

**Setting up of Practice  
by  
Company Secretaries**



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

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## PREFACE

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Excellence is the Hallmark of success in a competitive environment. The performance of a professional can be kept at the level of excellence, by continuous self-learning, professional development and enhancing the quality of their professional services. It is in these underpinnings, this book has been prepared to facilitate the members of the Institute of the Company Secretaries of India to setup their practice and to appreciate their duties and responsibilities towards their Clients.

In order to support and expedite and facilitate its members to establish their practice, the Institute brings to you this publication.

This publication contains an exhaustive list of Areas of practice which a Practising Company Secretary can undertake. It also provides various strategies for development, Office Administration and IT Systems as well as tips for new entrants in order to guide the members of the institute in the best possible manner.

I place on record my appreciation for Quality Review Board and the Practising Company Secretaries Committee to guide this initiative.

I commend the dedicated efforts put in by CS Saurabh Jain, Joint Director and CS Naveen Kumar, Executive Assistant, Dte. of PD, PP & Studies in preparing the manuscript of this publication. I am also grateful to CS Ashok Tyagi, Practising Company Secretary for finalizing the manuscript incorporating the practical inputs based on his experience in the profession.

I am confident that this publication will prove to be of immense practical value to all the professionals and will facilitate the members and other professionals in understanding and appreciating the nuances of establishing their own practice.

In any publication, there is always a scope for further improvement. I would personally be grateful to users and readers to offer their suggestions /comments for further refinement in the next edition of this publication.

Place : New Delhi

**CS Mamta Binani**

Date : 05 August, 2016

*President*

**The Institute of Company Secretaries of India**

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## **Introduction**

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The Institute of Company Secretaries of India (ICSI) has issued this Practical Guide for starting your practice for Company Secretaries to inform members contemplating to enter into whole time practice of the profession of Company Secretaries of the nuances involved in starting practice and to assist them to prepare a business plan . Intended for members, who have recently obtained membership of ICSI and are relatively new to the intricacies of practice as a Company Secretary intending to operate either as a sole practitioner or in a small firm, the Guide will be helpful in making the decision and carrying it forward.

The starting point for practice in any case is digging out information with respect to practice. If a member has already started the research process, this Guide will help him/her to complete the business plan for the practice. Conversely, if reading this Guide is the starting point, it will inform the member about the major issues to be considered when opening the practice and will direct the member to other material in each area requiring review. Once the review exercise is over, the member may return to the Guide and use it to draw a roadmap to assist in completing the business plan.

Owning a practice means both practising the profession of Company Secretaries and operating a business. At one end it may be exciting and at the other equally challenging. The chances of success in practice are greatly increased if one determines for oneself why opening professional business is attractive and pens down a business plan that creates the practice plan as desired.

## Deciding to Start Own Practice

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Starting and operating own practice makes one the owner of a business as well as a professional. The challenges faced by a self-employed business owner are different than those of an employee so the decision to start own practice needs to be a well-informed one. Before starting own practice, one should evaluate the skill set and attitudes one possesses and needs to further develop upon.

Golden Rules, which one must consider positively before starting own practice:

### Personality and Attitude

1. *Submissive* – You should be polite and possess quality of being empathetic.
2. *Dedicated* - You should be committed towards the assignment given to you by the client and should exercise due diligence so that it could be delivered in time.
3. *Problem Solver* – You should have adequate command over the subject as well as you should possess the quality of interpreting the law in such a manner that the queries can be resolved.
4. *Risk Taker* - You should have the capability to take the risks during initial setup of the Practice.
5. *Planner* - Steps should be taken in order to plan the time to be devoted to each assignment. The staff strength should be commensurate with the size of the practice.
6. *Well Organised* - You should be well organised not only in terms of handling of assignments but as well as with maintenance of your official accounts and documentation.

7. *Well versed with the subject* – You should possess well polished knowledge over the subject.
8. *Enterprising* – You should have entrepreneur quality.
9. *Decision making* - You should have the capability to take decisions appropriately and adequately.
10. *Adaptable* - You should be flexible enough to adapt yourself to changing conditions, financial aspects or otherwise.
11. *Patient* – You should try not to loose your temper on petty issues and should concentrate on other major achievements.
12. *Competent* - Besides being knowledgeable, you should be an adroit so that it is easy for you to stand in a different, unique and influential position in the queue.
13. *Outsourcer* - You should always be open to deployment of your work, which you feel that you are not capable enough to do and which is not your subject of practice or area of expertise, as it would help you to save the cost and provide best available services to the clients and thereby build confidence among them.

## Tips for New Entrants

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### For Individual Professionals

1. When you know better, you do better: It is very important to upgrade your knowledge and skills everyday in order to get thorough with daily modifications and changes in the outside world.
2. Be organized, seek quality over quantity: It is not the magnitude of work which is important, but the way you handle the work and develop faith and good relations with the clients.
3. A dream does not become reality through magic, it takes sweat determination and hard work : It is very important to work with dedication, commitment and devotion in order to flourish in the market.
4. Don't let one bad day stop you from reaching your goal : There will arise many times when you will feel low and decide to quit the work because of certain failures. That day may become the day of your transformation and will help you in reaching the heights.
5. It is very important to invest time in existing clients, they are likely to give you new business which can lead to an enhancement in your growth and development.

## Strategies for Development

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### Practice Development Strategies

Generally, two aspects of professional work create special management challenges to the PCS. First, professional services involve a high degree of customization in their work. PCS must manage customized activities where nothing can be reliably made routine.

Second, most professional services have a strong component of face-to-face interaction with the client. This implies that definitions of quality and service take on special meanings and must be managed carefully, and that very special skills are required of top performers.

Both of these characteristics (customization and client contact) demand that the PCS attract highly skilled individuals.

*Some of the important concepts are as under:*

To deliver outstanding client service, to provide fulfilling careers and professional satisfaction.

