

Vinod Kothari &
Company

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SPARSH.....

Touches

DECEMBER, 2015

In this Issue:

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



Editorial

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



"Success is walking from failure to failure with no loss of enthusiasm."

--Winston Churchill

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.

We also believe in sharing capabilities and achievements of our people to share happiness among ourselves. If you have any such achievements or feelings to share, please feel free to write to us so that we stay connected through Sparsh.

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

Stay in touch with us through SPARSH!!

Editor:

- Megha Saraf

editor@vinodkothari.com



Articles Published

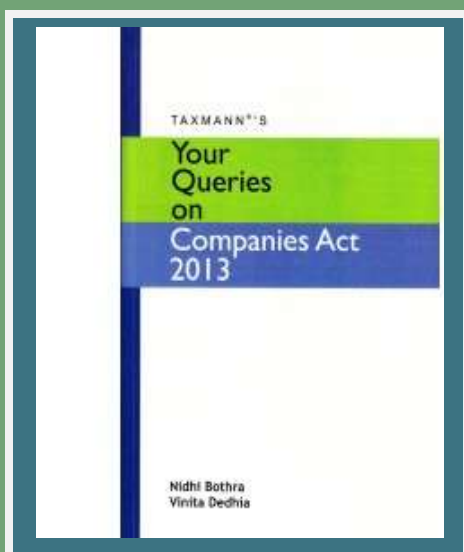
- Article on “NRI-controlled overseas corporate bodies are back” by Mr. Vinod Kothari and Ms. Niddhi Parmar got published on moneylife.
- Article on “Disqualification of director: A tainting provision left so unclear” by Ms. Vinita Nair got published in CPT magazine.
- Article on “Introduction of Commercial Courts and Divisions: Is it end of endless litigation?” by Mr. Aman Nijhawan got published in CPT magazine.
- Article on “Note on definition of factoring business” by Mr. Aman Nijhawan got published on taxguru.
- Article on “Determining the liability of Non Executive Director: A case study” by Ms. Dipanjali Nagpal got published in SCL magazine.
- Article on “RBI extends e-payment facility for imports” by Ms. Shruti Agarwal got published on moneylife.
- Article on “DIPP permits LLPs to make downstream investments” by Ms. Niddhi Parmar got published on moneylife.
- Article on “FDI in white label ATMs: Foreign NBFCs have reasons to cheer” by Ms. Nidhi Parmar got published on moneylife.
- Article on “Guidelines on Indian Owned and Controlled: Clarity on compliance to be ensured by Indian insurance companies” by Ms. Niddhi Parmar got published in The Insurance Times.
- Article on “New format to prepare financial results by debt listed companies- A comparative analysis” by Ms. Munmi Phukon got published in CPT magazine.
- Article on “Revised ECB framework widens the reach of NBFCs” by Ms. Arundhuthi Bose got published on taxguru.
- Article on “Section 47(2) - an unclear provision?” by Mr. Vignesh Iyer got published on taxguru.
- Article on “SEBI determined to regulate analyst meet” by Mr. Vignesh Iyer got published in SCL magazine.

Your Queries on Companies Act, 2013- A Book

- A new addition to the list of our publications by the authors- **Ms. Nidhi Bothra** and **Ms. Vinita Dedhia**.

This 895 page book gives no-nagging answers to approximately 2000 questions spanning from Companies Act 2013 to SEBI (Listing Obligations and Disclosure Requirements), 2015, Secretarial Standards, etc.

Questions have been arranged topically, and structured so as to include basic issues, as well as complex questions that arise in practice. Since our authors, along with colleagues and Vinod Kothari & Company have handled thousands of questions in the process of implementation of the Companies Act, 2013, they have included questions that is a virtual question bank. If you have any query that lurks in your mind – who knows, the question may have been covered by the authors already.



