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Role of Company Secretary in Corporate Sector

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From a mere compliance officer, few decades back, the Company Secretary has now come to be recognized as key managerial personnel on par with directors. This article portrays the transformation and pin points the role and importance of company secretaries in the corporate sector.

“Development after Disasters” is the say. Immediately after the Indo-Pak war in 1971, several measures were considered by the Government to strengthen the country from the unwarranted situation. The country was in so bad shape worse than natural calamities. Economy was in shambles The Government scrambled to restore both the agricultural and industrial production which were the two major activities for the overall revival of Indian economy. The agricultural sector is to be nourished by farmers and the industrial sector is to be looked after none other than the professionals.

PROFESSION OF SECRETARY

The Government realized that losses were heavy and at the same time the compliance of laws were heavy on Companies. Companies on the one hand found it difficult to restore normalcy and on the other hand found it harder to comply with various applicable provisions of laws for a good Corporate Governance. In the year 1972 itself, the Government realized that a company registered under the Companies Act (Act) has to comply with the requirements of several laws in our country. An idea was conceived in that year that in order to ensure such compliances medium sized and large companies should be required to employ a secretary to take care of the compliance of various laws. As a consequence clause 29 providing for compulsory appointment of a secretary was inserted in the Companies (Amendment) Bill, 1972. After deliberations, in the year 1974, the Companies (Amendment) Act, 1974 made it clear about the appointment of a Secretary which came into effect from 1st February, 1975. At that time in U.K., it was mandatory for every company to appoint a Secretary. It was aptly felt that such a compulsory provision in small sized companies may be a burden on such companies. It was, therefore, stipulated that only companies

**Views expressed in the article are the personal views of the author and do not necessarily reflect the views of the Institute.*

having a paid up capital of Rs. 25 lacs and above to have a whole time employed Secretary. Section 383A was inserted in the Act.

The notes on clauses explained the reasons for insertion of such compulsory provision. It is interesting to note that at that time of introducing such a compulsory appointment of a whole time employed Secretary, the object was two fold namely (1) for proper compliance of various laws which a company is required to comply with; and (2) to help the growth of the profession of company secretaries and provide employment opportunities to qualified secretaries.

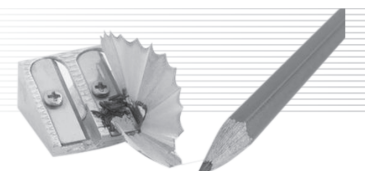
DESIGNATION OF COMPANY SECRETARY

The Institute of Company Secretaries of India (ICSI) constituted under an Act of Parliament i.e. the Company Secretaries Act, 1980 (Act No. 56 of 1980) is the only recognized professional body in India to develop and regulate the profession of Company Secretaries in India and the Institute awards the certificate bestowing the designation of Company Secretary to a candidate qualifying for the membership of the Institute of Company Secretaries of India (*Source:ICSI website*). The companies which employ a member of ICSI also designate him as the “Company Secretary”. The definition clause in the Company Secretaries Act, 1980 also defines “Company Secretary” to mean a person who is a member of the Institute. The definition clause in the Companies Act was also amended by the Companies (Amendment) Act, 1988. After amendment “Secretary” means a Company Secretary within the meaning of clause (c) sub section (1) of section 2 the Company Secretaries Act, 1980.

MEANING OF CORPORATE SECTOR

Corporate sector is of two components. It is the combination of both Government sector and of private sector. It is a section

Articles



Role of Company Secretary in Corporate Sector

of society consisting of Companies, Industries, Business Houses, Banks and Financial Institutions from both components. It contributes immensely for the development of the economy of the Country by virtue of its large and huge presence across all sectors, be it an Industry or Infrastructure or education or simply every other conceivable activity. Corporate sector makes a lot of contribution towards meetings its social responsibility too. Thus corporate sector contributes to National Income Generation, Infrastructural Growth and Development of the Economy. The size of both components, in terms of both number and capital has grown fast, particularly after the beginning of the seventies.

The number of companies limited by shares in 1972 and 1974 when the Government considered the mandatory appointment of Company Secretary were as under:

Year	Government	Private sector	Total
1972	352	31,915	32,267
1974	450	37,035	37,485

The number of companies limited by shares as on 31st March, 2008 stood as* :

	Public Limited	Private Limited	Total
Government sector	1,077	551	1,628
Private Sector	80,733	6,86,784	6,87,335
Total	81,810	6,87,335	7,69,145

Besides, the above, several banks and financial institutions falling under the ambit of body corporate also form part of the corporate sector.