PCS simply requires a delicate balancing act between the demands of the client marketplace, the realities of the people marketplace and the firm's economic ambitions.

### Leverage and the Client Marketplace

The required shape of the organization (the relative mix of juniors, managers and seniors) is primarily determined by the skill requirements of client work, the mix of senior-level, middle-level and junior-level tasks involved in the projects that the firm undertakes.

PCS should consider whether the client's problem is at the forefront of professional or technical knowledge, or of extreme complexity. Then the key elements of this type of professional service are creativity, innovation and pioneering of new approaches, concepts or techniques.

This usually involves highly skilled and highly paid professionals. Few procedures are routine in nature. The opportunities for leveraging the top professionals with juniors are relatively limited. Consequently, the ration of junior time to middle-level and senior time tends to be low.

PCS should consider projects may require a highly customized output in meeting the clients' needs involve a lesser degree of innovation and creativity in the actual performance of the work. General nature of the problem to be addressed is not unfamiliar and the activities necessary to complete the project may be similar to those performed on other projects. Clients seek out firms with experience in their particular type of problem. PCS sells his knowledge, experience and judgments.

## **Office Administration and IT Systems in Office**

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Service delivery now-a-days is increasingly leveraged upon technology. A practitioner cannot afford to stay aloof from IT and IT enabled devices as means of service delivery in this highly competitive environment where time is money and clients expect service delivery on real time basis. Identifying the IT systems (both hardware and software) for practice is crucial not just because it entails high capital outgo in procurement of hardware but also because such IT hardware is subjected to rapid obsolescence. The host of IT equipment and IT related services available to professionals, makes the choice all the more difficult.

If owning IT devices is not the option for a practitioner, he/she may consider leasing out one or using shared resources (such as software available on the cloud). The final decision would depend upon the bouquet of services offered and the manner and speed in which the services would be delivered. A candid discussion with an information technology (IT) or information systems (IS) consultant would enable one to make a well informed decision.

### **FOCUS**

- Management of employees;
- Ensure adequate resources needed for continuous productive results;
- Overseeing the day to day operations, etc.

### **ADMINISTRATION OF SERVICE**

- Work Area – appropriate infrastructure which shall include:
  - Proper furniture, lighting, ventilation in the work premises;

- Toilet, dining and refreshment facility.
- Information Technology –
  - Hardware, software, Networking necessary to keep up with the professional expectations;
  - Regular back up of important files, documents and diary/working papers;
  - Maintenance and updation of website of PU;
- Library including e-library – required books and reference materials;
- Compliances – checklists, templates, specimens;
- Communication facility – Written communication, verbal communication,
  - There should be proper system for recording inward/outward mails;
  - Maintenance of confidentiality of client and firm information;
  - Training employees and apprentice trainees to be well behaved and polite.
  - No important communication to be done verbally.
- Research and Training - requires regular and continuous updation and training on amendments and new laws;
- Budgeting - Planning the area of expense, ensure proper utilization and application of resources etc.
- Human resource management; and
- Adequate procedure for recruiting new employees and management trainees;
- Maintaining proper attendance record;
- Having disciplined environment;
- Training in interpersonal skills and communication skills;
- Assignment and rotation of work;

- Monitoring and accountability;
- Research and Training on continued basis.

*Office Resource Management*

- Proper facility to have back up of data;
- Office should be clean and hygienic, remove trash and avoid wastage;
- Ensure easy retrieval;
- Reduce redundancy.

**ENGAGEMENT DIARY**

An important tool in the hands of PCS and its whole team.

- Engagement Diary shall provide information on the following:
  - Who : who has carried out the engagement?
  - Where : where has the engagement been conducted?
  - When : when is engagement undertaken?
  - What : what is the purpose and scope of engagement?
- Contents of the diary:
  - Basic information of the name of the Client company whose work is being carried out.
  - Information about the PU.
  - Scope and objective of the engagement being carried out.
  - Records and documents to be verified and inspected.
  - Methodology of carrying out.
  - Period of engagement.
  - Documents requested, obtained and relied upon.

## Registration of Firm Name\*

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A trade/ firm name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use.

A trade/firm name may include the name(s) of the member(s) as it/ they appear in the Register of Members in the following manner:

- (i) For Sole proprietorship concern: (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix (b) Initials of the first name and/or middle name and/or surname, in whichever order (c) Combination of (a) and (b) above, in any order (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above
- (ii) For Partnership firm: (a) Full surnames of two or more partners (b) Full first names of two or more partners (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix (d) Combination of initials of first names and/or middle names and/or surnames of the two or more partners (e) Combination of (c) and (d) above, in any order.

General (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms. (ii) A trade/firm name shall not contravene the provisions

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\* As per guidelines issued by the Council of ICSI.

of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.

- (iii) The trade or firm name may be suffixed by the suffixes "G Co.", "G Company" or "G Associates". However, any suffixes that may be considered undesirable by the Council shall not be allowed.
- (iv) (The word "and"/ "G" could be used in between the first name/middle name/surname including initials thereof, of the partners of the firm.
- (v) A firm name may also be allowed without the use of the suffixes "G Co.", "G Company" or "G Associates" provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word "G"/ "and" is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
- (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes "G Co." / "and Company"/ "G Associates".
- (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
- (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc. shall not be allowed.
- (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/or in any order, shall not be allowed.

The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary, Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc., shall not be allowed. However, trade/firm names matching with the group name/theme shall

be allowed, if the same is not in contradiction with any other criteria.

- (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
- (xi) In case any change in the status of the firm from individual firm to partnership firm or vice versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
- (xii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
- (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
- (xiv) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.

