

15th
National Conference
of
Practising Company Secretaries

Theme
PCS - The Facilitator for Corporate Growth

Friday & Saturday, June 27-28, 2014

Venue
"The Orchid", Mumbai



THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

R. M. Lodha
Chief Justice of India



*11, Moti Lal Nehru Marg,
New Delhi - 110 011
Tel. : 23017474*

June 6, 2014

Message

I am immensely happy to learn that the Institute of Company Secretaries of India (ICSI) is organizing its 15th National Conference of Practising Company Secretaries on the theme "PCS - The Facilitator for Corporate Growth" at Mumbai from 27th to 28th June, 2014 and a souvenir is being brought to commemorate this occasion.

In the recent times, the role of ICSI "to carry out proactive research and development activities for protection of interest of all stakeholders" has become more challenging and demanding. It is of great significance that this august body is going to deliberate upon several important topics, including opportunities under the Companies Act, 2013, exploring new areas of practice and enhancing quality of professional services.

I am sure that ICSI will keep on contributing more effectively in order to achieve the ultimate goal for which ICSI was established.

I convey my best wishes for the success of the Conference.

A handwritten signature in black ink, appearing to read 'R.M. Lodha'.

R.M. Lodha



वित्त मंत्री
भारत
नई दिल्ली 110 001
FINANCE MINISTER
INDIA
NEW DELHI - 110 001



Message

June 9, 2014

It gives me pleasure to note that the Institute of Company Secretaries of India (ICSI) is organizing the 15th National Conference of Practising Company Secretaries on 27-28th June, 2014 at Mumbai on the theme **PCS - The Facilitator for Corporate Growth** where a large number of eminent faculty members including professionals, Directors, Advocates and Corporate Executives would deliberate on various important themes of the Conference. The Institute also proposes to bring out a Souvenir on the occasion of the Conference containing the programme, special articles and write-ups on the theme of the conference.

I wish all the success to the ICSI and the Organizers of the National Conference.


(ARUN JAITLEY)



Prakash Javadekar

Minister of State

Information & Broadcasting (Independent Charge)
Environment, Forest & Climate Change
(Independent Charge) and
Parliamentary Affairs
Government of India

13 JUN 2014

Message

It gives me great pleasure to learn that the Institute of Company Secretaries of India is organising its 15th National Conference of Practising Company Secretaries from 27th to 28th June, 2014 on the theme "PCS - The Facilitator for Corporate Growth" at The Orchid, Mumbai. I am sure the deliberations held at the Conference will immensely help the various professionals who will participate in it. I wish the organisers of the Conference and the participants a grand success.

(Prakash Javadekar)

किरन रिज्जू
KIREN RIJJU



गृह राज्य मंत्री
भारत सरकार
MINISTER OF STATE FOR
HOME AFFAIRS
GOVERNMENT OF INDIA

16 June 2014

Message

I am extremely glad to know that the Institute of Company Secretaries of India (ICSI) is organizing its 15th National Conference of Practising Company Secretaries.

The Company Secretary is a vital institution to ensure that human organizations adhere to their legal and social obligations in a transparent and effective manner. They are tasked with ensuring that our corporates adhere to the law of the land in letter and spirit.

I am sure this conference will be a milestone in ensuring the highest standards in this profession. I wish the organizers the very best in this and all their other endeavours.



(Kiren Rijju)

सर्बानन्द सोनोवाल
SARBANANDA SONOWAL



राज्य मंत्री (स्वतंत्र प्रभार)
कौशल विकास, उद्यमिता,
युवा कार्यक्रम और खेल मंत्रालय,
भारत सरकार

MINISTER OF STATE (INDEPENDENT CHARGE)
SKILL DEVELOPMENT, ENTREPRENEURSHIP
YOUTH AFFAIRS AND SPORTS
GOVERNMENT OF INDIA



Message

I am pleased to know that the Institute of Company Secretaries of India (ICSI) is organizing its 15th National Conference of Practising Company Secretaries on the theme "PCS- The Facilitator for Corporate Growth" from June 27-28, 2014 at The Orchid, Mumbai.

I congratulate the ICSI for organizing such Conference which encourages the professional fraternity to explore the new areas of practice, opportunities under the Companies Act, 2013 and enhance the quality of professional services. I am sure the Conference will be an incentive for the participants from various levels and the souvenir brought out on this occasion will be useful and informative for all.

I convey my best wishes to the ICSI for successful conduct of the Conference and publication of Souvenir on this occasion.

(SARBANANDA SONOWAL)



RANA KAPOOR
President



Message

In a modern, dynamic economy like India, modern legislation is essential to promote growth and business regulation of the corporate sector. The Companies Act 2013 is significant in this direction. ASSOCHAM has, on its part, interacted intensively with the Ministry of Corporate Affairs and various stakeholders to help frame the new Companies Act 2013. The Chamber played a stellar role in mobilizing political support for the passage of this landmark legislation which will now provide regulatory clarity and a framework for organisations to deliver on their CSR goals within the larger social and environmental sustainability context.

I am certain that the new measures mentioned in the 2013 Act will simplify several procedural aspects and regulations, enable a sound investment climate and position India as an attractive trade destination. The One Person Company (OPC) will promote entrepreneurial spirit, especially for new age e-commerce and online enterprises. Further, Class Action Suits will also ensure that companies become more careful in their actions and information disclosures.

The Companies Act 2013 has redefined the role of Company Secretaries as key custodians of governance within their organisations. The Institute of Company Secretaries of India (ICSI) has played an important role in developing an investor friendly business environment, with global best practices, based on the premise of equal opportunity.

ASSOCHAM compliments ICSI on the occasion of the 15th National Conference of Practicing Company Secretaries on the theme 'PCS - The Facilitator of Corporate Growth' during June 27-28, 2014, in Mumbai.

I wish the conference true success.

Sincerely,

Rana Kapoor
President
ASSOCHAM

17th June, 2014
New Delhi

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA



PROGRESS HARMONY DEVELOPMENT

Estd. - 1905

SHARAD JAIPURIA

President

10th June 2014



Message

I am pleased to learn that the Institute of Company Secretaries of India is organising its 15th National Conference of Practising Company Secretaries on the theme "PCS - The Facilitator for Corporate Growth".

There is enough buzz in the corporate world regarding the role of Practising Company Secretaries (PCS) under the Companies Act, 2013. The Act has widened the scope of services that a PCS can offer. One of such area is annual return to be filed by a company under Section 92 of the New Act. The Practising Professionals have to grab these opportunities and win confidence of stakeholders, legislature and corporate world. However, it is to be kept in mind that with more responsibility comes more accountability. Keeping in mind that the certification requirements are by and large very exhaustive and complex, practising company secretaries have to exercise due caution.

I am confident that the national conference would deliberate threadbare on how Practising Company Secretaries have to adhere to the confidence reposed under the New Act.

I congratulate the Institute in organizing the National Conference and wish them a grand success.

(Sharad Jaipuria)

AJAY S SHRIRAM
PRESIDENT, CII



Message

We wish to congratulate the Institute of Company Secretaries of India for organizing the 15th National Conference of Practicing Company Secretaries.

The Indian corporate regime is currently undergoing a sea-change intended at facilitating a growth spurt of the economic cycle. In keeping with this, the theme 'PCS – The Facilitator for Corporate Growth' is most apt, timely and contemporary. It assumes special significance given the role Practicing Company Secretaries can play in ushering in the new framework. With a specialized knowledge and expertise in supporting the assimilation of governance with business strategy for sustainable growth, Practicing Company Secretaries hold a special responsibility in the governance and regulatory framework of the country.

We are confident that with the foundation of ethics and competence instilled in the members by the Institute, Company Secretaries will keep up to stakeholders' expectations, navigate contemporary challenges and deliver value.

We wish the Conference all success and best wishes to the Institute in all their future endeavors.

Ajay S Shriram
President, CII



The Institute

The Institute of Company Secretaries of India is a premier national professional body constituted under an Act of Parliament, namely the Company Secretaries Act, 1980 (Act No. 56 of 1980) to regulate and develop the profession of Company Secretaries.

The Institute has on its rolls about 35,000 members including over 6,200 members holding certificate of practice. The number of current students is over 4,10,000.

Vision

“To be a global leader in promoting
good corporate governance”

Mission

“To develop high calibre professionals facilitating
good corporate governance”

ICSI Nationwide Network

Head Office - New Delhi

Chapters - 69

Counsellors - 112

Examination Centres - 123

Regional Councils - Chennai, Kolkata, Mumbai, New Delhi

Centre for Corporate Governance Research & Training
(CCGRT) - Navi Mumbai

Objectives and Functions

The Institute

- develops a cadre of highly competent Company Secretaries for ensuring good corporate governance and effective management by registering students with 10+2 and graduate qualifications for Foundation and Executive Programmes of Company Secretaryship Course respectively with course contents in Law, Tax, Management, Accounting and Finance disciplines;
- provides postal/oral/web-based coaching and training enabling students to qualify as Company Secretaries;
- conducts Company Secretaryship Examination twice a year in June and December, at 123 centres spread all over India and an overseas centre at Dubai;
- arranges practical training for Executive/Professional Programme pass Students with Companies/Practising Company Secretaries empanelled with the Institute for the purpose;
- enrolls qualified persons as Associate/ Fellow Members of the Institute and issues Certificate of Practice to members taking up practice;
- conducts Post Membership Qualification Courses for Members of the Institute;
- publishes widely read and highly acclaimed monthly journal 'Chartered Secretary' disseminating information, expeditiously;
- brings out 'Student Company Secretary' and 'CS Foundation Course Bulletin' for the benefit of Students;
- circulates CS Updates containing current notifications and circulars relating to various corporate and related laws, daily;
- exercises professional supervision over the Members of the Institute both in practice and in employment on matters pertaining to Professional Ethics and Code of Conduct;
- undertakes research in Law, Management, Finance, Capital Market, Corporate Governance and CSR and brings out research publications;
- formulates Secretarial Standards and brings out Guidance Notes thereon;
- renders expert advisory services to Members on intricate issues relating to various corporate laws;
- organises Professional Development and Continuing Education Programme(s), International/National/ Regional Conventions and Conference(s) directly or through its Regional Councils and Chapters, Chambers of Commerce, Department of Public Enterprises, Sister Professional Institutes and other Professional Development/ Management Bodies;
- interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations;
- interacts with various international/multilateral bodies/institutions with regard to issues relating to the Corporate Governance, Business Ethics, Sustainability and Corporate Social Responsibility;
- interacts with Government both at Centre and States on various issues concerning the profession;

- undertakes benevolence of members and employees;
- interacts with Members of Corporate Secretaries International Association (CSIA) and Company Secretaries Institutes in other jurisdictions;
- bestows ICSI National Award for Excellence in Corporate Governance to best governed companies;
- bestows ICSI Lifetime Achievement Award to eminent corporate personalities for Translating Excellence in Corporate Governance into Reality;
- conducts Investor Awareness Programmes throughout the country on behalf of the Investor Education & Protection Fund, Ministry of Corporate Affairs;
- undertakes Research Projects on behalf of Government and its agencies / Institutions.

Building Future Professionals to Guide Corporate India

The ICSI conducts the Company Secretaryship examination to bring in high level professionals specialized in corporate laws, management and governance.

Stages of Company Secretaryship Course

The Company Secretaryship Course is conducted in three stages as under :

- *Foundation Programme* : Candidates who have passed Senior Secondary Examination (10+2) are eligible for admission to Foundation Programme.
- *Executive Programme* : Graduates in any stream excluding Fine Arts or candidates who have passed the Foundation Examination are eligible to join Executive Programme.
- *Professional Programme* : A registered student is admitted to the Professional Programme on passing the Executive Examination.

Training

The candidates are also required to complete the following trainings :

- Three years on registration for Executive Programme; or
- Two years after passing the Executive Programme Examination; or
- One year after passing the Professional Programme Examination on whole time basis during working hours.
- Fifteen days Management Skills Orientation Programme (MSOP).

The Company Secretaryship course is conducted through distance learning and supplemented by Class Room teaching as well as e-learning. The Institute also initiated a Full time Company Secretaryship course at CCGRT.

Associate Membership

After successful completion of examination and training, a candidate is conferred with Associate Membership of the ICSI.

Fellow Membership

A member of the Institute is entitled to get himself enrolled as a fellow, if he is an Associate Member for atleast five years.

Company Secretary – A Lead Professional

A Company Secretary is defined under the Company Secretaries Act, 1980 to mean a person who is a member of ICSI.

Company Secretary in Employment

Section 203 of the Companies Act, 2013 provides that every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have the whole-time key managerial personnel. Further, other companies having a paid up share capital of five crore rupees or more shall have a whole-time Company Secretary.

A Company Secretary in Employment,

- acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities
- plays a key role in ensuring that the Board procedures are followed and regularly reviewed
- provides the Board with guidance as to its duties, responsibilities and powers under various laws, rules and regulations
- acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional departments of the company on various corporate, business, economic and tax laws
- is an important member of the corporate management team and acts as conscience seeker of the company

Company Secretary in Practice

The Company Secretaries Act, 1980 entitles a member of the Institute to practice whether in India or elsewhere only after obtaining from the Council of the Institute a Certificate of Practice. The Certificate of Practice is subject to renewal on annual basis.

Code of Conduct for Members

The members of the ICSI are subject to Code of Conduct provided under the Company Secretaries Act, 1980.

Regulatory Supervision

The Institute maintains strict regulatory supervision over its practising members through issuing Guidelines in accordance with the provisions of Company Secretaries Act, 1980.

- Guidelines for Advertisement by Company Secretary in Practice
- Guidelines for issuing Compliance Certificates and Annual Returns
- Guidelines for Requirement of Maintenance of a Register of Attestation/Certification services rendered by Practising Company Secretary/Firm of Practising Company Secretaries.

Disciplinary Control

The Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 made by the Central Government in exercise of powers conferred under of the Company Secretaries Act, 1980 provide elaborate provisions and fast track process for dealing with the complaints of professional or other misconduct filed under the Act.

The Council

President

R Sridharan

Vice-President

Vikas Y Khare

Members

Amandeep Singh Bhatia

Anil Murarka

Ardhendu Sen

Arun Balakrishnan

Ashok Pareek

Atul H Mehta

Atul Mittal

B Narasimhan

Gopalakrishna Hegde

Harish K Vaid

Nesar Ahmad

Pradeep K Mittal

P Sesh Kumar

Sanjay Grover

S N Ananthasubramanian

Sudhir Babu C

U D Choubey (Dr.)

Umesh H Ved

Secretary

M S Sahoo

Chief Executive

Sutanu Sinha

Practising Company Secretaries Committee

Chairman

Anil Murarka

Members

Atul H Mehta

Atul Mittal

B Narasimhan

Sanjay Grover

Sudhir Babu C

Umesh H Ved

**Western India Regional Council
(ICSI-WIRC)**

Ragini Chokshi (Ms.)	Chairperson
Ashish C Doshi	Vice-Chairman
Ashish Garg	Secretary
Amit Kumar Jain	Treasurer
Ashish C Bhatt	Member
Hitesh D Buch	Member
Sanjay Gupta	Member
Chandrashekhar S Kelkar	Member
Hitesh Kothari	Member
Makarand M Lele	Member
Mahavir Lunawat	Member
Prakash K Pandya	Member
S N Ananthasubramanian	Ex-officio
Girish Joshi	Co-opted
Vikas Y Khare	Ex-officio
Atul H Mehta	Ex-officio
B Narasimhan	Ex-officio
Umesh H Ved	Ex-officio

**15th
PCS Conference Organising Committee**

Atul Mehta	<i>Chairman</i>
Umesh H Ved	Member
Ragini Chokshi	Member

15th PCS Conference Organising Sub-committees

Local Reception Committee

CS Shweta R Parwani, *Chairperson*

CS Pramod Shah, *Member*

Tours & Transport Committee

CS Shweta R Parwani, *Chairperson*

Public Relations Committee

CS Kaushik M Jhaveri, *Chairman*

Hospitality Committee

CS Mahesh Soni, *Chairman*

CS Kaushik M Jhaveri, *Member*

Cultural Committee including Catering

CS Prashant Diwan, *Chairman*

Fund Raising Committee

CS Amrita Nautiyal, *Chairperson*

CS Mahesh Soni, *Co-chairman*

Delegate Committee

CS Dhawal Gadda, *Chairman*

Souvenir Committee

CS A Sekar, *Chairman*

Members:

CS Shweta R Parwani

CS Kaushik M Jhaveri

CS Rishikesh Vyas

CS Amrita Nautiyal

Camp Office Committee

CS Dhawal Gadda, *Chairman*

PROFILES

P K MALHOTRA

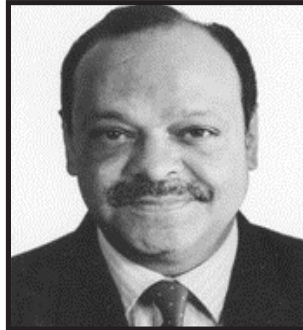


Mr. P. K. Malhotra, Secretary, Ministry of Law and Justice, Government of India is a Post Graduate in Law and Arts and holds a Gold Medal from Delhi University for Diploma in International Law. He has more than 35 years of experience in the field of Law as Legal Adviser and Adjudicating Officer in different Ministries and Tribunals and is a unique blend of executive and judicial experience. Some important assignments held by him in the past are Presiding Officer (Offg.) & Member of Securities Appellate Tribunal, Chairman, Adjudicating Authority, Prevention of Money Laundering Authority, Judicial Member of Income Tax Appellate Tribunal and Legal Adviser, Department of Telecom, Legal Adviser, Ministry of Labour & Railways, In-charge advising Ministry of Finance.

Mr. Malhotra has also handled many foreign assignments such as Head of Indian Delegation to Vienna to participate in working group meetings of UNCITRAL, represented the Ministry before WTO Dispute Resolution Tribunal at Geneva, participated in Bilateral Investment Protection Agreement with USA, Australia, Oman, China, Hong-Kong, dealt with DTAA agreements.

Mr. Malhotra is affiliated with Delhi High Court Bar Association as Member. He is also Life Member of Indian Institute of Public Administration, Indian Law Institute and International Centre for Alternate Dispute Resolutions.

M J JOSEPH



Mr. M. J. Joseph is Additional Secretary in the Ministry of Corporate Affairs, Government of India. He is graduate in Economics and post graduate in International Economic Relations from Paris, France. He also studied Business Management from the University of Sydney, Australia.

Mr. Joseph has served in various capacities in the Government of India, including as Private Secretary to two Union Ministers for Science and Technology and Human Resources Development. He has served as Deputy Secretary in the erstwhile Department of Electronics, as Director in the Ministry of Defence. He was also selected by President K.R. Narayanan to serve as Joint Secretary in the President's Secretariat in Rashtrapati Bhawan from 1997 to 2002.

Mr. Joseph served the International Monetary Fund (IMF) for a few years based at Dar es Salaam, Tanzania, when he provided technical and capacity building assistance in Public Financial Management to the Ministries of Finance and Central Banks' of seven East African Countries.

Mr. Joseph has authored the book "Sentinels of Raisina Hill" that describes the historical and architectural nuances of the Government of India's Secretariat building known as 'North and South Blocks' in New Delhi. The book was released in December, 2011 to commemorate the centenary of the founding of New Delhi.

R SRIDHARAN



CS R. Sridharan is a Commerce graduate and also a Fellow Member of the Institute of Company Secretaries of India is President, the Institute of Company Secretaries of India. Starting his career with Best & Crompton Engineering Limited, CS R. Sridharan moved over to Murugappa Group and was Secretary of TI Diamond Chain Ltd., Chennai from 1995 to 1999. He subsequently set up Practice as a Practising Company Secretary and is advising a number of leading companies in Chennai, including Murugappa Group.

Having abiding interest for teaching, CS R. Sridharan was a faculty for a number of years at oral coaching classes of SIRC of the Institute of Company Secretaries of India. Being very passionate about the students activities, CS R. Sridharan had involved himself in organizing various innovative curricular and co-curricular programmes for the students and thematic programmes for members during his tenure as the Chairman of SIRC. He also made significant improvements in infrastructure facilities at ICSI-SIRC Building, in particular, refurbishing of SIRC Library. He has presented papers and addressed various Professional Development Programmes organized by the Regional Council, Chapters, Madras University and ICAI and has authored articles in the "Chartered Secretary".

His association with the Institute activities goes back to more than 14 years.

CS R. Sridharan was elected as a member of the Regional Council for the term 2001-2003 and was Secretary of the Regional Council in 2003. Subsequently, elected for the term 2004-2006, he was Vice-Chairman for 2004 and Chairman for 2005 of SIRC. Having been elected as the Council Member of the ICSI for the term 2007-2010 and subsequently for 2011-2014, CS R. Sridharan served in various committees of the Institute and was the Chairman of the Corporate Laws Committee and Member of the Examination Committee, Syllabus Review Committee, PCS Committee, Professional Development Committee, Secretarial Standard Board, Managing Committee of CCGRT and also Finance and Accounts Committee and is also presently member of other committees. He was Chairman of the Board of Studies and had made significant contribution in designing the new syllabus as well as reading material. He was involved in Peer Review Activities and conducted Peer Reviewers Training Programmes all over India.

Keen Rotarian, CS R. Sridharan is actively involved in the activities of Rotary Club of Madras, Ashok Nagar, Chennai.

VIKAS Y KHARE



CS Vikas Y. Khare is Vice-president of ICSI and a Fellow Member of the Institute and has professional experience of 31 years. He practices in the areas of Excise, Service Tax and Custom Laws & Corporate Laws. He has been elected to the Central Council of the Institute of Company Secretaries of India for the term from 2011- 2015.

He is Public Representative Director on the Board of Pune Stock Exchange Ltd. He was the Chairman of Central Excise – Service Tax Sub-committee of Maharashtra Chamber of Commerce, Industries & Agriculture. He was also member of Public Grievance Committee and Regional Advisory Committee of Pune - I and Pune - III Central Excise Commissionerate. He was the Chairman of the Western India Regional Council of the Institute of Company Secretaries of India in the year 2007.

He is Chairman of CCGRT Committee, TEFC Committee & Peer Review Board & a member of the Examination Committee, of the Institute of Company Secretaries of India. CS Vikas Khare is a visiting faculty at various professional institutes including ICAI and ICAI (Cost), Associations and Bodies.

ANIL MURARKA



CS Anil Murarka is a Practising Company Secretary for the last 22 years. He is a Commerce and Law Graduate and a Fellow Member of the Institute of Company Secretaries of India.

CS Murarka was the President of the Institute for the year 2011. He was also the President of "Corporate Secretaries International Association". He was the Member of the "National Advisory Committee on Accounting Standards"(NACAS), "Indo-UK Taskforce" on Corporate Affairs, "National Foundation on Corporate Governance (NFCG) – Governing Council" and of various Committees of MCA as a representative of ICSI.

He was also a member of the Core Group of ICSI in 2009 which was constituted on Corporate Governance arising out of "Satyam" on the instruction of Ministry of Corporate Affairs.

He was Chairman of EIRC of ICSI for the year 2002 and also served the EIRC of ICSI in various capacities. He was also Member of CII-ER, Economic Affairs, Finance & Taxation Sub-Committee – 2012.

Since 1991 he has contributed as convener and speaker in many professional seminars and conferences. He is a regular Faculty at CII Youth Forum, the ICSI, the ICAI and other Educational Institutes & Professional organizations. He was one of the Panelists in first all India "Investor Awareness Programme" "My Money - My Decisions", organized by the Ministry of Finance, Government of India.

ATUL MEHTA



CS Atul Mehta, Council Member of the Institute of Company Secretaries of India and Chairman, Financial Services Committee is a Commerce graduate, BGL and Fellow Member of the Institute.

CS Mehta started his practice as the founder of Mehta and Mehta in 1996, and has been in the industry ever since. Mehta and Mehta specializes in Corporate Laws, IPR, FEMA, Mutual Fund Compliance and Recruitments.

CS Mehta has also been the Chairman of WIRC in the year 2009. Being a regular speaker in various seminars and workshops organized by ICSI, he is equally passionate about the students' activities and various programmes organized for student.

CS Mehta has been elected to the Council of the Institute of Company Secretaries of India for the term 2011–2014. He was the Chairman of ICSI-CCGRT (2011-14).

RAGINI CHOKSHI



CS Ragini Chokshi is the Chairperson of the WIRC. She is the elected council member of WIRC since 2005. During these years she was the Chairperson of various committees like Professional Development, Training and Education Committee, PCS Committee. She was Secretary in 2012 & Vice Chairperson in 2013.

CS Ragini Chokshi is a fellow member of the Institute and partner of Ragini Chokshi & Co. a firm of practicing company secretaries since 1991 based in Mumbai. Having vast experience in the corporate world she has handled various due-diligence matters, Compliance Certificate of various listed and unlisted companies, Secretarial audit of the company, Merger and amalgamation matters & appearance before various Govt. authorities like MCA, SEBI, CLB, & RBI.

M S SAHOO



CS M.S. Sahoo, an M. Phil, M.A. (Economics), LL.B., FCS, PGDM, has over three decades of rich work experience in self-employment, private sector, public sector, regulator and government in varied functional areas such as reforms, policy, regulations, research and analysis. Before joining the ICSI, he was an eminent legal practitioner in the field of securities laws. He was a Whole Time Member of the Securities and Exchange Board of India (SEBI) during 2008-11. Prior to this, he served as the Joint Secretary (non-functional), Director and Joint Director in the Ministry of Finance, as the Chief General Manager with SEBI, and as Economic Adviser with National Stock Exchange of India Limited (NSE). As an officer of Indian Economic Service (1985 batch), he served the Government of India for 22 years.

CS Sahoo played a key role in designing of major reforms in securities market, including dematerialization of securities, trading of derivatives, corporatisation and demutualization of exchanges, building regulatory and market infrastructural institutions, enforcement process/actions. He was instrumental in development of human resource capacity in securities markets through various interventions such as NSE's Certification in Financial Markets (NCFM), National Institute of Securities Markets (NISM) and a number of reputed publications. He has served / serves as a chairman / member on several expert committees/ boards and professional groups. He currently serves on the Boards of Oriental Bank of Commerce, Management Development Institute, National Institute of Securities Markets, National Foundation for Corporate Governance, and ICSI Knowledge Foundation and on the CISI National Advisory Council. He has delivered talks at various national and international fora and written over 100 articles.

SUTANU SINHA



CS Sutanu Sinha is a Fellow Member of the Institute of Company Secretaries of India and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). A Post Graduate in Commerce from Calcutta University, he stood First Class First in the Post Graduate Diploma in German Examination of Calcutta University.

Before assuming the office of Chief Executive of the Institute of Company Secretaries of India (ICSI) from 1st January, 2013, CS Sinha was heading the Academics & Professional Development Directorate of ICSI.

He has over twenty five years of professional experience in Company Secretarial and Corporate Functioning. He possesses a vast work experience in Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNC/PSUs. An avid reader and a corporate analyst, he has contributed several papers and articles on different aspects of Governance and Management and addressed at various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability and Enterprise Resource Planning. He is also Global Corporate Governance Forum(GCGF), IFC trained Trainer for Directors Development Programmes and Corporate Secretaries.

Last year, he was awarded scholarship by Cambridge University for attending 'The Prince of Wales - Business and Sustainability' leadership programme.

He has contributed significantly in ICSI initiatives to promote corporate governance in India and overseas.

He has been appointed by the Government of India as Director in the Board of Canara Bank, and presently he is Chairman of the Audit Committee of the Bank. CS Sinha is also the Chairman of the Expert Committee on Corporate Governance & CSR of the Association of Business Chambers of Commerce and Industry (ABCCI). He is also on the Independent Evaluation Committee of Indian Bank Association, a Committee constituted as per RBI Framework.

He is a Permanent Invitee to the Post Graduate Board of Studies of University of Calcutta.

Fluent in many foreign languages, his hobby traverses from instrumental music, painting, photography to Documentary Film-making.

NITIN AMBURE



CS Nitin Ambure is Vice President and head of the Issuer Interface department at NSDL. He did graduation in Engineering and Master of Management Studies (MMS) in Finance from Narsee Monjee Institute of Management Studies (NMIMS), Mumbai.

CS Ambure has been working with NSDL since the last 14 years in the Business Operations and handling the processes related to dematerialization of securities and e-voting system of NSDL.

CS Ambure has represented NSDL at various policy initiatives of SEBI regarding the capital market. He has been a part of many Investor Depository Meets conducted by NSDL/SEBI and a speaker at various programmes/ seminars organized by the Institute of Company Secretaries of India (ICSI).

MAHESH ANANT ATHAVALE



CS Mahesh Anant Athavale the Past President of the Institute of Company Secretaries of India, is partner of Kanj and Associates and Kanjmag & Co. He is a Law graduate and post-graduate in Commerce. He is also Honorary Fellow of Institute of Certified Public Secretaries of Kenya. CS Athavale was the founder president of International Federation of Company Secretaries.

CS Athavale was the past Chairman of Pune Chapter of Western India Regional Council and Member of Expert Advisory Group of ICSI. He is visiting faculty at Pune University, various Professional Institutes of repute.

CS Athavale is the Member on Board/Governing Council of various educational bodies such as Board of studies of Indsearch, Deccan Education Society, IMDR, BMCC etc. He is also a member of the Peer Review Board of the Institute.

CS Athavale is also associated with various philanthropic organisations.

SAVITHRI PAREKH



CS Savithri Parekh, Past Government Nominee on the Council of the Institute of Company Secretaries of India is Chief Legal & Secretarial of Pidilite Industries Limited. She is a Commerce & Law Graduate and Fellow Member of the Institute. She got Chevening Scholarship for young Indian Lawyers – which is fully funded by the Foreign Commonwealth Office, UK and gained exposure to European laws.

CS Parekh was Head Legal & Secretary of VFS Global Services Private Limited and also Worked in Private Equity Fund of the Future Group, Media House (publishers of Bussinessworld, Telegraph, Anandabazar Patrika etc), textile, chemical and pharmaceutical sector.

She delivered lectures at Management Development Programmes & Advanced Management Programmes and a Guest faculty at IIM – Calcutta. CS Parekh is a regular faculty at the Management Skill Orientation Programme of the Institute. CS Parekh has been associated with an NGO and involved in developing and deploying a module on value based education for children.

DR. BALACHANDRAN PARAKKAR



Dr. Balachandran Parakkat Director of Academic Affairs of Indian Institute of Banking & Finance is a Post Graduate in Commerce, Doctorate in Banking and Finance from Mumbai University. He is also holding Diploma holder in Training and Development - ISTD, New Delhi and CAIIB.

Dr. Balachandran worked in Reserve Bank of India, Union Bank of India and NIBSCOM. He has vast experience in the field of training and development for more than three decades and has been a guest faculty in a large number of educational institutions.

Dr. Balachandran has published seven books and contributed several articles in national and international journals. His latest book is –Chasing Success (Taxmman publications). His passion is vedantic studies and he currently runs a website devoted to happiness .

S.S. SEKHON

Mr. S. S. Sekhon, Practicing Advocate with the Bar Counsel of Maharashtra and Goa, received the President of India's Award for distinguished services in 1989. He holds degree in B.Sc (Hons) and M.Sc from University of Bombay. He completed Post Graduate Management Course at Jambhai Bajaj Institute of Management, Mumbai University. He entered the Civil Services in 1969 and joined IRS (Customs & Central Excise) and was Member of CESTAT.

Mr. Sekhon has attended International meeting on Customs Intelligence and Preventive issues at Malacca, Malaysia and Brussels and International Conference on Customs Valuation at New Delhi, as an head of Indian delegation.

Mr. Sekhon is dealing cases at Supreme Court, High Court of Bombay, Nagpur & Goa and in the CESTAT and various Commissioner (Appeals) and Commissioner of Customs and Central Excise.

AJAY THAKUR



Mr. Ajay Thakur is a professional with more than 19 years of experience in Capital Market spanning India's biggest Custodian to India's biggest and largest Stock Exchange. The key roles have been setting up the depository by the regional stock exchange, developing derivatives market and setting up SME Platform.

Mr. Thakur started the career way back in 1994 with Stock Holding Corporation Ltd as Senior Executive - Market operation. After working for one year joined Vadodara Stock Exchange in 1995 as Senior Management Executive looking after various departments viz Market Operations, Bad Delivery Cell and Auction. He was also assigned with the role to set up depository by VSE Ltd.

He joined BSE Ltd in December, 1996 as Head – Arbitration and Business Development. He has developed the derivatives segment of BSE Ltd and also actively involved in opening of regional centers across the country. Presently as Head - BSE SME, responsible for the development of this segment of BSE Ltd. He very successfully launched the SME Platform on 13th March, 2012 and thus BSE Ltd became the first Exchange to launch the Platform. Today BSE Ltd is the market leader in this segment with ninety two percent market share. Within a year this platform has 60 companies listed and another 13 companies are to get listed. The success of this platform has brought a lot of enthusiasm in the market and more and more companies and market intermediaries are coming forward to get the companies listed on this platform.

S. H. RAJADHYAKSHA



CS Shailesh H. Rajadhyaksha, Member of the Secretarial Standards Board of the ICSI is a qualified Chartered Accountant, Cost Accountant and Company Secretary.

CS Rajadhyaksha superannuated from the Tatas in November 2011 after working with the Tatas for over 17 years and has more than 33 years of post qualification experience in accounts, finance, regulatory and company secretarial functions. While with the Tatas, CS Rajadhyaksha has worked for Tata Capital Limited, Tata Consultancy Services Limited ("TCS"), Tata Industries Limited and Tata International Limited. Before joining the Tatas, CS Rajadhyaksha was with Larsen & Toubro Limited ("L&T") where, over a span of eight years, he worked in its Shipping Division, its Finance Division and as its Company Secretary.

CS Rajadhyaksha has received an Award from the Institute of Company Secretaries of India ("ICSI") as Company Secretary of TCS which was awarded ICSI's National Award for Corporate Governance-2007.

He was Chairman of the Legal Affairs Committee of the Bombay Chamber of Commerce and Industry and a Member of the Expert Advisory Group of the ICSI.

RAMESH LAKSHMAN



Mr. Ramesh Lakshman holds post-graduate qualification as Chartered Accountant, having graduated in commerce from University of Bombay. He holds additional qualifications in Cost Accountancy and Law. He has also completed the risk management course offered by Risk Metrics Group of J.P.Morgan.

He is a Practising Chartered Accountants and having his own firm Ramesh Lakshman & Co. since 1981. He is having vast and varied experience, including expertise in Treasury products, Risk Management, Cross Border dealings, Accounting Standards including International Accounting Standards.

He is a professional trainer having conducted structured programmes for various organizations like Earnst and Young, KPMG, TCS etc. and for organizations internationally in many African Countries.

He was recently awarded a very challenging valuation assignment to facilitate a dissolution of joint venture in Swaziland.

He facilitated the introduction of diploma course in foreign exchange and risk management for World Trade Centre and has contributed papers of varied topics..

He is a visiting faculty of BSE Training Institute of the Bombay Stock Exchange, Dun and Bradstreet Financial Education Services, SP Jain Institute of Management Studies-Singapore and Dubai.

BHARAT VASANI



CS Bharat Vasani, General Counsel for the Tata Group, is a renowned corporate lawyer in India with an international reputation. He holds a First Class Bachelor's Degree in Commerce and in Law from Mumbai University. He is also a member of the Institute of Company Secretaries of India and was awarded the President's Medal for securing the First Rank in the Company Secretaries examination in 1979. With over three decades of senior management experience he has successfully managed the in-house legal departments of large multinationals. He is reputed for having the most diverse corporate legal experience, ranging from complex mergers and acquisitions to handling high-profile litigations, both civil and criminal.

CS Vasani's key strength areas include negotiating joint ventures and collaborations, corporate restructuring and negotiation of commercial contracts. He has been actively involved in several large international M&A transactions.

CS Vasani is a keen public speaker and has addressed a large number of international seminars on various subjects, including corporate governance, mergers & acquisitions, insider trading, takeover code, constitutional issues, etc. He has participated in several international conferences and training programmes at the Harvard Law School and the Harvard Business School. He has also undergone several intensive training programmes in law and general management including the prestigious M&A training course at the Harvard Business School and the Leadership in Corporate Counsel Course at the Harvard Law School.

CS Vasani has the proud honour of winning several awards, including the IFLR Award 2010 for his outstanding achievements and the Legal Era Award for the Best General Counsel 2011.

DR. K R CHANDRATRE



Dr. K. R. Chandratre, Past President of Institute of Company Secretaries of India, is a Practising Company Secretary. He holds Master's degree in Commerce, Law degree and Doctorate degree from the University of Pune and fellow member of the Institute of Company Secretaries of India.

Dr. Chandratre has been in the profession of Company Secretary for more than three decades. He has copious published writings to his credit. He has so far authored over 1000 articles and 25 books on various subjects in the areas of Corporate Laws and Corporate Secretarial Practice. He has created the module 'Secretarial Practice Recorder', a Ready-reckoner on Company Law Procedures on magnetic media (CD), for Jurix, the Electronic Law library.

Dr. Chandratre is an active participant in seminars, workshops, conferences and conventions. He was a member of the Working Group on Redrafting of the Companies Act, 1956 constituted by the Government of India in August 1996.

He is a member of the Editorial Boards of the journals 'Corporate Law Adviser', 'Corporate Law Cases' and 'Corporate Courier'. Dr. Chandratre is also Consulting Editor of the monthly journal 'Tax and Corporate Referencer', since its inception in 1994.

G PADMANABHAN



Mr. G. Padmanabhan, is a Senior Executive in the Reserve Bank of India, with over 35 years of experience in various capacities in the Bank. His areas of work experience include regulation and supervision of not only banks, but also debt markets and foreign exchange market in India. He has spear-headed some important IT initiatives in the Reserve Bank. Before being elevated to his current position as the Executive Director, he was the head of the Payment Systems Department. Under his initiative, many innovations have taken place in the payment systems including pre-paid cards, m-wallets etc., besides bringing in a host of measures which have contributed significantly in safety and security of transactions.

Mr. Padmanabhan is a post graduate in Economics and an Associate of the Indian Institute of Bankers. He holds a Masters degree in Business Administration from the Birmingham University and is an Alumnus of the Kellogg Business School.

He has been a panel member at many of the Seminars on market issues organized in India and a regular guest speaker at many of the training colleges run by the Reserve Bank/ Commercial Banks. He is also the RBI nominee on the Committee for Payment and Settlement Systems in Bank for International Settlements, Basel. He is the Chair of the CPSS Working Group on Non-Banks in Retail Payments.

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ARTICLES

CUSTODIAN ROLE OF INDEPENDENT DIRECTOR UNDER COMPANIES ACT, 2013

CS Pramod S Shah*

Companies Act, 2013 which received the president's assent on August 29, 2013 has come up with dynamic changes in the corporate sector. Emerging as a strict provision for the corporate it has also kept the concern for the good Corporate Governance live.

Corporate Governance is not a new concept, but prior to the commencement of new Companies Act, 2013 governance was not properly regulated, due to which the interest of stake holders got affected.

Since the Company is owned by its shareholders and managed by the Board of Directors, the management is entrusted with the responsibility to provide its shareholders with correct, true and fair report, however there have been many incidences in the past where the interest of the shareholders were not taken into account leading to fraud. To avoid such incidences and to have a complete control and transparency in the management, it became necessary to appoint Independent Directors.

As it is necessary to have Independent Directors on the board of the Company, let us understand the some point of changes in the position of the Independent Director under 1956 and 2013 Act with a comparison table:

<i>Sr. No</i>	<i>Particulars</i>	<i>Companies Act, 1956</i>	<i>Companies Act, 2013</i>
1.	Applicable Companies	Listed Companies	Listed Companies & the public companies having paid up share capital of ten crore rupees or more; or having turnover of one hundred crore rupees or more; or having in aggregate outstanding loans, debentures and deposits, exceeding 50 crore rupees.
2.	Source for Selection	Not specified	As per section 150 any person fulfilling the eligibility for appointment as independent director can offer themselves for appointment. The companies may select eligible candidate as independent director.

* Practising Company Secretary, Mumbai. Former Chairman of WIRC of ICSI, and Past Central Council Member of ICSI.

<i>Sr. No</i>	<i>Particulars</i>	<i>Companies Act, 1956</i>	<i>Companies Act, 2013</i>
3.	Criteria/ Qualifications	Not specified	An individual possessing appropriate skills, experience, and knowledge in one or more fields of finance, law, management, or any other expert field related to companies business.
4.	Code of conduct	Not specified	Schedule IV of the Companies Act prescribes Code of Conduct for Independent Directors. Highlights of the conduct is as follows : I. Guidelines of professional Conduct II. Role and Functions III. Duties IV. Manner of Appointment V. Re- appointment VI. Resignation or removal VII. Separate Meetings VIII. Evaluation mechanism.
5.	Tenure	Earlier it was not specified the tenure for the appointment of independent director, due to which a person was appointed as independent director for any number of years.	As per section 149(10), an independent director shall be appointed for a term of up to 5 consecutive terms and thereafter shall be eligible for re-appointment for another period of five years after passing a special resolution. In such a manner the appointment of independent director has been restricted to hold office up to two consecutive terms of five years. However, after a cooling period of 3 years the same person shall be eligible for appointment as an independent director in the company.
6.	Retiring by rotation	Earlier there was no specific provision excluding the independent directors in calculating directors liable to retire by rotation.	Explanation to Sec 152(6)(e) provides not to include independent directors in total number of directors to calculate directors liable to retire by rotation.

