Company Secretary
A Value Creator

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Threats for CS

- Highly volatile economic environment;
- New laws and changes in the existing laws;
- New business structures;
- Highly competitive environment for Industry and professionals;
- High expectations of stakeholders;
- Technology: XBRL, e-voting, v-conferencing;
- Globalisation: SARC, BRICS, G-20, ILO, UNO, World Bank, ADB, OECD, GRI
Opportunities for CS

- CS an expert in corporate matters;
- Government & Regulators repose faith & confidence in the CS profession;
- Thrust on new areas: Societies, NGOs, Clubs;
- New opportunities for CS in job & practice;
- Newly acquired position of KMP;
- Technical knowledge puts CS ahead of competitors.

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ICSI Vision 2020- for Members in Employment

● “The objective of the strategy for the members in employment shall be to enable them to become ‘Corporate Managers’ responsible for total compliance and adoption of good corporate governance practices along with adding value and maximising wealth for the company and its stakeholders as a part of the management,”
ICSI Vision 2020- for Members in Practice

“The objective of strategy for members in practice shall be to enable them to serve as ‘Corporate Advisors’ providing sound and efficient compliance management advisory and representational services in all areas of corporate activities”
New Horizons for CS in Employment

- Functions and Duties of CS [Sec. 205]
- Key Managerial Personnel [Sec. 203]
- Corporate Governance
- Annual Return [Sec. 92]
- Board’s Report [Sec. 134]
- CSR [Sec. 135]
- SFIO [Sec. 211 & 212]
- NCLT [Sec. 408]
New Horizons for CS in Practice

- Business Structures
- Secretarial Audit [Sec.204]
- Reporting of Fraud [Sec.143(12)]
- Secretarial Standards [Sec.118(10)]
- Representation Services[Sec.432]
- Annual Return [Sec.92]
- Report on AGM [Sec. 121]
- Registered Valuers [Sec.247]
New Horizons for CS in Practice

- Corporate Restructuring & Insolvency
- Company Liquidators & Professional assistance to them [Sec.275] [Sec.291]
- Appointment as an Administrator [Sec.259]
- Technical member of NCLT [Sec.409]
- E- Filing
- Voting through electronic means [Sec.108]
- Adjudication of penalties [Sec.454]
- Mediation & conciliation Panel [Sec.442]
Important CG points

- Corporate Structure
- Board Composition
- Board Committees
- Directors
- Management
- Board Evaluation/Directors’ development
- Secretarial Audit
- Duties of Company Secretary
- Secretarial Standards
Important CG points

- Statutory Audit / Rotation of Auditor
- Internal Audit
- Whistle Blower
- Disclosure & Transparency
- Corporate Social Responsibility
- Related Party Transactions
- Protection for Minority Shareholders
- Investor Protection
- E-Governance

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Functions of Company Secretary
Sec. 205 {GAME CHANGER}

- The functions of a CS shall include:-
  a. To report to the Board about compliance with the provisions of the Act/ Rules and other laws applicable to the company;
  b. To ensure that the company complies with the applicable secretarial standards;
  c. To discharge such other duties as may be prescribed.
Duties of Company Secretary

GAME CHANGER

1) To provide such guidance to the directors, as they may require, about their responsibilities, duties and powers [Refer Sec.166 re. duties of directors];

2) To facilitate the convening of meetings and attend Board, committee and general meetings, and maintain their minutes;

3) To obtain approvals from the Board, general meetings, the Government and such other authorities as required under the Act.
Duties of Company Secretary

{GAME CHANGER}

4) To represent before various Regulators and other Authorities under the Act;
5) To assist the Board in the conduct of the affairs of the company;
6) To assist and advise the Board in ensuring good CG & in complying with CG requirements;
7) To discharge such other duties as have been specified under the Act/ Rules;
8) To discharge such other duties as may be assigned by the Board from time to time.
"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.
Key Managerial Personnel
Sec. 2 (51) {GAME CHANGER}

• “KMP” in relation to a company means the:–
  i. Chief Executive Officer or the Managing Director or the Manager;
  ii. Company Secretary;
  iii. Whole Time Director;
  iv. Chief Financial Officer; and
  v. Such other officer as may be prescribed.
Key Managerial Personnel
Sec.203 {GAME CHANGER}

- Board of every listed company and every other public company having a paid-up share capital of 10 crs or more shall appoint the whole time (i) MD or CEO and in their absence a WTD (ii) a CS and (iii) a CFO.

