

# Selected issues in implementation of Companies Act, 2013 with special focus on

- Companies (Amendment) Bill, 2016
  - CARO, 2016
- The Companies (Accounting Standards) Amendment Rules, 2016

22<sup>nd</sup> April, 2016 | 1:30 P.M – 6:30 P.M | Kolkata

Organised by: Vinod Kothari Consultants Pvt. Ltd.

## *Why this workshop*

The implementation of the Companies Act 2013 has thrown several challenges to companies. While the urge on the part of companies to attain strictest compliance has become high, at times, companies get to feel that the entire regime is getting counter-productive. Compliances are needed for healthy business, but compliance cannot transpire into a pain.

While the government has tried to moderate several provisions of the 2013 Act in form of the Companies (Amendment) Bill 2016, there are added compliances in respect of managerial remuneration and related party transactions etc.

Listing regulations, Insider Trading law, with the specter of heavy penalties – all of these add up to a tough regime for companies and other listed entities.

Professionals and practitioners need to constantly be on their vigil – keeping the law in their head, and equity in their heart, they need to ensure that they are not falling foul, of either the law or their spirit.

This is the core of our intended workshop. The faculty, **Mr. Vinod Kothari**, has done dozens of workshops on the Companies Act, 2013 and Listing Regulations, and is a seasoned trainer having practical exposure to corporate laws for almost 30 years now.

**The workshop will be interactive from the very start.** We will pick up some selected questions on the topics below, and nudge the participants to contribute to the discussions.



## **Topics for discussion:**

### **1. Control over companies and consequences of shareholding matrix:**

- a. Holding-subsiary , investor-associate companies
- b. Ultimate beneficial owner and declaration under sec. 90 as proposed; consequences of disclosure
- c. Organizing corporate control through layers, bringing chain-breaker entities

### **2. Private placements of shares and debentures**

- a. Exploiting rights issue method in small companies
- b. Can there be a “deemed allotted” concept, so that money on allotment can be swept out as soon as it comes?
- c. Companies (Amendment) Bill proposes to link the use of money to filing of return of allotment – is this a fair proposal?
- d. Are we being excessively paranoid about private placements, particularly if it is to institutional investors?
- e. Are the private placement provisions of Companies Act applicable to banks or other bodies corporate?

### **3. Shares and Debentures**

- a. Companies (Amendment) Bill 2016 proposes to create a carve out for short-term money market instruments from the definition of “debentures”. What implications will this have for companies? Will short-term debentures of upto 12-month maturity see a revival?
- b. Can companies issue unsecured debentures at all?
- c. Can companies issue optionally convertible debentures at all?
- d. There seems to a view expressed by some people that share warrants have been ruled out the Companies Act 2013. Is this a correct view? Are the share warrants being issued by present-day companies (options to subscribe to securities) the same as share warrants under sec 113 of CA, 1956? Warrants in the context of FDI Regulations, ICDR Regulations and the like.
- e. Warrants and compulsorily convertible debentures – what are the differences?
- f. Devising innovative financial instruments – key principles of design

### **4. Public deposits**

- a. Meaning of public deposits, in light of the Deposit rules.
- b. Are advances against goods or services, if outstanding for more than 12 months, deposits?

## **5. Charges**

- a. Do all charges require registration?
- b. Do third party charges require registration?
- c. Consequences of delay in registration on the priority of the charge – is the priority based on day of filing of registration, or day of creation of the charge?

## **6. Board meetings, video conferencing, committee meetings:**

- a. Secretarial standards – are the standards an extension of Parliamentary law, with the force of the statute? What about the guidance note on secretarial standards?
- b. The law seems to refer to the standards on board and general meetings. Are the standards applicable to committee meetings, creditors' meetings, and the like?
- c. The Act seems to permit directors to participate using audio-visual means. Is the intent to prohibit any other mode of participation? Can an expansive provision be read as a restrictive provision?
- d. Is there a case of a director participating in a meeting, but not being counted for quorum? Is it possible for a person to participate in the proceedings, but not be counted for quorum?
- e. Can a company permit a general meeting to be called using video-conferencing?

## **7. Accounts and audit, special focus on CARO 2016**

- a. Is consolidation required in case of a company having associates only?
- b. CARO 2016 has been promulgated by the Govt on 30<sup>th</sup> March 2016, however, effective for financial year 2015-16, leaving auditors with a very little time for compliance. There are several compliance points to be checked and reported upon by the statutory auditor. To what extent the auditor goes into regulatory compliances?
- c. Can the auditor rely upon the work of the secretarial auditor, who may have or may be reporting upon compliances?
- d. Important compliances to be checked by the auditor:
  - i. Managerial remuneration
  - ii. Loans and investments
  - iii. Related party transactions
  - iv. Acceptance of deposits
  - v. Registration as an NBFC, etc.
- e. Methodology and audit checks for the auditor

- f. Analysis of the changes in the seven Accounting Standards notified by MCA on 30<sup>th</sup> March, 2016
- g. Applicability of IndAS to NBFCs.

#### **8. Related party transactions**

- a. Scope of coverage of related party transactions
- b. Transactions covered by sec. 188, not covered by sec 188, covered by Listing Regulations
- c. What is the meaning of “ordinary course of business”?
- d. What is the meaning of arm’s length transaction? Is arm’s length price enough for a transaction to be arms-length?
- e. Is it important that a company while providing guarantees to other companies should charge a guarantee commission?
- f. CARO reporting of intra-group loans, guarantees, etc.
- g. Is sharing of brand name/flagship name a related party transaction?
- h. Are reimbursements related party transactions?