From the above stated differences it can concluded that the role, responsibility and importance of the independent director in the company has been immensely increased.

The analysis of provisions of Companies Act, 2013 relating to appointment of Independent Directors**1. *The independent director is a non-executive director other than a nominee director.****Analysis*

Under the old Act, clarity was not made between independent director and nominee director. Though Nominee director is that of a non-executive director his presence on the Board is only for the interest of the Bank or the Institution on whose behalf he is appointed, therefore there was a need to have clarity between the Independent director and nominee director.

2. *That the person should not be related to promoter, directors of the company or its holding, subsidiary or associate company.**Analysis*

There was no such clarification in the Companies Act, 1956, however the same was provided in the listing agreement. It has been now provided in the Companies Act, 2013 and even in listing agreement.

3. *That the person shall not had or has any pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.**Analysis*

A. In the common parlance pecuniary relationship means having any monetary transaction. Due to such understanding it was not clear whether it includes any remuneration, sitting fees or any other transaction.

For example: Mr. A is a non-executive of a company name as 'X' and receives remuneration and reimbursement of expenses as approved by the members, and now the company considers Mr. A for appointment as an independent director of its subsidiary Co.'Z'.

The Ministry of Corporate Affairs vide its circular dated 9th June, 2014 had clarified that if the remuneration is received in accordance with 197(5) of the Companies Act, 2013 and if any reimbursement of expenses or profit related commission has been approved by the members, it shall not be considered as pecuniary relationship.

Sec 197(5) prescribes the amount of fees that could be paid to a director depending upon the classes of companies as may be prescribed by the Central Government.

B. Further there was an ambiguity that whether any transaction entered into by the independent director with the company shall be considered as pecuniary relationship which shall affect his independency.

Analysis

MCA has clarified that if such transaction is at par with the price charged to the member of the public and if it is in the ordinary course of business at arm's length price, such transaction shall not be considered as pecuniary relationship. So, in this regard if any

independent director is entering into any transaction with the company at arm's length price, it will not be a barrier in his appointment.

4. ***None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two percent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial.***

Analysis:

The above criteria was neither in the companies nor in the listing agreement, it has been included with a view to have a complete control over the transaction entered in to by the management and the outsider so as to avoid the unnecessary transactions and support conservatism.

5. ***Holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.***

Analysis:

The above provision was not provided in the Companies Act, 1956 however the listing agreement provided that the independent director shall not be a person who has been an executive for preceding three years, however the amended clause 49 II B of the listing agreement in line with Companies Act, 2013 provides for the additional criteria as specified above.

Appointment & Tenure of Independent Director

As per Section 149(4), every listed company shall have at least 1/3rd of the total number of directors as independent director.

In case of a listed company where the Chairman of the Board is a non-executive director, at least 1/3rd of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at 1/2nd of the Board should comprise independent directors.

As per Sec 149(5), every company existing on or before the date of commencement of this Act shall, within one year from such commencement comply with the requirements of the provisions of this Act.

As per section 149(10), an independent director shall be appointed for a term of up to 5 consecutive terms and thereafter shall be eligible for re-appointment for another period of five years after passing a special resolution.

Amended clause 49 II B of the listing agreement however provides different term as that from Companies Act, 2013.

An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for re-appointment for another term of up to five consecutive years on passing of a special resolution by the company.

Provided that a person who has already served as an independent director for five years or more in a company as on October 1, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only.

Analysis: w.r.t Companies Act, 2013

The composition of independent director on the board of the listed company remains the same as it was earlier only with an addition to have a women director on the Board of the Company in such class of companies as may be prescribed.

Further with regards to Section 149(5), many had ambiguity whether the existing independent director may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed in accordance with the provisions of the new Act.

In this regard, Ministry of Corporate Affairs have clarified vide Circular No. 14/2014, it states that since Sec 149(11) (explanation) provides that any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under sub-sections 10 and 11 (sub-section 10 & 11 states about the tenure of the independent directors), and section 149(5) provide a transition period of 1 year, the existing independent directors can be appointed with a fresh term within one year from 1st April, 2014 subject to compliance with eligibility and other prescribed conditions.

For example

Mr. A is a independent director in Company X, his appointment was regularised as per Companies Act, 1956 in the annual general meeting held in the month of September, 2013, there after his new term had commenced which again would have to be regularised in the AGM to be held in the month of September, 2014.

However, since now section 149(10) & (11) provides for two terms of five consecutive years. Mr. A will be appointed in the forth coming AGM for a term of 5 years i.e. (September, 2019) thereafter after passing special resolution in the year 2019 for another term of 5 year (September, 2024).

After completion of above two terms he will go on cooling period of 3 years and again shall be eligible for fresh appointment of 2 terms as explained above.

Analysis: w.r.t Amended clause 49 II B

It has been clarified that for listed companies, if the independent director has completed 5 years or more, he shall be eligible to be appointed only for one term of 5 consecutive years. Thereafter there shall be a cooling period of 3 year after which he shall be eligible to be appointed as independent director for two terms of 5 years.

Further, Ministry of Corporate Affairs vide Circular No.14/2014 has clarified that, any appointment of director for a period of less than 5 years shall be considered as one term only.

Therefore, listed companies shall not be able to enjoy the privilege given to it by the Companies Act, 2013.

Remuneration, Sitting Fees and Reimbursement of Expenses

As per Section 197(5), sitting fees to an independent director shall not be less than the fees payable to a director for attending any meeting of Board or Committee thereof.

Maximum sitting fees to a director as per Rule 4 of Chapter XIII is Rs 1 Lac per meeting of Board or Committee.

According to Section 197(6), a director or manager may be paid remuneration by way of a monthly payment or at a specified percentage of the net profits of the company, partly by one way and partly by the other

As per Sec 197(7), an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

Stock option is prohibited to the Independent Director.

Analysis

Fees payable to independent directors is not to be lower than that payable to the director they have to be given equal status as that given to other directors, however maximum fees cannot exceed INR-1 Lac per meeting or Committee, also they shall be entitled for the reimbursement of expenses if the same is approved by the members.

Earlier there were no such prescribed fees in the Act, or listing agreement, it has now been clearly provided.

Earlier stock option was offered to non-executive director due to which even independent directors were eligible for stock option. However, now it has been clearly prohibited.

Committees and Independent Directors**Audit Committee**

Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

As per Listing Agreement, Chairman of Audit Committee shall be an independent director and shall also be present at the AGM to answer Shareholders.

Constitution of Corporate Social Responsibility (CSR) Committee

At least one director should be an independent director in CSR Committee.

Nomination and Remuneration Committee

The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one half shall be independent directors.

Provided that the Chairperson of the Company (Whether executive or non executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

As per SEBI Circular PR No.12/2014 to be effective from 1st October 2014, there shall be mandatory constitution of Nomination and Remuneration Committee with independent director as Chairman of such committee.

Stakeholders Relationship Committee

A committee under the Chairmanship of a non-executive director and such other members as may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders.

Analysis

Role of independent director, has been enhanced since all the committees as referred above is required to have independent director. The intent behind including independent director in the committees is to bring about a transparency in its function and to bring about proper governance in the company having such committees.

Separate Meeting

The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management.

All the independent directors of the company shall strive to be present at such meeting.

Performance Evaluation

The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.

Schedule IV and SEBI Circular specifies for the performance evaluation of the Independent Director.

Analysis

It is mandatory for listed companies to evaluate the performance of the independent director as it will be disclosed in the Annual Report. As it is the basis to determine whether or not to extend the term of independent director.

Liability

The independent director shall be responsible only for such acts or omissions or commission by a company which had occurred with his knowledge, attribute through Board processes, and with consent or connivance.

Analysis

The liability of independent directors has been restricted to the acts, omissions or commission made by the independent directors within their knowledge and no such acts done by the board without independent directors concern shall be considered as its liability.

Training of Independent Directors

The company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc.

The details of such training imparted shall be disclosed in the Annual Report.

Analysis:

For the listed companies, it has been made mandatory to provide training to the independent directors and the same shall be disclosed in the Annual Report.

Earlier, there was no such provision in the listing agreement nor in the Companies Act, 2013, however to bring about better quality governance and give a better understanding about the affairs of the company the need to train the independent directors of the listed companies have been introduced.

Formal Letter of Appointment

The company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013.

The letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the Stock Exchanges not later than one working day from the date of such appointment.

Analysis:

The Requirement to have a disclosure for the appointment of the independent director on the website is due to keep a control on the tenure of independent directors who have completed 5 years or more in the company as they can be appointed only for one term of 5 years.

Guidelines of Professional Conduct

An independent Director shall abide by the following :

- Uphold ethical standards of integrity and probity;
- Act objectively and constructively while exercising his duties;
- Where circumstance arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- Not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- Exercise his responsibilities in a bona fide manner in the interest of the company.

Role and functions

An independent Director shall:

- Balance the conflicting interest of the stakeholders;
- Safeguard the interests of all stakeholders, particularly the minority shareholders;
- Determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

- Satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- Help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct.

Duties

The Independent Director shall-

- Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- Strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- Participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- Pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- Ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- Report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- Not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Manner of Appointment

Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.

The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made there under and that the proposed director is independent of the management.

The appointment of independent directors shall be formalised through a letter of appointment, which shall set out the term of appointment; the expectation of the Board

from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks; the fiduciary duties that come with such an appointment along with accompanying liabilities; provision for Directors and Officers (D and O) insurance, if any; the Code of Business Ethics that the company expects its directors and employees to follow; the list of actions that a director should not do while functioning as such in the company and the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related.

Overview

From the above listed headings it can be concluded that the importance of the independent director and its role in the company has become vital.

Looking at the increasing non-compliances, window dressing made by the companies and to protect the right and interest of the Shareholders, a need arose to appoint the independent directors in the listed and prescribed class of public companies with prescribed set of roles, conduct and performance evaluation.

The Companies Act, 2013 has also bestowed major responsibility on the independent directors to give their opinion and regulate the actions taken by the management in the interest of the Company as well as the Stakeholders.

OVERVIEW OF CORPORATE SOCIAL RESPONSIBILITY (CSR) & PROFESSIONAL OPPORTUNITIES FOR COMPANY SECRETARIES IN CSR

CS Rajkumar S Adukia*

Corporate Social Responsibility is a form of corporate self-regulation integrated into a business model. The term, "corporate social responsibility" is used to envelop both social and environmental issues. The fundamentals of CSR rest on the fact that not only public policy but even corporate should be responsible enough to address social issues.

ORIGIN OF CSR

The modern era of CSR started in the 1950s, but the concept itself can find its origin in the 1930s.

Bowen (1953) was one of the first authors who attempted to define CSR. According to Bowen, CSR is the policies, the decisions, and the actions that align with the goals and values of society.

The attempts to define CSR grew significantly in the 1960s and became more specific in the 1970s. Carroll (1979) thought that the economic component should be included in the definition of CSR. He provided the following definition: "The social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time".

EVOLUTION OF CSR IN INDIA

The history of CSR in India has its four phases:

The First Phase: (pre-industrialization period, which lasted till 1850 - CSR motivated by charity and philanthropy)

- Charity and philanthropy were the main drivers of CSR
- Wealthy merchants shared a part of their wealth with the wider society by way of setting up temples for a religious cause
- With the arrival of colonial rule in India from the 1850s onwards, the approach towards CSR changed

The Second Phase: (during the independence movement - CSR for India's social development)

- Mahatma Gandhi introduced the notion of "trusteeship", according to which the industry leaders had to manage their wealth so as to benefit the common man

* ACS, FCA, ACWA.

- Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions
- The heads of the firms largely aligned the activities of their trusts with Gandhi's reform programmes. These programmes included activities that sought in particular the abolition of untouchability, women's empowerment and rural development

The Third Phase: (1960–1980 - CSR under the paradigm of the mixed economy)

- In mixed economy, emergence of Public Sector Undertakings (PSUs) and laws relating labour and environmental standards
- The policy of industrial licensing, high taxes and restrictions on the private sector led to corporate malpractices. This led to enactment of legislation regarding corporate governance, labour and environmental issues
- PSUs were set up by the state to ensure suitable distribution of resources -- public sector was effective only to a certain limited extent -- shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary
- In 1965 Indian academicians, politicians and businessmen set up a national workshop on CSR aimed at reconciliation

The Fourth Phase: (1980 - present)

- Indian companies started to integrate CSR into a sustainable business strategy
- In the 1990s the first initiation towards globalization and economic liberalization were undertaken which gave a boost to the economy
- The increased profitability increased business willingness as well as ability to give

Current scenario in India

The basic objective of CSR in these days is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of corporates feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness.

Companies have specialised CSR teams. Also Corporates increasingly join hands with Non-governmental organizations (NGOs) and use their expertise in devising programs which address wider social problems. CSR has been made a part of various legal frameworks.

CSR LAWS IN INDIA AND THE WORLD

1. CSR provisions within the Companies Act, 2013 (India)

According to Indian Institute of Corporate Affairs, a minimum of 8,000 Indian companies will be required to undertake CSR projects in order to comply with the provisions of the Companies Act, 2013 with many companies undertaking these initiatives for the first time. Further, estimates indicate that CSR commitments from companies can amount to as much as 15,000 crore INR.

Chapter IX Section 135 - Corporate Social Responsibility

(1) Every company having

Net Worth => Rs. 500 Crore or

Turnover => Rs. 1000 Crore or

Net profit => Rs. 5 Crore

during any financial year shall constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the CSR Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation — For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198 [Calculation of profits – for Sec 197 (managerial remuneration)].

Schedule VII

Activities which may be included by companies in their Corporate Social Responsibility Policies.

Activities relating to:—

1. eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation and making available safe drinking water;
 2. promoting education including special education and employment enhancing vocation skills especially among children, Women, elderly, and the differently abled and livelihood enhancement projects;
 3. promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
 4. ensuring environment sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
 5. protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
 6. measures for the benefits of armed forces veterans, war widows and their dependents;
 7. training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
 8. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
 9. contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
 10. rural development projects.
- 2. NVGs (National Voluntary Guidelines) for Social, Environmental and Economic Responsibilities of Business - July 2011**

- NVGs- A refinement over the Corporate Social Responsibility Voluntary Guidelines 2009, released by the Ministry of Corporate Affairs in December 2009.
- The CSR Voluntary Guidelines served as a statement of intent by the Government of India to encourage businesses to adopt responsible business practices.
- Guidelines are designed to be used by all businesses irrespective of size, sector or location.

- urges businesses to embrace the “triple bottom-line” approach whereby its financial performance can be harmonized with the expectations of society, the environment and the many stakeholders it interfaces with in a sustainable manner.

Guidelines have been articulated in the form of nine (9) Principles with the Core Elements to actualize each of the principles

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

Principle 3: Businesses should promote the wellbeing of all employees

Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized

Principle 5: Businesses should respect and promote human rights

Principle 6: Business should respect, protect, and make efforts to restore the environment

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

Principle 8: Businesses should support inclusive growth and equitable development

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

3. Annual Business Responsibility Report (ABRR)

ABRR is the disclosure framework based on the NVGs to ensure wider evidence based uptake of the NVGs.

This reporting framework helps Indian companies implement the NVGs and communicate the same to its stakeholders. It is designed on an ‘Apply or Explain’ methodology and aims at assisting companies to re-examine their processes and align them with the ethos of the NVGs.

4. Business Responsibility Reports (BRR) - SEBI

SEBI, by way of passing a board resolution in November 2011, mandated the top 100 listed companies to report on their Environmental, Social and Governance (ESG) performance through a Business Responsibility Report (BRR). These are to be reported in the form of a BRR as a part of the annual report.

SEBI has provided a template for filing the BRR. Business responsibility reporting is in line with the NVG published by the Ministry of Corporate Affairs in July 2011. Provisions have also been made in the listing agreement to incorporate the submission of BRR by the relevant companies. The listing agreement also provides the format of the BRR. The BRR requires companies to report their performance on the nine NVG principles. Other listed companies have also been encouraged by SEBI to voluntarily disclose information on their ESG performance in the BRR format.

Clause 55 was inserted in the Equity Listing Agreement mandating inclusion of BRR as a part of the Annual Reports for listed entities.

Listed entities submitting sustainability reports to overseas regulatory agencies/ stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines but only furnish the same to their stakeholders along with the details of the framework under which their Business Responsibility Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.

5. Global Reporting Initiative

The Global Reporting Initiative (GRI) is a leading organization in the sustainability field. GRI promotes the use of sustainability reporting as a way for organizations to become more sustainable and contribute to sustainable development.

GRI has pioneered and developed a comprehensive Sustainability Reporting Framework that is widely used around the world. The Framework, including the Sustainability Reporting Guidelines (the Guidelines), sets out the Principles and Standard Disclosures organizations can use to report their economic, environmental, and social performance and impacts.

Although the GRI is independent, it remains a collaborating centre of United Nations Environment Programme.

The Number of Indian Companies Reporting under GRI has quadrupled from 2011 to 2013.

The most current generation of the Guidelines are: The G4 Guidelines. Earlier generations of the Guidelines are: The G3.1 & G3 Guidelines.

6. ISO 14001 - Environmental management systems

ISO 14000 is a family of standards related to environmental management that exists to help organizations (a) minimize how their operations (processes, etc.) negatively affect the environment (i.e., cause adverse changes to air, water, or land); (b) comply with applicable laws, regulations, and other environmentally oriented requirements, and (c) continually improve in the above.

The ISO 14001 standard given by the International Organization for Standardization sets out the criteria for an environmental management system. It does not state requirements for environmental performance, but maps out a framework that a company or organization can follow to set up an effective environmental management system. Using ISO 14001 can provide assurance to company management and employees as well as external stakeholders that environmental impact is being measured and improved.

7. ISO 26000 - social responsibility

ISO 26000:2010 provides guidance rather than requirements. It helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.

The standard was launched in 2010 following five years of negotiations between many different stakeholders across the world. Representatives from government, NGOs, industry, consumer groups and labour organizations around the world were involved in its development, which means it represents an international consensus.

8. SA 8000

SA8000 is an auditable certification standard developed in 1997 by the Social Accountability International. It encourages organizations to develop, maintain, and apply socially acceptable practices in the workplace. As it can be applied worldwide to any company in any industry, it is an extremely useful tool in measuring, comparing, and verifying social accountability in the workplace. It also requires compliance with eight performance criteria relating to:

- Child Labour
- Forced and Compulsory Labour
- Health and Safety
- Freedom of Association and Right to Collective Bargaining
- Discrimination
- Disciplinary Practices
- Working Hours
- Remuneration

Certification is granted by independent certification bodies (23 bodies worldwide) that are accredited and overseen by Social Accountability Accreditation Services (SAAS).

9. AA 1000

AccountAbility is an independent, global, not-for-profit organisation promoting accountability, sustainable business practices and corporate responsibility. It is a self-managed partnership, governed by its multi-stakeholder network established in London in 1995. The AA 1000 Series of Standards issued by them are based on the principles of:

- Inclusivity - people should have a say in the decisions that impact on them
- Materiality - decision makers should identify and be clear about the issues that matter
- Responsiveness - organizations should be transparent about their actions

ROLE OF COMPANY SECRETARIES IN CSR

1. *Consultancy in CSR*

CSR is a complex concept and it needs deep understanding for implementing the same. Corporates who want to implement CSR need professional guidance for CSR strategy formation and its implementation which involves various planned stages. Such research, planning and implementation can be done with the help of professional consultants. Company Secretaries, with their skills and knowledge can serve as CSR consultants for these corporates.

2. *Legal Advisors in CSR*

CSR is governed by national and international legal and reporting frameworks. For an entity to comply with the CSR regulations, all these legal requirements have to be studied and applied to the entities for their compliance. Company secretaries, with their legal expertise can provide legal advice to the entities so as to enable them ensure proper compliance with all the CSR laws in a synergetic manner.

3. *Advising on Non Profit Organisations' (NPO) Governance*

Non Profit Organisations - NPOs are the organizations that can act as a means and help entities to meet their CSR objectives. The entities seeking to implement CSR may decide on the NPOs that they can tie up with or can take help of for this purpose based on various factors like the management of the NPO, internal control system, procedures and controls placed and financial disclosures among other factors. Hence, it becomes important that the NPOs adopt and follow effective governance principles and practices. They can be guided with regards to the governance principles applicable to them and those that the entities can introduce within and follow proactively.

4. *Grading/ Rating NPOs*

Selecting an NPO can be facilitated by way of comparing or grading them based on various financial and non-financial parameters. Company secretaries can use their skills for performing the function of grading/ assigning ratings to the NPOs. This will act as an assurance of further increase the reliability of the NPOs.

5. *Selection of NPOs – NPOs are generally formed as:*

- a. Trust,
- b. Society,
- c. Company or
- d. Non Trading Corporations

With the existence of large number of NPOs that exist in different forms and serve in diverse areas, selecting an NPO doesn't remain an easy task. In order to select the right NPO that can best serve the purpose of CSR implementation and its objectives most efficiently, different selection methods and criteria have to be applied. Company secretaries can carry out this function for the entities looking towards CSR implementation through NPOs.

6. *Consultants in funding – India & outside India*

Funding is an important aspect in the process of the CSR activities. Company Secretaries can act as consultants in the process of funding both in India as well as outside India by providing their professional services.

7. *Complying with Standards*

With the evolution and increasing importance to CSR many standards relating to CSR have been issued. Ensuring compliance with these standards requires them to perform various activities that lead to attaining the objective of complying with the standards.

Recognizing these activities and planning and performing them can be an area that the company secretaries can provide assistance in.

8. *CSR Reporting*

Entities are required to report or sometimes they can choose to report on their social responsibility initiatives and practices and present the impact of these initiatives and practices. Different reporting frameworks exist that the entities should/ may adopt for social responsibility reporting. Company secretaries can help the entities come out with such reports under different reporting frameworks.

9. *Social Audit*

Social Auditing allows organizations to assess their social impact and ethical performance vis-à-vis its stated vision, mission and goals. It helps the organization to set up measurement criteria for its social impact, account for its social performance, report on that performance and draw up action plans to improve that performance. The characteristics necessary for social auditing include Unbiasedness and Independence, Expertise and knowledge, Inquisitiveness and professional skepticism, Ability to understand impact of programs/ corporate actions in their wider social context and adherence to standards. Since company secretaries these characteristics they can be the entities that perform the social audits.

CHALLENGES OF THE COMPANIES ACT, 2013

CS Makarand Lele*

"Mere knowledge is comparatively worthless unless digested into practical wisdom and common sense as applied to the affairs of life." – Tryon Edwards

Finally, we got much awaited new company law legislation in the form of Companies Act, 2013. Substantial operative provisions together with a bunch of rules were made effective from 1.4.2014. However, a few provisions having involvement of NCLT, were not made effective and hence for such corporate actions provisions of Companies Act 1956 will apply.

Corporates have got less than a weeks' time to implement the new provisions. The approach towards implementation is certainly debatable. New law has challenged the inherent working mechanisms of corporates, which are in place for decades. The lack of transitory provisions has further aggravated the problem.

This poses bigger challenges before the professionals, who are supposed to play the key role of co-ordination between the corporates and law makers for effective implementation of the Act. Professionals are expected to decode and implement the new law in an effective manner so as to strike the proper balance between business expectations and compliances.

This article tries to highlight the key challenges and critical issues of the new Act.

Vacation of office by a Director

Section 167 (1) provided the list of incidences leading to automatic vacation by a director from all companies. This section, which came into effect from 1.4.2014, has open the new Pandora's Box. Clause (a) of the said section provides that if director incurs any of the disqualifications specified in entire section 164, he vacates the office. The disqualifications provided in sub section (1) of Section 164 are of personal nature. Directors can control those and can ensure that he is not entering into such disqualifications. However disqualifications provided in sub section (2), i.e., non filing of financial statements or annual return for 3 continuous financial years or default in repayment of deposits or interest thereon, redemption of debentures or interest thereon or default in payment of dividend declared for a continuous period of 1 year has a potential danger.

They are company specific and it would be difficult for a person to control it.

If the Company has failed to complete the annual filing for any continuous period of 3 financial years even prior to 1.4.2014 or if the amounts specified above are due for more

* Council Member, WIRC of ICSI. Partner, MRM Associates, Company Secretaries, Pune.

than 1 year as on 1.4.2014, the disqualification is incurred & passively occurred to a Director. Once this disqualification occurs to a director under section 164 (2) (a) or (b), he has to vacate the office by virtue of Section 167 (1) (a). The vacation is automatic and no cure is provided for it.

Thus, it can be concluded that on 1.4.2014, the Directors of such non-compliant companies have vacated their office in that Company (defaulting company) as well as in all other Companies. It would create anarchy in such defaulting Companies as there will be no director to carry on the affairs of the Company and authorized to take corrective steps, which does not seem to be the intention of legislature.

New Appointments after vacation of office by all Directors

In case of vacation of office by all Directors due to disqualification under Section 164 (2)(a) of Companies Act, 2013, sub-section (3) of Section 167 empowers the promoter and in his absence, Central Government to appoint the Directors till they are appointed in the general meeting. It implies that the defaulting directors can vacate their office without onus being placed to rectify the default. This does not seem to be the intention of legislators.

The question is whether the New Directors so appointed will incur the disqualification under Section 164 (2) (a) due to the status of the Company on their appointment? There appears to be no clarity provided in the Act or rules.

Structuring of the Board

The public companies which satisfy the criteria laid down in Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 have to appoint 2 Independent Directors (IDs). IDs are appointed for a specific term at the office. Hence, they will not fall under the purview Section 152 (6), i.e., will not be liable to retire by rotation. This position would mandate that the total strength of the Board shall be large enough to comply with the provisions of Section 152 (6), i.e., 2/3rd Directors being liable to retire by rotation. It might mandate certain companies to increase the size of their Board even if it is not warranted from corporate strategic angle. Another option may be to make promoter directors or whole-time directors liable to retire by rotation by passing the appropriate Board/ General Meeting resolution. Communication of such alteration of retirement term of a director to ROC is also a challenge.

So restructuring of Board by identifying suitable directors on the Board is a challenge before the Companies.

Appointment of casual vacancy Director

Sub-section (4) of Section 161 of the Companies Act, 2013 provides that Board of Public Company can fill up the casual vacancy caused at the office of director (who is appointed by general meeting) before expiry of his tenure. Does this indicate that the Act doesn't permit the Private Company's Board to fill up the casual vacancy? It would be difficult to digest as to why it is so. The entire scheme of the Act is based on bifurcation of Companies into Small or non-small and not into public or private, however in certain Sections like this, surprisingly restriction is placed on the Private Company.

In case of family owned company having 3 directors, if casual vacancy is created for 1

director, then remaining 2 directors cannot, by passing a Board resolution, fill up the said vacancy. They will have to necessarily adopt the route of induction of a director on the Board as an Additional Director and regularization under Section 160 by providing deposit of Rs. 1 Lac.

Objects of a Company

Section 4 (C) and Clause III (a) of Table A of Schedule I use the word 'objects' for which the Company is incorporated. This is an indication that the Company may have more than 1 main object as its main object. However, there is no mention of how many maximum main objects a Company may have. If the supportive objects like granting of loans or making investments etc. will be allowed along with main activity, it will facilitate company to justify its 'ordinary course of business'.

It is felt that such an important matter shall not be left at the discretion of the regulator but be crystallized by the MCA through clarification.

Amendment of existing 'Other Objects'

New format of Memorandum of Association does not contain the clause for "Other Objects" as was available in the Companies Act, 1956.

There is no clarity for existing companies as to whether they will be allowed to amend or alter the existing other objects or can commence any activity specified in their other objects. It is very important for MCA to clarify this, since many companies would be interested in commencing the activities like investment, finance, loans (subject to other applicable regulations) along with their main activity.

Now private companies can't by just passing the board resolution, commence new business activity. They have to complete the process of commencement of business prescribed in the Section 11 of Companies Act, 2013.

Amendment in existing Articles

Section 5 & Tables under Schedule I of Companies Act, 2013 prescribe for the provisions for the Articles of Association of the Company. The said provisions are applicable to the Companies to be formed under the new Act after 1.4.2014. New Companies are required to prepare their articles by following these rules.

For existing company there is no express need to amend articles to align it with the Schedule I and provisions of the Companies Act, 2013 unless and until, a private Company wants to take benefit of provisions like increase in number of Members to 200, removal of prohibitory clause of acceptance of deposits, inclusion of entrenchment provisions etc.

Provisions of new Act & rules will supersede the articles of the Company if they are inconsistent with it.

Share Application money Pending Allotment

New Deposit Rules provide that any amount received and held (i.e., after 1.4.2014) pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities

pending allotment is to be apportioned against allotment of securities within 60 days or to be refunded within next 15 days. If company fails to do this, entire such amount will be treated as deposit and will attract penalty & fine etc.

There is no clarity as to applicability of this provision to share application money accepted under Old Act and pending for allotment on 1.4.2014. However, it could be inferred that the same is not required to be apportioned within 60 days or to be refunded within next 15 days under the provisions of the New Act since the said amount is not received and held pursuant to the offer made under New Act.

Further earlier Act was never necessitated the Company to apportion the application money within specified period. These amounts are also not required to be transferred to IEPF account even if it is lying in the books of accounts for more than 7 years, since the same is not yet due for refund.

Allotment of Shares out of share application money received prior to 1.4.2014

Since the Act is implemented on a short notice of 4 days, companies didn't get the time to complete the pending transactions. One such important pending transaction is allotment of shares to those applicants who have paid the application money to the Company.

Since the new Section 23, 42 & 61 are effective from 1.4.2014, they would apply to issue of shares made after that date. If the share application money is already received by the Company, which means the process of issue is over and only apportionment through allotment is pending. Corporate action of allotment would require the compliance of new provisions & filing of return in new form with ROC. Limitation period of 60 days won't apply to such share application money since it is not received and held under an offer made under new act.

Company can take this action as per their own convenience, but it would be advisable to do it quickly.

Application of Section 74 to Unsecured Loans or exempted deposits

Section 74 of the New Act requires the Companies to provide the details of outstanding deposits within 3 months and to repay the deposits within 1 year or due date whichever is earlier. Deposit Rules further clarifies that said deposits accepted by the Companies who are "eligible companies" now need not be repaid prematurely, if the existing deposits (deposits accepted under Section 58A of the Companies Act, 1956) comply with the new Act and rules.

Hence companies who have public deposits need to check whether same are allowable under new act or not and accordingly can continue with the same till its maturity.

Since this section uses the word "Deposits" accepted under old Act, I don't see any requirement to repay the exempted deposits accepted under the old Act (like unsecured loan from directors or their relatives or members) even though they are not exempted under the new Act. It can continue till its due date and if there is no due date prescribed then it can continue forever.

It has been informed that there is some confusion emerging at the regulators' end and they are insisting the Companies to file the return & repay the amounts even if it is exempted under the old Act.

Such exempted deposits can continue till its maturity, however interest payable there on should not be accumulated to principal. Otherwise it will amount to acceptance of new Deposits.

Funding for Joint Venture Companies

Joint venture companies usually have the representation of both the joint venture partners on the Board. It is very likely that the existing Directors of the joint venture partners have been appointed on the Board of Joint Venture Company. Thus, the case will be covered under the expression "to any other person in whom director is interested" under Section 185. Also, it can also fall under the case of 'being accustomed to act in accordance with the directions or instructions'.

The Companies (Meetings of Board and its Powers) Rules, 2014 provide certain exemptions for Section 185 (Rule 10) and Section 186 (Rule 11). While Rule 11 exempts giving of a loan or guarantee or providing a security to a joint venture company from compliance of Section 186 (3), it is very likely that all financial assistance to Joint Venture Company will be prohibited by virtue of Section 185. Thus, the exemption under Section 186 will prove to be futile. It will also pose a huge challenge to joint venture companies to secure funding.

Vacation of office by Auditors

Section 141 provides for the eligibility and disqualification of auditors which has come into force from 1.4.2014. Section 141 (3) (g) states that an auditor should not be an auditor of more than 20 companies at the time of appointment or re-appointment. Sub-section (4) further states that, where a person appointed as an auditor, incurs any disqualification mentioned in sub-section (3), after his appointment, he shall vacate his office and such vacation shall be regarded as a casual vacancy.

Due to exclusion of Private Companies from the limits prescribed under Companies Act, 1956, Auditors may be holding office of Statutory Auditor in more than 20 companies. There is apparent conflict in interpretation as it could also be interpreted to mean vacation of office by existing Auditors on commencement of new Act.

There is another view being expressed that this would apply for the appointments or reappointments made on or after 1.4.2014 under Companies Act, 2013. However, it leads to a conclusion that existing Auditor will sign more than 20 balance sheets for the f.y. 2013-14 & have to vacate from excess companies by not offering himself for reappointment in the coming annual general meeting.

Annual Return for the FY 13-14

The new format for Annual Return is prescribed in Rule 11 of the Companies (Management and Administration) Rules, 2014 is MGT-7. Ministry, vide General Circular 8/ 2014 dated 4.4.2014 clarified that preparation, adoption and filing of financial statements, auditors report and board's report will be as per applicable provisions of Companies Act, 1956. However, Annual Return is conspicuous by its absence here.

Thus, is it to be concluded that Annual Return shall be prepared as per new format after complying with the provisions related to signing and certification and be uploaded in Form 20B.

There is no clear direction coming from MCA on this issue.

Fraud and false statement

Section 447 and 448 are truly 'God' sections of Companies Act, 2013 as they are really omnipresent and omnipotent!

The definition of 'fraud' which is included for the first time is wide enough to cover almost any situation. It is to be read along with other penal provisions. It effectively implies that for all offences, fraud can be alleged. Similarly, false statement provided under Section 448 is an alarm for professionals as the wrong certification would soon end them up in an imbroglio. General Circular 10/2014 dated 7.5.2014 issued by MCA has specified the methodology by which the proceedings will be initiated by the registrar against the concerned professional under Companies Act, 2013 and a reference to the disciplinary committees of concerned professional Institutes.

Impediments for closely held companies

In India, majority of the companies are closely held, family owned and operate on the principal of "My Company" & not "Our Company". These companies are characterized by family shareholding and management, lean business model and secrecy about the operations.

Under Companies Act, 2013, these core characteristics are challenged.

— Financing the needs of the business

Monies or loans granted by shareholders or relatives of directors will no more be exempted from the applicability of provisions of Deposits. This shrinks the major source of funding for small and closely held companies. They are left with no option but to accept such monies only from directors or from banks as loan or to issue shares. The Act imposes too much compliances even for issue of small amount of shares. Companies have lost their flexibility of doing business in corporate form and this may affect the overall growth & confidence.

— Related party transactions

In many of such companies, there are numerous transactions with the other entities of the shareholders/ owners or with group companies. Company owners usually give their own properties on rent to the Company to undertake their business activity.

New law has brought all possible transactions under the umbrella of RPT & placed stricter norms to comply. It would therefore be almost impossible to get the approval of the disinterested Board or shareholders for such transactions. Hence companies are now in dilemma as to what recourse to be adopted for this.

— Availing exemption for RPT

In order to avail the exemption from approval compliance for RPT, transaction is required to be entered in the "ordinary course of business" and at "Arm's Length basis".

There are challenge to justify these transactions as entered on "arm's length basis".

These transactions are of unique nature because of their interpersonal positioning and may not have the availability of comparable. Statutory auditors don't have the

comfort to certify these transactions as entered on “arm’s length basis”. There is a fear that Assessing Officer at the time of Transfer Pricing scrutiny will raise issues on justification of these transactions and will ask the Company to do additions and pay tax.

Small companies don’t have formal audit committees to get the recommendation for such transactions as entered at Arm’s Length basis. So more likely for such companies, this exemption will remain as showcase legislation. It would be mockery of the law if directors who are interested in the transaction are himself indulging into a justification of arm’s length basis.

— *Increased compliances*

The number and frequency of compliances by such companies have touched the roof. Private Company has almost lost its status due to withdrawal of multiple exemptions. Companies have to do a periodical event based compliances and filings. The costs of compliance is multiple and it creates an impression, that it has no value addition to business.

— *Small Company*

Concept of Small Company has been introduced in this Act to provide relief to them from frequent compliances. The categorization of company as Small is dependent on paid up capital or turnover. Company should be below both the thresholds to remain as “Small”. Further it has failed in providing sizable exemptions or reliefs to such Small Companies. Various section specific thresholds killed the concept of small company. In order to provide a greater relief to intended Small Corporates, there is a need to redraft the definition criteria. It could be based on a test of involvement of Public Money or else.

— *Information available in public domain*

The decisions of the Board are to be filed with the Registrar and will subsequently be available for public inspection by virtue of Section 179 (3) read with Section 117. Also, the Profit and Loss Account of all companies is going to be available for public inspection. Section 94 (2) has implication that the copies of Annual Return and Register of members to be maintained at registered office will be open for inspection by any member of public. All personal data of Independent directors would be available on web portal.

Will such requirements achieve the greater transparency or will lead to a potential threat to the companies and their directors?

Wide powers vested with the Regulators

The Regulator has been bestowed with a very wide sweep of powers hitherto not available. It could be argued that it bodes well for facilitating an early response to the needs of the businesses which are always in a flux. However, it also takes away an element of clarity and certainty to an extent. The powers so vested may not always be utilized in the best interest of the stakeholders. At the receiving end of this flak would be the professionals and closely held companies.

On a closing note, I would like to emphasize that much awaited Companies Act, 2013 has been a welcome change. It is indeed a harbinger of new opportunities and heralds the era of a more dynamic role for professionals. It has brought governance & transparency to the table. Certain issues like the ones mentioned in this articles call for detailed attention and scrutiny. However, they are here only for this transitory phase.

I do look forward to the long term benefits which would be richly reaped, on the back of the hard work to be put in the years to come.

ADVERSE IMPACT ON PRIVATE COMPANIES OPERATIONS UNDER 2013 ACT

CS N L Bhatia* CS Dhrumil Shah**

Introduction

Companies Act, 2013 has introduced several changes in relation to the private companies. On the one hand, it has increased the number of members from 50 to 200; while on the other hand it has introduced many restrictive provisions which have adversely affected the business operations of private companies. Some of the restrictive provisions are discussed in this article to highlight the difficulties being faced by the private companies.

Acceptance of Deposit

Under the 1956 Act, acceptance of deposits from members, directors or their relatives could be accepted without any regulatory compliance. Under section 73 of the 2013 Act, a private company is required to undergo lot of formalities before accepting any deposits from its members also. Some of the regulatory Compliances are given below.

- Deposits from Members shall not exceed 25% of aggregate of paid-up share capital and free reserves of the Company.
- Companies to issue circular to the members stating, *inter alia*, financial position of the Company. In addition to issue of circular to members, Companies also need to publish newspaper advertisement before accepting deposits from its members.
- Companies to file contents of circular thirty days prior to the issue of circular / Advertisement.
- Companies to obtain insurance cover at its own cost before issue of circular / advertisement.
- Companies to create security on its assets to cover the gap between the insurance cover and the deposit amount. In other words, the value of assets on which security is created should not be less than the aggregate amount of deposit and Interest. In case a Company is not providing any security, it has to state unsecured deposit in the circular / advertisement.
- Companies to create deposit repayment reserve account in which Companies are required to deposit with any scheduled bank 15% of deposit maturing in next two

* Practising Company Secretary, Mumbai.

** Practising Company Secretary, Mumbai.

years. In other words the Company is required to maintain 30% of deposit maturing in the immediately two years. (Current Financial Year and the next financial year). Further, the amount so deposited shall not be utilized for any purpose other than for repayment of deposits.

- Companies to obtain Credit Rating before accepting deposit from members.

Thus the acceptance of deposits by private companies from its members has not only become cumbersome but also costly.

Loans to Directors

Under the 1956 Act, private companies other than private companies which are subsidiaries of Public Company, were exempted to give loans to directors or firms and private companies in which they are directors, Now under Section 185 of 2013 Act such exemptions have been deleted.

It is usual for a private company to give guarantee for another private company in which a director of one private company is director or member in another private company. The Act of 1956 exempts private companies from such provisions, and with the withdrawal of such exemption the private companies are in a dilemma.