## **Areas of Practice for New Entrants**

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### **RAISING OF RESOURCES/FINANCIAL SERVICES**

- Loan documentation, registration of charges, search and status report.
- Advisor/Consultant in issue of shares and other securities.
- Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities, and obtaining various approvals in association with lead managers.
- Listing of securities/delisting of securities with recognised stock exchanges.
- Private placement of shares and securities.
- Buy-back of shares and other securities.
- Liaisoning with financial institutions, banks, other lenders, and stock exchanges, and furnishing periodical returns, reports and information required by them.

### **FOREIGN COLLABORATIONS AND JOINT VENTURES ABROAD**

- Advising on Foreign Collaborations.
- Advising on setting up of subsidiaries in India.
- Advising on setting up of joint ventures abroad or setting up of subsidiaries abroad.
- Drafting of Memorandum of Understanding, Promoters' Agreement, Shareholders' Agreement and Commercial Agreements.

**CORPORATE RESTRUCTURING**

- Planning strategies for amalgamation / merger, acquisition, takeover, spin off, reconstruction, reorganisation, restructuring and winding up of companies.
- Change of name, change of objects and shifting of registered office of the company.
- Drafting schemes of amalgamation or arrangement, public offer for acquisition or takeover, and Promoters Agreement.
- Complying with necessary legal and procedural requirements.
- Advising the management on post restructured scenario.

**CORPORATE LAWS ADVISORY SERVICES COMPANIES ACT**

- Filing, registering, representing, attesting or verifying any document including forms, returns and applications by or on behalf of the company as an authorised representative.
- Compilation of status/search reports for companies, banks and financial institutions.
- Pre-certification of forms relating to Registration/ Modification/ Satisfaction of charges and their filing with the Registrar of Companies.
- Pre-certification of other documents and returns required to be filed with the Registrar of Companies.
- Advising on legal and procedural matters under the Act.
- Maintenance of secretarial records, statutory books and registers.
- Acting as Secretarial Auditor, Advisor or Consultant.
- Filing of petitions before the Company Law Board.
- Appearing as authorised representative before the Company Law Board, Central Government, Regional Director and Registrar of Companies.
- Acting as Scrutinizer for postal ballots voting process.

### **CONSUMER PROTECTION ACT/ COMPETITION ACT**

- Appearing as authorised representative before the Consumer Forums, Competition Commission.
- Advising company on dealership agreements, trade practices, sales promotion schemes, marketing and sales campaigns.

### **FOREIGN EXCHANGE MANAGEMENT ACT**

- Advising on legal and procedural matters falling under FEMA.
- Advising Non-Resident Indians regarding investment in India and repatriation of such investments and returns thereon.
- Obtaining RBI/FIPB approvals.

### **DEPOSITORIES ACT**

- Appearing as authorised representative before Securities Appellate Tribunal.
- Conduct of Internal Audit of Operations of Depository Participants.

### **STATE LAWS**

- Advising on legal and procedural matters on various laws of different states on Pollution Control, Co-operative Societies, Public Trusts, Non Trading Corporations, Land Ceilings, Sales Tax, Revenue Laws etc.

### **APPEARANCE BEFORE REGULATORY AUTHORITIES**

- Appearing as authorised representative before the National Company Law Tribunal, National Company Law Appellate Tribunal, Central Government, Regional Director, Registrar of Companies, Consumer Forums, Securities Appellate Tribunal Central Excise authorities, Customs Authorities, Income Tax Authorities, Appellate Tribunals, Central Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission, Telecom Disputes Settlement and Appellate Tribunal.

**TAX PLANNING AND MANAGEMENT****Income Tax**

- Computation of tax payable, filing of returns of income of the company and its directors and obtaining permanent account numbers.
- Computation and payment of advance tax.
- Computation of deduction of tax at source, filing of forms and issue of TDS certificates.
- Acting as authorised representative before the Income Tax authorities during assessment proceedings, furnishing of records/ documents/explanations called for.

**Excise**

- Acting as authorised representative before Central Excise Authorities.
- Valuation and classification of goods.

**Customs**

- Acting as authorised representative before Customs Authorities and the Appellate Tribunal.
- Assisting in clearance of import/export classification of goods.

**EXPORT-IMPORT AND FOREX DEALINGS**

- Advising on Export-Import policy and regulations.
- Export-Import documentation.

**INTELLECTUAL PROPERTY RIGHTS AND WTO**

- Advising on Intellectual Property Licensing and drafting of agreement.
- Acting as registered Trade Mark Agent.
- Advising on passing off/infringement matters.
- Advising on registration of patents, trademarks and copyrights.

## Guidelines for Opinion Writing

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An Opinion is your written response to instructions to advise in writing. It follows that it must contain advice. You do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it. Advising is inextricably bound up with and is part of the mental attitude with which you approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.

### **Need for a Legal Opinion**

- Interpretation of statutes or documents
- Advise a transaction structure
- Opinion for guidance of decision makers in commerce, industry or government
- Opinion to Lenders on enforceability of Finance Documents
- Opinion for Investors for compliance by Target Companies
- Opinion on Foreign Direct Investment
- Determining provision for contingent liabilities or determination of contingent assets
- Merits or demerits of legal proceedings
- Provision for contingent liabilities or Identification of contingent assets
- Merits or demerits of legal proceedings
- Drafting a pleading
- Preparation for trial of arbitral or legal proceeding

- Ascertain compliance level for issue of securities and identification of risk factors for investors
- Valuation of business.

### **Formulation of a Legal Opinion**

A request for a legal opinion will usually come in written form. Such a request will usually include any documents in the case. The request for a legal opinion will include at least one and usually a number of questions which the legal advisor is being asked to address.

A legal opinion will often have the overarching question of does the client have a good and viable case. This is clearly the most important question to any client and must be approached with honesty and directness. If the client's case is not viable they must be advised of this in the course of the legal opinion, if there is something which can be done to improve the client's prospects of success, a good legal opinion will spell this out very precisely. Numbered action points are one way of achieving clarity in this regard.