ROLE OF COMPANY SECRETARY IN CORPORATE SECTOR

The Companies Amendment Act, 1974 enlarged the scope of services of a company secretary. His duties and responsibilities initially were ministerial or administrative in nature. His duties, *inter alia*, were:

- towards Board of Directors* : arrangement of meetings of the Board including its committees; preparation of agenda and proceedings of all meetings; briefing and liaisoning with promoter directors and other directors etc.
- towards stockholders* : conducting shareholders meetings, serving notices, reports, dividend, interest payments and other correspondence with them and so on;
- towards legal and administrative functions* : compliance and liaisoning with Government departments, stock

exchanges, regulators, drafting of contracts, agreements, filing of documents, maintenance of registers and records and other administrative duties.

The Government has consciously created an institution to cater to the specialized governance and compliance needs of Corporate Sector. The Government has also recognized adequately the quality and professional competency of the members of ICSI. ICSI has also lived up to the great expectations of the Government and has produced several stalwarts to serve the Corporate Sector. Thus there is no doubt about the role of Company Secretary in the Corporate Sector which includes small, medium and large enterprises. The scope of the profession Company Secretary has been widening year by year and to day the Government has recognized Company Secretary as one of the “Key Managerial Personnel”

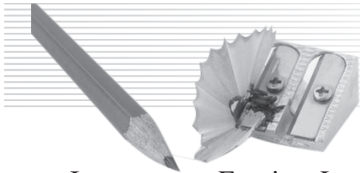
The role of Company Secretary in corporate sector is manifold and ICSI has projected the same to include:

- Corporate Laws;
- Corporate Governance;
- Corporate Administration;
- Board and Shareholders meetings;
- Corporate Compliance Management;
- Stakeholder Relationship;
- IPO, ADRs/GDRs
- Capital markets, stock exchanges and listing agreement;
- Mergers and Amalgamations;
- Insider Trading & Takeovers;
- Representations;
- Arbitrations & Reconciliation;
- Direct and Indirect Taxes;
- Investor Education and Protection.

Besides, Company Secretary renders the following services too.

- Acts as an advisor in Joint Venture and Foreign collaboration and in drafting of agreements thereto;
- Offers consultancy and acts as an advisor in Corporate Restructuring which includes demerger, sale, revival of sick companies and so on;
- Offers services towards Protection of Intellectual Properties.
- Offer services on Alternative Dispute Resolutions;
- Acts as an advisor on matters relating to Foreign Direct

*(Source : 52nd Annual Report of Ministry of Corporate Affairs)



Investment, Foreign Loans (ECB) including FEMA related issues.

In brief, the role of Company Secretary in the corporate sector is multifaceted and he has come to be recognized as a versatile personality and therefore, there is little doubt that an experienced CS is definitely a Key Managerial Personnel who protects the overall interests of all stakeholders.

IS MANDATORY PROVISION JUSTIFIED?

The Indian corporate sector is mostly family owned and limited in its exposure to professionalism. If one considers the corporate compliance management, companies tend to comply only those provisions which are mandatory and self regulation has to go a long way. In other words, voluntary compliance is very limited. The mantra of corporate governance is the combination of ethics, transparency and best legal and management practices without diluting commercial objectives. This has been made as a mandatory provision under the listing agreement. It needs no saying that some of the requirements relating to corporate governance are scattered in the Companies Act, 1956. Consider the following two situations of which one is mandatory. One can get the answer whether appointment of Company Secretary is to be made as a mandatory provision.

- (1) Before introduction of mandatory provisions of tax audit, which company has voluntarily prepared such a report? Withdraw the said mandatory provision and then consider how many companies would continue to prepare such report. In fact, such a report is a ready referencer for the regulator as well as Corporate Sector for proper compliance of Tax Laws. It is complied with because it is mandatory.
- (2) The objective of keeping the amount of unclaimed dividend, in a separate bank account is that that amount, after the dividend is declared, does not belong to the company that declared the dividend and therefore, in order to protect the overall interest of investors such amount has to be kept in a separate bank account and Corporate Sector is barred from utilizing such amount. On the other hand, unclaimed deposits after its maturity do not belong to the company that accepted the deposits and has to be kept in a separate bank account. But, the unclaimed deposit amount is being utilized by the Corporate Sector for their working capital requirements since, there is no such mandatory provision to keep such amount in a separate account. Does this augur well in the context of corporate governance? But through the Rules the amount get transferred to the IEPT at the end of seven years.

Articles

Role of Company Secretary in Corporate Sector

It was initially in the year 1975 that the law made appointment Company Secretary in companies of particular size, compulsory. But the Corporate Sector did not recognize Company Secretary and his importance. Therefore, another mandatory provision in the form of penal action was introduced in the year 1988.