Participation in Board and General Meeting

Most of the private companies are two member Company comprising of husbands and wives as Directors and Members. Such couples also create other private Companies. In their dealings between two such Companies, the restriction imposed by Section 184 of the Companies Act, 2013. The passing of board and general meeting resolutions has brought many such transactions to a deadlock. Even in cases where there are only two directors and one of the directors is interested in a transaction, the transaction shall not be possible, in as much as related parties are prohibited from participating in a discussion and voting on the resolutions. As a result, such companies have to induct outside persons both as directors and shareholders. Such inducted persons who carry 0.1% of the shares of the Company pass resolutions in respect of material transactions. This has created unprecedented complications for pure private companies which are unconnected with any promoter group.

The concept of related party could be validly applied in the context of Companies where there are both related and unrelated directors / members. In Public Listed Companies there are promoters' group shareholding and minority shareholders there this concept is properly applied for listed companies. Thus, when private companies are required to rope in outsiders with 0.1% shareholding to pass material transactions the futility of the provisions become manifest. Thus, there is a need for grant of relief to purely private companies.

Earlier under section 300(2) of the Companies Act, the Director in pure private limited company were not debarred from taking part in discussion and voting and not excluded for the purpose of quorum in respect of resolution in which they are interested. Now under Rule 15 of chapter XII of Companies Act, 2013 the directors of pure private limited company shall not be present at the meeting during the discussion on subject matter in which they are interested.

Loans & Investment by Company

Under Section 372 (A) of the Companies Act, 1956 private companies were exempt from the restrictive conditions contain therein. Under the 2013 Act, such exemption has been deleted in respect of pure private companies.

Sale of Undertaking

Section 293 of the Companies Act, 1956 was only applicable to Public Company or private company which is a subsidiary of a public company. This exemption has also been deleted under section 180 of the Companies Act, 2013. The same restriction will be applicable in such cases also.

Provisions relating to General Meetings

Section 170 of the Companies Act, 1956 exempt pure private companies from various provisions relating to general meetings. Such exemptions have been deleted under 2013 Act. Further, private companies which were earlier exempt from Issue of Explanatory Statement along with Notice for its general meetings are required to issue Explanatory Statement also along with Notice of its general meetings.

Commencement of Business, etc.

Under the 1956 Act, private company could commence its business immediately on receipt of certificate of incorporation. Under the 2013 Act, and rules thereunder a private company is required to file a declaration in regard to receipt of subscription money from the subscribers duly certified by Professionals.

Private Placement & Preferential Allotment

In the earlier regulatory provisions a private company could issue further shares to persons other than the existing shareholders by passing a Board Resolution. The new regulations are not only lengthy but costly as well in as much as it has to obtain members' approval by way of special resolution, issue Private Placement offer document in PAS 4, maintain a complete record of Private placement offer in the form of PAS 5, to open separate bank account for share application money, and to refund the share application money, if not allotted within 60 days from the receipt of money.

Financial Statement

A private company was not earlier required to file profit and loss account. However, in the 2013 Act, private company is required to file in addition to profit & Loss account, cash flow statement, if applicable, statement of changes in equity and Explanatory notes to the accounts with the Registrar of Companies.

Appointment of Director

In a private company, appointment of a Director requires seeking consent of the Director and filing of such consent with the Registrar of Companies as per the prescribed rules. Earlier such consent was neither required to be sought nor required to be filed with the Registrar of Companies.

Conclusion

As per Monthly Information Bulletin on Corporate Sector of Ministry of Corporate Affairs, April 2014, there were 9,51,831 companies out of which 8,87,869 were private companies. These private companies in SME Sector play an important role in economic growth of the country as well as job creation. Therefore, the new provisions need to be relaxed for smooth functioning of private companies, which are pure private companies and not remotely connected with any big industrial house.

OPPORTUNITIES FOR PRACTICING COMPANY SECRETARIES (under Companies Act, 2013 and other Regulatory Laws)

Prof R Balakrishnan*

Preliminary

Companies Act 2013, has brought many challenging, remarkable opportunities and provides scope for professionals, especially practicing professionals, particularly for the company secretaries in practice. Further, there is also a move – the days are not very far that the company secretary professional would be moving towards governance professional and the Institute of Company Secretaries of India would get themselves changed to the Institute of Corporate Professionals in the similar line elsewhere in the globe. (example Governance Institute of Australia).

Role of Practicing Company Secretaries as per the provisions of the Companies Act, 2013

There is no change in definition of Company Secretaries in Practice in the current Act of 2013 and sub-section (25) of section 2 of the Companies Act, 2013 defines Company Secretaries in Practice as a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980. Let us look into the roles / scope / certifications available for the practicing professionals of company secretaries.

Appointment of Company Secretary in Practice

Sub-section (8) of Section 118 reads that where the minutes have been kept in accordance with sub-section (1) then, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

By interpreting the section correctly, it is clear that the appointment of "Company Secretary in Practice" is a matter of either board of directors or by members (like the appointment of statutory auditors). Even though, there is no clarity as of now as to whether appointment of Company Secretary in Practice will be taking place by Board of Directors or Members in General Meeting - but, it is clear that the appointment would certainly be done in some meeting. Currently, the appointment of Company Secretary in Practice is being done by company management without running the required credentials and this unhealthy practice would come to an end, when the appointment becomes a matter of meeting of board or members.

* Practising Company Secretaries, Pune.

Company secretary in whole time practice would have to take more accountability and responsibility in discharging his / her duties since, he or she would be making the report to members and board needs to comment on adverse remarks / qualifications etc. and take suitable rectification action.

Beginning of a new path – Secretarial Audit

Secretarial audit has been made mandatory for every listed company and also companies belonging to other class / classes and the secretarial audit report shall have to be annexed with its Board's report. In this regard clause (f) to Sub-section (3) of section 134 makes it clear that report by Board of Directors shall include an explanation or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the company secretary in practice in his secretarial audit report.

This clearly specifies importance of secretarial audit report in the eye of the legislature. Now, this is on company secretary community to meet these expectations of legislature and corporate community. Hope, Secretarial Audit report by Company Secretary in Practice will win confidence among stakeholders including investors and this area of opportunity coupled with great challenge for Company Secretaries.

Powers and duties of Secretarial Auditors

Sub-section (14) of Section 143 makes it clear that company secretary in practice conducting secretarial audit under section 204 shall have same power and duties as auditor of the company. Sub – section (1) emphasizes on power by saying that every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.

Secretarial Auditors to act as Whistle Blower

Sub-section (12) of section 143 cast very important duty stating that if an auditor, Company Secretary in practice or Cost Accountant of a company, in the course of the performance of his duties has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. Obviously this section, in fact, turns auditors including the company secretary who acts as secretarial auditor into whistle-blowers, which was really a role for them intended by the regulators.

Compliance required by companies under all applicable laws

Under the Companies Act, 2013, while spelling out the functions of company secretaries for the first time in the history of the Companies Act, the role of the company secretary has been considerably widened in as much as now he is not only responsible for the compliances under the Company law but also in respect of compliances under all other applicable laws.

In this connection, if one asks a question to anyone including company secretary in a company or a practicing professional as to how many Acts/ laws are applicable to that company, by and large one may not be able to get the exact number of laws/ Acts applicable

to that company. Laws are innumerable and none has really got an idea as to how many laws would be applicable. Laws are innumerable and one needs to be focused in ensuring compliance.

Here is the great opportunity for the practicing company secretaries in assisting and helping the organizations to find out the number of laws which are applicable to them. The companies where no company secretary is required to be employed or company secretary is not employed, the practicing company secretaries have got a great opportunity to explore the areas of compliance in those companies under various laws that are applicable – it is a vast scope for the practicing secretaries since the laws are innumerable.

Exploring new avenues – CS as Internal Auditor

The Companies Act, 2013 vide section 138(1) has a provision stating that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The rules notified by the government under the Companies Act, 2013 clarifies that a person who is being appointed as an internal auditor may or may not be an employee of the company as provided in the explanation to rule 13 of Companies (Accounts) Rules, 2014. Therefore, the appointment of internal auditor could be an employee of company appointed by the board as internal auditor or a practicing professional.

From the above, it is very clear that a practicing company secretary being an expert, as stated in 2(38) of the Companies Act, 2013, he (i.e. the company secretary) could be appointed as an internal auditor and discharge this function and render valuable service to the company. This is yet another opportunity for a practicing company secretary who is having an inclination towards conducting audit and one could take up this position and serve as an internal auditor in a listed company and other specified companies.

This is altogether a new avenue, one has to venture into which comes with great challenges.

Search and seizure

In case the whole time company secretary has information in his / her possession or otherwise, the Registrar of Companies or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,

- (a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and
- (b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

This is clear that Company Secretary in practice is considered an important functionary related to company and record at his possession is being considered important evidence.

Obviously, the challenges for the whole time company secretary are much greater and the practicing companies secretaries need to maintain proper record at their offices and other piecemeal record may cause problem and make them party to unwanted situations if something goes wrong. Here the challenge comes with professional conduct and judgment of skill coupled with doing the right things.

Company Secretary's Services to Banks / Financial Institutions

As on date, banks and many other financial institutions require the services of practicing company secretaries to create compliance reports and search reports of the assisted units, before the credit is extended. Considering the banking operations in this country with multiple branches (which runs into multiple hundreds) and the credit facilities towards working capital, project financing etc., this is one of the areas with large scope for the practicing professional to excel into.

Diligence report for Banks

Reserve Bank of India has recognized the Practicing Company Secretaries to undertake Diligence Report for Banks.

Opportunities in Amalgamations/ Mergers / Arrangements

Many company secretaries who are in practice have an important role as consultants in merger and amalgamation and a very good opportunity exists in this area right from drafting the scheme, getting the scheme presented to the High Court, getting direction, conducting court convened meeting, finally getting the scheme approved and giving implementation.

Apart from this, sub-section (7) of section 232 of the Companies Act, 2013 provides an opportunity after order of approval for merger and amalgamation. Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

As many of us know the phenomenal growth in companies are happening by way of merger, amalgamation, takeover, acquisition, joint venture etc. Apart from this, company also does restructuring activities either externally or internally and the practicing company secretaries have a greater opportunity and scope in these activities.

Opportunities for CS in the area of managerial remuneration

Section III of schedule V of the Companies Act, 2013 deals with remuneration payable by companies having no profit or inadequate profit without the approval of Central Government in certain special circumstances. Proviso to this section lists some conditions to be complied with by the company before approving managerial remuneration in such circumstances. Two important conditions are:

- (i) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the

appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.

- (ii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

This is a new area under the Companies Act, 2013 providing yet another opportunity for practicing company secretaries.

Appearance before the Tribunal / Appellate Tribunal

Section 432 of the Companies Act, 2013, corresponds to section 10GD of the erstwhile Companies Act, 1956 which seeks to provide that a party to the proceeding may appear in person or authorize a Chartered Accountant, Cost Accountant, Company Secretary or Legal Practitioner to present the case before the Tribunal or the Appellate Tribunal.

Practicing Company Secretaries have also been recognized to appear before various other Tribunals such as Company Law Board, Telecom Dispute Settlement and Appellate Tribunal, Consumer Forums, Tax Tribunals etc.

Compliance of this section to be stated in annual return of the company

Part III of Schedule V makes a condition from the auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar of Companies. This is another challenge visualized in the Companies Act, 2013.

Declaration by Secretary in Practice upon Incorporation of a Company

The term 'Company Secretaries in Practice' is mentioned first time after definitions in Section 7 of the Companies Act, 2013, which deals with incorporation of companies. Company Secretary in Practice has to compete here with other professionals. For incorporation of a company there is a requirement that a declaration is to be given by company secretary in practice, which is engage in formation of the company that all the requirements of Act and rules related to registration, matter precedent and incidental thereto.

Annual Return

Annual return is required to be furnished / filed by all companies which are incorporated under the Companies Act. In case of listed companies and other specified companies the annual return is required to be certified by practicing company secretary while for other companies it is not so. Let us look into the relevant provisions in this regard.

Provision for companies other than listed / specified companies

Section 92 of the Companies Act, 2013 contains provisions about Annual Return of the Companies. Every company shall prepare annual return containing details as mentioned in sub-section (1) of this section; like registered office, principle activities, shareholding pattern, members, debenture-holders, Promoters, Directors, Key Managerial persons, meetings,

managerial remuneration, penalty, punishment and other matters as prescribed. This Annual Return shall be signed by a director and company secretary of the company. Where there is no company secretary, it shall be signed by Company Secretary in Practice.

Provision for listed companies and specified companies

In case of listed companies and certain other companies determined on the basis of paid-up capital and turnover; this annual return shall be certified by company secretary in practice in addition to signing of director of a company and by the company secretary in employment. The practicing company secretary shall certify that annual return discloses all facts correctly, adequately and in compliance with all provisions of the Companies Act.

Opportunity to serve / act as member of SFIO

In the Companies Act, 2013, the Government has granted statutory status to Serious Fraud Investigation Office (SFIO) and accordingly in the Companies Act, 2013, Section 211 has been incorporated. Company Secretaries not only being professional but also being expert, they would be eligible to act as member of the SIFO .

Opportunity for company secretary as Technical members of NCLT

Among other qualifications, practice as a company secretary for at least fifteen years or being a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies is a qualification for appointment as technical member of the National Company Law Tribunal.(Section 409 of the Companies Act, 2013)

Professional assistance to Company Liquidator

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Companies Act, 2013 as provided under section 291 and a good opportunity exists in this area also for practicing Company Secretaries.

Responsibility thrust upon CS Professional in case of fraud

Section 140 of the Companies Act, 2013 corresponds to section 225 of the erstwhile Companies Act, 1956 which is in relation to provisions for removal of auditor before the expiry of his term. The Tribunal is empowered to change the auditor of a Company in case of any fraudulent activities by auditor. A Company Secretary in practice [or] an auditor [or] a cost accountant in practice shall immediately report to the Central Government, if they, in pursuance of their duties have reason to believe that an offence involving fraud is being committed against the Company.

Services which could be rendered by virtue of EXPERT conferred on Company Secretaries

Chapter 1 of the Companies Act under section 2(38), wherein, the company secretary is recognized as an "expert" read as under -

2(38) "expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

Company secretary being recognized an expert as in par with valuer, chartered accountant; this expert position provides an excellent opportunity for company secretary.

Company secretaries in practice could carry out various assignments such as advise on matters to be stated in prospectus, assignment related to initial public offer, follow on public offer, advise company administration, act as mediator & conciliator and at certain places even as a negotiator, professional assistance to company liquidator and render advise on other applicable laws to a company and all these comes as a boon in the Companies Act, 2013.

Company Secretaries to be an "Arbitrator"

Company Secretaries are not only legal experts in corporate laws but they are also having superior knowledge in respect of commercial understanding. Company secretaries have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner since company secretaries are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising the client.

Thus company secretaries in practice can act as strategist and authorized representative in arbitral proceedings since they are now recognized as an expert.

The only precaution the company secretaries need to take is that they should develop thorough knowledge about the Civil Procedure Code, 1908 and Indian Evidence Act, 1872 as many a times the proceedings are conducted in accordance with these laws though it is not compulsory as per the Act. However, given the competence of the company secretaries it is not a difficult task.

Company Secretaries to be a Liquidator

For the purpose of winding up of a company by the Tribunal, the Tribunal at the time of passing of the order of winding shall appoint an official liquidator or liquidator from the panel maintained by the central government for this purpose consisting the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters. The section 275(1) and (2) spells out this in the Companies Act, 2013.

By virtue of the expertise, the company secretary could act as an official liquidator as the company secretary is one of the professional whose name is maintained for the appointment of official liquidator by the central government in its panel.

Company Secretaries could be administrator / receiver

As per the provisions of section 258 of the Companies Act, 2013, an interim / company administrator can be appointed by the Tribunal from the data bank maintained by the central government in case of Revival/ Rehabilitation of a company consisting of names of company secretary and other professionals. Further, Company Secretary can also act as receiver of the company.

Company Secretaries could be appointed as registered valuer

As per sub-section (1) of section 247, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. Further valuation is required to be done for various other transactions such as:-

- further issue of shares {sec 62(1)(c)},
- for valuing assets involved in arrangement of non cash transactions involving Directors [section 192(2)],
- for valuing whereas, property and assets of the company under a scheme of corporate debt restructuring {sec 230(2)(c)(V)},
- under a scheme of compromise/arrangement, along with the notice of creditors/shareholders meeting, a copy of valuation report, if any shall be accompanied {sec 230(3)},
- the report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members {sec 232(2)(d)},
- where under a scheme of compromise/arrangement the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal {sec 232(3)(h)},
- for valuing equity shares held by minority shareholders {sec 236(2)},
- for preparing valuation report in respect of shares and assets to arrive at the reserve price for company administrator {sec 260(2)(c)},
- for valuing assets for submission of report by liquidator {sec 281(1)},
- for report on the assets of the company for preparation of declaration of solvency under voluntary winding up {sec 305(2)(d)},
- for valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the company liquidator {sec 319(3)(d)},
- further issues of share capital (section 62),
- non cash transactions involving directors (section 192),
- compromise or arrangement (section 230),
- purchasing of minority shares (section 236).

Being an expert recognized under 2(38), the company secretary could act as a registered valuer and this is yet another avenue provided in the Companies Act, 2013.

Company Secretary could be valuer under Wealth Tax Act

Company secretaries could also work as valuers of securities under the Wealth Tax Act, 1957.

In summing up

One can notice in going through the Companies Act, 2013 that it is not only the straight and clearly written opportunities, the Act is speaking of, but there are also lot many hidden opportunities and scope which are available to the practicing professionals.

The Companies Act, 2013 allows / permits a company secretary to occupy the position of a director in a company. As per sub-section (1) of section 149 of the Companies Act, 2013, it is mandatory to appoint at least one woman director on the board of the prescribed companies.

Obviously, as the company secretary can become director of the company too, the woman company secretaries most likely could take up the position of director on board by the specified companies which needs to appoint women director(s).

Could we sum up and say that the role of company secretaries in the corporate world is going to be manifold and phenomenal.

Opportunities / scope under other regulations

Let us also now turn into opportunities that are available for practicing company secretaries under the other regulations and as well besides the company law, involving direct tax and indirect tax laws and further opportunities.

OPPORTUNITIES UNDER OTHER REGULATIONS**Company Secretaries are recognized as "Accountant" under DTC draft rules**

Clause 320(2) of the draft Direct Tax Code released recently by Government states that in this Code, unless the context otherwise requires — (2) "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, and shall include-

- (i) a company secretary within the meaning of the Company Secretaries Act, 1980;
- (ii) a cost accountant within the meaning of the Cost and Works Accountants Act, 1959;
or
- (iii) any person having such qualifications as the Board may prescribe, for the purposes specified in this behalf.

Opportunities under Direct Tax Code (when implemented)

Since the company secretary is recognized as Accountant under Direct Tax Code, when the Direct Tax Code is implemented, it would allow Tax Audit not only conducted by Chartered Accountants but also by Company Secretaries and Cost Accountants. It is relevant to note that clause 88 of the Proposed DTC prescribes who needs to get the book audited under the Direct Tax Code, 2013 and it further says that the same needs to be audited by an accountant.

Company secretary could be a tax consultant

As per the Tax laws of India, company secretaries in practice can work as tax consultants in various situations.

Opportunities under Customs and Central Excise

If company secretaries want to excel in the areas of customs and central excise – there are enough challenging opportunities available. For example, in customs, there is special valuation branch (SVB) which deals with related party transaction and arm's length dealings where the assessable value is determined by the department which is one of the rewarding areas of practice. Similarly, under central excise also, good amount of practice is available.

Opportunities under FEMA

Under the Foreign Exchange Management Act also there are various certifications relating to compliance required by Directorate of Enforcement office, related matters are available for company secretaries. Right from submission of proof of import, certification in case where the bill of lading is not available and other matters.

Opportunities under indirect taxation

Apart from direct taxation (i.e. income tax), there are opportunities for Practicing Company Secretaries available in indirect taxation such as – service tax, VAT, pollution laws involving feasibility reports, licenses and registration etc. Much would depend upon one's liking and inclination to excel in these areas.

Opportunities under labour laws

Similarly good amount of practice is open in the area of labour laws – right from registration, compliance, return etc., under Factories Act, Industrial Disputes Act, Contract Labour Act, etc. Further, there are also opportunities to act as conciliators and negotiators on selected areas of labour laws. Company secretary could also act as an arbitrator.

Further opportunities

There are various other economic laws, competition laws, Consumer Protection Act and intellectual Property Rights registration, renewals, assignments etc., where one could explore the areas of practice.

One could excel in the areas of investment planning for retirement for executives, home makers, financial planning for young investors coupled with financial education for middle Income group and for school children and also educate the financial literacy for self help groups.

Yet another area open to practicing professionals is drafting of agreements, vetting of agreement, incorporation of body corporate, joint ventures, partnership firms, etc.

One could venture into fund raising procedures and loan documentations as well coupled with acting as Liaoning Agent.

Opportunities under capital market regulations / Listing Agreement etc.

Under various securities laws such as Securities Contracts (Regulation) Act, 1956,

Depositories Act, 1996, Regulations and Guidelines issued by SEBI under the SEBI Act, 1992 and the Listing Agreement of the Stock Exchanges for Equity Debt listing & IDBs company secretaries have been authorized to verify compliances and to issue certificates.

Opportunities under capital market regulations / Listing Agreement etc.

Practicing company secretary is authorized and could represent on behalf of a company/ other persons before Securities Appellate Tribunal (section 15 of SEBI Act) and also under Depositories Act, 1996 (section 23C of Depositories Act, 1996).

Practicing Company Secretary could audit market intermediaries

Practicing Company Secretary is authorized for conducting the internal audit of Portfolio Manager, which is required to be done twice in a year under SEBI (Portfolio Managers) Rules, 1993 and SEBI (Portfolio Managers) Regulations, 1993 and circulars, notifications or guidelines issued by the SEBI and internal procedures followed by the Portfolio Manager. (SEBI Circular IMD/PMS/CIR/1/21727/03 dated 18th November 2003).

Company Secretaries are authorized to carry out complete Internal Audit of Stock Brokers/Trading Members/Clearing Members on a half yearly basis under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956, SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, circulars issued by SEBI, agreements, KYC requirements, Bye Laws of the Exchanges, data security and insurance in respect of the operations of stock brokers/clearing members. (SEBI Circular MRD/DMS/CIR-29/2008 dated 21st October 2008).

Practicing Company Secretary is authorized to carry out internal audit for Credit Rating Agencies (CRA) on a half yearly basis under SEBI Act, Rules and Regulations made there under (SEBI Circular MRD/CRA/CIR-01/2010 dated 06th January, 2010).

The two Depository service providers in India, viz., National Securities Depository Ltd. and Central Depository Services (India) Limited have allowed Company Secretaries in Whole-time Practice to undertake internal audit of the operations of Depository Participants. (CDSL circular- NSDL circular).

Practicing Company Secretary is authorized to carry out concurrent audit of Depository Participants which covers audit of the process of demat account opening, control and verification of Delivery Instruction Slips (NSDL/Policy/2006/0021 dated 24th June, 2006 and CDSL circular).

There are innumerable certification and compliance requirements required to be made under listing agreement on an ongoing basis and also on event based basis for equity listing and debt listing which is one of the larger scope area for practicing professionals.

Practicing Company Secretary's Scope / Role in SME platform of exchange

The SME platform of exchange promoted by BSE and NSE provides a good scope of the practicing company secretaries who could play a significant role in the overall work relating to SME IPO and listing right from initial due diligence and pre-IPO restructuring. BSE has issued a circular, dated November 26, 2012, desiring issuers to take practicing company secretaries due diligence certificate during the initial public offer. Needless to state that the practicing company secretary could also play a significant role at prospectus drafting stage,

ensuring corporate law compliances including ROC approval and completion of initial listing compliances. Further, practicing company secretaries have ongoing involvement post-issue for meeting post-issue compliance requirements and further corporate actions.

Company secretary could handle work related to Trademarks / copy rights

Company secretary would be in a position to handle all the work related to company's trademarks and copy rights including appearance before the trade mark and copy right registrar and handle registration, assignment, renewal and other related work.

Opportunities in academic / teaching areas

If one has an inclination in excelling in the area of teaching, one could take up position as teaching faculty either part time or full time. Alternatively one could be a visiting faculty to many institutions – as a resource person.

Opportunities for oral and online teaching

Oral Training classes and online teaching classes – live virtual class room - are also further options available for professionals who like to excel in teaching – our own institute i.e. Institute of Company Secretaries of India is now imparting online coaching for company secretary course involving video based training, web based training and live virtual class room.

Opportunities in conducting investor awareness programme

Company secretaries in practice (PCS) could be associated in conducting investor awareness programme conducted by various institutions under the aegis of NSE / BSE – our institute- i.e. ICSI is one of them.

Besides PCS could impart training – conduct workshops - could be speaker at various seminars.

Article writing / book writing

Company secretary in practice could also contribute articles to leading magazines since many professional magazines are encouraging article writing on moderate fees of honorarium.

Book(s) writing is another option on the topics of today's importance for students and other professionals and a reasonable reward in the form of royalty comes in this process.

Conclusion

From the foregoing points discussed above one can come to a conclusion that the present Companies Act, 2013 has many opportunities and challenges for Company Secretaries in Practice. The company secretaries in practice have to grab these available opportunities and win confidence of stakeholders, legislature and corporate world. In a broader view, it is the beginning of a new era, more particularly due recognition has been given to the Company Secretary professionals. The Companies Act, 2013 offers great scope for company secretaries not only to act as liquidator/administrator but also to represent the various stakeholders before the Tribunal. It is a complete new beginning for company secretary profession as more opportunities are provided as also challenges in the proper implementation and compliance of various provisions of the Act failing which huge penalties are imposed for violation of clauses. Besides, company secretaries can also excel under many other regulations and various other areas as seen above.

COMPANIES ACT, 2013 : OPPORTUNITIES FOR COMPANY SECRETARIES

Mahesh Kumar Airan & Akansha Rawat*

Prologue

The Companies Act, 2013 is a contemporary, futuristic and forward looking legislation which provides paradigm shift in approach and focuses primarily on good governance practices through disclosure based regime. The Companies Act, 2013 replaced the 57 years old Act and showcased a broad corporate responsibility model. The new law allows the country to have a modern legislation for growth and regulation of corporate sector in India.

The erstwhile Companies Act 1956 (the '1956 Act') appeared to be somewhat ineffective at handling some of the present day challenges of a growing industry and the interests of an increasing class of sophisticated stakeholders. Learning from these experiences, the 2013 Act promises to substantively 'raise the bar on governance' and in a comprehensive form purports to deal with relevant themes such as investor protection and fraud mitigation, inclusive agenda, auditor accountability, reporting framework, director responsibility and efficient restructuring. Keeping in view the globalised economy, several innovative provisions under the Companies Act, 2013 have been incorporated.

In last four decades, the Profession of Company Secretaries has climbed the top of ladder. In the earlier times, the functions of the Company Secretary were administrative and not the managerial. The scope for Company Secretary under the new law has been promoted to renowned pedestal by bestowing the responsibility of widened compliance function along with traditionally acknowledged role. A Company Secretary is responsible for implementation of all relevant laws applicable to the companies and thus envisages a much larger role in the areas of Annual Return, Secretarial Audit, Restructuring, Liquidation, Valuation and much more. The new Act compels the Company Secretary to play a wider role in terms of policing the activities of a company, in addition to merely certifying their actions.

Company Secretary - An Exalted Role

Company Secretary as an expert [Section 2(38)]

Section 2(38) of the Act define an expert, as an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. It is apparent that Company Secretaries have to share its expertise with other professionals.

* Assistant Education Officer(s), The ICSI.

Annual Return (Section 92)

The annual return is a comprehensive document and contains information about the company relating to its share capital, directors, shareholders, Key Managerial Personnel, changes in directorships, FIIs etc. Much reliance is placed on the annual return by the regulators, shareholders, judicial and other regulatory authorities.

Annual return under section 92 has enhanced disclosures regarding:

- Particulars of promoters/directors/KMP along with changes therein;
- Particulars of General, Board and Committee meetings including attendance details;
- Remuneration of directors/KMP;
- Punishment imposed on company/directors/officers & details of compounding of offences/appeals made;
- Prescribed matters relating to certification of compliances, disclosures; (equivalent to compliance certificate);
- Prescribed details in respect of shares held by Foreign Institutional Investors.

According to section 92, annual return of all the Companies has to be signed by a director and the Company Secretary and in case there is no Company Secretary, then by a Company Secretary in practice.

In case of One Person Company and small company, the annual return shall be signed by the Company Secretary or in case there no Company Secretary then by the director of the company.

The annual returns, filed by a listed Company or by a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice in form MGT.8 stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Further, prescribed extracts of the annual return shall be included in the Board's report. These provisions seek to ensure that information filed through annual returns in the Registry is properly verified by qualified professionals.

Internal Auditor (Section 138)

Section 138 of the Companies Act, 2013, read with Companies (Accounts) Rules, 2014 states that, following class of companies shall be required to appoint an internal auditor or firm of internal auditor:

- Every listed companies
- Every unlisted public company having —
 - paid up share capital of fifty crore rupees or more during the preceding financial year; or
 - turnover of two hundred crore rupees or more during the preceding financial year; or

- outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year, or which has outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- Every private company having-
 - turnover of two hundred crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

Such companies are required to appoint an internal auditor, who shall be a Chartered accountant or a Cost accountant, or such other professional as may be decided by the Board to conduct Internal Audit. The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

Key Managerial Personnel (Section 203)

The new Act emphasizes on the role and responsibilities of key management of companies. It will be mandatory for classes of companies, as prescribed by the Central Government, to appoint whole time key managerial personnel (KMP) by means of a Board resolution. 'Key managerial personnel' defined to mean Managing Director (MD) or Chief Executive Officer (CEO) or Manager, whole-time director(s) (if any), Company Secretary, and Chief Financial Officer (CFO). KMPs are covered as 'officer who is in default' and hence would be liable in that position also. KMPs are also included in 'related parties' of a company.

Section 203 of the Companies Act, 2013 has accorded an exalted status to Company Secretaries and provides for compulsory appointment of whole-time Key Managerial Personnel (KMP). Rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rule, 2014 states that every listed company and every other public company having a paid up share capital of ten crore rupees or more shall have Whole time Key Managerial Personnel. MCA has inserted the rule 8A under Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 vide Gazette Notification G.S.R. 390(E) dated June 09, 2014. According to Rule 8A a company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

Secretarial Audit (Section 204)

Secretarial Audit is a mechanism which can give necessary comfort to the management, regulators and the stakeholders, as to the compliances of various applicable laws to a company. Secretarial Audit is basically an audit of compliances and is a part of the total compliance management system of an organization. It helps to detect instances of non-compliance and facilitate taking corrective-measures. The introduction of Secretarial Audit proves that Government is committed to improved corporate compliance and governance. This provision highlights the enhanced role of the company secretaries in practice which is expected to play under the Act.

Based on the recommendations made by Parliamentary Standing Committee on finance, Secretarial Audit is introduced for the first time in India, This is a new concept never implemented in any other country so far. Secretarial Audit has been introduced for the first time in section 204 of the Companies Act, 2013. Under this Section every listed company and every public company having a paid-up share capital of fifty crore rupees or more; or every public company having a turnover of two hundred fifty crore rupees or more shall annex with its Board's report a Secretarial Audit Report, given by a company secretary in practice. If any qualifications or observations are in the report, the Board shall provide explanation for the same in the report.

A practicing Company Secretary (PCS) is the competent professional to conduct Secretarial audit. A significant area of competence of PCS is 'Corporate Laws' owing to intensive coaching, examinations, training and continuing education programmes. PCS is highly competent and specialized professional in matters of statutory, procedural and practical aspects involved in proper compliances under corporate laws.

Secretarial Audit establishes better compliance platform by checking the compliances with the provisions of various statutes, laws, rules and regulations, procedures by an independent professional to make necessary recommendations. Secretarial Audit covers non-financial aspects of the business having impact on its business and performance and verifies compliances of laws, regulations and guidelines of the land. Nonetheless, secretarial audit exercise also mitigates business risk to a great extent. It evaluates the manner in which affairs of a company are conducted. While pursuing its business activities, the company has to comply with the rules and regulations relating to the Companies Act, Securities laws, FEMA, Labour laws, Environmental and Pollution Related laws and various other applicable laws. Stringent penal provisions have been provided for non-compliance. Section 143 (12) states that if an auditor, in course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within the stipulated time. If any auditor does not comply with the provisions, he shall be punishable with fine which shall not be less than one lakh rupees and may extend to twenty five lakhs rupees.

Functions and Duties of Company Secretary (Section 205)

The Act has substantially strengthened the role and position of the company secretaries. Under the new Act, Company Secretary is a senior managerial person in the corporate structure ensuring efficient administration of the company and certifying the company's compliance with the provisions of the Act. A Company Secretary helps the company to comply with the Act, avoiding failures to comply which can be very debilitating. The functions and duties of Company secretary have been defined under section 205 of the Companies Act, 2013 as under:

- To report to the Board about compliance with various provisions of the Companies Act and other laws applicable to the company.
- To ensure compliance with the applicable secretarial standards.
- To provide guidance to the directors, with regard to their duties, responsibilities and powers.

- To facilitate the convening of meetings and attend Board Committee and general meetings and maintain the minutes of the meeting.
- To represent before various regulators, Tribunal and other authorities.
- To assist the Board in the Conduct of the Affairs of the company.
- To assist and advise the Board in ensuring good corporate governance practices.

Secretarial Standards (Section 118 and Section 205)

The basic purpose of any Standard is to integrate, harmonize and standardize the diverse practices prevalent. It helps in adopting global best practices and ensures uniformity of practices and brings better disclosures, transparency and accountability in corporate action. This leads to ease in doing business and better understanding of corporate processes by all stakeholders including foreign investors. Secretarial Standards bring uniformity which is important because different practices may lead to deceptive conclusion.

Companies Act, 2013 is big landmark in translating this approach into reality. Secretarial Standards have been given a place of pride in the Act. The Act recognizes the secretarial standards specified by the Institute of Company Secretaries of India. It is a beginning of a new dawn, where besides financial standards; non-financial standards have also been prioritized and given statutory recognition. Although many forward looking companies have been voluntarily adopting Secretarial Standards. Section 118(10) makes it mandatory for every company to observe the secretarial standards with respect to general and Board meetings as specified by the Institute of Company Secretaries of India and approved by the Central Government.

According to Section 205(1)(b) it is the duty of Company Secretary to ensure that company complies with the applicable Secretarial Standards. As per Section 205 of Companies Act, 2013, Secretarial Standards means Secretarial Standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by Central Government. It means every company shall comply with all secretarial standards as may be approved by the Central Government.

Other Recognitions for Company Secretary

Declaration of compliance at the time of Incorporation (section 7)

Section 7 of the Companies Act, 2013 authorizes company secretary in practice who is engaged in the formation of a company to give a declaration that all requirements of this Act and the rules in respect of registration and matters precedent or incidental thereto have been complied with. In case of false declaration, Company Secretary shall be penalized as per Section 447.

Valuation Professional (Section 247)*

Where a valuation required in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities, it shall be valued by a Registered Valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company. Registered Valuer should have prescribed qualifications and experience.

Amongst others, the Company Secretary having minimum 5 years continuous experience is eligible for being registered as a valuer.

Valuer appointed under this section shall make impartial, true and fair valuation of assets and exercise due diligence while performing his functions. He should make valuation in accordance with such rules as may be prescribed and not undertake valuation of any asset in which he has direct or indirect interest or becomes so interested at any time during or after the valuation of assets. Following are some of the Sections that require valuation under the new Act:

- Section 62(1)(c)– Further Issue of Shares
- Section 192(2)– For Valuing Assets involved in Arrangement of Non Cash transactions involving Directors
- Section 230(2)(c)(v)– For Valuing Shares, Property and Assets of the company under a Scheme of Corporate Debt Restructuring
- Section 230(3)- Under a Scheme of Compromise/Arrangement, along with the notice of creditors/shareholders meeting, a copy of Valuation Report, if any shall be accompanied
- Section 232(2)(d)- The report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members
- Section 232(3)(h)- Where under a Scheme of Compromise/Arrangement the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal
- Section 236(2) – For Valuing Equity Shares held by Minority Shareholders
- Section 260(2)(c) – For preparing Valuation report in respect of Shares and Assets to arrive at the Reserve Price for Company Administrator
- Section 281(1) – For Valuing Assets for submission of report by Liquidator
- Section 305(2)(d) – For report on the Assets of the company for preparation of declaration of solvency under voluntary winding up
- Section 319(3)(b) – For Valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the Company Liquidator

Professional Assistance to Company Liquidator (Section 291)*

Section 291 provides that with the sanction of the National Company Law Tribunal (NCLT), the Company Liquidator may appoint professionals, including Company Secretaries, for assistance in the performance of his duties and functions under the Act.

Qualifications of Members of the National Company Law Tribunal (Section 409)

Under Section 409, a Company Secretary in Practice for at least fifteen years, among others, is also eligible to become a Technical Member of the National Company Law Tribunal.

Appearance before Tribunal or Appellate Tribunal (Section 432)*

Section 432 provides that a party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize among others, a company secretary, to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Mediation and Conciliation Panel (Section 442)*

According to draft rules in respect of clause 442: Mediation and Conciliation Panel, a Company Secretary with experience of at least fifteen years of continuous practice is also eligible to be enlisted as experts in the panel of mediators/ conciliators.

End note

The new Law is progressive and forward looking which promises improved corporate governance norms, enhanced disclosures, transparency, increased accountability of company managements, protection of interest of investors particularly small and minority investors and better shareholder democracy. It also accentuates responsible entrepreneurship, corporate social responsibility (CSR) and stricter enforcement processes. The new law transits company secretaries to corporate governance professionals. It brackets them in the category of key managerial personnel and holds them responsible for implementation of all relevant laws applicable to the companies. It envisages a much larger role for them in the areas of secretarial audit, restructuring, liquidation and valuation. The new act is a beginning of a new era for Company Secretary Profession as more opportunities are provided with more challenges in the proper implementation and compliances of various provisions of the Act.

* As the rules are yet to be notified, draft rules have been referred.

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COMPANY SECRETARIES AND THE COMPETITION ACT, 2002

CS Surendra U Kanstiya*

The Competition Act, 2002

The Competition Act, 2002 (the Act) was passed by the Parliament in 2002 and it received the President's assent in 2013. However the provisions relating to section 3 and section 4 were enforced in 2009 and the provisions relating to section 5 and 6 were brought into force in 2011. As has been rightly noted by Mr. Ashok Chawla, Chairman Competition Commission of India (Commission), that within this short span of time, the Commission has reviewed anti-competitive practices in diverse sectors such as stock exchanges, infrastructure, travel, automobile, real estate, pharmaceuticals, financial sector, publishing, manufacturing, mining and entertainment and has gone on to impose more than Rs. 80 billion in financial penalties. The Commission has received more than 150 combination filings, all of which have been assessed and approved within a period of 30 days. Further, in these five years we have developed a cadre of high-quality professionals, a challenging task given that no competition enforcement expertise was available at home (Fair Play, Quarterly Bulletin of the CCI: Volume 8, January – March 2014).

The Competition Commission of India and the Competition Appellate Tribunal are the authorities established under the Act. The key provisions of the Act provide for (a) Prohibition of anti-competitive agreements; (b) Prohibition of abuse of dominant position; (c) Regulation of combinations; and (d) Competition advocacy. Referring to the objectives of the Act, the Supreme Court, in the case of Competition Commission of India v. Steel Authority of India [2010] 98 CLA 278 observed as under:

"The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law."

Imposition of huge penalties for contravention of various provisions of the Act has prompted the corporate sector to realize that this legislation can not be taken lightly. Under the Act, a Company Secretary is recognized as a professional having expertise in the

* Practising Company Secretary, Mumbai.

competition law matters. Be in employment or in practice, he can assist an enterprise in ensuring that the competition law compliance is an integral part of the “compliance agenda” of an organization. This paper covers the key areas where an enterprise can involve a Company Secretary to address various competition law issues.

Competition Commission of India

The Commission is an expert body and functions as a market regulator for preventing and regulating anti-competitive practices in India. It also performs advisory and advocacy functions in its role as a regulator and can also impose a penalty in certain cases specified in the Act. The key rules governing the procedures are given under the Competition Commission of India (General) Regulations, 2009 and the Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009.

Competition Appellate Tribunal

The Tribunal is a quasi-judicial body to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act. The Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009 *inter alia* provide for the form in which an appeal may be filed before the Tribunal and the fees payable in respect of such appeal. The Competition Appellate Tribunal (Procedure) Regulations, 2009 provides for the procedure of appeals and applications to the Tribunal.

Role of the Company Secretary

Appearance before the Commission

Section 35 of the Act deals with appearance before the Commission. According to this section, a person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission. (emphasis supplied). For the purpose of section 35, company secretary means a company secretary in practice.

Legal Representation before the Tribunal

Section 53S of the Act provides for the legal representation before the Tribunal. According to sub section (1), a person preferring an appeal to the Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Tribunal. Sub section (2) provides that the Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Tribunal may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Tribunal.

Sub section (3) provides that the Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its

officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Tribunal.

