



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



ICSI Vision

"To be a global leader in promoting
good corporate governance"

ICSI Motto

सत्यं वद। धर्मं चर। *Speak the truth. Abide by the law.*

ICSI Mission

"To develop high calibre professionals
facilitating good corporate governance"

SOUVENIR

23rd National Conference of Practising Company Secretaries

CS : A Preferred Professional

18th - 19th June, 2022 | Della Resorts, Lonavala, Maharashtra

Connect with ICSI

www.icsi.edu | [f](#) [t](#) [in](#) [v](#) [@](#) | Online Helpdesk : <http://support.icsi.edu>

Company Secretary

The Governance Professional

I am the first word in Compliance And the last word in Governance

Role of Company Secretary



Advisor to the Board of Directors



Key Managerial Personnel



Compliance Officer



Secretarial Auditor



Corporate Risk Manager



Chief Governance Officer



Arbitrator



Corporate Planner and Strategic Manager



Internal Auditor



GST Professional



Registered Valuer



Insolvency Professional



Representation Services

Public and Private entities play a key role in a nation's development. It is imperative that the interests of their stakeholders are well balanced while conforming to the laws of the land in true letter and spirit. The many roles played and diverse responsibilities shouldered by a Company Secretary ensure all these and more...



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Connect with ICSI

www.icsi.edu |      | Online helpdesk : <http://support.icsi.edu>



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)



23RD

**NATIONAL CONFERENCE OF
PRACTISING
COMPANY SECRETARIES**

CS : A Preferred Professional

Date : 18-19 June, 2022

Venue :

Della Resorts, Lonavala, Maharashtra

© THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

June 2022

◆◆◆

Disclaimer :

The views expressed in the articles are personal views of the authors and do not necessarily reflect those of the Institute.

Although due care and diligence have been exercised in preparation of this Souvenir, the Institute shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Souvenir. Any one wishing to act on the basis of the material contained herein should do so after cross checking with the original source.

◆◆◆



अमित शाह



सत्यमेव जयते
संदेश

गृह मंत्री एवं सहकारिता मंत्री
भारत सरकार

यह हर्ष का विषय है कि भारतीय कम्पनी सचिव संस्थान 'Company Secretary - A Preferred Professional' विषय पर दिनांक 18 से 19 जून, 2022 को लोनावाला, महाराष्ट्र में प्रैक्टिसिंग कम्पनी सचिवों के 23वें राष्ट्रीय सम्मेलन का आयोजन कर रहा है और इस अवसर पर एक ई-स्मारिका का प्रकाशन भी किया जा रहा है।

मुझे विश्वास है कि नए कॉर्पोरेट प्रशासनिक वातावरण में आयोजित यह सम्मेलन संगठनों को एक न्यायसंगत पारिस्थितिकी तंत्र में ले जाने के तरीकों को समझने में मदद करेगा, जो न केवल जोखिमों को कम करने के तरीके खोजने में सहायक होगा अपितु बोर्ड के प्रदर्शन में सुधार करने के तरीकों पर भी विचार-विमर्श करेगा।

आज, देश आजादी का अमृत महोत्सव मना रहा है, आत्मनिर्भर भारत के निर्माण की दृष्टि के साथ समावेशी विकास के युग की शुरुआत करते हुए संस्थान द्वारा सम्मेलन के लिए एक प्रासंगिक विषय का चुना जाना सराहनीय है। मैं आशा करता हूँ कि आत्मनिर्भर राष्ट्र के निर्माण एवं समावेशी विकास को बढ़ावा देने में कम्पनी सचिव एक महत्पूर्ण भूमिका निभाएंगे।

भारतीय कम्पनी सचिव संस्थान अपने स्पष्ट मिशन एवं योगदान से वैश्विक कॉर्पोरेट क्षेत्र में स्वयं को सुदृढ़ रूप से स्थापित किया है। मुझे विश्वास है कि यह सम्मेलन कम्पनी सचिवों को और अधिक सक्षम बनाने में सकारात्मक रूप से सहायक होगा, जिससे वे देश के आर्थिक-सामाजिक विकास को गति देने में अपना अहम योगदान देंगे।

मैं, संस्थान के सभी पदाधिकारियों को अपनी शुभकामनाएं प्रेषित करते हुए ई-स्मारिका के सफल प्रकाशन की कामना करता हूँ।

(अमित शाह)

श्रीमती प्रीती कौशिक बेनर्जी,
निदेशक, आई.सी.एस.आई.

कार्यालय : गृह मंत्रालय, नॉर्थ ब्लॉक, नई दिल्ली-110001
दूरभाष : 23092462, 23094686, फैक्स : 23094221
ई-मेल : hm@nic.in



THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान

The Institute of Company Secretaries of India (ICSI) is a premier national professional body constituted under an Act of Parliament, namely the Company Secretaries Act, 1980 (Act No. 56 of 1980) to regulate and develop the profession of Company Secretaries.

ICSI provides top-quality education to the students of Company Secretaries (CS) Course and has set and maintains best quality standards for CS members. The ICSI has on its rolls more than 68,000 qualified CS members including over 11,000 members holding certificate of practice. Around 2,50,000 students are presently pursuing the Company Secretaryship Course.

Motto

सत्यं वद। धर्मं चर।
Speak the Truth. Abide by the Law.

Vision

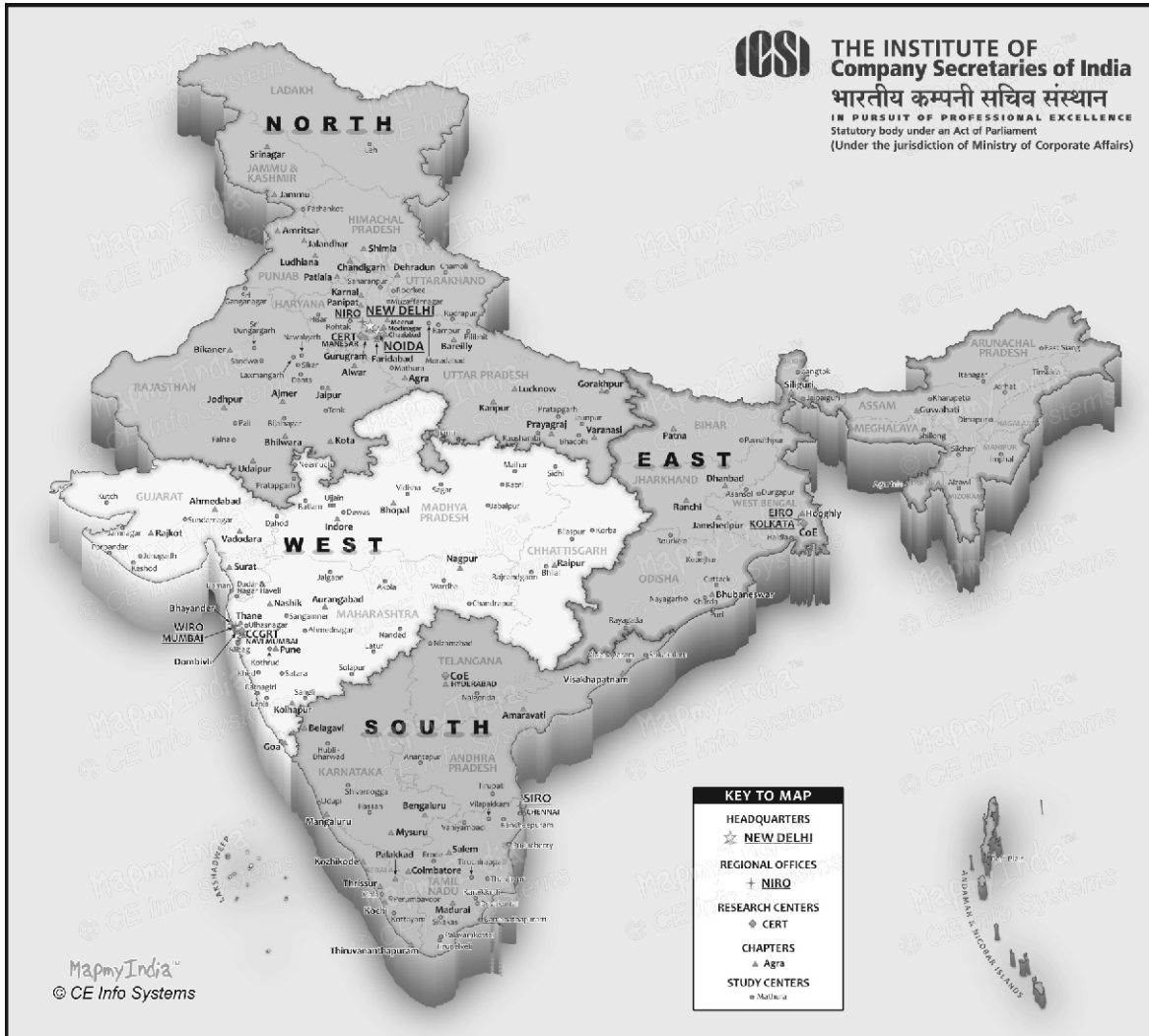
“To be a global leader in promoting good corporate governance”

Mission

“To develop high calibre professionals facilitating good corporate governance”

ICSI NETWORK

1. Head Office: New Delhi
2. Regional Offices: SIRC (Chennai), EIRC (Kolkata), WIRC (Mumbai), NIRC (New Delhi)
3. Chapters: 72
4. Research Centres: Navi Mumbai and Hyderabad
5. Overseas Centres: Dubai, USA, UK, Singapore & Australia
6. Study Centres: 147
7. Examination Centres: 176



ICSI SUBSIDIARIES

- ICSI Governance Research and Knowledge Foundation (ICSI GRKF)
- ICSI Institute of Insolvency Professionals (ICSI IIP)
- ICSI Registered Valuers Organization (ICSI RVO)

FUNCTIONS OF THE INSTITUTE

- Develops a cadre of Company Secretaries for ensuring governance and effective management in corporates. Students with 10+2 and/or graduate qualifications may appear in Company Secretary Executive Entrance Test (CSEET) and after qualifying the same, they are registered for Executive Programme of Company Secretaryship Course with course contents in Law, Tax, Management, Accounting and Finance disciplines;
- Provides postal/oral / web-based coaching and training enabling students to qualify as Company Secretaries;
- Conducts Company Secretaryship Examination twice a year in June and December at centres spread all over India and at an overseas centre at Dubai;
- Arranges for practical training of Executive/ Professional Programme qualified Students with Companies / Practising Company Secretaries etc. empanelled with the Institute for the purpose;
- Enrolls qualified persons as Associate/ Fellow Members of the Institute and issues Certificate of Practice to Members taking up practice;
- Conducts Post Membership Qualification (PMQ) Courses for Members of the Institute;
- Formulates Secretarial Standards, Auditing Standards and brings out Guidance Notes thereon;
- Conducts elections to the Council of the Institute;
- Maintains library and publishes books and periodicals relating to management of companies and allied subjects;
- Publishes widely read and highly acclaimed monthly Journal, Chartered Secretary, disseminating information, expeditiously;
- Brings out daily Info-capsules, Case digest series for Members and students, theme based Student Company Secretary e-journal, subject wise monthly updates for Executive and Professional Programmes, CS Foundation Course e-bulletin for Foundation Programme Students, CSEET Communique e- bulletin and conducting of mock tests for CSEET registered candidates;
- Grants ICSI Signature Award (Gold Medal & Certificate) to the toppers of B.Com. Examinations of reputed Universities and selected programmes of IIMs as per the MoUs with the respective Universities/institutions.
- Ties up with reputed Colleges for establishment of Study Centres for providing basic services to the students;
- Organises Career Awareness Programmes(CAP) for the benefit of prospective students;
- Exercises 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 Corporate Laws, Corporate Governance, Management, Finance and Capital Market disciplines and brings out research publications of its own accord and

on behalf of Government and its agencies/Institution;

- Renders expert advisory services to Members/ Industry on issues relating to corporate laws;
- Undertakes initiatives for enhancing self-governance;
- Organises Professional Development and Continuing Education Programmes, National Convention of Company Secretaries, International/National/ Regional Conferences directly or through its Regional Councils and Chapters, 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 various international, multi-lateral bodies / institutions with regard to issues relating to Corporate Governance, Business Ethics, Sustainability and Corporate Social Responsibility;
- Interacts with Centre and State Governments on various issues concerning the profession;
- Undertakes benevolence of Members;
- Interacts with Members of Corporate Secretaries International Association (CSIA) and Company Secretaries Institutes in other jurisdictions;
- Bestows ICSI National Award for Excellence in Corporate Governance to best governed companies;
- Bestows ICSI CSRExcellence Award;
- Bestows Best Secretarial Audit Report Award;
- Bestows ICSI Lifetime Achievement Award to eminent corporate personalities for translating Excellence in Corporate Governance into reality and;
- Conducts Investor Awareness Programmes throughout the country under the aegis of the Investor Education and Protection Fund (IEPF), Ministry of Corporate Affairs (MCA).

BUILDING FUTURE PROFESSIONALS TO GUIDE CORPORATE INDIA

The ICSI conducts the Company Secretaryship examination to bring in high level professionals specialized in corporate laws, management and governance.

STAGES OF COMPANY SECRETARYSHIP COURSE

The Company Secretaryship Course is conducted in the following stages as under;

CSEET

Students with 10+2 and/or graduate qualifications may appear in Company Secretary Executive Entrance Test (CSEET) and after qualifying the same, they are registered for Executive Programme of Company Secretaryship Course.

Executive Programme

A student passed / appearing in the Senior Secondary (10+2) Examination equivalent thereto and passed Company Secretary Executive Entrance Test (CSEET) Examination shall be eligible to appear in the CS Executive Programme.

OR

All Graduates/ Post Graduates who were eligible for registration directly to CS Executive Programme, are also required to pass the CSEET to become eligible for registration to Executive Programme.

Professional Programme

A registered student is admitted to the Professional Programme on passing the Executive Examination.

ICSI MEMBERSHIP

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.

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

CODE OF CONDUCT FOR MEMBERS

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

COUNCIL MEMBERS

CS Devendra Vasant Deshpande
President

CS Manish Gupta
Vice-President

CS Nagendra D Rao, Immediate Past President
Mr. Manoj Pandey, Govt. Nominee
Mr. Inder Dheep Singh Dhariwal, Govt. Nominee
Mr. Anil Gupta, Govt. Nominee
Dr. (Ms.) Madhu Vij, Govt. Nominee
Mr. S Santhanakrishnan, Govt. Nominee
CS Sandip Kumar Kejriwal
CS Hitender Mehta
CS NPS Chawla
CS Ranjeet Pandey
CS Vineet K Chaudhary
CS (Dr.) Ahalada Rao Vummenthala
CS C Ramasubramaniam
CS Ashish Garg
CS B. Narasimhan
CS Praveen Soni
CS Chetan Babaldas Patel

CS Asish Mohan
Secretary

Western India Regional Council Members

CS Rajesh Chhaganbhai Tarpara, Chairman
CS Snehal Chandrakant Shah, Vice-Chairman
CS Amrita Dineshchandra Nautiyal, Secretary
CS Hrishikesh Shirish Wagh, Treasurer
CS Pawan Ghanshyamdas Chandak, Member
CS Rahul P. Sahasrabuddhe, Member
CS Ashish Karodia, Member
CS Yogesh Choudhary, Member
CS Tushar Sudhir Pahade, Member
CS Shilpa Kedar Dixit, Member
CS Ashish Garg, Ex-Officio Member
CS Devendra Vasant Deshpande, Ex-Officio Member
CS Narasimhan Balasubramanian, Ex-Officio Member
CS Praveen Soni, Ex-Officio Member
CS Chetan Babaldas Patel, Ex-Officio Member

Practising Company Secretaries Committee

CS Sandip Kumar Kejriwal, Chairman
CS B. Narasimhan, Member
CS Ranjeet Pandey, Member
CS Praveen Soni, Member
Dr. (Ms.) Madhu Vij, Member (Govt. Nominee)
CS (Dr.) Ahalada Rao Vummenthala, Member
CS NPS Chawla, Member

23rd National PCS Conference Committee

CS Sandip Kumar Kejriwal, Council Member	Chairman
CS Ashish Garg, Council Member	Member
CS B Narasimhan, Council Member	Member
CS Chetan Babaldas Patel, Council Member	Member
CS Praveen Soni, Council Member	Member
CS Asish Mohan , Secretary, The ICSI	Member

23rd National Conference of PCS Organising Sub-Committee

CS Praveen Soni, Council Member	Chairman
CS Ashish Garg, Council Member	Member
CS B Narasimhan, Council Member	Member
CS Chetan Babaldas Patel, Council Member	Member
CS Rajesh Chhaganbhai Tarpara, Chairman, WIRC	Member
CS Sanjay Patare, Chairman, Pune Chapter	Member

Local Committees

CS Amrita Dineshchandra Nautiyal, Secretary, WIRC	Food & Catering Committee
CS Hrishikesh Shirish Wagh, Treasurer, WIRC	Reception & Welcome Committee
CS Ashish Karodia, Member, WIRC	Cultural Committee
CS Pawan Ghanshyamdas Chandak, Member, WIRC	Transport Committee - Pune
CS Rajesh Chhaganbhai Tarpara, Chairman, WIRC	Transport Committee - Mumbai
CS Snehal Chandrakant Shah, Vice-Chairman, WIRC	Transport Committee - Mumbai
CS Yogesh Chaudhary, Member, WIRC	Venue Committee

ICSI - CENTRE FOR CORPORATE GOVERNANCE RESEARCH & TRAINING (ICSI-CCGRT)

ICSI-CCGRT was established with the sole purpose of conducting high end research and training programmes for the CS fraternity on the contemporary issues concerning the profession. The Centre was inaugurated and dedicated to the nation in the worthy hands of Dr. A S Anand, then Chief Justice of India on 16 May 1999. Since then the Centre has been performing as an organ of the Institute in the domain of research, governance and training.

The primary objective of the Centre is to act as a catalyst organisation in the professional development of the Indian corporate sector through qualitative research and high level corporate training with 'Corporate Governance' as the thrust area. Since its inception, the Centre has undertaken a number of activities aimed towards fostering qualitative research.

ICSI CENTRE OF EXCELLENCE, HYDERABAD

The ICSI in its candid endeavours to foster good corporate governance and inculcating analytical approach through research and training among CS fraternity and other vital segments of society, has initiated to set up learning and knowledge centres across India. The ICSI-CCGRT being the first of its kind located in Navi Mumbai, the Institute has set up its second Research & Training centre as Centre of Excellence in Hyderabad which has commenced its activities effective from June 2018.

The ICSI-Centre of Excellence sprawling in a lush green area of 4166 square meters is located in Uppal area of Hyderabad, the Capital of Telangana State which is best known as "City of Pearls" and located on the banks of Musi River. The Centre is at a walkable distance from NGRI Metro Station.

The vast campus of the Centre comprises 200 seater Auditorium, Training Halls of different seating capacity, Board Room, Computer Room, Library, Yoga Room & Institutional Blocks equipped with ultra-modern and state of the art audio visual aids to facilitate high end training programmes and undertaking research of topical interests to the Institute. The campus has also 24 self-content dwelling units on twin sharing basis catering to the residential projects of the Institute.

ICSI GOVERNANCE RESEARCH AND KNOWLEDGE FOUNDATION (ICSI GRKF)

ICSI Governance Research and Knowledge Foundation (ICSI-GRKF) is a company promoted by the Institute of Company Secretaries of India (ICSI), which is registered under erstwhile Section 25 of the Companies Act, 1956 (now section 8 under the Companies Act, 2013). It was incorporated on September 23, 2013. The main object of ICSI GRKF is “to generate, spread and impart knowledge, directly or in association with person(s) having similar objects or engaged in similar activities, in the area of corporate laws, governance, management, business sustainability and corporate social responsibility, capital and financial markets, auditing, fiscal and economic laws and policies, information and control systems and allied disciplines through research, publications, training, education or in any other manner.”

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS (ICSI IIP)

The ICSI – Institute of Insolvency Professionals (ICSI IIP) is a section 8 Company incorporated under the Companies Act, 2013 and formed by ICSI with its 100% capital is owned by ICSI. The Company is registered as an Insolvency Professional Agency with Insolvency and Bankruptcy Board of India to enrol and regulate the members practising as Insolvency Professionals (IPs) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 read with rules and regulations made thereunder.

ICSI REGISTERED VALUERS ORGANISATION (ICSI RVO)

The ICSI Registered Valuers Organization (ICSI RVO) is a Section 8 Company incorporated under the Companies Act, 2013 and formed by ICSI with its 100% capital is owned by ICSI. The Company is recognised as Registered Valuers Organisation with Insolvency and Bankruptcy Board of India, formed with the intent to enrol, register, educate, train, promote, develop and regulate Registered Valuers as per the Registered Valuers Rules, while establishing and promoting high standards of practice and professional conduct and promote good professionalism, ethical conduct and competency ensuring quality of valuation work.

CONTENTS

S.No.	Name of the Articles	Authored
1.	Opportunities & Challenges for Company Secretaries	CS Kiran M. Chitale
2.	A Peninsula For Governance Professionals – Strategy, Governance and Sustainability	CS A. Sekar & Mr. Ranjith Krishnan
3.	Evolving Role of Company Secretaries in New India : Opportunities and Challenges	CS (Prof) R. Balakrishnan
4.	Think beyond, Act above, and Achieve more	CS Darryl P Barretto
5.	Disciplinary Mechanism for CS Professionals	CS (Dr.) Rajeev Kumar
6.	Peer Review	CS Roopali Baijal
7.	COMPANY SECRETARY: A Journey from Board Room to the Outside World	CS Maitri Khandelwal
8.	CS: A Preferred Professional	CS Soniya Gupta
9.	Practicing Company Secretaries: In The Multiverse of Compliances	CS Ruchita Deshpande & CS Tanmay Pethkar
10.	Evolving role of Company Secretaries in India: Opportunities and Challenges	CS Pradeep Kumar Ray
11.	Role of PCS under POSH & IPR	CS Harsha Batra
12.	Strategic Options for Practice in the New Decade: Valuation, Arbitration, Forensic Audit, IPR & POSH	CS Nikita Ahuja
13.	Building Trust and Enabling Sustainability	CS Rahul Luthra
14.	Strategic options for practice on the New Decade: Valuation, Arbitration, Forensic Audit, IPR and POSH	CS C Sakunthala

Opportunities And Challenges For Company Secretaries

CS Kiran M. Chitale,

Country Head Of Legal - Commercial, Innovation And Technology Legal, India

Where we are...

Company Secretary (“CS”) as a professional has definitely proved its need to various stakeholders in the economic development of the country. Each profession and professional play vital role in contributing to the economic growth of the nation. Company Secretaries have been primarily associated with the corporate sector and also plays a key role in providing advisory to other forms of business such as partnership and limited liability partnership, in particular. The profession of Company Secretaries has evolved over a period of time and has boldly faced various economic seasons. Traditionally, a Company Secretary was tied to compliances under the prevailing company law and was merely considered as expert in prevailing Companies Act. Things have changed over a period of time, some from within and some from outside. This profession has evolved over a period of time and has received multiple recognitions (in the eyes of law/ statutory authorities) and the industry at large. It is about the acknowledgment and acceptance of the professionalism demonstrated by a Company Secretary, both in employment as well as in practice, that has enabled us to reach where we are today. However, one should not be contented with the achievements so far, as the same mars further growth and willingness to accept new things or change further. It is equally important to continue our journey in the right way and look back for learning and experiences from the past, to be able to suitably modify, adapt, absorb, adjust and align our future course of action from time to time. This is a continuous process and requires us as professionals to constantly keep watching the environment where we operate, our stakeholders, our professional brothers and sisters, students (who are future professionals) keeping the Institute at the centre. The Institute of Company Secretaries of India (ICSI) as we all know, makes consistent efforts to adapt these dynamics through various means and methods, including but not limited to making suitable changes to the syllabus for the CS Course, bringing new secretarial standards, sharing learning from disciplinary actions, taking important decisions that impact the profession, seeking recognitions for the CS profession, maintaining rapport with government authorities, bringing opportunities for professional development, etc.

Where we want to be...

For a professional such as Company Secretary it is quite exciting to know our areas of knowledge and expertise and our skills and abilities to work alongside the government authorities to make incessant efforts to increase awareness of legal requirements, ensure maintenance of records and filing of various forms/ documents as required under relevant law, demonstrating compliance through various certifications and audits, adding value through provision of guidance to the management of the organizations in any of the corporate actions/ decisions that impact its stakeholders (in addition to routine compliance requirements).

While as a profession, we are moving and marching ahead to reach newer heights in achieving the goals of the ICSI, it is equally important for every professional to take steps in right direction with right intent, to contribute not only to the profession, but also to the economy we work for. It may not be feasible for each professional to diversify his service offering in many areas of practice. However, one should take reasonable efforts to expand the scope of services and encourage young professionals to take the challenges to enter into and/ or expand new areas of work (in employment as well as in practice). One needs to decide where he/ she wants to be after

certain number of years and work accordingly. It is necessary to build an ecosystem that is scalable and could sustain in the long run.

Expanding horizons

The Institute may continue to come up with relevant material and training for members of the profession to equip them to get into the new areas e.g. one wants to expand his/ her practice as an Arbitrator, even though the ICSI is already providing PMQ Course on Arbitration, which would provide relevant level of knowledge and requisite skills for a member. In addition, ICSI may consider sending out relevant updates through Chartered Secretary or emails, or otherwise to get to know up-to-date information about the field of arbitration. Mentoring sessions may be scheduled with arbitrators in practice for case studies and practical understanding. ICSI may start listing such members who wish to act as Arbitrators and provide them with a platform. ICSI may use its good offices with relevant authorities to gain recognition for Company Secretaries to be able to create opportunities for members of the ICSI to get jobs in employment or in practice. In addition, various programs, study circle meetings, could be conducted to discuss topics relevant to the subject of “arbitration”. ICSI may probably consider setting up a platform for its members to conduct arbitration after seeking formal recognition under law, and equipping itself to become a centre for arbitration, as an option to parties to resolve disputes through arbitration referred to the ICSI and under the set of rules and policies to be adopted by the ICSI. ICSI may keep generating guidance notes and other material to be circulated to those members (probably on paid basis to limit access to those who are genuinely interested to grow their profile in a specific area such as arbitration) and share such material or updates from time to time. ICSI may explore entering into tie ups/ MOUs with other arbitration bodies to work on a reciprocal basis and support parties from respective jurisdiction to offer them with this platform or area service.

In order to develop a profile in a specific area, one needs to build strong knowhow and required skill sets (experience to get added over a period of time!!). It is important to keep oneself up-to-date and equip self with necessary Do's and Don'ts of entering into a new area of work/ practice. It is all about creating appropriate eligibility and striking the opportunity at the door. This would require continuous efforts in the right way, based on a value system.

Likewise, a Company Secretary may consider expanding its wings in various other areas such as forensic audit, valuation, intellectual property, employment law, data privacy, policy audit, commercial contracts, POSH, Property documentation, RERA, ESG, etc. Why a Company Secretary cannot expand his/her profile (in employment) / practice in the above areas (and more to come in the future!!)? While Forensic, Valuation, employment law, IPR and POSH (law relating to sexual harassment of women at workplace) are probably well understood, one may need to consider a few more areas suggested above. One would need to think about these areas suitably in the context of both employment vs. in practice:

Exclusive **Data Privacy** law in India is at the corner and it could open up a new area of work for professionals such as Company Secretaries. It is all about governance in respect of privacy of data and provisions dealing with personal and non-personal data. There is a heavy potential to become a Data Privacy professional to advise on these matters and contribute to building governance in India, particularly after a dedicated legislation is introduced in India (in comparison to current set of rules that deal with protection of personal data).

Policy audit brings up opportunity to review and validate compliances under various organizational policies. This requires exercise of independent judgement, ability to provide for right controls and governance around compliance with various policies. A Company Secretary may want to explore this area and discuss if a Company Secretary can carve out a suitable role for his employer organization or client organization.

Commercial Contracts advisory is another area for Company Secretaries to chip in and add value to business

through drafting, negotiation and finalization of contract lifecycle, depending on nature of industry and scope of work and expectations from the management/ client.

Property documentation and RERA Audit : This could be considered as an area where a Company Secretary may be equipped to deal with negotiation and finalization of lease and license, lease and other property documentation, including conducting legal due diligence for properties and conducting an audit for confirming compliance under the Real Estate (Regulation and Development) Act, 2016 as amended/ modified. This is again to support governance under the said law, where Company Secretaries can support and advise Developers, Consumers, any authorized middle men dealing in real estate industry.

Environmental and Social Governance (ESG) is a booming area where regulators are going to expect more and more to support green earth initiative and provide appropriate framework to march towards net zero in the context of emission of greenhouse gases. Company Secretary can work alongside with regulators to provide guidance and enhance governance in this space. At present, certain disclosure requirements apply to select listed companies in India through Business Responsibility and Sustainability Report as part of the annual report.

