

Role of Company Secretary in Capital Markets



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Introduction

THE ICSI – CAPITAL MARKET INTERFACE

- Undertakes research in corporate and securities laws
- Views/suggestions on new laws/regulations proposed by capital market regulator
- Capacity Building Programmes on new developments in Capital markets and Securities Laws
- Issues Secretarial Standards and Guidance Notes thereon
- Organises Professional Development Programmes in Capital Market related areas
- Organises Investor Awareness Programmes

COMPANY SECRETARY AS GOVERNANCE PROFESSIONALS

ICSI is a pioneer Institute in developing Governance professionals who are well equipped and competent to meet the challenge of complying with complex legal, regulatory & governance matters.

A Company Secretary is a close confidant of the board thereby

- Acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities
- Provides the board with guidance such as its duties, responsibilities and powers under various laws, rules and regulations
- Ensures that the culture of independence is promoted at the board and committee meetings and at the level of individual directors
- Plays a key role in ensuring that the Board procedures are followed and regularly reviewed
- Acts as compliance officer as well as in house legal counsel to advise the Board and the functional department of the company on various corporate, business, economic and tax laws
- Is an important member of the corporate management team

COMPLIANCE OF SECRETARIAL STANDARDS BY LISTED COMPANIES

The issuance of Secretarial Standards by Secretarial Standards Board (SSB) of ICSI is a unique and pioneering step towards standardization of diverse secretarial practices prevalent in the corporate sector and a step towards promoting good governance practices.

The Secretarial Standards Board formulates Secretarial Standards taking into consideration the applicable laws, business environment and prevalent best secretarial practices. Secretarial Standards are developed in transparent manner, after extensive deliberations, analysis, research and taking into consideration the views of the corporate, regulators and public at large.

The Secretarial Standards Board constituted in the year 2000 comprises eminent members of the profession holding responsible positions in well known companies and senior members in practice as well as representatives of regulatory authorities such as SEBI, Ministry of Corporate Affairs, and sister professional bodies.

The Institute has so far issued Ten Secretarial Standards viz., Secretarial Standard on

- Meetings of Board of Directors (SS-1)
- General Meetings (SS-2)
- Dividend (SS-3)
- 'Registers and Records' (SS-4)

- 'Minutes' (SS-5)
- 'Transmission of Shares and Debentures' (SS-6)
- 'Passing of Resolution by Circulation'(SS-7)
- 'Affixing of Common Seal' (SS-8)
- 'Forfeiture of Shares' (SS-9)
- 'Board 's Report' (SS-10)

Many companies today are voluntarily adopting Secretarial Standards in their functioning. The Companies Bill, 2009 also proposes to make Secretarial Standards with regard to Meeting of Board of Directors (SS-1) and General Meetings (SS-2) mandatory for companies.

The adoption of Secretarial Standards by listed companies would have a significant impact on the corporate practices being followed by them making them comparable with the best practices in the world.

Investors being the backbone of capital markets it is necessary that they are adequately aware about various nuances of investment in capital market and are capable of making right investment decisions for orderly development of Capital Market institute as partner organization is making all efforts in educating the existing as well as prospective investors through organizing Invertor Awareness programmer through its Regional councils Chapter and Resource persons. The Institute started organizing Investor Awareness Programmes from the year 2005 and has organized more than 1200 Investor Awareness Programmes.

Company Secretaries Capital Market

The Company Secretary, over a period of time, has developed themselves as professional having core competence in compliances and corporate governance, moving from their traditional role of Secretary of the Company. They are now popularly known as governance professionals in capital markets and are more frequently called upon to guide the Corporate Board on various strategic, governance and compliance issues related to capital markets.

The disclosures, transparency, accountability and investor protection are the back bone of the orderly development and growth of the capital markets. This requires companies listed on the Stock Exchanges and various capital market intermediaries to comply with requirements under various Regulations and Guidelines issued by SEBI and Stock Exchanges. The companies accessing the capital markets for raising funds, to listing their securities and thereafter post-listing requirements, need to have a professional who is expert in capital market and corporate governance in ensuring compliances

A Company Secretary has the necessary competence to handle all issues concerning corporate governance and capital markets in ensuring compliances.

Company Secretary has substantial exposure in securities laws and capital market related matters. He is not only thoroughly conversant with the technicalities and substantive provisions of the corporate laws but is also a specialised professional in the matter of compliances enjoined under various statutes and the rules, regulations, bye-laws, guidelines made thereunder.

The Company Secretaries Act, 1980 recognizes the role of a Company Secretary in Practice in the matters relating to capital markets and securities laws. Section 2(2) of the Company Secretaries Act, 1980 authorizes a Company Secretary in Practice to perform the services as a share transfer agent, an issue house, a share and stock broker, a secretarial auditor or consultant. This section also authorizes a Company Secretary in Practice to act as advisor to a company on management, including any legal and procedural matter falling under the Capital Issues (Control) Act, 1947; Securities Contracts (Regulation) Act, 1956, any of the rules or bye laws made by a recognized stock exchange, among others.

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 authorised to verify compliances and to issue certificates.

The various services provided by Company Secretaries (both in employment and practice) in Capital Markets are as under :

CORPORATE LAWS ADVISORY AND REPRESENTATION SERVICES

Corporate Laws Advisory Services

Advising companies on Compliance of legal and procedural aspects, particularly under -

- SEBI Act,
- Securities Contracts (Regulation) Act, Rules and Regulations made thereunder
- SEBI Regulations and Guidelines
- Listing Agreement
- Competition Act, 2012
- Limited Liability Partnership Act, 2008

Representation Services

Representing on behalf of a company and other persons before-

- Securities Appellate Tribunal

Public Issue, Listing and Securities Management

- Advisor/consultant in issue of shares and other securities in India and abroad
- Drafting of prospectus/offer for sale/ letter of offer/other documents related to issue of securities and obtaining approvals in association with lead managers
- Listing / delisting of securities
- Private placement of securities
- Buy-back of shares
- Raising of funds from international markets - ADR/GDR/ECB
- Acting as Compliance Officer under listing agreement
- Compliance officer for various capital market intermediaries.