Appointment as Expert / Professional

Sub section (3) of section 17 confers the power on Commission to engage such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act. The procedure to be followed for engaging the experts and professionals is prescribed in The Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009.

Schedule I of these Regulations lists out the class of expert and professional and the desired qualifications and experience. The Schedule also includes "Company Secretary". In addition to being a Company Secretary in terms of the Company Secretaries Act, 1980, it is desirable that the Company Secretary has qualified the Post Membership Qualification (PMQ) course in Corporate Governance including competition law as a subject. The Company Secretary must have worked as a Company Secretary in reputed organization handling financial ventures of large enterprises or undertakings. And it is desirable that the Company Secretary has experience of handling acquisitions, mergers & amalgamations, etc. under competition law.

Signing of Information or Reference

According to Regulation 11(1)(c) of the Competition Commission of India (General) Regulations, 2009, an information or a reference or a reply to a notice or direction issued by the Commission shall be signed by the Managing Director and in his or her absence, any Director, duly authorized by the board of directors in the case of a company.

However, in case of filing Form I or Form II, regarding notification of the proposed combination, additional authority is given to the Company Secretary. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 have been amended by the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2012. Accordingly, in case of an acquisition or acquiring of control of enterprise(s), or in case of a merger or an amalgamation, Form I or Form II may also be signed by the Company Secretary of the company, duly authorized by the board of directors of the company.

Appointment as Independent Agency to Oversee Modification

Regulation 27 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 provides that the Commission may appoint agencies, to oversee the modification proposed to a combination.

The agencies to be appointed to perform the said task shall be independent of the parties to the combination having no conflicts of interest. Such independent agencies referred to in this regulation may include an accounting firm, management consultancy, law firm, any other professional organization, or part thereof, or independent practitioners of repute. The agencies so appointed shall carry out the responsibilities as specified by the Commission from time to time and shall submit a report to the Commission upon completion of each of the actions required for carrying out the modification.

A firm of practicing company secretaries should be considered by the Commission for such appointments.

Appointment as Member of the Commission / Tribunal

According to section 8(2), a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy is eligible to be appointed as the Chairman or member of the Commission.

According to section 53D(2), a person of ability, integrity and standing having special knowledge of, and professional experience of not less than 25 years in, competition matters including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration is eligible to be appointed a member of the Appellate Tribunal.

The Company Secretary is a professional who has expertise in various faculties as listed under section 8(2) and section 53D(2), as stated above, and therefore is eligible for appointment with these bodies.

Issuance of Compliance Certificate

According to "Securities Management and Compliances", a publication by the Institute of Company Secretaries of India, when securities have to be issued as a result of a combination, the Company Secretary may issue a compliance certificate certifying that the provisions of the Competition Act, 2002 have been complied with.

Competition Compliance Programme

Existence of a Competition Compliance Programme not only helps an enterprise in preventing the violation of the law but also promote a culture of compliance in the organization. A compliance programme succeeds only if it is driven from the Board. In view of his key position in an organization, a Company Secretary is the right professional to advise the Board about the positive nexus between Corporate Governance and Competition Compliance. The Company Secretary can play important role in key activities like preparation, monitoring and revision of the compliance manual, appointment of compliance officer etc.

Conduct Training Programmes

Large enterprises may engage a Company Secretary to conduct training programmes, 'mock dawn-raids' especially for the people working in departments like purchase, sales, marketing etc.

Conclusion

The recognition of the Company Secretaries under the Act and the Regulations mean opening of one more avenue for the Company Secretaries. The introduction of the Post Membership Qualification Course on Competition Law, is a timely decision which should enable the Company Secretaries in acquiring advanced skills to deal with the complex issues relating to the Act. Being fully conversant with the corporate affairs, Company Secretaries should be the natural allies of the parties taking up the issues before the authorities.

ARE COMPANY SECRETARIES GEARED UP FOR NEWER OPPORTUNITIES ?

CS Jagdish Ahuja*

Introduction

It is rightly said that the necessity is the mother of invention. Every change brings with it new opportunities, threats and challenges for professionals. The million dollar question before the optimist (forward looking) professionals is are we fully geared up for grabbing newer opportunities and facing challenges that are thrown open to us with the advent of the Companies Act, 2013 ? In contrast, the not so optimist professionals would be curious in knowing are we secured enough to survive in the changed scenario? It is a fact to be appreciated by all concerned that growth of the profession of Company Secretary lies in the hands of its members whether in practice or in employment. It is high time now that we stop looking for external support from the Government. One reason for this belief is that under the New Act, excessive reliance has been placed on delegated legislation. Major part of the substantive law is covered under rules and notifications to be issued by the Central Government. Moreover rules can be made and amended by the Central Government simply by issuing notifications without undergoing the cumbersome process of parliament approval. Thus the sword of government rule will unceasingly be on our head which can be used anytime to our detriment and therefore nothing much can be expected from the Government.

One good reason to cheer for company secretaries who are in employment or members or students who aspire to take up responsible positions in employment is that MCA has recently restored the provision of compulsory employment of CS in companies with a paid up capital of Rs. 5 Cr. and above. This is indeed a welcome move and is expected to reinforce the confidence of members and thousands of students currently pursuing CS profession who were in a state of dilemma.

If one sees the brighter side of the coin, the New Act has thrown open a number of newer avenues for PCS which can be capitalized. The true quality of a professional lies in how good he or she is in banking on such opportunities. In this article, a sincere attempt is made not only to list out such avenues under the New Act but also other opportunities which normally remain untapped by CS professionals.

Avenues under the New Act

One reason to cheer is that most of the new e-forms will continue to be subject to pre-certification by professionals thereby leading to data integrity and accuracy. Although pre-certification of e-forms helps the new practicing professionals with a source of income, one

* Company Secretary.

needs to exercise due care and diligence while pre-certifying the e-forms.

Under the Companies Act, 1956 (Old Act), every company not required to employ a whole time secretary and having a paid up share capital of Rs. 10 lacs and above, was required to obtain a secretarial compliance certificate from a practicing company secretary. This compliance is not recognized under the New Act. However, as per Section 92(2) of the New Act read with the relevant notified rule, the annual return, filed by a listed company or, by a company having paid-up capital of Rs. 10 Crore and above or turnover of Rs. 50 Crore and above, shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the New Act. Moreover, all listed companies as well as companies belonging to prescribed class are now subject to Secretarial Audit. As per Section 204(1), 'Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a Secretarial Audit Report, given by a company secretary in practice, in such form as may be prescribed'. As per the relevant rule recently published, for the purpose of Section 204(1), the other class of companies include every public company having a paid up share capital of Rs. 50 Crore or more or every public company having a turnover of Rs. 250 Crore or more. Thus it can be seen from the above that Secretarial Audit is applicable only to certain Big Public Companies which means majority of the companies (being private companies, despite of its bigger size) will stay out of it. Nevertheless this is still considered to be one lucrative avenue for practising company secretaries (PCS) and we are hopeful that gradually the Government would bring more and more number of companies by amending the rules prescribed in this behalf.

The constitution of NCLT (National Company Law Tribunal) and NCLAT (National Company Law Appellate Tribunal), as envisaged in the New Act, will offer one additional opportunity to PCS who would be eligible to appear for matters such as mergers, amalgamations, winding up procedure, etc. Such matters were earlier reserved for High Courts. Thus the PCSs now have to sharpen their advocacy skills as they are now recognized under the New Act to appear before NCLT and NCLAT.

The concept of One Person Company (OPC) as envisaged in the New Act is expected to encourage more and more entrepreneurs to take up the company formation route for their businesses. Company formation is a specialized job which involves preparation of cumbersome documentation such as Memorandum of Association and Articles of Association and normally a PCS is considered fit to undertake this job due to his specialized knowledge on Company law. Currently, there appear to be technical issues with MCA website in online form filing but these are considered as teething problems and once these issues are resolved, it is expected that MCA will be flooded with the company formation requests. In many developed countries, company formation exercise can be completed in one or two working days' time once the proper documents are submitted. This is to ensure the entrepreneurs hassle free business friendly environment. We expect that our Government will also very soon realize this and make our MCA at par with the developed countries of the world.

Moreover, as the New Act is considered to be more stringent and prescribes higher penalties for non-compliance, it is expected that more and more companies will become law abiding and would hire the services of PCS for ensuring timely compliances.

Other Avenues open to PCS

Intellectual Property Rights (IPR)

A PCS can become a Trade Mark/Copy Right Attorney and offer services such as registration of Trade Mark/Copy Right, appearing before Trade Mark/Copy Right Registrar on behalf of clients, in the matter of office objection, public opposition, etc. A PCS, having sound knowledge on IPR can also offer advisory services to his clients on various related matters. Similarly, he can also render his valuable services on other aspects of IPR such as under Patent Act & Geographical Indication. It is now high time that PCSs can take up this untapped or inadequately tapped potential practice area.

FEMA Compliances

With the new Government at the Centre, it is expected that more and more foreign investors would be attracted to invest in Indian market. The Government has already signaled that the retrospective amendment in tax law to make the past transaction taxable is undesirable and would be abolished. This is a welcome move and expected to bring the foreign investors back to Indian market who were shying away from Indian market after the Government announced retrospective amendment to Indian income tax law which was mainly to counter the Supreme Court's ruling in favor of Vodafone in the famous capital gain tax case between Income Tax Office and Vodafone. The Foreign investors opening shops in India is considered to benefit our profession in two ways. Firstly, it will throw open the employment opportunities to the company secretaries in employment. Secondly, the services of practicing company secretary will be in great demand because of their knowledge and experience in the FEMA related compliances.

Direct & Indirect Tax including Income Tax, Service Tax, VAT, Excise Duty, etc.

In my opinion, there is huge potential for knowledgeable company secretaries to take up work as direct and indirect tax practitioners. When a client approaches us, he expects from us all services under one roof so that he need not knock the door of the other professionals. For instance, a client approaches you with a request to effect transfer of shares from a non-resident to a resident share holder. What he will expect from you is not only compliance of company law matter but also FEMA and tax compliance which are applicable. If you happen to tell this client that you only undertake company law compliance most probably the client may switch over to your competitor and not avail any services from you. Similarly, when a client reaches you with a request for compliance on buyback of shares, apart from company law compliances, you would do well to inform your client that buyback of shares by unlisted company now attracts a tax rate of 20% whereas Dividend distribution tax (DDT) is only @ 15%. This will instill client's confidence in your services and he may become your long term client.

Under the Income Tax Law, a PCS can offer services such as filing of income tax returns for corporate or non-corporate assesses, computation and payment of advance tax, Computation of deduction of tax at source, filing of forms and issue of TDS certificates, advising on tax planning and tax management, availing tax concessions, incentives, reliefs and tax benefits.

A PCS can also render his valuable services under indirect tax law. For instance, he can

become a service tax practitioner which is currently very lucrative area of practice. It may kindly be noted that with the increasing role of service sector and its contribution to GDP, the Government felt the need to tax this sector. In our country, the service tax started from 1st July, 1994 with only 3 services viz., telephone, general insurance and stock broking. Today, there are very few services which are not taxable as we have recently switched over from selective approach to comprehensive approach to service tax. A PCS can offer services such as advising the client on the applicability of service tax, getting the client registered under service tax, Payment of service tax as per due dates and filing of timely service tax returns. He can also represent his clients before the regulatory authorities in case there is any dispute concerning payment of service tax by his client.

A PCS can also offer corporate advisory services on critical matters such as buy back of shares, public issue of securities, postal ballot, deciding on managerial remuneration of key personnel, class action suits or raising of financial resources via debt.

He can also be an exclusive Labour Law Practitioner offering services concerning provident fund, Factories Act, State Pollution Control Acts, Minimum Wages Act, etc.

If he has passion in teaching, he can additionally become faculty in reputed institutes for delivering part time lectures on specialized subjects such as company law, tax law, IPR, etc. or he may even plan to run his own professional coaching institute for giving specialized coaching to students pursuing MBA/CA/CS etc. Of course ensuring that his acts are within the boundaries as defined by ICSI for professional ethics.

In other words, a CS can be engaged in a number of services based on his skills, at par with other professionals like CAs/CMAs. There are CSs who specialize only in taxation matters such as Service Tax, Excise Duty, Income tax or VAT. A CS due to his possessing rich knowledge on the subject enjoys respect in the corporate sector and reports directly to the Board of Directors in an organisation.

Conclusion

India is expected to remain stable on political front and aspires to restore the confidence of foreign as well as domestic investors in the Indian Market. The Indian stock market has already welcomed the new Government with BSE/NSE index showing signs of recovery and bringing cheers to the millions of investors. Thus, we all can expect that the happy days are here again.

BOARD OF DIRECTORS – INDEPENDENT DIRECTORS’ ROLE, RESPONSIBILITY AND RISK

CS Naresh Kumar*

Introduction

A company, being an artificial person, functions through human beings, individually called ‘director’ and collectively ‘Board of Directors’ (BOD). The BOD comprises whole time directors (WTDs) and Independent Directors (IDs), who govern and manage the company. Independent Directors (IDs) play a significant role in proper functioning of companies. They advise and assist the board of directors (BODs) in governing and managing the business. In fact, quality of governance in corporate sector is inextricably linked to the issues of knowledge exercised through education, training and professional development. In fact, the role, responsibility and accountability of IDs towards corporate and their stakeholders have increased manifold under provisions of the Companies Act, 2013 (Act) and the SEBI’s Listing Agreement. In this context, an attempt is made to discuss the functioning of BODs with particular reference to the role, responsibility and risk of independent directors and makes a few practical suggestions.

Legal and Regulatory Framework

Section 2(10) of the Act states that: “Board of Director” or “Board”, in relation to a company, means the collective body of the directors of the company.” Section 149 of the Act states the BOD of every public company shall have minimum three directors and private company two directors and ‘One Person Company’ only one director; subject to a maximum of fifteen directors.

BOD generally comprises WTD, nominee director (ND) and Independent Directors (IDs), additional director, and alternate director. A WTD is in the whole-time employment of the company, ND is appointed by interest group like bank or financial institution and ID is a competent person appointed only to attend board meetings and render independent expert advice. Section 161 provides for appointment of nominee, additional and alternate directors.

BOD represents the intention, directing mind and eyes of the company in governing and managing the company. Directors deliberate issues and take management decisions at board meetings. A meeting of board of directors is held at least once in every three months and four such meetings are held in every year. The quorum for a board meeting is one-third (any fraction to be rounded off as one) or two disinterested directors, whichever is higher.

* FCS, FICS. Advocate - Business Laws & Visiting Professor IIFT, New Delhi.

BOD is vested with the supreme powers of management. The board of directors of a company is entitled to exercise all such powers, and to do all such acts and things, as prescribed under the law, except those to be exercised by members in general meeting of the company.

BOD deliberates on agenda items and takes management decisions at board meetings. Section 174 of the Act prescribes quorum for the board meeting to be one-third of total strength or two directors, whichever is higher. A meeting of BODs is held at least every quarter and four such meetings are held in every year. Notice and agenda of every board meeting is given to every director.

Section 149(4) provides that every public listed company on stock exchanges shall have at least one-third of total number of directors as independent directors. Further, Rule 4 of the Companies (Appointment and Qualification of the Directors) Rules, 2014 (effective from 01.04.2014 to be complied within one year) stipulates the public companies with prescribed paid-up share capital or turnover or outstanding, loans, borrowing, or debentures or deposits shall have at least one-third of the number of directors as independent directors:

- Public companies having paid-up share capital of Rs.100 crore or more; or
- Public companies having turnover of Rs.300 crore or more; or
- Public companies which in aggregate have outstanding loans, or borrowings, or debentures, or deposits exceeding Rs.200 crore.

Section 149(6) specifies the following criteria of an independent director:

- (a) Person of integrity and possessing relevant expertise;
- (b) Not a promoter of the company; or related to the promoters or directors of the company or its holding, subsidiary or associate company;
- (c) Not having any pecuniary relationship with the company, its holding, subsidiary or associate company;
- (d) None of his relative has or had pecuniary relation or transaction with the company or its holding, subsidiary or associate company, or their promoters/directors of two per cent or more of its gross turnover or total income or fifty lakh rupees or higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

The Ministry of Corporate Affairs (MCA) has vide its General Circular dated 09.06.2014 clarified that `Pecuniary interest' under section 149(6)(c) is not attracted in following transaction(s) undertaken by an ID with the company or its holding, subsidiary, or associate company or their promoters or directors during the year and during two immediately preceding financial years:

- (i) transaction(s) in ordinary course of business at arm's length;
- (ii) receipt of remuneration by way of sitting fees;
- (iii) re-imburement of expenses for attending board and other meetings; and
- (iv) any profit related commission as approved by members.

The clarification in line with Para II(B)(1)(c) of the SEBI Circular dated 17.04.2014 and will facilitate genuine business transactions.

- (e) Neither he nor his relatives (i) has or held any managerial position in the company, its holding, subsidiary or associate company in any of the three preceding financial year when he is proposed to be appointed (ii) has been an employee or proprietor or partner in any of the three immediately preceding financial year in a firm of advocates, chartered accountants/company secretaries/cost accountants when proposed to be appointed; (iii) holds two percent or more of the total voting power of the company; or (iv) is a Chief Executive or director in any NGO receiving 25% or more of its receipts from the company, its promoters/director, holding, subsidiary or associate company;

Section 149(7) read with Schedule IV of the Act prescribes the code of conduct for IDs. The Section requires every ID to disclose to the Board of Directors any circumstances or any change in circumstances which may affect his independence. An independent director must give a declaration about his independence to ensure that he qualifies to be an independent director. The Boards Report must carry a statement that all requirements with respect to appointment of independent directors have been complied with.

Section 149(8) states that every company and independent directors shall abide by the provisions specified in Schedule IV of the Act.

Section 150 prescribes the manner of selection of IDs and maintenance of databank of independent directors. However, the responsibility of exercising due diligence in selecting a person as independent from data bank shall be with the company. IDs bring in independent thinking and rich experience in their respective fields. They are paid sitting fees for sharing their expertise and knowledge in strategic matters that come up for discussion at the board meetings of the company. They do not have business and pecuniary interest in the company.

Section 165 provides that a person shall not hold office as director, including alternate director, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed director shall not exceed ten.

Managing Director (MD) of a company as per section 2(53) if the Act is entrusted with the substantial powers of management of the company. His powers are exercised subject to the superintendence, control and direction of the BOD. He is an employee of the company and paid remuneration for the services rendered by him.

The BOD elects a chairman to conduct and preside over at the meetings of the board and shareholders. He is the authority as far as the proceedings of the meetings are concerned. He must decide questions arising at the meeting and should maintain his ruling on points of procedure.

Invariably, the position of chairman and managing director is rolled in one person designated as 'Chairman and Managing Director' to facilitate effective decision-making and avoid a clash of personalities.

As far as the qualities of a chairman are concerned, the first and foremost is his character.

It is his integrity and intellectual honesty that makes the organization trust him. His decisions must be well thought-out and honest; objective and fair. He must do what he thinks is right, resisting pressure from inside and outside.

The chairman has also to acquire certain aloofness or arm's length relationship with those having vested interests. He has to learn to keep his own counsel in many matters, which if conveyed, even to his close colleagues, may create anxieties. In containing anxieties to himself, he may be able to solve them. But if he lets them pass into the organization too soon, the anxieties may adversely affect the morale of all. However, there are times when the situation is really bad and he has to worry and also look worried. At such a time, he has to do it in a decent and calm way. Besides telling the plain truth, he should also inform what is expected out of his colleagues and senior executives so that everyone makes an endeavour to pull the company out of the crisis.

In the emerging corporate scenario, role of chairman, who is an independent director, is going to be very important. He has to manage the relationship with the MD, executive and non-executive directors and also the relationship between board and shareholders, apart from setting the agenda on board values and culture.

The MD must possess three basic skills - technical, human and conceptual. He should have vision, business acumen and human skills to perceive changing business environment, accomplish company's goals and build competent team of management.

People like praise and popularity but the man at the top has to be different from the common lot. The MD should not look for praise when results are good and must not be unnecessarily perturbed over failures. He has to be his own best judge and own worst critic. He should derive his satisfaction from the job done in the way he feels it ought to be done, regardless of praise or criticism. Hard and unpleasant decisions are part of his unenviable lot. For accomplishing the organizational goals, he sometimes runs the risks that may even mean a threat to his own survival.

The MD should command respect and hold his self-esteem. He has to be fair and firm in situations of political pulls and pressure. He should not rush to sort out things himself, particularly if it amounts to bypassing fair procedures and rules. Instead, he should take a hard look and resist any proposal that is not in the best interest of his company.

The quality to be fair and firm equally applies to internal demands and pressures from the conflicting interest groups, when temptation to buy peace is high. The MD has to think of the price the company will have to pay and the compromises he will have to make in the long run. Yielding to a particular pressure group means buying peace over and over again, and, each time pay more and more to get less and less. So, in a fair and firm manner, he has to resist pressure, from whatever quarter it may be. For him, principles should be above expediency and he has to test his mettle in rough weather.

Independent Director

Section 2(47) states that "independent director" means a non-executive director of a company, who, apart from receiving director's remuneration, does not have any material pecuniary relationship or transactions with the company, its promoters, managing director, whole-time director, other directors, manager or its holding company and its subsidiaries.

In addition, an ID possesses the requisite attributes and qualities to function effectively and discharge his duties efficiently.

Rule 5 of the Companies (Appointment and Qualification of the Directors) Rules, 2014 (effective from 01.04.2014 to be complied within one year) provides that an independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.

IDs are not employees of the company but only attend and contribute their expertise at the board meetings of the companies. Under section 149(9) ID are not entitled to stock options or any remuneration except sitting fee, reimbursement of expenses for participation in the Board meeting and profit related commission as may be approved by the board. In fact, they are paid for sharing their expertise and knowledge in strategic matters that come up for discussion at the board meetings of the company.

The issue of ‘independence of board’ rather than ‘independent director’ occupies center stage in corporate governance. In practice independence of directors lies in the quality of the Board – whether members are encouraged to express their independent views without fear or favour on controversial issues. The true value quotient of the board of directors, therefore, comes to force at times of crises. What is important is the ability of a director in asserting before the board what he believes to be in the best interest for the company, particularly when there is a conflict of interest and difference of opinion. Any interest direct or indirect, close or remote, other than the interest of the company, that influences the thinking of a director while sitting on the board is inimical to the concept of independence.

Code for IDs

Section 149(7) read with Part I of the Code under Schedule IV of the Act prescribe the guidance to professional conduct for IDs. The Code requires adherence by IDs to the standards and fulfillment of their responsibilities in a professional manner. It will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

The important guidelines of professional conduct are:

- (i) Uphold ethical standards of integrity and probity;
- (ii) Act objectively and constructively while exercising his duties;
- (iii) Exercise his responsibilities in a bona fide manner in the interest of the company;
- (iv) Devote sufficient time and attention to the professional obligations for informed and balanced decision making;
- (v) Not allow any extraneous consideration that will vitiate his exercise of objective independent judgment in the paramount interest of the company;
- (vi) Avoid conflict of interest with the company’s interest;
- (vii) Avoid losing independence in decision-making; and
- (viii) Implement the best corporate governance practice.

Role and Functions of IDs

While the BOD plays an important role in strategic decision-making, IDs bring in critical elements of objectivity and independence in ensuring good corporate governance. IDs bring in independent thinking and rich experience in their respective fields.

IDs are the critical elements in ensuring good corporate governance. They play the crucial role of conscious keepers. They represent divergent viewpoints on issues brought before the board. They are capable of resisting the influence of promoters and taking independent decisions keeping in view the interest of all stakeholders. They are duty-bound to express their objective and independent views on the issues brought before them in the best interest of the company and take responsibility for their decisions.

The role of IDs becomes critical in determining the composition and functioning of board of directors. They govern the functioning of the board with long-term vision and perspective of the company.

Part II of the Code prescribes following role and functions to IDs:

- (i) help in bringing an independent judgment on Board's deliberations;
- (ii) bring an objective view in the valuation of performance of board and management;
- (iii) scrutinize the performance of management in meeting agreed goals and objectives;
- (iv) satisfy on the integrity of financial information, financial control and systems of risk management are robust;
- (v) balance the conflicting interest of the stakeholder;
- (vi) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management, and, if required have a prime role in their appointment and removal;
- (vii) moderate and arbitrate in the interest of the company in situation of conflict between the interests of management and shareholders.

The performance of the above crucial responsibilities requires extensive knowledge; expertise and independent mind set, but no less important is the quality of independence, which makes them truly independent while deciding issues at hand. Their role becomes critical in determining the composition and functioning of board of directors. They govern the functioning of the board with long-term vision and perspective of the company.

Duties of IDs

Section 166 of the Act prescribes the following duties of director:

- (1) Act in accordance with the Articles of the company.
- (2) Act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, shareholders, community and for the protection of environment.
- (3) Exercise his duties with due care and caution and diligence and exercise independent judgment.

- (4) Not involve in a situation in which he may have a direct or indirect interest that may conflict with the interest of the company.
- (5) Not achieve undue gain or advantage either to himself or to his relatives or associates, and, if he is found guilty of making any such undue gain, he shall be liable to an amount equal to that gain to the company.
- (6) Not assign his office and any assignment.

In addition, Part III of the Code outlines 13 duties of independent directors. These include regularly updating skills, knowledge and familiarity with the company; seeking clarifications and take expert opinion at the expenses of the company in appropriate cases; attend and participate constructively and actively in meetings of the Board and shareholders; protecting interests of the company, shareholders and its employees and keeping themselves informed about the company and external environment in which the company operates.

Responsibilities of IDS

In practice, important responsibilities of IDs include:

- (a) Foresee and understand opportunities and seize these before others can. This requires ability to anticipate situations where opportunities might emerge, identify them early enough and mobilize resources to seize these. Clarity around opportunities, pursuit of opportunities and seizing opportunities are the hallmarks of IDs.
- (b) Decide strategy to adjust to change as the pace of innovation is very rapid.
- (c) Acting in the best interest of the company.
- (d) Analyzing the given situation and make quick and correct judgments with limited information.
- (e) Working with conscience when taking crucial decisions by asking himself three questions:
 - ✓ Is it just and fair what I am doing?
 - ✓ Does it fall within the corporate mission?
 - ✓ How will it make me feel if my decisions are made public?
- (f) Thinking and acting independently in board meetings and feel personally responsible for their decisions.
- (g) Constructively criticize, if the situation demands.
- (h) Willing to be questioned on the soundness of his belief and proposals and convince the Board.
- (i) Advising on and complying with the legal and regulatory framework.
- (j) Guiding on developing and implementing strategies that mitigate environmental and social risks and focus on the long-term sustainability of business;
- (k) Guiding on business models where profit making, ethical working and social welfare go hand in hand;
- (l) Resisting the psychological impulses of group dynamics and should not hesitate in expressing their different views with reasons on the controversial issues.

Appraisal and Valuation

Section 149(7) read with Schedule IV prescribes the 'Evaluation Mechanism'. First, the performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the independent director being evaluated. Second, the extension or continue the terms of appointment of the independent director will be on the basis of his performance evaluation report.

Risk associated with IDs

Uneasiness lies on the head who wears the crown. The most important risk for independent directors is his accountability as per the Code for independent directors under section 149(7) of the Act detailed under Schedule IV. The other risks associated with IDs under other provisions include:

- Section 159 provides for punishment up to six months or with fine up to Rs.50,000/- for contravention of provisions of section 152, 155 and 156 of the Act. Further fine up to Rs.500/- per day is provided in case of contravention of a continuing nature.
- Section 166(7) of the Act provides that contravenes of the prescribed duties under section 166(1), shall be punishable with fine of Rupees one lakh to five lakh.
- Section 194 of the Act prohibits forward dealings in securities of company by director or key managerial personnel of a company. The contravention of the provision is punishable with imprisonment up to two years or with minimum fine of rupees one lakh extendable to rupees five lakh, or with both.
- Section 195 prohibits insider trading of securities of company by any person or director or key managerial personnel of a company.
- Section 195 prohibits directors or key managerial personnel of a company from entering into insider trading. The punishment for contravention of the provisions is imprisonment up to five years or with fine of minimum Rupees five lakhs extendable up to Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher, or both.

It is noteworthy that the liability of independent directors is limited under section 149(12) of the Act, clarifying that an independent director or a non-executive director, not being promoter or key managerial personnel, shall be held liable only in respect of such acts of omission or commission by a company which had occurred with it knowledge, consent or connivance or where he has not acted diligently.

Suggestion

- (1) The directors appointed by the chairman/managing director of companies' per-se cannot be independent, Human nature being what it is, if a person is appointed by the chairman of a company, he will act in line with the expectations of his appointing authority. As such, the MCA under section 150 should forward a list of directors from its databank of independent directors, who are most suitable to the requirements of a given company.
- (2) There is need for greater autonomy in the functioning of the board of directors of PSUs. There is need to promote professionalism and independent functioning of the

board of directors so that competent board can ensure profitability and long-term commercial viability of PSUs. It should be ensured that people of high caliber, integrity and commercial acumen are inducted into the Boards of PSUs.

- (3) The independent directors receive sitting fees for the board meeting attended by them. However, most of their earnings come from the share of profits earned by the company, given out as a commission to the board members. The compensation package of independent directors should be split into fixed (30%) and variable (70%) components and the latter should be paid if a director attends 70% of the board meetings during the year. This will enable even medium companies to attract the best talent in directors.
- (4) While companies can always find loopholes to put their own men in place, it is really the investors who ensure independence by rewarding companies with good governance practices. Particularly large investors like banks, institutional investors and mutual funds can play an important role in ensuring independence of board in their financially assisted companies. Their nominee directors can throw their weight around, influencing key decisions even if it means annoying the controlling shareholders.
- (5) The Board appraisal and evaluation are vital for improving the quality of higher decision-making and measuring the contribution and performance of directors. It is suggested that the appraisal of the performance of directors should be a continuous process and based on the performance drivers like:
 - (i) Effective participation in board meeting;
 - (ii) Raising voice of dissent when there is conflict of interest or the decision is against the interest of the company ;

The evaluation criteria for measuring the performance of directors during the year under review should be precise and accurate. Generally on a global setting, the criteria are evolved on a scale of five to ensure that the appraisal is realistic and prudent.

- (6) There is scarcity of independent directors to meet the requirement of corporate sector. It is suggested that the Indian Institute of Corporate Affairs (IICA), in line with the UK institute of Directors, should train and make available adequate number of professional and independent directors for corporate sector in the country. The IICA has the object of promoting corporate excellence by according accreditation and promoting policy research and studies, training and education and awards etc., in the field of corporate excellence. It should effectively implement the concept of excellence in corporate governance on a sustained basis to sharpen India’s global competitiveness edge and to further foster and develop corporate culture in the country. The IICA can significantly contribute in developing the following important traits and qualities in independent director for better governance and in policy matters:
 - ✓ Vision to foresee future - vision requires clarity of purpose and direction.
 - ✓ Demonstrate integrity and honesty and transparency in dealing.
 - ✓ Use his knowledge and experience as compass for navigating complex business situations.

- ✓ Find solutions of problems during business crises and stand against odds and maintain calm during challenges.
- ✓ Communicate effectively at all levels.
- ✓ Say clear “no” when situation so demands.

Conclusion

Experience proves that regulations are designed to achieve independence of directors, but, in essence, it is the effective implementation of regulations. It is the responsibility of the companies to create congenial environment in the board so as to ensure that the IDs can act independently and effectively.

Independence of directors lies not in their status and reputation, but the capability and strength to resist wrong proposals and take decisions in the best interest of their company. In this context, there is a lesson to be learnt from the mistakes of the board, including independent directors in Rs.10,000 crore Satyam Fraud.

The chairman B. Ramalinga Raju had inflated Satyam’s profits for years and created fictitious assets. To cover up the misdeeds, it was proposed to acquire Maytas Infrastructure and Maytas Properties owned by B. Ramalinga Raju and his family at a fabulous price.

Satyam’s board comprised highly eminent and renowned personalities. Besides whole time directors Ramalinga Raju and his brother Rama Raju, comprised eminent public figures including former Union Cabinet Secretary, Dean of Indian School of Business and former director of IIT Madras, Professor of Harvard Business School and retired professor of many US universities.

The Satyam’s board had been deliberating the Satyam-Maytas deal for the last three months. On the fateful board meeting, nine members of the Board were physically present, besides the audit committee members. The meeting was chaired by the Dean of Indian School of Business and all the directors including independent directors were present. The chairman Ramalinga Raju and his brother Rama Raju (family directors), however, abstained because they were ‘interested parties’.

Satyam’s board of directors unanimously approved to proposal in contravention of all norms of corporate governance. The promoters with just 6% shares stripped the company of its cash.

It was the typical case where eminent independent directors turned a blind eye to the fraud for the reasons best known to them. The board miserably failed in its primary duty to protect the interest of the company and its stakeholders. The independent directors were in a position to ask searching and tough question on the proposal, but merrily accepted the promoters’ proposal. There was dereliction of duty on their part to exercise due diligence, care and caution in performing their statutory duties as directors.

The lesson for independent directors is loud and clear. In the ultimate analysis it is the spirit of independence and not the letter of law. Board rooms and companies do not have a moral compass, but directors do have. The business world needs some serious introspection. The need for boards is, therefore, to reorient and realign their moral bearings if corporate governance is to be followed in true spirit.

INDEPENDENT DIRECTOR — ROLE, RESPONSIBILITIES AND RISK

CS Reena Kewat*

Background

With the advent of the Companies Act, 2013, finally we have got the all new clear definition of the term "Independent Director". Here everyone must note that till now only listed companies were under the ambit of the term "Independent Director." But in new changed era of business, considering the importance of "Independent Director" in maintaining transparency, the provisions of "Independent Director" have become applicable to a very large number of companies. Considering the qualification and experience norms of Independent Director, one must assume that the benefit of induction of "Independent Director" will be a milestone in the corporate growth and development of more and more transparency.

Definition

The definition of the term "Independent Director" has gone through an extensive change. Section 2(47) of the Companies Act, 2013 contains the primary reference of the term "Independent Director". Thereafter section 149(5) provides an elaborate list of requirements to be fulfilled for appointment as "Independent Directors". However one may note that the provisions of this section are not applicable to Managing Director, Whole-time Director or Nominee Director.

Critical analysis of statutory qualification

On making critical analysis of the statutory qualification one should note that a high degree of integrity, relevant expertise and experience will be the foremost qualification to become an "Independent Director". Apart from that, in order to ensure more and more transparency, the Act restricts all the past and present promoters of holding, subsidiary and associate Company to act as Independent Director. A term called "pecuniary relationship" has been used in this section as a restrictive requirement. However, a monetary ceiling limit of two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year has been prescribed for determination of the word "Pecuniary relationship".

* Practising Company Secretary, Pune.

Applicability of “Independent Director” to Companies

Against the provisions of erstwhile Companies Act, 1956, a large number of companies would cover under the requirement of appointment of Independent Director. The applicability to listed companies was based on the ground of larger public stake in those companies. The same principle has been adopted by the government to unlisted public companies where considerably large number of shareholders, creditors or lenders are involved. In short, where certainly a good number of stakeholders are involved, requirement to appoint Independent Director has more value. In case of listed companies atleast one-third of the total number of directors have been prescribed to be independent directors. Further through Companies (Appointment and Qualification of Directors) Rules, 2014, Government has prescribed following types of unlisted public companies to have atleast two Independent Directors:

- (i) the Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

(Note:- Here one must note that the number of Directors are prescribed on minimum basis. Therefore the numbers can be more in view of composition of various managerial committees).

Role of Independent Director

Citing the above discussion as a basis of conclusion, it can be termed that Independent Director has a crucial role in promoting corporate governance. The Act has provided a wholesome power to Independent Director in order to ensure better transparency. In simple words, the Independent Director has to work on behalf of all the stakeholders of the Company. On making analysis of provisions of Companies Act, 2013, one can find that Independent Director has to play his/her un-biased role on major occasions, which will have long term effect not only on growth and stability of Company but also on shareholder value as well as stock market movement. Considering the reality that stakeholders especially Shareholders have very low accessibility to the Board decisions, the law directly impose the role of not only a watch dog but also of a bloodhound player. Some of the major areas where the role of Independent Director is crucial are summarized below:

- (1) Presence of atleast one Independent Director would be required in order to call Board meeting at shorter notice of less than seven days to transact an urgent business. Therefore being an outsider it's a statutory duty of Independent Director to keep a bird's eye view on the transactions made on those Board meetings called at shorter notice. The Independent Director should keep a close watch regarding the requirement of short notice period of Board meeting.

- (2) Decision taken at such meetings without the presence of Independent Director shall not take any effect unless it has been ratified by at least one Independent Director.
- (3) Independent Director will have a strong influence on audit committee as the majority of audit committee should consist of Independent Directors.
- (4) The mandatory requirement of constitution of Nomination and remuneration committee shall have one half of Independent Director.

Keeping in view the importance of Independent Director, the role of Independent Director can be summarized as follows:

- (a) To ensure un-biased, independent judgment on the Board meetings relating to all the key issues.
- (b) To perform critical evaluation of the performance of board and management in the best interest of the Company and overall stakeholders.
- (c) To scrutinize the effect of key strategies for achievement of desired goals and provide critical analysis of possible shortcomings.
- (d) To ensure integrity of financial information, financial controls and the effective risk management system.
- (e) Being an outsider to the Company, he should always consider the interest of minority shareholders.
- (f) An Independent Director plays an important role in determining the levels of remuneration among executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend executive directors, key managerial personnel and senior management.

Responsibility of an Independent Director

The character of Independent Director assumes several duties and responsibilities. In fact, the Independent Director assumes responsibility towards all the stakeholders including Company. As an outsider to the Company it is most essential for him to maintain his independent criteria. Besides maintaining his dignity and high ethical standard, it is always expected to act in a bona fide and impartial manner in the interest of the Company. An exhaustive (but not the limited) list of responsibilities is summarized in following points.

- a) It's the first responsibility of Independent Director to provide sufficient time and participants actively in the management of Company particularly relating to the key issues.
- b) It would always be the responsibility as well as the safe ground to seek proper clarification and if necessary take and follow appropriate professional advice from outside experts at the expense of the Company.
- c) The Independent Director must keep himself abreast with the latest change and modifications in the rules, procedure etc. applicable to the Company.
- d) It is the foremost responsibility of the Independent Director to attend all the Board meetings, general meetings and committee meetings in which he is a member.

- e) The Independent Director should keep a close watch on recording of minutes of Board meetings and ensure all the relevant material or concerns especially with operation of Company are truly entered in the minutes of Board meeting.
- f) It is preferred that the Independent Director shall not abuse his position to the detriment of the company or its stakeholders or for the purpose of gaining direct or indirect advantage.
- g) The Independent Director should refrain himself from any activity that would lead to loss of his independence.
- h) He should ensure and assist in formulating as well as implementing best corporate governance practices.
- i) Ensure to have a vigil mechanism and an effective whistle blower mechanism at the same time, it would be his responsibility to ensure that users of this mechanism are not negatively affected.
- j) It's the major responsibility of Independent Director to ensure that related party transactions are entered in the best interest of the Company and all the Board members are well informed about the rationale for such related party transaction.

Risk associated with Independent Director

The innumerable duties cum responsibilities of Independent Director are mainly covered by some risks too. The risk associated with Independent Director puts him on a critical edge. The Independent Director should try to minimize the risk in his independent assignment. Some of the grey areas are as follows:

- (1) There is always a chance of unfair obstruction of the functioning of a Board or committee of the Board by Independent Director.
- (2) There is always an inherent risk that the Independent Director has not been provided complete information about Company and its operations.
- (3) Lack of co-operation from other Board members certainly increases a chance of partial judgment.
- (4) It has become relevant to say that in most of the cases Independent Directors do not get complete access over documents of the Company.
- (5) Loss of independence is a major issue of concern.

Conclusion: Independent Director being an important concept of good corporate governance needs to have proper working mechanism. Independent Directors are newly inducted persons in the Company. Therefore Company Secretaries have to play a key role in keeping abreast with the changes and keep him informed with rules, regulations, procedures etc. Practicing Company Secretaries being an expert in plethora of laws is an ideal choice for appointment as Independent Director. But at the same time it is equally essential to provide him a proper working environment, so that he can act in impartial manner.

INDEPENDENT DIRECTORS UNDER COMPANIES ACT, 2013

CS S. Dhanpal*

Balancing the roles & the responsibilities

“Independent Directors” (ID) is one of the most often discussed topics in any forum on corporate governance the world over. As the name suggests, independent directors are those directors who are independent individuals, not having any other relationship or transaction with the company.

The concept of independent directors gained momentum in the late 1980s and early 1990s due to the uncovering of various corporate frauds and scams on the international front. Corporate governance became a pressing issue following the introduction of the Sarbanes-Oxley Act in the U.S., which was ushered in to restore public confidence in companies and markets after accounting fraud bankrupted high-profile companies such as Enron and WorldCom.