FACTORS THAT CREATE OR SUPPLEMENT OPPORTUNITIES

In addition to bringing and building areas of work in order to expand a job profile or service offering by Company Secretaries in employment or practice, as the case may be, it may be useful to consider following factors that could help a Company Secretary, directly or indirectly, to convert potential work opportunity or task into a real and rich service delivery and increase stakeholder experience. A lot depends on willingness of the individual and feasibility components. This will also bring more opportunities for growth (in employment or in practice) in pursuit of achieving perfection:

a) Knowledge bank:

Professional should ensure building thorough knowledge in the area of work. This requires understanding, learning and application of knowledge in a pragmatic and sensible way and to reach to solution in the given situation. This also involves continuous upgrade and updating the knowledge. It is important for a professional to participate in professional gatherings to share and learn from other professional colleagues and help new professionals as well. In addition to the knowledge of relevant laws (including rules, circulars, etc.) and rule of interpretation, it is important to study case laws and build repository of relevant cases. One should consider benefitting the government and regulators with his/ her knowledge in order to contribute back to the society.

b) Up-skilling (including soft skills):

Similar to the building knowhow, it is important to focus on building on various skill sets necessary for a professional. For a Company Secretary in employment as well as in practice, one must develop drafting, communication, presentation, decision making skills apart from technology skills, soft skills, etc.

c) Culture and Value system:

Culture and Value system forms the foundation, on the basis of which a professional should development himself/ herself. Putting right culture brings right thought process particularly, when it comes to advising in grey areas or matters where law is unclear or is yet to reach desired level of maturity through precedence and practice. It would encourage employer/ client organizations to do the right thing when it comes to completing compliance action or demonstrating governance. It would also mean rejecting the ways or solutions that do not enhance governance or add to risk to business or

reputation of the employer or client. Building right culture and values would require a lot of effort and team work.

It is imperative to build trust across all stakeholders within and outside the organization you work for. Installing strong ethics helps in the long run. It is important to demonstrate and deliver what we offer or commit to our stakeholders. One should be open to get due diligence, quality review or audit work and test your function as a whole through an assessment by an independent body/ professional firm.

d) Infrastructure :

A Company Secretary would benefit by having right infrastructure that enables him/ her to perform his/ her role efficiently and effectively. This would include having right set of resources, access to knowledge bank, IT infrastructure, etc. Having necessary infrastructure plays a key role in building efficiency and enrich service delivery. It is important to build next generation of professionals through proper training and knowledge sharing. This would probably enhance the chance of retaining trained/ skilled resources, with a possibility of such resources adding value back to the Company Secretarial Department/ Office.

e) Best practices :

A professional should consider putting in best practices in his domain. This not only means probably creating process flows, proper record keeping practices, creating check-lists, building a bank of FAQs, templates, creating strong internal database of employer organization or client organizations to be able to drive compliance calendar and complete compliance actions well before time and be able to report any non-compliance by exception than practice. It would also mean creating ensuring all relevant Company Secretarial data is maintained properly including practices to ensure back-up of such databases.

f) Automation:

Automation is one the preferred ways to standardize and streamline most of the work these days. Automation would help building master data of employer/ client organization, track pending actions, create reports, provide dashboards required for decision making, allocate work, track timelines, etc. apart from creating electronic records for future reference.

g) Standard Operating Processes (SOPs) :

It is advisable to create/ refer to standard operating processes for compliance procedure. Also, a Company Secretary may create SOPs for his internal functional processes/ requirements to make things more and more person independent and standardize ways to operate within Company Secretarial Function or Department. This would contribute to efficiency and saving of time and costs in the long run. This would also help avoiding any mistakes/ misses while completing compliances or updating of records/ Forms to be filed under the law, as the standard checklists/ reference points would be quite helpful. It saves time and energy in bringing new comers up to speed. Also, it builds good resilience in the absence of other team members dealing with a matter/ compliance process.

h) Decision making and time management:

Among other skills, decision making and time management are key to success.

A Company Secretary in employment needs to support the management in taking important decisions and significantly contributes to providing strategic direction. It is equally important for a Company Secretary to build decision making ability in order to protect the interest of the organization

and at times, take pragmatic approach to find solution to a query at hand, without putting organization to breach. Likewise, a Company Secretary in practice could actively contribute to the decision of his/ her client organizations. A lot depends on scope of engagement, relationship with the client.

A Company Secretary should manage his time efficiently. One can think of various ways to manage time better. This could create some time for focussing on new areas of practice or learning or could help in professional development activities.

i) Stakeholder expectations :

One needs to check who the stakeholders are, what they are looking for, how can one raise the bar on stakeholder's experience, working on feedback, etc. All of this requires conscious effort and focus in improving stakeholders' experience as a whole. This requires a lot of detailing, observation, planning and execution focus or outcome-based thinking. It is important to identify parameters for satisfying reasonable stakeholder expectations. It is important to operate within the four corners of doing the right thing, doing things that make sense in the given situation, picking up things/ areas/ work/ assignments that are appropriate to do and checking feasibility in each case. Stakeholders typically expect convenience, customization and special attention. It may not be always feasible and/ or appropriate to fulfil all such expectations. One needs to weigh between fulfilling stakeholder expectations vs. be transparent and share reality to avoid unfriendly surprises to stakeholders at a later date. There are situations where a Company Secretary may deny an opportunity for additional role in employment or in practice, as the same may not be feasible for various reasons.

j) Working with Regulators/ Law makers:

One needs to choose between minimum compliance vs. leading by example (in terms of raising the compliance/ governance bar) e.g. annual reports or notices of meetings of shareholders of select companies used to be referred more or less as templates or good baseline drafts. This sets the tone for your employer/ client organization.

It is equally important to understand where the market practices are heading to, how various company secretarial procedures and practices are contributing to better governance in a holistic way. One should consider working closely with the law makers or the regulators in order to feed the learning points from experiences, to plug loopholes, reduce grey areas or possibilities of incorrect interpretation. This would not only result in building reputation for your organization or office, but help you get an edge for implementing better governance. The same demonstrates good position on the maturity curve. One could also explore reaching out to the professional bodies such as ICSI or other industry bodies to contribute to the process of raising governance or to curb bad practices or behaviours when it comes to your area of work and incidental matters.

k) Continuous learning/ improvement approach :

It is important to continuously learn from the current and past matters and apply the learning for future work/ matters. Best way to improve is self-introspection/ criticism. It is also vital to work on feedback received from stakeholders. This would help one develop as a professional and bring desired outcomes by applying right methods and means to achieve better outcomes. Continuous improvement requires setting the right tone within the office and install an environment that encourages constructive feedback. Sometimes small changes could make big difference in terms of creating better controls or time saving. In other cases, it would take a longer route that involves more investment of time, energy and money to make systemic changes or improvements at large scale.

l) Use of technology :

With developments in technology, one ought to rely on better/ updated applications and tools that automate or simplify routine actions. With deployment of artificial intelligence and machine learning, block chain, etc. companies are achieving wonderful results or are getting hugely benefitted. Deploying technology would significantly make difference to overall output, quality of service delivery and the customer experience. Technology has simplified routine tasks and has offered smart thinking over years. Any transition would take time and probably have teething issues. We have probably experienced some difficulties while adapting online filing of Forms under the Companies Act. The same has evolved over a period of time. However, technology has, inter alia, brought quite a few benefits, in some way or the other.

Addressing the “what”, “why” and “how”, etc.

For a profession to grow, it is desirable to find answers to some of the W and H questions e.g. what do we need to do to achieve growth, what is the meaning of growth, what it takes to reach certain level of governance, why should one adopt option 1 vs. option 2 and the like. Once the goal is determined, it is desirable to consider “how” to reach there. Some of the options may be costlier or more time consuming than others. It is for a professional to choose the appropriate means and methods to reach desired outcomes e.g. if a Company Secretary decides to enter into practice, it would be useful to identify primary areas of practice, start building rapport with right set of people (potential customers, government authorities, co-professionals, etc.), plan for having right infrastructure/ investment, think about the form of organization e.g. sole proprietary, partnership, etc., as permitted and probably think of an office location, and so on. This will help facing or dealing with some challenges.

There could be other challenges e.g. continuity of recognition for Company Secretaries, competition within and outside profession, starting new areas of practice, updating knowledge and updating all checklists, processes, etc. with changes to laws, loss of job or client, challenges of dealing with employer/ client expectations, etc.

Some of the challenges can mitigated or addressed by ensuring proper service which imbibes timely and qualitative service along with right attitude and network. Management of employer organization or client organization expects Company Secretaries to provide pragmatic solutions and save time in implementing their decisions or plans. Somewhere one needs to draw the line by setting right expectations, providing clarity to compliance requirements and pre-conditions specified under the law. However, one could explore improving on timelines or deploying methods to manage time better or use automation to complete certain tasks faster than before. It's a mix bag of expectations and reality. It is important to have right mind-set to drive change for good and make difference through deployment right attitude and best practices. Most of the times challenges may be converted into an opportunity after allowing adequate time and efforts in right direction.

At times, it helps challenging the status quo and coming up with new ways of working. This may require use of observation, time and motion study, etc. as techniques to drive continuous improvements in the way a Company Secretary operates. This may mean re-allocation of responsibilities within the Function, motivational activities to contain attrition of team members, spending time and energy on training the team, revising internal Functional/ Departmental processes, adapting better ways to maintain records, managing databases in a better manner through use of automation, etc. It is therefore, crucial to think and act in a holistic manner and not just focussing attention to updating knowledge of laws (it is one of the key parameters to bring in professionalism).

It may be worth considering a new area of work in employment or in practice with proper planning and focussing on execution of the action plan. This would require investment of time and money to build

knowhow and required ecosystem to establish the new area e.g. a company secretary in employment who is initially responsible for compliances under Company law, could consider building adequate knowledge and skills to be a contact point for matters relating to Foreign Exchange laws, Competition laws and advise his/ her employer organization. In the similar manner, a Company Secretary in practice would need to build new area of practice and start to invest time and seeking assignments to allow that area of practice to grow over a period of time. Most of the times, having right attitude, building good network/ connects, willingness to learn, adaptability helps creating opportunities to the profession/ career. If we start creating opportunities for others, it may also create an opportunity for us e.g. if we hire an intern or a trainee, we offer him/ her an opportunity to learn and develop. This may in turn, help us develop new profile or area of work by capitalizing the research conducted by the trainee, as we may not be able to spare longer time to get into a new area of work.

Recognition for Company Secretaries could well be obtained through provisions of law or through arrangements supported by the Institute as well. However, recognition could also be achieved through delivering better stakeholder experience through qualitative and timely delivery, building better rapport, delivering commitments, and at times going out of the way, as required. It is all about how you impact your stakeholder in terms of output from your work, how flexible or adaptive are you when it comes to customized service, can you provide a quick help on a matter or a query, how can you make difference to the management/ client, are you in a position to provide a well-rounded advice and end-to-end service so that your stakeholders do not need to run from pillar to post to complete the proposed corporate actions/ execution of management decisions. It's the "wow" factor what will make you win hearts of your stakeholders. Of course, all of this needs to be weighed against ethical practices, something that makes sense and what is feasible and appropriate.

Company Secretaries have capability to drive key decisions of an organization and carry very important roles of a conscience keeper, compliance officer and a governance professional. It is necessary for a Company Secretary to take active interest in bringing better outcomes for the organizations (employer/ client) in a professional manner. It is quite necessary a Company Secretary to emphasise the need for upskilling – including managing Company Secretarial department, record keeping, IT skills, networking, communication, presentation and so on, to be able to build a strong brand, about his professionalism and the profession of Company Secretaries as well...!!



A Peninsula for Governance Professionals - Strategy Governance and Sustainability

CS A. Sekar, Practising Company Secretary, Mumbai

Mr. Ranjith Krishnan, Assistant Professor, Head - Academic Programme Unit (APU)
and Industry Liaison Officer, National Institute of Securities Market

INTRODUCTION

Strategy (or Strategic Management) and Governance (or Corporate Governance) are in reality two sides of the same coin. This is particularly so in the case of business enterprises organised in the corporate form, with one of the most striking and distinguishing features being the separation of ownership from the management. Globalisation and Liberalisation requires proactive response to the rapidly changing environment and this response to the situation is driven by the strategic business managers. In medium-sized and large business enterprises, there are three distinct groups namely shareholders, Board of Directors and the Management. The complexities in relationships between these three groups increase with the growing volume and size of business and the gap between the shareholders and the management widens. This gap is filled by having in place a proper governance framework. Apart from the economics of the business operations in terms of profits and / or wealth maximisation, rapidly growing business dynamics have their implications for the environment and the society as well. Since business enterprises are very much a part of the environment and the society in which operate, they have a responsibility to address the concerns of both the environment and society in a balanced manner, apart from their obligations to other concerned groups in the business entity such as employees, suppliers, customers, bankers and the regulators as well apart from their shareholders. Thus, emerged the concept of “stakeholders” instead of just “shareholders” and from a long term point of view for any business enterprise – a third dimension in the form of sustainability. The varying stakeholder concerns have expanded the scope of governance which links the strategy with long term sustainability.

CONCEPTUAL FRAMEWORK

Strategic Management

Strategic Management refers to the process of formulating, implementing and evaluating cross-functional decisions that enable a business enterprise to achieve its goals and objectives and is also concerned with a set of managerial actions and decisions that drives the long run performance of a business enterprise.¹

The Strategic Management process comprises of the following components: -

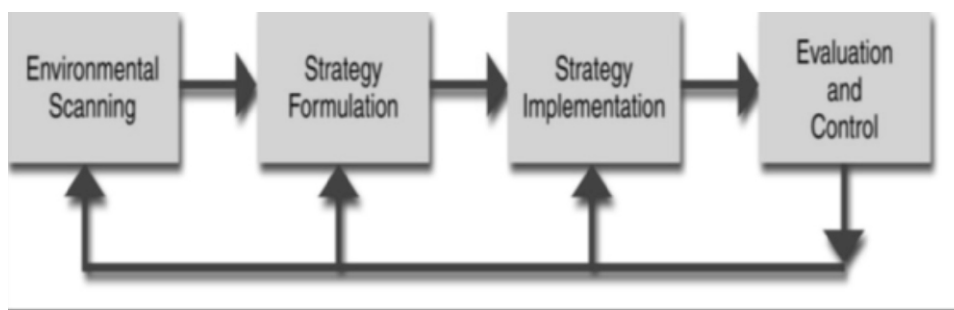


Fig. 1 Components of Strategic Management

Source: Metric Stream GRC Summit 2014 – Middle East

¹ Article titled Strategic Management and Corporate Governance-Two sides of the same coin authored by Sekar, A in March 2021 edition of Chartered Secretary journal

It will have to be understood and appreciated that each of the four components of Strategic Management depicted in Fig. 1 is a continuing as well as ongoing process, which are mutually interconnected and not necessarily sequential.

Corporate Governance

Good corporate governance is essential to develop added value to the stakeholders and going forward in times to come, preserve value for all the stakeholders by ensuring transparency always keeping in focus strong and balanced economic development. The concept of Corporate Governance was coined by Robert Ian (Bob) Tricker (who introduced the words corporate governance for the first time in his book in 1984) and according to him, “Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies are managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company” .

The Institute of Company Secretaries of India (ICSI) has defined Corporate Governance as “the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”

The foregoing definitions highlight the following important aspects: -²

- a) Definition of structure
- b) Relationship between various stakeholders
- c) Application of best management practices
- d) Laws, procedures, practices and rules
- e) Compliance of law in true letter and spirit
- f) Adherence to ethical standards
- g) Discharge of social responsibility
- h) Sustainable development of all stakeholders

The scope of Corporate Governance includes both social and institutional aspects as it encourages a trustworthy, moral, as well as ethical environment. In other words, the heart of corporate governance is signified by the acronym ADRIFTS and companies would do well not to go adrift from “ADRIFTS”, when it comes to Governance. ADRIFTS when expanded signifies Accountability, Disclosure, Responsibility, Integrity, Fairness, Transparency and Succession (ADRIFTS)³

Corporate Governance can be regarded as the weaving thread that runs through an enterprise for creating and developing a corporate culture that is built upon the foregoing seven pillars namely ADRIFTS, which in combination determine the effectiveness of Corporate Governance.

With this background of Corporate Governance, in the following paragraphs, an effort is made to understand the concept and meaning of “Sustainability”.

SUSTAINABILITY

Sustainability can be perceived as the way an entity creates value for its shareholders by maximizing positive and minimizing negative effects of environmental, social or economic issues.⁴

² Mastering Global Governance – A publication of ICSI

³ Ibid.2

⁴ Accenture, Chartered Institute of Management Accountants, Sustainability performance management: How CFOs can unlock value, Chartered Institute of Management Accountants, London, 2011

According to the UN World Commission on Environment and Development (WCED): “sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Thus, it can be seen that in the concept of Sustainability there is a presumption that resources are finite and they should be used conservatively, judiciously and wisely keeping in mind the long-term priorities of the stakeholders and the society at large, as also to minimise the negative consequences of the way in which the resources are used.

Sustainability is a holistic approach that considers ecological, social and economic dimensions, recognising that all must be considered together to find lasting prosperity.⁵

Pillars of Sustainability

Sustainability can be best explained with three pillars also referred to as the “Triple Bottom Line” approach. The three bottom lines or pillars, are:

- Social Sustainability
- Environmental Sustainability
- Economic Sustainability

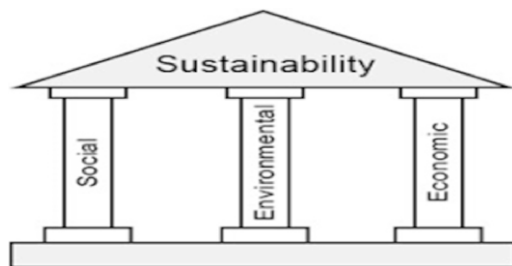


Fig. 2 – Three Pillars of Sustainability

Source: Open.edu

Corporate Sustainability

Thomas Dyllick and Kai Hockerts in “Beyond the Business Case for Corporate Sustainability” define Corporate Sustainability as, "meeting the needs of a firm's direct and indirect stakeholders (such as shareholders, employees, clients, pressure groups, communities, etc.) without compromising its ability to meet the needs of future stakeholders as well."

Corporate Sustainability can be best described as "encompassing strategies and practices that aim to meet the needs of the stakeholders today, while seeking to protect, support, and enhance the human and natural resources that will be needed in the future."

According to the Dow Jones Sustainability Index, ‘Corporate Sustainability is a business approach that creates long-term shareholder value by embracing opportunities and managing risks deriving from economic, environmental and social developments.’

Corporate Sustainability can be understood as the ability of companies to positively influence environmental, social and economic development through their governance practices and market presence. As a philosophy, it is a more viable alternative in the long run as compared to the traditional profit and wealth maximisation objective. Corporate Sustainability focusses on environmental protection and preservation as well as social justice and equity while at the same time recognising and balancing the apparent requirement of corporate

⁵ <https://www.prakati.in/what-is-sustainability-concept-meaning-and-definition/>

growth and profitability. It is re-iterated, those enterprises that focus on sustainable growth and development would command greater respect, reputation and goodwill than those that focus only on shareholder gains and prosperity.

THE PENINSULAR CONNECT BETWEEN STRATEGY, GOVERNANCE AND SUSTAINABILITY

Strategic Management is connected with Corporate Governance in the sense that the definition of structure which is appropriate for the business enterprise and application of best management practices are of paramount importance requiring close involvement of strategic leaders, as the enterprise pursues its strategy while at the same time ensures that it is well governed.

Corporate Governance is connected with sustainability in the sense that the business enterprise discharges its social responsibility for sustainable development of all stakeholders and not just its shareholders or some selected group of stakeholders.

Arising out of the foregoing, it follows that Strategic Management processes have to connect and address the sustainability concerns to be effective and relevant not only in the immediate context, but in the long run for the future generations.

Strategic Leadership pursuing Corporate Sustainability seek to achieve long-term shareholder value by gearing their strategies and management to harness the market's potential for sustainability products and services while at the same time successfully optimising sustainability costs and risks.

Integrating Strategy with Sustainability through Sustainable Governance

A robust governance structure is a sine qua non for successful integration of a company's strategy with management of sustainability. The pre-requisite for such integration requires having in place committed leadership, clear direction and strategic influence coupled with strong, powerful and effective governance structures.

How and where sustainability fits into the overall corporate structure can be very revealing of a company's direction and priorities and in this context, it is important to appreciate that there is no cookie-cutter structure that can be applied; every company must tailor its approach for what makes most sense given its business model, structure, resources, and level of sustainability integration into the business.⁶

It has been generally noticed that though enterprises are aware of the importance of the concept of sustainability to achieve corporate performance in the long run, sustainability is not integrated into the individual business processes particularly in the SME sector consequent to which while there is focus on the company's financial results, sustainability is not part of the Performance Measurement and Management systems of these entities. This is where Sustainable Governance systems come in handy through which sustainability is incorporated as part and parcel of the whole process of the strategic and operational management of the business. Strategic Management processes which incorporates the requisite sustainability parameters as part of the performance measurement and management systems coupled with Corporate Governance systems that addresses sustainability concerns on an ongoing basis leads to optimisation of the entire structure of the business in the long run.

Role of Governance Professional in this Peninsular Integration

Company Secretaries who are referred to as the Governance Professionals, either in their capacity as Whole Time Secretary or as Practising Company Secretaries (PCS) are the fulcrum in the process of this peninsular integration of Strategy, Governance and Sustainability. The role and the expertise of the Governance

⁶ <https://www.bsr.org/en/our-insights/blog-view/how-to-build-effective-sustainability-governance-structures>

Professionals are displayed and highlighted in two distinct aspects – firstly in the development of the internal processes within the company for integration of strategic and operational processes followed with measurable, wherever possible and assessable sustainability outcomes and secondly in the reporting of the sustainability outcomes to the Board and onwards to the stakeholders as mandated by the regulatory framework.

It is necessary for the Governance Professional to impress upon the Board of Directors and the committees thereof that all Board and Committee members should have:

- generic sustainability skills and knowledge such as basic awareness of sustainability and how it affects the organization;
- basic understanding of what is corporate sustainability;
- ability to identify at a high level the most material sustainability impacts of and on the organization, its value chain, industry and operating context;
- knowledge of key stakeholders and their priorities and issues;
- understanding of how poor sustainability performance can create reputational and other risks;
- ability to articulate how sustainability relates to the purpose and strategy of the organization;
- understanding of sustainability trends generally and as they affect the industry and their impact on the company; and
- knowledge of the company's business case for sustainability, including how sustainability can contribute to long-term value creation such as the ability to attract and retain talent and stimulate innovation.⁷

Towards this end and also for the development of the internal processes within the company, the role of a governance professional could cover many aspects, some of which are as follows: -

- 1) Determine and implement amendments to governing documents, processes and structures to incorporate sustainability oversight roles for the Board and correspondingly ensure that managers, executives and key employees understand the emerging trends in corporate sustainability governance.
- 2) Ensure that the Board regularly reviews, updates and monitors compliance with corporate sustainability policies laid down by the company.
- 3) Include sufficient time for sustainability discussions in the agenda of the relevant committees and the Board of Directors.
- 4) Ensure that minutes of the meetings of the Board and the relevant committee documents the discussion on sustainability and other stakeholder related issues.
- 5) Development and communication of the strategy for sustainability initiatives and recommendations relating to them and link these initiatives and recommendations to the Board processes.
- 6) Initiate activities leading to increased stakeholder awareness about the benefits of a sustainable strategy.
- 7) Participate and co-ordinate the conduct of periodic assessments to identify potential short-term, medium-term and long-term trends and impact on the business arising out of various sustainability issues.
- 8) Participate in and co-ordinate the process of setting sustainability goals, targets and KPI's including development of the methodology to be followed for measurement of the actual performance on sustainability initiatives.
- 9) Ensure that there are systems for communication to the Risk Management Committee / Board about

⁷ The Essential Role of the Corporate Secretary to Enhance Board Sustainability Oversight: A best practices guide by the United Nations Global Compact – Discussion Draft – September 2016

sustainability risks that impact the long-term competitiveness of the business.

- 10) Collaborate with the committees of the Board and the divisions / segments of the business on sustainability initiatives and risks.

In India, Securities and Exchange Board of India (SEBI) has prescribed the “Business Responsibility and Sustainability Reporting” (BRSR) which is mandatorily applicable to the Top 1000 Listed entities in India by Market Capitalisation. For other listed entities, BRSR is voluntary. The Company Secretaries as Governance Professionals have already been called up to play a major role in the implementation of the necessary procedures and systems for the integration of the sustainability practices and reporting under the new framework of “BRSR”.

The BRSR format⁸ is divided into three sections namely:

Section A – General Disclosures

Under this section, the detailed disclosures are prescribed with respect to Details of the Listed Entity; its Products / Services; its operations; employees; Holding, Subsidiary and Associate Companies (including Jv’s); CSR details and Transparency & Disclosure Compliances.

Section B - Management and Process Disclosures

In Section B, disclosures are mandated which aim at helping entities to demonstrate the structures, policies and processes that they have put in place towards adopting the NGRBC (National Guidelines on Responsible Business Conduct) Principles and Core Elements.

Section C – Principles wise Performance Disclosures

Section C requires disclosures aimed at helping entities to demonstrate their performance in integrating the Principles and Core Elements with key processes and decisions. Information is sought with respect to indicators that are categorized as “Essential” and “Leadership”. It should be noted that disclosures with respect to essential indicators are mandatorily required to be disclosed by every entity to which the provisions of filing BRSR report is mandatorily applicable. Entities which aspire to progress to a higher level in their quest to be socially, environmentally and ethically responsible may voluntarily disclose information with respect to the leadership indicators.

The nine principles under which disclosures are sought distinctly under two heads (Essential Indicators and Leadership Indicators) are as under:-

Principle No.	Description
1	Businesses should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable.
2	Businesses should provide goods and services in a manner that is sustainable and safe.
3	Businesses should promote the well-being of all employees, including those in their value chains.
4	Businesses should respect the interests of and be responsive to all its stakeholders.
5	Businesses should respect and promote human rights.
6	Businesses should respect and make efforts to protect and restore the environment.

⁸ SEBI Circular ref SEBI/HO/CFD/CMD-2/P/CIR/2021/562

7	Businesses when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
8	Businesses should promote inclusive growth and equitable development.
9	Businesses should engage with and provide value to their consumers in a responsible manner.

A CS (both in employment and in practice) are naturally “the preferred professionals” for advising and ensuring the compliances with respect to BRSR considering their exposure to Governance and Compliance Management systems in the corporate world, which will give them a definite edge over other professionals.

Pillars of the CS / Governance profession

The governance professionals / CS armed with the three pillars unique to Indian governance professionals namely Secretarial Standards, Secretarial Audit and the Auditing Standards issued by the ICSI (CSAS 1 to CSAS 4). In this sense, the Indian governance professionals have set a benchmark for the world to follow and adapt.

The quest for integrating strategies into sustainability gets strengthened through the Secretarial Standards which streamlines the Board process. Adherence to the secretarial standards is in the exclusive domain of the whole-time company secretary.

Secretarial Audit by a PCS for listed entities and certain large companies based on thresholds is another unique pillar, which goes a long way in the form of an assurance function with respect to the corporate governance framework prevailing in the company that is being audited.

The third unique pillar is the Auditing Standards issued by ICSI (CSAS-1 to CSAS-4) applicable to a PCS accepting audit assignments (including secretarial audit).

While, as regards Secretarial Standards and Secretarial Audit, there is a need to dive deep with due care but with an open back of the mind that will lead the profession into the landscape where there is increasing focus on ESG and sustainability, the effectiveness of auditing standards is yet to be tested on the ground. However, there is no doubt that with the right approach and an open mind, these three unique pillars of the Indian Corporate governance system properly shaped towards a world- class framework should take us forward with confidence as we travel the path towards corporate sustainability in the true sense.



Evolving role of Company Secretaries in New India - Opportunities and Challenges

CS (Prof.) R. Balakrishnan, FCS, FICWA & Governance Professional (UK)

Introduction

Our country will turn into 75 years of independent India in coming August 2022 and our Government has taken lot of initiative for a celebration and commemoration of the 75th years of independence titled as 'Azadi Ka Amrit Mahotsav' and we are walking towards to make India Atmanirbhar (self-reliant) and the Campaign (Abhiyan) is gaining momentum and will certainly be successful in the future.

Last decade, we witnessed lot of reforms, in Companies Act, IBC code, amendments in LODR, many start-ups coming up, MSME industries flourishing and all these have considerably enhanced the role and responsibilities of CS both in employment and in practice. Government in the recent past, focusing on promoting absolute compliances and being harsh on shell companies and the companies involved in law evasion and window-dressing. In this scenario, the scope of CS has increased immensely as they are entrusted to ensure that the law is strictly complied with and the legal compliances are duly checked.

Profession of Company Secretaries - history

Profession of Company Secretary have witnessed a drastic metamorphosis across the world. In yester years the CS were looked upon as a 'Glorified book keeper', and today the profession of CS have attained the status of 'Governance Professionals' which is a sea-change. As we are all aware, the earlier Companies Act, 1956 was replaced with the Companies Act, 2013 which is a game changer for the profession of CS. The trajectory of the profession of the CS have moved upward when one compares his / her role under the provisions of the Companies Act.

Regulatory framework

The CS is a qualified professional, a member of ICSI and holds a very crucial position in the organization being in employment or in practice. PCS has been given recognition by section 2 (2) of the Company Secretaries Act, 1980 means a Company Secretary who is deemed to be in practice as such. The CS is also recognized as a KMP under the provisions of Companies Act, wherein he / she occupies a senior-level position in the management and is an integral part of the board of any company.

Responsibilities of the Company Secretaries in a nutshell

CS professionals are the natural conscience keepers for the corporate sector since they are specialists in the field of corporate governance, regulations, and processes and are the eyes and ears of the board on such matters. They act as a vital link between the company and its board of directors (management), shareholders (owners), other stakeholders and regulatory authorities. A CS is an officer responsible for compliance with numerous legal requirements under different legal acts, including the Companies Act, as applicable to companies. Since it is the CS who is also "an officer in default", therefore, the onus to ensure timely compliance of law is on CS similar to any member of the board.

Essentials traits

One of the essential traits of a CS is to follow strict business code of conduct and ethics preserving rigorous ethical and moral obligations. In a self-regulated regime, a CS is subjected to a strict code of conduct is looked

upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector.