ROLE OF COMPANY SECRETARY IN CORPORATE GOVERNANCE

Several institutions and organizations world wide recognize and award Corporate Governance shields to so many Indian companies. The MCA in the year 1972 itself realized and recognized the importance of Company Secretary in certain size of companies for proper compliance of various provisions of the Act. SEBI in its part extended such recognition promptly by stipulating the requirement of the appointment of Company Secretary as Secretary for every committee as well as compliance officer of a listed entity. Goint a step further, SEBI has extended the issuance of certificate on compliance of conditions of CG by Company Secretary in practice.

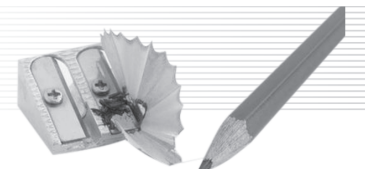
Initially, businessmen and their family members formed part of the Board. Hardly there used to be any external person occupying directorships in a company except to the extent of overcoming certain mandatory statutory provisions that prohibited interested directors from voting. Subsequently, with the growth of the value of services rendered by professionals, they entered the Board rooms. SEBI also brought the concept of mandatory appointment of independent directors. There are several conditions attached to the CG and the Board, comprising of the entrepreneurs, businessmen and independent directors who are normally professionals of different fields.

Company Secretary being in touch with the Board members at every point of time, is the right employee professional to inform the Board from time to time in complying the provisions of CG. He has to explain the concept of independent director and their eligibility for appointment as such an independent director, to inform and collect various forms and papers to be provided by such director, besides communicating to various authorities about the constitution of Board. He acts as Secretary for every committee such as Audit, Remuneration, and Investors' Grievances. Compliance of clause 49 of the listing agreement is the total responsibility of employed Company Secretary which is also one of the ingredients for achieving good CG.

ROLE OF COMPANY SECRETARY IN INVESTORS' PROTECTION

The meaning of "investors" is not limited to only shareholders

Articles



Role of Company Secretary in Corporate Sector

but to extend to all others who are part and parcel of the organization. Deposit/debenture holders, trade creditors, secured and unsecured lenders, any holder of securities issued by a company in the forms of warrants, ADRs/GDRs, employees and last but not least the revenue authorities are one way or other is “Investor” and collectively termed as stakeholders. An employed Company Secretary is the bridge between all such stakeholders and the company in which he is employed. He is sincere not only to the company but also to all the stakeholders in proper communication, compliance and so on. He is also a link between a company and intermediaries at the time of issuance of any securities and ensures compliance of various provisions of law applicable to his company and the relevant issue of securities.

COMPANY SECRETARY AS AN “OFFICER IN DEFAULT”

The Act as well as the Bill 2009 duly recognize the role an employee Company Secretary is expected in the matter of compliance with the various provisions of the Act and that is why he is included as an “officer in default” for all non-compliances. One can find a citation under the Act on mergers and amalgamations, winding up, oppression and mismanagement but not on other non-compliances of other provisions of the Act. This is one of the credentials for an employee Company Secretary.

He has also actively to take part in follow up of all investors’ grievances both inside the office and at the office of Registrar and Share Transfer Agents and Regulators. The very minimal investors’ complaints almost in all big and medium size companies prove that the employed Company Secretary do give top priority in redressing the grievances, if any, of the investors.

THE NEED FOR COMPANY SECRETARY

From the above, every one be it a Board Member, an investor, a stakeholder and regulator will easily accept that a company which is widely held does need a whole-time Company Secretary. The syllabus offered by ICSI covers all legal and managerial issues which Corporate Sector faces on day to day basis. Other professionals such as Chartered Accountants, Cost Accountants and Corporate Lawyers do take advantage of the extensive coverage of corporate laws in the Company Secretary curriculum and become members of ICSI to excel in their respective profession. It is also added feather to the cap of Company Secretary, the recognition awarded by certain Universities to enroll for Ph.D courses. The recognition to certify various returns and issuance of certificates by a Company Secretary in practice further enhances the credibility of employee Company Secretary. At the same time, there is a concern in some corner on the mis-match of available

Company Secretary *vis-a-vis* the requirement in Corporate Sector. The Bill recognizes the role of Company Secretary and has included him as Key Management Personnel. The criteria for compulsory appointment based on the paid up capital also requires re-consideration. Several companies with low capital base with huge reserves and with huge borrowings play a significant role in the Industry to which it belongs. In the overall interest of Corporate Sector it is better to consider appointment of CS on a mandatory basis :

- (a) in a widely held company with a particulars number of shareholder base ; and
- (b) in an unlisted public company and smaller base shareholders of listed companies with a combination of long term capital deployed which includes the paid up capital, free reserves, borrowings powers and turnover of such companies.

The stakeholders’ interest in all such companies is very important and the active role of full time Company Secretary will certainly take care of all issues and recognize as the good CG in Corporate Sector and also keep the profession of Company Secretary in high esteem. □