Closer home, few recent scams created deep dent in the confidence of shareholders, shaking their belief regarding effectiveness of corporate governance practices in board rooms of big listed companies. The concept of independent directors was confined only to listed companies, thereby meaning that all other entities were not mandated by law to appoint any independent director on their Board, irrespective of the size and spread of their shareholding, net-worth and scale of operations etc.

Though efforts were made by various ministries to lay down corporate governance guidelines, for example, “Guidelines on Corporate Governance for Central Public Sector Enterprises” issued by the Ministry of Heavy Industries and Public Enterprises in June 2007, “Corporate Governance Voluntary Guidelines 2009”, issued by the Ministry of Corporate Affairs in December, 2009, these guidelines fell short in making their mark being voluntary in nature.

Companies Act, 2013 (Act) for the first time introduced this concept of independent director in the periphery of Companies Act itself. The Act and the relevant Rules made thereunder contain extensive provisions dealing with independent director. In fact, a whole schedule, namely Schedule IV has been prescribed under the Act which contains the “Code for Independent Directors”. The listing agreement has also been amended since then, bringing the provisions contained therein in line with the requirements of the Companies Act, 2013.

* Practising Company Secretary.

In the present article we have made an attempt to analyze the provisions of the Companies Act, 2013 relating to independent directors and also the recent prescriptions of listing agreement in this context.

From when are the provisions of the Act relating to Independent Directors Applicable ?

The provisions relating to independent directors prescribed under the Companies Act, 2013 were notified to come into effect from 01.04.2014.

Section 149(5) provides a transitional period of upto one year from, the date of commencement, to all existing companies to comply with the requirement of mandatory appointment of independent directors.

Which Class of Companies is Mandatorily required to appoint Independent Directors ?

At least 1/3rd of total directors to be independent directors

- Listed Company

At least 2 directors to be independent directors

- Public Companies having paid up share capital of Rs. 10 Crores or more
- Public Companies having turnover of Rs. 100 Crores or more
- Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 Crores

Explanations provided in the Act and the Companies (Appointment and Qualification of Directors) Rules, 2014 in the above context:

- Any fraction contained in the 1/3rd number shall be rounded off as one.
- In case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.
- A company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.
- Any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.
- Where an unlisted public company ceases to fulfil any of three conditions laid above for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.
- The paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Term of Office of Independent Director

- Subject to the provisions of Section 152, an independent director shall hold office for a term upto 5 consecutive years on the Board of a company, but shall be eligible for

re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

- Notwithstanding anything contained in point above, no independent director shall hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director provided that the independent director shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.
- The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Explanation provided in the Act in the above context:

- Any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under the above provisions.

Contextual clarifications provided by MCA vide their general circular number 14/2014 dated 9th June, 2014

Clarification sought:

1. If 'IDs' appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company decide so) in accordance with the provisions of the new Act?
2. Whether it would be possible to appoint an individual as an ID for a period less than five years?

Clarification provided by MCA

1. The matter has been examined in the light of the relevant provisions of the Act, particularly section 149(5) and 149(10) & (11). Explanation to section 149(11) clearly provides that any tenure of an 'ID' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act. In view of the transitional period of one year provided under section 149(5), it is hereby clarified that it would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.
2. It is clarified that section 149(10) of the Act provides for a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing consecutive terms

of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

Manner of Selection and Appointment of Independent Directors

Manner of Selection

- An independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government for the use by the company making the appointment of such directors.
- Responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment. A disclaimer shall be conspicuously displayed on the website hosting the databank that a company must carry out its own due diligence before appointment of any person as an independent director and "the agency" maintaining the databank or the Central Government shall not be held responsible for the accuracy of information or lack of suitability of the person whose particulars form part of the databank.

Manner of appointment

- Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.
- The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall also include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.
- The appointment of independent directors shall be formalised through a letter of appointment, which shall set out the matters as detailed in Schedule VI of the Act.
- The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- The terms and conditions of appointment of independent directors shall also be posted on the company's website.

- The re-appointment of independent director shall be on the basis of report of performance evaluation.

Contextual clarifications provided by MCA vide their general circular number 14/2014 dated 9th June, 2014

Clarification sought:

1. With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of 'IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'?

Clarification provided by MCA –

1. The matter has been examined. In view of the specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

Provisions relating to Remuneration Entitlement or Independent Directors

- An independent director shall not be entitled to any stock option and may receive remuneration by way of sittings fee for attending meetings of the Board or committees thereof, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- The sitting fees payable to a director for attending meetings of the Board or committees thereof shall be such sum as may be decided by the Board of directors which shall not exceed Rs. 1 Lakh per meeting of the Board or committee thereto.
- For Independent Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

Role, Responsibilities and Duties of Independent Directors

- Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence.
- The company and independent directors are required to abide by the provisions specified in Schedule IV of the Act.
- Schedule IV of the Act contains the "Code for Independent Directors" which is a guide to professional conduct for independent directors. The code is divided into 8 headings which are listed below:
 - I. Guidelines of professional conduct
 - II. Role and functions
 - III. Duties
 - IV. Manner of appointment

- V. Re-appointment
- VI. Resignation or removal
- VII. Separate meetings
- VIII. Evaluation mechanism

Extent of Liability of Independent Directors

- An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

Relevant Provisions of Listing Agreement applicable with effect from 01.10.2014

Given below is a comparison of the provisions of listing agreement pertaining to independent directors (applicable from 01.10.2014) vis-a-vis the provisions of Companies Act, 2013. The comparison has been done taking the listing agreement as base and the provisions which are exclusively given under the Companies Act, 2013 have not been reproduced hereunder since they have already been covered in the foregoing portion.

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
Composition of the Board	<ul style="list-style-type: none"> • The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than 50% of the Board of Directors comprising non-executive directors. • Where the Chairman of the Board is a non-executive director, at least 1/3rd of the Board should comprise of independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors. • If the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors. 	Every listed public company shall have at least one woman director and at least 1/3rd of the total number of directors as independent directors.

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
Qualifications for independent director	The expression 'independent director' shall mean a non-executive director, other than a nominee director of the company	An independent director in relation to a company means a director other than a managing director or a whole-time director or a nominee director.
	who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience	Same requirement
	(i) who is or was not a promoter of the company or its holding, subsidiary or associate company;	Same requirement
	(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;	
	Meaning of associate company: "Associate" shall mean a company which is an "associate" as defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.	Meaning of associate company: "Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
	Apart from receiving director's remuneration, has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;	who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.
	none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2% or more of its gross turnover or total income or Rs. 50 Lakhs or such higher amount as may be prescribed, whichever is lower, during the two	Same requirement

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
Qualifications for independent	<p>immediately preceding financial years or during the current financial year.</p> <p>who, neither himself nor any of his relatives —</p> <p>(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;</p> <p>(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —</p> <p>(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or</p> <p>(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;</p> <p>(iii) holds together with his relatives 2% or more of the total voting power of the company; or</p> <p>(iv) is a Chief Executive or director, by whatever name called, of any non-profit organization that receives 25% or more of its receipts from the</p>	<p>Point no v specified in listing agreement, namely "(v) is a material supplier, service provider or customer or a lessor or lessee of the company;" is not specified in the Act. This is an additional qualification prescribed in the listing agreement.</p>

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
	<p>company, any of its promoters, directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company;</p> <p>(v) is a material supplier, service provider or customer or a lessor or lessee of the company;</p> <p>who is less than 21 years of age (the word 'not' seems to have been missed out before the word 'less').</p>	<p>No such age related requirement has been prescribed under the Act. This is an additional qualification prescribed in the listing agreement.</p>
Limit on number of directorships	<ul style="list-style-type: none"> • A person shall not serve as an independent director in more than seven listed companies. • Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies. 	<p>No such restriction has been prescribed under the Act. This is an additional restriction prescribed in the listing agreement.</p>
Maximum tenure of Independent Directors	<ul style="list-style-type: none"> • An independent director shall hold office for a term up to five consecutive years on the Board of a company and shall be eligible for reappointment for another term of up to five consecutive years on passing of a special resolution by the company. • A person who has already served as an independent director for five years or more in a company as on October 1, 2014 shall be eligible for appointment, on completion of his present term, for one more term of up to five years only. • An independent director, who completes his above mentioned term shall be eligible for appointment as independent director in 	<ul style="list-style-type: none"> • Same requirement • Any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under the above provisions. • Notwithstanding anything contained in point 1 above, no independent director shall hold office for more than 2 consecutive terms, but such independent director shall be eligible

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
	<p>the company only after the expiration of three years of ceasing to be an independent director in the company.</p>	<p>for appointment after the expiration of 3 years of ceasing to become an independent director provided that the independent director shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.</p>
<p>Formal letter of appointment to Independent Directors</p>	<ul style="list-style-type: none"> • The company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013. • The letter of appointment along with the detailed profile of independent director shall be disclosed on the websites of the company and the Stock Exchanges not later than one working day from the date of such appointment. 	<ul style="list-style-type: none"> • Listing agreement itself specifies compliance of Companies Act, 2013 in this respect. • The appointment of independent directors shall be formalised through a letter of appointment, which shall set out the matters as prescribed in Schedule IV. The terms and conditions of appointment of independent directors shall also be posted on the company's website.
<p>Performance evaluation of Independent Directors</p>	<ul style="list-style-type: none"> • The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors. • The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report. • The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated). • On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. 	<ul style="list-style-type: none"> • First two points have not been prescribed under the Companies Act, 2013. These are additional requirements prescribed in the listing agreement.
<p>Separate meetings of the Independent Directors</p>	<ul style="list-style-type: none"> • The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors 	<ul style="list-style-type: none"> • Same requirements

<i>Nature of requirement</i>	<i>Provision of Listing Agreement</i>	<i>Comparative provision of Companies Act, 2013 read with relevant rules</i>
	<p>and members of management. All the independent directors of the company shall strive to be present at such meeting.</p> <ul style="list-style-type: none"> • The independent directors in the meeting shall, inter-alia: <ul style="list-style-type: none"> • review the performance of non-independent directors and the Board as a whole; • review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; • assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties. 	
Training of Independent Directors	<ul style="list-style-type: none"> • The company shall provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc. • The details of such training imparted shall be disclosed in the Annual Report. 	<ul style="list-style-type: none"> • No such requirement has been prescribed under the Act. These are additional requirements prescribed in the listing agreement.

ROLE OF INDEPENDENT DIRECTORS IN CORPORATE GOVERNANCE

Vikram Singh Jaswal*

Corporate Governance is only possible with the help of Independent Directors. Reference is usually made to independence from the management because the board of directors must supervise the management and must evaluate its performance. One trend that has characterized boards of directors over the past 28 years has been rise in the 'independent' outside director. While definitions of independence vary, most agree that in order to be independent, a director must have no connection to the company other than the seat on the board. Scholars, academicians and investors began to put more emphasis on the importance of independent directors not primarily employed by company. Outsiders are not dependent on the chief executive for promotion or for legal or consulting business. Independent directors are free from conflicted interest. The board of directors includes the independent directors, they are crucial part of the corporate structure. They work like a link line between the people who provide capital and the people who use that capital to create value.

Movement for independent directors is raised by all over the world for improving corporate governance. In the corporate society different committees recommended for the powers and functions of independent directors. Independent director is that who no pouncing and social and

economic relation with the company. Independent directors have an important limb of corporate governance campaign.

Role of Independent Director in Corporate Governance

Corporate governance i.e. the system by which companies are directed and controlled has become a key topic for legislation, practice and academia in all modern states. The financial crisis has highlighted the problem. Yet one goes astray if one does not understand how the unique combination of economic, legal and social determinant of corporate governance functions in each country.

In a nutshell, the problem of corporate governance is contained in a paragraph from Adam Smith's "An Inquiry into the Nature and Causes of the Wealth of Nation of 1776":

The Director of such companies, however being the managers rather of other people's money than of their own, it cannot well be expended, that they should watch over it with the sum anxious vigilance with which the partner in private company frequently watch over their non negligence and profession, therefore, must always prevail more or less, in the

* Assistant Professor, Bahra University (School of Law), Wahnaghat Shimla Hills, District Solan (HP).

management of the affair of such company. The Board of Directors is crucial part of corporate structure. They are the link between supplier of capital and those who manage capital to create value. The directors are representative of owners. The Board overlaps between small yet powerful group that runs the company and huge diffused and relatively powerless group called shareholders that wish to see that the company runs well.

A bulk of literature revolves around the Board of Director and its functioning. Companies Act section 2(34) of the Act define the term director. According to section 2(10) of the Companies Act, "Board of Directors" or "Board", in relation to the company, means the collective body of the directors of the company.

In simple words, Directors are the middlemen between managers and the vast group of shareholders. In law, the Board owes a strict fiduciary duty to ensure that the company is run in the long term interest of owners. Good corporate governance is possible only by refurbishing the governing organ the board. As repositories of corporate powers, boards are the guardians of their respective enterprises as also the protectors of the shareholders interest.

Corporate governance as defined in the Cadbury Committee Report is the system by which the companies are directed and controlled. Board of Directors is responsible for the governance of their companies. The shareholders role in governance is to appoint the Directors and auditor and to satisfy themselves that an appropriate corporate governance structure is in place. The responsibilities of the Board include setting up the company's strategic aim, providing the leadership to put them into effect supervising the management of the business and reporting to shareholder on their stewardship. The board actions were subject to laws, regulations and the shareholders meetings.

This arise the central issue of the corporate governance debate which is the accountability of the senior management of the company for the extensive powers vested in them. Since the historical development was or is perceived to have been, one of the movement from a situation in which shareholders were both investors and manager to one which management became a separate function from that of investment, it is natural to think of the accountability issue as being one of the accountability of the managers to shareholders.

Though a company is a legal entity in the eye of the law it cannot, in the nature of things act as a natural person. It must act through human agency and control of its management and exercise of its powers must necessarily be delegated. The person to whom the delegation is made is referred to as Directors, which expression is simply denoting the board of Directors or Directors acting as body. The Directors are appointed by the shareholders to act on the latter's behalf as agent to run the company.

Good Corporate governance requires a team effort between honest management and a board willing to offer their experience to challenge, counsel, and guide.

Corporate governance has become the long ways in recent years and it continues to evolve, many countries have amended suitable law for the implementation of corporate governance. Directors play the dynamic role in the development of corporate governance. Many countries have passed the legislations for establishment of independent directors. The definition of an independent director considerably differs according to the nature of

corporate governance system involved in a managerial capitalism. Model independence will mainly relate to the managers whereas in reference shareholder model independence will be defined in relation to the reference shareholder, a stakeholder model will mainly focus on the prevention of board members defending separate interest group; what is essential in this respect is that an independent director must be independent in relation to those parties involved that have the power over the board and the corporation.

There are perhaps few aspects of corporate governance which have aroused as much worldwide interest as independence of directors. Most of the attention regarding corporate governance codes is devoted to independence as structural requirement for the smooth operation of the Board of Directors, effective control of the management and the balanced attention to the relevant interests. Directors of companies occupy important and critical roles in the lives and affairs of their companies. In fulfilling this function, multifarious responsibilities are imposed on directors. Independent directors are part and parcel of corporate governance movement.

Companies Act, 2013 and Independent Director

The Companies Act, 2013 was enacted with the purpose to implementation of Corporate Governance.

Appointment and Qualification of Directors

Section 149 of Companies Act, 2013 provides that every company shall have the board of director constituting of individuals as director and shall have:

- (a) Minimum number of three directors in public company, two directors in case of private company and one director in the case of one Person Company.
- (b) Maximum of 15 directors.

Section 149 clause (6) provides that, an Independent directors in relation to a company, means a director other than managing director or a whole time director or a nominee director.

- (a) Who, in the opinion of the Board is a person of integrity and possesses relevant expertise and experience.

Qualification for Independent Director

- (b) (i) Who is not promoter of the company or its holding, subsidiary or associate company.
- (ii) Who is not related to promoters or directors in the company, its holding, subsidiary or Association Company.
- (c) Who has a pecuniary relationship with the company, or directors, during the two immediately preceding financial years or during the current year.
- (d) None of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoter, or directors, amounting to two percent, or more of its gross turnover or total income or 50 lakh rupees or such amount as may be prescribed, whichever is lower, during the immediately preceding financial years or during the current year.

- (e) Who neither himself nor any of his relatives
 - (i) Holds or has held the position of a key managerial personal or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years.
 - (ii) Nor has been employee or proprietor or a partner, in any of the three financial years immediately preceding the financial
 - (1) Not auditor of company
 - (2) Not a legal constituent of the company.
 - (iii) Holds together with his relative 2% or more of the total voting power of the company.
 - (iv) Not chief executive of nonprofit organization that receives 25% or more of its profit from the company, any of its promoters, directors or its holdings.

Term of Independent Director

Subject to provision of section 152, an independent director shall hold office for a term up to five consecutive years on the board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

But, any independent directors shall not hold the office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become independent director.

Appointment of Independent Directors

Section 152 provides that in case of appointment of an independent director in the general meeting, an explanatory statement of such appointment, annexed to notice for the general meeting, shall include the statement that in opinion of the board, he fulfills the conditions specified in this Act or such an appointment. In total numbers of directors, independent director shall not include.

Responsibilities of Independent Directors

Duties and responsibilities have been provided under section 166.

- (a) A director of a company shall act in good faith in order to promote the objects of the company for the benefits of the members as a wholly or in the best interest of the company, its employees, the shareholders, the community and for protection of environment.
- (b) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (c) A director of company shall not involve in a situation in which he may have direct or indirect interest that conflict, or possibly may conflict, with the interest of the company.
- (d) A director of company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners or associates and if such

director is found guilty of making any undue gain he shall be liable to pay an amount equal to that gain to the company.

- (e) If any director contravenes the above said provision, he shall be liable to pay one lakh rupee fine.

Board Meeting and Independent Director

Section 173 further provides that in case of absence of independent director from such meeting of the board, decision taken at such meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least an independent director.

Section 150: Manner of Selection of Independent Directors and Maintenance of Data Bank in Independent Director

(1) Subject to the provision contained in sub-section (5) of section 149, an independent director may be selected from the data bank containing names, address and qualification of persons who are eligible and willing to act as independent directors, maintained by anybody, institute or association, as may be notified by the central government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such director. Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

The appointment of independent director shall be approved by company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

Corporate Social Responsibility and Independent Director

Section 135 relating to corporate social responsibility provides that every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a corporate social responsibility committee of the Board consisting of three or more directors out of which at least one director shall be an independent director.

Clause 49 of Listing Agreement and Independent Directors

Clause 49 of listing agreement is about independent director. The expression independent director shall mean a non-executive director of company who:

- (a) Apart from receiving director's remuneration, does not have any material pecuniary relationship or transactions with company, its directors, its senior management or the holding company.
- (b) He must not relate to promoter of company.
- (c) Has not been an executive of the company in the immediately preceding three financial years.
- (d) He must not be partner of the company.
- (e) He is not material supplier of the company.

- (f) He is not substantial shareholder of the company.
- (g) He is not less than 21 years of age.

Summing Up

Independence is essential for the implementation of rule of law and Independent Directors are essential for the implementation of corporate governance. Many countries of the world have established supervisory boards to check out the functioning of management. The Concept of independence is connected with natural justice. Natural justice deals with justness, fairness, transparency and accountability.

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INDEPENDENT DIRECTORS : THE GUARDIAN OF STAKEHOLDERS

Akinchan Buddhodev Sinha*

To Begin With.....

Corporate governance is not merely a collection of rules and procedures; it is the way in which companies conduct business. Further, it ensconces the principles of transparency, ethics and accountability into the day-to-day operations. All these put together exert a positive effect on the company's employee and customer value propositions. The need for adhering to corporate governance has given birth to the demand for a person who can ensure that the activities of the company are aimed at betterment of the stakeholders and he/she is none other than the 'Independent Directors'.

In today's era of dynamism, concepts and perceptions change quite frequently, somewhat like seasons. It hardly consumes a moment to change the outlook towards an organization with one disturbing news of a scam, despite the fact that till yesterday, the concerned organization used to be 'Blue-eyed boy' for stakeholders. The flurries of fiddles have turned focus on the composition of board of companies in which 'public interest' is involved. We can observe that now a day a higher stress is given on transparency in governance and management because the way a board functions affects the entire corporate culture, which in turn impacts the economy also.

So there is a need for a person on the board who does not have any material or economic relationship with the company or directors. In essence, there is a need for an 'Independent Director' on the board who by embracing a neutral approach can ensure that the interests of stakeholders are preserved. At this juncture, it is important to understand concept of independent directors. Section 149(6) of the Companies Act, 2013, prescribes the norms for independent directors which are as follows: a) such individuals should have integrity and relevant industrial expertise; b) such individuals should not have any material or financial relationship with the company or its subsidiaries; c) they or their relatives should not have any economic relationship with the company or its subsidiaries, amounting to 2% or more of its gross turnover or total income of INR 5 million (approximately US\$80, 645), whichever is less, during the two immediately preceding financial years or in the current financial year; d) such appointees or their relatives must not hold any key managerial personnel position in the company or its subsidiary companies during any of the three preceding financial years; e) such persons or their relatives should not have been an employee of the company or its subsidiary companies during any of the three preceding financial years; f) they or their

* Assistant Director, Directorate of Perspective Planning, ICSI.

relatives should not be a director of a non-profit organization, which receives 25% or more of its receipts from the company or its subsidiary companies or its promoters/directors or from anyone who holds 2% of voting rights in such companies; g) such individuals should not be a promoter of the company or its subsidiaries; h) they must not hold more than 2% voting rights in the company either by themselves or together with their relatives.

Thus the above mentioned stringent criterion for independent directors clearly indicates that board of companies, especially where huge public money is invested, cannot afford to be malevolent, as now their activities are on the radars of persons who have no financial attachment but act as custodian of stakeholders.

In the ensuing paragraphs, the discussion will revolve around the importance of independent directors in attaining good corporate governance, opening up of new vistas for independent directors through Companies Act, 2013 and the needed paradigm shift.

Sincere endeavors will be made to ensure that a common thread of 'stakeholders interest protection' runs through the mentioned discussion points.

Independent Directors: The Fulcrum of Good Governance

The advocates of the concept of independent director opines that they can see a light through the tunnel in the era of good governance. It has been generally observed that the family or promoter controlled boards in which public at large is the stakeholder are assumed to be inclined towards protection of their own interests. No doubt, there are several instances of promoter-controlled companies generating wealth for its stakeholders but the question that still haunts us is whether these companies have done better had there been independent directors.

The assumption that forms the basis to involve independent directors on the board is that a board with independent directors operate in a more transparent and effective manner. However, before pondering over this issue, it is pertinent to grasp the meaning of 'independence' first. Independence here does not imply sovereignty, autonomy, freedom or liberty. The adjective 'independent' is more relevant than the noun 'independence'. To put in simple words, a person who is not dependent is 'independent'. This definition of 'independent' is music to the ears of law formulators. Its practical utility is, however, zero.

The independent directors are the custodians of stakeholders. The corporate culture moves on the fundamental concept of divorce of ownership and governance. The independent directors like policemen observes the deviations, pinpoint it at the earliest, delve further to procure information and make the management to initiate remedial steps without further loss of time or else blow the whistle to send out early warnings. However, whistle blowing by an independent director carries severe outcomes and must be done with extreme caution and intelligence.

There are contradictory theories regarding who should be given higher priority, i.e. whether it should be promoters or stakeholders. One school of thought opines that promoters should be given higher importance as they have high stakes and are more conversant with the business knowledge. On the contrary, the other group of experts think a company being a corporate citizen has social responsibility also besides earning profits and creating wealth. As the saying goes that a train requires a driver to command and run but it also needs a guard to tell when to start and when to stop.

So, it is clear that due importance needs to be given to the stakeholders, as in their absence a business cannot exist forget about growth or expansion. And so there is a need for a person who can keep the interest of stakeholders intact, and it is none other than independent directors. But a million dollar question that surfaces is, should the keepers of interest of stakeholders must possess business intellect and wisdom? The answer may not be fully no, as it is mentioned that a person to be an independent director needs to possess relevant industrial expertise but yes it is not the only essential qualification, as he need to have the eyes of eagle to ensure that the activities in a company are fair, truthful, transparent and reasonable. As Shri Ramkrishna Paramhansaji have aptly said that one needs to have comprehensive knowledge, i.e. only bookish knowledge will not help, a person should have the ability to integrate the theory with practice, otherwise it is like a half-baked knowledge. Similarly an independent director need not be an academic expert but should have the quality of understanding the events happening in the organization. But to have a correct comprehension of business events, i.e. right or wrong, he/she must be transparent and have clarity in approach.

Companies Act, 2013: Opportunities Galore for Independent Directors

The Companies Act, 2013 provided due weight-age to the most important or to put simply, the 'pivot' of an organization and he/she is none other than 'Independent Directors'. There were no clear-cut provisions pertaining to independent directors under Companies Act, 1956 and merely clause 49 of the Listing Agreement prescribed for the need of appointing independent directors and made it compulsory for listed companies. Thereafter, the Ministry of Corporate Affairs initiated corresponding amendments to the provisions of 1956 Act, in an effort to incorporate the need of having an independent director on the board of listed companies to oversee corporate governance. However, such efforts went into vain as the changes failed to offer the roles, duties or liabilities of independent directors lucidly.

Board's independence from external influences is essential in order to establish effective corporate governance. Therefore, the requirement for complete and robust legislation regarding independent directors became vital and eventually resulted in the formulation of the Act.

The new Companies Act, 2013 (Section 149(4), Company to have Board of Directors) entails a specific obligation on listed companies to have at least one third of the total number of directors as independent directors in case of any class or classes of public companies. It is to be noted that for the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one. Accordingly, it becomes mandatory for public companies with a paid-up capital of INR 1 billion (nearly US\$ 16 million) or turnover of INR 3 billion (approximately US\$ 48 million) or aggregate loans/debentures/borrowings of more than INR 2 billion (nearly US\$ 3,225,065).

Independent directors have a big role to play in ensuring corporate governance in the shape of his presence in Corporate Social Responsibility (CSR) Committee, Nomination and Remuneration Committee ("NRC") and Audit Committees. The Act have prescribed that every company with a net worth of INR 5 billion (approximately US\$ 80 million) or more, or sales of INR 100 billion (approximately) US\$161 million) or more, or net profit of INR 50 million (approximately US\$ 806,451) during any financial year should form a CSR committee

with three or more directors out of which at least one director must be an independent director. Moreover, by making CSR a compulsory component, the spectrum of independent directors obligations in the form of ensuring corporate houses initiate requisite measures aimed at social, economic and environmental development activities, which covers promotion of education, encouragement to gender equality and empowerment of women, eradication of hunger or poverty, contribution to Prime Minister's National Relief Fund etc.

Similarly, the Nomination and Remuneration Committee provide independent directors with substantial powers in terms of identifying suitable persons with desired qualifications who can prove to be a best fit for the position of directors, recommend appointment or removal of directors, performance appraisal of directors, formulation of suitable remuneration policy and setting up of criteria for deciding upon qualifications, positive attributes and independence of directors. Thus, in a nutshell, provision for independent directors in NRC (Nomination and Remuneration Committee) will cultivate an environment of sound corporate governance by empowering them to appoint competent directors or key managerial personnel.

One of the forte of new Companies Act, 2013 is providing berth to independent directors in one of the most vital committee of the organization, i.e., 'Audit Committee'. The Act have made it crystal clear that every listed company should form an audit committee of at least three directors with a majority of independent directors. As most of the scams revolves around finance and auditing is one of the powerful mechanism in monitoring malpractices, in view of this audit committee through its key functions like, assisting the board in the appointment of directors, issuing approval for related party transactions, examination of the financial statements, reviewing of auditor's independence etc. can assist immensely in checking the wrong-doings. Moreover, the presence of independent directors will add transparency and unbiased approach in execution of the mentioned functions. Therefore, provision for independent directors will go a assist in traversing from 'Comma to Full Stop', i.e. from flurry of financial scams to financial stringency.

The Needed Paradigm Shift

A large number of independent directors on Indian boards are retired professionals with a good proportion of accountants and legal experts. Consequently, companies are not having independent directors whose knowledge, skills and expertise align with its strategic priorities. Now to address this issue, a sea change is demanded in the thinking process, meaning thereby, that companies having marquee names on its board are better governed. There is also a viewpoint that there is a serious paucity of good candidates and hence there is a tendency to refer the same names. But having marquee names does not ensure good corporate governance. What is needed is to embrace a more professional, independent and transparent approach in appointing independent directors. For instance, a company which has embarked on a strategy of inorganic growth, i.e. through acquisitions should have an independent director on the board who have experience and reasonable understanding of merger and acquisition. Similarly, a company operating in domestic territory but having plans of making offshore investments, must be having an independent director on its board who possess fair knowledge about implications of foraying into international markets.

Another way to broaden the base of independent directors is to give leeway to the senior executives of the companies to take up the role of non-executive directors or independent

directors outside of their regular employment. Next the idea of having a panel of independent directors (an idea that gained prominence in recent times) maintained by an independent body can be given necessary thrust. However, solely relying upon the mentioned approach may not fill up the gap but obviously it provides some succor to the board in getting independent directors on-board.

Procedure followed by European companies is an exemplar. In Europe 80 percent of the companies have separated the CEO and Board Chair roles basically on account of large institutional shareholding in European companies. The scenario is completely reverse in India, wherein we can observe majority of companies are governed by promoters and promoter families continue to play a pivotal role in management. Although several large listed companies in India have transitioned to professional management, the promoters still continue to hold the reins in the form of taking key strategic decisions. True segregation, which involves having an independent director as the Board Chair is a matter of scarcity.

However, having an independent director as the Board Chair can only prove to be effective when the concerned independent director is able to command the respect of the entire board, navigate the entire board in the same direction and possess the ability to identify the most important issues for the board to focus upon. Moreover, Chairmanship calls for thorough knowledge of the business and devotion of more hours on organizational matters. Now the question is whether an independent director in the capacity of chairman can afford to invest a good amount of time in handling business issues?

Organizations need to welcome the concept of Lead Independent Director, as he/she leads the group of independent directors and functions as a link between them and the executive directors. The reason for going with the idea of Lead Independent Director, especially in Indian context is to avoid confrontation between executive and independent directors in the event of Chairmanship of a board with an independent director. In this regard, it is worth to discuss the case of Infosys Technologies, which has appointed a Lead Independent Director representing and acting as a spokesperson for independent directors group. The role of the Lead Independent Director according to company's annual report is as follows:

- i) Presiding over all executive sessions of the board's independent directors.
- ii) Working closely with the Chairman, co-Chairman and CEO to finalize the information flow, meeting agendas and meeting schedules.
- iii) Liaising between Chairman, co-Chairman, CEO and independent directors group.
- iv) Taking the lead role, along with Chairman and co-Chairman, in the board evaluation process.

An important matter that calls for attention is conducting of induction/orientation program for directors, especially for independent directors. As it is a fact that most of the independent directors of companies come from varied backgrounds and more often than not, they do not belong to same industry. Therefore, a formal on-boarding program can prove beneficial for independent directors in catching up the requisite pace and start performing at the earliest.

Likewise several other measures and change in mindset on the part of the companies is the need of the hour so that independent directors enjoy a level playing field, wherein they

can bring to the notice of stakeholders about the activities of companies that can prove to be a blessing or curse.

Conclusion

In order to perform the duties efficiently, an independent director must have independent thinking, insight and prudence. The platter is full of tasks but excellence can only be ensured when independent directors lay due emphasis on enhancing their skills. There must be provision for continuous skill development programs so that quality of work is improved. Every effort should be focused towards maintain independence of directors and custodians of stakeholders must relinquish the position of independent directors if they understand that their suggestions/feedback/instructions are not taken seriously even after repeated reminders. If an independent director continues to be blind, despite malpractices going on in the organization, then he/she cannot be considered as independent in true sense. The law makers and government need to continuously monitor the practical efficacy of the provisions pertaining to independent directors and should not give a double thought in amending or modifying the provisions if contrary is observed. The law relating to corporate governance, of which the concept of independent directors is a component, should be dynamic and should undergo the needed metamorphosis with transformation in corporate culture, time and situation.

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ALL ABOUT ELECTRONIC VOTING

CS Gaurav Pingle*

Nowdays, one of the most vital and significant medium for disseminating and propagating information and conducting business is Internet. Internet helps us in accessing emails, social networking websites, online banking account, online share trading, transferring funds to another account, booking railway or movie tickets. The only concern in executing internet transactions is safety and security of the transaction.

In order to ensure shareholders participation and activism; a system was introduced called as Electronic Voting ['E-voting']. This system provides the shareholders with flexibility, convenience and increasing the efficiency of decision making. From the perspective of the corporate (or agency) which is offering E-voting facility; it shall ensure efficient execution, secured processing and guaranteed delivery of transactions.

Vide General Circular No. 20/2014 dated June 7, 2014 issued by Ministry of Corporate Affairs; provisions relating to E-voting are not mandatory till December 31, 2014.

Definition of E-Voting System

E – Voting has been defined¹ as follows:

E-voting means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

Advantages of E-Voting to the Company

1. Reduction in cost and paperwork;
2. No need to store physical ballot papers [in case of Postal Ballot Voting];
3. Accurate counting of votes;
4. Declaration of results in a very short time;
5. No need to verify the signatures of shareholders.

Advantages of E-Voting to the Shareholders

1. Voting can be done from any place;
2. Sufficient time will be available for voting as it can be casted even on the last day;

* Company Secretary, Pune.

3. Voting can be done for different companies at the same time;
4. Better transparency;
5. Better participation in the decision making process.

Disadvantages of E-Voting

1. There may be a chance of misuse of User Id and Password of the shareholders, if it is fallen into wrong hands;
2. Lack of awareness among the shareholders about the new process of E-voting;
3. It has to be ensured that the entire process of e-voting is not subject to any kind of manipulation;
4. Correct Data of Shareholders will have to be provided by the Registrar and Share Transfer Agents or the Company to the agency providing e-voting platform otherwise a shareholder may not get his User Id and Password and thus may not be able to cast their vote;
5. No option is available to the shareholders to modify the casted vote.

Legal Provisions relating to E-Voting

Applicable provisions: The applicable provisions relating to E-voting are as follows:

1. Section 108 of the Companies Act, 2013;
2. Rule 20 of the Companies (Management and Administration) Rules, 2014;
3. General Circular No. 20/2014 dated June 17, 2014 issued by Ministry of Corporate Affairs.

Mandatory Applicability: The Rules mandate that the following class of companies to its members e-voting facility to exercise their right to vote at General Meetings (i.e. Annual General Meetings & Extra Ordinary General Meetings):

1. Every listed company or;
2. Company having not less than 1,000 shareholders.

Compliance Procedure

1. *Who can vote?:* Members of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their e – vote. Once the e-vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.
2. *Recipients of the Notice of General Meetings:* The Notice of General Meetings shall be sent to all the Members, Auditors of the company, or Directors of the Company;
3. *Mode of sending Notice of General Meetings:*
 - (a) Registered Post; or
 - (b) Speed Post; or
 - (c) Email; or
 - (d) Courier Service.

4. *Appointment of Scrutinizer*: Board of Directors shall appoint one Scrutinizer, who may be Practising Professional who is not in employment of the company and is a person of repute who, in the opinion of the Board of Directors can scrutinize the e-voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;
5. *Content of the Notice of Meeting* : Notice of the General Meeting shall mention and contain the following information:
 - (a) Business may be transacted through Electronic Voting System;
 - (b) Company is providing e-voting facility;
 - (c) Process and manner for voting by electronic means;
 - (d) Time Schedule including the Time Period during which the votes may be cast;
 - (e) Login ID;
 - (f) Create a facility for generating password and for keeping security and casting of vote in a secure manner.
6. *Notice on Website*: Notice of General Meeting shall also be placed on the website of the company, and of the Agency immediately after it is sent to the members;
7. *Advertisement in Newspapers*:
 - (a) The company shall publish advertisement in at least two newspapers having wide circulation [One in Vernacular Newspaper in Vernacular Language in which the Registered Office of the company is situated and another in English language in an English Newspaper];
 - (b) The advertisement in the Newspaper shall be published 5 days (minimum) before the date of beginning of the voting period;
 - (c) Content of Newspaper Notice shall be as follows:
 - (i) Statement that the business may be transacted by E-Voting;
 - (ii) Date of completion of sending of Notices;
 - (iii) Date and time of commencement of E-voting;
 - (iv) Date and time of end of E-voting;
 - (v) Statement that voting shall not be allowed beyond the said date and time;
 - (vi) Website address of the company and agency, if any, where notice of the meeting is displayed; and
 - (vii) Contact details of the person responsible to address the grievances connected with the E-voting;
8. *Window for E-voting* : E-voting shall remain open for not less than a day and not more than 3 days. The voting period shall be completed 3 days prior to the date of the General Meeting. At the end of the voting period, the portal where votes are cast shall be blocked immediately;

9. *Assistance by Scrutinizer* : The Scrutinizer may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system;
10. *Role of the Scrutinizer* : The Scrutinizer shall, within a period of not exceeding 3 working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least 2 witnesses not in the employment of the company and make a Scrutinizer's report of the votes cast in favour or against, if any, forthwith (meaning "immediately" or "without delay") to the Chairman. The Scrutinizer shall maintain, store the register in prescribed format.
11. *Result of E-Voting* : Results declared along with the Scrutinizer's Report shall be placed on the website of the company and on the website of the agency within 2 days of passing of the resolution at the relevant general meeting of members;
12. *Passing of the Resolution* : Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Considering the above points; following are the timelines for reference purpose:

<i>Sr. No.</i>	<i>Nature of Activity</i>	<i>Explanation of Activity</i>	<i>Time lines</i>
1.	Holding of Board Meeting for discussing the following matters: i. Preliminary approval for the subject matter; ii. Decide to call a General Meeting (For the purpose example – June 30, 2014 is the date of General Meeting); iii. Appointment of Scrutinizer – deciding the Professionals Fees; iv. Authority to issue Notice of the General Meeting.	-	June 1, 2014
2.	Printing of Notice of General Meeting	-	Up to June 4, 2014
3.	Dispatch of Notice of General Meeting in prescribed mode.	In accordance with Section 101 of Companies Act, 2013.	June 5, 2014
4.	Placing of Notice on the website of Company and Agency.	Immediately after sending to Members	June 5, 2014
5.	Advertisement in the Newspaper – Vernacular & English	Advertisement in the Newspaper shall be published 5 days (minimum) before the date of beginning of the voting period	June 19, 2014

<i>Sr. No.</i>	<i>Nature of Activity</i>	<i>Explanation of Activity</i>	<i>Time lines</i>
6.	Opening of E-Voting Window	As discussed above	June 24, 2014
7.	Closing of E-Voting Window	As discussed above	June 26, 2014
8.	Blocking of the online portal where votes are casted	Forthwith at end of voting period	June 26, 2014
9.	Unblocking the votes in presence of 2 Witnesses who are not in whole time employment of the company	Within a period not exceeding 3 working days	June 27, 2014
10.	Counting of votes by the Scrutinizer.	Within a period of not exceeding 3 working days from the date of conclusion of e-voting period.	June 28, 2014 Or June 29, 2014
11.	Preparation of Scrutinizer's Report	As discussed above	June 28 Or June 29, 2014
12.	Holding of General Meeting	In accordance with Companies Act, 2013	June 30, 2014
13.	Placing of Result & Scrutinizer's Report of E-Voting on website of the company and agency.	To be placed within 2 days of passing of the resolution at the General Meeting.	July 1, 2014 or July 2, 2014

Some Contentious Issues about E-Voting addressed in MCA Circular :

The Ministry of Corporate Affairs issued General Circular No. 20 / 2014 dated June 17, 2014 in which few contentious provisions relating to E-voting have been addressed.

<i>Sr. No.</i>	<i>Contentious Issues</i>	<i>Clarification by MCA</i>
1.	How should the company reconcile the voting by way of show of hands [One member equals One Vote] and Electronic Voting [Count of the votes not prescribed in the Companies Act, 2013 and Companies (Management and Administration) Rules, 2014]?	<p>i. Voting of show of hands is not allowed in case company proceeds with e-voting i.e. Either the company should proceed with general meeting or electronic voting;</p> <p>ii. In e-voting, proportion principle of voting shall apply i.e. one share equals one vote.</p>

<i>Sr. No.</i>	<i>Contentious Issues</i>	<i>Clarification by MCA</i>
2.	In case of matters to be discussed only through Postal Ballot; can the same be considered in general meeting where e-voting facility is available?	The matter shall be transacted by means of Postal Ballot only and not at the General Meeting.
3.	Can the member of the company [who has casted e-vote] attend general meeting of the company?	Member of company, who has casted e-vote, can attend the general meeting but shall be debarred from voting in general meeting.
4.	If a member of Company, has neither casted his e-vote nor voted at general meeting; then can he vote through Postal Ballot?	MCA has clarified that voting through Postal Ballot is not permitted in such case. That means, the members loses his right to vote.
5.	Rule 20(3) of the Companies (Management and Administration) Rules, 2014; have words "A company which opts to provide" and Rule 20(1) of the Companies (Management and Administration) Rules, 2014 starts with "Every Listed Company or a company having 1,000 shareholders ..."	Does it mean that E-voting facility is applicable to all companies? MCA has clarified that companies that are not statutorily mandated to provide shareholders e-voting facility; but e-voting has been voluntarily opted; then the complete procedure specified in Rule 20 of the Companies (Management and Administration) Rules, 2014 shall be followed. Piecemeal application in not interest of shareholders.