CS profession moving towards governance professional

World over, CS is moving to governance professionals as has been seen with UK Governance Institute, Australia and New Zealand Governance Institute and certain other countries. Chartered Secretaries of these countries are now known as governance professional.

Scope of Company Secretary profession

The scope of Company Secretaries in the recent past has now become vastly different compared to its traditional notions and Company Secretary is an important cog in the business machinery today. Corporate governance and compliance matters are just one aspect of the Company Secretary profession but at the same time, the new evolution of Company Secretaries sees them as advisors on various important matters related to law, mergers and acquisitions, restructuring, new business setups, etc. and CS are looked upon increasingly value added professional.

Future Company Secretaries

If we could analyse the CS profession from the yesteryears to today and also in the forthcoming decade, we can see that CS looked upon earlier as an administrator, today regarded as moral / conscience compass guiding the board of directors in a company, thought leader, curator, analyser and adviser and CS are wide thinker by proactively raising the right questions. CS are moving as a principle based professional as against process-based (in the past). Finally the change is happening and continue to happen from 'Secretary' to 'trusted adviser' to the board.

Challenges and Opportunities

With the above background, let us examine the profession of CS as to its development over a period of time / development that took place / recognition of CS's competence in compliance matters and corporate governance and how the profession is moving away from the traditional notions of a CS to corporate professional and the associated opportunities and the challenges. First we start with the opportunities and later on we could look into the challenges.

Company Secretary (as an expert)

The Companies Act 2013 in its definition – vide section 2 (38) spells out that an “expert” includes an Engineer a Valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. Since the CS has been recognized as being an expert, the CS could do many things in his capacity as an expert including opinion writing, not only on company law related issues but also all other applicable laws for a company to which a PCS is rendering service. Being an expert and also coupled with professional knowledge in corporate laws, Company Secretary professionals in whole time practice would be in a position to render:-

Opinion on various matters

Many a times, the organizations may like to have written opinion from the expert – not only on company law – but also on other corporate laws – professionals have to get equipped to the art of “opinion writing” so that – the companies could take decision based on such opinion and the professionals would be asked to render service. The PCS have a wider role in assisting the corporate for determination of applicable law i.e. whether a particular law is applicable or otherwise. This is very

important as much as, any court trying a case would have jurisdiction over the matter – if jurisdiction is not there, the case get dismissed. Similarly, one has to be sure about the applicability of a particular law.

Advisory services

PCS could advise on:

- (a) legal and procedural matters - Companies Act
- (b) SEBI Act.
- (c) SERA
- (d) Depositories Act
- (e) Cyber Laws
- (f) Environmental and Pollution Control laws
- (g) Industrial and Labour laws
- (h) Cooperative Societies Act
- (i) Competition Act.
- (j) matters to be stated in prospectus
- (k) Legal and procedural matters under FEMA.
- (l) planning strategies of amalgamations / mergers / demerger / reverse merger / compromise and arrangements and reorganization etc., including cross border merger and acquisitions
- (m) post-merger, acquisitions or restructuring strategies
- (n) foreign collaborations / setting up of JV / subsidiaries in India or abroad
- (o) strategic plan - consolidation and diversification of the business
- (p) compliance management, IPRs, risk management, business policy strategy and planning
- (q) agreements and MoUs
- (r) matters relating to CSR

Certification and attesting documents

PCS is authorized to issue certificates and attest documents under the provisions of Companies Act, SEBI Act, Depositories Act, SCRA, Exim policy etc.

Secretarial Auditor

PCS are the professional who can be appointed as a secretarial auditor of a company. Pursuant to section 204 of the Companies Act, 2013, every listed public company with a paid-up share capital of 50 crore rupees or more, every public company with a turnover of 250 crore rupees or more and every company with outstanding loans or borrowings from banks or public financial institutions of rupees One hundred crore or more, the secretarial audit is required to be conducted. Under LODR Regulation 24A, every listed company and its material unlisted subsidiaries incorporated in India must conduct a secretarial audit and annex a secretarial audit report to the annual report given by a PCS in the prescribed form.

Internal auditor

Companies in the prescribed class (es) are required to mandatorily appoint an internal auditor to perform internal audits of the company's duties and activities pursuant to section 138 read with rule 13 of Companies (Accounts) Rules 2014.

PCS is authorized to undertake an internal audit of Credit rating agencies, Portfolio managers, Stock brokers / clearing members / trading members, RTAs, (v) Internal audit & concurrent audit of depository participants, annual compliance audit of research analyst, reconciliation of share capital audit and yearly audit of investment advisers.

Corporate Governance Certificate

PCS have been authorized to issue certificate regarding compliance with the conditions of corporate governance pursuant to Regulation 34(3) read with Schedule V of the LODR Regulations.

GST Specialist

PCS could provide value added services to trade and industry by functioning as extended arms of regulatory mechanisms, with their expertise in the interpretation of law and skills in tackling and managing regulatory compliances under GST. Enrolment as a GST practitioner is open to anyone who has passed the CS examination. PCS can assist business entities in interpreting GST laws and effectively discharging various GST compliances while performing activities such as tax planning, maintaining GST records, and drafting legal documents and as responding show cause notices, conducting impact analysts and so on.

Due Diligence Report - banks

The RBI acknowledged that PCS to undertake due diligence reports for banks. In this connection the RBI circular dated September 19, 2008 advised all the scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification i.e. diligence report, by a professional, preferably from a PCS regarding compliance of various statutory prescriptions that are in vogue. Further the RBI vide its circular dated January 21, 2009 also advised all Primary Urban Co-operative Banks to obtain diligence report. Subsequently the RBI vide its circulars dated December 08, 2008 and February 10, 2009 revised the format of diligence report for Scheduled Commercial Banks and also for Primary Urban Co-operative Banks vide its Circular dated February 12, 2009.

Insolvency Professional

CS who have passed necessary examination, have prescribed by number of years of experience are enrolled with an Insolvency Professional Agency and are registered with the Insolvency and Bankruptcy Board of India as insolvency professionals, can take up matter relating to corporate insolvency as interim resolution, Professionals / resolution professionals, as well as voluntary liquidation cases. In a resolution process, they can also act as an authorised representative for a class of creditors in a meeting of the committee of creditors.

Appearing as Authorized Representative

PCS, upon getting the due authorization to represent them with the judicial authorities could appear in front of judicial authorities as the representative of the company and present the matter to NCLT / NCALT / Central Government / RD & ROC / SAT / RBI / CCI & CAT / Telecom Disputes Settlement and Appellate Tribunal / Tax Authorities / Authorities under Real Estate (Regulations & Development) Act and appearing DGFT's office of Foreign Trade and such other regulatory officials

Scheme of Restructuring / Compromise and Arrangement

PCS would be in a position to deal with all matters in NCLT / NCLAT like that of lawyers / advocates without being a law graduate and enrolling themselves in the bar council by virtue of the expertise knowledge they possess in the company law matters such as on all M & A matters, demerger, reverse merger, compromise and arrangement etc., right from the conceptual stage of any scheme till its implementation.

Revival of Sick Companies

As per the provisions of the Act the reference relating to sick industrial company is required to be made to the NCLT within a period of 180 days from the date on which the Board of Directors of the company or the Central Government, RBI or State Government or a Public Financial Institution or a State level Institution or a

Scheduled Bank as the case may be, come to know of the relevant fact giving rise to causes of such reference or within 60 days of final adoption of accounts whichever is earlier.

Reduction of Capital

Section 66 of the Companies Act permits that subject to confirmation by the NCLT, a company limited by shares or a company limited by guarantee and having a share capital may if so authorized by its Memorandum and Articles of Association and by passing a special resolution by the members in the general meeting could reduce its share capital. Practising Company Secretaries would be able to represent cases of reduction of capital before the NCLT which is another added area opened to them for practice.

Registered Valuer

Under the Companies (Registered Valuer and Valuation) Rules 2017, PCS is recognized as a registered valuer for the asset class securities of financial assets.

As per section 247 (1), where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the Audit Committee or in its absence by the Board of Directors of that company. Being an expert, PCS could act as a registered valuer and render valuation for various transactions such as:-

- Further issue of shares {sec 62(1) (c)},
- For valuing assets [section 192(2)],
- For valuing property and assets of the company under a scheme {sec 230(2) (c) (V)},
- Under a scheme with the notice of creditors/shareholders meeting, a copy of valuation report, {sec 230(3)}, and {sec 232(2) (d)},
- Where under a scheme of compromise/arrangement the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal {sec 232(3)(h)},
- For valuing equity shares held by minority shareholders {sec 236(2)},
- For preparing valuation report in respect of shares and assets to arrive at the reserve price for company administrator {sec 260(2) (c)},
- For valuing assets for submission of report by liquidator {sec 281(1)},
- For report on the assets of the company for preparation of declaration of solvency under voluntary winding up {sec 305(2) (d)},
- For valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the company liquidator {sec 319(3)(d)},
- Further issues of share capital (section 62),
- Non cash transactions involving directors (section 192),
- Compromise or arrangement (section 230),
- Purchasing of minority shares (section 236).

Issue of Shares and Other Securities

PCS can assist (handling company law formalities such as incorporation of companies, shifting of registered office, various certifications etc., Due diligence, Advisor/ consultant in the issue of shares and other securities, Drafting prospectuses / offers for sale / letter of offer / other documents related to the issue of securities and obtaining various approvals, Private placement of shares and other securities, Buy back of shares and Raising of funds from international markets – ADR / GDR / FCCBs / FCEBs / ECB etc. In addition, PCS can assist in JV and

foreign collaborations, creating JV / WOS in other countries, ensure that the takeover regulations and PIT Regulations is followed.

Services in Finance, Accounting and Taxation

PCS can provide finance, accounting and taxation services in the areas of budgetary controls, determination of the appropriate capital structure, feasibility studies, project reports, tax management, tax planning, returns, reports under Income Tax, GST and other taxation laws.

Administrator / Receiver

As per the provisions of section 258 of the Companies Act, an interim / company administrator can be appointed by the Tribunal from the data bank maintained by the Central Government in case of Revival/ Rehabilitation of a company consisting of names of Company Secretary and other professionals. Since Company Secretary is one such expert professional, the Company Secretary could act as receiver of the company

Arbitrator

PCS are not only legal experts in corporate laws but they are also having superior knowledge in respect of commercial understanding. PCS have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner since PCS are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings and can act as strategist and authorized representative in arbitral proceedings since they are recognized as expert.

Mediator and Conciliator

PCS could also be able to act as a mediator & conciliator whenever, the business community would like to settle the matter out of the court. PCS being an expert, well versed with all corporate laws, would be able to act as a mediator and conciliator in the best interest of the parties.

Liquidator

For the purpose of winding up of a company by the Tribunal, at the time of passing of the order of winding up shall appoint an official liquidator or liquidator from the panel maintained by the Central Government for this purpose consisting the names of CAs, Advocates, CSs, CMAs or firms or bodies corporate having such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years of experience in company matters as per section 275(1) and (2) of the Companies Act, By virtue of the expertise and having proficiency in company law related matters, the PCS could act as an official liquidator as PCS is one of the professional whose name is maintained for the appointment of official liquidator by the Central Government in its panel.

Technical Members of NCLT

Among other qualifications, PCS for at least fifteen years, or being a person of proven ability, integrity and standing having special knowledge and experience, of not less than fifteen years, in law, industrial finance, industrial management or administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies is a qualification for appointment as technical member of the NCLT.(section 409 of the Companies Act, 2013)

Professional Assistance to Company Liquidator

-The Company Liquidator may, with the sanction of the NCLT, appoint one or more professionals including CS to assist him in the performance of his duties and functions under the Companies Act, as provided under section 291 and it is a good opportunity for the young (starter) PCS who are in practice as an additional area of practice.

Assisting Companies to get Certification in Specific areas

The PCS could advise the companies to go for certification process of EMS – system ISO 14001, QMS – system ISO 9001, OHSAS- system 18000 and GVC – rating system amongst others. These certifications would also ensure the systematic way of working and it gives a long run benefit to the corporate. Since the PCS are well versed in various corporate laws, they would be in a better position to assist, bring out required documents and ensure for the certification process for the corporate.

Labour Laws

In manufacturing organizations, ensuring the adherence of labour laws applicable to the specific organization. Starting from Factories Act compliance followed by, Industrial Disputes Act, Trade Union Act, industrial employment standing orders, Code on Wages, 2019 and even contract labour act – etc. and also various labour welfare related laws such as Maternity Act, Labour Welfare Act, ESIC and as well laws relating to retirement benefits such as gratuity act employees provident funds and miscellaneous provisions act compliance to be ensured. There are various returns ranging from monthly, quarterly, half-yearly and annual filings are involved and as well timely payment against certain labour laws. Even in non-manufacturing organizations – they are governed under the Shop and Establishment Act and of course lesser compliance compared to manufacturing organizations would be called for. Under the labour laws, there is a great opportunity for the PCS in assisting and helping the organizations to find out the number of applicable laws at the first place.

Manual Writing with Standard Operating Procedures

One would agree that practicing good governance practice is the differentiating factor in competition and competitors. The various litigations arise due to non-compliance. Arising out of this is, the requirement of timely compliance by corporate in respect of all applicable laws. PCS, being an expert in corporate laws could aid in assisting for better compliance methodologies for timely compliance in an organization and assist the organization to bring the required manual for all operational areas along with standard operating procedures which would be of immense importance. PCS could undertake the creation of manual for the organization as listed below:-

- (a) Policy manual – spelling out the policy decisions, resolutions, and guidelines
- (b) Finance manual – spelling out the company's financial policies in line with the applicable accounting standards along with the systems and procedures. .
- (c) Materials manual - spelling out the procurement policy, source of procurement, systems and procedures to be followed.
- (d) More such manuals relating to other field such as HR, quality, safety health and environmental etc., could also be brought out.

More Areas

There are many more areas open for PCS and depending upon the time availability such as writing articles, book writing, teaching online, teaching faculty, conducting webinars etc. PCS can assist a promoter in registration of real estate project with the real estate Regulatory Authority under the Real Estate (Regulation and Development) Act 2016.

SWOT Analysis for CS

The PCS could conduct the SWOT analysis on the following areas and take appropriate steps in order to service the clients better.

Digital Era Vs. CS

An all pervasive information technology has created manifold opportunities for Company Secretaries and the Company Secretaries have leverage the best use of the information technology and meet the expectation of the business community. In the digital era, the physical documents are almost done away with and adopting the right technology in conducting the board, committee, general meetings and coordinating with the board members & shareholders, ensuring seamless meetings and above all ensuring absolute compliance with regard to the provisions of the Companies Act read with Secretarial Standard are the important task, a CS is required to perform. In view of the digitalization, it is necessary for today's CS to be open enough and cultivate the habit of continuous learning so that he or she should be able to cope up with the ever changing technology. In this respect, PCS could take note necessary pre-caution in adopting the right technology, undertaking necessary training to handle the technology, extending support to the clients in their meetings and such other related matters.

One should also think about the downside of the technology such as dependence on an unreliable source, the risk of being hacked, the weakening of social skills and the sense of community, and the misuse of information.

Need to be “Industry Ready”

After the Covid-19 pandemic experienced across the world, the work from home culture has come into place and the same is likely to be continued in future. The CS who want to be in service and as well PCS need to leverage the advantages of technology and make the best use of them or all the emerging areas like internal audit, information technology audits, forensic audits and such other compliance and governance related areas.

Companies are sharing their documents / data / information via online and asking the professional to carry out the statutory audit, cost audit, internal audit, secretarial audit etc., which is going to be the future. Discussions on observations would also would take place via audio / video visual means. Judiciary hearings also being handled by the Adjudicating Officers through online hearing. Professional institutions including ICSI are conducting the courses through webinar / zoom meeting etc. The physical meeting is gradually reducing and everything is moving towards digitalization and the working place is going to be “work from home” in future for which CS to be geared up.

Needless to mention that PCS need to invest in improving their Information Technology expertise, take the highest advantage of digitalization and be "industry ready" and accordingly need to reposition themselves in order to meet the expectations of the industry. It may be noted that our own Institute, makes it compulsory for CS to undergo a compulsory training after the completion of the course. This is on the principle that without training one cannot be an industry ready professional and one will not know how to apply their knowledge in real life situations when one enters a corporate entity.

Expectation of Value Addition by the Business Community

The industry and the business community is looking for value addition to their business that the PCS can bring and contribute in creation of wealth to all the stakeholders. Therefore, a PCS having strong

functional expertise in corporate laws as well in information technology knowledge could play a unique role of bridging information technology professionals and business people, and add tremendous value to information technology system design and development.

Pre-requisite for Appearance before NCLT / NCLAT

Another challenge for PCS would be that of drafting skills, appearance in front of judicial authorities and pleading. PCS need to get well equipped with excellent legal drafting abilities, legal frame work pertaining to the appearances before various Tribunals/quasi-judicial bodies and the basic understanding of the principles of pleadings, with command over English and above all, presenting the facts to the Tribunal and pleading the matter would only lead to the success in the profession.

Needless to mention, one has to have the clear cut facts rightly understood, with sequence, present the facts which are relevant to case, with reference to the applicable provisions of law, rules, and regulations – finally seeking the prayer. If the other party has the counter argument, one has to be prepared to answer the same then and there and make the point strongly in favour of the case which is being represented. Fluency, flow of clear communication would call for at these situations

Court Procedures

PCS need to get familiar with the court procedures (Since NCLT / NCLAT both are covered under the Civil Procedure Code and Criminal Procedure codes with prescribed rules for their functioning) right from filing a petition till the disposal. There are various stages involved in dealing with NCLT / NCLAT such as – filing petition with registrar – modification / changes required – rectification – getting registration number – making written statement – filing re-joinder, time extension – adjudicating procedure, pleading before – getting order – certified copy – compliance procedure thereafter etc.

Legal Phrases

PCS who plan to practice in NCLT / NCLAT need to know difference between, may and shall “ipso-facto” – “tenable” - “quasi” – “jurisprudence” - “mensrea” (essential element in criminal cases) - “suo moto” – “non-est” - “de-nova” (many times the court passes an order stating de-novo adjudication) - sine-quo-non” and such other various legal phrases in law – which obviously would be used / practiced at NCLT / NCLAT.

Similarly certain phrases like “reason to believe vs. reason to suspect” - “discovery vs. detection” – “to quash” – etc. Out of ten grounds, even nine grounds are proved to be wrong – quashing cannot be done since the tenth one is remaining and hence one has to muster the art on this. Many such legal phrases would be understood as one goes along and the PCS need to sharpen their skills for successful practice in NCLT / NCLAT. To cite some more legal phrases would be – locus standi, suspended animus, sub-judice, impediment, sine-di, as-interm, defacto, ad-hoc, de-jure, modus-operandi, nexus, onus probandi, ratio-decidendi, caveat emptor and in personam etc. etc.

Conclusion

In a nutshell, we could summarize that the role of PCS in the corporate world is going to be manifold and phenomenal with multiple areas of practice which keep emerging on an ongoing basis and let us sharpen our skills with continuous improvement keeping in face with the amendments from time to time and try our best to “deliver first time right” and prove our metal in excelling the areas of governance and compliance by adopting values like creativity by embracing diversity with cooperation coupled with reliability and establish our integrity.

References:

1. The Companies Act 1956 / 2013
2. The Company Secretaries Act, 1980
3. Companies (Accounts) Rules 2014.
4. Reserve Bank of India Act 1934
5. SEBI Act 1992
6. Depositories Act 1996
7. SCRA 1956
8. Exim policy
9. Companies (Registered Valuer and Valuation) Rules 2017
10. Information Technology Act 2000
11. Real Estate (Regulation and Development) Act 2016
12. Civil Procedure Code 1908
13. Criminal Procedure codes 1973



Think Beyond, Act Above, And Achieve More

CS Darryl P Barretto, Advocate & Solicitor, Chamber of Darryl P Barretto, Mumbai

Introduction

Company Secretaries have traditionally been the flag bearers of corporate governance in India. Practising Company Secretaries have been providing invaluable contributions to the field of corporate governance. With rapid changes happening we have seen Practising Company Secretaries have enhanced their bouquet of services. In the last few years, Practising Company Secretaries have successfully ventured in the services related to the Goods and Services Tax, the Real Estate (Regulation and Development) Act, 2016, the Insolvency and Bankruptcy Code, 2016 and even in the field of Intellectual Property Rights. The start of 2020 brought in the COVID-19 pandemic which has very much changed the way the world functions. The pandemic has fastened the implementation of technology in businesses. Concepts such as Automation, Artificial Intelligence and the Metaverse are becoming realities. The biggest challenge post pandemic and in coming decades is how to stay relevant in these rapidly changing scenarios.

This article tries to shed light on some new avenues for Practising Company Secretaries that have arisen, to cash in and build a practice.

Global Sanctions Compliance

The war in Ukraine has brought ahead a new area for Practising Company Secretaries to explore. Although India has not applied sanctions, a number of Western nations have imposed sanctions on trading with Russia. A number of businesses in the west are worried due to heavy penal consequences of violating sanctions related law and would like to not do business with entities which are related or do business with a sanctioned country.

Many businesses recognize the need for stronger compliance controls, but they have limited budgets and human capital resources. This presents a business opportunity for Practising Company Secretaries. Practising Company Secretaries can provide services such as vendor due-diligence and certification that no business is being done with an entity based in a sanctioned country. A number of foreign organisations as well as Indian entities doing business abroad are requesting for sanction screening. Sanction screening would generally involve the following processes: (1) KYC and due diligence check of the Customer and its associated entities; (2) transactions monitoring, which would include checking of specific financial transactions and payments to trace the end beneficiary; (3) Periodic searches with regulators and watchdogs to keep the list of sanctioned individuals and entity updated; (4) Specific individual information and background check.

Practising Company Secretaries have a sound understanding of corporate structures, ultimate beneficial ownership, and legal framework and are well equipped to advise their clients on global sanction compliances. Some Practising Company Secretaries are already working in the field of export and import compliances and could easily inculcate the Global Sanction Compliances in their service offerings.

Contract Management Services

Contract management basically envisages creating and maintaining contract databases. The objective is to keep an organisation informed about the contract it has entered into, identify the risks, and keep tab on terminations and renewals. One may say that contract management is a sub-set of a due diligence exercise for contracts, but which is conducted on an ongoing basis. Large organisations may enter into several thousand

contracts even in a month. These could range from non-disclosure agreements, vendor agreements, and employment agreements. With tight budgets many organisations are looking to outsource their contract management responsibilities to professionals. Contract management may also involve a clean-up service, which means that an entity may already have a contract database but requires a professional to go through it and identify redundant contracts and agreements or faulty files.

As Company Secretaries, we have adequate knowledge of law and contracts and we can try to build a practice of providing contract management services to organisations. Some of the key requirements to start a contract management service would be to have a secure cyber infrastructure in the office, to ensure that sensitive contractual information is not leaked or that there is no cyber breach. It is also important that non-disclosure and confidentiality agreements are put in place to make the client feel secure.

Anti-money Laundering compliances

The anti-money laundering framework in India consists of the Prevention of Money Laundering Act, 2002, the Benami Transactions (Prohibition) Act, 1988, together with the various rules and regulations prescribed by regulators such as the Reserve Bank of India, the Securities and Exchange Board of India and Insurance Regulatory and Development Authority of India. With the advent of Environmental, Social and Corporate Governance data reporting a number of organisations have understood the importance of having a sound anti-money laundering framework within their organisation. The full potential of opportunities for Practising Company Secretaries under the anti-money laundering framework has yet to be explored.

Practising Company Secretaries can examine the opportunity to become consultants in this field providing services like designing an appropriate anti-money laundering policy framework for their clients, trainings programmes for client employees. Even organisations that already have an anti-money laundering policy in place require a GAP analysis to be done for combating the emergent scenarios.

During M&A transactions there are also specific requests for transaction lookback services. Sometimes there is a requirement to perform a review of past financial transactions, often referred to as a “lookback,” to determine whether a reasoned decision policy was followed and adequate monitoring norms were in place, irrespective of whether the transaction is suspicious or not. The time period of “lookback” could range from six months to several years. Practising Company Secretaries are well qualified to provide such services and need to concentrate to tap this emerging market.

Mediation

Mediation is one of the forms of alternate dispute resolutions and has been gaining a lot of attraction in the last few years. So, what exactly is mediation? The Hon'ble Supreme Court in the case of Salem Advocate Bar Association v. Union of India [2005 (6) SCC 344] provided the following definition of mediation: “Settlement by 'Mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute between the parties..., and in particular, by facilitating discussion between parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that the parties own responsibility for making decisions which affect them.”

Another definition of mediation can be found, in paragraph 1 of chapter-III of the Mediation Training Manual of India issued by the Mediation and Conciliation Project Committee, Supreme Court of India under the chairmanship of Hon'ble Mr. Justice Cyriac Joseph (Retired). The Manual defines mediation as “a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques.”

Mediation has always been encouraged since it's a cost efficient, quick, and less cumbersome dispute resolution mechanism. Through new legislative initiatives by the Indian Government, mediation is being promoted whole heartedly. For example, Section 12A of the Commercial Courts Act, 2015, has made it mandatory for litigants to exhaust the remedy of pre-institution mediation as provided under the said Act before instituting a suit. The Consumer Protection Act, 2019, empowers the District Commission under Section 37 to 38 and under Chapter V of the said Act to refer disputes to mediation.

Internationally, the United Nations Convention on International Settlement Agreements Resulting from Mediation, which is colloquially known as the Singapore Convention on Mediation, has resulted in mediation being recognised internationally as a dispute resolution mechanism. The said Convention provides for a harmonised framework for the enforcement and invocation of international settlement agreements which are outcomes of mediation. India became a signatory to the said Convention on August 2019 and has whole heartedly accepted it with open arms.

A number of businesses have started incorporating a dispute resolution clause in their commercial contracts whereby parties have to opt for mediation, and only if the mediation fails then arbitration shall follow. To give a further impetus to mediation in India, the Mediation Bill, 2021 was introduced in December 2021 in the Rajya Sabha. The Bill, provides for making it mandatory for parties to undertake mediation before filing any suit or proceedings of civil or commercial nature in any court. It also provides that a mediated settlement agreement, i.e. a settlement agreement which is entered into by parties as an outcome of mediation shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court. If the Bill is passed, it will cause a radical shift in the mediation regime in India.

There are plenty of opportunities for Practising Company Secretaries to act as mediators. The Companies (Mediation and Conciliation) Rules, 2016 recognises Company Secretaries as professionals competent to act as a mediator for matters referred from National Company Law Tribunal and National Company Law Appellate Tribunal. Practising Company Secretaries can try to explore this area of law by honing their skills to various mediation programmes organised.

Future to be more exciting

The future holds more for company secretarial professionals. The Joint Parliamentary Committee has placed its report before the house of Parliament on the Personal Data Protection Bill, 2019 on 16th December 2021. This report, amongst other things, has recommended that in respect to companies, the “Key Managerial Personnel” which include Company Secretaries be added to the definition of “Data Protection Officer”. Although the rules specifying the eligibility to act as data auditors, are still not available. However, it wouldn't be out of place to say that practising Company Secretaries may have a role to play in the field of designing data protection policies, data protection audits, and data impact assessments.

Conclusion

As the legal and regulatory laws, continue to evolve and change, the Company Secretaries need to stay updated with new emerging areas of law. To cater the new opportunities and substantial challenges in market today, the Company Secretaries must pursue a holistic approach. They should recognize the change, pursue the opportunity, take risk, responsibility, innovation, make better use of resources and create new value which is meaning to the clients, and do it all over again and again. However, before you dive into a new practice area, do your research and understand what clients are looking for. The Company Secretaries profession has plenty to offer, it is up to us all to think beyond, act above, and achieve more.



Disciplinary Mechanism For CS Professionals

CS (Dr.) Rajeev Kumar, Company Secretary

Introduction

The profession of Company Secretary is regulated by the provisions of The Company Secretaries Act, 1980 (here after referred to as 'principal act'). The Institute of Company Secretaries of India was constituted under this principal act. The affairs of the Institute are managed by Council comprising of elected and nominated members. As per the principal act, the institute has been self regulatory in nature. An effective disciplinary mechanism has been in place to curtail professional and other misconduct by the members registered with the Institute. This has been possible due to amendments as have been introduced in the principal act keeping in view the changing business scenario, international tie ups between businesses/ regulatory authorities / professional bodies, growth of the profession, changed regulatory framework, new regulators, new stakeholders, technological advancements, agile media, corporate frauds, etc.

The Company Secretaries Amendment Act, 2006 was assented by the President of India on 17th March, 2006. This act (referred to as 'amended act 2006') amended the provisions of the Company Secretaries Act, 1980. The disciplinary mechanism was also amended herewith. The principal act was again amended by The Company Secretaries (Amendment) Act, 2011. The principal act has been again amended by The Chartered Accountants, The Cost and Work Accountants and the Company Secretaries (Amendment) Act, 2022. This Act received the assent of the President of India on 18th April, 2022. This Act has been referred to as 'amended act 2022'). Due to space constraint, the present paper attempts to understand the amendments in the disciplinary mechanism as per the principal act that have been done in the years 2006 and 2022.

Under the disciplinary mechanism of the Institute, Disciplinary Directorate is at the bottom of the hierarchy, Board of discipline, Disciplinary Committee and the Appellate Authority on the top.

This paper is an attempt to understand the provisions of disciplinary mechanism as per the principal act and the subsequent amendments made in the principal act. The paper starts with the salient features concerning disciplinary mechanism as per the Amended act 2006. This is followed by listing the amendments as carried out in the disciplinary mechanism by the amendment act, 2022. Wherever required a comparison has been tried to understand the position as per the erstwhile principal act and the subsequent amendments in year 2006 and 2022.