To view the contents of the book, click on our webpage:

vinodkothari.com



Sessions/Lectures taken/Events attended

- Ms. Vinita Nair took session on “NBFC- A Regulatory Framework” at the 10th Management Skill Orientation Programme being organized by ICSI-Thane Chapter on December 8, 2015.
- Ms. Aditi Jhunjhunwala took session on “The Micro, Small and Medium Enterprises Development Act, 2006” at R. Singhi Hall, EIRC Premises on December 29, 2015.

Workshops

Upcoming Workshop

- Cash-Flow Modelling for Securitisation, **Morocco**

Articles Published

Article on NRI-controlled overseas corporate bodies are back

- by Mr. Vinod Kothari and Ms. Niddhi Parmar got published on [moneylife](http://moneylife.com).

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NRI-controlled overseas corporate bodies are back

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VINOD KOTHARI AND NIDDIHI PARMAR | 30/11/2015 05:54 PM | 66



While the new dispensation will add to the ease of making investments in India, regulators will have to keep a close watch to avoid history repeating itself

The far-reaching changes in the regulatory regime for foreign direct investment (FDI), as per changes made by the recent press note (no. 12 dated 24 November 2015) (http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf) issued by Department of Industrial Policy & Promotion (DIPP), has also silently brought about a significant change. In the press note, overseas corporate bodies (OCBs), which were de-recognised in 2003, have been re-recognised.

To view full article click [here](#)

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Article on Disqualification of director: A tainting provision left so unclear

- by Ms. Vinita Nair got published in [CPT magazine](#)

Disqualification of director : A tainting provision left so unclear

VINITA NAIR
Senior Associate,
Vinod Kohari & Co.

Introduction

1. Certain provisions of the Companies Act, 2013 (Act) seem to have been written with a broken pencil – they are pointless! Provisions which are tainting provisions, crucial for determining the tenure of a director in a Company, have been drafted so loosely that companies are struggling with their interpretation. Additionally, a statutory auditor is also mandated under section 143(3)(g) of the Act, 2013 [corresponding to section 227(3)(f) of the Act, 1956] to report whether any director is disqualified from being appointed as a director under section 164(2) in the Auditor's report. Similarly a secretarial auditor in his report provided under section 204 in Form MR-3 is required to comment on the composition of the Board. This article discusses on the applicability of one such provision as is specified under section 164(2) of the Act, read with section 167.

2. Section 164(2) of the Companies Act, 2013 (Act, 2013)

“(2) No person who is or has been a director of a company which –

- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that

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Article on Introduction of Commercial Courts and Divisions: Is it end of endless litigation?

- by Mr. Aman Nijhawan got published in [CPT magazine](#)

Introduction of Commercial Courts and Divisions: Is it end of endless litigation?



AMAN NIJHAWAN
Research Asstt.
Vinod Kohari & Co.

Introduction

1. To facilitate ease of doing business and to ensure the expeditious disposal of high value commercial disputes, in exercise of powers conferred under Article 123(1) of the Constitution of India, President of India has promulgated an Ordinance to bring into force "*The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015*"¹ on October 23, 2015.

With this Bill coming into force, all the pending suits and applications including applications under the Arbitration and Conciliation Act, 1996 relating to commercial disputes of value of ₹ 1 Crore or more in the High Courts or civil courts will be transferred to the relevant Commercial Division or Commercial Court, as the case may be. However, a suit will not be transferred if a final judgment on the case has been reserved prior to the constitution of the relevant Commercial Division or Commercial Court.

Background

2. In 2003, 17th Law Commission of India *suo motu* raised the issue of setting-up Commercial Divisions in the High Courts and submitted Report No.188² titled "*Proposals for Constitution of Hi-tech Fast Track Commercial Divisions in High Courts*". Further, in 2009 Union Cabinet

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Article on “Note on definition of factoring business”

- by Mr. Aman Nijhawan got published on [taxguru](http://taxguru.com)



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Note on definition of factoring business

Article ID 72591 | Posted In RBI / FEMA | Articles | No Comments » 



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Factoring works mainly on the principle of seller selling the receivables of a debtor to a specialized financial intermediary called a factor. The sale of the receivables takes place at a discount and the ownership of the receivables is transferred to the factor who shall on purchase of receivables, collect the dues from the debtor instead of the seller, enabling the seller to receive upfront funds from the factor. This allows companies to receive immediate cash on their sales without having to wait for payments to come in from customers in due course. With the purchase of the receivables the factor enters the shoes of the seller and dawns the liability under the contract.

