



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

e-CS Nitor

**PCS –
THE FACILITATOR
FOR
CORPORATE GROWTH**



World Entrepreneur of the Year 2014 : Shri Uday S. Kotak, Executive Vice-Chairman, Kotak Mahindra Bank, Addressing the Audience.

From Left to right on the dais: CS M.S. Sahoo, Secretary, ICSI, CS Atul Mehta, Council Member, The ICSI and Co-Chairman, ICSI-CCGRT Management Committee, CS R. Sridharan, President, The ICSI, Shri Ashishkumar Chauhan, Managing Director and CEO, BSE Ltd., and CS Vikas Y Khare, Vice-President, The ICSI.



From Left to right on the dais: CS M.S. Sahoo, Secretary, ICSI, CS Atul Mehta, Council Member, The ICSI and Co-Chairman, ICSI-CCGRT Management Committee, CS R. Sridharan, President, The ICSI, Shri Uday S. Kotak, Executive Vice-Chairman, Kotak Mahindra Bank, Shri Ashishkumar Chauhan, Managing Director and CEO, BSE Ltd., Shri K. Sethuraman, Group Company Secretary, Reliance Industries, CS Vikas Y Khare, Vice-President, The ICSI and CS Gopalchalam, Dean ICSI-CCGRT.

**The Institute of Company
Secretaries of India (ICSI)**

Launches

**Full - Time Residential Integrated
Company Secretaryship Course
at**

**ICSI- Centre for Corporate Governance
Research and Training (ICSI-CCGRT) at
Navi Mumbai**

Message from President



Dear Member,

Feverishly, we are making attempts to keep the date line for **CS-Nitor**, fortnightly e-journal, which will be out for circulation on 15th and on the last day of that particular month – either 30th or 31st. Within the period of two weeks period, our aim is to capture important developments and analyse the same and share it with the readers in the form of write-ups. I request all our members to share their experiences, views, reactions, insights and perspectives in the form of articles. Apart from regular issue of **CS-Nitor**, we brought out two special issues.

When we talk of *professional excellence*, it is not restricted to mere technical skills alone, it goes much beyond. Communicating effectively, fulfilling commitments, recognizing and expanding professional limits, affirming fellow professionals, mentoring, involving in community development programs, professional ethics, family life and celebrating work are some of the key elements of *professional excellence*. We want to inculcate these traits in young minds and to create an exclusive brand, which resulted in launching of CS Integrated Course on 12th July 2014 at Mumbai. Shri Uday S Kotak, Executive Vice Chairman and Managing Director, Kotak Mahindra Bank was the Chief Guest and Shri Ashish Kumar Chauhan, Managing Director & CEO, BSE was the Guest of Honour at this historic occasion.

With a quote from Ronnie Oldham, I conclude this communication, - “ ***Excellence is the result of caring more than others think is wise, risking more than others think is safe, dreaming more than others think is Practical and expecting more than others think is possible.***”

Regards

R Sridharan

President

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Contents

- Message from the President
- ICSI Launches Full-Time Residential Integrated Company Secretaryship Course
- Companies Act, 2013 : Opportunities for Company Secretaries
- Are Company Secretaries Geared up for Newer Opportunities ?
- Opportunities for Practicing Company Secretaries (Under Companies Act, 2013 and other Regulator Laws)
- Enhancing Qualities of Professional Services
- Circulars / Notifications

The Institute of Company Secretaries of India (ICSI) Launches Full - Time Residential Integrated Company Secretaryship Course

World Entrepreneur of the year 2014, Shri Uday S. Kotak, Executive Vice-Chairman and Managing Director Kotak Mahindra Bank, launched the Full - Time Residential Integrated Company Secretaryship Course at ICSI- Centre for Corporate Governance Research and Training (ICSI-CCGRT) at Navi Mumbai on July 12th , 2014.

In his inaugural address, Shri Uday S. Kotak, expressed that,"Interesting time is going on now and there is need for Minimum Government and Maximum Governance and Company Secretary is one such pillar which can deliver maximum governance". He said that, the CS get the role of carrying the torch of maximum Governance where entrepreneurship & professionalism play a vital role. He emphasised that combining these two roles is crucial and ICSI has vital role to play in the same, He added.

Shri Ashish Kumar Chauhan, Managing Director & Chief Executive Officer, BSE was the Guest of Honour on the occasion. Shri Chauhan, in his address said that, "technology is about creating social structure and ICSI is playing a very important role in creating quality CS professionals. In this fast moving society CS plays a role of Lord Krishna to Arjuna. Each CS has a responsibility on his shoulder to drive the brand to a path of success legally and morally." Shri Ashishkumar Chauhan also released ICSI publication, 'Companies Act, 2013 – A Ready Referencer' authored by Shri K. Sethuraman , Group Company Secretary, Reliance industries.

CS R Sridharan, President, The Institute of Company Secretaries of India (ICSI) while delivering Presidential Address on the occasion informed that the Full Time Company Secretaryship Course is a knowledge initiative of the The Institute of Company Secretaries of India (ICSI) for developing well rounded Governance Professionals. The Course is an interactive program focusing on experiential learning and combining class room lectures, discussions, class exercises, case studies etc.