Above all it is vital to remember that in being asked to draft a legal opinion, you are being asked to advise. Sitting on the fence is not an option. Lay out the pros and cons of a particular course of action, but always come down on one side or the other. Giving a percentage chance of success at the beginning of a legal opinion is one way of being clear about what you think the client's prospects are.

Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

#### **I. The Mental Attitude**

The mental attitude required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academician. The approach required is a practical approach as opposed to an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles

to remember to develop the right mental attitude at all times are:-

- (a) You are dealing with a real situation.
- (b) The facts are more fundamental than the law.
- (c) The law is a means to an end.
- (d) Answer the question.

## II The Thinking Process

The next stage in writing an opinion is the thinking process. It involves the following stages:-

- (a) *Read and digest your instructions* :- Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.
- (b) *Answer the primary question* :- You must have a clear idea of what your client wants to know if you are to address your mind to the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.
- (c) *Digest & organise the facts* :- The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not. A legal opinion must focus on the relevant facts, but it may also be necessary to specifically advise that certain things are not relevant. The first stage will be about organising the facts of the case into these categories. It is a matter of personal preference how this is done, but charts and schedules are often useful and a chronology should be a starting point for every fact marshalling exercise.
- (d) *Construct a legal framework* :- Once the facts are at your finger tips, a legal framework needs to be constructed into which these facts can be logically slotted. Different types of cases will involve different legal frameworks, but whatever the legal issue, the legal opinion must be continuously advising on the strength of the client's position in the case.

One question which is implicit in every request for a legal opinion is 'what should be done next?' This should be decided at the planning stage and should inform the legal opinion throughout.

- (e) *Look at the case as a whole* :- What should also be borne in mind throughout the planning stage should be the opposing case. A legal opinion will be useless if it considers the client's case in isolation. Evidential issues must also be considered. A good legal opinion will always address how a particular factual situation can be proved.
- (f) *Consider your advice* :- What your client needs is good practical advice, so you should consider also the practical steps that you advise your client to take.

Before you begin writing a legal opinion, you will know exactly what advice you are going to give, why you are giving it and how you are going to present it.

### III. The Writing Process

Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality. You have to know how to express yourself in an opinion, how to transfer the thinking process on to paper.

The legal opinion should be written following a structure. It should be entitled OPINION or ADVICE and contain the title of the case in the heading. The first few paragraphs should serve as an introduction to the legal opinion, laying out the salient facts and what you have been asked to advise about.

At this point, many legal opinions will set out the main conclusions and advice and the overall opinion. This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading. A percentage chance of success can be included in this section if appropriate.

The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each

issue should be taken in its logical order. Each section should include your opinion on that issue and the reasons for it.

There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions. One example of these is that liability should be dealt with before quantum in civil claims. If there are two or more defendants take each of the defendant's liability in turn before turning to quantum. The concluding paragraph of a legal opinion ought to be a 'Next Step' paragraph advising what needs to be done to strengthen the client's case.

### **Using the Law in a Legal Opinion**

There is no need to set out basic principles of law with which the reader will be familiar. Otherwise, authorities should be cited to support propositions of law and when doing so a full citation should be given. It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to your reasoning, the basis on which the case was decided should be set out fully in the legal opinion. It may even be appropriate to quote directly from the judgment although often paraphrasing the effect of the decision will usually suffice. Always refer the case you are citing back to the facts being dealt with in the legal opinion. Always cite the most authoritative case on the point of law being dealt with.

With regard to statute, much of the same advice will apply. If there is a statutory provision which deals directly with the subject of the legal opinion then this should be clearly stated and its effects fully explained. Of course care must be taken to ensure that any statutory provision being cited is in force at the time of writing the legal opinion.

In summary, any legal opinion should be written with the reader in mind. It should be clear, well reasoned and as concise as it is possible to be without sacrificing completeness. A logical structure based on the legal principles being discussed is vital to clarity. Any piece of legal writing should be read before submission to ensure against grammatical or typographical errors which will detract from the communicative value of the work. Above all, the advisory purpose of a legal opinion should be borne in mind at all times.

**Structuring a Legal Opinion**

- Purpose
- Reader's Logic
- Facts / Issues
- Law – statutes
- Law – Judicial precedents
- Application of law to the facts and issues
- Conclusion
- Signature

**Contents of a Good Opinion**

1. Give brief background of all the facts originally given and additionally called for in the matter along with the materials/ documents submitted and perused. Also mention about the legal status and activities of the querist. If necessary, reference to the name of the executive(s) and department giving explanations and seeking the opinion may be mentioned.
2. Never fail to touch upon the relevant charging section in case of revenue statute and definition(s) in the Statute (Act), if available or the meaning assigned in General Clauses Act or meaning given in Law Lexicon or where advisable simple common parlance meaning depending on case to case.
3. It is equally important, dependent upon the query to analyse the Constitution of India, Relevant Articles, Seventh Schedule of Constitution - State list, Central List or Concurrent list and Relevant Entries.
4. The queries as raised in the case for opinion should be reproduced verbatim in serial order and wherever necessary improve and rephrase the query to bring out better clarity.
5. Answer to the queries should be seriatim and specific. Where necessary, a couple or more related queries may also be

clubbed for common opinion if the answer is going to be common. The reader of the opinion should be able to make out the answer is 'yes' or 'no'.