Takeover Code and Insider Trading

- Ensuring compliance of the Takeover Regulations
- Ensuring compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992.

Securities Compliance and Certification Services

Compliance with rules and regulations in securities market particularly-

- Internal Audit of Depository Participants
- Internal Audit of Stock Brokers/Trading Members/Clearing Members
- Internal Audit of Portfolio Managers
- Internal Audit of Credit Rating Agencies
- Certification in relation to Reconciliation of total issued capital, listed capital and Capital held by depositories in dematerialized form
- Concurrent Audit in case of Demat Account Opening, Control, Verification of Delivery Instruction Slips
- Certification regarding Non - Promoters Holding under clause 35 of the Equity Listing Agreement
- Certification that all transfers have been completed within stipulated time period under clause 47 (c) of the Equity Listing Agreement
- Certification regarding compliance of conditions of Corporate Governance under clause 49 of the Equity Listing Agreement
- Certification regarding compliance of conditions of Corporate Governance under Listing Agreement for Listing of Debt Securities and Listing Agreement for Indian Depository Receipts
- Certification regarding maintenance of 100% Security cover under Listing Agreement for Listing of Debt Securities
- Various certifications for trading members of Stock Exchanges.

Recognitions to Company Secretaries under various Securities Laws

Company Secretary in Employment

Compliance Officer under Equity Listing Agreement [Clause 47]

Clause 47 of the listing agreement requires every listed company to appoint Company Secretary as Compliance Officer of the Company to be responsible

- for monitoring the share transfer process and report to the company's board in each meeting;
- to directly liaise with the authorities such as SEBI, Stock Exchanges, ROC etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service & complaints related matter

Compliance officer under Listing Agreement for Issue of Debt securities [Clause 22]

Company Secretary act as Compliance Officer under Clause 22 of the Listing Agreement for Issue of Debt Securities requiring the company to designate the Company Secretary or any other person as Compliance Officer who:

- (a) shall be responsible for ensuring compliance with the regulatory provisions applicable to such issuance of debt securities and report the same at the meeting of Board of Directors/ Council of Issuer held subsequently;
- (b) shall directly report to the Securities and Exchange Board of India, Stock Exchanges, Registrar of Companies, etc., and investors on the implementation of various clauses, rules, regulations and other directives of these authorities;
- (c) shall be responsible for filing the information in the CorpFiling system/ Electronic Data Information Filing and Retrieval (EDIFAR) System or any other platform as may be mandated by SEBI from time to time. The Compliance Officer and the Issuer shall ensure the correctness and authenticity of the information filed in the system and that it is in conformity with applicable laws and terms of the Listing Agreement;
- (d) shall monitor the designated e-mail ID of the grievance redressal division which shall be exclusively maintained for the purpose of registering complaints by investors. The company shall display the email ID and other relevant details prominently on their websites and in the various materials / pamphlets/ advertisement campaigns initiated by them for creating investor awareness.

Compliance Officer under Model Listing agreement for Indian Depository Receipts (IDRs) [Clause 23 (a)]

Company Secretary act as Compliance Officer to directly liaise with the authorities such as SEBI, Stock Exchanges, ROC etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service & complaints related matter.

Listing Agreement for Indian Depository Receipts (IDRs) who are signatories to MOU of International Organization of Securities Commission (IOSCO) [Clause 26 (a)]

Company Secretary act as the Compliance Officer of the issuing company who directly liaise with the authorities such as SEBI, the stock exchanges, Registrar of Companies etc., and investors with respect to implementation of various rules, regulations, guidelines, circulars and other directives or order of such authorities and investor service & complaints related matters.

Compliance officer under SME Listing Agreement Clause 50 (a)

Clause 50(a) of SME Listing agreement requires the companies to appoint Company Secretary of the issuer as Compliance officer. The responsibilities of Compliance Officer under Clause 54(ii) are as follows :-

- Ensuring the correctness, authenticity and comprehensiveness of the information, statements and reports filed under this clause ;
- Ensuring that such information is in conformity with the applicable laws and the listing agreement.

Act as as Compliance Officer for various capital market intermediaries

Company Secretary, recognised as Compliance Officer under Listing Agreement, also acts as compliance officer for various capital markets intermediaries, such as

- Members of the Stock exchanges;
- Depository Participants;
- Mutual Funds;
- Merchant Bankers and Other Intermediaries

Company Secretary in Practice

Certification under SEBI Act/Depositories Act

Appearance before Securities Appellate Tribunal

Company Secretary appear as authorised representative before the Securities Appellate Tribunal under SEBI Act, 1992 and Depositories Act, 1996. [Section 15 V of SEBI Act; Section 23C of Depositories Act, 1996]

Certification under SEBI Regulation

Reconciliation of Share Capital Audit

Company Secretary is authorised to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital under SEBI (Depositories and Participants) Regulations, 1996. [Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996]

AUDIT OF CAPITAL MARKET INTERMEDIARIES

Efficient internal control systems and processes are pre requisite for good governance. The governance being a dynamic concept requires constant evaluation and monitoring of the systems and processes. In the context of Capital Markets, capital markets intermediaries are an important constituent of over all governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that ensures effective investor service at all times and provides regulators comfort as to the compliance of regulatory prescription.