There would be industrial visits and the students would be given practical exposures to various aspects of the profession through practice sessions, experiential learning, mock meetings and short training guided by practising and employed professionals, he informed. He also informed that the face of CS profession has changed from ministerial to managerial as now CS is Key Managerial Personnel. To create a unique brand and to develop soft and cognitive skills, theoretical knowledge to practical approach, the ICSI has launched its full time Residential Integrated Company Secretaries Course. The innovative and conducive environment is primary to equip students to think independently and the course will offer the same.

Based on the experience, the course would be gradually extended to other Regional / Chapter offices of ICSI, informed President, ICSI.

CS Vikas Y. Khare, Vice-President , ICSI introduced the guests and felicitated Shri Uday Kotak , Executive Vice-Chairman and MD, Kotak Mahindra Bank & world entrepreneur of the year 2014 on behalf of ICSI. In his address, he informed that , The Students undergoing this course would be exposed to real life organisational situations, professional dilemmas etc. to enable them to develop holistic perspective towards decision making as Company Secretaries. He also informed that ICSI has made all efforts to facilitate the students for getting training from

reputed industry/service firms. Experts from industry would be addressing the students and sharing their experience.

CS M S Sahoo, Secretary, The ICSI, gave an overview of the Full Time Residential Integrated Company Secretary Course and said, "that Companies Act, 2013 has enhanced the role of Company Secretaries in the Corporate Sector and in order to build a niche cadre of professionals who can shoulder the responsibilities assigned to them in an evolving business environment and ensure governance in true letter and spirit. The course will be imparted through experts from Academia/Industry and Practice. The students will get a very good chance to meet the industry experts. Moreover, this course will facilitate the students in getting trained and understanding the industry requirement and playing a vital role as Governance Professionals, informed Mr. Sahoo.

CS Atul Mehta, Council Member and Co-Chairman, ICSI-CCGRT Management Committee delivered the welcome address.

CS Gopalachalam , Dean, ICSI-CCGRT, delivered the vote of thanks.

About the Course

The curriculum of the course includes the syllabus of the Company Secretaryship Course as notified by ICSI from time to time. The first year would cover the seven subjects of Executive Programme and the second year would cover nine subjects of the Professional Programme; which are as under:

- Executive Programme (7 Papers), which includes
- Company Law
- Cost and Management Accounting
- Economic and Commercial Laws
- Tax Laws and Practice
- Company Accounts and Auditing Practices
- Capital Markets and Securities Laws
- Industrial, Labour and General Laws

Professional Programme (9 Papers)

- Advanced Company Law and Practice
- Secretarial Audit, Compliance Management and Due Diligence
- Corporate Restructuring, Valuation and Insolvency
- Information Technology and Systems Audit
- Financial, Treasury and Forex Management
- Ethics, Governance and Sustainability
- Advanced Tax Laws and Practice
- Drafting, Appearances and Pleadings
- Electives 1 out of below 5 subjects

- o Banking Law and Practice
- o Capital, Commodity and Money Market
- o Insurance Law and Practice
- o Intellectual Property Rights - Law and Practice
- o International Business-Laws and Practices

The selection process of this course is purely based upon the entrance examination. The entrance procedure will follow online examination by ICSI. The entrance would be based on different section like Reasoning, English and Numerical Aptitude. In lieu of online entrance examination, scores of recognized tests, namely, CAT, XAT, NMAT, GMAT, SNAP, MH-CET would also be considered. After the written examination the procedure will follow the Group Discussion and/or interview. The Integrated Course on Company Secretaryship is being launched in the Pilot Stage and the best candidates have been admitted to the Programme, selected through:

The Institute of Company Secretaries of India (ICSI)

The Institute of Company Secretaries of India (ICSI) is a premier national professional body. Its vision is “to be a global leader in promoting good corporate governance”. The mission of the Institute is “to develop high caliber professionals facilitating good corporate governance”.

Constituted under the Company Secretaries Act, 1980 to develop and regulate the profession of Company Secretaries, it functions under the jurisdiction of Ministry of Corporate Affairs, Government of India.

ICSI has its headquarters at New Delhi, four Regional Councils at New Delhi, Chennai, Kolkata and Mumbai and 69 Chapters across India including one overseas Chapter at Dubai. It has established Centre for Corporate Governance, Research and Training at Navi Mumbai. It has 88 examination centers across the country and one overseas centre in Dubai. In addition, the Institute has appointed 33 counselors to act as a bridge between ICSI and the students in those towns where the Institute does not have chapters. The ICSI has on its rolls over 35,000 qualified members both in Employment & in practice. Over 4.5 lac students are currently enrolled in the Company Secretaries Course.

Companies Act, 2013 : Opportunities for Company Secretaries

Mahesh Kumar Airan & Akansha Rawat

Assistant Education Officer(s), ICSI*

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.

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, FII's etc. Much reliance is placed on the annual return by the regulators, shareholders, judicial and other regulatory authorities.

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- *Reproduced from Souvenir of 15th National PCS Conference held on June 27-28, 2014 at Mumbai. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.*

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.