6. If answer to any query does obviate the need to answer other/ further query/ies, then you may mention that in view of answer to query no. \_\_\_ there is no need to answer query no. \_\_\_. Opinions also state "please refer answer to query no. \_\_\_"
7. A good opinion is specific and not gol-gol without touching the goal! Poor client on a misleading opinion may reach goal!
8. Opinion is interpretation. Follow all good rules of interpretations. Reproduce relevant sections, title to the section and preamble too as may be required to bring out the clarity and to justify what you opine.
9. A good opinion fortifies itself by supportive case laws (both of Supreme Court and High Court) which have not been overruled on the date of the opinion. Relevant Circulars, Clarifications Notifications, Press Notes, given by the administering authority like SEBI, FIPB, Ministries & Courts should be relied upon.
10. A better opinion fortifies itself by quoting both supportive and non-supportive case laws on the issues and distinguishing one from another to conclude why the supportive case laws are relevant / decisive for the opinion.
11. Cite foreign case-laws only when absolutely necessary and persuasive and where the Indian jurisprudence is wanting e.g. Competition Law.
12. Mention clearly that the opinion is based on the facts and materials made available and if there comes any variation, the opinion might need modification, even reversal.
13. Keep in mind the end use of the opinion i.e. for internal consumption, Board, for parent company abroad, auditors requirement, to fight demand notices, to play safe, keep on file etc.
14. Sometimes depending on the query and nature of issue,

opinion may traverse beyond the queries raised and travel extra mile.

15. Opinion should allow the querist to seek any further clarifications on the given opinion.
16. Opinion should be signed with date. E-mail opinion is fine and binding for internal purposes.

## Drafting of Deeds and Documents

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As Company Secretaries, you are quite commonly required to draft legal documents, resolutions, minutes, notices etc. and give opinions on interpretation of various corporate laws. Since Practising Company Secretaries (PCS) are now also allowed to practice before the NCLT, you as PCS, may be required to even draft 'statement of case'. Hence, it is very important for you to develop these skills.

### Effective Writing

Both drafting and opinion writing are written word skills. There are certain key ingredients or qualities of effective writing common to both drafting and opinion writing. They are as follows:-

- *Be clear* : The meaning should spring instantly from the words and should not need to be pondered, reread or analysed. An opinion may try to explain a complex situation so that it can be understood. A statement of case tries to define issues and bring them into the open. It follows that there is a great need for clarity in what a drafter writes. If it cannot be understood by those reading it, or if it is open to different interpretations, not only is it poorly written, but it has failed to serve the very purpose for which it was written. Clarity of expression can never be achieved without clarity of thought behind it.
- *Avoid ambiguity* : Ambiguity is a loser. Too much ambiguity has great potential for misunderstandings. When you are writing in a legal context you must be aware of all different view points from your words might be seen and ensure that what you write is genuinely unambiguous. You should reckon

that if what you write could reasonably bear another meaning than that which you intent, someone somewhere will probably try to read it in that way. Learn to be aware of and avoid all possible ambiguities.

- *Be precise* : Everything you should ideally say exactly what you want to say, neither more nor less. There are degrees of precision. You will have to write with great degree of precision. This is particularly true of opinions and advices and quite fundamental in drafting. In statements of case there have to be absolute precision. The words you use must be chosen for their precise meaning; the sentences you write must be composed to convey a precise sense. Lack of precision will result in a degree of confusion or at worst it may mean you are in effect telling lies.
- *Be concise* : Write what you have to write in a reasonably brief manner. This does not mean it should be abbreviated, or even short; rather it should be succinct and to the point. Try to avoid repetition and long-windedness. Leave out what is unnecessary or that which obstructs your flow or meaning without adding anything. But beware of trying to be too concise. If what you are writing merely becomes a summary of what you mean to say, it will not do. Note that clarity is more important than brevity.
- *Be complete* : This is a quality which must be balanced with conciseness. When you write, you must express your ideas completely. If incomplete, it is almost certainly imprecise, ambiguous and unclear. Especially in contracts, if you don't cover something, it's up to the judge. Boiler plate is not really necessary, yet it is usually used for a reason — it is comprehensive in most cases. Just make sure to tailor your writing to the appropriate contract.
- *Have logical structure* : Clarity very much depends on the structure of what is being written. The whole piece of writing needs to be composed in a clear and coherent manner. This means that the structure should be logical. Remember to organize things logically, and make it so that if someone is

looking for the integration clause, he or she doesn't have to flip through all pages.

- *Avoid spelling errors* : Spelling errors make you look unprofessional. Take all reasonable steps towards eliminating them. The first step is to accept that spelling matters. In the modern age a great many spelling mistakes occur not because the writer cannot spell, but because he or she is clumsy on the keyboard makes typographical errors, and then fails to correct them. A computerised spell checker can pick up a great many of them, but never all. A spell checker will often suggest a wrong word and certainly is not capable of identifying correct homonyms (e.g., "suite" versus "sweet") or pointing out all typos (e.g., if you typed "then" when you meant to type "the"). It is, therefore, your responsibility, not your computer's, to make sure your spelling is correct. Of particular importance in the professional world is to spell names correctly especially that of your client. Always study the spelling of any name you are given and make sure you reproduce it precisely.
- *Avoid grammatical errors* : The rules of grammar dictate wordforms, word order and sentence structure. If a verb is in a wrong tense, an adverb in the wrong place or a sentence improperly composed, the only possible result is obscurity of meaning. Grammar is particularly important where you are using long sentences. Any grammatical inconsistency is therefore likely to destroy the value of the long sentence. You cannot write clearly if your writing is not grammatical.
- *Use Proper Punctuation* : Punctuation can be crucial to the meaning of a legal document. Take care to use full stops, commas, semicolons and colons properly and in the right places. The sense of a sentence can be destroyed by a wrong punctuation at a wrong place. Take particular care over punctuation when drafting. Drafting can occasionally involve complex grammatical structures, long sentences and numbered sub clauses. The wrong punctuation can easily destroy the whole relationship between various parts of the sentence or detach a sub clause from the main clause to

which it belongs. The choice of punctuation marks is just as much a part of drafting as the choice of words.