Some of the salient features of the Act (amended Act, 2006) were –

- The principal act (1980) defined professional misconduct.
- The amended act 2006 defined professional and other misconduct.
- This amended act 2006, included other misconduct also under the powers of the disciplinary authorities.
- After this amendment, the member of the Institute could be tried for professional misconduct and other misconducts.
- There were two schedules to this amended act.
- First Schedule was divided in four parts –
 - Part I dealt with professional misconduct in relation to Company Secretaries in Practice.

- Part II covered professional misconduct in relation to members in service.
- Part III covered professional misconduct in relation to members in general.
- Part IV covered other misconduct in relation to members generally. As per this part, a member of the Institute whether in practice or not was deemed to be guilty of other misconduct if he was held guilty by civil or criminal court for an offence which was punishable with imprisonment for a term not exceeding six months. A member was deemed guilty of other misconduct if the Council of the Institute formed an opinion that a member has brought disrepute to the profession or the Institute by his action related or not related to his professional work.

The Second Schedule of the amended act 2006 was divided in three parts –

- Part I dealt with professional misconduct in relation to Company Secretaries in Practice.
- Part II covered professional misconduct in relation to members generally.
- Part III dealt with other misconduct in relation to members of the Institute generally
- If a member in practice or otherwise was held guilty by civil or criminal court for an offence punishable with imprisonment for a term exceeding 6 months, then he was deemed to be guilty of other misconduct.

To further strengthen the existing disciplinary mechanism, The Company Secretaries Act, 1980 has been again amended. The new legislation namely The Chartered Accountants, the Cost and Work Accountants and the Company Secretaries (Amendment) Act, 2022 aims to provide a mechanism to deal with cases of professional misconduct in the three professional Institutes.

Some of the salient features of this latest legislation (amended Act, 2022) are -

- The amendment seeks to strengthen the existing disciplinary mechanism and speedy and timely disposal of disciplinary cases.
- The disciplinary mechanism under the principal act has been changed with this objective.
- Thrust is on more external representation on the Board of Discipline and Disciplinary Committee. The Presiding Officer of the Disciplinary Committee of the Institute will be a non member.
- Timelines have been specified for the disposal of disciplinary proceedings.
- A coordination committee headed by the Secretary of the Ministry of Corporate Affairs is to be formed.
- The amended act, 2022 seeks to strengthen the accountability of practitioners and firms. This is ensured by registering the firms and enhanced penalties.
- The amended law provides for mandatorily registering of professional firms with the Institute and the Council of the Institute have to maintain a register of firms containing details including pendency of any actionable complaint or imposition of a penalty.
- For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm as mentioned in any of the Schedules.
- This legislation also enhanced certain fines.
- Preliminary Examination Report (PER) to replace Prima Facie Opinion (PFO) by Director (Discipline) holding the respondent guilty or not guilty in his/her opinion.

- Faceless proceedings and virtual hearings have been allowed.

The main amendments in the disciplinary mechanism of the Institute under the amended Act, 2022 are as follows –

We have discussed the disciplinary authority from bottom to top. That is, the discussion starts with the amendments as done concerning Disciplinary Directorate by the amended Act, 2022. This is followed by the amended provisions concerning Board of Discipline followed by Changes in the Disciplinary Committee.

Disciplinary Directorate

There was no provision regarding Disciplinary Directorate in the principal act. The principal act only spelt out the procedure to be followed in the case of an inquiry relating to the misconduct of member of the Institute.

The amended act, 2006 provided for the establishment of Disciplinary Directorate by notification issued by the Council.

- Director (Discipline) was to head this directorate.
- On receipt of a complaint or information, the Director had to arrive at a prima facie opinion on the occurrence of alleged misconduct.
- If the proven misconduct of the member pertained to First Schedule, the matter was to be placed before the Board of Discipline.
- If the proven misconduct of the member pertained to Second Schedule or in both the Schedules, the matter was to be placed before the Disciplinary Committee.
- Withdrawal of complaint by the complainant was allowed. This withdrawal was to be placed before the Board of Discipline or the Disciplinary Committee as per the case.

Disciplinary Directorate as per the amended Act, 2022

The main amendments are as follows –

- The Council shall, by notification, establish a Disciplinary Directorate consisting of a Director (Discipline) and at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed.
- Investigations shall be initiated either *suo motu*, or on receipt of an information or a complaint in such form, along with such fees as may be specified.
- Within thirty days of receipt of an information or a complaint, the Director (Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable.
- The Director (Discipline) may call for additional information from the complainant or the informant, as the case may be, by giving fifteen days time before deciding whether the case is actionable or non-actionable.
- The recommendations of the Director (Discipline) on non-actionable complaint or information shall be submitted to the Board of Discipline within sixty days of its receipt.
The Board of Discipline may, after looking into the merit of the case, may refer such complaint or information to the Director (Discipline) for conducting further investigation.
- In an actionable case, the Director (Discipline) shall give an opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days which may further be extended

by another twenty-one days, for reasons to be recorded in writing.

- Upon receipt of the written statement, if any, the Director (Discipline) shall send a copy of the statement to the complainant or the informant, as the case may be, and the complainant or the informant, shall, within twenty-one days of the receipt of such written statement, submit his rejoinder.
- On receipt of the written statement, the Director (Discipline) shall submit a preliminary examination report within thirty days, if a *prima facie* case is made out against a member or a firm, as the case may be.
- In case a *prima facie* case is made out for any professional or other misconduct mentioned in the First Schedule, the Director (Discipline) shall submit the preliminary examination report to the Board of Discipline.

Where *prima facie* case is made out for any professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, Director (Discipline) shall submit a preliminary examination report to the Disciplinary Committee.

- Complaint or information filed by any authorised officer of the Central Government or a State Government or any statutory authority duly supported by an investigation report or relevant extract of the investigation report along with supporting evidence, shall be treated as preliminary examination report.

Where no *prima facie* case is made out against the member or the firm, the Director (Discipline) shall submit such information or complaint with relevant documents to the Board of Discipline and the Board of Discipline may, if it agrees with the findings of the Director (Discipline), close the matter or in case of disagreement, may itself proceed further or refer the matter to the Disciplinary Committee or advise the Director (Discipline) to further investigate the matter.

- For the purpose of investigation under this Act, the Disciplinary Directorate shall follow such procedure as may be specified.
- A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.
- The status of actionable information and complaints pending before the Disciplinary Directorate, Boards of Discipline and Disciplinary Committees and the orders passed by the Boards of Discipline under section 21A and by the Disciplinary Committees under section 21B shall be made available in the public domain by the Disciplinary Directorate in such manner as may be prescribed.

Comparison of some of the provisions related to Disciplinary Directorate under the Principal Act, Amended Act, 2006 and the Amended Act, 2022.

Disciplinary Directorate	Principal Act,1980	Amended Act,2006	Amended Act,2022
Concept of D.D.	Not there	This concept was introduced	Many amendments have been initiated for disciplinary directorate
Head of the directorate	No concept	An officer of the institute	Director (Discipline) and at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute
Withdrawal of complaint	Not applicable here	Allowed	Not allowed
Information in public domain	Not applicable here	No provision	Information on pending cases and action taken cases to be put in public domain

BOARD OF DISCIPLINE

There was no provision for a Board of Discipline under the Company Secretaries Act, 1980. As per the amended act, 2006, the Council was to constitute a Board of Discipline. The Board was to be constituted with a person with experience in law and having knowledge of the disciplinary matters and the profession. This person was to be designated as the Presiding Officer. Two other members were also part of the Board. One of the member was to be a member of the council and the other member was to be designated as the Chief Executive. Director (Discipline) was to function as the Secretary of the Board.

If in the opinion of the Board, a member was found guilty of professional or other misconduct mentioned in First Schedule, the Board could reprimand the guilty member, remove the name of guilty member for a period of three months, impose fine up to rupees one lakh.

Board of Discipline as per Amended Act, 2022.

Some of the provisions under the amended act, 2022 concerning Board of Discipline are –

- The Council shall, by notification, constitute one or more Boards of Discipline, each consisting of –
 - ❖ a person not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council, in such manner as may be prescribed.
 - ❖ one member, who is a person of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council, in such manner as may be prescribed.
 - ❖ one member to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council, in such manner as may be prescribed.
 - ❖ an officer of the Institute not below the rank of a Deputy Secretary shall function as the Secretary of the Board of Discipline.
- The Board of Discipline shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.
- The Board of Discipline shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.
- The Board of Discipline shall conclude its inquiry within ninety days of the receipt of preliminary examination report from the Director (Discipline).
- Upon inquiry, if the Board of Discipline finds that such member is guilty of a professional or other misconduct mentioned in the First Schedule, it may pass an order within thirty days of such finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:
 - ❖ reprimand the member and record it in the Register of Members.
 - ❖ remove the name of the member or members from the Register of Members, up to a period of six month.

- ❖ impose such fine as it may think fit which may extend to two lakh rupees.
 - ❖ where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Board of Discipline is of the opinion that any such member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct under the First Schedule during the last five years, the following action may also be taken against such firm, namely
 - prohibit the firm from undertaking any activity or activities relating to the profession of a company secretary in practice for such period not exceeding one year
 - or impose such fine as it may think fit, which may extend to twenty-five lakh rupees.
- Where a member fails to pay the fine imposed under sub-section (5) or sub-section (6) within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period as it may think fit.

A comparison of some of the provisions related to Board of Discipline under the principal Act and the subsequent amendments has been given in chart form.

Board of Discipline	Principal Act, 1980	Amended Act, 2006	Amended Act, 2022
Provision on Board of Discipline	No provision was there	Provision was there	Provision is there
Number of Board of Discipline	No provision was there	One board of discipline	One or more board of discipline
Time line for completion of inquiry	No provision was there	Reasonable time	Complete inquiry within 90 days from the receipt of report from Director (Discipline)
Role of President/Vice president of the Institute	No provision	President or Vice President could act as P.O.	Non Member to preside
No. of Members	No provision	The committee had 5 members	Committee to have 5 members
Action against guilty member	No provision	Reprimand the guilty member Remove name for three months Impose fines up to one lac rupees	Reprimand and record this in the register of members Remove name for a period of 6 months Fines up to Rs 2 Lacs
Action against guilty firm	No provision	No provision	Prohibit guilty firm from taking up practice for a period not exceeding 1 year. Fines can be imposed up to Rs 25 lacs

Disciplinary Committee –

As per the principal act, the Disciplinary Committee consisted of three members. But under the amended act 2006, the committee had six members including two members of eminence having experience in the field of law, economics, business, finance or accountancy. These two members were to be nominated by the government. As per the amended act 2006, the Council of the Institute could form more Disciplinary Committees as and when required or deemed necessary. The Disciplinary Committee could remove the name of guilty member permanently if required. But the Disciplinary Committee under the principal act could remove the name of guilty member for a period of five years. For permanent removal of name as per the principal act, the case was to be recommended to the High Court. As per the amended act, 2022 heavy penalty

can be imposed on guilty practising firm of Company Secretaries. Non payment of fine further has penal provisions applicable to firm and its members. The presiding officer of the committee shall be a non member of the Institute.

Some of the provisions as per the amended Act, 2022 are -

The Council shall, by notification, constitute one or more Disciplinary Committees, each consisting of—

- (a) a person, not being a member of the Institute, with experience in the field of law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;
- (b) two members, who are persons of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;
- (c) two members to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council in such manner as may be prescribed.

The other amended provisions are –

- The Presiding Officer nominated under clause (a) and the members nominated under clause (b) may be the same for different Disciplinary Committees as may be constituted.
- The Disciplinary Committees shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.
- The Disciplinary Committee shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.
- The Disciplinary Committee shall conclude its inquiry within one hundred and eighty days of receipt of the preliminary examination report from the Director (Discipline).
- Upon inquiry, if the Disciplinary Committee finds that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, it may pass an order within thirty days of such a finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:—
 - (a) reprimand the member and record it in the Register of members; or
 - (b) remove the name of the member from the Register of members permanently or for such period, as it may think fit; or
 - (c) impose such fine as it may think fit, which may extend to ten lakh rupees.
- Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Disciplinary Committee is of the opinion that any member, who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule during the last five years, the following action may also be taken against such firm —

- (a) prohibit the firm from undertaking any activity or activities relating to the profession of Company Secretary in practice for such period not exceeding two years; or
 - (b) suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or
 - (c) impose such fine as it may think fit, which may extend to fifty lakh rupees.
- Where a member or a firm fails to pay the fine imposed within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period, as it may think fit.
 - The Presiding Officer and members of the Disciplinary Committee shall be paid such allowances as may be prescribed.

A comparison of the provisions related to Disciplinary Committee under the principal Act and the subsequent amendments has been given in chart form.

Disciplinary Committee	Principal Act, 1980	Amended Act, 2006	Amended Act, 2022
Presiding member	A member of the institute	A member of the institute	Be a non member of the institute
Role of President/Vice president of the Institute	President presided over the committee	President or Vice President could act as P.O.	Non Member to preside
No. of Members	consisted of three members	The committee had 5 members	Committee to have 5 members
Nominated members	One ex officio member nominated	2 members to be nominated by government	2 members to be nominated by government
Removal of name of the guilty member	Name of guilty member could be removed for 5 years. Case to be recommended to High Court for permanent removal of name	The disciplinary committee could remove the name of guilty member permanently	Name can be removed permanently or for such period as deemed fit
Misconduct by member and or his firm	Misconduct of the member	Member individually	Member and/or his firm also can be tried for misconduct
Professional misconduct	Defined	Defined	Defined
Other Misconduct	Not defined	Defined	Defined
Time limit for proceedings	Not defined	Not defined	Disciplinary committee to conclude its inquiry within 180 days from the date of receipt of preliminary examination report from Director(Discipline)
Fines on the guilty members	Fines ranged between Rupees one thousand to Rupees Five thousand	Fines between Rupees five thousand to Rupees two lakh	Fines can go up to Rs 10 lacs
Fines on the guilty firms	No provision	No provision	Fines upto Rs 50 lacs
Faceless proceeding and Virtual hearings	NA	NA	Allowed as per the amended act, 2022
Removal of name of guilty member (for specified time)	Council could remove name for a period not exceeding five years	The disciplinary committee could remove the name for such period it deemed fit	Name removed for such period as deemed fit

Appellate Authority

The Appellate Authority under the principal act was the High Court. The amended act, 2006 provided for the formation of an Appellate Authority. The Appellate Authority as constituted under the amended Chartered Accountants Act, 1949 has been deemed to be the Appellate authority for the purpose of this act also. Members of the Institute of Company Secretaries of India have been given a representation on this appellate board.

As per the principal act, an aggrieved party could prefer an appeal to the Appellate Authority within thirty days of the order as communicated to him. This period was extended to ninety days as per the amended act, 2006. Director (Discipline) had been authorised to prefer an appeal against the order of the Board of Discipline or the Disciplinary committee to the Appellate Authority, if so authorised by the Council. Appellate authority could entertain an appeal even after the lapse of ninety days. The Appellate Authority had the authority to revise any order given by the Board of Discipline or the Disciplinary Committee. The authority that was vested in the High Court under the principal act had been assigned to the Appellate Authority. The amended act, 2022 has not deliberated much on this issue.

Conclusion

Changing economic and business environment has impacted all the stakeholders in some way. Similarly the laws have become dynamic that change and assimilate changes as and when required. To keep pace with the changing times, amendment in rules/laws/statutes and regulations needs to be undertaken on timely basis. The profession of Company Secretaries is also affected by all these changes. So amendments in the laws governing the Company Secretary profession are necessary to make statute more robust and effective that leads to growth of the profession. These amendments should be accepted to maintain the relevance of the profession in the changed scenario.



Peer Review

CS ROOPALI BAIJAL - Company Secretary, Roopali Baijal & Co.

Introduction

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 person or group of people, in the same occupation, profession, or industry. Peer Review contemplates examination of the systems and approach of a Practice Unit (PU) by another member of the Institute with the objective of identifying the areas, where the member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards.

The focus lies on the promotion of continuing quality improvement in an atmosphere of openness and mutual trust that contributes to enhancing transparency and comparability.

Objective

The main objective of Peer Review is to ensure that in carrying out the professional assignments; the Practice Units:

- (a) comply with the Technical Standards laid down by the Institute and
- (b) have in place proper systems (including documentation systems) for maintaining the quality of the work they perform.

Technical Standards means and includes:

1. Auditing Standards issued by the Institute of Company Secretaries of India (ICSI).
2. Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India which are applicable in the context of the specific engagements being reviewed.
3. Compliance of the provisions of the various relevant Statutes and/ or Regulations, which are applicable in the context of the specific engagements being reviewed; and
4. Notifications/Directions issued by the Council of the Institute of Company Secretaries of India.

Peer Review is directed towards maintenance as well as enhancement of quality of Attestation and Audit Services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of records of Attestation and Audit Services engagement, Peer Review identifies the areas where a practicing member may require guidance in improving the quality of his/her performance and adherence to various requirements as per applicable Technical Standards.

These guidelines provide a framework of the Peer Review process and the expectations from member during the process of Peer Review.

Attestation and Audit Services in relation to the Peer Review, means the following services as per the law applicable as on date 'or' such other laws as may be in force –

- 1) Annual Returns Certified/Signed under Companies Act, 2013
- 2) Certificates Issued under Regulation 40 (9) of SEBI (LODR) Regulations, 2015
- 3) Secretarial Audit Reports issued Section 204 of the Companies Act, 2013 / Regulation 24A of SEBI

- (Listing Obligations and Disclosure Requirements) Regulations, 2015
- 4) Annual Secretarial Compliance Reports under SEBI (LODR) Regulations, 2015
 - 5) Internal Audits under Section 138 of the Companies Act, 2013
 - 6) Audit Reports issued under Clause 76 of SEBI (Depositories & Participant Regulations) 2018
 - 7) Certificate issued under Regulation 56 of LODR Regulation 34(3) read with Schedule V, Para C, Clause (b) (i)
 - 3) Compliance Certificates issued under Clause E, Schedule V of SEBI (LODR) Regulations, 2015
 - 4) Internal Audit of Registrar and Share Transfer Agent (RTA) under SEBI Circular No. SEBI/ HO/ MIRSD/ CIR/ P/2018/ 73
 - 5) Internal Audit of Credit Rating Agencies under SEBI Circular No. SEBI/MIRSD/CRA/Cir- 01/2010
 - 6) Issuance of Internal Audit Certificate for operations of the Depository Participants
 - 7) Half yearly bank due diligence certificates issued
 - 8) Due Diligence and Certification under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021

Qualifications of Peer Reviewer

The nature and complexity of Peer Review require the exercise of professional judgement. Accordingly, an individual to be empanelled as Peer Reviewer shall:-

- a) Be a member with at least 10 years of post qualification experience as Company Secretary
- b) Be currently holding Certificate of Practice as issued by the Institute; Further to be empanelled as Peer Reviewer, a member shall not have: -
 - i) disciplinary action / proceedings pending against him during the past 3 years;
 - ii) been convicted by a Competent Court whether within or outside India, of an offence involving moral turpitude and punishable with transportation or imprisonment;

The Peer Review of every Practice Unit should be mandatorily carried out at least once in a block of five years and the validity of the Peer Review Certificate shall be five years from the date of issue.

If the Committee so decides or otherwise at the request of the Practice Unit, the Peer Review for a practice unit can be conducted at shorter intervals.

Further, in case the Practice Unit (PU) is reviewed within two year of its incorporation, the validity of the Peer Review Certificate shall be two years.

The cost of Peer Review, payable to the Reviewer, as may be decided by the Committee from time to time, shall be borne by the Practice Unit. Each of the branch / office under review would be considered separately.

The cost of Peer Review shall be paid by the Practice Unit within 30 days from the receipt of Invoice from the Peer Reviewer.

Essentially, a Peer Review entails a review of engagement records and related documents to ascertain that the Practice Unit is adhering to Technical Standards. In certain situations, where a Practice Unit is not following Technical Standards, suggestions and commendations for improvement should be given, which shall possibly be followed by a further review, keeping in view with the primary thrust of Peer Review.

Planning

Notification - A Practice Unit will be notified in writing about an impending Peer Review and will be sent a Questionnaire for completion.

Return of completed Questionnaire - The Practice Unit shall have to complete and return the Questionnaire to the Secretariat within 15 (fifteen) days of receipt. The information will be used for the planning of the review. In

addition, Practice Units will be required to enclose a complete list of their Attestation and Audit Services and to provide any other information as the Reviewer may consider necessary to facilitate the selection of a sample of Attestation and Audit Services, engagement records, which represents the Practice Unit's client portfolio, for review.

Sample of Attestation and Audit Services Engagements:-

- (a) From the complete list of Attestation and Audit Services, an initial sample will be selected by the Reviewer. Practice Units will be notified of the selection in writing about 2 (two) weeks in advance, requesting the relevant records of the selected Attestation and Audit Services, to be made available for review.
- (b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the Practice Unit's Attestation and Audit Services engagements, he/she may make further selections.

Initial meeting

An initial meeting may be held between the Reviewer and an Individual / partner/ sole proprietor of the Practice Unit concerned to conduct the review. The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted/ followed by the Practice Unit and this initial meeting can provide additional information. The Reviewer should gather a full understanding of the system, and be able to form a preliminary opinion/evaluation of its adequacy at the conclusion of the meeting.

Confirmation of visit

In consultation with the Practice Unit, date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not uncomfortable during busy periods. The on-site review date(s) will be decided by mutual consent such that the review is concluded within 30 (thirty) days of intimation or any other time as may be extended by Peer Review Committee keeping in view of the Practical difficulties.

Peer Review visits will be conducted at the Practice Unit's head office or any other office/branch for which Peer Review has been initiated. The complete on-site review of a practice unit may take at least a full day depending upon the size of the Practice Unit. This is based on the assumption that the Practice Unit concerned has made all the necessary information and documentation available to the Reviewer for review. However, in any case this on-site review should not extend beyond 3 (three) working days.

Compliance Review-General Controls

- (a) The Reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance.
- (b) The Reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of engagement records.

Compliance approach

- (c) The compliance approach is to assess whether proper control procedures have been established by the Practice Unit, to ensure that Attestation and Audit Services are being performed in accordance with Technical Standards.
- (d) The Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborative for most of

their clients and so should tailor their documentation to suit their particular circumstances and the justification for the same should also be provided to the reviewer.

Substantive approach

A substantive approach will be employed if the Reviewer chooses not to place reliance on the Practice Unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the working papers in order to establish whether the attestation and audit work has been carried out as per norms of Technical Standards.

Reporting

(i) Preliminary Report of Reviewer

At the end of an on-site review, the reviewer shall, before making his report to the Committee, communicate a preliminary report to the Practice Unit (in case he/she finds any deficiency in the systems and procedures of the Practice Unit in rendering Professional Services to the clients). The Reviewer shall report on the areas where systems and procedures had been found to be deficient or where non-compliance with reference to any other matter was noticed.

The Practice Unit shall make submissions or representations, in writing to the Reviewer, concerning the preliminary report within 15(fifteen) days from the date of receipt of preliminary report from Reviewer.

(ii) Final Report of Reviewer

(a) The Reviewer will submit a Final Report to the Committee with a copy to the Practice Unit (the Reviewer's Report), incorporating the findings. The Final Report will be examined/inspected by the Committee in terms of the degree of compliance with the Technical Standards by the reviewed Practice Unit. The model forms of such Final Reports shall be communicated to the Reviewer by the Committee.

(b) The Committee may, if deems fit, issue Peer Review Certificate to the Practice Unit.

OR

(c) The Committee, having regard to the Report and any submissions or representations attached to it, may:

i. Make recommendations to Practice Unit concerned regarding the applicability by it of Technical Standards.

ii. If it is of the opinion that:

1. In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
2. In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;
3. Issue instructions to the Reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further Peer Review as regards the Practice Unit to which the report relates; and
4. Specify in the instruction, the matters as regards which the review is to be carried out;

- (d) The Committee will make recommendations to the Practice Unit where:
- 1) Based on the report of the Reviewer, it appears that the Practice Unit has satisfied all key control objectives, which the Committee has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and
 - 2) Based on the report of the reviewer, it appears that the Practice Unit has satisfied the major key control objectives but some weaknesses exist in others. The Practice Unit is expected to consider the recommendations for rectifying the weakness thus identified and informed by the committee and take all necessary actions to ensure that all key areas are addressed.
- (e) A follow up review will be required where the Practice Unit has not satisfied the Committee that all the key control objectives have been maintained and where, in the view of the Committee the deficiencies are likely to materially affect the overall quality of engagements of the Practice Unit. In such cases the Committee will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.
- (iii) The Reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him/her or by a partner or an employee of his/her firm.**

Mandatory Peer Review for Certifications and Audit Services

The Council has issued Guidelines for mandatory Peer Review for Certification and Audit services as under

Services	Applicability	Effective date (w.e.f.)
1. Secretarial Audit Report / Annual Secretarial Compliance Report under SEBI (LODR) Regulations, 2015 2. Certification of Annual Return in terms of Section 92(2) of the Companies Act, 2013 3. Compliance Certificate under Schedule V, Clause E of SEBI (LODR) Regulations, 2015	Top 100 Companies as per market capitalization as on 31st March, 2020	April 1, 2020
4. Half yearly Share Capital Reconciliation Certificate under Regulation 40(9) of SEBI (LODR) Regulation, 2015 5. Quarterly Share Capital Reconciliation Certificate under Regulation 76 of SEBI (Depository Participants) Regulation, 2018	Top 100 Companies as per market capitalization as on 31st March, 2020	April 1, 2021
	All Listed Companies	April 1, 2022
	All Companies	April 1, 2023
6. Internal Audit of Operations of the Depository Participants		April 1, 2020

7. Diligence Report for Banks in case of Consortium Lending / Multiple Banking Arrangements	July 1, 2020
8. Due Diligence and Certification under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021	June 10, 2021

Further the Council has decided that the PCS shall mandatorily mention the Peer Review Certificate number while signing / certifying the above in following format.

For XYZ & Associates Company Secretaries

Name

FCS

Date

Place

CP

PR

The Peer Review Committee has decided to extend benefit of Peer Review to the Quality Reviewed Units, as specified. The validity shall be five years from the date of issue of Quality Review Report by the Quality Reviewer or the validity of the Peer Review Certificate, whichever is later, in case the Practice Unit is also a Peer Reviewed Unit.

UDIN Generation

The Council has made Guidelines for allowing additional Secretarial Audit Report / Annual Secretarial Compliance Report to the Peer Reviewed Units as well as mandated that certain services can be rendered by the Peer Reviewed Units only. The details are given in the FAQs and can also be obtained from

https://www.icsi.edu/media/webmodules/PRB/Mandatory_Peer_Review.jpg

The details of Peer Reviewed Units are updated from time to time in the system designed for the purpose so as to give effect to the above Guidelines and allow the Peer Reviewed Units to generate the UDIN for the services that are mandatorily done by Peer Reviewed Units.

The Council has made following Guidelines on limits on Secretarial Audit and Annual Secretarial Compliance Reports to be issued by PCS:

Limits for the issue of Secretarial Audit Reports (FY 2016-17 onwards):

- 10 Secretarial Audits per partner/ PCS, and
- **an additional limit of 5 secretarial audits per partner/ PCS in case the unit is peer reviewed.**

Number of Annual Secretarial Compliance Reports to be issued by PCS (w.e.f. 1st April, 2020):

- 5 (five) reports individually / per partner in each financial year
- **an additional limit of 5 (five) ASCR individually / per partner in case the unit has been Peer Reviewed.**

Disclaimer:- Readers are requested to check the facts before taking any action or making any decision. The Author will be not responsible for any of their decision based on this article.



COMPANY SECRETARY: A Journey from Board Room to the Outside World

CS Maitri Khandelwal, Practising Company Secretary, M/s. Maitri Khandelwal & Co.

INTRODUCTION

After, the havoc caused due to Covid -19 pandemic, the world has changed rapidly and so as our life has also changed personally as well as professionally. At this juncture, every day there is a change and every change comes along with challenges and every challenge unveils an opportunity. We, the Company Secretaries, should be first one to adopt the changes, face the challenges and need to grab the opportunities. However, the question emerges that who is going to bell the cat. But as wisely said, “Light reflects Light”, every member of the institute needs to come forward, do their bit and by helping and supporting each other try to take this profession to much greater heights. The early we accept the changes, the better we can serve to our clients, to organizations and to the society as a whole and thus, can become a great asset to our nation in the years to come.

In the last few years, we have seen drastic change in the position of Company Secretary moving from Board Room to the Outside world whether with regulators, government, shareholders and with the stakeholders. The compliances are getting stricter day by day whether w.r.t Corporate Governance or the legislations and thereby giving infinite opportunities to Company Secretaries. The regulators, who once considered Company Secretary good only for taking and making notes, has now reposed immense confidence in Company Secretary by blessing him with the position of Key Managerial Personnel (KMP). The article is an attempt to highlight the opportunities alongside the challenges for Company Secretary and how he can reach towards excellence.

ARTIFICIAL INTELLIGENCE: IS IT REALLY HARMFUL TO THE PROFESSION?

The Digital era we are living in, is a great help in executing any task with the blink of an eye. And there is no doubt the new technologies are knocking our doors in the upcoming time. For the first time in our life time, the Ministry has allowed to conduct the General Meetings through Video-conferencing or other Audio-Visual means. In the recent years, we have also seen that MCA and SEBI have experimented many governing systems for the effective implementation of the AI.

But the matter in question is whether the Artificial Intelligence will replace the role of Company Secretaries?

