

Vinod Kothari & Company

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Sparsh..

December, 2012



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Co.**
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Editorial



Change is inevitable, it is important to change in dynamic environment, of which the corporate world part.

mature is to go on creating oneself endlessly " Ā
-Henri Bergson

Change is inevitable, it is important to change in dynamic environment, of which the corporate world part.

The most awaited Companies Bill has been passed in Sabha and as such it is creating waves all over. Vinod Kothari was invited as speaker in reputed professional forums to speak on the Companies Bill.

Also, VKC is organizing the Affordable Housing Summit 2013 in Mumbai to address issues pertaining to home ownership and housing finance in India.

Stay in touch with us!

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Highlights of December, 2012:

➤ Articles Published:

- [Companies Bill too strict on Private Placement provisions:](#) by Vinod Kothari and Nidhi Ladha
 - [Derivatives Mess in India;](#) by Nidhi Bothra
 - [Companies Bill: From the Rule of Law to the Law of Rules:](#) by Vinod Kothari and Vrinda Bagaria
 - [Law of Pledges in India:](#) by Vrinda Bagaria
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- [Affordable Housing Finance Summit, 2013](#)
 - [Securitisation, Covered Bonds and Credit Derivatives Master Class](#)
 - [Participation in "Doing Business in India", a survey by IFC](#)
 - [The Companies Bill: in Limelight](#)
 - [Vinod Kothari as speaker in various reputed forums](#)

Our Articles Published

Fallout of the Sahara case:

Companies Bill, 2012 too strict on private Placement provisions

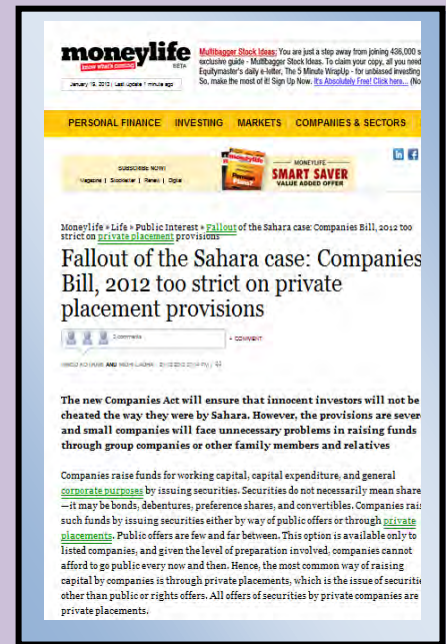
-by VINOD KOTHARI and NIDHI LADHA, published in *moneylife*

Companies raise such funds by issuing securities either by way of public offers or through private placements. Public offers are few and far between. This option is available only to listed companies, and given the level of preparation involved, companies cannot afford to go public every now and then. Hence, the most common way of raising capital by companies is through private placements, which is the issue of securities other than public or rights offers. All offers of securities by private companies are private placements.

The Sahara case highlighted abuse of this provision-some Rs20,000-plus crores were raised from a few million investors. But it was still termed private placement. In response, the Companies Bill, 2012, passed by the Lok Sabha on 18 December 2012 has tightened the provisions pertaining to private placements. But the rules are now so stringent that it is difficult to flexibly raise capital.

What adds to the rigours of the section is that the section is applicable to *all securities* debt and equity, and to *all companies* public and private.

The Article throws light on such provisions and the probable impact of the same. The article has been published in www.moneylife.in see [here](#). The article is also available on our website [here](#). Read other interesting articles relating to the Companies Bill. See [our dedicated page on the Companies Bill](#).



Our Articles Published

Derivatives mess in India:

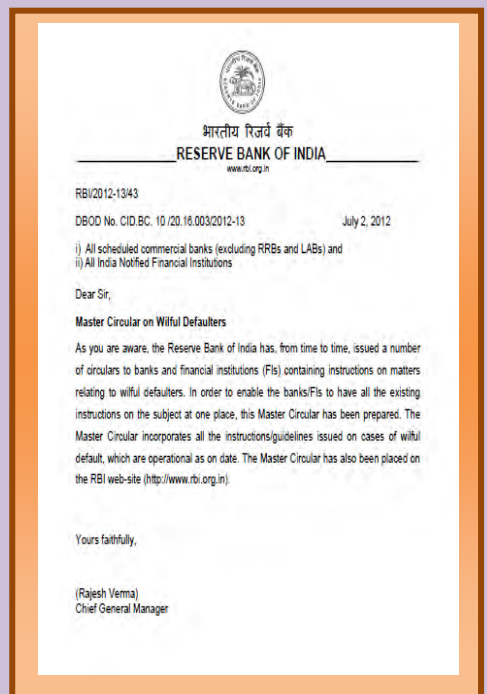
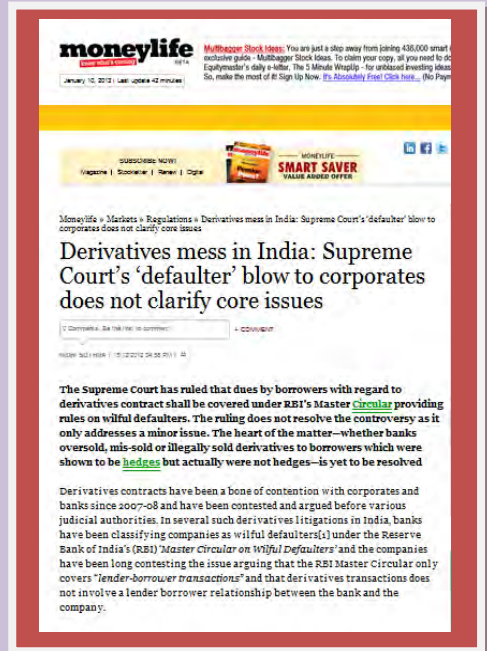
« ± ® ° - · ¨ ; ¢ š does not clarify core issues »

-by NIDHI BOTHRA published in [moneylife](http://www.moneylife.in)

Derivatives contracts have been a topic of contest and argument before various judicial authorities. In several such derivatives litigations in India, banks have been classifying companies as wilful defaulters ± a ¨ ; ® ° ¨ ; & ; - ; ® Master Circular on Wilful Defaulters and the companies have been long contesting the issue arguing that th ; & " ! š ° ; ® ° ¨ ; ¥ ® œ ± ¨ ; š ® lender-borrower ° ® š a - š and that derivatives transactions do not involve a lender borrower relationship between the bank and the company.

The Supreme Court in its landmark judgment dated December 11, 2012 ruled that dues by borrowers with regard to derivatives contract shall be covered ± a ¨ ; ® ° & " ¨ ; Circular providing rules on wilful defaulters. The ruling does not resolve the controversy as it only addresses a minor issue. The heart of the matter whether banks oversold, mis-sold or illegally sold derivatives to borrowers which were shown to be hedges but actually were not hedges is yet to be resolved.

(¨ ; ¥ - ¨ ; š ® ° ¨ ; ¥ œ ¨ ; ; ¨ ; ¨ ; ¨ ; - œ ± - - ; - ¨ ; ¨ ; ¨ ; ± ¨ ; ° ; ® ° ¨ ; ¨ ; ¨ ; ¨ ; œ « a - ; - analyses the stand taken by the Apex Court in the matter. The article has been published in www.moneylife.in and can be read [here](#).



Our Articles Published

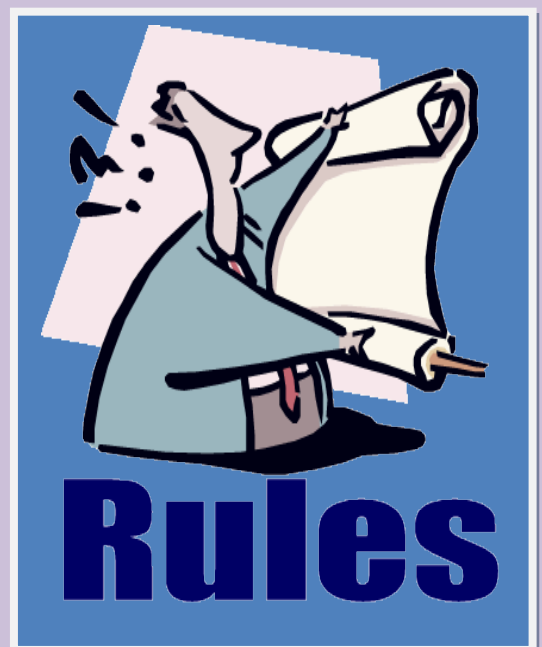
Companies Bill: From the Rule of Law to the Law of Rules -by VINOD KOTHARI and VRINDA BAGARIA, published in *IndiaCorpLaw*

Parliament makes legislation, and the executive, that is, the Central government or any other statutory authority, is primarily concerned with the implementation of the law, but is quite often given powers to make rules. The power of rule-making commonly comes by words such as

Rule-making has its own advantage – rules are flexible, and may be amended from time to time without going to the Parliament. Rules may contain matters of details, for example, the procedural rules, which may be parked into rules to keep the body of the law light. However, there is a curious balance between what needs to be in the law and what may be parked into the rules.