A. Internal Audit of portfolio Managers

Practising Company Secretary is authorized for conducting the internal audit of Portfolio Manager. The report is to be submitted twice a year, as on 31st of March and 30th of September. The scope of the internal audit comprise the checking of compliance of 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 Nov. 18, 2003)

B. Internal audit of Stock Brokers/Clearing Members/Trading Members

Company Secretaries are authorised to carry out complete Internal Audit of Stock Brokers/Trading Members/Clearing Members on a half yearly basis. The scope of internal audit of stock brokers, being wide enough, covers interalia the existence, scope and efficiency of the internal control system, compliance with the provisions of 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 October 21, 2008)

C. Internal Audit of Credit Rating Agencies

Practising Company Secretary is authorized to carry out internal audit for Credit Rating Agencies(CRA) on a half yearly basis. The Audit covers all aspects of CRA operations and procedures, including investor grievance redress mechanism, compliance with the requirements stipulated in the SEBI Act, Rules and Regulations made thereunder and guidelines issued by SEBI from time to time. (SEBI Circular MRD/CRA/CIR-01/2010 dated January 06, 2010)

D. Internal Audit of Depository Participants

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

E. Concurrent Audit of Depository Participants

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

CERTIFICATIONS UNDER LISTING AGREEMENT

Certification regarding non-promoter holdings under Equity Listing Agreement [Clause 35]

Certification with regard to non- promoter holdings in demat mode in case of the companies which have established connectivity with both the depositories.

Certification regarding Transfer of Securities [Clause 47(c)]

Certification by PCS regarding all transfer has been completed within the stipulated time.

Certification of Compliance of Conditions of Corporate Governance under Listing Agreement

1. Clause 49 of the Listing Agreement authorizes Company Secretary in practice to issue certificate regarding compliance of conditions of Corporate Governance as stipulated under the Clause. [Clause 49]
2. SEBI Listing Agreement for Debt Listing and Indian Depository Receipts (IDRs) also authorizes the Company Secretary in practice to issue certificate of compliance of conditions of Corporate Governance. [Clause 24 (vii) (1)]

Certificate regarding maintenance of 100% Security Cover (Model Listing Agreement for Debt Securities)

Company Secretary is authorized to issue half yearly certificate regarding maintenance of 100% security cover in respect of listed secured debt securities. [PART A Clause 2(d) and PART B Clause 13 (d)].

CERTIFICATION UNDER SME LISTING AGREEMENT

SEBI has recognized the services of Company Secretaries through introduction of various clauses in the Model SME Equity Listing Agreement viz. certification with regard to compliance of conditions of corporate governance and completion of all transfers within stipulated time.

Clause 50(a) authorizes Practicing Company Secretaries to certify that all transfers have been completed within stipulated time.

Clause 52(ii) authorizes PCS to certify compliance of conditions of Corporate Governance.

CERTIFICATION UNDER RULES / REGULATIONS OF STOCK EXCHANGES

Net worth Certificate to Members of Bombay Stock Exchange Limited

Company Secretary is authorized to issue Net worth Certificate to be submitted by all active members including representative members of Cash segment, Limited Trading members & Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange.

Bombay Stock Exchange Limited	Listing of new equity shares issued to the shareholders of the company pursuant to the reduction of capital/BIFR order -- If there are non-transferable shares in existence, a certificate from Practising Company Secretary specifically certifying that equity share certificates held by promoters, etc. have been stamped @Not to be sold/transferred/hypothecated until @..@ (source: www.bseindia.com)
National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Details of directors/proprietor in format C-3 of Annual Return submitted by Trading Member to the Stock Exchange
National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern/sharing pattern of corporates in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange
National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern/sharing pattern of firms in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange.
National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of corporates in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange.
National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of firms in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange
National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Undertaking from Relative of Persons constituting Dominant Promoter Group in format C@8 of Annual Return submitted by Trading Member to the Stock Exchange
National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Undertaking from Corporates supporting Dominant Promoter Group in format C@8 of Annual Return submitted by Trading Member to the Stock Exchange
National Stock Exchange Limited	Grant of approval for listing under clause 24(a) of the Listing Agreement @ Certificate from Practising Company Secretary confirming that the entire pre-preferential holding of the allottee (mentioning the quantity) is locked in for the period starting from relevant date up to a period of six months from the date of allotment (source: www.nseindia.com)
National Stock Exchange Limited	Grant of approval under clause 24(f) of the Listing Agreement (Amalgamation @ Wholly Owned Subsidiary / other than Wholly Owned Subsidiary /Reduction of Capital under Section 100) @ Certificate from Practising Company Secretary for Networth of the Company pre and post scheme under section 101, 391 and 394 of the Companies Act, 1956. (source: www.nseindia.com)

National Stock Exchange Limited	Listing of shares arising out of Conversion of Debentures/Warrants/Notes/Bonds into Equity Shares @ Certificate from Practising Company Secretary for receipt of money at the time of allotment of Convertible Debentures/Warrants/Notes, etc. (source: www.nseindia.com)
National Stock Exchange Limited	Listing of shares/securities issued on Preferential/Private Placement basis @ Certificate from Practising Company Secretary for the following confirmations : (a) The pricing of the issue along with the detailed working of the same (b) The company has received the entire consideration payable prior to the allotment of shares (c) The total shares under lock-in (along with the dates of lock-in and distinctive numbers) and additionally confirming that the locked in equity shares if issued in physical form have been encased with non transferability condition (d) The entire pre-preferential holding of the allottee (mentioning the quantity) is locked in for the period starting from relevant date upto a period of six months from the date of allotment. (source: www.nseindia.com)
National Stock Exchange Limited	Listing of shares/securities issued on Preferential/Private Placement basis in case allotment under Section 81(3) of Companies Act @A confirmation signed by the compliance officer of the company duly counter confirmed by the Practising Company Secretary confirming that the said allotment has been made in accordance with the provisions of section 81(3) of the Companies Act, 1956. (source: www.nseindia.com)
National Stock Exchange Limited	Certificate from Practising Company Secretary confirming securities under lock-in (the certificate should include the distinctive numbers of securities under lock-in and date from and upto which these shares are under lock-in) (source: www.nseindia.com)

Other areas of Practice for Company Secretaries in Capital Market

There is a visible shift in regulatory prescription from control regime to self regulatory regime providing market players desired level of flexibility to manage their affairs and at the same time minimize regulatory interventions. The concept of self regulation imbibe in it Independent professional support that assures that the affairs of the business are conducted conforming to regulatory requirements in true letter and spirit. This independent professional intervention creates a win-win situation for all constituents of governance process and in particular the market players. Apart from the various authorization/recognitions under various Acts, Rules and Regulations, Company Secretaries perform various activities leading to sound practices in the capital market.