- A WT KMP shall not hold office in more than one company except in its subsidiary company at the same time.

- Vacancy in the office of WT KMP shall be filled up by the board within six months.
Amendment to Rule 8 re. appointment of CS

- MCA vide its notification dated 9th June 2014 has amended the provisions of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

- As per the amendment, a company other than a company covered under Rule 8 which has a paid up share capital of 5 crs or more shall have a whole-time company secretary.
Report on AGM Sec.121 & Rule 31

- Every listed public company shall prepare a report on each AGM including confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act, Rules and Secretarial Standard regarding general meetings.

- Report shall contain fair and correct summary of the proceedings of the meeting and shall be signed and dated by the Chairman of the meeting and the CS of the company.
One Person Company
Sec. 2(62)

- The introduction of OPC would encourage entrepreneurship and corporatisation of sole proprietorship business with limited liability of the member.
- It will generate more investment and jobs.
- SMEs will be able to avail credit facilities from lending institutions through this new business structure.
- PCS can play major role in advising clients in formation and management of OPCs.
Secretarial Audit  
Sec. 204 \{GAME CHANGER\}

- Every listed and every public company having a paid-up share capital of 50 crs or more or turnover of 250 crs or more:-

- shall annex with its Board’s Report, a Secretarial Audit Report given by a PCS.

- The company shall give all assistance and facilities to PCS, for auditing the secretarial records of the company.

- The BOD in its report shall explain in full any qualification or observation or other remarks made by the PCS in his report.
Secretarial Audit Report
Form No. MR-3

- “We have conducted SA of the compliance of applicable statutory provisions and the adherence to good corporate practices by--”
- “SA was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon.”
Secretarial Audit Report
Form No. MR-3

- “...company has...complied with the statutory provisions...has proper Board processes and compliance mechanism in place.....”
- “…The Board of Directors is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors”
Secretarial Audit Report
Form No. MR-3

● “..there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.”

● Auditor to give details of specific events and actions having a major bearing on the company’s affairs.
Secretarial Audit
Sec. 204

- The provisions of Sec. 143 (powers and duties of auditors..) shall *mutatis mutandis* apply to PCS conducting secretarial audit u/s 204.
- If a company or any officer of the company or the PCS, contravenes the provisions of Sec. 204, the company, every officer of the company or the PCS, who is in default, shall be punishable with fine which shall not be less than 1 lac but which may extend to 5 lac.
Fraud Reporting by Auditor Sec. 143(12),(15) & 204

- If a PCS conducting SA, has reason to believe that an offence involving fraud is being or has been committed against the company by its officers/employees, he shall immediately report the matter to the Central Government.

- If a PCS does not comply with the above provision, he shall be punishable with fine of minimum 1 lac and may extend to 25 lac.
Fraud Reporting by Auditor: Sec. 143(12)

- Should the concept of materiality be introduced as was in the draft rules.
- At what stage should it be reported;
- Should it be merely based on allegations or after the matter has been investigated and investigation report is available;
- Regulations should be in place to protect the auditor from criminal or civil liability;
Fraud Reporting by Auditor: Sec. 143(12)

- Globally such protection is accorded to auditors.
- For example:
  - (i) US SEC Order 10A;
  - (ii) OECD anti-bribery recommendations state that the requirement to report bribes should be accompanied by protection to auditors.
An internal auditor shall either be CA/CMA/other professional to conduct internal audit of the functions and activities of the company.
Annual Return Sec. 92
{GAME CHANGER}

✓ Transparency
✓ Disclosures
✓ Non- Financial Information

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Certification of Annual Return

- Sec 92 of the Act read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provide that AR filed by following companies shall be certified by a company secretary in practice:-

  - Listed company;
  - Company having a paid up share capital of 10 crs. or more or a turnover of 50 crs. or more.
Certification of Annual Return

- Annual Return shall be certified by a PCS stating that the AR discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act. [Refer Form No. MGT-8]

- If the PCS certifies the AR otherwise than in conformity with the requirements of Sec 92 or the Rules made thereunder, he shall be punishable with fine of 50k up to 5 lacs.
Major Changes-Annual Return

- Substantial additional disclosures of non-financial information about the company.
- AR to contain particulars as they stood on the close of the FY and not on the date of AGM.
- AR shall now be compulsorily signed by a CS/PCS (except in case of OPC/SC).
- The 1956 Act required signing of AR by PCS for only listed companies but 2013 Act provides for certification of AR by PCS for listed and prescribed classes of unlisted companies.
Major Changes-Annual Return

- Full AR to be filed every year. No provision like Sec.159(1) of 1956 Act of filing full AR once in 5 years and changes in between.
- The 2013 Act provides that an extract of AR shall form part of Board’s Report. There was no such requirement in 1956 Act.
- The 2013 Act provides a PCS shall be punishable with fine if he certifies the AR not in conformity with Sec 92. There was no such penal provision in 1956 Act.
A Report of the Board of Directors shall be attached to the financial statement laid before a company in general meeting.