There is a famous quote from Albert Einstein that, “It has become appallingly obvious that our technology has exceeded our humanity.” And we are all aware of the veracity of this statement and Company Secretaries are no exception to it. We have to accept and adopt the technologies to enhance our performance. Having said that, we also cannot deny the fact that the intellectual work of Company Secretary cannot never be replaced.

“Machines can replace human, but not humanity.” They lack innovation, creativity, humanity and strategies. They have no mind of their own and can respond only with the data fed within them. Thus, to get the best of all result, let machines do what they can do the best and let us do what human-beings do the best.

Now, the challenge before a Company Secretary is the resistance nature of the Board towards the new technology. Thus, it becomes imperative for him to make the Board understand the need of the hour and the adverse consequences of resistance. Additionally, a CS should be well aware of the new updates and technologies which will help him to adopt the most suitable technology. There should be continuous zeal to learn and evolve new things and to handle the technology excellently.

VALUATION

Beautifully quoted by Warren Buffet, “Price is what you pay, Value is what you get”. In the last few years, the demand for valuation has increased drastically. Professionals having specialized knowledge and experience on multi-disciplinary aspects can become a Registered Valuer. Company Secretaries being the Governance professionals possess specialized knowledge on various laws and have good grip on commercial and business aspects, have excellent opportunities in future as Valuation Professionals.

A Company Secretary can very well grab the opportunities as valuation professional under the provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016. The framework for the Registered Valuers Professionals who are mandated to carry out valuation of shares, assets and net worth of companies is provided under the provisions of section 247 of the Companies Act, 2013 read with the Companies (Registered Valuers and Valuation) Rules, 2017. Further, the provisions of the Insolvency and Bankruptcy Code, 2016 read with the regulations made thereunder also mandatorily requires the Resolution Professional as well as the Liquidator to appoint Registered Valuers to carry out valuation.

Valuation of any property, stocks, shares, debentures, securities, goodwill, any other asset or net worth or liabilities of a Company needs to be valued by a Registered Valuer (RV). Any Company Secretary with three years of post-membership experience can enroll with ICSI Registered Valuer Organization (or any other RVO), and on completion of the course and passing the examination conducted by IBBI and thereafter, seeking registration with IBBI can act as a Valuer. It is high time that Company Secretaries who are governance professional grab the opportunity and raise the bar of the profession by entering into the field of Valuation.

SEBI REPOSING CONFIDENCE IN COMPANY SECRETARIES

In order to ensure good governance practices, SEBI, the market regulator, from time to time has reposed its confidence in the profession of Company Secretaries. SEBI has once again bestowed the profession of Company Secretaries by providing a new opportunity under SEBI (Issue of Capital and Disclosures Requirements) (Amendment) Regulations, 2022 dated January 14, 2022.

As per the aforesaid amendment, Company Secretary in Practice has been given power to issue Compliance Certificate to the issuer certifying that the proposed preferential issue is being made in accordance with the provisions of the SEBI (ICDR) Regulations, 2018.

“START PRACTISING IN START-UPS”

India is rewriting its growth story globally by encouraging the start-ups, thereby reducing our dependency on the other countries and hence evolving as “New India”. In fact, many start-ups of India have received enormous amount of investment from the foreign countries, making India an investment hub. There is a need for good and knowledgeable professional who can help the start-up in setting up of their business and to run it effectively to make a New India. There is no doubt that the Company Secretaries can greatly contribute in startups from the teething stages and beyond, thereby becoming a part of the startups journey. A startup will need both a Practising Professional as an Adviser and an in-house Company Secretary.

A start-up is a newbie, not so mature and not heavily funded organization, which is yet to attain stability and sustainability in the industrial environment. In such case, a Company Secretary can be very useful to a Startup and can save it from very high costs for non-compliances, legal matters and delayed filings. The Role of In-house Company Secretary in a Startup can be following:

- Ensuring Compliances: A Company Secretary will ensure the compliance of all the laws and rules applicable to the startup.
- Act as an Adviser: He will act as an adviser to the Board providing legal implications and requirements to be complied while taking any type of business decisions;

- Liaising Officer: A CS will act as Liaising Officer between the Company and its clients, regulators, government and all other stakeholders.
- Replying to Legal Notices: For every business, there is always a high chance to receive legal notices from regulators now and then. Instead of hiring a professional every time, it's better to have an in-house CS who can very well reply to the notice as well as can represent the Company, if required.
- And lastly, an In-House Company Secretary will be responsible to do all such acts, deeds and matters which covered under the functions of CS under the Companies Act, 2013.

Further, a Practising Company Secretary can inter-alia, deliver the following services to a Start-up:

- Incorporation Services: A Practising Company Secretary can guide the founders in incorporating the Company with articles and objectives in line with their business requirements.
- Annual Return and MGT-8: A Company Secretary is the only person to certify the annual return of the Company.
- Secretarial Services: A PCS will be providing Secretarial services w.r.t change in registered office, change in directors and change in business of the Company etc. With these niche skill Practising Company Secretary, is the go-to person for all the secretarial aspects for any startups
- Drafting of Documents: As a consultant, the Practising Company Secretaries can help in drafting of various agreements including shareholders agreements required from time to time. A Practising Company Secretary is very well versed in the art of drafting and is usually engaged by the Startups for settling the drafting agreement as per the needs of the parties to contract.

ALTERNATIVE DISPUTE RESOLUTION BY COMPANY SECRETARY:

In India, we have an alarming situation for the pendency of cases before the Court and hence it becomes imperative to swiftly move the cases out of the Court to other dispute resolving mechanism. Indian Judiciary highly recommend Arbitration as one of the ways to get the cases settled out of the Court.

Company Secretaries being an expert of several laws and very well-versed with drafting has a high professional opportunity to become an arbitrator to resolve the domestic as well as international disputes. Company Secretaries has a good sense of commercial transactions and their legal framework, can very well advise as well as practice Arbitration.

Further, the provisions of section 442 of the Companies Act, 2013 read with the Companies (Mediation and Conciliation) Rules, 2016, provides statutory recognition to a Company Secretary to be qualified for being empanelled as mediator or conciliator.

It provides that a Company Secretary being in practice for minimum 15 years can be empanelled as mediator or conciliator under the Act.

The aforesaid section specifies that Mediator / Conciliator shall attempt to facilitate the following:

- Voluntary resolution of the dispute(s) by the parties,
- Communicate the view of each party to the other,
- Assist them in identifying issues,
- Reducing misunderstandings,
- Clarifying priorities,
- Exploring areas of compromise and generating options in an attempt to resolve the dispute(s),

emphasizing that it is the responsibility of the parties to take decision which affect them.

- He / She shall not impose any terms of settlement on the parties. However, if both the parties' consent, the mediator/ conciliator may impose such terms and conditions on the parties for early settlement of the dispute.

A Company Secretary while dealing with any arbitration case must ensure that he deals it with all fair and reasonable means and should be unbiased towards each party to the case. Company Secretaries who are treated as good governance professionals should carry themselves with dignity and not to worry about who will be offended if you provide the fair decision. Worry about who will be deceived and destroyed, if you act the other way.

WAY FORWARD:

The opportunities for Company Secretaries will continue to grow with increasing expectations from the Corporates and the Regulators. With the modern business complexities, the role of the Company Secretary has been extended not only as a compliance officer but with many varied newer areas of specialization such as MSMEs & Start-ups, GST, Valuation, Internal Audit, IPR legislation, Arbitration, Foreign collaboration and Joint venture, CSR and sustainability, Risk management and so on.

Company Secretaries have already proven themselves as governance professionals with their sheer dedication in every aspect of their work. CS has come a long way, but sky is the limit and there is no end to it. We have to stride forth and be unlimited, impactful and immense and let us go beyond doing what one has been already doing today!

The ICSI also plays a crucial role in continuously providing opportunities to its members by making representations before the regulators to seek recognitions in the new areas of practice and employment. Further, the Institute keep on introducing the post-membership qualification Courses such as for Arbitration, Internal Audit, Forensic Audit etc. to hone professional skills of its members.

It is absolutely demanding and necessary for today's Company Secretary to become multi-skilled and multifaceted hard-core professionals and shall be ready to undertake newer areas of practice. They have to have an open mindset to cultivate the habit of continuous learning, to accept the challenges and to use the opportunities to create stronger, and more resilient organizations. On this note, while concluding I'll quote Dr. A. P. J. Abdul Kalam, "Knowledge is a tangible asset, quite often the most important tool in your work." Hope this is read and we all are much wiser and prepared next time to see an opportunity with more open thoughts.



Company Secretary: A Preferred Professional

CS Soniya Gupta, Practising Company Secretary, Soniya Gupta & Associates

A Company Secretary is an important Key Managerial Professional in a company.

As per Section 2(1)c) of Company Secretaries Act, 1980, “Company Secretary” means a person who is a member of the Institute of Company Secretaries of India.

The first and foremost responsibility of the Company Secretary (CS) includes effective company administration especially when it comes to ensuring the compliance with statutory and regulatory requirements and enforcing the board of director’s decisions in the company. CS holds a very high rank or position in a firm and also comes right next to the CEO and Managing Director, and whole-time directors.

A CS in a company is the mediator between the board of directors, shareholders, government, and other agencies. The CS has the required expertise in legal matters, securities law, capital market, and corporate governance to regulate a company according to the compliances charted out.

EVOLVING ROLE OF COMPANY SECRETARIES IN NEW INDIA: OPPORTUNITIES AND CHALLENGES

Gone are the days, when the traditional role of the company secretary used to be heavily slanted towards ensuring regulatory (or legal) compliance and corporate records administration. The role of company secretary is transitioning from being a support person to becoming one of the key governance positions within a Company. State and Central laws including taxation and regulatory bodies are holding Company Secretaries accountable for following all the legalities. The Board of directors need someone in a role who knows and understands the laws and will ensure that the corporation is in compliance at all times. The most logical place for that responsibility is the role of the Company Secretary.

Those who fill the shoes of the Company Secretary need to know that The Securities and Exchange Board of India requires annual and quarterly financial reports and interim reports about events that impact investors. Company Secretaries need to know and understand the history of such laws and stay current as those laws are amended or get superseded. Company Secretaries will need to know if and when the law passes, and how its passage affects existing laws. They will also need to be prepared to communicate any new requirements to board members, managers and shareholders.

The Company Secretary signs legal documents as a representative for the Company, and bears custody of the common seal also. Company Secretaries share information with the board and managers on best practices for corporate governance and work with them to uphold them.

Because of the increased duties and very important responsibilities that boards require in a company secretary, the role of a corporate secretary must be filled by a professionally qualified member of the Institute of Company Secretaries of India.

Personal competency required to give optimum performance:

- Having a thorough understanding of the company’s business
- Having thorough knowledge of corporate and securities laws,
- Having solid communication skills and an “executive presence”
- Being intuitive and sensitive to the thoughts and feelings of board directors and the CEO
- Staying current with changes in corporate governance and giving the board and managers a “heads up” about new developments

- Being able to work and achieve a consensus within multidisciplinary settings
- Being able to navigate bureaucratic thinking
- Being flexible, creative and detailed
- Remaining calm under pressure and not losing sight of perspective

Challenges: Adapting To Technological Change and Legal Updates:

The emergence of new technologies has also greatly impacted the role and tasks of Company Secretaries. As mentioned above, the traditional roles of Company Secretaries were often seen as primarily administrative in nature. But with the advent of new technologies, their ability to provide strategic value to the organization has increased. Let's take a look at some of the technologies challenges that facilitate this:

a) Board Portals

As Boards go paperless with the adoption of board portals (or board meeting software), the administrative weight and burden on Company Secretaries is significantly reduced. Board pack creation, minute-taking, and remote collaboration can be accomplished with enhanced security, minimal effort, and less time. The Company Secretary can focus on responsibilities that have greater impact on organisational strategy – including risk management, corporate governance advice, and regulatory compliance.

b) Artificial Intelligence (AI)

- An Institute of Chartered Secretaries and Administrators (ICSA) paper published in August of 2018 discusses artificial intelligence and its increasing role in board rooms.
- The use of artificial intelligence ignites a discussion on whether or not a robot can be seen as a legal entity who is entitled to vote and attend meetings. It also raises the issue of legal responsibility and fiduciary duty to shareholders, especially when those are tied to directors.
- What does this mean for Company Secretaries?

As artificial intelligence finds its way into the boardroom, it places the Company Secretary in a unique and challenging position: he/she will need to set forth, clarify, and implement company laws and practices to ensure that this technology has appropriate oversight – and that it will operate within the confines of ethical boundaries. It's not an easy undertaking. The developments in the use of artificial intelligence can be complex, and ethics is a concern that's highly subjective and open to qualitative debate.

To succeed in this age of technological advancement and frequent legal updates/ amendments, Company Secretaries will have to be receptive and accept an environment of continuous change.

Officer In Default: As per Section 2(60) of the Companies Act, 2013, A Company Secretary is regarded as the officer in default. So, the Company Secretary will be penalized whenever the Company in which he is employed, does not follow with the Act.

Technologies are evolving, decisions are being made quickly, and sign-offs are needed urgently. Company Secretaries will have to contend with this pace of business and offer pragmatic yet innovative responses that do not compromise compliance, controls, and corporate governance.

STRATEGIC OPTIONS FOR PRACTICE IN THE NEW DECADE: VALUATION, ARBITRATION, FORENSIC AUDIT, IPR & POSH

During the strategic options for practice in the new decade, there is a need to consider “strategic fit” of the

options; for example, is the proposed strategy and area of practice suitable, feasible, and acceptable to the firm? From preparing strategies and playing to key strengths, exploiting opportunities, capitalizing on distinctive competencies must meet the organization's objectives. There are various strategic options for practice including;

Valuation:

Valuation is a process of evaluating the financial and economic value of a company. In a way it is the net worth of the company. In October, 2017 the Ministry of Corporate Affairs has introduced Companies (Registered Valuer and Valuation) Rules with the notification of Section 247 in the Companies Act, 2013. A new institution has been designated by the ministry for implementation of the new regime, laws and statutes, named as Insolvency Bankruptcy Board of India. The ministry also notified a new rule stating that after February 1st 2019, all valuation to be done by Registered Valuer.

Scope of Valuation Process:

The scope area in the valuation process involves the following-

1. For Technical valuation- It is done by the technical valuer. Movable and Immovable property valuation process are the key areas in this.
2. For Financial valuation- It is conducted by the financial valuer. The key areas of valuation process include goodwill, stocks, shares, debentures, winding up, compromise, arrangement, liquidation, securities, restructuring and corporate debt.

Factors to be considered during Valuation Process:

There are certain factors that the valuer has to consider during the valuation process. But even before that an owner needs to know the scope and area all about Valuation of shares, stocks, assets, movable or immovable property etc. as per the requirement and needs of the company. The factors to be kept in mind are-

1. Nature of the business.
2. Size of the enterprise.
3. History of the company from its date of commencement or incorporation.
4. Financial condition and position of the company.
5. It's earning capacity.
6. It's intangible value and the goodwill.
7. Value of the stocks in the books.
8. Sales of the stocks by the company.
9. General outlook in the area of economic factor of the business.
10. Company's capacity to pay the dividend.
11. Block of stocks size for valuation.
12. Market price of stocks of other corporations engaged in similar activities or business area.
13. Any legal issues that are substantial and the contingent liabilities affecting the business, either in India or abroad.

Statutory requirements for Valuation Process:

Any valuation process in a company is to be carried out under the statutory provisions prescribed by the Companies Act, 2013. The valuer has to follow the necessary laws as follows-

1. Section 39(4)- Allotting the securities for consideration other than cash.
2. Section 42- Placement of shares privately.
3. Section 54 Rule 8- Issuing of sweat equity shares.

4. Section 62(1)(c) - For value of further issue of shares.
5. Section 67 Rule 16- Company buying its own shares for benefit of the employees by the trustees or even employees with provision of company's money.
6. Section 177(4)(iv)- Valuating the assets or the undertaking of the company.
7. Section 191 Rule 17- By way of compensation, payment to the directors other than in cash.
8. Section 192(2)- Any non-cash transactions that involve directors.
9. Section 230(2)(c)(v)- Valuation under the Scheme of Corporate Debt Restructuring.
10. Section 230(3)- Valuation under Arrangement or Compromise scheme with the members and creditors.
11. Section 230(11)- Due to arrangement or compromise, offer of overtaking of an unlisted company.
12. Section 232(2)(d)- Reconstruction due to merger, demerger or amalgamation of the company.
13. Section 232(3)(h)- For providing existence to dissenting shareholders of transferor company, valuation is to be done by the tribunal.
14. Section 236(2)- Purchasing any shareholdings in the minority.
15. Section 281(1)- Asset valuation by liquidator of the company for submitting a report to NCLT.

Arbitration:

Arbitration is private dispute resolution procedure chosen by the parties instead of heading towards the courts for the resolution of their inter-se disputes. In sync with the modern times certain amendments were carried out for further streamlining of the Arbitration and Conciliation Act, 1996 in 2015, the highlights of which are as under:

1. It introduced timelines to make arbitration more effective for delivering the awards and fast tracking the process of arbitration proceedings.
2. Interference by Courts in arbitration proceedings has been minimised.
3. Doing away with the concept of automatic stay on arbitration award by mere filing of an application under section 34 challenging the award.
4. Interference of Courts is further limited by the definition of public policy as one of grounds available for challenge under section 34.
5. To safeguard assets in India involved in arbitrations, seats of which are outside India, applications can be filed seeking interim reliefs during the the arbitration proceedings.

Section 11 of The Arbitration and Conciliation Act, 1996 provides for the appointment of Arbitrator(s). An arbitrator is appointed under the following means –

- (1) Appointment by Parties
- (2) Appointment by Court The parties may agree to appoint a sole (one) arbitrator or more than one arbitrator. An arbitrator named by the parties and so appointed can proceed with the arbitration proceedings. If the parties do not name their own arbitrator, they may mutually agree that arbitrator(s) may be appointed by a third designated person.

Being an Arbitrator, a Company Secretary plays a very important role while doing mediation in such cases

Forensic Audit:

A forensic audit is a professional program that reduces fraud, deceit, and financial misplacement. Efficiency in the corporate culture is a must for economic growth. The corporate sector gets empowerment because of a forensic audit.

Types of forensic audit:

Financial theft, bankruptcy, defaulting on debt, securities fraud, economic damages, Tax evasion or fraud, M&A related lawsuits, and corporate valuation disputes are the different types of forensic accounting branches. The areas in which forensic accountants work are insolvency, insurance claims, divorces, fraud, embezzlement, skimming and financial theft. Accountants focus on the value of the company, tax bills, fraud, and damages. These points help in collecting forensic evidence. This evidence is presented in a court of law. The courses which have forensic accounting as a subject are chartered financial analyst, chartered alternative investment analyst, certified public accountant, certified financial planner, financial modelling and valuation analyst, associate company secretary and financial risk manager certification.

The role of CS in forensic audit is to check the accuracy and taking decisions. Company secretaries provide suggestions in the Credit decisions, investment decisions, investigation of the income and expenditure, investigation of deviation of guidelines, unlawful activities, wrong decisions, organisational structure, illegalities in recruitment, corporate governance, relativity in the industry, respecting stakeholders, strategy, promotion and transfers, social responsibility and systems and procedure. For credit decisions, it is essential to check the RBI guidelines. For investment decisions, the parameters are actual return, anticipated return, prevention of loss, and reasons for less profit. As there is more competition with banks, there is a need for information sharing. For sharing information and creating relativity factors among other banks forensic auditing gives support.

The financial audit and forensic audit have similar functions. Planning the process, gathering evidence-based information, and writing a report are the three steps in a forensic audit. The companies with loan accounts need to present the report of non-performing assets. A forensic audit is helpful to understand the non-performing assets, and it is an event-based one. The investigations show the fair and true view of the financial statements. The payment systems pay way to the fraudsters. Creditors use forensic accounting to satisfy the promoters. A forensic audit is essential in companies for stakeholders and banking loans. Satyam scam and Kingfisher Airlines scandal are financial frauds. These frauds raised the value of forensic accounting.

Foreign opportunities for forensic audit professionals:

Role of Company Secretary as an internal auditor ensures the meeting records, tax planning, corporate litigation, management of capital and debt. Chartered Accountants and Company Secretaries are eligible for forensic accountancy. During mergers and acquisitions, economic crime investigations, tax investigations, specialised audits, litigation support, and terrorist investigations, there is a need for a professional with knowledge about forensic auditing. Unlike India, forensic accountancy has vast demand in foreign countries. It boosts the opportunities for forensic accountancy. Indian certification and global certification both are essential to work abroad.

Intellectual Property Rights (IPRs):

Any invention is the result of creative thinking, time, efforts, and consistency and Intellectual Property Rights is purely a legal framework to protect the interests of these creators and innovators who created or invented such things. This framework assures an inventor or creator that their inventions are protected from piracy or misuse and such prohibited acts under laws are strictly punishable with respective penalties. In India, Intellectual Property Rights are protected by the following laws that strictly prohibit the circulation of duplicated copies by giving the originator an exclusive right to his/her intellectual inventions under:-

1. The Patents Act, 1970;
2. The Trade Marks Act, 1999;
3. The Copyright Act, 1957;
4. The Designs Act, 2000;

5. The Geographical Indications of Goods (Registration & Protection) Act, 1999;
6. The Semiconductor Integrated Circuits Layout Design Act, 2000;
7. The Biological Diversity Act, 2002;
8. The Protection of Plant Varieties and Farmers' Rights Act, 2001.

The government through above Laws provide very strong protection to Intellectual property rights (IPRs) and therefore scope for company secretaries, to be well-versed with the framework of Intellectual property laws and procedures has become important since the Company Secretary deals with various Corporate Laws. Company Secretary Professionals are experts and bestowed with quality knowledge, skills, and acumen pertaining to legal and regulatory compliance of IPR.

POSH Act – Sexual Harassment of Women at Workplace:

The Prevention of Sexual Harassment (POSH) at workplace Act is applicable to every workplace, establishment, company or organization employing 10 or more employees (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

The Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014, in accordance with the request made by the Ministry of Women and Child Welfare. By this amendment, it is now mandatory to disclose that the company has implemented the provisions of the Sexual Harassment Act. It is now compulsory for a company to make a statement in the Director's Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC). This amendment comes as a major step towards making the workplaces in the private sector safer for women, thereby casting higher responsibility on the Board of Directors to ensure compliance under the POSH Laws. Penal provisions that ensue in case of non-disclosure under Section 134 of the Companies Act will now be levied in the matters of non-disclosure of the implementation of the Sexual Harassment Act as well.

NEW RECOGNITION UNDER SEBI LAWS: EXPECTATIONS AND CHALLENGES:

New Recognition to Company Secretary under the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022

The Institute in furtherance of its continuous endeavours to provide new opportunities to its members has been sending suggestions on various draft rules, regulations, policies and guidelines, etc. issued by Ministries, Government organisations and Regulatory Bodies to seek recognitions in new areas of practice and employment. In this direction, the Institute pro-actively makes representations and submits its views/suggestions/comments on various Consultation/Discussion Papers/Reports issued by the SEBI and seeks opportunities for its Members in the area of Securities Laws

The SEBI has recently bestowed upon the profession of Company Secretaries a new recognition under the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 issued vide Gazette Notification dated 14th January, 2022, to issue a Certificate of Compliance to the issuer certifying that the proposed preferential issue is being made in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

BUILDING TRUST AND ENABLING SUSTAINABILITY: IMPORTANCE OF PEER REVIEW & QUALITY REVIEW, DISCIPLINARY MECHANISM, UDIN, DUE DILIGENCE TOOLS, AUDITING STANDARDS:

Company Secretaries, as professionals shoulder responsibilities pertaining not only to strengthen the governance framework in the India, but are also expected to maintain and uphold highest standards of transparency, fairness, objectivity and quality of services. It is with this thought that power had been vested in the Central Government by the Company Secretaries Act, 1980 to establish a Quality Review Board. The

functions of the Board included reviewing quality of services provided by the members of the Institute, making recommendations to the Council regarding the same; and guiding the members as regards the measures required to be undertaken to improve the quality of services and adherence to various statutory and other regulatory requirements.

Importance Of Quality Review:

The Quality Review is focused towards evaluation and review of quality of services rendered by members and adherence to various statutory and other regulatory requirements. It involves assessment of the work of the member while rendering professional services so as to enable Quality Review Board to assess:

- (a) compliance with statutory and regulatory requirements;
- (b) the quality control framework adopted by the member; and
- (c) the quality of reporting.

Functions of the Board:

Section 29B of the Act lays down the functions of the Board as under:

- a) Making recommendations to the Council with regard to the quality of services provided by the members of the Institute;
- b) Reviewing the quality of services provided by the members of the Institute including secretarial services; and
- c) Guiding members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

Importance of Peer Review:

Peer Review is a method of evaluation of a person's work or performance by a group of people in the same occupation, profession, or industry. For continued quality improvement in an atmosphere of openness and mutual trust that contributes to enhancing transparency and comparability it is necessary that good practice is valued and mutual learning encouraged in a dynamic and motivating process, from which both the Practice Unit and Reviewer can benefit. Practice Unit means members in practice, whether practicing individually in own name, or as a sole proprietorship, or as a partner of a firm/LLP of Company Secretaries.

The Review shall focus on: Compliance with Technical Standards. Quality of Reporting or Attestation services. Office systems and procedures with regard to compliance of services including appropriate infrastructure. Training and capacity building Programs for staff (particularly, the Apprentice Trainees)

Advantages of the Peer Review to the Practice Unit (PU):

- A. Enhances the Attestation quality, Audit Services and Credibility
- B. Provides competitive advantage and a forum for Guidance and knowledge sharing

Methodology to be followed by Reviewer:

- (a) Offsite review: Studying the information given by the PU in the Questionnaire (refer to annexure IV on icsi.edu)
- (b) Onsite Review: Verification of information given by the PU. Test checks in respect of attestation assignments handled by the PU. Interaction with the staff & trainees of PU should be a part of the peer review. Calling for the records in respect of the client maintained by the PU to verify whether proper systems and procedures have been followed.

Disciplinary Mechanism:

The government has tabled the Company Secretaries (Amendment) Act, 2021 and other Professional Bodies act wherein the norms of the Company Secretary (CS) and other professions has been tightened.

Disciplinary Directorate:

The Council shall, by notification, establish a Disciplinary Directorate consisting of a Director (Discipline), at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed under section 16, for making investigations either suo motu, or on receipt of information or a complaint, in such form, along with such fees as may be specified. Within thirty days of receipt of an information or a complaint, the Director (Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable.

Disciplinary Committee under the amended Act seeks to substitute section 21B of the erstwhile Act to empower the Central Government to establish one or more Disciplinary Committees, each comprising of a Presiding Officer to be nominated by the Central Government and four members of which two shall be nominated by the Central Government and two members to be nominated by the Council. It further seeks to fix a time frame for completion of inquiry by Disciplinary Committees and to empower the Central Government to make rules for procedures to be followed by it, modify penalty provisions for misconduct by members of the Institute and to provide for inclusion of firms of cost accountants under the purview of disciplinary mechanism. It also seeks to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Penalty for falsely claiming to be a member: Any person who, not being a member of the Institute, represents that he is a member of the Institute; or uses the designation “Company Secretary”; or uses the letters “A.C.S.” or “F.C.S.” after his name; or being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Company Secretary, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

ICSI Mandates UDIN for all Company Secretaries in Practice:

To strengthen the practicing side of company secretaries, ICSI had initiated for the use of UDIN (Unique Document Identification Number) in attestation and certification of service documents by all company secretaries in practice from 1st Oct 2019 onwards.

The rules governing the use of UDIN has been added vide terms of Clause (I), Part 2 of Second Schedule to Companies Secretaries Act, 1980 as amended by Company Secretaries (Amendment) Act, 2006 where ICSI has made UDIN mandatory by company secretaries for verification and attestation of documents each time imparting their services in practice.

Use of UDIN by Company Secretaries will do the following:

- Ensure counterfeiting of multiple attestations/certifications
- Enable the shareholders/stakeholders to authenticate documents to be actually verified by company secretaries
- Ensure easy compliance of guidelines on mandatory attestation and maintenance of registers of services rendered by members in practice.
- Enable auto-filling of details of the registered CS members in practice each time verification or attestation is initiated.

Due Diligence Tools:

Black's Law Dictionary defines Due Diligence as a measure of prudence or activity to be expected from, and

ordinarily exercised.

Businesses have realized that long term growth and stability can be achieved only by strengthening the foundation. Compliances are being regarded as value addition measures rather than cost centres. To achieve this level of investor confidence, the corporate leaders need set of tools that provide greater visibility to their organizations and strengthen governance, compliance and corporate performance management. Few of such effective and efficient tools includes “Compliance Management” and 'Secretarial Audit' etc.

Auditing Standards:

This Auditing Standard ('the Standard') is applicable to the Auditor undertaking Audit Engagement under any statute. The Standard deals with the Auditor's role and responsibilities with respect to an Audit Engagement and the process of entering into an understanding/agreement with the Appointing Authority for the purpose of audit. The objective of the Standard is to prescribe for the Auditor, principles and procedures to be followed while accepting or continuing with an Audit Engagement by agreeing to the terms of engagement with the Appointing Authority or any changes therein and matters relating thereto.

REGULATORY PERSPECTIVE: OPPORTUNITIES AND EXPECTATION

The emerging paradigm is certainly demanding and would be more demanding with the passage of time. It will require us to look beyond traditional and conventional opportunities to focus on a larger canvas in a wider perspective. Value addition and stakeholders' wealth maximization will be the key 'mantras' to sustain the growth momentum in the market place. Multi-tasking and versatile knowledge would be the required skill sets to reach the pinnacle. Therefore, a new orientation in our thinking, perception and initiating action is a call we have to take today to place our profession on the highest pedestal.