Public issue of equity shares is an important segment of securities market as it enables the Corporate Sector, to raise resources required for business and related purposes. What is imperative for a company considering a public issue of equity shares is to take an objective view after examining all aspects with due clarity on the purpose of the issue, including evolving state of investment climate, performance of the industry, its prospects, investors appetite for equity shares, both retail and institutional as well as the state of primary and secondary market of the stock exchanges.

Company Secretaries as a member of IPO team plays an important role in a public issue, beginning from fixing the price band and looking after the due diligence process of an IPO/FPO. Particularly they are under obligation to play the following role in the issue process:

- Directing and co-coordinating the activities with Underwriters, Registrars, Bankers and other intermediaries.
- Assuring the investors of the soundness of the issue.
- Providing companies/ entrepreneurs/promoters a platform to tap resources.
- Complying with requirements of various laws, such as Companies Act, Regulations and Guidelines issued by SEBI and Stock Exchange requirements.
- Ensuring Adherence to all Board Procedures relating to resolutions concerning the IPO/FPO and ensuring the consent of the shareholders has been taken
- Conformity with Articles of Association with the Securities Contracts (Regulation) Act, 1956 and other applicable rules and regulations
- Ensure that the company has received necessary approval from various regulatory authorities
- Compliance of various laws, rules and regulations relating to Issue of Capital and Disclosure Requirements
- Compliance with Listing Conditions specified under SEBI Act, SCRA and the rules made there under and those specified by Stock Exchanges

I. COMPLIANCE CERTIFICATE ON IPO/FPO

As an aid to this process and in order to ensure that the formalities and procedures connected with the issue process from Pre-IPO to Listing are adhered to and the Issuer is fully compliant with the Regulations connected therewith, the Institute of Company Secretaries of India conceived the concept of Certification on IPO/FPO and after series of discussions with senior professionals, Stock Exchanges and market intermediaries, formulated the compliance Certificate on IPO/FPO, to be provided by a Company Secretary in Practice.

The Certification includes inter alia, confirmation of compliance of conditions/stipulations prescribed by the Regulatory Authorities and stock exchanges for listing of equity shares on Initial Public Offer (IPO), Further Public Offer (FPO), etc.

The scope of the Certification is wide enough to include compliance of all rules, applicable regulations, guidelines in relation to issue of securities, issue of certificates in relation to all transactions of company's securities, physical verification of relevant records and documents. The certification is intended to provide comfort and assurance to both the Merchant bankers and regulators to the effect that the proposed Initial Public Offering (IPO) and Further Public Offer (FPO), conforms to all regulatory prescriptions.

The Compliance certificate provide an assurance as to the:

- Compliance with relevant laws
- Formalities with SEBI / Stock Exchange / ROC, etc.
- Compliances with regulations relating to Issue of Capital and Disclosure Requirements
- Compliances with all the Listing Conditions
- Other matters like utilization of promoter's contribution, etc.

The adoption of this Compliance Certificate also provide comfort to facilitate Stock Exchanges while considering listing of securities being offered under IPO/FPO.

II. ADVISOR TO AN ISSUE FOR SMALL AND MEDIUM SCALE SECTOR

As stated earlier, SEBI has recognized the services of Company Secretaries in employment and practice through introduction of various clauses in the Model SME Equity Listing Agreement viz. appointment of Company Secretary as Compliance Officer, certification with regard to compliance of conditions of corporate governance and completion of all transfers within stipulated time.

A small enterprise in order to get its securities listed on SME Exchanges is required to ensure compliance of various provisions of the Companies Act, 1956, other laws, regulations, listing agreement etc., as applicable.

In order to ensure that the formalities and procedures connected with the issue process by SME are adhered to and the issuer is fully compliant with the Regulations connected therewith, it is suggested that the Practicing Company Secretaries act as Advisor to an Issue guiding adherence to various compliances by the SME proposing listing on the Stock Exchange.

The certification of compliance by practicing company secretaries provide comfort and assurance to SEBI and stock exchanges to the effect that the proposed listing of SMEs conforms to all regulatory prescriptions.

III. COMPLIANCE REPORT BY AN INDEPENDENT PROFESSIONAL

The irregularities/violations/non-compliances by companies with particular reference to Capital Markets can be broadly categorised on the following basic:-

Initial Public Offer

- Irregularities in allotment and subscription
- Listing on stock exchange without actual inflow of fund
- Not resolving investor grievances
- Violation of listing and investor norms
- Deceptive and manipulative practices to corner the shares meant for retail individual investors
- Mis statements in offer document

Preferential allotment

- Dematerialization of securities without permission of listing on stock exchange
- Rerouting of preferential allotment funds from the company to the preferential allottees through layers of related entities
- Violation of SEBI (issue of Capital & Disclosure Requirements) Regulations, 2009
- Preferential allotment by irregular and illegal method
- Perpetrated fraud injuring the interests of investors
- Issue of shares without actually receiving adequate consideration
- Non-disclosure of details of utilization of proceeds

Rights Issue

- Rotation of funds by promoters for subscribing to the issue which is undersubscribed
- False data submitted by company regarding Pre issue and Post issue promoters holding
- Escaping from lock-in period requirement
- Wrong disclosure in the letter of offer
- Manipulation of market price of shares
- Default in commitment made to public
- Failure to make continuous disclosures of price sensitive information

There is some gap being leveraged by unscrupulous promoters placing the investors at a receiving end. Practising Company Secretary advise the Companies regarding compliances in respect of Initial Public Offer, Follow on Public Offer, Rights issue, preferential allotment, qualified Institutional Placement, Convertible Debt Instruments so as to minimize the leverage to the companies and to protect the interest of small investors.