Rule 8(1) of the Companies (Accounts) Rules, 2014 provides that the Board’s Report shall be prepared based on the stand-alone financial statement of the company.
Contents of Board’s Report

- Extract of the Annual Return in Form MGT 9;
- Number of meetings of the Board;
- Directors’ Responsibility Statement;
- A statement on declaration given by IDs u/s 149(6) that they meet the criteria of independence;
- Particulars of loans, guarantees or investments u/s 186;
Contents of Board’s Report

- In case of a company required to constitute a NRC u/s 178(1), its policy on appointment & remuneration of directors, KMP etc.;
- Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made:
  i. by the auditor in his report; and
  ii. by the company secretary in practice in his secretarial audit report;
Contents of Board’s Report

- Particulars of contracts or arrangements with related parties referred to u/s 188(1);
- State of the company’s affairs;
- Amounts proposed to carry to any reserves;
- Amounts recommended for dividend payment;
- Material changes and commitments affecting the financial position of the company which have occurred between end of the FY and the date of the report.
Contents of Board’s Report

- The conservation of energy, technology absorption, foreign exchange earnings & outgo;
- Development and implementation of risk management policy including identification of risk which may threaten existence of company;
- CSR policy and its implementation;
- A statement indicating the manner of formal annual evaluation made by the Board of its own performance and that of its committees and individual directors (for prescribed companies).
- Such other matters as may be prescribed.
Directors’ Responsibility Statement shall state that:-

- The directors, in case of a listed company, had laid down adequate internal financial controls which were operating effectively.

- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
Penalty

- If a company contravenes the provisions of Sec.134, the company shall be punishable with fine of 50K to 25 lacs.
- Every officer in default shall be punishable with imprisonment up to 3 years or with fine of 50K to 5 lacs or with both.
Major Changes-Board’s Report

- The Act requires the BR to be attached to FS and not the BS as was required by 1956 Act.
- Additional disclosures/information including extract of AR as compared to 1956 Act.
Additional Disclosures
{ Critical Role for CS}

- Prospectus-Sec.26
- Annual Return-Sec.92
- Promoters’ Stake Change-Sec.93
- Statement with AGM Notice-Sec.102
- Consolidated Financial Statement-Sec.129 and 137
- Boards’ Report-Sec.134
- Directors’ Responsibility Statement-Sec.134
Additional Disclosures
{Critical Role for CS}

- Register of KMPs-Sec. 170
- Related Party Transactions-Sec. 188
- Register of Contracts-Sec. 189
- Managerial Remuneration-Sec. 197
- Mergers & Amalgamations-Sec. 232
Secretarial Standards
Sec. 118(10) {GAME CHANGER}

● Every company shall observe secretarial standards with respect to General and Board meetings specified by ICSI constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government.

● It is one of the functions of the CS to ensure that company complies with the applicable secretarial standards [Refer Sec. 205].
CS as Independent Directors

{Ideally suited}

- ...act objectively; independent judgment;
- ...objectivity in board evaluation;
- ...safeguard interest of all stakeholders;
- ...balance conflicting interest of stakeholders;
- ...seek clarification/information/opinions;
- ...recording unresolved concerns in minutes;
- ...determine remuneration, appointment and removal of EDs, KMPs & senior management
The following classes of companies shall appoint at least one WD:

i. every listed company;

ii. every other public company having:
   - paid-up share capital of 100 crs or more; or
   - turnover of 300 crs or more.
Registered Valuers   Sec.247
{Challenging Assignment}

- Valuation of any property, stocks, shares, debentures, securities, goodwill, any other asset or net worth or liabilities of a company shall be valued by a RV.
- The RVs shall have prescribed qualifications and experience and registered as a valuer on prescribed terms & conditions.
- Audit Committee/BOD shall appoint an RV.
- [Not yet notified]
Appointment of Administrator
Sec. 259 {Ideally suited}