The Companies Bill 2012 goes a little overboard in liberally setting aside matters which may be prescribed by the Central Government. The word “prescribed” occurs 416 times in the Bill. Though at lots of instances where the said word is used, the idea may be the prescription of the form/e-form whereby filing is to be done, there is an enormous extent of law that is reserved for prescription by the executive in form of rules. This would mean, besides the law with 470 sections and 5 schedules, subjects will have to keep in mind the massive body of rules to be framed under the law.

In their [post](#), the authors critically analyze the extensive nature of rule making powers conferred upon the Central Government under the Companies Bill, 2011. The write-up is also available [here](#). To read other informative and analytical articles on the Companies Bill, see [our dedicated page on the Companies Bill](#).



Our Articles Published

Law of Pledges in India

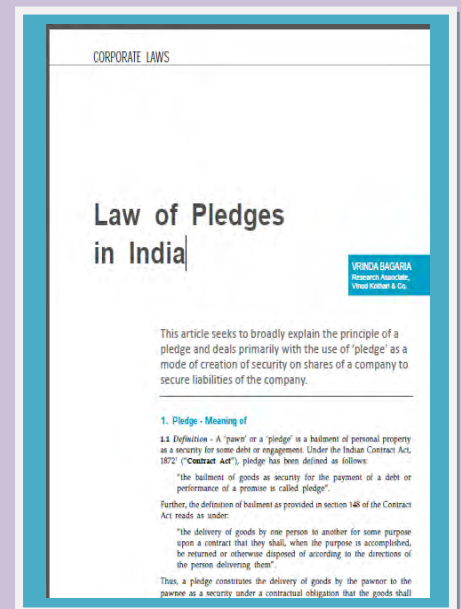
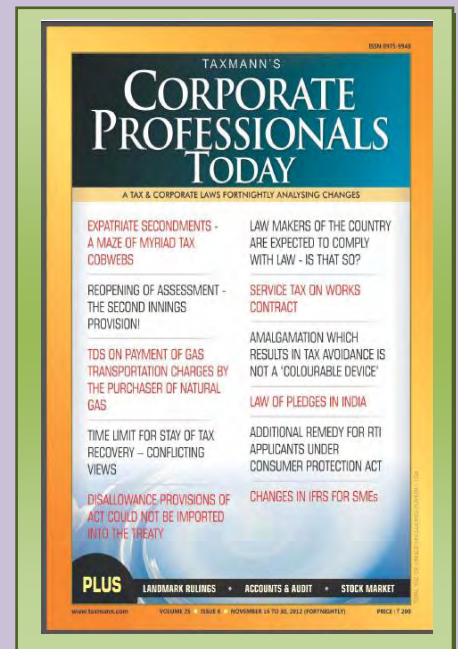
-by VRINDA BAGARIA published by [Taxmann](#) in the Journal [Corporate Professionals Today](#)

Pledge, under the Indian Contract Act, 1872 has been defined as the bailment of goods as security for the payment of a debt or performance of a promise. There are several essentials of a valid pledge: subject-matter (i.e. goods), delivery of goods (whether actual or constructive), security for a debt or performance of an obligation.

Government promissory notes, insurance policies, bonds, scrips, railway receipts can be pledged. Shares can also be pledged as securities by delivery of share certificates and rules of delivery and other rules applicable in case of bailment are applicable to them also.

This article seeks to broadly explain the principle of a mode of creation of security on shares of a company to secure liabilities of the company.

The article has been published in Corporate Professionals Today Part 6, Volume25. The article can be read [here](#).



What's happening at VKC

THE AFFORDABLE HOUSING FINANCE SUMMIT, 2013

Housing sector is one of the principal sectors of the economy. Quintessential to the development of the sector is housing finance, which has been focused on high income groups in our country. Of late, affordable housing finance is gaining momentum. Affordable housing finance has emerged as a strong focus area for the industry players. Several positive measures have been taken in the recent past: tax benefits, RAY, special refinancing schemes of NHB and so on. However, the task is huge and requires efforts at each level.

Vinod Kothari Consultants is taking a step forward by organizing [The Affordable Housing Finance Summit, 2013](#) scheduled to be held on 22nd-23rd January, 2013 in Mumbai. The Summit will serve as a platform for industry stakeholders to discuss problems, prospects, opportunities and environment of housing finance; for the market participants to put forward their perspective on issues concerning them and way forward.

The Summit is sponsored by Magma Fincorp Limited; co-sponsored by HDFC Limited; and supported by International Finance Corporation, National Housing Bank (NHB) and International Union for Housing Finance (IUHF).

Click for the brochure [here](#).