As the companies get comfort from the advice of PCS regarding Compliance of conditions whenever there is preferential allotment of shares, issue of rights share and initial public offer as well as follow on public offer, this is a win-win situation for the companies, the investors as well as regulator.

It helps the Company directors from the consequences of unintended non-compliance of laws; provides the investor much needed comfort strengthening their faith and confidence in the company and the capital market. For regulator the better compliances of laws help reduce the incidences of misgovernance thereby helping them achieving the defined objectives of investor protection and the growth of well governed capital market.

IV. INSPECTION OF MARKET INTERMEDIARIES, MARKET SURVEILLANCE AND INVESTIGATIONS

A Company Secretary can effectively discharge responsibility of inspection and investigations under SEBI Act, 1992, as he is thoroughly conversant with the technicalities and substantive provisions of the securities laws and capital market related matters, and has adequate exposure of financial matters, securities trading, banking and finance.

Recognising the core competency of Practising Company Secretary in legal and procedural aspects of corporate, economic and securities laws, they have been recognized to act as authorized representative before the Tribunals, Appellate Tribunals, Quasi Judicial bodies such as Company Law Board, MRTP Commission, Securities Appellate Tribunal, National Company Law Tribunal, Competition Commission of

India, etc. In addition, Practising Company Secretary is also authorized to issue various certifications under the Regulations and Guidelines made under SEBI Act. The services of Practising Company Secretaries can therefore be utilised for market surveillance and investigation.

V. ACT AS MEMBER OF STOCK EXCHANGES

Practising Company Secretaries can take memberships of the exchange(s) on fulfilling the eligibility requirements laid down by SEBI.

VI. COMPLIANCE CERTIFICATE ON 'QUALIFIED INSTITUTIONS PLACEMENT'

Regulation 84(3) of Chapter VIII of SEBI (ICDR) Regulations, 2009 requires a compliance certificate to be given to stock exchanges for seeking listing approval.

Regulation 84(3) reads as under-

"84 (3) The issuer shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate confirming compliance with the provisions of this Chapter along with any other documents required by the stock exchange."

Practising Company Secretaries may issue this compliance Certificate confirming the compliances under ICDR.

The certification include legal/secretarial compliances. Since no SEBI approval is required for QIP, it will give additional comfort to SEBI if a comprehensive compliance certificate by PCS is made mandatory for QIP issue.

VII. COMPLIANCE CERTIFICATE ON 'PREFERENTIAL ISSUE' UNDER CHAPTER VII OF THE SEBI(ICDR) REGULATIONS, 2009.

Regulation 73 (2) of the SEBI ICDR regulations requires a compliance certificate to be given by the statutory auditors. The regulations read as under:

"73 (2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations."

As most of the compliances relates to governance matters, Practising Company Secretary may be authorized to issue this Compliance Certificate at par with other professionals.

VIII. BUY-BACK, DELISTING, OPEN OFFERS UNDER TAKEOVER CODE

There are various regular compliance requirements by a listed entity and its promoters under SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 2011, SEBI (Prohibition of Insider Trading) Regulations, 1992. There have been incidences of non-compliance by listed entities.

Practising Company Secretary may certify compliance of Takeover Code and Insider Trading Regulations on yearly/half-yearly/quarterly basis to help improve compliances.

IX. CERTIFICATION REGARDING COMPLIANCE OF SEBI RULES & REGULATIONS

The Issuer may submit a comprehensive Certificate of Compliance, covering various conditions / requirements applicable for listing / continued listing, compliance with SEBI Rules, Regulations obtained from the company secretary' in practice, for each financial year. The issuer may also be required to place this certificate before the meeting of its Board Directors for noting and forwarding to the Stock Exchange within prescribed time.

X. AUDIT OF BROKERS OF COMMODITY EXCHANGES

It is understood that the Forward Market Commission (FMC), as part of its initiatives to bring more transparency to the functioning of Commodity Exchanges and help ensuring a greater degree of compliances, is making the audit of brokers mandatory once in three years.

Company Secretary in practice may conduct Brokers Audit for members of the Commodity Stock Exchange(s).

SUCCESS MANTRA

- S - Strategic Thinking
- U - Understanding
- C - Curiosity & Commitment
- C - Can do Attitude
- E - Excellence in Knowledge
- S - Sincerity
- S - Strives for Excellence always and Strong Work Ethics

Company Secretary : Knowledge and Competency in Capital Markets

The curriculum for company Secretaryship course includes the following subjects which gives the students indepth knowledge of Capital market, finance/Accounts and corporate compliances:

- **Securities Laws & Compliances** provides expert knowledge and understanding of securities laws and regulatory framework concerning capital markets in India, provisions of Securities Contracts (Regulation) Act,1956; SEBI Act,1992,and rules, regulations and guidelines made there under, role and functions of primary market and secondary market intermediaries, mutual funds, issue management and compliances.
- **Company Secretarial Practice** provides an in-depth understanding of the procedures under the companies Act, Rules and Regulations made there under including understanding of international dimensions of company law.
- **Due Diligence and Corporate Compliance Management** provides thorough understanding and appreciation of composite legal due diligence in regard to corporate activities and expert knowledge about corporate compliance management.
- **Company Accounts, Cost and Management Accounting** provides knowledge of accounting principles and procedures for companies in accordance with statutory requirements, accounting techniques and practices.
- **Financial, Treasury and Forex Management** provides conceptual clarity about the management tools and techniques used in financial planning, analysis, control and decision making including knowledge of derivatives, forex and treasury management.
- **Strategic Management, Alliances and International Trade** provides understanding of concepts, techniques and processes relating to strategic management, risk management, management information systems, techniques of internal control systems, international trade and treaties including WTO.