Even after issue of Circular by the MCA, there are some crucial issues that need to be addressed. Also, some more crucial issues have cropped up from MCA's Circular. Few of them are discussed below:

1. *Definition of Agency* : At several places in the Companies (Management and Administration) Rules, 2014; there is a mention of "Agency"; but the same is not defined. Broadly, Agency can be considered as a Third Party providing a readymade platform i.e. 'secured system' to Corporates for providing e-voting facility to their shareholders, for a fee. The third party shall be the link between the corporate and its members for this purpose and hence the term 'Agency' may have been used in the Act / Rules.
2. *Counting of Votes* : Some professionals find it absurd about the procedure given in the Companies (Management and Administration) Rules, 2014 for e-voting. The window for e-voting closes 3 days prior to the General Meeting. Take a hypothetical situation; where few shareholders have electronically voted AGAINST a particular ordinary resolution and few shareholders have voted FOR the same ordinary resolution in the general meeting. In the general meeting; due to requisite majority, the resolution is passed in accordance with Section 107 of Companies Act, 2013 and Chairman declares the result as Resolution has been passed successfully. Later, Scrutinizers Report is received from a Practising Professional; which states that the shareholders

have electronically voted AGAINST the Resolution. Effectively, after counting and reconciling the total votes [at general meeting and e-voting]; the resolution ought not to have been passed. But now, how to resolve the position as result of meeting has already been declared? Only option which I consider is that the Practising Professional to provide Scrutinizers Report before the General Meeting; then only the Chairman will be in a position to reconcile the votes and declare the result in accordance with Section 107 of Companies Act, 2013.

3. *Based on the result of E-voting* : Can remaining shareholders take a guidance of the result to vote at General Meeting? The results declared along with Scrutinizer's Report shall be placed on the website of company and on website of the Agency within 2 days of passing of resolution at the relevant General Meeting of members. Therefore, disclosing the result of e-voting at the General Meeting seems difficult. Therefore, the shareholders at General Meeting cannot vote based on the result of E-voting.
4. *Case of 'Listed Companies'*: 'Listed Company' is defined in Section 2(52) of the Companies Act, 2013 which means a company which has any of its securities listed on the recognized stock exchange. 'Securities' has been defined in Section 2(81) of the Companies Act, 2013 which gives a reference to definition in the Securities Contracts (Regulation) Act, 1956 – which includes shares, scrips, stocks, bonds, debentures, debenture stocks. In case of a public company whose shares are not listed on recognized stock exchange in India but whose debentures are listed on the recognized stock exchange; such company would be a listed company; after a combined reading of the provisions of Section 2(52) and 2(81) of the Companies Act, 2013.

Therefore, in accordance with the provisions of Section 108 of the Companies Act, 2013 and Companies (Management and Administration) Rules, 2014; such public company would be required to provide e-voting facility to its members [even though the number of members are minimum required i.e. 7].

Recent Bombay High Court Judgement

The Bombay High Court passed a landmark judgment on May 8, 2014ⁱⁱ clarifying the provisions for holding a court convened meeting, passing a resolution through postal ballot and passing a resolution by e-voting under Section 391 and 394 of the Companies Act, 1956 corresponding to Section 230 and Section 232 of the Companies Act, 2013 [which are yet to be notified].

The Bombay High Court held that all provisions for compulsory voting by postal ballot and by electronic voting to the exclusion of an actual meeting cannot and do not apply to court-convened meetings.

At the court-convened meetings; provision must be made for Postal Ballots and e-voting; in addition to an actual meeting. E-voting must also be made available at the venue of the meeting. Any shareholder who has casted his vote by postal ballot or by electronic voting from a remote location (other than the venue of the meeting) shall not be entitled to vote at the meeting. He or she may, however, attend the meeting and participate in those proceedings.

Conclusion

Presently, there is some ambiguity and loopholes in the implementation of E-voting at the time of General Meeting even after issue of Circular by MCA. At a latter point of time, once necessary action is taken to bring in more clarity. E-voting has a long way to go as it brings in more shareholders participation at their convenience.

End Notes

- (i) In an Explanation (i) to Rule 20(2) of the Companies (Management and Administration) Rules, 2014.
 - (ii) Company Summons for Direction No. 256 of 2014 in the Scheme of Amalgamation of Wadala Commodities Limited with Godrej Industries Limited.
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REGISTERED VALUER

CS Monali Shah*

Introduction

The concept of valuation has been introduced for the first time in the Companies Act, 2013. Professional opportunities likely to emerge with the increase in the number of valuation requirements as per the new concept of Registered Valuer under the Companies Act, 2013. The system of valuation will offer more transparency and fairness which will in turn uplift the shareholders confidence.

The detailed analysis of the provisions of registered valuers under the Companies Act, 2013 follows herewith:

- Q1. Which Chapter and Section of the Companies Act, 2013 (the Act) shall apply to Registered Valuers?
- A1. Chapter XVII (Section 247) and Rule 17 shall apply to the Registered Valuers.
- Q2. Whether Section 247 and Rule 17 are notified?
- A2. No still they are not notified.
- Q3. What is the scope of valuation under the Act?
- A3. Under the Act, valuation is required to be made in respect of any property, stocks, debentures, securities or goodwill or any other assets or net worth of a Company or its liabilities under the provisions of the Act.
- Q4. Whether registration as a Valuer shall be required under the Act?
- A4. Yes registration as a Valuer shall be required under the Act.

As per draft rule 17.1, 'Registered Valuer' means a person registered as a Valuer under Chapter XVII of the Act.

As per draft rule 17.2(1), the Central Government or any authority, institution or agency, as may be notified by the Central Government, shall maintain a register to be called as the Register of Valuers in which there shall be registered the names, address and other details of the persons registered as valuers in pursuance of section 247.

* Practicing Company Secretary, Mumbai.

Q5. Which persons shall be eligible to apply for being registered as a valuer?

A5. As per draft rule 17.2(2), the following persons shall be eligible to apply for being registered as a valuer:

(a) a chartered accountant, company secretary or cost accountant who is in whole-time practice, or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognise by an order;

Provided that such foreign qualification acquired by Indian citizen.

(b) a Merchant Banker registered with the Securities and Exchange Board of India, and who has in his employment person(s) having qualifications prescribed under (a) above to carry out valuation by such qualified persons;

(c) member of the Institute of Engineers and who is in whole-time practice;

(d) member of the Institute of Architects and who is in whole-time practice;

(e) a person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time.

Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have not less than five years continuous experience after acquiring membership of respective institutions.

Provided further that in the case of merchant banker, the valuation report shall be signed by the qualified person.

Provided also that persons referred to in (a) and (b) shall be in respect of requirement for a "financial valuation" and the persons referred to in (c) and (d) shall be in respect of requirement for a "technical valuation" and a person or a firm or Limited Liability Partnership or merchant banker possessing both the qualifications may act in dual capacity.

Explanation: A person shall be deemed "to be in whole-time practice", when individually or in partnership or in limited liability partnership or in merchant banker with other persons in practice who are members of other professional bodies, he, in consideration of remuneration received or to be received:

- (i) engages himself in the practice of valuation; or
- (ii) offers to perform or performs services involving valuation of any assets with the object of arriving at financial value of the asset being valued; or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to valuation.

Q6. Whether any form is prescribed for the application for registration as a valuer?

A6. As per draft rule 17.2(3), an application for registration as a valuer shall be made in Form No. 17.1 by individuals and firms and Form No. 17.2 by others, along with the fee as provided in Annexure 'B' of the draft rule 17.

Q7. Who shall appoint the registered valuer?

A7. As per Section 247(1) of the Act, the valuer shall be appointed by the Audit Committee or in its absence by the Board of Directors of the Company.

Q8. What are the occasions requiring valuations under the Act?

A8. The occasions requiring valuation under the Act are as follows:

<i>Sr.</i>	<i>Sections as per Act</i>	<i>Valuation Requirement/Purpose</i>
1.	62(1)(c)	Valuation for Further Issue of Share Capital.
2.	192(2)	Valuing Assets involved in Arrangement of Non-Cash transactions involving directors.
3.	230(2)(c)(v)	Valuation of shares, property and assets of the company under Corporate Debt restructuring scheme.
4.	230(3)	Copy of valuation report to be accompanied with the notice of the meetings of shareholders or creditors.
5.	232(2)(d)	Circulation of report of the expert relating to valuation at the meeting of creditors/members.
6.	232(3)(h)	Where under a scheme of Compromise/Arrangement, the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal.
7.	236(2)	Valuation of shares held by Minority shareholders.
8.	260(2)(c)	Valuation of shares/assets for company administrator.
9.	281(1)(a)	Valuation of assets for submission of report by the liquidator.
10.	305(2)(d)	Valuation at the time of declaration for solvency under voluntary winding up.
11.	319(3)(b)	The interest of dissenting member of transferor company who did not support the special resolution as required by company liquidator.
12.	325(1)(b)	Valuation of annuities and future and contingent liabilities in winding up of insolvent Company.

Q9. What are the responsibilities of a registered valuer?

A9. As per Section 274(2) of the Act, the valuer appointed shall,—

- a. make an impartial, true and fair valuation of any assets which may be required to be valued;

- b. exercise due diligence while performing the functions as valuer;
 - c. make the valuation in accordance with such rules as may be prescribed; and
 - d. not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.
- Q10. What are the approach to be followed by the valuer for valuation?
- A10. As per draft rule 17.6(i), before adoption of the methods of valuation, the registered valuer shall decide the approach to valuation based upon the purpose of valuation:
- a. Asset approach;
 - b. Income approach;
 - c. Market approach.
- Q11. What is the checklist for valuer while undertaking valuation?
- A11. As per draft rule 17.6(ii), the valuer shall consider the following points while undertaking valuation:
- a. Nature of the business and the History of the Enterprise from its inception;
 - b. Economic outlook in general and outlook of the specific industry in particular;
 - c. Book value of the stock and the financial condition of the business;
 - d. Earning capacity of the company;
 - e. Dividend-paying capacity of the company;
 - f. Goodwill or other intangible value;
 - g. Sales of the stock and the size of the block of stock to be valued;
 - h. Market prices of stock of corporations engaged in the same or a similar line of business;
 - i. Contingent liabilities or substantial legal issues, within India or abroad, impacting the business;
 - j. Nature of instrument proposed to be issued, and nature of transaction contemplated by the parties.
- Q12. What are the methods for valuation of any asset?
- A12. For the purpose of clause (c) of sub-section (2) of section 247 of the Act (refer question 9), a registered valuer shall make a valuation of any asset as on valuation date, in accordance with any one or more of the following methods:
- a. *Net asset value method (NAV)* : It represents the value of the business with reference to the asset base of the entity and the attached liabilities on the valuation date (represents the value of an entity's assets less the value of its liabilities);
 - b. *Market Price method* : Under this method the current price at which the subject of valuation is bought or sold in the market between unrelated third parties is taken into account;

- c. *Yield method / Profit Earning Capacity Value (PECV)*: Under this method the value is calculated by capitalizing the average of the after tax profits for the preceding three years (or such other period. Provided adequate justification is available for choosing another period) at capitalisation rates specified in the report.
- d. *Discounted Cash Flow Method (DCF)* : This method expresses the present value of the business as a function of its future cash earnings capacity. This methodology works on the premise that the value of a business is measured in terms of future cash flow streams, discounted to the present time at an appropriate discount rate. The value of the firm is arrived at by estimating the Free Cash Flows (FCF) to Firm and discounting the same with Weighted Average cost of capital (WACC). In case FCF to equity or FCF to debt is used, the appropriate denominator (required return to equity or debt, as the case may be) shall be used.
- e. *Comparable Companies Multiples Methodology (CCM)* : This Method uses the valuation ratios of a publicly traded company and applies that ratio to the company being valued (after applying appropriate discount or premium, as the context may require). The valuation ratio typically expresses the valuation as a function of a measure of financial performance or book value (e.g. total revenue/revenue from operations, EBITDA, EBIT, EPS, operating cash flows, book value or other suitable parameter, with reasons being recorded for choosing each relevant parameter). Multiples used, if not derived from financial statements, can also be based on certain business performance parameters, provided that such valuation is deemed to be more appropriate than valuation based on financial parameters, in the facts of the case. (for instance, price/subscriber for an internet portal)
- f. *Comparable Transaction Multiples Method (CTM)* : Entails valuation on the basis of similar transactions among unrelated parties in the peer group companies.
- g. *Price of Recent Investment method (PORI)* : which entails valuation on the basis of recent investment received in the company from an independent investor.
- h. *Sum of the parts valuation (SOTP)* : where each part of the business is valued according to method(s) appropriate to that business, and the results are summed up to obtain total value of the business.
- i. *Liquidation value* : if the value is being calculated in a liquidation scenario.
- j. *Weighted Average Method* : Under this method the weights are assigned to the values calculated under different valuation approaches.
- k. Any other method accepted or notified by the Reserve Bank of India, Securities and Exchange Board or Income Tax Authorities.
- l. Any other method(s) that the valuer may deem fit to adopt in the given circumstances of the case, provided that adequate justification for use of such method(s) (and not any of the methods above) must be included in the report.

Explanation : For the purposes of this rule, 'valuation date' means the date on which the estimate of value is applicable. It may be different from the date of the valuation report or the date on which the investigations were undertaken or completed.

Q13. What are the contents of the valuation report?

A13. As per draft rule 17.7, the report of valuation by a registered valuer shall be as near to and shall contain such information as set out in Form No. 17.3.

Valuation Report

<i>Sr.</i>	<i>Contents</i>	<i>Sub-Contents</i>
1.	Valuer Details	a) Name of the Valuer b) Address of the Valuer c) Registration number of the Valuer d) e-mail ID
2.	Description of Valuation Engagement	a) Name of the client b) Other intended users c) Purpose for valuation
3.	Description of Business/ Asset / Liability being valued	a) Nature of business or asset / liability b) Legal background c) Financial aspects d) Tax matters
4.	Description of the Information underlying the Valuation	a) Analysis of past results b) Budgets, with underlying assumptions c) Availability and quality of underlying data d) Review of budgets for plausibility e) Statement of responsibility for information received.
5.	Description of specific Valuation of Assets used in the Business	a) Basis or bases of value b) Valuation Date c) Description of the procedures carried out d) Principles used in the valuation e) The valuation method used and reasoning f) Nature, scope and quality of underlying data g) The extent of estimates and assumptions together with considerations underlying them.
6.	Confirmation	That the valuation has been undertaken in accordance with these rules.

<i>Sr.</i>	<i>Contents</i>	<i>Sub - Contents</i>
7.	Further it is certified that valuation has been undertaken after taking into account relevant conditions/regulations/rules/notifications, if any, issued by the Central/State Government(s) from time to time.	
8.	Valuation Statement :	
	Date:	
	Place:	Signature of Valuer

Apart from this, some key/additional information to be included in the Valuation Report:

- (i) The valuation report must clearly state the significant assumptions upon which the value is based. When reporting, there may be instances where there are confidential figures, these must be summarised in a separate exhibit.
 - (ii) In the valuation report, the Registered Valuer must set out a clear value or range of values alongwith the reasoning.
 - (iii) In case the Registered Valuer has been involved in valuing any part of the subject matter of valuation in the past, the past valuation report(s) should be attached and referred to herein. In case a different basis has been adopted for valuation (than adopted in the past), the Valuer should justify the reason for such differences.
- Q14. What are the penal provisions if a valuer contravenes the provisions of section 247 of the Act or the rules made thereunder?
- A14. As per Section 247(3) of the Act, if a valuer contravenes the provisions of section 247 or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Additionally as per Section 247(4) of the Act, where a valuer has been convicted under Section 247(3), he shall be liable to—

- (i) refund the remuneration received by him to the company; and
- (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Additionally as per draft rule 17.3, where any person who is registered as a valuer under section 247 of the Act or who has made an application for registration as a valuer under that section is, at any time thereafter,—

- (a) sentenced to a term of imprisonment for any offence; or

(b) found guilty of misconduct in his professional capacity by any association or institute or other body of which he is a member or with which he is registered;

He shall immediately after such conviction or finding, intimate the particulars thereof to the Central Government, institution or agency with which he is registered as a valuer and cease to act as valuer unless permitted by the Central Government, institute or agency with which he is registered as a valuer unless the order imposing penalty/sentence at rule 17.3 (a) and (b) has been stayed by competent authority.

Provided that in case valuer is found guilty of professional misconduct or otherwise by the Institute which he is a member or by National Financial Reporting Authority or where the SEBI removed the registration of the merchant banker, such valuer shall cease to be the valuer automatically and their name shall be removed from the register of valuer unless such order has been stayed by the Competent Authority.

Provided further that any ongoing assignment of such valuer, who has ceased to be a valuer, shall be assigned to other valuer from the panel maintained by Central Government or any authority or institution to complete the assignment, if no stay is granted on such appeal, if any.

Q15. What are the provisions for the removal and restoration of names of valuers from register under the Act?

A15. As per draft rule 17.4,

(1) the Central Government or any authority, institution or agency, may remove by order the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit:

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government or any authority, institution or agency, renders his name unfit to be kept in the register.

(2) The Central Government or any authority, institution or agency, may on application and on sufficient cause being shown and on being satisfied, restore in the register the name of any person removed there from.

(3) Without prejudice to the provisions of sub-rule (1) and (2), the Central Government or any authority, institution or agency, may review the performance of any registered valuer and order removal of the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make, that his performance is such that his name should not remain on the register of valuers.

(4) The Central Government or any authority, institution or agency may appoint one or more competent persons as enquiry officer(s) for conducting an enquiry under sub-rule (3) of this rule.

- (5) (i) The officer(s) conducting an enquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while make an enquiry, in respect of the following matters, namely:
- (a) Summoning and enforcing the attendance of any person and examining him on oath;
 - (b) Requiring the discovery and production of documents;
 - (c) Receiving evidence on affidavit
 - (d) Issuing commissions for the examination of witnesses or documents;
 - (e) Requisitioning under the provisions of Section 123 or 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office.
- (ii) The officer(s) may also call upon such experts from the field of law, economics, business, finance, accountancy, international trade, management, technology or such other discipline as he deems necessary to assist him in conducting the enquiry.
- Q16. Can an appeal be made against the order passed under the draft rule 17.4(1)(a) or 17.4(3) (refer Q15)?
- A16. As per draft rule 17.5, a registered valuer aggrieved by an order passed under rule 17.4(1)(a) or 17.4(3) may prefer an appeal in accordance with the procedure laid down in the respective Acts, regulations or bye-laws governing the respective professional. An appeal against the order of the Central Government shall be preferred to the Tribunal.
- Q17. Which is other new area of valuation for practicing Company Secretary?
- A17. The valuation for Real Estate Investments Trusts (REITs) can be a new area of practice for practicing professionals. REITs shall be governed by the draft SEBI (Real Estate Investment Trusts) Regulations, 2013.
- Q18. How does REITs structure works?
- A18. REITs structure works as follows:
1. The REIT shall be set up as a Trust under the provisions of the Indian Trusts Act, 1882. REITs shall not launch any schemes.
 2. The REIT shall have parties such as trustee (registered with SEBI), sponsor, manager and principal valuer (registered valuer under the Companies Act, 2013).
 3. The structure of REIT is similar to that of corporate environment wherein, sponsor has roles similar to promoter, trustee to be more of like an independent director, manager to be like chief executive officer.
- Q19. What is the definition of principal valuer as per the draft SEBI (Real Estate Investment Trusts) Regulations, 2013 ?
- A19. "Principal Valuer" means any person who is a "registered valuer" under Section 247 of the Companies Act, 2013 and assigned as such and who has been appointed by the manager to undertake valuation of the real estate assets.

- Q20. What is the criteria for being appointed as a principal valuer under the draft SEBI (Real Estate Investment Trusts) Regulations, 2013?
- A20. The principal valuer shall be Independent person (not related to sponsor, manager and trustees) and shall have an experience of at least 5 years in valuation of real estate.
- Q21. What are the functions of the principal valuer under the draft SEBI (Real Estate Investment Trusts) Regulations, 2013?
- A21. The valuer shall ensure that the valuation of the real estate assets is impartial, true and fair and is in accordance with regulation 21 of draft SEBI (Real Estate Investment Trusts) Regulations, 2013.

Conclusion

India's real estate sector has witnessed rapid growth in recent years underlined by robust economic growth in the country. The growing scale of operations of the corporate sector has increased the demand for commercial buildings and space including modern offices, warehouses, shopping centres, conference centres, etc. For such rapidly growing industry, it is crucial that investment vehicles such as Real Estate Investment Trusts (REITs) evolve in the country.

SERVICE TAX – REVERSE CHARGE – CLARITY ON CONFUSION

CS Deepak P Jain*

Amidst Chaos and confusion of the provisions of the Companies Act 2013, it becomes pertinent for a Professional to explore and make opportunity for other confusing yet convincing areas, instead being confused always.

Hence the author thinks that Service Tax would be a newer area for the professional friends to look into, guide and help the business community. With the introduction of Reverse Charge Mechanism, the initial apprehension and confusion exists amongst the service receivers.

With effect from 1-7-2012, the central government has notified the new partial reverse charge mechanism for the payment of service tax in respect of certain taxable services. The present write up tries to make an investigative study of this scheme.

The Liability to pay Service Tax

Service tax is an indirect tax, where the service provider has to collect the tax from the service receiver and had to deposit in to Government account. As per Sec 68 (1) of Finance Act 1994, every person providing taxable service to any person is liable to pay service tax. Hence the liability to pay service tax is on the service provider. However an exception to the above said rule has been provided under sub-section (2) of section 68 of the Act., in terms of which the central government has the powers to notify services in respect of which even the service receiver shall be liable to pay service tax wholly or partially. This is termed as REVERSE CHARGE MECHANISM. Since in respect of some services both the service provider and service receiver are liable to pay service tax proportionately, it is termed as "partial reverse charge mechanism".

Services covered under partial reverse charge mechanism

By the virtue of powers conferred under sub-section (2) of Section 68 of the Act, The Central Govt. has issued notification dated 1-7-2012 notifying the following services which shall be covered under the partial reverse charge mechanism. The list of such services along with the effective rate and abatements available is capsule in once table:

* Practising Company Secretary.

Sl No	Description of Services	Service Provider	Service Recipient	Proportion of Service Tax Payable by		Abatement %	Effective Service Tax applicable to Service Recipient
				Service Provider	Service Recipient		
1	Insurance Auxiliary Service	Insurance Agent	Person carrying on Insurance Business	NIL	100%	NIL	12.36%
2	Sponsorship Service	Any service provider	Body Corporate or Partnership Firm	NIL	100%	NIL	12.36%
3	Transport of Goods by Road	Goods Transport Agency	Consignor or Consignee in organized sector	NIL	100%	75%	3.09%
4	Legal Service	Arbitral Tribunal	Business Entity	NIL	100%	NIL	12.36%
5	Legal Service	Individual or Firm of Advocates	Business Entity	NIL	100%	NIL	12.36%
6	Support Services excluding renting of immovable property	Govt. or local authority	Business Entity	NIL	100%	NIL	12.36%
7	Renting of motor vehicle designed to carry passengers on abated value	Individual, HUF, Firm, AOP, BOI	Business Entity registered as Corporate Body	NIL	100%	60%	4.944%
8	Renting of motor vehicle designed to carry passengers on non abated value	Individual, HUF, Firm, AOP, BOI	Business Entity registered as Corporate Body	60%	40%	NIL	4.944%
9	Supply of Man Power for any purpose	Individual, HUF, Firm, AOP, BOI	Business Entity registered as Corporate Body	25%	75%	NIL	9.27%

Sl No	Description of Services	Service Provider	Service Recipient	Proportion of Service Tax Payable by		Abatement %	Effective Service Tax applicable to Service Recipient
				Service Provider	Service Recipient		
10	Security Services	Individual, HUF, Firm, AOP, BOI	Business Entity registered as Corporate Body	25%	75%	NIL	9.27%
11	Service portion in execution of Works Contract	Individual, HUF, Firm, AOP, BOI	Business Entity registered as Corporate Body	50%	50%	NIL	6.18%
12	Any Taxable Service	Person located in non taxable territory	Any Person located in taxable territory	NIL	100%	NIL	12.36%
13	Service provided by a Director to Company Director *	Individual	Company	NIL	100%	NIL	12.36%

(* excludes Managing/Wholetime/Executive Director in employment of company)

For the purpose of Goods Transport Agency, Organized Sector would mean –

- 1 Any factory registered under or governed by the Factories Act, 1948
- 2 Society Registered under Societies Registration Act, 1860
- 3 Any Co-operative Society
- 4 Any dealer of Excisable goods
- 5 Any Body corporate established, by or under any law
- 6 Any Partnership Firm whether registered or not under any law including association of Persons

Payment of Tax under Reverse Charge Mechanism

Where Service Tax is payable under reverse charge mechanism, it is required to be paid in cash only. In other words benefit of Cenvat cannot be availed for discharging the service tax liability on reverse charge mechanism.

Cenvat Credit on Service Tax paid on reverse Charge Mechanism

Any service recipient paying the Service Tax under reverse charge mechanism may take the Cenvat credit of Service Tax paid by him and utilize the same towards the discharge of Central Excise Duty payable on Manufacture of Final Products or towards payment of Service Tax on Other Output Services, on the basis of Copy of GAR-7 Challan.

Threshold exemption of Upto Rs.10 Lac is not applicable

By Virtue of notification no. 33/2012, the aggregate value of taxable services upto Rs. 10 lacs has been exempted from Service Tax. However, it has been provided that the benefit of the threshold exemption is not applicable to those cases where the Service Tax is payable under reverse charge mechanism. As per the Proviso to the said Notification, the benefit of threshold exemption does not apply to such value of taxable services in respect of which Service Tax shall be paid by such person and in such manner as specified under sub-section (2) of Section 68 of the Act. A plain reading of the above said provision suggests that the benefit of threshold exemption is not applicable in respect of services specified under notification No.33/2012, irrespective of whether the Service Tax is payable, wholly or partially by the service provider or service receiver.

Refund of Unutilised Cenvat Credit to Service Recipients

The Central Government has inserted a new rule 5B under Cenvat Credit Rules, 2004, providing for the refund of the Service Tax paid under reverse mechanism. According to this rule, if the Service provider is unable to utilize the Cenvat credit availed of Inputs and Input services, he shall be allowed refund of such unutilized Cenvat credit subject to safeguards, conditions and limitations.

It may be noted that the refund under the above rule is available for the Provider of service who pays service tax on reverse charge mechanism. In other words, the refund shall not be allowed to service recipients who pay service tax under reverse charge wholly or fully.

Some Instances

1. It may be noted that in respect of renting of motor vehicles, supply of man power or security services or works contract service provided by an Individual, or HUF, or Proprietary or Partnership Firm, the reverse charge mechanism shall apply only if the service recipient is a business entity registered as body corporate. If the service recipient is not a body corporate, the reverse charge shall not apply.
2. In case of legal services provided by an individual advocate or a partnership of advocates, reverse charge provisions shall apply even if the receiver of such service is an Individual, HUF, Proprietary firm or partnership firm. However, such service tax shall be liable only when the gross turnover of service receiver exceeded Rs.10 lac in the preceding Financial Year.

Summing Up

Liability to pay Service Tax on the reverse charge mechanism is a unique feature of the Service Tax regime. The service recipient is liable to pay Service Tax without availing the Cenvat credit of the Inputs and Input services. However, he can claim the Cenvat credit paid as service receiver towards the payment of Service Tax on other Output services and Payment of Central Excise duty on manufacture and clearance of excisable goods.

ENHANCING QUALITIES OF PROFESSIONAL SERVICES

CS Pooja Dave*

Introduction to the theme

“Profession” reveals its exclusivity through the standards it sets through a combination of technical proficiency and ethical values. A profession is that mastery which in a sense tunes the passion and the technique to offer a unique capability for delivering what it promises. For any business it is of utmost importance that the men involved are not only competitive and productive but also such that they provide the so called professional edge to the resources and money involved in the business. The business calls for the most economical yet feasible corporate solutions to meet the ever increasing and never ending demands. Here steps in the terminology – profession! Professionals are the conductors of these promises that are looked up to by the larger half of the corporate. They are the conscience keepers for their respective sectors and the specialists in their areas of practice. They are the joining link between the regulatory bodies and the regulated entities. They are the measure for ensurance of not only laws and standards but that of authenticity and accuracy. Professions are characterized by several factors, including an identifiable body of knowledge, a pathway for advancing knowledge and skills related to the profession and an emphasis on continued learning and development. A professional in any sector secures his unique position owing to the output he assures as a facilitator to provide corporate solutions. In a growing business where all the areas are separated departmentally, a need for specialized personnel with adequate knowledge and experience is felt to oversee the department and coordinate its activity for giving the right edge for growth. A professional plays this exact role in bridging the gap between the business need and available corporate solutions. He stands as a catalyst to corporate growth and leads to the best way out for the need of business. Equipped with profound knowledge and focused area, a professional seeks to provide a channel to streamline data into information. At the same time, as pointed out earlier ethical values and morals are the essence of any profession. These reasons create an unmatched value for the professionals in the corporates worldwide. These specialities of professionals are their very USP.

The significant role played by the professionals calls for a continuous endeavour for maintaining the integrity and quality of the profession; it calls for a need of an environment that is conducive not only for the growth and development of profession but which offers a corrective and promotional measure for the profession. While a professional is engaged in rendering his services, it is not only his client or the organization he is working for who is

* Practising Company Secretary, Pune.

affected but there is a list of other stakeholders who are influenced being part of the whole system. Thus it is imperative to nurture a profession and create the right valued professionals so that the whole system at large is benefitted. The overall quality enhancement of the profession must be a mandatory part of any professional development programme. This subject is dynamic in its application as it evolves with the passage of time and therefore must be supported by a continual overhauling and renovating approach. The quality enhancement programme must be planned considering the past history, the present scenario and the future expectations from the profession. This article reviews the improvement efforts put in for quality enhancement of professionals in the past; scans the present status of the same and views those aspects of the quality enhancement.

Company Secretary – one of the elite professionals

The journey of the Company Secretary has been long and struggling. Major impetus in the economic development of industries and the whole country created a distinguished need for the professional called Company Secretary. The statutory recognitions added to the need for the profession and lead the Company Secretary to a challenging and an elite position in the corporate sector and thereby in the whole economy. Today the profession is looked upon as a dependable and an essential catalyst to the corporate decision making. The stakeholders seek a high level of delivery of services by a Company Secretary. With the introduction of the Companies Act, 2013 a Company Secretary has assumed the role of a vital management and governance personnel. The role of the Company Secretary has leaped from being perceived as a functionary for board meetings and compiling minutes, to being a trustworthy partner of the directors in decision making and policy framing.

The time has again tendered Company Secretary in new order to take up the challenges in the corporate compliances in letter and spirit of law and usher a new standard of quality performance. In the newly introduced legislation a Company Secretary obliges to serve the broader interest of the public and contribute to promoting the culture of good governance. They are expected to deliver professionalism beyond satisfying the requirements of law and that of the clients by developing influential skills and aligning them with the business strategies thereby connecting professional goals with the corporate goals. In the light of the new set of legislation the position of a Company Secretary is pushed up to the rank of a key managerial person. Today the position of a CS is recognized as a technologist than being a mechanic. In a broader sense the role of CS is now to endeavour to transport India in to a big league keeping the promise of the profession with integration, harmonization and standardization.

Call for Quality Enhancement

As mentioned in the introduction part, the profession distinguishes itself from other means of occupation owing to the process of continuous improvisation involved in it. This improvisation process has to derive from the past experience of policy implementation and generate corrective and innovative plans for result oriented objectives. While formulating the plans focus must be kept on the need for change and the plan must be answerable to make up the deficiencies. When one talks about the professional enhancement, it is not only in terms to addition to the knowledge but also necessarily in terms of the quality of the professional services. The increased recognition of profession casts increased responsibilities

which further demands better regulation of service delivery and conduct. To meet surging demands and unending opportunities and challenges, professionals need to equip themselves with adequate knowledge and profess high ethical and moral values. Given the dynamism of a profession, it must be all pervasive and not restricted to any particular group or even just to corporate, but must flourish in a true sense with a democratic approach.

A professional must exercise restraint in not falling victim to the lure of the office and act as a guard against any damage to its reputation. The professional to be a person of character and integrity is given a firm assurance through the code of conduct evolved. He must exercise independence while rendering services. Let us analyze various associations of a professional and the obligations.

1. *Towards Clients*: profession is nothing but a distinguished occupation whose ultimate objective is serving business and earning business. Business may mean anything that talks money and work but when it comes to a professional it must be built on some basic values and ethics. The services provided by the Company Secretary are quite closely interlinked with the innermost dealings of any client and thus a special relationship is created with the client. Such strategic position calls for the authentic and quality services.
2. *Toward peers, employees and subordinates*: though in practice or in employment, a Company Secretary has to network with the peers at the work place. Providing services may be the ultimate reason for the existence of a company secretary but his survival is difficult in isolation and therefore relation building with peers, associates, seniors and subordinates, including the apprentice trainees form a part of professional dealing. A professional needs to create and maintain an environment that is encouraging for work and goal achievement.
3. *Towards society at large*: Being a representative of the profession it remains a duty of each professional to reflect a high level of professionalism so that the society can have faith in the profession. A professional must set standards in his behaviour not just for image building in the general population, but to encourage more and more individuals to take up the profession.
4. *Towards government*: Quality enhancement of professional services may not be the direct objective of the government but indirectly it seeks for such improvements to lower the burden of surveillance. A peaceful and conducive economy with backbone of quality professionals is the ideal situation for growth and development. Quality professionals ensure correct implementation of government plans and thus pave way for achieving objectivity in the economy.
5. *Towards regulators*: Regulating bodies stand as a control link to bring newer directions to the profession and are engaged in continuous development of the professionals and the professional services provided by them. It remains their direct responsibility to regulate the direction in which the profession is booming. The onus of keeping a check over quality ordinance lies on such bodies.
6. *Towards self*: Any professional is obliged to observe a high standard of self discipline along with continuous self appraisal in the quality of services provided by him. It is not surprising to point out that those professionals, who are not well defined in their own operations, generally lag behind in the run of success. Thus enhancement of

quality of self is an integral part of any profession, a Company Secretary being no exemption.

"To be idle is a short road to death and to be diligent is a way to life; foolish people are idle, wise people are diligent- Budhha". Indeed! Being a professional, continuous improvisation and diligent attempts towards bringing out quality enhancement in delivering services is the road to survive; otherwise as aptly quoted by Budhha the idle people who are least concern about self can never be called professionals! Further it is not just for the benefit of self but improvisation leads to the betterment of the whole society and the economy.

Roles of various stakeholders in Quality enhancement

"Don't worry if you are not recognized, but strive to be worthy of recognition"- Abrahan Lincon. Fortunately the system and government that rules us has well recognized the worth of the profession of a Company Secretary, but it does not end there; a continuous struggle is a prerequisite for enhancing the status of the profession. Laws are mere set of rules that can only impose compulsion to ensure order and harmony in the system by adhering to rules, regulations, disclosures, etc. On the other hand a need is felt to add to the above with a personal sense of moral values and ethical standards to give social and economic outputs. Though it be any system, on a macro or a micro scale, it tries to bring synchronization in abiding the law and at the same time enhancing the other-than-law aspects that are catalyst to the smooth running of the system. These other-than-law aspects essentially involve improvement efforts that evolve by the trial-and-error rule. Let us see such preventive and developmental efforts put in by various stakeholders and regulators to synergize the spirit of the profession of company secretary:

1. *The ICSI* : The Institute has laid the necessary pathway and provided the essential groundwork for the profession of Company Secretaryship from its inception and over years of struggle. The Institute has been successful to transform the fledgling organization into one of the most reputed Institutes not only in terms of producing quality professionals but also the Institute is looked upon as one of the elite bodies in the corporate governance sector at national as well as international level. The Institute has always come up with very innovative ideas to answer the need of hour with respect to the profession. It has endured to make representation of the profession at various levels and served the purpose of enhancing quality of the profession. While reviewing and improving the quality of services of Company Secretaries the Institute has strived to bring the most feasible solutions to the members and associates of the Institute in the form of publications of quality and affordable publications in the form of books, guidance notes, newsletters, journals etc., organization of various platforms for the professionals to exchange their ideas through conferences, conventions, seminars, discussion forums, etc. This has proved as a guidance for the professionals and helped them to deliver quality services with a profound information and knowledge base and ease of practical application.
2. *The Students* : Students of the professional course are the future of the profession. Practical approach in the learning process based on knowledge gathering shall create the correct base for the quality genre. Quality expectations should be embedded at this level.

3. *The Government* : The Government and regulatory authorities have contributed by reposing greater trust and confidence which has provided various opportunities to practising Company Secretaries. This has identified the independence of the profession and raised level of expectation. The Government remains as a guardian of the profession.
4. *Others* : Other factors which have played major role in professional services include the professionals from the sister concerns like the ICAI-CMA and ICAI and big corporates who have developed their own in-house system of quality appraisal and promotion of standardized work ethics. The advancement of technology and information dissemination system has effectively helped to keep the professionals updated with the times and thus have maintained an environment of competition which is an encouraging factor for quality assurance.

Areas of Concern while setting Quality Bars

Raising the quality of professional services cannot be one time activity but it remains a dynamic activity that evolves by time. While setting up the bar for quality assurance certain circumstances must be kept in view. Following are some of the facts which are essential to be considered while framing any quality control and quality check scheme for professionals:

- Clarity in objectives
- Avoiding conflicts of interest
- Expectation of service receiver
- Precisely defined areas of work and powers
- Accountability mechanism
- Risks and liabilities of professionals
- Protection available to professionals
- Expectation of service receiver

Brief Overview of some Quality Control Measures

The ICSI has been instrumental in bringing out newer and practicable approaches to evaluate and encourage professional quality of the Company Secretaries. In its efforts to attain the most viable control system for regulating the profession the Institute introduced the concepts of Peer Review and Code of Conduct among many other measures for enhancement of the profession. The article does not seek recital of the existing system of peer review and code of conduct, but takes a brief overview of some views their validity.

1. Peer Review

In simple words 'peer review' can be explained as a review of the professional work and system by the peers i.e. working members of the professional fraternity. The concept of peer review is an internal as well as an external measure for appraising the work quality. Its advantage is that the quality is checked and reviewed by the experts and experienced persons of the same profession who are well versed with the background of the profession. Being closely associated with the profession also helps in evaluating the right points and putting forth the correct practicable measures for improvement.

The ICSI introduced the peer review model in late 2011, with the focus on enhancing the quality services of the Practicing Company Secretaries. It includes in its ambit the practicing individuals as well as firms. The main expectation behind peer review is to enhance quality of attestation services provided by the practicing professionals, enhance credibility and provide competitive advantage to the members and to provide forum for knowledge sharing and guidance.

The system of peer review is quite simple and governed by the Institute. As pointed earlier it is an examination of a practicing professional with respect to his work quality by other professionals of the similar rank, and thus there are two major sides of the system viz. the peer reviewers and the unit under review. Any interested practicing individual may apply for being reviewed or for being empanelled as peer reviewer with the Peer Review Board, provided he/she possess the desired qualification as laid down by the Institute. However peer review though may be undertaken voluntarily, it can be asked to be undertaken by the Board, refusal to which leads to misconduct under the Code of Conduct. The procedure consists of onsite review wherein the practices followed by the unit in the office is examined with respect to his existing assignments, trainees, employees and internal record and relation maintenance system; offsite review, consists of study of the self evaluation made by the reviewed unit which may be followed by a personal meeting with the reviewer for suggestions and scope of improvement. The approach of the peer review system is methodological and starts with the planning, then the execution i.e. actual visit and examination and verification of records and that of the work system and finally the reporting of the review by the reviewers in a specific format with suggested areas of improvement along with a Peer Review Certificate, as considered fit, to the reviewed unit.