- *Avoid passive voice.*
- *Be plain and straight forward* : Legal language remains largely unintelligible to most members of the community. It even causes problems for the members of legal profession. It is very easy to fall into the habit of writing like this, because such language is all around you, in precedents, forms, contracts, statutes etc. This kind of legal writing presents a barrier to effective communication. Being cute or clever when it isn't necessary can be distracting. Plain, clear English is what you need — not too much Latin and five-syllable words or legalese.
- *Be Elegant* : Elegance is something we recognise and appreciate when reading a piece of writing. It is a matter of artistic impression. It is also very much a matter of flow and rhythm. No one can tell you how to write elegantly. It is for you to decide. Elegance should be sacrificed to some degree if it is in conflict with precision, non-ambiguity, completeness or clarity.
- *Be polite* : It may feel good to make those stinging, snide comments about the other company or to the other side...but this won't be your only case or dealing with them. If you need to get a point across, doing so tactfully is better.
- *Appeal visually* : It will help make your proposal attractive. Douse white space and short paragraphs. Tables of contents can be used as well and are greatly appreciated in lengthier drafts. Breaking up long paragraphs into subparagraphs and numbered lists is nice too — it makes it easier to pinpoint cite a particular provision. This also goes for most documents, such as articles of incorporation, etc.
- *Have the reader in mind when you write* : An opinion or a legal document may be addressed to anyone but frequently a lay client will wish to read it and it should be comprehensible to him or her. Always be aware of the characteristics and background of the likely reader of what you write and gear it to that reader.

- *Read over anything you write to correct typographical errors and to give yourself one final opportunity to improve in any small way you can on what you have written.*

**Tips to improve writing**

1. Have a strong mindset to improve your writing skills and believe that you can do anything and everything.
2. Read writings of others regularly. While reading, underline those words for which you don't know the meaning. Then, refer the dictionary and know the meaning. Try to find meaning for atleast 30 to 50 words a day. Also, try to understand the whole sentence where you find the word. You need to do this for a minimum of 6 months to one year and many professionals and even successful personalities do this throughout their life.
3. You should know basic grammar. Refer basic grammar books and understand the substance. Concentrate on basics first.
4. Before starting to write anything, make sure what you want to say.
5. Practice writing. Write something regularly. Note down your experience, send mails and write an article.
6. If you are uncertain of the spelling of a particular word, use a dictionary.
7. If you cannot think of the word which conveys precisely what you want to convey, use a thesaurus.
8. After doing all the things referred to above for some time, then, communicate with others in English and participate in discussions with friends and intellectuals in English. But get basics first before going to speak in English.
9. While doing all these things, you tend to be good at professional drafting. It's all practice and it makes one perfect.
10. Ultimately, you should constantly read and write and it should be your hobby and in the course, you will be master in communication.

Taking these steps, you should improve your ability to write in a way which is clear and easy to read.

## Peer Review of the Practice Unit

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### Definition

The dictionary meaning of the term "Peer" is, a person of the same legal status or a person who is equal to another in abilities, qualifications, age, background, etc. "Review" means to look back upon (a period of time, sequence of events, etc.) Thus Peer Review is a self-improvement process and is a method of evaluation of a person's work or performance by a group of people in the same occupation, profession, or industry.

**Excellence is the hallmark of success in a competitive environment. Performance can be judged and enhanced to a level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore decided to introduce Peer Review for Practising Companies Secretaries (PCS) to periodically evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.**

### Benefits of Peer Review

There are significant benefits which a Practice Unit (P.U.) will obtain in undergoing a Peer Review. These may be summarized below:

1. A successful Peer Review will provide comfort to the P.U. that he has adhered to various statutory, documentary and other regulatory requirements.
2. If deficiencies are noticed and corrective measures suggested, the P.U. will have an opportunity to correct the deficiencies and thereby enhance his professional competence.

3. If a Peer Review Certificate is issued in favor of the P.U. it enhances his credibility in the eyes of the general public.
4. Since a Chinese Wall exists between the Peer Review Process and the Disciplinary Proceedings, the P.U. will benefit from Peer Review without any apprehension of any disciplinary proceedings being initiated against him for any deficiencies noticed on his part.
5. Clients of the P.U. will benefit from knowing that their P.U. is periodically reviewed by the ICSI.

#### **FAQs on Peer Review**

1. *What is Peer Review?*

Ans. Peer Review is a process used for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. *To whom all would Peer Review be applicable?*

Ans. Peer Review is applicable to all Practising Company Secretaries.

3. *How much will it cost me to get Peer Reviewed?*

Ans. You shall pay to the Peer Reviewer the fee of Rs. 10,000/- (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

4. *What is the frequency of Peer Review?*

Ans. Initially, each Practice Unit would be required to be peer reviewed at least once in every five years.

5. *Can I become a Peer Reviewer?*

Ans. Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-

- a. possesses at least 10 years of post membership experience
- b. is currently in practice as a Company Secretary.

6. *After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?*

Ans. No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review. (Refer Cl. 18 of the Guidelines for details)

7. *Will ICSI be issuing any Certificate after Peer review?*

Ans. Yes.

8. *Will ICSI put up the names of the PU which have undergone PR on ICSI website?*

Ans. Yes

9. *Is it true that the significant objective of Peer Review is to identify deficiencies?*

Ans. No, the significant objective of the peer review is not to find out deficiencies but to improve the quality of services rendered by the members. The objective is not to identify isolated cases of engagement failure, but to identify weaknesses that are pervasive and chronic in nature.

9. *What professional opportunities are likely to be provided by the process of peer review?*

Ans. Some of the areas which may provide/enhance professional growth/opportunities both for Reviewer and Practice Unit could be as under:

I. Training of Reviewer and practice unit would lead to updating the knowledge and consequently expansion of horizon of professional opportunities.

II. Incentive for implementation of the best professional Practices by a Practice Unit being subject to peer review, since one's internal policies and procedures are subject to an independent review.