Training

The Training requirements for Company Secretaries include sixteen month exhaustive practical training which comprises of fifteen months training in a company or under practicing Company Secretary, fifteen days training in stock exchanges, Office of Registrar of Companies and Management Skills Orientation Programme which exposes the participants to practical intricacies of Capital Market, Compliance Management Systems & Regulations thereof.

The inter-disciplinary expertise that a candidate acquires while undergoing CS Course coupled with on the job practical training makes the candidate fit and competent professional to handle and manage legal and procedural aspects, thus giving an edge of having expert knowledge of both substantive and procedural laws.

Capacity Building

In order to update the members, the Institute conducts the seminars, professional development programmes and short-term courses on capital market, securities and corporate laws on a regular basis. Series of training programmes/seminars/ conference especially for the members towards capacity building in capital market related functions are undertaken in collaboration with Exchanges and Chambers of Commerce etc.

ICSI Publications on Capital Market

The Institute has also published various books, Guidance Notes and Referencers / Backgrounders related to Capital Markets and Securities Laws to build up the capacities of its members:

- Securities Management and Compliances
- Delisting of Equity Shares
- Listing Agreement – A Compendium
- Prohibition of Insider Trading – Law & Procedure
- Handbook on Internal Audit of Operations of Depository Participants
- Guidance Note on Corporate Governance Compliance Certificate
- Guidance Note on Internal Audit of Stock Brokers
- Handbook on Mergers Amalgamations & Takeovers : Law and Practice
- Guidance Note on Certificate under Investor Education and Protection Fund
- Corporate Governance Beyond letters
- Guidance Note on Buy Back of Securities
- Guidance Note on Preferential Issue of Securities
- Guidance Note on Issue of Debt Capital

Memorandum of Understanding with NSE, MCX SX and USE

The Institute entered into a Memorandum of Understanding with MCX SX, United Stock Exchange of India

- facilitate holding of training programmes for students and members on themes of topical and professional interest
- to regularly exchange resources
- developing curriculum of academic and continuing education programmes
- to exchange faculties.

(i) The Institute entered into an MOU with The Capital Markets and Corporate Governance Institute (CMCGI) of Capital Markets Development Authority (CMDA) of Maldives.

(ii) The Institute has MOU with Chartered Institute for Securities and Investment (CISI) London, which provides opportunities to Company Secretaries to enhance their career progression in various specialised areas like

- capital markets,
- commodity markets,
- fund management,
- wealth management, and
- investment banking.

ICSI membership has been recognized for automatic membership of CISI at the associate level (ACSI). Senior practitioners of ICSI in Securities and Investment industry would be entitled to apply for Membership (MCSI).

Research Project on Compliance Manual for Trading/Clearing Members of NSE

The Institute at the behest of National Stock Exchange of India Limited completed a Research project to prepare a Compliance Manual for its Trading/Clearing Members covering all aspects of compliance arising out of SEBI Act, Rules, Regulations, Guidelines made there under, Securities Contracts (Regulation) Act, 1956; Securities Contracts (Regulation) Rules, 1957; NSE rules, bye-laws, regulations, circulars etc.; and NSCCL Rules, bye-laws, regulations and circulars.



The Institute of Company Secretaries of India (ICSI) has been constituted under an Act of Parliament i.e., the Company Secretaries Act, 1980 to develop and regulate the profession of Company Secretaries. The ICSI functions under the administrative jurisdiction of Ministry of Corporate Affairs, Government of India.

The ICSI awards the designation of Company Secretary to a candidate qualifying for the membership of the Institute and exercises professional supervision.

The ICSI has on its rolls over 25,000 members including over 3,500 members holding Certificate of Practice and over 1,50,000 students pursuing the Company Secretaryship Course.

ICSI NATIONWIDE NETWORK

Head Office - New Delhi

Chapters - 68

Counsellors - 100

Examination Centres - 97 and one overseas center at Dubai

Regional Councils - Chennai, Kolkata, Mumbai, New Delhi

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

COUNCIL OF THE INSTITUTE

In terms of Section 9 of the Company Secretaries Act, 1980 the affairs of the Institute are managed by the Council of the Institute consisting of fifteen elected members and five nominees of the Central Government.

BUILDING FUTURE PROFESSIONALS TO GUIDE CORPORATE INDIA

The ICSI conducts the Company Secretaryship examination to developing high level professionals specializing in corporate and securities laws, management and governance.

Stages of Company Secretaryship Course

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

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

SYLLABUS

The Company Secretaryship Course provides substantial coverage in its current syllabus to capital markets as reflected below :

Executive Programme

Securities Laws and Compliances

Professional Programme

Corporate Restructuring

Due Diligence and Corporate Compliance Management

TRAINING

The candidates are also required to complete the following trainings :

- Seven days Student Induction Programme (SIP) within six months of registration to the Executive Programme
- 72 Hours Computer Training
- Eight days Executive Development Programme (EDP) after passing Executive Programme
- Fifteen months whole time training after passing Executive Programme
- Fifteen days training in a specialized agency such as Office of Registrar of Companies, stock exchange, commodity stock exchange, financial or banking institution or management consultancy firm, etc.
- Fifteen days Management Skills Orientation Programme (MSOP)/e-MSOP

The Company Secretaryship Course is conducted through distance learning and supplemented by oral coaching as well as e-learning.