The business of factoring in India is regulated by the Factoring Regulation Act, 2011 ('Act')[1]. The Act defines the terms 'factoring business' and 'factor'.

Section 2(3) of the Factoring Regulation Act, 2011 defines Factoring business as:-

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Article on “Determining the liability of Non Executive Director: A case study

- by Ms. Dipanjali Nagpal got published in [SCL magazine](#)

2015]

DETERMINING LIABILITY OF NON-EXECUTIVE DIRECTORS

109

[2015] 132 SCL 109 (Mag.)

DETERMINING THE LIABILITY OF NON-EXECUTIVE DIRECTORS: A CASE STUDY

DIPANJALI NAGPAL*

Introduction

1. The regime of corporate governance makes a clear distinction between the roles to be performed by the directors of the company distinguishing them as Executive and Non-Executive Directors. The nomenclature ‘Non-Executive Directors’ (NED) implies that the director is not a part of the executive machinery of the company. His role does not encompass running of the day-to-day affairs of the company. Listed Public Companies statutorily require that NEDs be placed on the board to oversee the governance process by taking an independent and professional stance.

The extent of liability of a NED has always been controversial¹. The Ministry of Corporate Affairs had, *vide* its circular dated 25th March, 2011², clarified that, subject to certain conditions, penal actions can also be taken against directors who are not charged with responsibility. The present article discusses the case of *Umesh K. Modi v. Deputy Director of Enforcement*³, 2014 where the Delhi High Court settled the liability of a NED. The decision of the Hon’ble High Court is based on previous decisions of the Supreme Court in similar circumstances.

2. The case of *Umesh K. Modi v. Dy. Director of Enforcement* :

2.1 Facts of the Case - Umesh K. Modi, the plaintiff, a NED of Modi Xerox Limited (MXL) challenged the impugned order of the Appellate Tribunal of Foreign Exchange (AT) dated 26th March, 2008 upholding the adjudication order (AO) of Deputy Director of the Directorate of Enforcement (ED), dated 31st March, 2004.

MXL was incorporated in 1983-84. It imported goods/raw materials. It failed to submit to the exchange control copies of customs bills of entry as evidence of import against remittances of foreign exchange made by it, consequent upon

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Article on RBI extends e-payment facility for imports

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RBI extends e-payment facility for imports

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SHRUTI AGARWAL | 04/12/2015 05:02 PM | 



A new set of consolidated guidelines are applicable to both the export and import transactions

In order to exercise regulatory control over e-commerce transactions, specifically to the cross border transactions, Reserve Bank of India (RBI) vide its circular dated November 16, 2010 on "Processing and Settlement of Export related receipts facilitated by Online Payment Gateways" had issued a set of guidelines. Under these guidelines the Authorised Dealer Category-1 (AD Category-I) banks were permitted to offer the facility to **repatriate export related remittances only** by entering into standing arrangements with Online Payment Gateway Service Providers (OPGSPs) in respect of **export of goods and services**.

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Article on DIPP permits LLPs to make downstream investments

- by Ms. Niddhi Parmar got published on [moneylife](http://moneylife.com)

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DIPP permits LLPs to make downstream investments

 + COMMENT

NIDDI PARMAR (01/12/2015 03:28 PM)



This should make LLPs happy and we can expect a notification from RBI amending Regulation 14 (6) of the Foreign Exchange Management Regulations for transfer or issue of security by a person resident outside India

With the aim of improving the ease of doing business in the country and to fast-track the projects that are stuck, the Department of Industrial Policy & Promotion (DIPP) has issued press note no. 12 (http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf) dated 24 November 2015 (shall come into effect immediately) thereby liberalising FDI in favour of 15 major sectors.