#### **9. Inter-company loans and investments**

- a. Are transaction between holding and WOSs covered by sec. 185? For applicability of sec. 185, is the scope of the section the starting point, or the scope of the exception? Merely because a company does not qualify for the exception, is it proper to say the company is covered by the section?
- b. Is distinction between loans and deposits relevant for sec. 185? Sec 186?
- c. Are transactions for assignment of receivables, co-borrowing transactions, etc. covered by sec. 185? What is a co-borrowing transaction? Does the nomenclature suffice?
- d. Is a letter of comfort a guarantee for the purpose of sec. 185 or 186? What are the distinctive features of a LoC? When does the nomenclature become irrelevant and the LoC become a guarantee?
- e. What is the scope of exceptions from sec. 186 for NBFCs

#### **10. Managerial Remuneration**

- a. What is the scope of coverage of sec. 197? Does it or may it cover CEO’s remuneration?
- b. The proposed Amendment Bill 2016 imposes a requirement of consent of banks and financial institutions for payment of managerial remuneration. Is it application even where there is no default?
- c. Disqualifications of a director in case of filing or financial defaults under sec. 164 (2) read with sec. 167 (1) (a)
- d. How to remunerate professional directors under the new regime, post amendments in 2016?

e. Auditors' reporting on managerial remuneration

❖ **Details of the course**

- **Date:** 23<sup>rd</sup> April, 2016
- **Place:** Kolkata
- **Venue:** 1006-1009, Krishna Building, 224 AJC Bose Road, Kolkata - 700017
- **Faculty:** Mr. Vinod Kothari

❖ **Fee for the course and how to register**

The standard fee for the course is **Rs.5000/- [plus applicable taxes]**

**To register just drop an e-mail at:**

- Nikita Snehil: [nikita@vinodkothari.com](mailto:nikita@vinodkothari.com) / 8820226195
- Arundhuthi Bose-[arundhuthi@vinodkothari.com](mailto:arundhuthi@vinodkothari.com) / 9007637475

**Contact Number:** 033 2281 1276/3742/7715

**Alternatively you can drop an e-mail at [fintrain@vinodkothari.com](mailto:fintrain@vinodkothari.com)**

**Register soon!!!**

# *Faculty*



**Mr. Vinod Kothari**

**Qualification: Company Secretary, Chartered Accountant**

## **About Mr. Vinod Kothari**

He is internationally recognized as an author, trainer and consultant on corporate laws and specialised subjects of finance like leasing, housing finance, securitisation, credit derivatives, accounting for financial instruments, etc. As such, he lectures all over the world. The locations where he has lectured on these subjects include New York, Washington, London, Milan, Frankfurt, Singapore, Hong Kong, Sydney, Colombia (South America), South Africa, Malaysia, Jordan, Dubai, Kuwait, Egypt, Sri Lanka, Bangladesh, etc. Mr. Kothari with his efficient team has handled very diverse groups – from rating agency professionals in Malaysia, to group of investors in Sydney, to tax officers in South Africa, to group of lawyers in India, to executives of the World’s largest securitisation agency in Washington, to a group of quants in New York. He is acclaimed for his deep understanding of the various facets of corporate laws and his expertise in areas of FEMA, leasing, NBFCs. He is renowned for offering services to a number of listed companies which not only include advisory or consultancy related services or conduct of due diligences, but also litigation related services.

Mr. Kothari has served as the Chairman of the Institute of Company Secretaries of India Eastern India Regional Council, Calcutta. In 1987, a voluntary organisation of Calcutta chose him as the Outstanding Young Person of Calcutta in the field of Finance and Taxation. He is also one of the editors of the Ramaiya's Company Law, a tome on company law and an unquestionable source of authority on the subject.

He also has a vast experience in working with the various regulators like SEBI, NHB and Government of India and multilateral organisations like IFC and ADB.

### **Author of Books:**

- Corporate Boards, Committees and Policies under the Companies Act
- Understanding Companies Act 2013, 2014 Edition
- Guide to Independent Directors, 2014 Edition
- Led a team of 17 specialist editors for the latest edition of Guide to the Companies Act, A. Ramaiya, 18<sup>th</sup> Edition.
- Prepared the key highlights and reference tables for “Corporate Laws” second edition and “The Companies Act, 2013” published by Lexis Nexis Guide to Housing Finance – A comprehensive guide to mortgage lending, 2013 Edition
- Guide to Structured Finance, 2014 Edition
- Securitisation, Asset Reconstruction and Enforcement of Security Interests, Fourth Edition, 2013
- Taxation of Lease Transactions in India, co-authored by Sikha Bansal, 2013
- Lease Financing and Hire Purchase, Fourth Edition, 1996.
- Securitisation: The Financial Instrument of the Future, Fifth edition 2006.
- Credit Derivatives and Structured Credit Trading, 2009 Edition
- Introduction to Securitization (co-authored with Frank J. Fabozzi)
- Author of 3 Chapters in Handbook of Finance, (editor Frank Fabozzi), published by Wiley, USA.

### **Lecturing:**

- He is a visiting faculty at Indian Institute of Management, Joka, Calcutta for several years, teaching a full-fledged course for the final year students on Structured Finance and Taxation. Over 125 students sign up of the course every year.
- He is a guest faculty at the National University of Juridical Sciences- the subject taught here are insolvency and credit interest enforcement laws in India and other countries. The course included a comparative study of the insolvency and creditors' rights in USA, UK and Australia.

### **Articles:**

- Vinod Kothari's articles on asset-based finance, securitisation etc. have appeared in several national and international journals including Duke Journal of Comparative International Law (USA), US Banker (USA), Export trader (Spain), Trade and Forfeiting Review (UK), Journal of International Banking Law and Regulation (UK), Equipment Finance Journal (USA), Monitor daily (USA), Analyst (India), etc.
- Vinod Kothari also contributed to Euro money's yearbooks on leasing and securitisation.

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