ASSOCIATE MEMBERSHIP

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

FELLOW MEMBERSHIP

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

COMPANY SECRETARY - A LEAD PROFESSIONAL

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

Company Secretary in Employment

Section 383A of the Companies Act, 1956 requires every company with a paid-up share capital of rupees five crore or more to compulsorily appoint a whole-time Company Secretary who must be a member of the Institute of Company Secretaries of India.

Company Secretary in Practice

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

CODE OF CONDUCT FOR MEMBERS

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

REGULATORY SUPERVISION

The Institute maintains strict regulatory supervision over its practising members through issuing Guidelines in accordance with the provisions of Company Secretaries Act, 1980. Some of the Guidelines issued by the Council are as under :-

- Guidelines for Compulsory Attendance of Professional Development Programmes
- Guidelines for Advertisement by Company Secretary in Practice

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

DISCIPLINARY CONTROL

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

Council and its Committees and Organisation Structure of the ICSI

The Council manages the affairs of the Institute. The Council consists of fifteen elected members including the President and the Vice-President and five persons nominated by the Government of India.

To discharge its function effectively, the Council has constituted Standing and Non-standing Committees from amongst its members.

STANDING COMMITTEES

- Executive Community
- Finance Committee
- Examination Committee

NON-STANDING COMMITTEES/BOARDS

- Professional Development Committee
- Training & Educational Committee
- Practising Company Secretary Committee
- ICSI-CCGRT Committee
- PMQ Course Committee
- Information Technology Committee
- Co-ordination Committee
- Corporate Laws and Governance Committee
- Capital Markets Committee
- Secretarial Standards Board
- Editorial Advisory Committee
- Expert Advisory Board
- Disciplinary Committee
- Board of Discipline
- Quality Review Board
- Election Reforms Committee
- Regulations Committee
- Stakeholder Grievance Committee
- Peer Review Board
- Syllabus Review Board

The Institute also represents on various committees of the Central Government, Regulatory Authorities and other professional bodies.

CENTRAL GOVERNMENT COMMITTEES

- National Advisory Committee on Accounting Standards
- Indo-UK Task Force on Corporate Affairs
- Indo-UK Accountancy Task Force

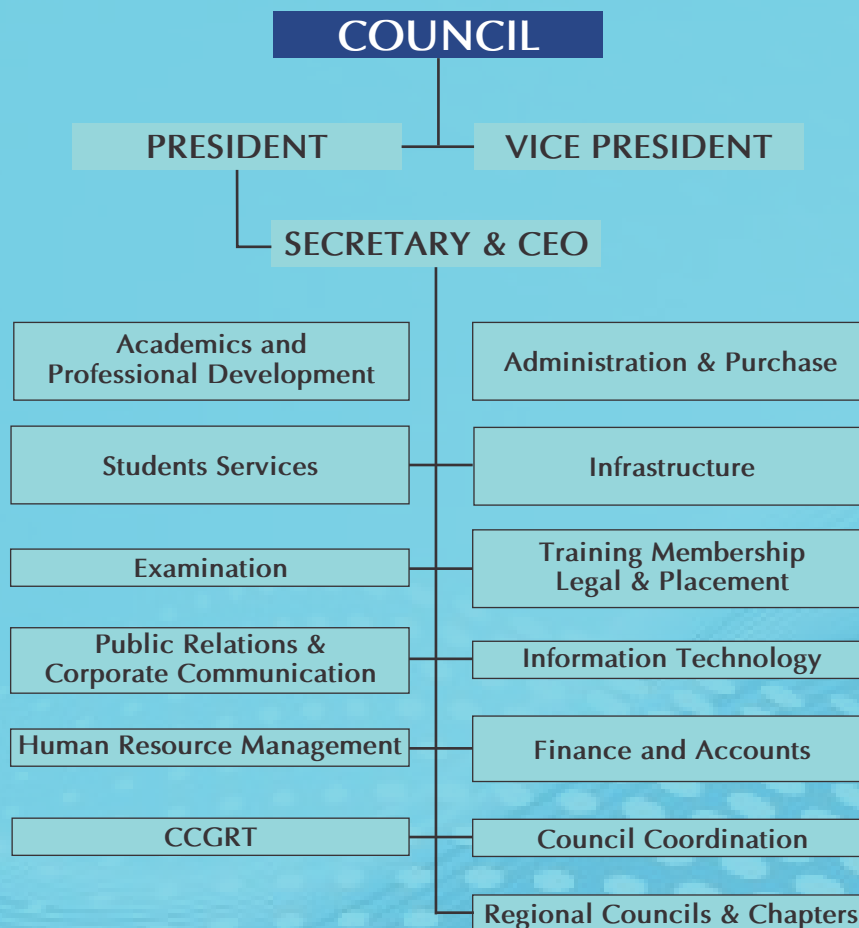
COMPETITION COMMISSION OF INDIA

- Advisory Committee on Academic Curriculum

OTHER COMMITTEES / BOARDS

- Accounting Standards Board of the Institute of Chartered Accountants of India
- Cost Accounting Standards Board of the Institute of Cost and Works Accountants of India.