- CS may be appointed as Interim/Company Administrator (CA) from a databank to be maintained by the Central Government.
- NCLT may direct the CA to take over the assets or management of the company.
- The CA shall prepare a scheme for revival and rehabilitation of the sick company.
Company Liquidator
Sec. 2(23) {Ideally suited}

● “Company Liquidator” means a person appointed by:-
  a) the Tribunal in the case of winding up by the Tribunal; or
  b) the company or creditors in case of voluntary winding, as a Company Liquidator from a penal of professionals maintained by the Central Government.
Company Liquidator
Sec. 275 {Ideally suited}

- The Panel shall consist of CSs, CAs, Cost Accountants, Advocates, other notified professionals or a firm or a body corporate of persons having a combination of such professional and having at least 10 years’ experience in company matters. [not notified]

- Liquidation proceedings are extremely rewarding professional engagement in several jurisdictions.
The Company Liquidator may, with the sanction of NCLT, appoint Company Secretaries or other professionals to assist him in the performance of his duties and functions under the Act.
Legal Representation before NCLT Sec.432 {Game Changer}

- It substantially increases the scope of CS who have a right to legal representation before NCLT & Appellate Tribunal on all matters including scheme of compromise or arrangement, scheme of merger and amalgamation, winding up of a company etc.

- CS may be appointed as technical member of NCLT if he is, or has been in practice as a company secretary for at least 15 years.

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SFIO Sec.211
{Good Opportunity}

- The SFIO shall be headed by a Director and consist of experts in the fields of corporate affairs, capital market, law, banking, taxation, forensic audit, IT etc.
- The CSs have an opportunity of occupying prestigious positions as an expert in SFIO and play vital role in investigations.
Mediation & Conciliation Panel
Sec. 442 {Good Opportunity}

● The Central Gov. shall maintain a panel of experts to be called as “Mediation and Conciliation Panel” for mediation between parties during the pendency of any proceedings before the Central Govt. or the Tribunal or the Appellate Tribunal under the new law.

● CS have an opportunity to be empaneled on this Panel.
E-Governance
{Critical Role for CS}

- Service of documents through electronic transmission;
- Maintenance and inspection of documents in electronic form;
- Books of accounts in electronic form;
- Notice of meetings through electronic mode;
- Board meetings through video conferencing;
- Voting through electronic means.
E-Governance
{Critical Role for CS}

- Responsible for maintenance and security of electronic records [Rule 28];
- To take due & reasonable care to safeguard the integrity of the board meeting;
- PCS may be appointed as a scrutinizer to scrutinize e-voting process [Rule 20 & 21]
Enhancement of Penalties
{Critical Role for CS}

- The Companies Act, 2013 provides for enhanced penalties with maximum and minimum quantum of penalty for each offence with deterrence for repeated defaults.

- This would result in better compliance of law by companies through more and more reliance on services of professionals like Company Secretaries.
Adjudication of penalties
Se.454 {Critical Role for CS}

- It provides for appointment of adjudicating officers for adjudging penalty on the company & the officer who is in default for non-compliance or default under the Companies Act, 2013.
- Any person aggrieved by an order will have a right to prefer an appeal to Regional Director.
- It would enhance role of CS who may be called upon to represent the companies before the Registrar/Regional Director in such matters.
Domestic Trends

- Law makers-Parliament & State Assemblies
- Central & State Governments
- Regulators
- Judicial & Quasi-judicial authorities
- Industry Associations & Trade & Commerce
- Collaborations-NFCG, IIBF, IGNOU, NISM
- Investors & Investor associations
- Communities & other stakeholders
Global Trends

- Global Corporate Governance Forum
- Organisation for Economic Cooperation & Development (OECD)
- International Corporate Governance Network
- Global Reporting Initiative (GRI)
- INSOL International
- Chartered Institute of Securities & Investment
- Transparency International
- CSIA
Way Forward
{Do it soon & fast}

✓ Don't lower your expectations to meet your performance.
✓ Raise your level of performance to meet your expectations.
✓ Expect the best of yourself, and then do what is necessary to make it a reality.
Way Forward
{Do it soon & fast}

- Invest on resources
- Fix expiry date/time of your knowledge
- Regular communication with your clients
- De-stress yourself
- Spend time with loved ones
- Connect with nature
- Be fun loving and enjoy your work
Way Forward
{Business Mantra}

In BUSINESS,
words are words;
explanations are explanations;
promises are promises;
but
ONLY PERFORMANCE IS REALITY
THANK YOU

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