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Article on FDI in white label ATMs: Foreign NBFCs have reasons to cheer

- by Ms. Nidhi Parmar got published on [moneylife](http://moneylife.com)

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FDI in white label ATMs: Foreign NBFCs have reasons to cheer

 + COMMENT

NIDHI PARMAR | 08/12/2015 02:53 PM |

**With DIPP clarifying on 100% FDI under automatic route in white label ATMs, foreign-owned or controlled NBFCs can offer these services without approvals**

In order to expand the reach of ATMs to smaller centres, the Reserve Bank of India (RBI) had given its nod to non-bank entities in June 2012 to install White Label ATMs (WLAs). While seeking RBI authorisation, foreign owned or controlled company (FOCC) non-banking financial company (NBFC) were required to obtain necessary approvals from the competent authority. However, the Department of Industrial Policy and Promotion (DIPP) vide its [press note no. 11 dated 1 October 2015](#) permitted 100% foreign direct


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Article on Guidelines on Indian Owned and Controlled: Clarity on compliance to be ensured by Indian insurance companies

- by Ms. Niddhi Parmar got published in [The Insurance Times](#)

GUIDELINES ON INDIAN OWNED AND CONTROLLED: CLARITY ON COMPLIANCE TO BE ENSURED BY INDIAN INSURANCE COMPANIES



Guidelines

Introduction

The Insurance Regulatory and Development Authority of India (IRDAI) has issued guidelines on "Indian owned and controlled" vide Ref. No. IRDA/F&A/GDL/GLD/180/10/2015 dated 19th October, 2015 (date of issue) clarifying the issues pertaining to the compliances to be ensured by an Indian insurance company to be known as Indian owned and controlled (Guidelines).

Prior to issuance of guidelines, the Central Government in consultation with IRDAI came up with the Indian Insurance Companies (Foreign Investment) Rules, 2015 (hereinafter referred to as "Rules 2015") effective from February 19, 2015 taking a significant step towards the most awaited reforms i.e. increasing the foreign investment cap from 26 per cent to 49 per cent which was then embedded in an Insurance Laws (Amendment) Act, 2015 (hereinafter referred to as "Amendment Act, 2015") which came into force from 26th December, 2014 (published in the Official

Gazette on 23rd March, 2015). Also, the provisions of erstwhile Insurance Act, 1938 (hereinafter referred to as "Act 1938") were substituted through the Amendment Act, 2015 in order to align with the provisions of the Companies Act, 2013 (hereinafter referred to as "Act, 2013").

All the existing Indian insurance companies' needs to comply with the disclosure requirements stated under the Guidelines within a period of 3 months from the date of issue i.e. up to 18th January, 2016 and for the companies coming into existence post issuance of Guidelines the same needs to be complied before grant of certificate of registration.

Provisions under Rules 2015

Rule 4 of Rules 2015 states -
An Indian Insurance Company shall ensure that its ownership and control shall remain at all times in the hands of resident Indian entities referred to in clauses (k) and (l) of rule 2.

Rule 2(k) defines the term Indian Control of an Insurance Company as under-

About the author

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Article on New format to prepare financial results by debt listed companies- A comparative analysis

- by Ms. Munmi Phukon got published in [CPT magazine](#)

New format to prepare financial results by Debt Listed Cos : A Comparative Analysis of



MUNMI PHUKON
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Introduction

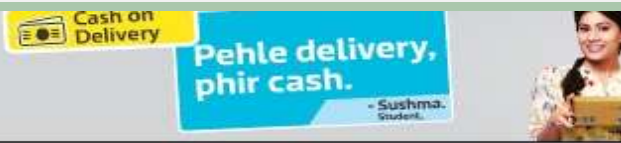

1. By the time, it seems the listed entities are quite neurotic, since only some hours left for the new Listing Regulations, 2015 (the 'Regulations') to become applicable. After 2nd September, 2015, each of us has seen that SEBI is coming out with various notifications, clarifications and guidance note such as guidance on material events, format of Business Responsibility Report, voting results, quarterly holding pattern of IDRs etc. Same way, on 27th November, 2015, vide Circular no. CIR/IMD/DF1/9/2015 (the 'Circular'), SEBI has prescribed the format of financial statements to be submitted by debt listed entities.