- III. Enhancement in the competence of members since such a process greatly increases the awareness about the implementation of Technical Standards both on the part of the Reviewer and the Practice Unit.
- IV. Public sector undertakings (PSUs) prefer Peer Reviewed PUs to conduct Secretarial Audit of their undertakings.
- V. Council of ICSI has issued notification that the Partners of Peer Reviewed unit would be entitled to get 5 additional Secretarial Audits.
- VI. Peer Review would serve as a quality assurance certificate and may invite preference from regulatory and other authorities while assigning Professional work to Companies Secretaries.

10. *What is the focus of Peer Review?*

Ans. The focus of Peer Review is on:

- Compliance with Technical Standards
- Quality of Reporting
- Office Systems and Procedures –pertaining to attestation services only, including appropriate infrastructure.
- Time and Staff Management
- Professional Development of Staff

11. *How will a PU be selected for Review?*

Ans. At each phase of Peer Review, certain PUs, would be selected for peer review on a random selection basis. The Board is empowered to decide the proportion of PUs to be included in the selection during each phase of implementation.

A PU may also suo moto; apply to the Board for conduct of its peer review. Further a client of the PU may request Board for Peer Review of the PU. In such a case, the cost of the peer review would be borne by the Client itself.

12. *How does a Reviewer select attestation service engagements to be reviewed?*

Ans. The Reviewer is required to select on a random basis an initial sample for review from the complete list of attestation service engagement of the PU. He may select the sample on the basis of the information given in the questionnaire and after seeking such other information from the PU as he considers necessary to facilitate the selection. The engagements to be reviewed should be a balanced sample from a variety of different sized clients covering various entities so that they reflect the overall performance of a PU.

The Reviewer may modify the initial samples selected for review, in consultation with the PU at the execution stage.

## **Bank Accounts, Accounting and other Financial Issues**

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The practitioner receives remuneration for the professional services by way of bank transfers, cheques, bank drafts as well as in cash in a few cases. It becomes imperative to have a bank account where to received funds and deposit the other bank instruments and cash received. This would not only enable safekeeping of the funds but also help in building up a corpus to meet future expansion needs. The practitioner as well as the bank in which the account is maintained develop a healthy relationship overtime and are more willing to lend funds to the customers who already maintain deposit accounts with the bank. The type of bank account whether savings or current account or overdraft or cash credit account would depend on the needs of the practice. The need is to plan the available resources well and regularly keep aside some funds in the bank account to meet unforeseen emergencies and future expansion needs.

## **Building Support Team**

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During the initial years of practice the work load may be less and the sole practitioners may be able to handle all the tasks requiring the exercise of professional skill and judgement or regular mundane tasks which may be just administrative in nature on his own with great ease. Employing support staff during the initial years of practice may not be a good idea if the same is manageable with some part time staff or just an office boy to run around and do all odd jobs such as paying utility bills for telephone and electricity, receiving phone calls and postal mails in your absence from office maintain the cleanliness in office and other such things. Nevertheless you should plan in advance and employ staff who in the long run will be your greatest asset in the form of a support team which functions on its own without every time being told to do certain tasks.

## Soliciting Clients

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A professional practice will remain afloat only so long as it has regular clientele. During the initial years of practice the potential clients may not know you and you need to go out all the way and apprise them about the services that you can offer. You may advertise your services but with caution as soliciting clients is subject to the code of conduct as applicable to company secretaries. The Council of the Institute has permitted practising company secretaries to use their own logo on Stationery (Letterhead, business cards, envelopes, etc.); Branding Collateral (Flyers, brochures, books, website, etc.); Apparel Design (Tangible clothing items that are worn by employees); Signage (Interior & Exterior design); Messages & Actions (Messages conveyed via indirect or direct modes of communication); Other Communication (Audio / video, etc.); Anything visual that represents the business, subject to compliance with the "Guidelines for use of Individual Logo by Company Secretaries in Practice".

The Guidelines for Advertisement by Company Secretary in Practice lay down the broad parameters for what is permissible and what is restricted while advertising your services in various modes. Of course you may advertise through the internet by setting up your own website providing information about the range of services offered by your professional practice.

The design of an effective advertisement for soliciting clients without stepping into the quagmire of the Code of Conduct requires a thorough understanding of the clients' needs in the geographical area which you plan to service. A complete research of the viability of the practice in the field of professional services which you plan to offer. A detailed budget plan to finance the advertisement

exercise. The work will start with identifying the target clients, services proposed to be offered, clients' needs and the capacity of the professional practice to tailor its service offerings to the client's needs. The advertisement should be targeted at providing exposure of the professional practice to the target market right from the start of the practice to the evolution period of the practice. The entire exercise would need a close watch on the budgets, financing of the advertisement exercise and outcomes so as to determine timely alternations in the action plan.

## Networking

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The recent regulatory prescriptions in the Companies Act, 2013 and various other legislations have given a big boost the Practice of Company Secretaries. The Practice Units are quite small in size in form of sole proprietorship firm or in the form of partnership firms.

Such small and medium PCS firms face the following key challenges:

- (a) Limitation of resources including skilled manpower, infrastructure, Information technology.
- (b) Limitation in providing services at multi locations.
- (c) Competition with other professional firms.
- (d) Professional development.
- (e) Limitation of Client base.
- (f) Limitation in getting quality work due to limited resources and specialized team.
- (g) Limitation in scale of operations.
- (h) Limitation in Brand Equity.
- (i) Succession planning.

In view of enhanced scope of practice, mega partnerships comprising of ten or more partners would be required for providing professional services. Such mega partnership firms are possible only through mergers/demergers of existing firms to retain benefits of their past experience/credentials. There is no doubt that with consolidation and formation of large firms the profession shall attain new heights, stature & growth. Networking may also facilitate the growth & consolidation of PCS firms.