The major advantages of the peer review concept can be summarized as follows:

- Examination by parallel practising professionals
- Confidentiality
- Reassurance to the stakeholders and society at large
- Reflects consciousness and responsibility of the profession
- Evaluates areas of strengths as well as of improvements

2. *Code of Conduct*

Professionals across the world have been put under the scanner in recent times over incidents of accounting mismanagement or even professional misconduct. In an effort to ensure that company secretaries are not subjected to such public scrutiny the Institute came up with a set of governing code called – Code of Conduct. The Code of Conduct aims at regulation not just the routine work of the professional but to ensure that a high degree of trustworthiness and merit is met. The Institute has been revising and introducing improvements in the Code of Conduct from time to time to provide with the most relative model that matches with the corporate. The Code of Conduct lays down a strict set of observances and cautionary guidelines against wrongdoing. It aims at raising the ethical, moral and professional conduct which further helps in achieving integrity, transparency and accountability in the

working of the professional. The observation of Code of Conduct has certainly distinguished the profession of Company Secretary by raising the professional standard in terms of the image it reflects in the society and what the society expects from the profession. The accomplishment of observance of Code of Conduct can be summarized as follows:

- Reflects the profession as an elite one
- Guides the members throughout
- Keeps check over incidences of misconduct through proper disciplinary system
- Provides an ethical and moral model
- Helps not only at individual level but also at corporate level
- Governs both employee and practicing members
- Keeps clear of unfair, restrictive or monopolistic or other undesirable practices
- Standardized fair dealing towards his peers, the clients, the employers and the public at large

Penalties under Companies Act, 2013

The Companies Act, 2013 has acknowledged the position of Company Secretary as the key managerial personnel. Section 247 to Section 253 define various provisions of punishment for offences under the Act and includes punishment for fraud, false statement, false evidence, etc. these sections cover any person involved including the company secretary. Apart from these sections certain other sections under the Act lay down a greater role of company secretary, in practice as well as in employment and thus with the responsibility comes the stringent penal provisions for eg. 92(2), if a company secretary in practice certifies the Annual Return otherwise than in conformity with the Act and rules made thereunder, he shall be punishable with fine ranging between Rs. 50 thousand to Rs. 5 Lakh. Under Section 204 which deals with obtaining a secretarial audit report by certain listed companies, any company secretary in practice who contravenes the provisions of this section or who is in default shall be punishable with a fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakh. Section 143 of the Act states applicability of the penalty provisions under sub-section 12 to a company secretaries as well which includes a fine which shall not be less than Rs. 1 lakh and which may extend to Rs. 25 Laks.

Concluding Comments

The whole gamut of discussion of the topic is to consider various facets for the improvisation in the quality of services and rendered by the professional and to create and maintain such environment that encourages more objectivity, transparency, adherence to high ethical standards and a continual updation of knowledge base. The professionals must make the maximum utility of the available programmes and review mechanisms introduced by the Institute and other forms from time to time and strive to inhabit the culture of self assessment and self improvement with themselves. In the end for any professional it will be prudent to advice "Try not to become a man of success but a man of values".

GUIDELINES

GUIDELINES FOR PROFESSIONAL DRESS OF COMPANY SECRETARIES

With a view to enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India at its 148th Meeting held on 27th & 28th March, 2004 at New Delhi, has prescribed the following guidelines for professional dress for members while appearing before judicial / quasi-judicial bodies and tribunals:

- (a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
 - (b) The professional dress for female members will be saree or any other dress of a sober colour with a Navy Blue jacket.
 - (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
 - (d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.
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GUIDELINES FOR REQUIREMENT OF MAINTENANCE OF A REGISTER OF ATTESTATION [/CERTIFICATION]¹ SERVICES RENDERED BY PRACTISING COMPANY SECRETARY/FIRM OF PRACTISING COMPANY SECRETARIES

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. For the purpose of maintaining quality of attestation [/certification]¹ services provided by Company Secretaries in Practice, every Practising Company Secretary /Firm of Practising Company Secretary shall maintain a register regarding attestation [/certification]¹ services provided by him/her/it, which shall be open for inspection by such person as may be authorised.
2. The Format of the register to be maintained by a Practising Company Secretary/Firm of Practising Company Secretaries regarding attestation [/certification]¹ services is as under:

<i>Sl. No.</i>	<i>Name and Registration No. of the company to which attestation [/Certification]¹ services* provided</i>	<i>Services rendered</i>	<i>Date of signing of Certificate Return/Audit Report</i>	<i>Signature of the PCS</i>	<i>Signature of the person authorised for verification</i>
1.	2.	3.	4.	5.	6.

* The various attestation [/certification]¹ services mean :

- (i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.2 of November, 2007 [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007.

1. Inserted by the Council in its 178th Meeting held on 29th December, 2007.

- (ii) Issue of Compliance Certificate pursuant to proviso to sub-section (1) of section 383A of the Companies Act, 1956.
 - (iii) Issue of certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.
 - (iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular DGCC/FITTC/Cir-16/2002 dated December 31, 2002.
 - (v) Conduct of Internal Audit of Operations of the Depository Participants.
 - (vi) [Certification under Clause 49 of the Listing Agreement]¹.
3. These Guidelines are effective from 1st January, 2008.

1. Inserted by the Council in its 178th Meeting held on 29th December, 2007.

GUIDELINES FOR ISSUING COMPLIANCE CERTIFICATE AND SIGNING OF ANNUAL RETURN*

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. A member of the Institute in practice who is entitled –
 - (i) to issue compliance certificate pursuant to the proviso to sub-section (1) of Section 383A of the Companies Act, 1956 (1 of 1956); and/or
 - (ii) to sign an Annual Return pursuant to the proviso to sub-section (1) of Section 161 of the Companies Act, 1956 (1 of 1956),

shall be deemed to be guilty of professional misconduct if he –

- issues compliance certificates; and/or
- signs Annual Return

for more than eighty companies in aggregate, in a calendar year.

Provided, however, that in the case of a firm of Company Secretaries, the ceiling of eighty companies aforesaid would apply to each partner therein who is entitled to (i) sign the compliance certificate in terms of the proviso to Sub-section (1) of Section 383A of the Companies Act, 1956; (ii) sign Annual Return in terms of the proviso to sub-section (1) of Section 161 of the Companies Act, 1956.

2. These Guidelines are effective from 1st January, 2008.

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.1 of November, 2007. [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007.

**GUIDELINES FRAMED BY THE COUNCIL RELATING TO APPROVAL
OF PROPRIETORSHIP CONCERN/FIRM'S NAME UNDER
REGULATION 169 OF THE COMPANY SECRETARIES
REGULATIONS, 1982**

1. A trade or firm name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use;
2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manners:
 - (i) For Sole proprietorship concern
 - (a) Name comprising surname, first name and/or middle name of the member
 - (b) Full first name or its initial and surname of the member
 - (c) Initials of the first name and/or middle name with full surname
 - (d) Initials of full name
 - (e) Any combination as permissible above.
 - (ii) For Partnership
 - (a) Full surname of two or more partners
 - (b) Full first name of two or more partners
 - (c) Combination of first names and/or surnames of two or more partners
 - (d) Combination of initials of first names and/or middle names or surnames of the two or more partners
 - (e) Combination of first names, middle names, surnames or initials of two or more partners
 - (f) Initials of names of two or more partners.
3. General
 - (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of offices of firms.
 - (ii) The trade or firm name shall be suffixed by the suffixes " & Co.", " & Company" or " & Associates" or their equivalents. Suffixes like " & Partners", " & Fellows" and other words as may be considered undesirable shall not be allowed by the Council.

- (iii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
 - (iv) Descriptive trade/firm names shall not be allowed.
 - (v) Trade/firm names, which denote publicity, shall not be allowed.
 - (vi) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
 - (vii) In case any change in the status of the firm i.e. from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
 - (viii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members upto a period of three years of the closer of the firm. In event of removal of name of a practicing member, the firm name shall be reserved for a period of three years from the date of approval. After expiry of period of three years, the said trade/firm name may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
 - (ix) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of Firm/trade name in accordance with the same, he may be permitted to adopted or coin a Firm/ trade name out of the names of his/her family members provided that such name was not already registered by some other members. The term "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
 - (x) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170."
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GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN PRACTICE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
(Constituted under the Company Secretaries Act, 1980)

ICSI Guideline No. 4 of December, 2007

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

1. Introduction

- 1.1 The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.
- 1.2 The areas in which the Company Secretaries in Practice can and do render their services and the names, addresses and other particulars of Company Secretaries in Practice are displayed on the website of the Institute.
- 1.3 Members of the Institute are required under the Act to maintain high standards of professional conduct.
- 1.4 Part I of the First schedule of the Company Secretaries Act, 1980, enumerates professional misconduct in relation to a member in practice and *inter-alia* includes if such a member :
 - (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means :
Provided that nothing herein contained shall be construed as preventing or prohibiting—
 - (i) any company secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in Practice; or
 - (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;
 - (7) advertises his professional attainments or services, or uses any designation or

expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council :

Provided that a member in practice may advertise through a write up setting out — the services provided by him or his firm and

— particulars of his firm subject to such guidelines as may be issued by the Council;

- 1.5 The Council of the Institute of Company Secretaries of India at its 178th meeting held on 29th December, 2007 approved the following Guidelines for Advertisement by Company Secretary in Practice.
- 1.6 The Guidelines herein, as issued by the Central Council of the Institute on 29th December, 2007 deal with the manner in which a Company Secretary in Practice can advertise the services provided by him or his firm and the particulars of his firm through a write-up.
- 1.7 Any non compliance or violation of these Guidelines as may be in force from time to time in any manner whatsoever shall be deemed to be an act of professional misconduct and the concerned member shall be liable to disciplinary proceedings under the Act.

2. Key Definitions

For the purposes of these Guidelines,

- 2.1 The "Act" means the Company Secretaries Act, 1980.
- 2.2 "Institute" means the Institute of Company Secretaries of India.
- 2.3 "Advertisement or advertising" means advertisement or advertising in any mode including written, recorded, displayed communication through print or electronic mode or otherwise including in newspapers, journals, internet, online, websites, banners, letters, circulars issued, circulated or published in accordance with these guidelines.
- 2.4 "Company Secretary in Practice" means a member of the Institute who holds a Certificate of Practice issued to him by the Institute.
- 2.5 "Firm of Company Secretaries" means sole proprietorship concern, the sole proprietor of which is a Company Secretary in Practice or a firm, wherein all partners are Company Secretaries and such firm is approved by the Council.
- 2.6 "write up" includes any writing or display setting out services rendered by a Company Secretary in Practice or firm of company secretaries and any writing or display of the particulars of the Company Secretary in Practice or of firm of company secretaries issued, circulated or published in accordance with these guidelines.

The terms not defined herein have the same meaning as assigned to them in the Company Secretaries Act, 1980 and the rules and regulations made thereunder.

3. Prohibition to Advertise

- 3.1 No Company Secretary or a firm of Company Secretaries is permitted to advertise the services as specified in the Act, rules, regulations framed thereunder except through a write-up as defined in Clause 2.6.

4. The Write-up shall be made in compliance with the following:

4.1 Applicability

These guidelines shall apply to advertisements issued by a Company Secretary in Practice not only in India but would also apply to those circulated, communicated, published, issued or allowed to be issued abroad.

4.2 Permitted list of information

- 4.2.1 Name of Company Secretary, Membership number, Certificate of Practice Number and date of issue (for each partner in case of firm)
- 4.2.2 Address and website (if any), telephone, mobile, e-mail, fax number of the member
- 4.2.3 Name of the firm in which the member is a partner
- 4.2.4 Year of Establishment
- 4.2.5 Date and place of Issue of Advertisement
- 4.2.6 Age
- 4.2.7 Gender
- 4.2.8 Additional recognized qualifications
- 4.2.9 Languages spoken by the partner(s)
- 4.2.10 Honours or awards in the field of teaching, research, authorship etc. conferred by nationally accredited institutions
- 4.2.11 Current teaching or research appointments at a university or college of advanced education or professional Institute
- 4.2.12 Name of firm in case of partnership
- 4.2.13 Details of networking through own office or through formal association in other places within & outside India
- 4.2.14 Number, name of employees of the firm and their qualifications and other particulars
- 4.2.15 Business address, telephone numbers (including email, fax and other details) of the firm
- 4.2.16 Office hours and after office hours availability

- 4.2.17 Advertisement about setting up of certified filing centers
- 4.2.18 Frequently Asked Questions (FAQs) in conformity to these guidelines
- 4.2.19 Declaration indicating
 - (a) willingness to accept work, either generally or in particular areas of practice;
 - (b) unwillingness to accept work in particular areas;
 - (c) willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
- 4.2.20 The write-up may display the passport size photograph of the member or partners of the firm of Company Secretaries
- 4.2.21 Fees:
 - (a) Willingness to give written estimates of fees;
 - (b) Methods for determining fees;
 - (c) Mode of Acceptance of Fees.
- 4.2.22 Speed of Service
 - (a) willingness to give written estimates concerning completion of particular work;
 - (b) maximum time within which specific services will be completed.
- 4.2.23 Write-up may include the names of clients and services rendered
- 4.2.24 Particulars of Services
 - (i) The write-up to be circulated, distributed, published, issued by or on behalf of Company Secretary in Practice shall set out the professional services rendered or to be rendered by the advertiser.
 - (ii) The write-up may explain the nature and usefulness of the professional services rendered by the Company Secretary in Practice.
 - (iii) The write-up may include the names of clients and services rendered provided that the Company Secretary in Practice shall maintain record of his having provided such professional services.
- 4.2.25 In case of advertisement through website :
 - (a) A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice.
 - (b) While designing and/or hosting the particulars on the website, certain keywords should be provided so as to enable the search engine/s to locate the website and these keywords will not be visible or displayed on the website. Any one of the following key words may be used for this purpose. Company Secretary/Company Secretary in Whole-time Practice/Company Secretary in Practice/Practising Company Secretary/

Indian Chartered Secretary/Indian Certified Corporate Secretary/Indian CS/Indian Company Secretary/Corporate Advisor/ Company Law Consultant/Secretarial Auditor/ Secretarial Consultant/Indian Certified Public Secretary/CS/ACS/FCS/PCS/CSP.

However, the keywords shall not be materially different from the designations used for a Company Secretary.

- (c) The website may provide a hyperlink to the website of ICSI, its Regional Councils and Chapters and other regulatory bodies of the Government, after obtaining necessary permission from the concerned body.
- (d) A Company Secretary in Practice may provide online advice to their clients or other members/ firms of Company Secretaries who specifically request for the same.
- (e) A Company Secretary or a firm of Company Secretaries may disclose the fact that he/she or their firm has been Peer Reviewed. Any such disclosure shall clearly state the period for which the Peer Review has been conducted and in case the member has more than one office or place of practice, then it shall be mentioned that the Peer Review has been done for which branch office.*

4.2.26 Changes in any of the above particulars.

4.3 Restrictions

The write-up shall :

- (i) not be false or misleading ;
- (ii) not claim superiority over any or all other Company Secretaries in Practice;
- (iii) not be indecent, sensational or otherwise of such nature as to be likely to bring the profession into disrepute;
- (iv) not contain testimonials or endorsements concerning the Company Secretary in Practice.
- (v) not refer the Company Secretaries in practice in terms such as "specialists" or "experts".
- (vi) In case of advertisement through website :
 - (a) A Company Secretary in Practice or a firm of Company Secretaries shall ensure that no information contained in the website is circulated to other websites/e-mail accounts etc. through e-mail or otherwise without the same having been specifically requested for.
 - (b) A Company Secretary in Practice or a firm of Company Secretaries shall not use logo(s) unless otherwise permitted by the Institute.

* Inserted by the Council at its 216th Meeting held at New Delhi on June 21-22, 2013.

4.4 Declaration

The Advertiser shall declare that the contents of the advertisement are true to the best of his knowledge and belief and are in conformity with these Guidelines.

4.5 Disclaimer

The Advertiser shall also include the following Statement of Responsibility and Disclaimer in the Advertisement :

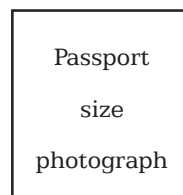
Disclaimer : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

5. Responsibility for the observance of these Guidelines

- 5.1 The responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

6. EFFECTIVE DATE

- 6.1 These guidelines become effective from 1st January, 2008 and consequently the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

ANNEXURE**MODEL ADVERTISEMENT**

- (i) Name of Company Secretary
 - (ii) Membership number
 - (iii) Certificate of Practice number and date of issue
 - (iv) Website (if any)
 - (v) Name of the sole proprietary concern under which the member is practicing/Name of the partnership in which the member is a partner
 - (vi) Age
 - (vii) Gender
 - (viii) Languages spoken
 - (ix) Number, name of employees and their qualifications and other particulars
 - (x) Business address telephone numbers (including email, fax and other details)
 - (xi) Office hours and after office hours availability
 - (xii) Additional recognized qualifications
 - (xiii) Current teaching or research appointments at a university or college of advanced education or professional Institute
 - (xiv) Honours or awards conferred
 - (xv) Frequently Asked Questions (FAQs)
 - (xvi) Declaration indicating:
 - willingness to accept work, either generally or in particular areas of practice;
 - unwillingness to accept work in particular areas;
 - willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
 - (xvii) Fees :
 - Mode of Acceptance of Fees
 - Methods for determining fees
 - Willingness to give written estimates of fees
 - (xviii) Speed of Service :
 - willingness to give written estimates concerning completion of particular work;
 - maximum time within which specific services will be completed.
 - (xix) Particulars of Services:
 - (xx) **Declaration** : I declare that the contents of the advertisement are true to the best of my knowledge and belief and are in conformity with these Guidelines.
 - (xxi) **Disclaimer** : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.
 - (xxii) Date and Place of Issue of Advertisement :
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GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTISING COMPANY SECRETARIES*

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain size of companies. Our members in practice are also being recognised for issuing certificates under various laws.

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, decided to introduce Peer Review for Practising Company Secretaries to periodically review the PCS firms and evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

The Council of the Institute of Company Secretaries of India has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that "the duties of carrying out the provisions of this Act shall be vested in the Council" and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

- 2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the

* ICSI Guideline No. 1 of 2011.

Approved by the Council in its 202nd Meeting held on 25-26 August, 2011.

Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

- 2.2 Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable Technical Standards.
- 2.3 These guidelines provide a framework of the peer review process and the requirements of what is expected of a member during the conduct of a peer review.

3. Key Definitions - For the purpose of these guidelines.

- 3.1 *Attestation Services* - Means services involving the secretarial audit issuing of various certificates, but does not include:
- Management consulting Engagement;
 - Representing a client before the Authorities;
 - Testifying as expert witness; and
 - Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client;
 - The phrase 'Attestation Services' is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.
- 3.2 *Member* - Means a member of the Institute of Company Secretaries of India.
- 3.3 *Practice Unit* - Means members in practice, whether practicing individually or a firm of Company Secretaries.
- 3.4 *Peer Review* - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/mandated by the Technical Standards and whether these were effective or not during the period under review.
- 3.5 *Peer Review Board* - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression "Peer Review Board" is hereinafter referred to as "Board".
- 3.6 *Regulator* - Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.

3.7 *Reviewer* - Means any member engaged to carry out peer review of practice unit from the panel of reviewers.

3.8 *Technical Standards* - Mean and include:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

3.9 *Qualified Assistant* - means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of Clause 15.1 of the Guidelines.

3.10 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder.

4. Authority of the Guidelines on Peer Review

4.1 The guidelines on Peer Review shall apply to all or any of the following cases :

- (a) Whenever a peer review is mandated
- (b) Whenever a peer review is requested
- (c) Whenever peer review is conducted.

4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

5. Powers of the Council

- To constitute the Board and to fill in the vacancies arising in the Board from time to time.

- To decide upon, from time to time, the Technical Standards the implementation of which fall within the purview of the peer review process.
- To refer such matters to the Board as the Council may deem fit.

6. Peer Review Board

6.1 Establishment and Appointment

- (1) The Board shall be established by the Council.
- (2) The Board shall consist of a maximum of seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
- (3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to, former public officials, regulatory authorities etc.
- (4) The Council shall appoint the Chairman and the Vice-Chairman from amongst the Members of the Council.
- (5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
- (6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
- (7) Any vacancy(ies) on the Board shall be filled in by the Council.
- (8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.

6.2 Meetings

- (1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairman or, in his absence, the Vice-Chairman,
- (2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairman or, in his absence, the Vice-Chairman.
- (3) The Board shall meet not less than four times in a year.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of the meeting to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services of a practice unit.

- (1) Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review. Provided that the records of attestation services relating to years prior to the financial year beginning 1.04.2004 shall not be subjected to review.

(2) The Review shall focus on:

- (i) Compliance with Technical Standards.
- (ii) Quality of Reporting.
- (iii) Office systems and procedures with regard to compliance of attestation services systems and procedures.
- (iv) Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

8. Powers of the Board

8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.

8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:

- (1) To call for information from practice units in such form as it deem fit.
- (2) To maintain a panel of Reviewers.
- (3) To define the terms of appointment of the reviewers.
- (4) To send a Panel of at least three reviewers (from the Board's own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it;

Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.

- (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
- (6) To arrange for such training programs for reviewers as may be deemed appropriate;
- (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
- (8) On considering the Report of a reviewer, to do any or all of the following:
 - (a) To issue recommendations to the practice unit;
 - (b) To order a further peer review to be carried out;
- (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.
- (10) To guide the members on best practices on peer review.

- 8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:
- (i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.
 - (ii) Its own suggestions for further improvement in quality of attestation services.
- 8.4 The Board may perform any other thing or act as may be incidental to, or, which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of sub-committees and regional benches of the Board for specific tasks.

9. Compliance with Peer Review Guidelines

- 9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as notified to the members.

10. Qualifications of the Reviewer

- 10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-
- (a) be a member;
 - (b) possess at least ten years experience; and
 - (c) be currently in the practice as Company Secretary in Practice.
- 10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

11. Members/ Firms Subject to Review

- 11.1 Peer review will be implemented on the basis of random selections from the practice units or at the request of practice unit.
- 11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.
- 11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.
- 11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.

12. Obligations of the Practice Unit

12.1 Provisions of access to any record or document to a reviewer:

- (1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:
 - (i) Produce to the reviewer or afford him access to, any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/ being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require;
 - (ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and
 - (iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.
- (2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.
- (3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.
- (4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. Periodicity of Peer Review

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. Cost of Peer Review

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer

has to conduct second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered separately.

15. Training and Development

- 15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall/be provided, from time to time, to the Reviewer(s) and other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. Review Framework

- 16.1 Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

- 16.2 The methodological approach involved in peer review can be defined in terms of three stages viz., planning, execution and reporting, which are summarized below:

(i) Planning

- Notification - A practice unit will be notified in writing about an impending peer review and will be sent a Questionnaire for completion together with a panel of three suggested names of reviewers. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by the Board.
- Return of completed Questionnaire - The practice unit shall have to complete and return the Questionnaire to the reviewer within one month of receipt. The information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services clients, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit's client portfolio, for review.

(ii) Sample of Attestation Services Engagements

- (a) From the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be notified of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.
- (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

(iii) *Confirmation of visit*

In consultation with the practice unit date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of notification.

(i) Peer review visits will be conducted at the practice unit's head office or other officially noted/recorded place of office. The complete on-site review of a practice unit may take at least a full day depending upon the size of the practice unit. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond three working days.

(ii) *Initial meeting*

An initial meeting will be held between the reviewer and a partner/ sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) *Compliance Review-General Controls*

(a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:

- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration

Practice units are expected to address each of the five key control areas.

(b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.

(c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(iv) *Selection of Attestation Services Engagements to be Reviewed*

- (a) The number of attestation services engagements to be reviewed depends upon:
- the number of practicing members involved in attestation services engagements in the practice unit;
 - the degree of reliance placed, if any, on general quality controls; and
 - the total number of attestation services engagements undertaken by the practice units for the period under review.
- (b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.

(v) *Review of records*

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

(a) Compliance approach-Attestation services Engagements

- The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
- Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.

(b) Substantive approach-Attestation services Engagements

A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the attestation working papers in order to establish whether the attestation work has been carried out as per norms of Technical Standards.

16.3 Reporting

(i) *Preliminary Report of Reviewer*

- At the end of an on-site review, the reviewer shall, before making his report to

the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.

- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21 days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(ii) *Interim Report of Reviewer*

- (a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board. In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.
- (b) In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- (c) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:
- make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
 - if it is of the opinion that
 - (1) in case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
 - (2) in case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;
- Then:
- (3) issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and
 - (4) specify in the instruction, the matters as regards which the review is to be carried out;

(d) The Board will make recommendations to the practice unit where:

based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(e) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

(f) In case the reviewer is not satisfied even at, the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) *Final Report of Reviewer*

(a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

(b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

(iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17. Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within two months in such manner as may be prescribed by the Board in these regards.

- 17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-
- shall decide the dispute within six months and communicate such decision to each of the parties to the dispute;
 - may issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them;
 - shall convey its decision in these regards to the appellant within 15 days from the date of the decision, so as to provide the appellant sufficient time to respond.
- 17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within two months in such manner as may be prescribed.

18. Immunity

- 18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review.
- 18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.
- 18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

- 19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.
- 19.2 Those persons subject to the secrecy provision:
- (1) Shall at all times after his/ their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.
 - (2) Shall not at any time communicate any such matter to any other person.
 - (3) Shall not at any time permit any other person to have any access to any record, document or any other material if any form which is in his/their possession or under his/their control by virtue of his/their being or having been so appointed or

his/their having performed or having assisted any other person in the performance of such a function.

- 19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.
- 19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20. Procedural Departures

- 20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.

*Annexure 'A'***Statement of Confidentiality**

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To,

The Chairman
Peer Review Board
The Institute of Company Secretaries of India

Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whensoever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit's attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.

I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature :

Name :

Designation :

Date :

Place :

Taken on record on (date)

By

Signature :

Name :

Designation :

RESOLUTION PASSED BY THE COUNCIL UNDER REGULATION 168 OF THE COMPANY SECRETARIES REGULATIONS, 1982

The Council of the Institute at its 156th Meeting held on March 19-20, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 has accorded general permission to its members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

It must be clarified that under section 26 of the Company Secretaries Act, 1980 no company can practise as Company Secretary.

The Council has further allowed members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The Council in its resolution adopted at the said meeting defined the term non-executive director as to mean an ordinary director who is required to attend the meetings of the Board or its committees only, not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Practising Company Secretaries can now take up teaching assignment with any organization apart from the coaching organization of the Institute. Further the condition has been relaxed for teaching hours from average three hours to four hours in a day. General permission has been given to Practising Company Secretaries to act as Recovery Consultants in the Banking Sector. With the specific permission of the Council a member in practice can have interest in agricultural and allied activities carried on with the help, if required, of hired labour and editorship of journals other than professional journals.

Text of the Resolution Passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982

“Resolved that in supercession of all earlier resolutions passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982 allowing members in practice to engage in any other business or occupation, the Council hereby permits the members in practice to engage in the following other business or occupation under Regulation 168 of the Company Secretaries Regulations, 1982:

Permission granted generally

- (i) Private tutorship.
- (ii) Authorship of books and articles.
- (iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (iv) Holding of public elective offices such as M.P., M.L.A., M.L.C.
- (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (vii) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- (viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Editorship of professional journals.
- (x) Acting as ISO lead auditor.
- (xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (xii) Acting as Recovery Consultant in the Banking Sector.
- (xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
- (xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Permission to be granted specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- (i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- (ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- (iii) Editorship of journals other than professional journals.

For the purpose of the above resolution:

(i) A non-executive director means an ordinary director who fulfils the following conditions:

(a) he is required to attend the meetings of the Board or its committees only.

(b) he is not paid any remuneration except the sitting fees for attending the Board/ Committee meetings and any remuneration to which he is entitled as ordinary director.

(c) he is devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

(ii) a member shall be deemed to have a "substantial interest" in a concern :

(a) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of voting power at any time during the previous year, are owned beneficially by such member.

(b) in the case of any other concern, if such member is entitled at any time during the previous year, to not less than 25% of the profits of such concern.

Further Resolved that in cases of permission to be granted specifically the Council will, however, be always entitled to refuse permission in individual cases."

RESOLUTION UNDER REGULATION 168 OF THE COMPANY SECRETARIES REGULATIONS, 1982 ALLOWING MEMBERS IN PRACTICE TO CARRY OUT NON-ATTESTATION SERVICES THROUGH THE NEW BUSINESS STRUCTURE OF LIMITED LIABILITY PARTNERSHIP.

The Council had at the 156th meeting held on 19th – 20th March, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 accorded general permission to members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

The Council had also allowed members in practice to become non-executive directors/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The term non-executive director was defined to mean an ordinary director who is required to attend the meetings of the board or its committees only, not paid any remuneration except the sitting fees for attending the board/committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the board or committee thereof and not for any other purpose.

In line with the aforesaid decisions, the Council has passed the following resolution under regulation 168 allowing Company Secretaries in Practice to become partners of LLP, the objects of which include areas which fall within the scope of non-attestation services of the profession of Company Secretaries or in any other business or occupation.

“Resolved that under regulation 168 of the Company Secretaries Regulations, 1982, the Council gives general permission to the members in practice to :

- (a) become passive partner of a limited liability partnership (LLP) the objects of which include carrying out non-attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;
- (b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

- (i) “Attestation Services” include services which require signing any certificate, document, report or any other statements relating thereto on behalf of a Company Secretary in Practice or a firm of such Company Secretaries in his or its professional capacity or which require signing anything that is required to be signed by a Company Secretary in practice.
- (ii) “Non-attestation Services” means services which are not attestation services.
- (iii) A “passive partner” means a partner of LLP who fulfils the following conditions:
 - (a) he must not be a designated partner;

- (b) subject to the LLP agreement, he may make agreed contribution to the capital of LLP and receive share in the profits of the LLP; and
- (c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

- (1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).
 - (2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.
 - (3) Approving or disapproving an amendment to the partnership agreement.
 - (4) Reviewing and approving the accounts of the LLP;
 - (5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –
 - (a) the dissolution and winding up of the LLP;
 - (b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;
 - (c) a change in the nature of the activities of the LLP;
 - (d) the admission or removal of a partner of the LLP;
 - (e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;
 - (f) any amendment to the LLP agreement;
 - (iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.”
-

**SERVICES THAT CAN BE RENDERED AS PER THE RESOLUTION
PASSED BY THE COUNCIL UNDER CLAUSE (f) OF
SUB-SECTION 2 OF SECTION 2 OF
THE COMPANY SECRETARIES ACT, 1980***

Section 2(2) of the Company Secretaries Act, 1980 provides that a member of the Institute shall be "deemed to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, he, in consideration of remuneration received or to be received,-

- (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by –
 - (i) an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
 - (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant,
 - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development & Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye laws made by a recognized stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), or under any other law for the time being in force,
 - (vii) Issuing certificates on behalf of, or for the purposes of, a company; or
- (d) holds himself out to the public as a Company Secretary in practice; or

* Published in the May 2006 issue of Chartered Secretary at pp. 820-821.

- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

and the words "to be in practice" with their grammatical variations and cognate expressions, shall be construed accordingly.

AT ITS MEETING HELD ON MARCH 24-25, 2006, THE COUNCIL PASSED THE FOLLOWING RESOLUTION PURSUANT TO THE POWERS GRANTED UNDER CLAUSE (f) OF SUB-SECTION (2) OF SECTION 2 OF THE COMPANY SECRETARIES ACT, 1980.

"Resolved that pursuant to the powers granted under clause (f) of sub-section (2) of section 2 of the Company Secretaries Act, 1980, the Council of the Institute hereby specifies the following categories of Management, Advisory and Other Services, which may be rendered by a Company Secretary in Practice. Any of such services may be rendered by practising members to corporations, bodies corporate, societies, trusts, associations, enterprises, undertakings, clubs, non-trading corporations, industrial co-operatives, co-operative societies, non-government organizations, local self government bodies, estates, firms, small, medium and large industrial undertakings, entrepreneurs, investors, and other persons in carrying out their activities and operations :

- Providing all services in MCA-21 Systems including those relating to Front Office, Facilitation Centre, Filing Centre, Local Registration Authority of Digital Signature Certificate Providers.
- Conceptualisation, identification, crystallization of business enterprise, industrial-project or business activity.
- Carrying out feasibility studies, preparation of project reports, proposals for business operations including setting up a new unit or enterprise, as well as expansion, or diversification and also representations, follow-up with financial institutions, Government and other authorities for procurement of the requisite approval, clearance or permission in respect of such proposals.
- Guidance and support in relation to collaborations, joint-ventures, business agreements, arrangements, restructuring, contracts, tie-ups in India and abroad.
- Business planning, policy and management in all fields including manpower, recruitment, employment, industrial relations, human resource development, management information systems, marketing, publicity and public relations.
- Planning, supervision and carrying out of internal audit, systems audit, labour audit, management audit, operational audit, quality audit, social audit, environment audit and energy audit.
- Risk management of properties, profits, resources, know-how and operations.
- Management, planning, representation and protection of trade marks, patents and intellectual property service.
- Procurement and management of materials and inventories.

- Assessment, procurement and management of financial requirements and resources including project finance, working capital finance, forex management, loan syndication, portfolio management.
 - Evaluation and management of deployment of funds in investments, assets and securities, loans, collaborations, tie-ups, joint - ventures.
 - Formulating and implementing all activities relating to capital structure including creation, issue, offer, allotment, placement, procurement, listing of shares, debentures, bonds, deposits, coupons, ADR, GDR, IDR and all types of financial instruments.
 - Recovery-consultant in banking and financial sector.
 - Insurance advisor and other related activities.
 - Acting as an arbitrator, mediator or conciliator for settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.
 - Acting as advisor to investors, depositors, mutual fund unit holders and stakeholders.
 - Acting as advisor in relation to intermediary in securities and commodities markets.
 - Due diligence and legal services.
 - Corporate governance services.
 - Competition law and practice.
 - Business process outsourcing, knowledge process outsourcing and legal outsourcing.
 - Valuer, surveyor and loss assessor.
 - Investigator, private liquidator, insolvency practitioner; operating agency.”
-

FAQs ON GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN PRACTICE*

- 1. Are the Advertisement Guidelines complementary to the Website Guidelines issued by the Council earlier ?**

No, the Guidelines for Advertisement by Company Secretary in Practice are a separate set of guidelines. Clause 6.1 of these guidelines clearly states that with the coming into effect of these guidelines the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

- 2. In case of contradiction between the Advertisement Guidelines and the Website Guidelines which one would prevail ?**

Since the Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed w.e.f. 1st January, 2008 there arises no question of their applicability. The Guidelines for Advertisement by Company Secretary in Practice shall have an overriding effect on the issues related to websites.

- 3. Do I need to get my advertisements approved from ICSI before issue ?**

No. Clause 5.1 of these Guidelines provides that the responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

Hence, there is no need to get any advertisements approved from ICSI before issue.

- 4. I am in the process of designing a website. Is there any mechanism in ICSI to check the website before it is hosted in the server to ensure compliance with the Guidelines for Advertisement ?**

Under the Guidelines for Advertisement by Company Secretary in Practice there is no need to check the website before it is hosted on the server by a PCS.

- 5. What is the status on the use of logo and whether it could be used in the website?**

In terms of Clause 4.3(vi)(b) of the guidelines a Company Secretary in Practice or a firm of Company Secretaries shall not use his /its logo(s).

* Published in the May 2008 issue of Chartered Secretary at pp. 699-700.

6. Do I need to get the domain name for my website approved from ICSI before registering the same ?

No. The Guidelines do not provide for prior approval of domain name for website by the ICSI.

7. Are there any specific guidelines for domain names ?

No. There are no specific guidelines for domain names. You may choose any domain name as long as it is not undesirable or unethical or immoral or opposed to public policy.

8. Is there any list of undesirable domain names ?

No. There is no list of undesirable domain names.

9. In which media can I issue advertisements ?

Advertisements may be issued in the print as well as the electronic media.

10. Do I need to follow the pattern of the model advertisement only ?

No. The model advertisement has been provided for guidance only.

11. Is all the information provided by the guidelines compulsory to be included in the advertisement ?

No. The guidelines provide only for the permitted list of information that may be included in the advertisement. You may omit any of the information from the advertisement which you feel not relevant from your point of view.

12. If my PCS firm publishes some newsletter does it constitute surrogate advertising under these guidelines ?

Printing and publication of newsletter by a firm of Practicing Company Secretaries does not amount to issue of an advertisement under these Guidelines.

13. Who is the relevant authority for reporting cases of violation of these guidelines ?

Matters relating to violation of these guidelines may be construed as acts of misconduct and shall be dealt by the disciplinary committee.

14. How will the cases of violation of these guidelines be dealt with ?

In terms of Clause 1 of Part II of Schedule II of the Company Secretaries Act, 1980 a member shall be deemed to be guilty of professional misconduct, if he contravened any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council and any such act or omission shall be dealt in accordance with the provisions of Chapter V of the Company Secretaries Act, 1980 which deals with Misconduct.

15. Is there any limit on the number of advertisements that can be issued by a PCS in a specified period ?

No. There is no limit on the number of advertisements that can be issued by a PCS in any relevant period.

16. What is the maximum frequency at which advertisements can be issued ?

The Guidelines do not provide for any frequency at which advertisements can be issued.

17. Do I need to intimate the ICSI of any updation or changes in my website ?

No. The Guidelines do not provide for any intimation to the ICSI in regard to any updation or changes in your website.

18. Do I need to intimate the ICSI in case of any corrigendum in any advertisement issued by me?

No. The Guidelines do not provide for any intimation to the ICSI in regard to any corrigendum in any advertisement issued by you.

19. Can I revoke an advertisement issued by me? If yes, what is the process in this regard ?

Yes you may revoke any advertisement issued by you. There is no specific procedure to be followed in this regard but you may issue another advertisement in the same media in which the previous advertisement was published intimating revocation of the earlier advertisement in part or in full.

20. Is there any specific guidance note issued by the ICSI in regard to these guidelines?

No. The ICSI has not issued any specific guidance note in regard to these guidelines.

21. In case of persons having multiple professional qualifications can a single advertisement be issued in regard to services offered under each qualification ?

No. A PCS can only practice the profession of Company Secretaries and not as a member of any other professional body. There is no question of advertising services which cannot be rendered by a PCS.

22. Can I advertise about services which are not specifically rendered by PCS ?

No. The outer boundary in respect of advertisement is limited to advertising through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council. Hence, services which can be provided as a PCS can only be advertised under these Guidelines.

23. Can I issue advertisements to overseas clients also ?

Yes. You may issue advertisements to your clients anywhere in the world.

FAQs ON PEER REVIEW*

1. What is Peer Review?

Peer Review is a process used for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. When will Peer Review start?

The Peer Review Board proposes to start the process of Peer Review from December 2011.

3. To whom all would Peer Review be applicable?

Peer Review is applicable to all Practicing Company Secretaries.

4. What is the meaning of Practice Unit?

Practice Unit means members in practice, whether practicing individually or a firm of Company Secretaries.

5. What are the practice areas covered under the scope of Peer Review?

To begin with, the Review would only be in respect of the following services:

- a. Signing of Annual Return pursuant to Section 161(1) of the Companies Act, 1956
- b. Issue of Compliance Certificate pursuant to Section 383A(1) of the Companies Act, 1956
- c. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges
- d. Certificate of reconciliation of Capital as per SEBI Circular dated Dec. 31, 2002
- e. Conduct of Internal Audit of Operations of Depository Participants
- f. Certification under Clause 49 of Listing Agreement

6. Whether the concept of Peer Review exists for CWA's and CA's?

The Institute of Chartered Accountants of India has a mechanism of Peer Review of their Members in Practice.

* ICSI Guideline No. 1 of 2011 - Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries.

7. What are the advantages of the Peer Review to the Practice Unit (PU) ?

It is expected to

- (a) enhance the quality of attestation services.
- (b) enhance credibility and provide competitive advantage.
- (c) provide a forum for Guidance and knowledge sharing.

8. How much will it cost me to get Peer Reviewed?

You shall pay to the Peer Reviewer the fee of Rs. 10,000/- to the Peer Reviewer (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

9. What is the frequency of Peer Review?

Initially, each Practice Unit would be required to be peer reviewed at least once in every five years.

10. How will I be selected for Peer Review?

You may apply to be peer reviewed or it may be done through random selection by the Peer Review Board.

11. If I have been Peer Reviewed can I disclose this on my website?

Only the fact of being Peer Reviewed can be stated. However, neither the Certificate nor the Peer Review Report may be given on the website.

12. Can I become a Peer Reviewer?

Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-

- (a) possesses at least 10 years of post membership experience
- (b) is currently in practice as a Company Secretary.

13. Will the information disclosed by me be kept confidential by the reviewer?

The Peer Reviewer is bound by a Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by you he may be subject to disciplinary action by the Institute.

14. If I am Peer Reviewed and it is found that I have not maintained adequate records will I be liable for any disciplinary action?

No.

15. Is the Peer Reviewer exposed to any liability?

The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

16. After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?

No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review. (Refer Cl. 18 of the Guidelines for details)

17. What do I do if I am not satisfied with the Report of the Peer Reviewer?

You may refer your case to the Peer Review Board.

18. If I am selected for Peer Review is it mandatory for me to offer myself for Peer Review?

Yes

19. Do I need to disclose the records of my clients to the reviewers?

No

20. (a) Can any of my clients ask the Institute to get me peer reviewed?