The brochure is also available at [IUHF website](#).



The brochure for 'The Affordable Housing Finance Summit 2013' is presented by Vinod Kothari Consultants P. Ltd. It features the VKC logo and the event details: 22-23 January 2013, Venue-TBA, Mumbai. The brochure lists co-sponsors (IFC International Finance Corporation) and supporters (NHB, IUHF). It includes a 'Highlights' section with bullet points: 'The stakeholders of the industry come together to discuss problems, prospects, opportunities and environment of housing finance.', 'Housing finance seems to be on a steep growth path, with huge potential for further growth, extremely opportune time to all across and take stock of the developments and be ready for the unleashed force!', 'Hear the market participants' perspective on issues concerning them and way forward.', 'Excellent place for networking.', and 'Top speakers on respective topics.' The visual design includes a hand holding a house model and stacks of gold coins.



What's happening at VKC

Securitisation, Covered Bonds, & Credit Derivatives Master Class

VKC has completed 15 runs of the famous Securitisation School. *The Securitisation, Covered Bonds and Credit Derivatives Master Class* is a compressed version of the Securitisation School.

The Master Class will cover 3 hottest topics in structured finance securitisation, covered bonds and credit default swaps

Securitisation is clearly re-emerging and its relevance unquestionable for fast developing economies. Covered bonds as an instrument for housing finance is seen as the next big wave! Indian regulators are getting ready to launch covered bonds. Credit default swaps are emerging as the new way of synthetically transforming debt into tradable assets.

Know more about the workshop [here](#).

Securitisation, Covered Bonds & Credit Derivatives Master Class
30th January-2nd February, 2013, Mumbai, India

- Three hottest topics in structured finance - securitisation, covered bonds and credit default swaps - packed into a single workshop (and you still have the flexibility!)
- Securitisation clearly re-emerging, relevance unquestionable for fast developing economies
- Covered bonds as an instrument for housing finance seen as the next big wave! Indian regulators are getting ready to launch covered bonds
- Credit default swaps - the new way of synthetically transforming debt into tradable assets, extremely interesting ideas on franchising
- This is a compressed version of our World-famous Securitisation School (15 runs completed, with participants from all over the world).

Early Bird Discount of 20% for registrations on or before 31st December, 2012.
Thereafter, 10% discount for registrations on or before 9th January, 2013

Organized by
Vinod Kothari Consultants Pvt Ltd

Venue: TBA Mumbai, India	Mumbai Office: 222, Ashoka Shopping Centre 2 nd Floor, LT Road Near IT Hospital Mumbai - 400 001 022-22475600	Kolkata Office: 3012, Krishna Building, 22 A J C Bose Road, Kolkata - 700017, India Ph - 9133 2281276/77151/3742
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To register, email at info@vinodkothari.com or poorja@vinodkothari.com

What's happening at VKC

Participation in "Doing Business in India":

A Survey conducted by IFC



Vinod Kothari and Nidhi Bothra participated in a survey by IFC « [here](#) »

They have received Certificate of Appreciation from the IFC World Bank.

What's happening at VK & Co.

The Companies Bill, 2012: In Limelight

The Eastern India Regional Council of Institute of Chartered Accountants India (ICAI) hosted a 2-Day **National Conference on Corporate Laws and Direct Taxes**; organized by Corporate Laws & Corporate Governance Committee and Direct Taxes Committee of the ICAI on 29th - 30th December 2012 at Vidya Mandir.

Vinod Kothari was one of the eminent speakers in the Conference. He lectured on **“New Regulatory Framework for NBFCs”** and **“Significant Provisions relating to Directors, Management and Corporate Governance in the Companies Bill, 2012”**.



Central Kolkata Chartered Accountants Study Circle-EIRC organized a Seminar on **“The Companies Bill”** on 27th December, 2012 at Bengal Chamber of Commerce & Industry.

Vinod Kothari was invited to speak on the Companies Bill.

What's happening at VK & Co.

The Companies Bill, 2012: In Limelight



Terapanth Professional Forum Kolkata Branch organized a Seminar on « © - š a ¥ j - & j œ j a ° · œ œ Saturday 29th December 2012. Vinod Kothari was a Speaker in the Seminar.

Eastern India Regional Council of the Institute of Company Secretaries of India organised a Half-Day Workshop on « © - š a ¥ j - · " ¥ " · ž « § · ' š > α š · « a · ° α on 22nd December, 2012 at Golden Park Hotel.

Vinod Kothari was invited as Guest Speaker in the Workshop



Our Corner



Our past associate Neha Gupta has tied the knot. We wish her a happy and successful marriage life ahead.



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