

**REPORTS OF THE PARLIAMENTARY STANDING
COMMITTEE ON FINANCE ON THE COMPANIES BILL,
2009 AND THE COMPANY SECRETARIES
(AMENDMENT) BILL, 2010**

The Hon'ble Parliamentary Standing Committee on Finance placed their report on the Companies Bill, 2009 as well as report on the Company Secretaries (Amendment) Bill, 2010 before the Lok Sabha on 31st August, 2010.

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Report on the Companies Bill, 2009

The recommendations contained in the Report on the Companies Bill, 2009 include the following with regard to the profession of Company Secretaries:

1. Annual Return

- (i) The following additional clause may be added in clause 82(1)

“(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses/countries of incorporation/registration and percentage of shareholding held by them.”

- (ii) The suggestion for placing an obligation on the Company to provide every assistance to the Company Secretary in whole time practice to enable him to verify any record or information etc.

in connection with certification of annual return of the company may be considered for inclusion in the clause.

- (iii) The Committee recommend that the new provision requiring return to be filed with Registrar, in case promoters' stake changes beyond a limit, in order to provide audit trail of ownership may be duly incorporated in the Bill.
- (iv) The Committee recommend that any adverse remarks or qualification, made by the Company Secretary in whole-time practice, while certifying the annual return, should be necessarily explained for or commented upon in the Board's report.

2. Directors' Responsibility Statement

The Directors' Responsibility Statement referred to in sub-clause (3) of clause 120 shall state that –

“(f) The directors had devised proper systems to ensure compliance with the provisions of this Act and rules made there under and that such systems were adequate and operating effectively”

3. Key Managerial Personnel

The Committee is of the view that the proposal originally contained in the Bill in clause 178(1) regarding appointment of KMP may be retained with a view to providing flexibility to decide the threshold limit of companies which shall compulsorily have whole-time KMP. (i.e. every company belonging to such class or description of companies as may be prescribed by the rules shall be required to appoint all the three Key Managerial Personnel – Managing Director, Company Secretary and Chief Financial Officer).

4. Secretarial Audit

Provisions to be included in the Bill to mandate Secretarial Audit for bigger companies.

New Clause 178A –

- (1) Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed.
- (2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and other records of the company.
- (3) The Board of directors, in their Report made in terms of sub-section (3) of section 120 of the Act, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report under sub-section(1)
- (4) Where any default is made in complying with the provisions of this section, -
 - (a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;
 - (b) The company secretary in practice who is in default shall be punishable with fine which

shall not be less than one lakh rupees but which may extend to five lakh rupees.

5. Functions/Role of Company Secretary

The functions of Company Secretaries to be provided.

New Clause 178C – The functions of Company Secretaries shall include :-

- (a) to convene Board and general meetings, to attend the board and general meetings and maintain the record of the minutes of these meetings.
- (b) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of this Act;
- (c) to assist and advise the board in the conduct of the affairs of the company;
- (d) to assist and advise the board in ensuring good corporate governance and in complying with the corporate governance requirements and good practice;
- (e) to ensure that the company complies with the applicable secretarial standards.

Explanation – For the purpose of this clause, the term “Secretarial Standards” means Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government.”

6 Incorporation of Companies

With a view to ensuring greater accountability, the Committee recommend that necessary changes may be

made in clause 7(1)(b) requiring certificate of compliances under this clause to be given both by the professional as well as by Director/Manager/Secretary of the Company.

Report on the Company Secretaries (Amendment) Bill, 2010

Secretary of the Council

As pointed out by the ICSI, it would be in the fitness of things that the Secretary of the Council of the Institute is a qualified member of the Institute. The Committee, therefore, recommend that the stipulations of section 16(1)(a) relating to the appointment of the Secretary of the Council are reviewed for reinstating the position prevailing earlier whereby the Secretary had to necessarily be a member of the Institute.