References

- Companies Act, 2013, the rules notified under various Chapters and draft rules Website www.mca.gov.in.
- Companies Act, 2013- New Rule of the Game Website: http://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/Companies%20bill/ASSOCHAM%20Bill_web.pdf.
- Company secretary's extended Role Website www.thelegaltrain.com/2013/10/company-secretarys-extended-role.html.

Are Company Secretaries Geared up for Newer Opportunities

CS Jagdish Ahuja

*Company Secretary**

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

* Reproduced from Souvenir of 15th National PCS Conference held on June 27-28, 2014 at Mumbai. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.

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.

Opportunities For Practicing Company Secretaries (Under Companies Act, 2013 And Other Regulatory Laws)

Prof R Balakrishnan
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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.

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.

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- Reproduced from Souvenir of 15th National PCS Conference held on June 27-28, 2014 at Mumbai. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.

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.

Enhancing Qualities of Professional Services

CS Pooja Dave

*Practising Company Secretary, Pune**

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 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

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- Reproduced from Souvenir of 15th National PCS Conference held on June 27-28, 2014 at Mumbai. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.

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 fledging 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 which 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 same 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, provides 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”.

CIRCULARS / NOTIFICATIONS

[To be Published in the Gazette of India, Extra ordinary, Part II, Section 3, Sub-section (ii)]

MINISTRY OF CORPORATE AFFAIRS

ORDER

New Delhi, dated 09.07.2014

S.O _____ (E) Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on 29th August, 2013 and section 1 thereof came into force on the same date;

And whereas clause (76) of section 2 of the said Act define the term 'related party'. In sub-clause (v) of the said clause, the word 'or' has appeared inadvertently and therefore defeating the intention of that clause.

And whereas difficulties have arisen regarding compliance with the provision.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 the Central Government hereby makes the following order to remove the above said difficulties, namely :-

1. Short title and commencement-

- (1) This order may be called the Companies (Removal of Difficulties) Fifth Order, 2014.
- (2) It shall come into force on the date of its publication in the Official Gazette.

2. In sub-clause (v) of clause (76) of section 2, for the word "or", the word "and" shall be substituted.

[F. No. 2/5/2014-CLV]

Sd/-

AMARDEEP SINGH BHATIA
JOINT SECRETARY

General Circular 28/2014

File No. 1/9/2013 – CL-V

Government of India

Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,

Rajendra Prasad Road, New Delhi - 110 001

Dated : 9th July, 2014

To

All Regional Directors,

All Registrars of Companies,

All Stakeholders.

Subject: clarification on form MGT-14 through STP mode.

Sir,

In order to simplify procedures and with a view to ensure timely disposal of E-Forms in the office of Registrars of Companies and keeping in view the penal provisions for false declaration as contained in section 448 read with section 447, the following E-Forms with the conditions mentioned along with will be processed and taken on record using the Straight Through Process mode.

S.No.	E-Form	Conditions
1	MGT-14	All cases except for change of Name, change of object, resolution for further issue of capital and conversion of companies will be STP Mode.

This circular will be effective from 21.07.2014.

Yours faithfully,

Sd/-

(KMS Narayanan)
Assistant Director
Tel: 23387263

Copy to :

1. PSO to Secretary
2. PPS to AS
3. PS to JS(M)/PS to JS(B)/PS to JS(SP)

Articles / Reviews invited for e-CS Nitor

We invite the members to contribute articles/checklist/reviews or any other relevant material pertaining to the Companies Act, 2013 for inclusion in the coming issues of **e-CS nitor** through e-mail at: ecsnitor@icci.edu. The article should ordinarily have 1500 to 2000 words.

Broad topics for submission of Articles

- One Person Company
- Annual Return
- AGM
- Bonus Shares
- Preferential issues
- Board Disclosures
- Incorporation
- Incorporation conversion
- Shareholders democracy
- Acceptance of Deposits
- Rules under Companies Act, 2013
- Resolutions to be filed under Companies Act, 2013

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All previous issues of e-CS Nitor are available on the link <http://www.icsi.edu/JournalsBulletins/eCSNitor.aspx>

For views/suggestions/feedback please write to : ecsnitor@icsi.edu

10 PCH for Members
Twenty five PDP for Students

42nd National Convention of Company Secretaries

Dates : 21-22-23 August, 2014

Venue: Science City, Dhapa, Kolkata

Theme: CS – Change. Challenge. Opportunity

Delegate Fee

Type of Delegate	Early Birds (Payment Received upto 10.08.2014) Inclusive of Service Tax	Others (Payment Received after 10.08.2014) Inclusive of Service Tax
Members of ICSI/ICAI/ICAI-CMA	Rs. 7000	Rs. 7500
Company Secretaries in Practice	Rs. 6500	Rs. 7000
Non-Members	Rs. 7500	Rs. 8000
Senior Members (60 years & above)	Rs. 6000	Rs. 6500
Students	Rs. 6250	Rs. 6750
Spouse/ Accompanying Guest / Children	Rs. 6000	Rs. 6500
Foreign Delegates	\$ 200	\$ 250

For Registration and other details please visit www.icci.edu/42nc.aspx.

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**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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