It is well confessed by SEBI itself that *'In order to enable investors to make well-informed investment decisions, timely, adequate and accurate disclosure of financial results on a periodical basis is critical. At the same time, to ensure comparability, uniformity and quality in disclosures made by listed entities across stock*

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Article on Revised ECB framework widens the reach of NBFCs

- by Ms. Arundhuthi Bose got published on [taxguru](http://taxguru.in)






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Revised ECB framework widens the reach of NBFCs

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Preamble

The revised ECB framework[1] which the RBI issued on the 30th of November, 2015 comprise of favorable amendments with regard to categories of eligible borrowers. One of the components of the financial sector of the economy, the NBFCs, will be benefitted by the framework. The earlier framework was not as liberal and considerate as the revised framework with respect to NBFCs. This write up tends to focus on the impact of the revised framework on NBFCs and analyze the same compared to the former framework.

Comparative analysis of the former and the revised ECB framework

1. Eligible borrowers –

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Article on Section 47(2) - an unclear provision?

- by Mr. Vignesh Iyer got published on [Indiacorp law](#)

IndiaCorpLaw

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

Voting Rights on Preference Shares: An Unclear Provision?

[The following guest post is contributed by Vignesh Iyer of Vinod Kothari & Co. The author can be contacted at vignesh@vinodkothari.com]

The enactment of the Companies Act, 2013 (Act, 2013) has given rise to various issues with regard to compliance and interpretations of several statutory provisions. One such issue is the subject matter of this post.

Section 47 of Act, 2013 - Voting rights

Section 47 of Act, 2013 provides for voting rights of the shareholders. The same corresponds to Section 87 of the Companies Act, 1956 (Act, 1956). Section 87 of Act, 1956 clearly demarcated the rights of cumulative and non-cumulative preference shareholders in case of default in payment of dividend, whereas Section 47 of Act, 2013 does not provide for the same.

The second proviso to Section 47(2) of Act, 2013 provides:

"Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company."

It is evident that the above proviso has been muddled, which leads to several queries viz.:

- Does it mean a period of two consecutive years or any two years?
- If dividend is paid in such two years, will it extinguish the voting rights of the preference shareholders or will it be a permanent right?
- Whether subsequent payment considered as remedial?

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SEBI & CORPORATE LAWS - MAGAZINE

[Vol. 132

[2015] 132 SCL 102 (Mag.)

SEBI DETERMINED TO REGULATE ANALYST MEETS

VIGNESH IYER*

Introduction

1. It is a common practice to have several analysts approaching the Key Managerial Personnel (KMPs) of the listed entities to know more about the company, its product lines, future prospects, etc. The officials never have any intent to divulge any undisclosed or sensitive matter. It is better for them to be safe than sorry while scheduling analysts meets. Any inadvertent disclosure of price sensitive information is likely to have far reaching effects. In this article an overview of the disclosure requirements under various regulations in India and corresponding provisions internationally have been given. The intent is to evaluate whether private meetings with analysts or potential investors is possible in the given scenario?

2. Disclosure requirements with regard to meetings with Analysts and Institutional Investors :

2.1 SEBI (Prohibition of Insider Trading) Regulations, 2015¹ :

2.1-1 Regulation 8(1) of the SEBI (PIT) Regulations, 2015 reads as follows :—

"The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

Note: This provision requires every company whose securities are listed on stock exchanges to formulate a stated framework and policy for fair disclosure of events and occurrences that could impact price discovery in the market for its securities. Principles such as, equality of access to information, publication of policies such as those on dividend, inorganic growth pursuits, calls and meetings with analysts, publication of transcripts of such calls and meeting, and the like are set out in the Schedule."

Principles 6 & 7 of Principles of Fair Disclosure for purposes of Code of

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Our Corner

Christmas Day celebration at our office



Birthday celebration of our employees





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