Organisation Structure of the ICSI



Regional Councils & Chapters of the Institute

EASTERN INDIA REGIONAL COUNCIL

ICSI-EIRC Building, 3-A Ahiripukur I Lane, Kolkata 700 019

Phone : 22832973, 22816541, 22816542, 22901065, 2290 2178-79 Fax : 22816542,

E-mail : eiro@icsi.edu

Chapters : Bhubaneswar : 2552282 Dhanbad: 2205076 North Eastern Chapter (Guwahati): 2600401

Hooghly : 32420164 Jamshedpur : 2234273 Patna : 2322405, 9234705754 Ranchi : 3254128

NORTHERN INDIA REGIONAL COUNCIL

ICSI-NIRC Building, Plot No.4, Prasad Nagar Institutional Area, New Delhi 110 005

Phone:25769352, 4934 3005

Fax : 25722662 Email : niro@icsi.edu

Chapters : Agra : 2881618 Ajmer : 2425013 Allahabad: 9335117477 Alwar : 9414277623

Amritsar : 2566861

Bareilly : 2310708 Bhilwara : 329603, 238044 Chandigarh: 2661840 Dehradun : 6543193

Faridabad: 9136606604-05 Ghaziabad : 2796668, 4559681 Gurgaon: 2380021, 9718381912

Jaipur : 2707236, 2707736 Jalandhar: 2280315, 9872397506 Jammu: 2475148 Jodhpur: 5102551

Kanpur : 2296535, 2212767 Karnal-Panipat: 3290035 Kota: 2476176 Lucknow : 4109382,

9450465499 Ludhiana: 2545456 Meerut : 2642201 Modinagar: 243048 Noida : 9811231064

Shimla: 9418085670 Sonapat: 9416972240 Srinagar : 2483775, 9906631180 Udaipur: 2413977

Varanasi : 2507491, 2506077 Yamunanagar : 227541, 9355337541

SOUTHERN INDIA REGIONAL COUNCIL

ICSI-SIRC House, No.9 Wheat Crofts Road, Nungambakkam, Chennai 600 034

Phone : 28279898, 28222212

Fax : 28268685 E-mail : siro@icsi.edu

Chapters : Bangalore : 22286574, 22287158 Calicut : 6570601 Coimbatore : 2452006

Hyderabad: 23399541, 23396494 Kochi : 2392950, 4050502 Madurai : 2340797

Mangalore : 2216482, Mysore : 2516065 Palakkad : 2544061

Puducherry : 2251151 9362251151 Salem : 2441050, Thiruvananthapuram : 2451915

Thrissur : 2327860, 9995639511 Tiruchirapalli : 2461662 Visakhapatnam : 2533516

WESTERN INDIA REGIONAL COUNCIL

13 Jolly Maker Chambers, No.2, First Floor, Nariman Point, Mumbai 400021

Phones : 22844073, 22047569, 22047580, 22047604 Fax : 22850109 E-mail : wiro@icsi.edu

Chapters : Ahmedabad: 26589343, 32918705 Aurangabad : 9325228194 Bhopal : 2577139

Dombivli : 2445423 Goa : 2435033 Indore : 4248181, 2494552 Kolhapur : 2659498

Nagpur : 2453276 Nashik : 2509989, 2500150 Navi Mumbai : 9833284483

Pune : 24263228, 24260341 Raipur :4069290 Rajkot : 3059646 Surat : 2463404, 3917164

Thane : 25444478, 25444479 Vadodara : 2331498

CENTRE FOR CORPORATE GOVERNANCE, RESEARCH AND TRAINING (ICSI-CCGRT)

Plot No.101, Sector 15, Institutional Area, CBD Belapur, Navi Mumbai 400 614

Phone : 022-27577814-16 Fax : 022-27574384 E-mail : ccgrt@icsi.edu



Objectives & Functions

The Institute of Company Secretaries of India (ICSI):

- Registers students with 10+2 and graduate qualifications for Foundation and Executive Programme of Company Secretaryship respectively with course contents in Corporate and Economic Laws, Management, Accounting, Taxation and Finance disciplines;
- Conducts Company Secretaryship examination twice a year in June and December, at 85 examination centres spread all over India and an overseas centre at Dubai;
- Provides postal/oral coaching and training enabling students to qualify as Company Secretaries;
- Arranges e-learning for students through Web Based Training, Video Based Training and Live Virtual Classroom;
- Arranges training for Executive/Professional Programme pass students in companies/with Company Secretaries in Practice empanelled with the Institute for the purpose;
- Enrols qualified persons as Associate/Fellow members of the Institute and issues Certificate of Practice to members taking up practice;
- Conducts Post Membership Qualification Course for members of the Institute;
- Publishes widely read and highly acclaimed monthly journal 'Chartered Secretary';
- Publishes 'Student Company Secretary' and 'CS Foundation Course Bulletin' for the benefit of students; Publishes Online 'CS update' containing current notifications and circulars relating to various corporate and related laws;
- Exercises professional supervision over the members of the Institute both in practice and in employment in matters pertaining to Professional Ethics and Code of Conduct;
- Undertakes research in Law, Management, Finance and Capital Market disciplines and brings out research publications and guidance notes;
- Issues Secretarial Standards and brings out Guidance Notes thereon;
- Renders expert advisory services to members on intricate issues relating to various corporate laws;
- Organises Professional Development and Continuing Education Programmes, International/National/Regional Conventions and Conferences directly or through its Regional Councils and Chapters;
- Organises Professional Development Programmes in collaboration with Chambers of Commerce, Department of Public Enterprises, sister Professional Institutes and other Professional Development/ Management Bodies;
- Interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations;
- Interacts with the Central and State Governments and Regulatory Authorities on matters of professional interests;
- Interacts with Company Secretaries Institutions of other countries for mutual benefit and in respect of the International Federation of Company Secretaries;
- Bestows ICSI National Award for Excellence in Corporate Governance on best governed companies;
- Bestows Life Time Achievement Award for Translating Excellence in Corporate Governance into Reality;
- Is a Member of the National Foundation for Corporate Governance;
- Is a Member of International Federation of Company Secretaries (IFCS).
- Is a member of Corporate Secretaries International Association (CSIA)



Vision

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

Mission

“ To develop high calibre professionals facilitating good corporate governance ”



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

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email info@icsi.edu **website** www.icsi.edu / www.icsi.in