India's capital markets have seen phenomenal growth over the past two decades, both in terms of number of listed companies and the amount of capital mobilized. The inflow of foreign capital has been substantial and India has become a favoured destination due to its strengths. The process of globalization has seen a host of foreign companies establishing operations here. At the same time, a new breed of 'Indian MNCs' have emerged acquiring foreign companies, with some notable big ticket and high profile acquisitions. Several Indian companies are opening subsidiaries in foreign countries.

The reforms process has thus put India into the league of the fastest growing economies of the world and opened up numerous opportunities for professionals, among them Company Secretaries.

Members have seized these opportunities by providing their services in diversified areas, with considerable success. This success ought to make the Institute and its stakeholders proud, and to attract new students to the Institute.

The process of evolution has also thrown some challenges, and these require prompt attention.

These could be converted into opportunities by taking focused approach. The steps include creating greater awareness about the course, striking a better balance between growth of students and members, and infrastructure, improving the practical orientation of the course and training contents, examination pattern, placement mechanism, better coordination with industry, improvement in interpersonal skills and developing entrepreneurial skills – these are some of the such areas which would require concerted efforts.

The opportunities are immense and will only increase in the coming decade due to strong demand factors, among them new thrust on corporate governance and corporate social responsibility, diversification of the profession into new areas, emergence of global professional services, new forms of organization such as LLP, OPC etc, potential opportunities in upcoming fields like NCLT, competition laws, insolvency laws, KPOs, LPOs etc. Therefore, the right knowledge, skills and attitude will have to be developed to help the members take full advantage of these opportunities.

While focusing on the opportunities, the profession will have to be aware of and address the challenges and threats to the profession. These include increasing competition from other professions, technological obsolescence, new players in education field and over-dependence on legal recognitions. These challenges need to be met by making suitable policies and strategies to enable the profession not only to meet the expectations of the stakeholders but exceed them convincingly.

Conclusion

Finally, Company Secretaries cannot afford to shy away from technological advancements. Whether the advancement of technology impacts their day-to-day tasks or permeates into boardroom or shareholder activities, Company Secretaries need to stay ahead of the curve. The ability to respond to change places the Company Secretary in an advantageous position to exploit opportunities and assume a defensive stance against risk.

Now a days, we are hearing failures of big corporates, financial institutions etc which is resulting in the erosion of public wealth, capital and also affects the economy negatively. One of the main reason for such a failure is not following the legal compliance seriously with regards to funding, filing, disclosures, appointment of personnel etc. Company Secretary is the professional who can save a company from imminent failure by providing timely advices.

So, we can conclude that Company Secretary is not just an officer who is doing 9 to 5 job or just doing compliances as a practicing professional, but, he/she is a responsible officer of the company whose service can also decide efficient running of an organisation and its success.

References:

ICSI Auditing Standards
ICSI Vision 2022

Websites

www.icsi.edu/media/
<https://www.taxscan.in/>
<https://www.researchgate.net/>
<http://cs-india.com/icsi-mandates-udin-pcs>
<https://taxguru.in/>
<https://www.boardeffect.com/blog/evolving-role-company-secretary-todays-corporate-world>



Practising Company Secretaries: In The Multiverse of Compliances

CS Ruchita Deshpande, Associate J. B. Bhave & Co.

CS Tanmay Pethkar, Associate J. B. Bhave & Co.

Introduction

The Institute of Company Secretaries of India (ICSI) is the only recognized professional body in India to develop and regulate the profession of Company Secretaries in India. Our institute is a premier national professional body set up under an act of Parliament, the Company Secretaries Act, 1980. Though the profession of company secretary got its recognition in India from 1980 onwards but Secretary is centuries-old profession which had contributed to the development of human civilization since the ancient time. It performs both clerical and administrative functions in the government, religious institutions, and business as well. As a profession, it has evolved as the business and work environment change. Today the title company secretary especially in India as a professional has redefined the roles and responsibilities of the office secretary to a wider and broader management function. The company secretaries not merely as subordinates that follow instruction but as to assist the management of the company in the process of decision making. Since the setting up of our institute, there has been many changes in the political, legal, business and economics spheres of the society and thus the profession of the company secretaries was required in India to change with the ever-changing situation. Our Institute is constantly endeavoring for educate and provide various recognitions for the company secretaries, it is also the duty of all the members of the institute to spread their wings in the different areas, especially the practising company secretaries. There are various post membership courses on different subjects which our institute offers to the members. The curriculum of the CS students is also drafted in such way that after getting their membership, the young company secretaries can do and advice upon, as the title of the article suggest, companies on any applicable law in the multiverse. In this article we will look towards the different alternatives of the company secretaries to practice which includes Valuation, Forensic Audit, POSH, IPR etc.

DIFFERENT ALTERNATIVES FOR PRACTICE FOR PCS

VALUATION

Valuation of Securities or Financial Assets is required for strategic business decisions including fund raising, M&A, Sale of businesses, Strategic business decisions like Family or Shareholders disputes, Voluntary value assessment. The area of valuation is perceived to be limited to corporate valuation work like Valuation of Shares, Enterprise-wide valuation etc. However, the scope of Valuation extends to Co-operative organization, Income Tax Department, Municipal Corporation, Asset or Business Valuation for Banking or Insurance Company etc., in addition to corporate valuation. The valuation is also necessary to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act, SEBI Laws, etc. Proper business valuation and transparency is an instrument of good corporate governance.

Before 2017, the company secretaries were not recognized as valuation professional. But after the notification of Companies (Registered Valuers and Valuation) Rules, 2017, a Company Secretary is now recognized as a 'registered valuer' under the new valuation rules issued by the Corporate Affairs Ministry. This is one of the most important recognitions for the Company Secretaries.

FORENSIC AUDIT

A forensic audit is an analysis and review of the financial records of a company or person to extract facts which can be used in a court of law. Forensic auditing is a specialty in the accounting industry, and most major

accounting firms have a department for forensic auditing. Forensic audits include the experience in accounting and auditing practices as well as expert knowledge of forensic audit's legal framework.

Forensic audit cover a large spectrum of investigative activities. There may be a forensic audit to prosecute a party for fraud, embezzlement or other financial crimes. The auditor may be called in during the process of a forensic audit to serve as an expert witness during trial proceedings. Forensic audit could also include situations that do not involve financial fraud, such as bankruptcy filing disputes, closures of businesses, and divorces.

Forensic audit investigations may expose, or confirm, various kinds of illegal activities. Normally, instead of a normal audit, a forensic audit is used, if there is a possibility that the evidence gathered would be used in court.

The forensic audit process is similar to a traditional financial audit – planning, gathering evidence, and writing a report – with the additional step of a possible appearance in court. The lawyers on both sides offer evidence that the crime is either discovered or disproved, which decides the harm sustained. They explain their conclusions to the defendant should the case go to trial before the judge.

Company Secretary is a catalyst in upholding good governance via Forensic Audit. His role in specific to Forensic audit is important. The Company Secretary has following role while conducting the forensic audit.

1. A Company Secretary would use his/her investigative accounting skills to examine the documentary and other available evidence to give his/her expert opinion on the matter.
2. Where losses arise as a result of personal injury, insurance companies sometimes seek expert opinion from a forensic auditor before deciding whether the claim is valid and how much to pay.
3. A Company Secretary might be called upon to assist in business investigations which could involve funds tracing, asset identification and recovery, forensic intelligence gathering and due diligence review.
4. Company Secretary may help investigating authorities in collecting evidences and other investigation purposes. For example, section 157 Cr.P.C, 1973; sections 17 and, 18 of the Prevention of Corruption Act, 1988; Section 6 of The Bankers Books Evidence Act, 1891; Section 78 of Information Technology Act, 2000; Section 447 of the Companies Act, 2013 wherein the Court or Police may require the skills of Forensic auditors while inspecting any books in so far as related to the accounts of an accused.
6. Company Secretaries see and carefully examine the accounts and balance sheets and use his skills to find out whether there is any fraud committed or any anomaly associated with it by giving his expert opinion. This finds place in for example section 45, section 118 of Indian Evidence Act, 1872; section 293 of Cr. P.C, 1973.
7. Some forensic auditors because of their specialist training they would have received in legal mediation and arbitration, have extended their forensic auditing practices to include providing Alternative Dispute Resolution (ADR) services.

The ICSI is also providing a certification course of forensic audit and holding various seminars and conferences to educate and draw the members and students of the institute towards this different area of practice.

ARBITRATION & CONCILIATION

The Practising Company Secretaries in day-to-day practice unofficially provide services of mediation / conciliation, if there are any disputes between the directors or shareholders of closely held companies. The practicing company secretaries also play an instrumental role in the drafting of various agreement for their respective clients which generally has an arbitration clause in case of any dispute between the parties. Company Secretaries being considered as expert in the Arbitration and Conciliation law can act as arbitrator.

Section 442 of the Companies Act, 2013 has opened the gateway of professional opportunities for the members of Institute of Company Secretaries of India (ICSI).

Arbitration is a well-established and widely used means to end disputes. It is one of several kinds of Alternative Dispute Resolution, which provide parties to a controversy with a choice other than litigation. Unlike litigation, arbitration takes place out of court: the two sides select an impartial third party, known as an arbitrator; agree in advance to comply with the arbitrator's award; and then participate in a hearing at which both sides can present evidence and testimony. The arbitrator's decision is usually final, and courts rarely reexamine it.

To avoid clogged court calendars, the parties often agree to have the matter determined by a panel such as one provided by the American Arbitration Association (which has a specific set of rules), a retired judge, some other respected lawyer, or some organization that provides these services. Usually contract-required arbitration may be converted into a legal judgment on petition to the court, unless some party has protested that there has been a gross injustice, collusion or fraud. Many states provide for mandatory arbitration of cases on a non-binding basis in the hope that these "mini-trials" by experienced attorneys will give the parties a clearer picture of the probable result and lead to acceptance of the arbitrator's decision.

Role of an Arbitrator

- (1) To administer oath to parties and witnesses appearing before him;
 - (2) To state a special case for the opinion of the court on any question of law or state the award in the form of a special case for the opinion of the court;
 - (3) To make the award conditional or in the alternative;
 - (4) To correct in an award any clerical mistake or error arising from any accidental slip or omission;
 - (5) To administer any party interrogatories.
- In addition to the statutory powers given above, there are some implied and incidental powers, such as:
- a) Power to obtain legal assistance;
 - b) Power to delegate authority limited to the performance of acts of ministerial character;
 - c) Power to award interest;
 - d) Power to award costs;
 - e) Power to allow payment by installments;
 - f) Power to allow amendment of the plaint.

With the growing business needs and expanding horizons across the world, the need for Company Secretaries in practice is also increasing manifold. Today, a Company Secretary in practice is in great demand in the corporate sector, be it a case of corporate restructuring (such as mergers, amalgamations or takeovers) or corporate advisory services related to Company law/FEMA/SEBI/IPR, many others, a CS in practice is always preferred compared to other professionals due to his sound knowledge of corporate and economic laws. He is an expert and considered as panacea for all Compliance and Governance related worries in the corporate sector. A CS, as a generalist can provide wide range of services as per need, as also a 'Specialist' who can render exclusive services such as specialist in Corporate Laws/FEMA/Tax/many other matters.

IPR

Intellectual Property Rights (IPRs) are legal rights that protect creations and/or inventions resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The most common IPRs include patents, copyrights, marks and trade secrets.

Types of IPR:

Patents

Patents are basically used to protect innovative ideas or processes and also any newly engineered plant species or strains. Patents are the types of intellectual property that provide for the right of the owner to exclude others, normally for twenty years, from making, selling, using and importing an invention.

Trademarks

A trademark is the name of a product associated with a service or product. It is what consumers use to identify a product or its source. If a trademark is made up of a word or words, it is referred to as a wordmark. Other than just the name, colors, sounds, or even smells may be used to serve as trademarks. Typically, most trademarks are wordmarks, slogans or logos.

Copyright

A copyright is used to protect images, words, product packaging, label and the product itself. These types of intellectual property are not expensive to secure a copyright registration, and anyone who infringes on the copyright is required by law to pay attorney fees.

Trade Secret

A trade secret is information that is not publicly known and reasonably ascertainable. It assures its owner a competitive advantage. For a trade secret to be effective, the owner must keep it confidential. This is achieved by using non-disclosure methods and implementing policies and practices that restrict access to that information.

Industrial Design

Industrial design may be defined as a product that is created in a specific shape, pattern or colour with the motive of enhancing functionality, usability or aesthetic value. The Industrial Design Act protects these designs for the artist. For an industrial design to be protected, visual appeal and originality are key. Industrial design is granted by the Patent Office to protect only the non-functional features of a product.

Database

Database rights were developed solely to protect databases. The rights exist where there is considerable input into obtaining, presenting, or verifying a database's contents. The investment includes financial, human and technical resources. The original owner of the database is the creator of the database and has the responsibility of obtaining, verifying and presenting the contents of a database.

Opportunities for IP Professionals

Protection of intellectual property has become so important that companies today carry out intellectual property audits to identify their intellectual wealth and form special departments to manage them. The legal professional who specializes with matters related to intellectual properties are termed as Intellectual Property Attorneys/Agents. The major job of all Intellectual property (IP) Professionals is to protect the intellectual property rights of their clients.

Since IPR law is an innovation-oriented profession, Intellectual Property rights professionals should possess scientific, technical, technological and business skills. They should possess an eye for detail to understand all kinds of information and must have some technical skills.

Company Secretary having all skills required for IPR Professionals:

Attributes that are necessary to make a career in the IPR, we already have it:

1. Critical thinking,
2. Analytical reasoning,
3. Negotiation,
4. Research and writing skills,
5. Knowledge of scientific and legal concepts,
6. Mathematical or computer-related skills,
7. Excellent communication and competence to manage IPR.

The institute is also organising various programs and seminars to encourage professionals take up this area of practice.

The government through above Laws provide very strong protection to Intellectual property rights (IPRs) and therefore scope for company secretaries, to be well-versed with the framework of Intellectual property laws and procedures has become important since the Company Secretary deals with various Corporate Laws.

POSH

The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act and Rules, 2013 (“Law”) mandates every Employer to “provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace” (Section 19 (a)).

It provides that the aggrieved can file a complaint of sexual harassment within the organization itself and seek redressal via the internal mechanism. For the success of this, all organizations (whether public or private) having 10 or more employees (whether permanent, temporary, ad-hoc, consultants, interns or contract workers irrespective of gender) are mandated under Law to comply with certain requirements.

The POSH Law provides that employers must formulate a policy against sexual harassment at workplace. A POSH Policy is a document used to make awareness among the employees and other personnel of an organization about the POSH Act, 2013 (The Sexual Harassment of Woman at Workplace (Prevention, Prohibition, and Redressal) Act, 2013).

The Law states that organizations must have an Internal Complaints Committee (ICC) which shall consist of:

- A Women Presiding Officer
- At least 2 members from amongst employees
- 1 external member (independent person from amongst NGO or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment)
- At least one half of the total members must be women
- Term of ICC is three years

The POSH Law requires that ICC Members are trained so that they are able to inquire into complaints effectively as per the process under Law. Similarly, law also provides that organizations must organize regular training and awareness programs on this Law amongst employees to ensure knowledge/awareness about it. These can be conducted through in-person interactive sessions, interactive webinars, e-learning modules, podcasts, plays etc. and can be of different durations.

Annual Report & Disclosure

As per POSH Law, each ICC of each separate legal entity must prepare and submit an annual report to the employer and District Officer in their district.

Also, as per Section 22, an organization employing 10 or more persons and /or having an ICC must disclose in its annual report of previous financial year: the number of complaints filed with the ICC; and the number of complaints disposed of. As per MCA Rules (Companies (Accounts) Rules, 2014), ICC's details also have to be disclosed in organization's Annual Report.

Consequences of Non – Compliance

Non-compliance with reporting requirements under the law could lead to a fine of Rs. 50,000 and in case of subsequent conviction, penalty can be double the amount imposed earlier or lead to cancellation of license to do business.

Role of Company Secretary

The main role of a company secretary as an administrator is to make sure that company confirms to the company policy, specifically. The company secretary is aware of the organizational structure and thus, how it affects the work output of the company. Thus, he has a good working knowledge of how well the organization is functioning. The Company Secretary helps formulate the POSH policy and the committee. He has to make sure that the Company files monthly returns as per the POSH Act.

SOME NOTABLE MENTIONS

1. Company Secretary can act as CSR professional. As there are various changes in the Section 135 of Companies Act, 2013 and rules made thereunder, Company Secretaries can act as CSR professional who can help the corporates in effective implementation of the CSR policy.
2. Company Secretary in GST: Many of the company secretaries in India are now working as a GST/indirect tax consultant. The institute is also making efforts to educate the members and students regarding GST and other indirect tax laws.
3. Company Secretary can also act as Insolvency Professionals. Many of the company secretaries who have completed 10 years of Practice are doing their practice of Insolvency Professional.

As explained in the Companies Act, 2013, the power of company secretary in India have broadened and more direct responsibilities have into effect. As mentioned in section 203, the companies need to hire full-time managerial.

This is required to be done in order to make sure the efficient governance and corporate regulation are working well. It is necessary for the companies to appoint a Company Secretary professional, this describes the importance of the CS in the modern world.

The Profession of Practising Company Secretary is also gaining importance. The professionals can work in various fields and not restrict themselves to the Company law practice.

References

1. www.wikipedia.com
2. www.icsi.edu
3. <https://blogs.compliancecalendar.in>
4. www.investopedia.com
5. Arbitration legal definition of arbitration (thefreedictionary.com)
6. Arbitrator: His appointment, powers and duties (preservearticles.com)
7. Intellectual Property Rights (IPRs) (itu.int)



Evolving Role of Company Secretaries in India: Opportunities and Challenges

CS Pradeep Kumar Ray, Advocate

“Welcome the challenges. Look for the opportunities in every situation to learn and grow in wisdom.”
- Brain Tracy

Introduction

The dire need of Company Secretaries is being felt significantly in the recent years, thanks to the economic liberalization and deregulation of industry and business and significantly, the demand for new corporate ethos and stricter compliance with various laws and greater accountability of companies to all the stakeholders. The recent globalization and liberalization of economy has made it inevitable for corporate world to strive for excellence in Corporate Governance in a continuous manner. Their knowledge, skills and caliber are no longer limited to basic company law and administrative requirements relating to the submission and filing of documents.

Role of CS Under Companies Act, 2013

There are a plethora of sections under the Companies Act, 2013 affecting the role of Companies Secretary. These are as follows:

1. **Secretarial Standards (Section 118)**

Section 118 makes it necessary for the Companies to comply with the secretarial standards. With a view to integrate, harmonize and standardize diverse secretarial practices.

2. **Secretarial Audit (Section 204)**

Section 204 casts duty on the Company Secretary in practice to perform the secretarial audit of every listed company so as to check the company's compliance with the relevant laws. The main purpose is to improve corporate governance and compliance.

3. **Key Managerial Personnel (Section 203)**

Section 203 mandates a certain class of companies to appoint the whole time key managerial personnel. Key Managerial Personnel are Managing Director or CEO, Company Secretary and Chief Financial Officer. This makes the appointment of whole-time Company Secretary mandatory for better efficiency.

4. **Annual Returns (Section 92)**

Earlier, only the listed companies were required to get its annual returns signed by the company secretary. Section 92 includes within its purview many industries to sign the same. Hence, it increases the role of the Company Secretary in the organization.

Evolving Roles of a Company Secretary

With the passage of time, the profession of Company Secretary has been emerged as one of the most lucrative profession to choose and practice. The company secretary has been imbued with the following challenging roles in the corporate sector:

1. **Guide:** Company Secretary works as an advisor by suggesting the role and power of the chairman and director of the company.

2. **Legal advisory:** The Company Secretary firm knows the laws of the company very well and works as a legal advisor for the executives. Besides this, it is also important for a company secretary to follow these legal aspects:-
 - Furnishing the annual returns and forms according to the Companies law.
 - Helping the chairman and directors in implementing some guidelines effectively.
 - Checking the legal necessities required for issue of share certificates.
 - Regulating the flow of dividends in a phased manner according to the laws followed by the company.
3. **Maintenance of legal work record:** A company secretary is responsible to maintain the statistic regarding investors, shares, directors, and members in a record. The company secretary needs to maintain some records of a company even if it is not strictly needed by the laws.
4. **Company secretarial audit:** The company secretary makes sure that the company is following the laws and guidelines explained in the memorandum to make the easy functioning of the organization, as per the rules mentioned in section 204 of the companies act, 2013. It is not only a role, but the duty of the company secretary to execute such audits of prescribed and listed companies.
5. **Bridging the gap between inside and outside corporate work:** A company secretary plays the role of connector between the investors, board of directors, and authorities who work in the direction of the company's functioning and regulation.
6. **Good Governance:** The company secretary plays a leading role in good governance by helping the board and its committees function effectively and following their terms of reference and best practice. He arranges meetings to proactively manage the agenda and ensures the presentation of high quality up to date information in advance of meetings. This should enable directors to contribute fully inboard discussion and debate and to enhance the capability of the board for good decision making.
7. **Convening company meetings:** He is also responsible for arranging the shareholders and company board meetings. The articles of the company will work on the final needs for shareholders and board of directors meetings, but it is the legal company secretary who is responsible for following the notice necessities ideal with any sort of furnishing or revising the records.
8. **Board development:** All directors should have access to the advice and services of the company secretary. In promoting board development the company secretary should assist the chairman with all development processes including board evaluation, induction, and training.
9. **Company statutory register:** Company secretary is responsible to maintain certain statutory registers that include register of members, directors their shareholdings, contracts, charges. Investments, fixed assets, allotments. Transfers, etc.
10. **Administration of share transfers:** Company Secretary needs to perform transfer of shares in private limited companies including cancellation of previous and furnishing of new share certificates.
11. **Custody and use of the corporate seal:** The company secretary is usually accountable for custody and confinement of common seal.
12. **Fiduciary agent:** A company secretary, as an officer of the company, owes responsibilities to act in bona fides in the best intrigue of the company. These prime responsibilities not to act wherever there's a dispute of interest or to make secret profits. Breach of these responsibilities the consequences are the secretary for compensation.
13. **Signing authority:** The duty of signing legal documents on behalf of the company director may sometimes fall to the company secretary. This can be anything from signing cheques and bank

documents to the other vital documents.

14. **Statutory Compliance:** The role of company secretary ought to take time to confirm the corporate remains compliant with legislation outlined in companies act at all times.
15. **Communication with stakeholders:** The role of company secretary acts as the bridge between stakeholders and the company by communicating any vital announcements, sending out news and liaising with the shareholder to arrange the shareholder's meeting and the company's General Meetings
16. **Professional assistance to company liquidator:** With the sanction of the tribunal, the corporate liquidator might appoint one or a lot of professionals, together with company secretaries to help him within the performance of his duties and functions under the act.
17. **Appearance before Quasi-judicial authorities :** A party to any proceedings or appeal before the tribunal or the appellate tribunal might authorize amongst others a company secretary to present the case before the tribunal or the appellate tribunal, as the case is also”.
18. **Company secretary as a registered valuer:** A practicing company secretary can act as a registered valuer after complying requisite provisions mentioned under the Companies (Registered Valuers and Valuation) Rules, 2017
19. **Provide banking services:** Company Secretary is authorized to issue Diligence report and certification in respect of consortium/multiple banking arrangements made by scheduled commercial banks/urban co-operative banks. Loan syndication and documentation, registration of charges, status, and search report.
20. **Corporate Policymaker:** Company secretaries play an important role in putting together both short term and long term corporate policies of the company. They also advise the company board when existing corporate policies are brought up for review from time-to-time.
21. **Chief Administrative Officer:** In the capacity of the chief administrative officer, they have to monitor the general administrative activities of the company. They are responsible for the safekeeping of all legal and other confidential documents of the company.
22. **Principal Secretary:** They have to manage all aspects of corporate meetings be it board meetings, annual general meetings, interaction with important clients and vendors, meetings with government and private delegations. They may also have to take up the responsibility to manage corporate events and manage clients.
23. **Corporate Planner:** As additional responsibility, company secretaries also have to keep a discerning eye on the expansion opportunities of the company. Further, they have to take care of collaborations, joint-ventures, mergers, takeovers within the country and outside.
24. **Important Link:** Company secretaries act as a vital link between the board of directors and external entities such as shareholders, regulatory authorities and government bodies. They have to prepare detailed reports regarding company policies and disseminate them amongst internal as well as external stakeholders. On the other hand, they have to present the views of shareholders, regulatory bodies and government agencies to the board.
25. **Miscellaneous Tasks:** Another important role requires company secretaries to manage the company's tax management. The assessment of tax, filing of tax has to be supervised by a company secretary. In some organizations, they have to take care of loans taken by the company, deal with corporate banks and actively participate in important investment decisions.

Opportunities Under The Companies Act, 2013 and Rules

There is no second thought that Company law is the domain area of a company secretary and given a chance to serve, he can prove his worth at a step ahead of other contemporary professionals. The Companies Act, 2013 has gifted them the following lucrative areas to work upon and stand the test:

- 1) **Certification of Annual Return** [Section 92 read with Rule 11(2) of Chapter VII – Companies (Management and Administration) Rules, 2014]
- 2) **Internal Auditor** Section 138 read with Rule 13(1) of Chapter IX – Companies (Accounts) Rules, 2014
- 3) **Women Director** Section 149 read with Rule 3 of Chapter XI – Companies (Appointment and Qualification of Directors) Rules, 2014
- 4) **Independent Director** Section 149 read with Rule 4 of Chapter XI – Companies (Appointment and Qualification of Directors) Rules, 2014
- 5) **Whole-time Company Secretary** Section 203 read with Rule 8A of Chapter XIII – Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
- 6) **Secretarial Audit** Section 204 read with Rule 9 of Chapter XIII – Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
- 7) **XBRL MCA General Circular No. 16/2012 dated: 06.07.2012**
- 8) **Scrutinizer** [Rule 20 of the Companies (Management and Administration) Rules, 2014]
- 9) **Compliance Officer** [Rule 4 of the Companies (Issue of Global Depository Receipts) Rules, 2014]
- 10) **Expert** [Section 2(38)]
- 11) **SFIO** [Sec.211]
- 12) **Provisional/ Company Liquidator** [Section 275(2)]
- 13) **Technical Member in Tribunal** [Section 409]
- 14) **Legal representation before a National Company Law Tribunal** [Section 432]
- 15) **Mediation & Conciliation Panel** [Sec.442]
- 16) **Declaration**
 - Incorporation of Company [Section 7(1) (b) read with rule 14 of the Companies Incorporation) Rules, 2014]
 - Formation of companies with charitable objects, etc. [Section 8 read with rule 19 of the Companies (Incorporation) Rules, 2014]
- 17) **Issue of Compliance Certificate** in respect of
 - Buyback of securities in Form No. SH-15
 - Certification of Annual Return
 - Merger and amalgamation of companies
- 18) **Pre certification** under following provisions:
 - The Companies (Incorporation) Rules, 2014
 - The Companies (Prospectus and Allotment of Securities) Rules, 2014
 - The Companies (Registration of Charges) Rules 2014
 - The Companies (Management and Administration) Rules, 2014
 - The Companies (Accounts) Rules, 2014
 - The Companies (Appointment and Qualification of Directors) Rules, 2014
 - The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

- The Companies (Registration offices and Fees) Rules, 2014
- Nidhi Rules, 2014
- The Companies Act, 2013 read with rule 3 of the Companies (Miscellaneous) Rules, 2014
- The Investor Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016
- Miscellaneous E-Forms

19) E-Governance

Service of documents through of documents through electronic transmission, maintenance and inspection of documents in electronic form, books of accounts in electronic form, notice of meetings through electronic mode, Board meetings through video conferencing, Voting through electronic means

20) Other areas

Business Structures, Corporate Restructuring & Insolvency, Due-Diligence Reports, Legal Opinion Letters, Search & Status Reports, Designing Compliance Program / Compliance Management Manuals, Project Viability & Strategic Plan, Internal Audit & Risk Assessment.