Networking provides the following key benefits:

- (a) Growth, better visibility and branding of Company Secretary firms in view of sharing of knowledge, data base, profit, cost, common ownership, control, management, common quality control policies and procedures, common business strategy, the use of a common brand name or resources.
- (b) Standardization of practices and procedures followed by professional firms.
- (c) Provides an opportunity to start up firms to scale up their operations, learn and adopt the standard practices and nuances thereof.
- (d) Attracting the best talent and retention of best and skilled staff and manpower.
- (e) Single window services – one stop shop for clients.
- (f) Facilitates execution of BPO work.
- (g) Advantage of economies of scale.
- (h) Gives more confidence to clients in services.
- (i) Provides an opportunity to compete with fellow professionals as well as global service providers.
- (j) It is a step towards adaptation of Global practices and may open gates for International tie-ups for professional firms
- (k) Encourages Research in more systematic and meaningful manner.
- (l) Encourages practice units to move towards specialist firms, as through Network they can offer complete set of services to their clients without taking liabilities.
- (m) Improves client satisfaction due to standardized service delivery modules in diversified areas and at different locations.
- (n) Enhances the confidence to handle assignments in new areas and provides an opportunity for continuous professional updation/training/knowledge dissemination to members as well as service users.

- (o) Empowerment to small firms and brand building.
- (p) Provides and accelerates multi disciplinary services.
- (q) Satisfies the needs of clients having business units in various geographical locations.
- (r) Overcome Infrastructure constraints.
- (s) Provides a base to firms to understand each other, leading to merger/ formation of mega/bigger firms.

The benefits of Networking pose unique challenges before the professionals as under:

- (a) Networking does not facilitate/permit the claim of pooled resources (including partners/infrastructure, etc.) of all members of Network towards meeting the eligibility criteria of particular Company/organization.
- (b) Perceived conflicts of interest.
- (c) Fear of loss of the client.
- (d) Uncertainty as to achieving the objectives of the networking initiative.

Another dimension to networking is building relationships with others, i.e., persons and organisations not in the practice of the profession. Such networking relationships lead to increased clientele for the practice unit and avoid isolation that may be detrimental to the growth and development of the practice. Such networking provides opportunities for connecting with:

- Mentors, to assist and guide in the practice.
- Mentees, for sharing the rich experience gained in the practice.
- Other practitioners, for exchange of services and referrals.
- Prospective employees, to lend support in the growth and development of the practice.
- Potential Clients, to engage your services.

## Mentoring

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Mentoring is an essential part of the professional practice. Mentors provide the necessary support, guidance and insight that may not be available with the immediate family members, friends and other staff members during the initial years of practice. In the long run, typically a mentor may offer expert advice on:

- Specific or complex legal procedures
- Strategy or tactics
- Ethics and professional judgement
- Issues in managing the practice
- Professional development
- Expansion of the areas of services offering
- Health and wellness issues

A real mentor assists a practice unit in reducing client complaints and potential hazards of unintentional non-compliance with the law. The benefits of having a mentor may not be immediate but in the long run, the practice unit is sure to gain from the mentoring relationship.

## **Administrative Requirements**

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Setting up of the practice requires compliance with certain statutory provisions of the Company Secretaries Act, 1980; Company Secretaries Regulations, 1982 and the Guidelines issued by the Council of the Institute from time to time to regulate and develop the profession of company secretaries. Each practitioner must:

- (i) Pay the annual membership and renewal of CoP fee
- (ii) Intimate to the Institute any change in professional address or address of his branch or any other office
- (iii) Maintain the Register of Certificate / Attestation services in the format prescribed by the Institute
- (iv) Pay the statutory dues such as House Tax, Electricity and telephone charges, etc.

## Practice Management

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The primary objective of this publication is to guide the start-ups in setting up their practice. However, more daunting than starting a practice is to sustain and run the practice successfully on an ongoing basis. Statistics prove that quite many practice units surrender the Certificate of Practice citing insufficient practice opportunities, inability to find clients or disloyalty from the clientele. While the main reason for shutting the practice unit is the inability of the practitioner to find and retain clients due to absence of systems and procedures for running the practice unit.

Operation of a successful practice unit needs setting up of systems and procedures that effectively manage:

- Client service, relations, expectations and communications.
- Client files, including KYC, checking of conflicts organisation and storage of files.
- Financial obligations, cash flow, book keeping and financial reporting.
- Time, time planning, docketing and reminder systems.
- Use of technology to aid practice.

## Contingency Planning

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A sound practice demands that clients' interest is paramount in all circumstances. There may be instances when the practitioner may not be in a position to personally attend to the client or to address the client's urgent requirements. At times the practitioner may be away from office on professional assignments or to meet personal commitments, in such situations there need to be some colleague or employee of the practitioner who can atleast acknowledge receipt of any communication from the clients.

This calls for development and implementation of a proper contingency plan to help manage the affairs of the practice unit during unforeseen interruptions, planned and unplanned absence from office. The contingency plan should take care of the client's interests by ensuring continuity in service during the period of interruption or absence of the practitioner. Similarly, there should be a plan for someone to see the sale, transfer or closure of practice in the event the practitioner is permanently disabled from returning to the practice.

The contingency plan should be designed and implemented as soon as possible after start of the practice and should be reviewed at regular intervals to remain relevant.

## **Ethics and Disciplinary Actions by the Institute**

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### **EXTRACTS OF THE COMPANIES SECRETARIES ACT, 1980**

#### **FIRST SCHEDULE PART I**

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

- (1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.
- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute: Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;
- (4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other

person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

- (5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business: Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;
- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;
- (7) advertises his professional attainments or services, uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council;
- (8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage;

- (11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary; or any other statements relating thereto.

#### **SECOND SCHEDULE PART I**

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;
- (3) permits his name or his name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

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