Yes

(b) Who will pay the cost of such Peer Review?

The client shall pay the cost of such Peer Review.

21. Will ICSI be issuing any Certificate after Peer review?

Yes.

22. Will ICSI put up the names of the PU which have undergone PR on ICSI website?

Yes

23. What are my obligations as a Practice Unit?

Refer Cl. 12 of the Guidelines

24. Can I volunteer to get Peer Reviewed?

Yes

25. I have been Peer Reviewed once, will I be Peer Reviewed again?

Yes, if the Peer Review Board so decides.

26. Can I choose my Peer Reviewer?

The Peer Review Board would send you a panel of atleast three reviewers and you may choose any one name out of the panel sent to you.

27. Can I reject all the reviewers mentioned in the panel and ask for another reviewer from the same State or region?

No.

28. If I want a Peer Reviewer from out side my State or region what should I do?

You may make a special request to the Peer Review Board to provide names of such Peer Reviewers. However, in such a case you would have to bear the extra cost that would be incurred for TA / DA etc.

29. If I am not satisfied with the order of the Peer Review Board can I appeal to the Council?

Yes. You may appeal against the Order of the Peer Review Board to the Central Council of the Institute. (Refer cl. 17.3 of the Guidelines)

30. Can I refuse to get myself Peer Reviewed?

No. Any refusal to get Peer Reviewed shall be a misconduct under the Code of Conduct.

**PROVISIONS RELATING TO MISCONDUCT CONTAINED IN THE
COMPANY SECRETARIES ACT, 1980 AS AMENDED BY THE
COMPANY SECRETARIES (AMENDMENT) ACT, 2006**

**CHAPTER V
MISCONDUCT**

****[21. Disciplinary Directorate**

- (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
- (2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
- (3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.
- (4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.
- (5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.]

¹[21A. Board of Discipline

- (1) The Council shall constitute a Board of Discipline consisting of –
 - (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;
 - (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section (16);

** For foot notes, see at the end of the Text.

1. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

- (c) the Director (Discipline) shall function as the Secretary of the Board.
- (2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.
- (3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
- (a) reprimand the member;
 - (b) remove the name of the member from the Register up to a period of three months;
 - (c) impose such fine as it may think fit which may extend to rupees one lakh.
- (4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.]

²[21B. **Disciplinary Committee**

- (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy :
- Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.
- (2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.
- (3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely : –
- (a) Reprimand the member;
 - (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
 - (c) Impose such fine as it may think fit, which may extend to rupees five lakhs.

2. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified].

³[21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely : –

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation – For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.]

⁴[21D. Transitional provisions

All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006.]

⁵[22. Professional or other misconduct defined

For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.]

⁶[22A. Constitution of Appellate Authority

The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of

3. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

4. Inserted, *ibid*.

5. Substituted, *ibid*.

Prior to its substitution, section 22 read as under:

22. Professional misconduct defined

For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

6. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely : –

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;]

⁷[22B. Term of office of members of Authority

A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier.

⁸[22C. Procedure, etc. of Authority

The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.]

⁹[22D. Officers and other staff of Authority

- (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.
- (2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.]

¹⁰[22E. Appeal to Authority

- (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

- (2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section

7. Inserted, *ibid.*

8. Inserted, *ibid.*

9. Inserted, *ibid.*

10. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

21A and sub-section (3) of section 21B and may –

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.]

******[THE FIRST SCHEDULE**

[See sections 21 (3), 21A(3) and 22]

PART I

Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he –

- (1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.

Explanation. – In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

- (4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional

body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

- (5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business :

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means :

Provided that nothing herein contained shall be construed as preventing or prohibiting—

- (i) any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice; or
- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

- (7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

- (8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

- (11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) not being a Fellow of the Institute, acts as a Fellow of the Institute;
- (2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;
- (3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if –

- (1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
- (2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.]

*******[THE SECOND SCHEDULE**

[See sections 21(3), 21(B)(3) and 22]

PART I

Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;

- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.]

FOOTNOTES

** Substituted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, section 21 read as under :

21. Procedure in inquiries relating to misconduct of members of the Institute

- (1) Where on receipt of information by, or a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.
- (2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.
- (3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.
- (4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely : –
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit :

Provided that where the Council is of opinion that the case is one in which the

name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

- (5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon.
- (6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:—
- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;
 - (b) reprimand the member;
 - (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
 - (d) refer the case to the Council for further inquiry and report.
- (7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I. – In this section, “High Court” means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II. – For the purposes of this section, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

- (8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested

in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavits.

*** Omitted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its omission, section 30 read as under :

CHAPTER VIII

APPEALS

30. Appeal

- (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

- (2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may –
- (a) confirm, modify or set aside the order;
 - (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;
 - (c) remit case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;
 - (d) pass such other order as the High Court thinks fit :

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.

Explanation. – In this section “High Court” and “member of the Institute” have the same meanings as in section 21.

**** Substituted for “The First Schedule” vide the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, "The First Schedule" read as under:

THE FIRST SCHEDULE

[See section 21(4) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he –

- (1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognized profession as may be prescribed in this behalf, and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation. – In this item, "partner" includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

- (3) accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognized professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;
- (4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognized profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;
- (5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;
- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;
- (7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognized by the Central Government or may be recognized by the Council;

- (8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act;

- (11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;
- (12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person –

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;
- (3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he –

- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (2) not being a Fellow styles himself as a Fellow;
- (3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;

(4) defalcates or embezzles moneys received in his professional capacity.

***** Substituted for "The Second Schedule" vide the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, "The Second Schedule" read as under:

THE SECOND SCHEDULE

[See section 21(5) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice requiring action by a High Court

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he –

- (1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;
- (5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;
- (6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

**Professional misconduct in relation to members of the Institute generally
requiring action by a High Court**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) contravenes any of the provisions of this Act or the regulations made thereunder;
 - (2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.
-

QUESTIONNAIRE FOR CREATION OF DATABASE OF COMPANY SECRETARIES IN PRACTICE

1.	NAME (Mr./Ms.)	
	Date of Birth	
	ACS/FCS No.	
	C.P. No.	
	Date of Issue of CP	
	2. QUALIFICATIONS	
2.	(i) Professional Address City State Pin Code Telephone No. Mobile No. Fax No. Website E-mail	
	(ii) Residential Address City State Pin Code Telephone No.	
	(iii) Address(es) of Branch Office(s), if any Address City State Pin Code Telephone No. Mobile No. Fax No. Website E-mail Member-in-charge Name Membership No.	
3.	Whether practising as	
	(i) Sole Proprietor or	Yes/No
	(ii) Partner in a Firm of Company Secretaries or	Yes/No
	(iii) Sole Proprietor as well as Partner in one or more Firms of Company Secretaries	Yes/No

4.	If you are a partner in a firm, please give following further information :			
	Name(s) of Firm(s)			
5.	Particulars of Partner(s) (Please specify separately for each partner)			
	Particulars	Partners		
		I	II	III
	(a) Name (Mr./Ms)			
	(b) Date of Birth			
	(c) ACS/FCS No.			
	(d) CP No.			
	(e) Date of issue of CP			
	(f) Qualifications			
6.	Post Qualification Experience (No. of years)			
	(i) In service			
	(ii) In practice			
	(iii) Any other			
7.	Please tick the industries in which you have BEEN ASSOCIATED/HAVE worked from the list given below:			
	<input type="checkbox"/> Banking	<input type="checkbox"/> Cement	<input type="checkbox"/> Financial Services	
	<input type="checkbox"/> Engineering	<input type="checkbox"/> Entertainment	<input type="checkbox"/> FMCG	
	<input type="checkbox"/> Food Processing	<input type="checkbox"/> Housing	<input type="checkbox"/> Insurance	
	<input type="checkbox"/> Textile	<input type="checkbox"/> Steel	<input type="checkbox"/> Pharmaceuticals	
	<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Petroleum	<input type="checkbox"/> Power	
	<input type="checkbox"/> IT	<input type="checkbox"/> Petrochemicals	<input type="checkbox"/> Any other, Please specify.....	
8.	Whether you have been/are a director on the Board of any Company, if Yes, give details :			
	Name of Company	Year From To		
9.	Whether you are a member of any Committee of Trade Association/Chambers of Commerce/Other bodies, etc., if yes, give details			
	Name of Organisation	Year From To		
10.	If you are a member of any other Professional Body, if yes, give details			
	Name of Professional body	Membership Number		
11.	Areas of Practice (mention your area,]..... [an indicative list of areas is placed at the annexure given at the end).			
12.	Type of services rendered so far-Consultative/ retainership basis/assignment basis/certificate/ search reports/any other (specify)			

13.	Infrastructure details	
(a)	Office Carpet area (in sq. feet) Own/Rented	
(b)	Number of staff	
(c)	Particulars of staff (Please specify separately for each staff)	
(i)	Designation	
(ii)	Qualification	
(iii)	Whether whole time or part time	
(d)	No. of trainees	
(e)	No. of seats	
(i)	Current no. of apprentices employed	
(ii)	Total No. of Trainees who have completed training	
	Tick infrastructure facilities in your office	
<input type="checkbox"/>	Computer	<input type="checkbox"/> Internet
<input type="checkbox"/>	Laptop	<input type="checkbox"/> Printer
<input type="checkbox"/>	JRE (Java Runtime Environment)	<input type="checkbox"/> Acrobat Reader
<input type="checkbox"/>	Scanner	
<input type="checkbox"/>	Website	
<input type="checkbox"/>	Any other infrastructure not covered above	
14.	Whether obtained Digital Signature Certificate - Yes/No	
15.	(a) Details of Publications/Articles authored/papers presented and Professional Development Programmes addressed.	
	(b) Any other distinction	
16.	Lecture(s) delivered at various fora/teaching assignments undertaken in Universities/Management Institutes/ oral tuition classes	

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Declaration: I certify that data/information contained in this form is true and correct to the best of my knowledge and belief. I understand that by signing this form I agree to be bound by the terms and conditions as have been or may be laid down by the Institute of Company Secretaries in regard to preparation and maintenance of database of Company Secretaries in practice.

Date :

Signature.....

Place :

Name.....

CP No.

ANNEXURE**INDICATIVE LIST OF AREAS OF PRACTICE**

o Corporate Laws	o Financial Services and Consultancy
o Securities / Commodities Exchange Market	o Finance including Project/ Working Capital / Loan Syndication
o Corporate Restructuring	o Excise/CUSTOMS
o Sales Tax/VAT	o Income Tax
o Service Tax	o Foreign Exchange Management
o Foreign Collaborations & Joint Ventures	o Intellectual Property Rights
o Depositories	o Monopolies/Restrictive Trade Practices/ Competition Law
o Consumer Protection Laws	o Arbitration and Conciliation
o Import and Export Policy & Procedure	o Environment Laws
o Labour and Industrial Laws NCTs	o Societies/Trusts/Co-operative Societies & (Non Co-operative Trust Societies)
o Financial Consultancy	o Other Economic Laws
o SEBI / Securities Appellate Tribunal	o Banking and Insurance
o Any Other Service (Please specify)	

RECOGNITIONS SECURED FOR COMPANY SECRETARIES

I. FOR A PRACTISING COMPANY SECRETARY

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
1.	The Companies Act, 2013 and Rules made thereunder	<p>(a) "Company Secretary in Practice" means a company secretary who is deemed to be in practice under subsection (2) of section 2 of the Company Secretaries Act, 1980. {Section 2(25)}</p> <p>(b) To make declaration that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. {Section 7(1)(b) & Rule 14 of the Companies (Incorporation) Rules, 2014}</p> <p>(c) To certify the annual return of listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more. {Section 92(2) & Companies (Management and Administration) Rules, 2014}</p> <p>(d) Issue Secretarial Audit Report to every listed company and every public company having a paid-up share capital of fifty crore rupees or more; or every public company having a turnover of two hundred fifty crore rupees or more. {Section 204 & Companies (Appointment and Remuneration Personnel) Rules, 2014}</p> <p>(e) To certify that whether the merger and amalgamation scheme is being complied with in accordance with the orders of the Tribunal or not. {Section 232 (7)}</p> <p>(f) To be appointed as an expert {Section 2(38)}</p> <p>(g) To be appointed as Interim/Company Administrator (Section 259)</p>	12 September, 2013

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
2	Companies (Incorporation) Rules, 2014	To make declaration that the draft memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 of the Companies Act, 2013 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with.{Rule 19}	
3	Nidhi Rules, 2014	To certify half yearly return of Nidhi Company {Rule 21}.	
4	Companies (Management and Administration) Rules, 2014	To appoint as a scrutinizer in every listed company or a company having not less than one thousand shareholders to scrutinize the e-voting process in a fair and transparent manner{Rule 20}	
5	Companies (Registration Offices and Fees) Rules, 2014	Precertification of e-form	
6.	Limited Liability Partnership Rules, 2009	LLP forms: Form No.2 Form No.3 Form No.4 Form No.5 Form No. 8 Form No.11 Form No.12 Form No.15 Form No.17 Form No.18 Form No.31 Form No.32	1st April, 2009
7.	Company Law Board Regulations, 1991 ¹ [Reg. 19]	To act as authorised representative before the Company Law Board Benches.	May, 1991
II	CORPORATE AND ECONOMIC LAWS		
8.	Competition Act, 2002 [Section 35 & 53S]	To act as authorised representative before the Competition Commission of India and Competition Appellate Tribunal.	March 31, 2003

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
9.	Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 1999 (Clause 6)	To act as authorized representative before the Central Electricity Regulatory Commission.	August, 1999
10.	Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (Regulation 23)	To act as authorized representative before the Gujarat Electricity Regulatory Commission.	July, 1999
11.	The Telecom Regulatory Authority of India Act, 1997 (Section 17 and Explanation (b) thereto)	To act as authorized representative before the Telecom Disputes Settlement and Appellate Tribunal.	March, 2000
12.	IRDA (Registration of Indian Insurance Companies) Regulations, 2000 (Regulation 10)	To certify that the company has complied with all the requirements relating to registration fees, share capital, deposits and other requirements of the Insurance Regulatory and Development Authority Act, 1999.	July, 2000
13.	Foreign Trade Policy 2004-2009	<p>Illustrative List of certificates which may be issued by a Company Secretary in Practice is given hereunder:</p> <p>(i) Certificate for issue of EPCG authorisation (Appendix 26)</p> <p>(ii) Certificate for EPCG Redemption (Appendix 26A)</p> <p>(iii) Certificate showing sales turnover of ammunition (indigenous and imported) during the preceding three licensing years (Annexure ANF 2B)</p> <p>(iv) Certification in respect of Application for grant of Status Certificate (ANF 3A)</p> <p>(v) Certification in respect of application for Served from Indian Scheme (annexure ANF 3B)</p> <p>(vi) Certificate for Agriculture Infrastructure incentive scrip under VKGUY (Annexure to ANF 3D)</p>	Foreign Trade Policy (2009 – 2014)
14.	Special Economic Zones Rules, 2006 (Rule 61)	To act as authorized representative before the Board of Approval	February, 2006
15.	Foreign Exchange Manage-	To issue certificates for exchange	Original recognition

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
	ment Act, 1999 (FEMA)	control purposes. All certificates, which a Practising Chartered Accountant can issue as documentary evidence in support of certain applications, may also be issued by a Company Secretary in Whole-time Practice.	received in 1992 under FERA. RBI clarified vide letter dated April 19,2001,the recognition is valid under FEMA
16.	Foreign Exchange Management (Transfer of Issue of Securities by a Person Resident Outside India) Regulations, 2008	To certify under FDI Scheme on behalf of Indian companies accepting investment	May 30, 2008
17.	The Trade Marks Rules, 2002 (Rules 148-161)	Qualified to be registered as a trade marks agent.	September 15, 2003
III SECURITIES LAWS AND CAPITAL MARKETS			
18.	Clause 47(c) of the Listing Agreement	Certification to the effect that RTA and / or In-house Share transfer facility of Listed Companies have issued all certificates within one month of the lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. This certificate is to be issued within one month of the end of each half of the financial year.	February 12, 1998
19.	The Securities and Exchange Board of India Act, 1992. [Section 15V, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December, 1999
20.	The Depositories Act, 1996 [Section 23C, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December, 1999
21.	SEBI - Circular No.MRD/DoP/SE/Cir-1/06	Certify non - promoter holdings as per clause 35 of Listing Agreement in demat mode in case of companies which have established connectivity with both the depositories.	January 13, 2006
22.	SEBI – Clause 49 of the Listing Agreement.	To issue certificate of compliance of conditions of corporate governance.	January, 2006 & CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014
23.	Model Listing Agreement for Listing of Debt Securities. SEBI/CFD/DIL/ CIR-39/2004/11/01	To issue certificate regarding maintenance of adequate security cover in respect of listed debentures by either a Practising	November 01, 2004

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		Company Secretary or a Practising Chartered Accountant, every quarter.	
24.	Model Listing Agreement for Listing of Debt Securities. SEBI/CFD/DIL/CIR-39/ 2004/11/01	To issue certificate regarding compliance of conditions of Corporate Governance.	November 01, 2004
25.	Listing Agreement for Indian Depository Receipts (IDRs) SEBI/CFD/DIL/IDR/1/ 2006/3/4	To issue certificate of compliance of conditions of Corporate Governance.	April 03, 2006
26.	SME Listing Agreement	To certify that all transfers have been completed within stipulated time. To certify compliance of conditions of Corporate Governance.	
27.	SEBI (Depositories Participants) Regulations, 1996	To issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.	September, 2003
28.	SEBI's Circular IMD/PMS/ CIR/1/21727/03	To conduct Internal Audit of Portfolio Managers.	November 18, 2003
29.	SEBI's Circular MRD/DMS/ CIR-29/2008	To conduct Internal Audit of Stock Brokers /Trading Members/Clearing Members	October 21,2008
30.	SEBI' s Circular SEBI/MIRSD CRA/CIR-1/2010	To conduct Internal Audit for Credit Rating Agencies (CRAs).	18 November, 2003
31.	Bombay Stock Exchange Limited BSE Notice No. 20061031 - 21	To issue Networth Certificate to be submitted by all active members including representative members of Cash segment, Limited Trading members & Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange.	October 31,2006
32.	Bombay Stock Exchange Limited	Listing of new equity shares issued to the shareholders of the company pursuant to the reduction of capital/ BIFR order — If there are non- transferable	

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		shares in existence, a certificate from Practising Company Secretary specifically certifying that equity share certificates held by promoters, etc. have been stamped "Not to be sold / transferred / hypothecated until" (source: www.bseindia.com)	
33.	National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Details of directors/ proprietor in format C-3 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
34.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern / sharing pattern of corporates in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
35.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern/ sharing pattern of firms in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
36.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of corporates in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange.	September 06, 2006
37.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of firms in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
38.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Undertaking from Relative of Persons constituting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
39.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Undertaking from Corporates supporting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
40.	National Stock Exchange Limited	Grant of approval for listing under clause 24(a) of the Listing Agreement – Certificate from Practising Company Secretary	

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		confirming that the entire pre-preferential holding of the allottee (mentioning the quantity) is locked in for the period starting from relevant date up to a period of six months from the date of allotment (source: www.nseindia.com)	
41.	National Stock Exchange Limited	Grant of approval under clause 24(f) of the Listing Agreement (Amalgamation – Wholly Owned Subsidiary / other than Wholly Owned Subsidiary /Reduction of Capital under Section 100) – Certificate from Practising Company Secretary for Networth of the Company pre and post scheme under section 101, 391 and 394 of the Companies Act, 1956. (source: www.nseindia.com)	
42.	National Stock Exchange Limited	Listing of shares arising out of Conversion of Debentures/Warrants/Notes/Bonds into Equity Shares – Certificate from Practising Company Secretary for receipt of money at the time of allotment of Convertible Debentures/Warrants/Notes, etc. (source: www.nseindia.com)	
43.	National Stock Exchange Limited	Listing of shares/securities issued on Preferential/Private Placement basis– Certificate from Practising Company Secretary for the following confirmations : <ul style="list-style-type: none"> (a) The pricing of the issue along with the detailed working of the same (b) The company has received the entire consideration payable prior to the allotment of shares (c) The total shares under lock-in (along with the dates of lock-in and distinctive numbers) and additionally confirming that the locked in equity shares if issued in physical form have been enfaced with non transferability condition (d) The entire pre-preferential holding of the allottee (mentioning the quantity) is 	

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		locked in for the period starting from relevant date upto a period of six months from the date of allotment. (source: www.nseindia.com)	
44.	National Stock Exchange Limited	Listing of shares/securities issued on Preferential/Private Placement basis in case allotment under Section 81(3) of Companies Act – A confirmation signed by the compliance officer of the company duly counter confirmed by the Practising Company Secretary confirming that the said allotment has been made in accordance with the provisions of section 81(3) of the Companies Act, 1956. (source: www.nseindia.com)	
45.	National Stock Exchange Limited	Certificate from Practising Company Secretary confirming securities under lock-in (the certificate should include the distinctive numbers of securities under lock-in and date from and upto which these shares are under lock-in) (source: www.nseindia.com)	
46.	National Securities Depositories Limited (NSDL)	Conduct of Internal Audit of operations of the Depository Participants, at intervals of not more than three months and furnish a copy of the internal audit report to the depository.	March, 1999
47.	NSDL Circular No. NSDL/POLICY/2006/0021	Concurrent Audit in case of Demat Account opening, Control and Verification of Delivery Instruction Slips.	June, 2006
48.	Central Depository Services (India) Limited (CDS)	(i) Conduct of Internal Audit of operations of the Depository Participants at such intervals as may be specified by CDS from time to time and furnish a copy of the internal audit report to CDS. (ii) For empanelment by CDS as auditors for conduct of audit of the records of the participants in so far as the records and operations relate to CDS.	September, 1999

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
49.	(A) Securities Contracts (Regulation) Act, 1956; and Securities Contracts (Regulation) Rules, 1957 [Section 22C, Explanation (b)] (Guideline No. F1/8/SE/82 dt. 20.8.1982).	(i) To appear as authorized representative before the Securities Appellate Tribunal (ii) Certificate to the effect that allotment has been made by the company on the basis approved by the Stock Exchange.	December, 1999 August, 1982
	(B) (i) The Ahmedabad Share and Stock Brokers Association, Ahmedabad.	Inspection of books of accounts and other documents of members of stock exchange required by guideline F. No. 1/4/SE/89 dated 29.1.1983.	March 1984
	(ii) Uttar Pradesh Stock Exchange Association Ltd., Kanpur.	- do -	April, 1984
	(iii) The Bombay Stock Exchange Bombay Ltd.	Certification to the effect that RTA and/or In-house Share transfer facility of Listed Companies have issued all certificates within one month of the lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. This certificate is to be issued within one month of the end of each half of the financial year.	February, 1998
	(iv) Pune Stock Exchange	-do-	-do-
	(v) The Calcutta Stock Exchange	-do-	-do-
	(vi) Uttar Pradesh Stock Exchange Association Limited (Kanpur)	-do-	-do-
	(vii) Delhi Stock Exchange	Certificate to the effect that the RTA has completed all transfers within the stipulated time.	-do-
	(viii) Hyderabad Stock Exchange	-do-	-do-
	(ix) Bhubaneswar Stock Exchange Association Limited	-do-	-do-
	(x) Stock Exchange, Ahmedabad	-do-	-do-
	(xi) Cochin Stock Exchange	-do-	-do-
	(xii) Coimbatore Stock Exchange	-do-	-do-

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
(xiii)	Ludhiana Stock Exchange Association Limited	-do-	-do-
(xiv)	Magadh Stock Exchange Association	-do-	-do-
(xv)	Madhya Pradesh Stock Exchange	-do-	-do-
(xvi)	National Stock Exchange	-do-	-do-
(xvii)	Bangalore Stock Exchange	-do-	-do-
(xviii)	Madras Stock Exchange	-do-	-do-
(xix)	Udaipur Stock Exchange	-do-	-do-
(xx)	The Stock Exchange, Ahmedabad	Verification and authentication of the declarations of the Managing Director of a Company when- (1) the company intimates the stock exchange the forfeiture of its listed securities; or (2) the company approaches the stock exchange for voluntary delisting of securities.	May, 1999
50.	BSE SME Notice No. 2012/126-17 dated 26 November 2012	To issue certificate of Compliance Conditions for listing on SME Platform of BSE Ltd.	
IV TAXATION			
51.	Income-tax Act, 1961 and Income-tax Rules, 1962 [section 288(2) and Rule 50]	To act as authorised representative before the Income-Tax authorities	July, 1979
52.	Wealth-tax Rules, 1957 [Rule 8A(7)]	Recognised for registering as a valuer of stocks, shares, debentures, etc.	October 8, 1974
53.	Central Excise Act, 1944 [Section 35Q] and Central Excise (Appeals) Rules, 2001 [Rule 12]	To act as authorised representative before the Customs, Excise and Service Tax Appellate Tribunal and other authorities.	October, 1982
54.	Customs Act, 1962 and Customs (Appeals) Rules, 1982 [section 146A and Rule 9(c)].	To appeal before Custom Authorities	October, 1982
55.	West Bengal Value Added Tax Rules, 2005	Authorized to appear before Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner or any person appointed to assist the Commissioner on behalf of a dealer [Rule 2 (1)(a)(iv)].	April, 2005

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
56.	Bihar Value Added Tax Act, 2005	Authorised to appear before VAT authorities appointed under Section 10 or the Tribunal or an Officer of the Bureau of Investigation constituted under Section 86 of the Act [Section 87(d)].	April, 2005
57.	Daman and Diu Value Added Tax Regulations, 2005	Authorised to appear before any VAT authority in connection with any proceedings under this Regulation. [Section 82(1)(b)].	April, 2005
58.	Goa Value Added Tax Act, 2005	Authorised to appear before any VAT authority including the Tribunal in connection with any proceedings under this Act [Section 82(1)(b)].	April, 2005
59.	Gujarat Value Added Tax Act, 2003 read with Gujarat Value Added Tax Rules, 2005.	Authorised to appear before VAT Authorities in connection with any proceedings under this Act [Section 81(1) (c) read with Rule 59 (1) (a)]	January, 2005
60.	Jharkhand Value Added Tax Act, 2005	To conduct VAT Audit under section 63(1) To appear before VAT authorities under Rule 51(1)(c)	February 2006
61.	Karnataka Value Added Tax Act, 2003 read with Karnataka Value Added Tax Rules, 2005	Authorised to appear before any Authority other than the High Court in connection with any proceeding under this Act [Section 86 (c) read with Rule 168(2)(c) (iv)(b)].	April, 2005
62.	Arunachal Pradesh Goods Tax Act, 2005 read with Arunachal Pradesh Goods Tax Rules, 2005	To appear and attend before any authority in connection with any proceedings under this Act [Section 83(1)(c) read with Rule 78(1) (a)].	2005
63.	Kerala Value Added Tax Act, 2003	Authorised to appear before VAT Authorities in connection with my proceedings under this Act [Section 86(e)]	2009
64.	Delhi Value Added Tax Act, 2004	Authorize to appear before VAT Authorities under section 82 (1)(b)	April 2009
V FINANCIAL INSTITUTIONS			
65.	All India Financial Institutions	Certification with regard to the following:	
	(i) Industrial Development Bank of India	(a) Necessary powers of a company and its directors to enter into an agreement.	July, 1981 December, 1981 July, 1983
	(ii) Industrial Finance Corporation of India	(b) Borrowing limits of a company under section 293(1)(d) of the	

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
(iii)	Industrial Credit and Investment Corporation of India	Companies Act, 1956, including details of share capital, authorised, issued, subscribe and paid-up, and the actual borrowing.	
(iv)	Unit Trust of India		
(v)	Life Insurance Corporation of India	(c) List of Members of a company.	
(vi)	General Insurance Corporation of India	(d) Copies of resolutions passed at company meetings to be furnished to financial institutions	January, 1986
(vii)	Industrial Reconstruction Bank of India	Certification of documents relating to charges.	April, 1991
(viii)	Industrial Development Bank of India		
VI BANKS			
66.	Reserve Bank of India Circular DBOD No. BP.PC.46/08.12.001/2008-09	Diligence Report for Banks	September 19, 2008
67.	Indian Banks Association (Circular Status/No. SO / 69-73-III-C-82 / 9565 dated 15.4.1983 and Circular no. SO/69-73-C-86/4763 dated 16.6.1986).	Search Reports for banks	April, 1983
68.	(i) Indian Bank	Certification of documents relating to charges.	December, 1990
	(ii) Bank of India	-do-	February, 1991
	(iii) Andhra Bank (Eastern Region)	-do-	February, 1991
	(iv) Canara Bank	-do-	February, 1991
	(v) United Bank of India	-do-	March, 1991
	(vi) Vijaya Bank	-do-	March, 1991
	(vii) Bank of Baroda ²	-do-	July, 1991
	(viii) Corporation Bank	-do-	August, 1991
	(ix) State Bank of India ²	-do-	September, 1991
	(x) Bharat Overseas Bank	-do-	September, 1991
	(xi) State Bank of Mysore	-do-	October, 1991
	(xii) Indian Overseas Bank	-do-	October, 1991
	(xiii) State Bank of Indore ²	-do-	February, 1992
	(xiv) State Bank of Travancore	-do-	April, 1992
	(xv) Laxmi Vilas Bank Ltd.	-do-	June, 1992
VII STATE LEVEL AGENCIES			
69.	State Financial/Industrial Investment/ Development Corporations :	A. Certification with regard to the following:	
	(i) Himachal Pradesh Financial Corporation, Shimla	(a) Necessary powers of a company and its directors to enter into an agreement	July, 1982

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		(b) Borrowing limits of a company under section 293(1)(d) of the Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up and the actual borrowing.	
(ii)	West Bengal Financial Corporation ² , Kolkata	-do-	August, 1982
(iii)	Maharashtra State Financial Corporation, Mumbai	-do-	April, 1984
(iv)	UP State Industrial Development Corporation Ltd., Kanpur	-do-	December, 1985
(v)	Assam Industrial Development Corporation Ltd. ² , Guwahati	(a) Necessary powers of a company and its directors to enter into an agreement. (b) Borrowing limits of a company under section 293(1)(d) of the Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up and the actual borrowing. (c) List of members of a company. (d) Copies of resolutions passed at company meetings to be furnished to financial institutions.	March, 1982 October 1988
(vi)	Gujarat Industrial Investment Corpn. Ltd. ² , Ahmedabad	-do- (a) to (d)	October, 1982 August, 1986
(vii)	Nagaland Industrial Dev. Corpn. Ltd., Dimapur	-do- (a) to (d)	September, 1983
(viii)	Uttar Pradesh Financial Corpn., Kanpur	-do- (a) to (d)	September, 1983
(ix)	State Industries Promotion Corpn. of Tamil Nadu Ltd. ² , Chennai	-do- (a) to (d)	October, 1983
(x)	The Tamil Nadu Industrial Investment Corpn. Ltd. ² , Chennai	-do- (a) to (d)	November, 1983
(xi)	Karnataka State Indl. Invest. and Dev. Corpn.Ltd ² , Bangalore	-do- (a) to (d)	July, 1982 February, 1986
(xii)	The Pradeshiya Ind. and Investment Corpn. of UP Ltd., Lucknow	-do- (a) to (d)	March, 1986
(xiii)	Andhra Pradesh State Financial Corpn., Hyderabad	-do- (a) to (d)	June, 1982 March, 1986

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
(xiv)	The Punjab State Indl. Dev. Corpn. Ltd., Chandigarh	-do- (a) to (d)	March, 1986
(xv)	The State Indl. and Investment Corpn. of Maharashtra Ltd ² ., Mumbai	-do- (a) to (d)	June, 1982 April, 1984 June, 1984
(xvi)	Haryana Financial Corpn. ² , Chandigarh	-do- (a) to (d)	September, 1982 April, 1986 May, 1988
(xvii)	Punjab Financial Corpn., Chandigarh	-do- (a) to (d)	May, 1986
(xviii)	Andhra Pradesh Indl. Dev., Corpn. Ltd., Hyderabad	-do- (a) to (d)	May, 1982 June, 1986
(xix)	Rajasthan State Indl. Dev. & Inv. Corpn. Ltd., Jaipur	-do- (a) to (d)	August, 1986
(xx)	Indl. Promotion & Inv. Corpn. of Orissa Ltd ² ., Bhubaneswar	-do- (a) to (d)	September, 1982 August, 1986
(xxi)	Gujarat State Fin. Corpn ² ., Ahmedabad	-do- (a) to (d)	April, 1982 September, 1986
(xxii)	The Zoram Indl. Dev. Corpn. Ltd., Mizoram	-do- (a) to (d)	March, 1987
(xxiii)	Kerala State Indl. Dev. Corpn. Ltd ² . Thiruvnanthapuram	-do- (a) to (d)	August, 1986
(xxiv)	Rajasthan Financial Corpn. ² , Jaipur	-do- (a) to (d)	September, 1983 July, 1987
(xxv)	West Bengal Indl. Dev. Corpn. Ltd ² ., Calcutta	-do- (a) to (d)	July, 1987
(xxvi)	Orissa State Financial Corporation	-do- (a) to (d)	July, 1987
(xxvii)	Bihar State Financial Corpn., Patna	-do- (a) to (d)	January, 1988
(xxviii)	Delhi Financial Corpn. ² , New Delhi	-do- (a) to (d)	August, 1988
(xxix)	Manipur Indl. Dev. Corpn. Ltd. ² , Imphal	-do- (a) to (d)	April, 1990
(xxx)	Pondicherry Indl. Promotion, Dev. & Inv. Corpn. Ltd., Pondicherry	-do- (a) to (d)	December, 1990
(xxxii)	Arunachal Pradesh Indl. Dev. & Financial Corpn. Ltd. ² , Naharlagum	-do- (a) to (d)	August, 1991
(xxxiii)	Gujarat Industrial Development Corporation	To issue certificate with regard to shareholders, and shareholdings of companies, for the purposes of transfer of industrial Plot/Shed.	May, 1999

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
B. Secretarial Audit			
(xxxiii)	Manipur Industrial Development Corpn. Ltd., Imphal	Secretarial Audit, once a year of the companies assisted by the Corporation	April, 1990
(xxxiv)	Assam Indl. Dev. Corpn. Ltd., Guwahati	Secretarial Audit, once a year, of the companies assisted by the Corpn. under the IDBI's Refinance Scheme. However, companies having whole-time secretary need not perform Secretarial Audit, provided such Company Secretary submits a certificate of compliance of various provisions of law.	July, 1990
(xxv)	Gujarat Industrial Investment Corporation Ltd., Ahmedabad	Secretarial Audit, once a year, of the companies assisted by the Corpn. including the joint/associate sector companies of the corpn. However, companies having whole-time secretary need not perform Secretarial Audit provided such Company Secretary submits a certificate of compliance of various provisions of law.	June, 1991
(xxxvi)	Arunachal Pradesh Industrial Development & Financial Corpn. Ltd., Naharlagun	Secretarial Audit, once a year, of the companies assisted by the Corporation.	August, 1991
C. Due Diligence Certificates/Search Report			
(xxxvii)	Gujarat State Financial Corporation	(i) Certification with regard to the compliance of various laws such as Factories Act, Safety Provisions and other local Acts, by the concerned borrowers. (ii) Preparation of Search Report and other work connected with Registrar of Companies.	May, 1999
VIII. GOVERNMENT DEPARTMENTS			
70.	Department of Agriculture and Cooperation, Ministry of Agriculture	To issue a certificate about certain prescribed details of a company chartering foreign fishing vessels, according to the guidelines issued by the Department of Agriculture and Co-operation.	July, 1987
71.	Entrepreneurship Department	A Company Secretary setting	August, 1992

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
	of Industries, Government of Orissa	up industrial unit recognised as 'Special Class Entrepreneur' under the category of technical entrepreneurs (Special class entrepreneurs are eligible for 5% extra capital investment subsidy and other additional privileges for setting up industries).	
72.	Department of Telecommunication, vide its Guidelines No. 820-1/2006-LR, dated 24.8.2007	The "Guidelines and General Information for Grant of Licence for Operating Internet Services" authorise Company Secretaries to issue certificate on net worth of the Companies. The Guidelines provide that a company having ISP licence and a net worth of Rs. One Hundred crore or more can only offer IPTV services subject to approval from Licensor. A certificate from Company Secretary (certifying the net worth of the company) is to be submitted	August, 2007
73.	Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, vide its ref. no. 18(8)/2005-GM dated 22nd June 2007	The Guidelines on Corporate Governance for Central Public Sector Enterprises 2007 provide that the company shall obtain certificate from practicing Company Secretary regarding compliance of conditions of corporate governance as stipulated in these Guidelines and Annexes.	June, 2007
IX	HIGH COURT		
74.	Calcutta High Court (letter no. Cor. 424 dated 9.2.1983)	Introduction of panel of Practising Company Secretaries for appointment as receivers, arbitrators, trustees and special officers.	February, 1983
X	ANCILLARY		
75.	Income-Tax Act, 1961	Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, have notified the profession of Company Secretaries under section 44AA of the Income Tax Act, 1961.	October, 1992

1. Secretary of Company can also undertake such assignment.
2. In addition, certificate in respect of search reports from the records maintained by the office of the Registrar of Companies will be accepted.

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
II. FOR A COMPANY SECRETARY IN EMPLOYMENT			
1.	Ministry of Education	Appointment of superior posts and services under the Central Government.	February, 1968 December, 1971 July, 1981
2.	Section 2(24) of the Companies Act, 2013.	"Company Secretary" or "Secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under the Act.	12 September, 2013
3.	Section 203 of the Companies Act, 2013.	Appointed as Key Managerial Personnel.	12 September, 2013
4.	Section 581X of the Companies Act, 1956	Every producer company having an average annual turnover exceeding five crores rupees in each of three consecutive financial years to have a whole-time secretary who is a member of the Institute.	February 6, 2003
5.	SEBI vide circular Letter No. SMD/POLICY/CIR-12/99 dated 18.5.1999	Compliance officer to be appointed by Listed companies in Compliance with Circular No. SMD/POLICY/CIR-06/98 dated February, 12, 1988, shall be the Company Secretary of the Company.	May, 1999
6.	Government of Andhra Pradesh	For recruitment in public sector under-takings of the State to superior posts.	September, 1981
7.	Central Government (Ministry of Corporate Affairs)	Qualification for recruitment to Grades I to IV in the Accounts Branch of the Central Company Law Service.	November, 1982
8.	Ministry of Home Affairs, Department of Personnel and Administrative Reforms	Empanelment of Company Secretaries for assignment of Indian experts to the developing countries of Asia, Africa and Latin America.	March, 1984
9.	Government of Gujarat, General Administration, Department Circular No. RDD/1077/1120/K dated 16.1.1978 and letter No. RDD/1081/1781/K dated 23.6.1981	Degrees / diplomas awarded by Universities or other educational Institutes established by an Act of the Central or State legislature or by an Act of Parliament	January, 1978 June, 1981

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		automatically specialize for the purpose of recruitment to the posts and services under the State Government.	
10.	Government of Tamil Nadu, Personnel and Administrative Reforms (Personnel) Department, Order No. G.O. Ms. No. 148 dated 7.3.1988	ACS is specialized as one of the qualifications for the purpose of Group 'A' appointments in the State Government Service in the departments concerned with Trade, Commerce, Finance, Commercial Taxes and Industry where such a specialized knowledge is called for.	March, 1988
11.	Government of Kerala, Planning & Economic Affairs (BPE) Department, Thiruvananthapuram, Order No. 10180/BPE – 2/89/Plg. Dated 29.5.1989.	Preference to be given to candidates possessing ACS qualification in addition to ACA/AICWA qualification, for recruitment to the posts of Finance Directors in State Government Undertakings in Kerala.	May, 1989
12.	Karnataka State Financial Corporation, Letter Pers/P- 3214 dated 10.11.1989	ACS as one of the superior qualification for appointment to executive posts.	November, 1989
13.	(a) Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) O M No. dated 1/2/89-Estt.(Pay.I) dated 09.04.1999. (b) Office of Comptroller & Auditor General of India vide Letter No.284/ NGE(ENTT)/ 44-2005.	Employees passing Intermediate and Final Examinations of Company Secretaryship course are eligible for lump sum incentives of Rs. 2,000 and Rs. 4,000, respectively.	9th April, 1999 April, 1991 (revised in 1999)
14.	Model Listing Agreement for Listing of Debt Securities SEBI/CFD/DIL/CIR-39/ 2004/11/01	Company Secretary or any other person to be designated as compliance officer.	November 01, 2004
15.	Model Listing Agreement for Listing of Indian Depository Receipts SEBI/CFD/DIL/IDR/ 1/2006/3/4	Issuer to appoint its Company Secretary as Compliance Officer.	April 03, 2006
16.	University Grants Commission (UGC) Regulations vide File No. F. 3 - 1 /2009 dated 30th June 2010	CS Qualification for Appointment as Teaching Faculty in Universities and Colleges in the Area of Management / Business Administration	30 June, 2010



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