Opportunities Under Securities Laws

A company secretary is required to perform various functions under the securities laws as follows:

- 1) Representation-** Appearance before Securities Appellate Tribunal [Section 15 V of SEBI Act, 1992; Section 23C of Depositories Act, 1996]
- 2) Audit**
 - (a)** Reconciliation of Share Capital Audit. [Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996
 - (b)** Audit of Capital Market Intermediaries
 - a) Internal Audit of Portfolio Managers, Stock Brokers/Clearing Members/Trading Members, Credit Rating Agencies, Depository Participants
 - b) Yearly Audit of Investment Adviser
 - c) Annual Audit of Research Analyst
 - d) Concurrent Audit of Depository Participants
- 3) Certification under SEBI Listing Regulations**
 - a) Certificate regarding Transfer of Securities [Regulation 40(9)]
 - b) Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations SEBI listing regulations [Schedule V, clause E]
 - c) Certificate Regarding Maintenance of 100% Asset Cover [Regulation 56(1)] (d)]
 - d) Compliance Certificate [BSE circular dated 26th November, 2012]
 - e) Certification [SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016]
- 4) Financial valuer under SEBI regulations**
 - a) SEBI (Real Estate Investment Trusts) Regulations, 2014
 - b) SEBI (Infrastructure Investment Trusts) Regulations, 2014
- 5) Stock Exchange certification**
 - I) Under Bombay Stock Exchange Ltd. (BSE)**
 - a) Net worth Certificate
 - b) Listing of IPO
 - c) Forfeiture of securities
 - d) Listing of Non-Convertible Debentures pursuant to Public Issue

- e) Revocation of suspension in trading of equity shares
- f) Listing on the BSE Hi-Tech (Institutional Trading Platform)
- g) Listing on the BSE-SME Platform
- h) Granting approvals under regulation 28 (l) of the SEBI listing Regulations in case of Qualified Institutions Placement (QIPs)
- i) “In-principle approval” for issue of securities issued on a preferential basis under Regulation 28(1) of the SEBI Listing Regulations
- j) granting listing approvals, for the equity shares issued on a preferential basis-Post issues
- k) For listing of equity shares issued pursuant to exercise of options granted under ESPS/ESOS/SARS/GEBS/RBS
- l) Listing of securities issued pursuant to the Rights issue
- m) Listing approval for Bonus equity shares issued by the Companies
- n) For Direct Listing for Companies which are listed with Stock Exchanges in Equity Segment

II) Under National Stock Exchange Ltd. (NSE)

- a) Promoter to be reclassified as public shareholder [Regulation 31A (6) SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
- b) Name Change
- c) In principle approval for securities issued underlying GDRs/ADRs
- d) Grant of approval under Regulation 37 of the SEBI Listing Regulations, 2015 (Demerger - Resulting Company Seeking Listing at Exchange, other Companies, reduction of Capital under Section 66 of Companies Act, 2013, re-commencement of trading of listed company post scheme of arrangement / capital reduction)
- e) Listing of further issue of securities issued pursuant to scheme of amalgamation/ merger/ scheme of arrangement etc.
- f) Listing of further issue of securities issued as Bonus
- g) Issue of securities under Qualified Institutional Placement (QIP) and Institutional Placement programme (IPP)
- h) In-principle approval for listing of securities issued under Rights/ Public Issues by already listed company
- i) Listing of Indian Depository Receipts (IDRs) A Certificate from a Practising Company
- j) For In-principal Approval on Debt Market Segment
- k) Listing of shares arising out of Conversion of Debentures/Warrants/Notes/Bonds into Equity Shares
- l) Grant of In-principle approval (Preferential Issue) for listing under Regulation 28(1) of the SEBI Listing Regulations, 2015]
- m) Pre-preferential holding of the allottee/s
- n) Listing of shares/securities issued on Preferential/Private Placement basis in case of allotment under Section 62(3) of Companies Act, 2013

Major Opportunities Under Taxation Laws

- 1) **GST Practitioner** - Pursuant to Section 48 of CGST Act, 2017, read with Rule 24 of the Revised Return Rules, any person who has passed the final examination of the Institute of Company Secretaries of India (ICSI) is eligible for enrolment as a Goods and Service Tax Practitioner.

- 2) **Authority to represent before the Appellate Authority-** Under Section 116 of Central GST Act, a company secretary is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act

Opportunities Under Other Legislations

Besides the above laws, a company secretary is also required under the following special laws:

- 1) **LLP Rules, 2009-** Annual Return [Rule 25(2) and Pre-certification of e-forms
- 2) **Reserve Bank of India-** Right to Issuance of Objection/Tax Clearance Certificate
- 3) **Pension Fund Regulatory and Development Authority of India-** Internal Audit of Custodian of Securities
- 4) **Department of Telecommunications-** Authorised to Certify Documents for Other Service Providers (OSP)
- 5) **Central Electricity Regulatory Commission Regulations, 1999-** Authority to represent before the Commission
- 6) **Special Economic Zone Rules, 2006-** In Principle Approval is considered when the minimum contiguous land area required for setting up of the SEZ is not in possession of the developer Formal Approval for setting up of SEZ and subsequent Notification of the SEZ are considered if the land is owned by the Developer or has leasehold rights over the land for a year not less than twenty years.
- 7) **Trade Marks Rules, 2017-** As per Rule 144 of the Trade Marks Rules, 2017, a member of the Institute of Company Secretaries of India has been qualified to be registered as a Trademarks Agent.
- 8) **Insurance Regulatory and Development Authority Act, 1999** Issue certificate under IRDA (Registration of Indian Insurance Companies) Regulations, 2016 (Regulation 10)
- 9) **Telecom Regulatory Authority of India Act, 1997** -Appear as authorised representative before the Telecom Disputes Settlement and Appellate Tribunal under Section 17 of the Telecom Regulatory Authority of India Act, 1997]
- 10) **Competition Act, 2002-** act as authorised representative before the Competition Commission of India and Competition Appellate Tribunal. Under Section 35 under Competition Act, 2002]
- 11) **Foreign Trade and Development Act, 1992** -certify various returns pertaining to import and export by individuals and partnership firms as well as companies. Under Para 1.18 of Foreign Trade Policy 2015-2020]
- 12) **Real Estate (Regulation and Development) Act, 2016** - act as authorised representative before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be under Real Estate (Regulation and Development) Act, 2016. [Section 56 of Real Estate (Regulation and Development) Act, 2016]

Opportunities For CS in Practice

Here a plenty of opportunities lie for a company secretary who is considered the best professional to carry our corporate governance compliance activities like. Corporate Structure, Board Composition, Board Committees, Directors, Management, Board Evaluation/Directors' development, Secretarial Audit, Secretarial Standards, Statutory Audit, Rotation of Auditor, Internal Audit, Whistle Blower Disclosure & Transparency, Corporate Social Responsibility, Related Party Transactions, Protection for Minority Shareholders, Investor Protection, E-Governance, Legal, Secretarial and Corporate Governance

The corporate sector is now regularly requiring a PCS firm for their compliance requirements. Further,

relatively medium and large companies shall require the service of a PCS for obtaining certifications / reports which are mandatory under Companies Act and related corporate laws.

1. **GST Practitioner** -Under the CGST, SGST/UTGST Act.
2. **Representation services**- To appear before various Quasi-judicial bodies including
 - National Company Law Tribunal (NCLT) & National Company Law Appellate Tribunal (NCLAT) constituted under the Companies Act, 2013,
 - Competition Commission of India & Competition Appellate Tribunal Under the Competition Act, 2002,
 - Securities Appellate Tribunal under the SEBI Act, 1992,
 - Income Tax Appellate Tribunal under Income Tax Act, 1961,
 - Tribunal or Regulatory Authority under The Real Estate (Regulation and Development) Act, 2016.
 - Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) covered under debt recovery laws.
 - District, State and National level Consumer Forums constituted under the Consumer protection Act.
3. **Advisory Services**- Under RERA which include penal provisions under the Act, funding options for real estate project, taxation aspects for real estate project, legal & regulatory compliances, etc.
4. **Internal Auditor**- To conduct internal audit of the functions and activities of the company.
5. **Secretarial Auditor**- Under section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
6. **NGO Consultant** - To offer services in respect of NGO, Societies and trust which includes incorporation, documentation, day to day operation, legal compliance, compliance pertaining to Foreign Contribution Regulation Act, Prevention of Money Laundering Act, etc.
7. **Legal Advisor** -To provide assistance to the company in any legal related matters like drafting, conveyancing, pleading and ensure that the company complies with the statutory and bureaucratic directives of company, security and all other corporate laws.
8. **Financial Advisor**-To provide financial advices on Financial Market Financial Planning and Wealth Management Strategic Financial Management.
9. **Corporate Strategic Advisor**- Corporate Restructuring, Foreign Collaborations and Joint Ventures, Arbitration and Conciliation, Financial Management , Project Planning, Capital Market and Investor Relations, Due Diligence, Corporate Advisory Services,
10. **Business Consultant**- To provide consultancy in Corporate Governance, Business / Commercial Laws, Formation of various Forms of Business Entity, Financial Institutions, Foreign Exchange, International Trade, Social Security Laws and Employee Ownership, Takeover , M & A, Arbitration. Business Process Outsourcing, NRI Service, STPI and SEZ, Business Startup, Government Projects, Pension, Performance Measurement, Insurance Information Technology and Information System Audit
11. **Intellectual Properties Attorney** –To represent for and on behalf of any individual, firm, corporate, LLP in respect of registration of trademarks, infringement/ passing-off of trademarks, etc. Also he can provide valuable services in respect of patent, industrial design, copyright, etc.
12. **Advisory to the Board of Directors** -To provide secretarial assistance and expert advice to the board in many corporate related aspects.
13. **Corporate Policymaker** –To put together both short term and long term corporate policies of the company, advise the company about when existing corporate policies are brought up for review from time-to-time.

14. **Chief Administrative Officer** To monitor the general administrative activities of the company. They are responsible for the safekeeping of all legal and other confidential documents of the company.
15. **Principal Secretary-** To manage all aspects of corporate meetings (board, committee, extra-ordinary and annual general meetings) and interaction with important clients and vendors, meetings with government and private delegations and manage corporate events and manage clients.
16. **Corporate Planner** - To keep a discerning eye on the expansion opportunities of the company. Further, they have to take care of collaborations, joint-ventures, mergers, takeovers within the country and outside.
17. **Liasoning Officer** - To act as a vital link between the board of directors and external entities such as shareholders, regulatory authorities and government bodies. They have to prepare detailed reports regarding company policies and disseminate them amongst internal as well as external stakeholders. On the other hand, they have to present the views of shareholders, regulatory bodies and government agencies to the board.
18. **Tax Planning Manager** -To manage the company's tax management. The assessment of tax, filing of tax has to be supervised by a company secretary. In some organizations, they have to take care of loans taken by the company, deal with corporate, banks and actively participate in important investment decisions.
19. **IPO Consultant** – To provide services in the field of Capital Markets right from the conceptual stage of the issue and fulfilling the continuous listing requirement.
20. **Strategic advisor** -To interpret the law and provide complete, guidance and advisory to the business entities.
21. **Compliance officer-** To handle procedural compliances includes registration, filing of returns, payments of taxes, assessment under various other laws.
22. **Book/Record Custodian: To keep records, registers, common seal, agreements, contracts** properly and maintain systematic records of credit of input/input service and its proper utilisation etc.
23. **Risk Manager-** In the field of Risk Management and fraud detection.
24. **Export and Import consultant -** In the area of Export and Import.
25. **Environment Advisory-** To provide advisory services in Climate change, environment protection, Carbon Credit Mechanism, National Green Tribunal (NGT) matters.
26. **Trainer/ Faculty** -To provide professional education, training, coaching on various laws, online or offline, in different events, programs, seminars, workshops, etc. organized by clubs, institutions, organisations, etc. as a Faculty/ Coach/ Soft skill Trainer, Corporate Trainer/ motivator or as a management guru
27. **Writer/ Author/ Publisher** – To write articles, columns for various professional magazines, journals and publish books in domain areas of practice.
28. **Appellate work-** To provide better services in all appellate works under all applicable laws very efficiently and excellently.

Current Professional Opportunities- Lucrative Career Options

The present corporate environment involves a chain of challenging and rewarding career options for a company secretary in practice, be it an Insolvency Professional (IP), a Registered Valuer (RV), Forensic Auditor (FA) or an independent director (ID), these are described as follows:

- 1) **Insolvency Professional (IP) under IBC:** IBC provides a challenging but rewarding opportunity for company secretaries in practice having at least ten years of experience to become eligible for appointment as an Insolvency Professionals (IPs) as per Regulation 4 and 5 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. He can act as Resolution Professional, Liquidator and Bankruptcy Trustee after obtaining the requisite certificate of registration from the Insolvency and Bankruptcy Board of India (IBBI) through an Insolvency Professional Agency (IPA) as per the said Regulation..
- 2) **Registered Valuer (RV) under IBC and CA, 2013:** A company secretary can act as a Registered Valuer under the Companies (Registered Valuers and Valuation) Rules, 2017 after obtaining registration from the Insolvency and Bankruptcy Board of India (IBBI) Registered Valuers Organization (RVO). He must comply eligibility and qualification and experience criteria prescribed under rule 3 and 4 of the Companies (Registered Valuers and Valuation) Rules, 2017.
- 3) **Independent Directors (ID) under CA, 2013 :** Independent Director is Non-executive Director and a Practising Company Secretary can be appointed as an Independent Director under section 149(6) of the Companies Act, 2016 by getting his/her name registered in the database of independent directors maintained by the Indian Institute of Corporate Affairs (IICA).
- 4) **Forensic Auditor (FA):** With the rapid increasing incidents of cyber-crimes and frauds detection, the Forensic Accounting and Fraud Detection specialisation are in huge demand. It is the practice of utilizing accounting, auditing, CAATs/ Data Mining Tools, and investigative skills to detect fraud/ mistakes. The provisions of the Companies Act requires that every company has to have proactive fraud risk management policies.

Statutory Recognitions

These are plethora of duly recognized opportunities given to Company Secretaries under various laws. Few of them are enumerated below:

- a. Issue of net worth certificate to be submitted by issuer company for admitting securities to Central Depository Services (India) Limited (“CDSL”) and National Securities Depositories Limited (“NSDL”).
- b. Act as Arbitrator under the Arbitration and Conciliation (Amendment) Act, 2019.
- c. Issue of Secretarial audit report under the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020.
- d. Issue of Annual Secretarial Compliance Report to be issued by the Practising Company Secretaries for listed entities as well as material unlisted subsidiaries.
- e. Half yearly reconciliation certificate to be issued to unlisted public companies by Practising Company Secretaries which was introduced vide Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2019.
- f. Rendering services in the area of various Corporate and Economic Laws, Taxation Laws, Foreign Exchange Management Act, Consumer Protection Act, Depositories Act, Environment and Pollution Control Laws, Labour and Industrial Laws, Co-operative Societies Act,
- g. Act as authorized representative before the Competition Commission of India and Competition Appellate Tribunal, NCLT, NCLAT, and other Quasi judicial authorities
- h. Act as Trademark Agents. Under the Trade Marks Rules 2002,
- i. Act as Insolvency Professional (IP), Registered valuer (RV), Independent Director(ID), Forensic Auditor under respective laws.

Challenging Roles Ahead

A company secretary plays a very pivotal role in ensuring better corporate governance and sustainability. More challenges are ahead for company secretaries to prove their worth. For example:

- a) The invisible leadership, power and influence**
The company secretary can exert influence if he or she is organised and efficient. Being the 'ear' of the management, board members may approach them for advice on how and when to deal with specific matters. This allows the company secretary to exercise power and influence, which may result in them prioritising specific matters on the board agenda to ensure adequate discussion by the board in order to reach a quality decision.
- b) The company secretary as the knowledge manager**
The company secretary are described as the knowledge manager due to their specialist skills and knowledge in respect of corporate governance, as well as the business environment in which the company operates and its stakeholders.
- c) The company secretary promotes and shares responsibility for the quality of governance**
Company secretaries play a significant role in promoting corporate governance. The internal corporate governance system is championed by the role of the company secretary. This is because the company secretary champions legal and governance compliance with internal policies and procedures to ensure the proper governance of an organisation.
- d) The company secretary is considered a strategic partner or leader**
As a strategic partner, the company secretary plays a role in the setting, managing and promoting of governance standards. Since these standards will have a bearing on the company's vision, mission and values, the company secretary's guidance will be required in the development thereof.
- e) The company secretary assists with building an ethical culture**
A company secretary assists with building an ethical culture, thus known as 'conscience keeper' of a company. In order to fulfil this role, the company secretary must ensure that the relevant corporate governance policies are in place, that people are managed effectively to comply with such policies and that the board puts appropriate measures in place to deal with non-compliance.
- f) The company secretary facilitates board induction, training and professional development for board members**
The purpose of board induction and what must be included on the induction agenda was discussed in paragraph and will not be repeated here. The company secretary contributes to board effectiveness by arranging and ensuring a detailed board induction for new board members as well as training and professional development for board members in order to effectively discharge their duties.
- g) The company secretary is the board's trusted adviser and confidant**
Confidentiality is integral of the role of the company secretary. Trust is implicit between the board and company secretary. Emotional intelligence, professionalism and discharging their duties effectively will build trust in the company secretary. The company secretary is privy to confidential information contained in board packs received in management meetings as well as attendances in board meetings. Individual board members as well as the full board must be able to trust in the company secretary's ability to maintain the confidentiality of their discussions.
- h) The company secretary as the chairperson of the board's support**
The role of the company secretary is dependent on the chairperson of the board and his / her reliance on the advice and guidance of the company secretary.²³¹ The chairperson's personality and preferences will influence how effectively the company secretary can contribute to corporate

governance.

i) The company secretary plays a role in sustainability and corporate citizenship

Further to the discussion in paragraph, the company secretary supports the board by ensuring that sustainability and corporate social responsibility (CSR) remains on the board agenda. The company secretary can do this by ensuring that where companies are not required to have a social and ethics committee, matters such as fraud, corruption, ethical compliance,

j) The advisory role of a Company Secretary

To ensure quality and effective corporate governance, they can further assist by ensuring that the organisation has adequate policies and procedures in place which augment its role as a responsible corporate citizen. The company secretary will be required to advise the board on how the above matters should be disclosed in the integrated or annual report, including key focus areas and measures in place to monitor corporate citizenship.

Lucrative Opportunities for Company Secretary In Practice

The NCLT Provide various opportunities for company secretary in practice in the following ways:

1. Insolvency Professionals duly registered under the Insolvency and Bankruptcy Board of India (IBBI) to act as
 - a) Interim Resolution Professional (IRP) in a corporate insolvency resolution process under section 16(4),
 - b) Resolution Professional (RP) in an individual insolvency resolution process under section 97(4) or 98(3),
 - c) Liquidator in a liquidation process under section 34(6), and
 - d) Bankruptcy Trustee (BT) in a bankruptcy process under section 125(4), 146(3) or 147(3)
 - e) Associate, Consultant, Advisor to assist the Insolvency Professionals in complying their IBC and corresponding NCLT matters efficiently
2. A company secretary having 15 years working experience in whole-time practice can be appointed as a Technical Member of NCLT
3. Company secretaries who are authorised representatives or valuers or such other experts and have empanelled by the Tribunal may be required by the Tribunal to assist in proceedings before the Tribunal.
4. Company secretaries who can associate with major corporate house or firms as an associate and assist in complying NCLT related matters properly and efficiently.
5. Company secretaries who can act as Advisor, Counsel, Consultant and help their clients in drafting, representing and pleading on NCLT matters.
6. Company secretaries who can act as Faculty member in coaching institutes, colleges, universities and provide online/ offline lectures, trainings and presentations.

Scope for Practising Professionals

The NCLT Provide various opportunities for practicing company secretaries

- a) To appear before the Tribunal in case of sick companies, mergers / amalgamation / demerger / restructuring, reduction share capital, winding up proceeding, oppression and mismanagement, Conversion Company from public to private, which are dealt with by Company court.
- b) To present the facts before the NCLT and provide complete facts considering the interest of all the stakeholder

- c) To prepare schemes, appearing before NCLT or NCLAT for approval of Schemes and Post merger formalities.

Role As Interim Resolution Professional (IRP)

- 1) Under Section 16(1) of the Code, any person registered with the IBBI shall be appointed as an Interim Resolution Professional by the Adjudicating Authority (i.e. NCLT) within 14 days from the insolvency commencement date. The Interim Resolution Professional shall either be proposed by the Applicant (i.e. Financial/Corporate Debtor) if no disciplinary proceedings are pending against him.
- 2) Where an Application is filed by an Operational Creditor and no proposal for appointment of Interim Resolution Professional is made then the Adjudicating Authority shall make reference to IBBI and the Board shall within 10 days of receipt of reference shall recommend the name of Interim Resolution Professional. The tenure of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22.
- 3) Now Professionals like (CA/CS/CMA) have been permitted to act as Insolvency Professional, Liquidator in case of Winding-up before the Tribunal

Role as Resolution Professional

- 1) Under Section 22 of the Code, the CoC within 7 days of their constitution shall by a majority of not less than 66% of the voting share of Financial Creditors, either appoint the Interim Resolution Professional as the Resolution Professional or replace the Interim Resolution Professional with another Resolution Professional.
 - The appointment of the Interim Resolution Professional as the Resolution Professional shall be communicated to the Corporate Debtor and Adjudicating Authority.
 - In case of replacing the Interim Resolution Professional, an Application shall be made to the Adjudicating Authority and the Adjudicating Authority shall forward the name of the Resolution Professional to the Board and shall make such appointment after confirmation from the Board.
- 2) Resolution Professional is the first person appointed and the last person to be relieved. The primary role of the Resolution Professional is to ensure the revival of the corporate debtor. However, more important for the Resolution Professional is to keep the process transparent and fair.
- 3) The Resolution professional plays a very significant role for the efficient operations of the insolvency process. He has to perform a whole range of functions and duties that are vested in him. The primary responsibility of a resolution professional is to conduct the Corporate Insolvency Resolution Process with transparency. Besides, the Insolvency Professional is also required to possess the appropriate skills, knowledge, expertise to ensure that the proceedings are conducted in an effective manner and carry out the duties and responsibilities vested in him.

Role as Liquidator

A liquidator is appointed under the Insolvency and Bankruptcy Board of India (Liquidation Process), Regulations, 2016.

Challenges before Company Secretary

A company secretary witnesses enormous challenges while performing their respective roles. Some of them are as follows:

- a. **Holding of meetings**- Holding an AGM in Video Conference mode is a very difficult task for a Company having large number of Shareholders interested in attending the meeting.
- b. **Signing of documents**-Attendance register was used to be signed by directors in physical presence which were a conclusive evidence of maintaining the register .However , in electronic mode it is difficult to maintain such evidence.
- c. **Minutes** -Signing of Minutes within the time limit will now be a challenge since holding meetings physically is not possible in the current scenario.
- d. **Declaration of dividend**-Despite the financial difficulties, few companies are still declaring dividend because of which CS is facing multiple difficulties while co-coordinating with the Banks for making payments of dividend within the prescribed time.
- e. **Employment opportunity**-Due to the pandemic , right now most of the Companies don't want to hire a CS because of financial crisis.This is a big challenge for the fresher's.
- f. **Lack of technical knowledge**-It's a bit difficult for the CS to educate the Directors who do not have the technical expertise to attend a Video conference.
- g. **As a Practising Company Secretary(PCS)**
- h. **Client meetings/management**- Visits to Clients/company are limited due to this pandemic situation. This also affects the collection of documents.
- i. **Delay in payment of fees**- Payment of fees are still pending from the clients and companies due to the sudden implementation lockdown.
- j. **Audit** -While Conducting the Secretarial/Compliance Audit ,a CS is facing difficulties while physically verifying all the registers and documents .
- k. **Human resources unavailability**- Due to absence of trainees and other staffs members it's a bit difficult for a CS to manage all the action items at once.

How to overcome Challenges

1. **Understand the business:**
Since every company and every board is different, the Company Secretary knows and understands the business in which they are working. In order to strengthen their knowledge the Company Secretary needs to work with the other board members but also with the management of the business to really get to know and understand how the business operates.
2. **Reporting Obligations:**
The Company Secretary needs to have a thorough understanding of the company obligations under industry specific regulatory bodies. It is essential that to mitigate risk and avoid any adverse penalties to the business that the Company Secretary is across the requirements and ensures that the company responds to these in a timely manner.
3. **Knowing their place on the board:**
There are defined duties for most board roles, however, each board is different. Therefore the requirements for each person may vary from the standard. It is important that the Company Secretary is clear on what their role is within the board.
4. **Building rapport with the rest of the board:**
The Company Secretary needs to really know and understand the many personalities that are on the board and learn how to get the most value out of each person. Board members are busy people, and

the best boards have a strong rapport between its members and understand what is required of each of them. A Company Secretary should know how to get out the best of other members to ensure that issues are resolved quickly and the business can thrive.

5. Coordinator to Top Management

The Company Secretary provides important support to the chairman of the company to ensure the board runs smoothly and efficiently. The Company Secretary ensures the board meets regularly, prepares and circulates meeting notes and takes minutes of meetings. They also drive procedures governing meetings - particularly ensuring requirements are met for the relevant company constitution provisions on quorum requirements, voting procedures and proxies.

6. Balancing Force

Often the Company Secretary can have an additional role within the organization, it is important to balance each of the roles and their responsibilities within multiple roles, especially when there is a conflict in priorities.

Conclusion

As John D. Rockefeller rightly said, **“If you want to succeed you should strike out on new paths, rather than travel the worn paths of accepted success”**, it fits best for the Company secretaries who have the right kind of spirit, enthusiasm and urge to keep their profession going on the way they dream and in this respect The present corporate provides a chain of opportunities for them to explore their areas and practice at a tandem. In today's cut-throat competitive environment, only those professionals would be one step ahead of others, who possess with adequate knowledge, experience, skills, efficiency, expertise and caliber on his preferred areas of profession. Hope the best for company secretaries to grow and excel in their respective areas.



Role of PCS under POSH & IPR

CS Harsha Batra,

Compliance Officer & POSH Presiding Member of Hyundai Heavy Industries.

The Company Secretaries are the backbone of the businesses. A Company Secretary protects the Company from unwanted legal penalties by guiding Board & Management of the Company to comply with various laws applicable on it. Being a legal representative of the Company a CS protect the company to get indulge in legal wrong.

ROLE OF COMPANY SECRETARY UNDER POSH

Brief of POSH Act, 2013

The basis of POSH Act, 2013 is to protect the women from workplace harassment & provide a safe work environment where women can work with no fear & earn their livelihood.

The scope of this Act is wide, it protects the women who is working in the organization as well as it protects the women coming in the organization from outside who is not under the employment of same organization. The Act also provide protection to women who visit any other place in connection with her job.

As per the Act, the organizations employed more than 10 employees, is required to comply with the POSH Act compliances & required to constitute an Internal Committee.

As per POSH Act, there shall be at least 4 members in the Internal Committee(IC) of POSH out of which:

1. One shall be Presiding Officer, who shall be the women employee working at the senior level of the organization.
2. Two senior most members of the organization.
3. One External member, who shall be the member of NGO or a person who is having knowledge and expertise in the matters of sexual harassment of women.

COMPANY SECRETARY AS A EXTERNAL MEMBER

Practicing as an Independent professional, A Company Secretary who is in practice has a wide area of operations. To become an External Member of IC under POSH Act, the person shall possess relevant knowledge of law & familiar with the issues relating to sexual harassment.

Thus a practicing company secretary who is having knowledge & experience in handling cases relating to sexual harassment can become an External member of IC of the organization. As a person not being in a full time employment of any Company, a PCS can give his/her independent & unbiased legal advice to the IC in handling sexual harassment complaints. A PCS can assist an Organization being an External Member in following ways:

1. Assist in constituting IC under POSH.
2. Assist in Registration process of IC under POSH Act, as the organizations having business operations in Maharashtra & Telangana is required to mandatorily register their Internal Committee with the local government.
3. Help the Organization to become a compliant with POSH rules & regulations.

4. Assist in finalizing POSH Policy.
5. Conduct yearly awareness program for IC members & employees of the organization as required under law.
6. Give an Independent opinion in resolving the complaint.
7. Attend the inquiry proceedings of complaint received under sexual harassment & supervise the procedure.
8. Ensures that the IC shall follow the Natural Justice principle while handling the complaint.
9. Ensure that the Company has maintain properly the POSH Policy, minutes of every meeting, appointment letters of IC members.
10. Assist & ensure that company has filed the annual return under POSH with local government on or before 31st January every year.

Under the POSH Act, it is required to conduct POSH awareness program time to time by the organization. With the help of the program the employees shall aware that the organization in which they are working is having the POSH policy & IC in place where they can approach in case they face sexual harassment at workplace. The employees must be aware about of workplace ethics & to respect the moral values of every other employee working in the organization.

A PCS is well versed with the knowledge of law & facts, is in a position to give unbiased & Independent advice. A PCS can become an External Member of various organizations & conduct various awareness program for IC & employees of the organization. PCS being a legal expert, having knowledge of laws applicable on Company as well as the laws of local government where company is operating can provide expert advice on the various aspects, such as:

1. Elaborating the term Sexual Harassment, the term Sexual harassment has a wide scope defined under the Act. To be aware about the POSH Act, first & foremost step is to know that what actions, impressions or behavior comes under the sexual harassment which should not be acceptable.
2. Encourage women employees to file a complaint against wrong doer, there may be a case where women face the sexual harassment but fears to file the complaint, in that very case a PCS being an External member shall encourage the women employee to file the complaint to prevent the further action of wrong doer.
3. Maintain the privacy of the parties involved in the complaint including witnesses.
4. Ensures that company has placed the Notice of Constitution of IC along with details of IC members on notice board of the Organization.
5. Assist in concluding the complaint process & declaring the Punishment against wrong doers.
6. It's a responsibility of a PCS being an External member to ensure the authenticity of the complaint received.

ROLE OF COMPANY SECRETARY UNDER INTELLECTUAL PROPERTY RIGHTS

Today's world is a full of innovative & creative minds. Innovation & creativity is taking upper pace to add value to the businesses. Organizations are now hiring team of experts who can add the value to the business in the form of unique inventions.

Intellectual Property is an intangible asset which create value addition to the businesses. These creations and inventions comes from the creative mind set of human being. If we go to the examples of IP, Inventions, names, symbols, marks, work in an artistic manner, comes under the preview.

The most common Intellectual Properties are:

1. Patents
2. Trademark
3. Trade Secrets
4. Copyrights

In the recent scenario if we take consideration, the Intellectual property is not limited to the above mentioned properties, it's now has a wider scope which include:

1. Protection to Plant varieties.
2. Protection to Integrated circuits & semiconductors
3. Geographical Indications
4. Undisclosed information

The law of Intellectual Property rights, protect the creative & innovative work of the owner of the Intellectual property from use by any other person in an unauthorized manner by given them exclusive rights upon their registration under law.

To protect the originality of a creation, it is necessary to take assistance from an expert who possess the relevant knowledge under law on how to protect the rights from infringement.

Company Secretaries are the experts in the field of Intellectual Property Rights, they play a major role in protecting & assigning the rights under law.

ROLE OF A PCS AS A TRADEMARK AGENT

In the year 2017, the members of the Institute of Company Secretaries of India, were accorded recognition under Trademark Rules, 2017 and as per Rule 144 of Trade Mark Rules, 2017 a member who belongs to the Institute of Company Secretaries of India may be registered as Agent under Trademarks Act.

As a Trademark agent a PCS can provide following services to the Trademark owner:

1. **Search on Trademark:** The first & foremost step in filing trademark application shall be to check whether the proposed mark or word or logo etc. is already register under trademark registry or not.
2. **Evaluation of Trademark class:** After ensuring the uniqueness of proposed mark, It shall be required to check category under which the mark falls. There are various different classes or categories under Trademark, a PCS before filing application for registration has to evaluate the exact category.
3. **Registration of Trademark:** After identification of class of trademark, file online application for taking Registration under Trademark Act on Trade Mark Registry government website designed for the handling the trademark matters.
4. **Drafting & Filing Reply:** In case of any query received from the department relating to registration of a particular trademark, a PCS on behalf of owner of trademark can file a reply & submit the same to the government authorities.
5. **Appear for hearing:** If required under certain cases a PCS can also appear before the authorities for hearing on behalf of trademark owner.
6. **Advice for Trademark protection:** In case of infringement of IPR, a PCS can guide the trademark owner as to the rights available to them to protect their rights as registered trademark owner.

ROLE OF PCS AS A PATENT ATTORNEY

PCS, as a Patent attorney can guide the owner of the Patent in a following manner:

1. **Protection of Patent Rights:** A PCS advises as to how the patent rights can be protected, the rights attached with the Registered Patent provided to the owner of Patent Rights under law.
2. **Assigning of Patent:** In case Owner of the patent rights want to assign his/her rights to any other person for its use, a PCS assist the owner in drafting the agreement for assignment of Patent rights.

ROLE OF A PCS AS A COPYRIGHT AGENT

A professional with the rich expertise in Intellectual property rights matters can assist the person to protect their unique creation. The creator of music, books, software, films, artistic designs etc. can protect their creation under Copy right laws. A practicing company secretary can also assist the owner of such creativity in order to make application & protect their creation.

Right of Patent, Copyrights, Trademark are common forms of Intellectual Property Rights, there are other forms of IPR also, which has given exclusive rights to the owner to prevent unauthorized use of their creativity by other person.

Company Secretaries are the expert in Legal & they have a rich knowledge under IPR Laws connecting with International conventions. As a Practicing Company Secretaries we have a wide scope of practice in the area of Intellectual property rights. We can provide assistance to the owner of Invention or creation to protect their rights by registering their Rights. The Rights once get registered can also be assign to any other person by making an agreement, PCS can assist in drafting & finalizing assignment agreement. A PCS can also appear before the government authorities on behalf of the owner of the rights, if required.

In addition to this, Company Secretaries can also conduct Intellectual Property Audits, with the growing business needs organizations are now involved in conducting IPR audits. IPR audit consists of collecting information of company's owned Intellectual Property rights, review & make policies to protect the Intellectual property of the company, evaluating that how business can take benefit & gain advantage from its Intellectual property.

CONCLUSION

Company Secretaries are the experts having excellent grip on various laws, which opens the area of practice & increase the scope of work where Company Secretaries can practice. This makes a Company Secretary proud upon the profession.



Strategic options for practice in the new decade: Valuation, Arbitration, Forensic Audit, IPR & POSH

CS Nikita Ahuja, Company Secretary, Elouise Green Mobility Limited

Introduction

The Company Secretary is an in-house legal expert, a compliance officer, an expert in corporate laws, securities laws, capital market and corporate governance. He/She is responsible for all regulatory compliances and act as corporate planner and strategic manager for companies.

A Company Secretary being multi disciplinary professional renders services in many areas such as Corporate Governance, Secretarial Services, Certification Services, Corporate Laws Advisory, Representation Services, Arbitration & Conciliation Services, Financial Market Services and many more.

A qualified Company Secretary has openings in Employment and as Practicing Independent Professional. Company Secretary in Employment has been recognized as Key Managerial Personnel under section 203 of the Companies Act, 2013. Whereas, some of the important areas of recognition for Company Secretary in Practice includes carrying out Secretarial Audit, Pre-certification of e-forms, Duty to report fraud, act as Company Liquidators and many more.

Company Secretaries in Practice also render services in the following areas:

1. Legal, Secretarial and Corporate Governance
2. Corporate Restructuring
3. Foreign Collaborations and Joint Ventures
4. Arbitration and Conciliation
5. Financial Management
6. Project Planning
7. Capital Market and Investor Relations
8. Due Diligence

The scope of Company Secretaries have now become vastly different as compared to its traditional notions. In the present times, Corporate Governance & compliance matters have gained much importance than in past times. The role of Company Secretaries in today's world is not only limited to secretarial compliances. The new evolution of Company Secretaries are now seen as advisors on many important matters of law such as Mergers & Amalgamations, Restructuring, Valuation of business and many more.

In a self-regulated regime, a Company Secretary ("CS") subjected to a strict code of conduct is looked upon by the regulators as an ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector. Therefore, a CS as a professional has a core competence in compliances and corporate governance.

Various acts with time enhanced the roles & responsibilities of Company Secretaries both in employment and in practice. In this article, we will discuss some areas that can be strategic options for practice by the company secretaries in the new decade.

A] VALUATION

The concept of Registered Valuer was brought by The Companies Act, 2013 to regulate the practice of Valuation in India and to standardize the valuation in line with International standards. The Ministry of Corporate Affairs ("MCA") brought into effect Section 247 of the Companies Act, 2013 and the

Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules) from 18 October, 2017. The section emphasized that where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other asset or net worth of a company or its liabilities under the provisions of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed and appointed by the Audit Committee or in its absence by the Board of Directors of the company.

To become such registered valuer, one need to possess not only required qualification and experience as mentioned above, but also need to pass the examination for particular asset class.

Registered Valuer under the SEBI (REIT AND INVIT) Regulations, 2016 which requires valuation report from a registered valuer, states that in case of valuation of Securities or Financial Assets, any graduate in any stream and Member of Professional Institute (CA/CS/CMA) or MBA/PGDBM specialization in finance or Post graduate degree in Finance having 3 years of experience in discipline after completing graduation, is qualified to become a registered valuer as per section 247 of Companies Act, 2013.

Therefore, one can say that the role of Company Secretary has been enhanced by the above insertion of Companies Act, 2013. Further, now CA / CMA / CS are recognized to act as Registered Valuers for Asset Class Securities or Financial Assets. Professionals can appear for the limited examination to take benefits of this new opportunity.

B] ARBITRATION

Arbitration is flexible, confidential, fair and final. Arbitration is distinguished from other dispute mechanisms. Arbitrators are appointed by or on behalf of the parties in disputes and they have to decide a dispute that has already arisen. Arbitration is conducted in accordance with the terms of the parties' arbitration agreement.

Arbitrators are usually used to resolve financial or contractual commercial disputes, international or cross-border commercial disputes, sports disputes, such as appeals against disciplinary sanctions or player eligibility, life science matters, in research and development agreements, maritime or shipping disputes and many more areas.

Although there is no legal requirement to become an arbitrator. It is usually understood that having a law degree is more advantageous where disputes involve issues of law. Someone, who is an expert in the particular law for which the dispute arose, is considered the most suitable arbitrator.

The Arbitration and Conciliation (Amendment) Act, 2019, has opened a new pavement for Company Secretaries & widened their role in Arbitration & Conciliation Act. Section 43-J of Arbitration and Conciliation (Amendment) Act, 2019 read with Eighth Schedule states the Qualification & Experience that an Arbitrator needs to possess. It states that:

A person shall not be qualified to be an arbitrator unless he—

- (i) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or
- (ii) is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or
- (iii) is a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or
- (iv) is a Company Secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; or

- (v) has been an officer of the Indian Legal Service; or
- (vi) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or
- (vii) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or
- (viii) has been an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute;
- (ix) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialized areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.

Therefore, as per the above amendment in the act, the Company Secretaries have a big professional opportunity in the arbitration space. All the Practising Company Secretaries having more than or equal to 10 years of experience are now eligible to participate in the arbitration activities.

C] FORENSIC AUDITING

Forensic Auditing is an examination of financial records to find any illegal financial activity. The objective of this kind of audit is to investigate the matter with the intention of finding evidence that will appear in a court of law for some type of litigation. Forensic Audit submits various recompenses in ensuring commercial health of the companies through aiding in the prevention, regulation and penalization of financial frauds and swindles. Forensic Audit is a strategical approach in detecting the financial frauds in the organizations along with enhancing their financial stability at par. Many regulatory authorities are rigorously emphasizing on need for forensic audit following the rise in money laundering and wilful default cases that are plaguing our economic system. Corporate Frauds are now being considered as one of the major challenges, which is obstructing the growth of corporates as well as economy.

Therefore, in order to curb these frauds happening, the Good Governance is paramount for the growth of the economy while promoting the transparency, accountability and supporting the ethical decision-making, which all in consolidation call for the bright future of our country at a global platform.

The role of Company Secretaries is now expanding under conducting forensic audit wherein the Company Secretaries are crucially assisting in prevention, regulation and penalization of financial frauds. The role of Company Secretaries is not only limited to assisting in detection of fraud, but is inclusive right from examining evidences during audit to identifying the culprit engaged in such fraud till appearance before the court to submit the testimony in the alleged fraud.

The role of a Company Secretary in forensic audit requires detailed engagement of the professional & requires expertise in not only accounting & auditing procedures but also requires understanding of various frauds that can be carried out & requires expert knowledge of the legal framework as to how to collect evidences of the fraud so taken place.

In order to boost the role of Company Secretaries in field of forensic audit, The Institute of Company Secretaries of India (“ICSI”) has been conducting various certificate courses on the forensic audit.

Some of the Indian certifications in forensic audit are CSMFA, CIFA, CBFA and CFAP. These courses usually focus on overview of financial statement frauds, fraud in digital form, legal & regulatory misconduct & unveil asset misappropriation schemes. After taking such certifications, the eligible & qualified candidates also have an opportunity to work with law enforcement agencies like IRDA, CBI, RBI, etc.

Therefore, the fraud investigation, internal auditing skills and forensic auditing skills have placed an increased demand of Company Secretaries in the role of forensic auditors.

D] Intellectual Property Rights

Intellectual Property in India is a term that refers to brand, invention, design, and any other kind of creation over which the person or the business is having legal rights. These kind of properties are valuable assets of any organization. The rights attached to these properties are known as Intellectual Property Rights (“IPR”). One should know how to use, guard & enforce these rights to make their business grow overtime.

Intellectual Property Rights (“IPR”) mainly includes Trademarks, Patents, Copyright and Industrial Design. Protection of this Intellectual Property has become a prime concern for all the companies in India. It has become so important that companies are now directing to carry out Intellectual Property audits in order to identify their Intellectual Property wealth. The professionals who conduct such audits are known as Intellectual Property (IP) Professionals.

Company Secretary Professionals are experts and bestowed with quality knowledge, skills, and acumen pertaining to legal and regulatory compliance of IPR. In order to strengthen the knowledge & expertise of young professionals, our own institute, The ICSI has introduced Post membership Diploma in Intellectual Property Rights. It is a post membership qualification course, which specifically aims to provide knowledge and building capacities of the Company Secretaries in the area of Intellectual Property laws and practices.

The ICSI is persistently playing a pivotal role in building capacities of its members and has decided to provide a complete picture of learning to the students along with apprising them with the advanced changes in the area of Intellectual Property Rights.

The Company Secretaries are professional having analytical reasoning, critical thinking, research & writing skills. All these skills are necessary to become Intellectual Property Professional. Therefore, the role of a Company Secretary in Intellectual Property Rights has elaborated overtime & provides Practising Company Secretaries ample of opportunities to start a career in this field.

E] POSH

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (also referred to as the “POSH Act”) came into existence in 2013. This act has been implemented with a view to report, prevent & protect the women from sexual harassment at the workplace and thereby ensure a safe working environment.

The act requires that every company having more than 10 employees need to constitute Internal Compliant Committee (ICC) to receive and address the complaints of any sort of sexual harassment of a women in extremely confidential manner.

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE (ICC):

1. Every employer of the workplace shall constitute a committee called as “Internal Complaints Committee” under section 4 of the Act.

2. The Internal Complaints Committee shall consist of the following members to be nominated by the employer, namely:
 - a) Presiding Officer: Shall be a women employed at a senior level at workplace amongst the employees.
 - b) Two Internal Members– At least 2 members amongst employees preferably committed to cause of women or who have experience in social work or have legal knowledge.
 - c) One External Member– 1 Member amongst non-governmental organizations or associations committed to the cause of women.
3. At least one-half of the total members so nominated shall be women.
4. The presiding officer and every member of the Internal Committee shall hold office for such period not exceeding 3 years.
5. The members appointed amongst the non-governmental organizations or associations shall be paid shall be paid such fees or allowances by the employer for holding the proceedings of the Internal Committees.
6. Where the presiding officer or any member of the Committee contravenes any provisions of section 16, or has been convicted for an offence or inquiry into offence, or has been found guilty in any disciplinary proceeding, then such presiding officer or member (as the case may be) shall be removed from the committee.
7. Any vacancy in the Committee shall be filled by fresh nomination.

FORMULATION OF INTERNAL POSH POLICY

Every employer of the workplace shall be responsible to have a Policy for protection of women from sexual harassment at workplace. Such policy shall contain following details:

- The objective and scope of such policy.
- Function and duties of Internal Complaints Committee
- Composition and contact details of Internal Committee members
- Redressal Mechanism
- Conciliation opportunity
- Inquiry procedure
- Reports submissions

COMPLIANCES UNDER COMPANIES ACT, 2013

According to Rule 8 of the Companies (Accounts) Rules, 2014, it is mandatory for a company to make a statement in its directors' report stating that the company has complied with provisions relating to the constitution of internal complaints committee under the Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013

Non-disclosure will attract the penalty under section 134 of the Companies Act, 2013.

PENALTY UNDER POSH ACT

- (1) The employer shall be punishable with fine which may extend to Rs. 50,000/- if he:
 - Fails to Constitute an Internal Complaints Committee.
 - Fails to Comply with the recommendation of Internal Complaints Committee.
 - Fails to file an annual report to the district officer.
 - If contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder.

- (2) If the employer after having previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-
- Twice the punishment, which might have been imposed on first conviction, subject to the punishment being maximum, provided for the same offence.
 - Cancellation of his license, withdrawal or non-renewal or cancellation of registration as required for carrying on his business or activity.

The role of the Company Secretary under POSH Act is to ensure the committees are formulated as per the laid guidelines. Further, he/she should also ensure that the policy regarding prevention of sexual harassment of women's at the workplace is made as per the act & relevant points for the safety of women's are included with proper consideration.

In addition, it should be noted that all the disclosures are timely made under the Companies Act, 2013 & all the reporting is completed timely. In case, a company fails to report any such matter, the company secretaries in practice should duly mention all the points related to non-disclosures in their secretarial audit reports.

CONCLUSION

In today's scenario, given the focus on good corporate governance & compliances, the role of a Company secretary is very vast and elaborative. Considering the number of opportunities open for a Company Secretaries, it definitely has a lot of scope in India. One has to choose this field based upon their interest and be open to practice in any of the fields mentioned above. The future of Company Secretaries stand bright and shiny. All you need is right approach & ethical behavior!



Building Trust and Enabling Sustainability

CS Rahul Luthra,

Company Secretary & Compliance Officer, One Mobiwik Systems Limited

Introduction

The Company Secretaries play an important role as governance professionals in all types of corporates, whether it is a private company, public company, section 8 company, government company and so on and so forth. In the recent international development in corporate governance, the role of Company Secretaries is not limited to ensuring compliances with laws, regulations, standards, and codes; it is also about creating cultures of good practice.

A Company Secretary is globally recognized as the part of the senior management of the company. However, the company secretaries are typically named as corporate secretary or secretary in the various countries according to the prevailing law in such country and the Companies Act, 2013 has also accorded an exalted status to a Company Secretary bracketing him as Key Managerial Personnel along with the Managing Director / CEO & CFO.

The Board as a whole, particularly the chairperson, relies on the Company Secretary to advise them not only on role of the directors and their statutory duties under the prevailing law and various disclosure obligations but also in respect of corporate governance requirements and practices and effective board processes.

The Company Secretary act as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its stakeholders including shareholders.

The main strength of Company Secretary lies in his/ her legal knowledge especially in the fields of business, corporate and monetary laws.

Company secretaries are highly valued and relied upon by regulators for compliances and they are considered as the first level regulators at the corporate level.

The Company Secretaries Act, 1980 was enacted to make provision for the regulation and development of the profession of Company Secretaries.

The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

The traits which every profession demands - Strive for excellence, Be trustworthy, Accountable, courteous, honest, open, and transparent, High Integrity, respectful of confidentiality etc.

“Your advice - right or wrong has an impact on the Corporate Governance of the country”

Prime Minister of India

at Golden Jubilee Year Celebrations of ICSI dated 04-October-2017

ICSI is committed to serve and uphold the trust of the regulators and stakeholders through its various endeavours and gain immense reputation by promoting Good Corporate Governance.

Acharya Chanakya has said-

“Eken Shushka Vrikshena

Dahya Manen Vanhi Na

Dahyate Ta Vanam Sarvam Kuputren Kulam Yatha”

It means, 'Even if a single dry tree in the forest catches fire, the entire forest is engulfed in the fire. In the same way, even if one member of the family does wrong, the reputation of the entire family is at stake'

ICSI is working with a same rigour to refine and touch the heights of Purity and Integrity in services being offered by each and every members of the Institute to achieve vision i.e., "To be a global leader in promoting Good Corporate Governance".

In line of above, some of these endeavours of ICSI are mentioned here under:

1. **Peer Review mechanism** with an object to enhance the quality of attestation services
2. **Disciplinary Mechanism** which ensures proper conduct on the part of the members and to address issues in case of violation of the provisions
3. Mandatory generation of **UDIN** which prevent counterfeiting of various attestations / certifications
4. **Auditing Standards** which prescribe for the Auditor, principles, and procedures to be followed
 - while accepting or continuing with an Audit Engagement prescribe (CSAS-01)
 - to conduct audit (CSAS-02)
 - for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report (CSAS-03)
 - for evaluation of statutory compliances and corporate conduct (CSAS-04).
5. **Due Diligence Tools** which will guide the professional for conducting Due Diligence in best possible manner.

1. **Peer Review & Quality Review**

Background:

Globalisation has redefined the role of Company Secretaries and with the Government and regulatory authorities increasingly and continuously reposing greater trust and confidence in the profession, today there lies a numerous opportunity for the Company Secretaries in practice including but not limited to issue of certificates under various laws, secretarial audit, due diligence audit, attestation engagements, etc. The undoubted trust and confidence reposed in a professional by his client must also be reciprocated by him in terms of excellent performance and quality service.

One of function of Practicing Company Secretary is of "Certification of documents and issuance of various certificates/reports" which provides reliability about the genuineness and contents of the document which facilitates the self-regulation of Companies/entities without much involvement of Government Machinery.

Company Secretaries are recognized in the year 1991 to pre-certify the e-forms before filing the same with the Registrar vide Circular Issued by the Ministry of Industry & Department of Company Affairs and when it have been observed that verification of compliances with the provisions of the Companies Act, 1956 by a Company Secretary in practice was necessary, the Companies (Amendment) Bill, 2003 introduced in the Rajya Sabha sought to add a new Section 383C to provide that all documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in practice and after enactment of the Companies Act, 2013 ("the Act") the same provisions are covered under Sub-rule (12) of Rule 8 of the Companies (Registration Offices and Fees) Rules, 2014, inserted by Notification No. G.S.R. 297(E) dated 28th April, 2014.

The requirement of authentication of document under Rule 8(12) clearly elaborates on the responsibility of professionals certifying the forms and shows the confidence reposed by the

legislators on professional and if a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under the provisions of the Act as well as liable for professional or other misconduct under Company Secretaries Act, 1980.

Global Scenario:

“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.

Till recently, the concept of peer review of the professional services performed by the Company Secretaries/ Chartered Secretaries/ Corporate Secretaries in public practice was not well-known worldwide. But with the issue of Guidelines for Peer Review of Attestation Services by Practising Company Secretaries, the Institute of Company Secretaries of India ("ICSI") has emerged as the front-runner to adopt the mechanism of peer review for maintenance and enhancement of the quality of attestation services performed by its members in public practice.

Globally, peer review is used extensively in a variety of professional fields, including academic and scientific research, medicine, law, accounting and computer software development. Peer review is statutorily mandated in some situations, particularly in law and medicine.

Peer Review - ICSI :

The Institute of Company Secretaries of India, ICSI (“the Institute”) is a premier national professional body constituted under the Company Secretaries Act, 1980 with a vision of “to be a global leader in promoting good corporate governance” set up a mechanism of Peer Review of their Members in Practice to enhance the quality of attestation services, to enhance credibility and provide competitive advantage and provide a forum for Guidance and knowledge sharing

ICSI has decided in year 2011 to provide guidelines for evaluation of performance of a professional by other professional (i.e., Peer Review).

In view of the plethora of responsibilities as well as penal provisions, Peer Review is directed towards maintenance as well as enhancement of quality of Attestation and Audit Services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements.

Object:

The goal of all peer review processes is to verify whether the work executed by the Reviewee satisfies the prescribed specifications for review, identify any deviations from the Technical and other standards, and provide suggestions for improvement.

- On successful peer review, a Practising unit gain credibility in the eyes of the general public, Corporate Sector and regulator.
- It provides comfort to the Practice Unit that it has adhered to various statutory, documentary and other regulatory requirement
- An opportunity to correct the deficiencies and thereby enhance professional competence
- Existence of Chinese wall move out the fear of apprehension of any disciplinary proceedings being initiated against for any deficiencies noticed on its part.

2. Disciplinary Mechanism

The principles which govern the conduct of a professional broadly encompass:

- (I) integrity

- (ii) professional independence
- (iii) professional competence
- (iv) objectivity
- (v) ethical behaviour
- (vi) conformance to technical standards, if any, prescribed; and
- (vii) confidentiality of information acquired in the course of professional work.

The Professionals are expected to conduct themselves in such a manner so as to uphold the grace, dignity and professional standing of the Institute.

The provisions relating to Misconduct by the members are given in Chapter V of the Company Secretaries Act, 1980 (Act) read with the First and the Second Schedule to the Act. The procedures to deal with the Misconduct cases are specified under the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 made by the Central Government

The purpose of disciplinary action is to correct, not to punish, work related behaviour and to ensure proper conduct on the part of the members and to address issues in case of violation of the provisions.

3. UDIN

Background:

UDIN stands for Unique Document Identification Number, it is a (15) digit number generated on the UDIN portal for every certificate and other such documents that have been attested by a professional.

The attestation of a professional on a certificate or any such document is of immense value since it usually signifies that such Professional, in his opinion, has ensured that there is no misrepresentation by the entity issuing/submitting such a document.

It is being observed that certain unscrupulous individuals are forging signatures while posing as professional to issue certificates and other such documents with the intent of misleading the authorities.

In view of above, the various professional Institutes developed a method of securing the documents issued by any professional by issuing a Unique Document Identification Number (UDIN).

ICSI Perspective:

ICSI is committed to serve and uphold the trust of the regulators and stakeholders through its various endeavours. UDIN is proving as one of the effective tool in this fast changing digital world for strengthening the profession and will also facilitate for economic development of our Country.

By introducing and implementing UDIN, ICSI has made a historic achievement not only in India but across the globe. With the mandate of generation of UDIN by all the Professionals in practice for all their certificates and documents and realization of the importance of the same by the stakeholders, UDIN is now being widely accepted as a Seal of authentication.

UDIN has been made mandatory based on the decision of the Council taken at its 261st (Special) Meeting held on 27th June, 2019 at New Delhi, for all the certificates, reports and documents as mentioned in Unique Document Identification Number (UDIN) Guidelines.

The objective of issuing these Guidelines is to:

- enable the stakeholders to verify the authenticity of various documents certified by Company

Secretaries in Practice

- prevent counterfeiting of various attestations / certifications
- provide ease of maintaining the Register of Attestation / Certification services rendered by practicing members
- ensure compliance of the Guidelines issued by the Institute w.r.t ceilings on the number of the various certification / attestation services that may be rendered by the practitioners
- auto-prefill details of Certification / Attestation services rendered by practicing members in of the form for renewal of Certificate of Practice.

Any non-compliance with these Guidelines shall render the members liable for action under the Company Secretaries Act, 1980 read with First Schedule and Second Schedule to the Company Secretaries Act, 1980.

4. Auditing Standards

Auditing Standards are expected to harmonise the audit practices among the auditors and to streamline and enable members to effectively undertake audit and ensure compliance. It is also expected that Standards will enhance the quality of compliance.

ICSI has issued (4) Auditing Standards (i.e., CSAS-1, CSAS-2, CSAS-3, and CSAS-4) which was recommendatory but mandatory to follow from April 01, 2021, onwards.

The adoption of Auditing Standards will bring substantial impact on the quality of audits performed by Company Secretaries and bring uniformity and consistency.

CSAS-1 Auditing Standard on Audit Engagement

The objective of the Standard is to prescribe for the Auditor, principles and procedures to be followed while accepting or continuing with an Audit Engagement by agreeing to the terms of engagement with the Appointing Authority or any changes therein and matters relating thereto.

CSAS-2 Auditing Standard on Audit Process and Documentation

The objective of the Standard is to prescribe principles for an Auditor:

- to conduct audit as per the specified audit process;
- to maintain documentation that provide:
- sufficient and appropriate record to form the basis for the Auditor's Report; and
- evidence that the audit was planned and performed in accordance with the applicable Auditing Standards and statutory requirements.

CSAS-3 Auditing Standard on Forming of Opinion

The objective of the Standard is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

CSAS-4 Auditing Standard on Secretarial Audit

The objective of the Standard is to lay down the principles for evaluation of statutory compliances and corporate conduct in relation thereto

5. Due Diligence

Business transactions in dynamic business environment require detailed analysis. It involves number

of issues, both financial and non-financial that requires careful and methodological investigation of business processes and the parties involved. Due diligence is an art of evaluating a business transaction through methodical investigation of financial; business, technical and human aspects, and its' impact pre and post the business transaction.

Due Diligence is the process by which confidential legal, financial, and other material information is exchanged, reviewed, and appraised by the parties to a business transaction, before entering into the transaction with the other party.

However, in general the Due Diligence can be defined as under:

“Due diligence” is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation of a business or persons, or the performance of an act with a certain standard of care to ensure that information is accurate, and to uncover information that may affect the outcome of the transaction.

The main object of due diligence is like a peep hole to analyses target Company's before opening of the door, this includes the success and potential, opportunities for the growth of business, and the goals and objectives of the company.

The objective of due diligence may be to:

- Collection of material of information
- Identification of strength and threats and weaknesses
- To improving the bargaining position
- Identification of areas where representations and warranties are required.

Conclusion: -

ICSI, our mother Institute being a statutory body under an act of Parliament of India, i.e., the Company Secretaries Act, 1980 formed dated 4 October 1968. Since then, Institute is rigorously working from 'examination of a student to become a member of Institute to publishing guidance note for facilitating a guide while serving as CS professional' and it becomes our truly responsibility to appreciate the efforts by adhering to the various guidelines/Rules/provisions relating to any mechanism/Standards etc, which are mandatory to follow or not, not only in words but in blood i.e., we need to understand the affect of single word/statement being/been delivered by a CS professional to any of stakeholders, in Corporate Governance of our Country.



Strategic Options For Practice In The New Decade - Valuation, Arbitration, Forensic Audit, IPR And Posh

CS C SAKUNTHALA - B.Com, FCA, FCS, ISA (ICAI)

VALUATION

The Ministry of Corporate Affairs (MCA) has notified the provisions governing valuation by Registered Valuers [section 247 of the Companies Act, 2013 (the Act)] and the Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules), both to come into effect from 18 October, 2017.

In addition, to administer and perform functions under the said rules, the MCA by way of notification on 23 October, 2017, has specified the Insolvency and Bankruptcy Board of India (IBBI) as the responsible authority.

The concept of Registered Valuers was brought by The Companies Act, 2013 to regulate the practice of Valuation in India and to standardize the valuation in line with International standards. However, the valuer's qualification, experience, manner and process was not prescribed. Valuation denotes the Value of the underlying assets as on a particular date. Business/Asset valuation is critical for strategic business decisions including fund raising, M&A, Sale/Liquidation of businesses, Strategic business decisions like Family or Shareholders disputes, Voluntary value assessment or may be just to comply with certain regulatory or accounting requirements in India under RBI, Income Tax, Companies Act, SEBI Laws etc. Better Corporate Governance is also leading to requirement of independent Business Valuations. Companies like Infosys have reported Valuation of Human resources as part of their Voluntary disclosures for many years.

Valuation itself is an evolving field and is an inexact science. Professional judgement of valuer is thus critical in any valuation exercise. Due to lack of Indian Valuation Standards and absence of any Regulatory Authority to control, guide and develop the practice of valuation in India, different valuers have been taking different assumptions leading to drastic differences in value conclusion. In many cases, the valuation also lacks uniformity and generally accepted global valuation practices.

The following persons shall be eligible to apply for being registered as a valuer:

A chartered accountant, company secretary or cost accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any Indian Citizen holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may by an order recognize. A Merchant Banker registered with SEBI and having in his employment persons having qualifications as mentioned above to carry out valuation services by such qualified persons, A member of the Institute of Engineers and who is in whole-time practice

A member of the Institute of Architects and who is in whole-time practice 5 years of continuous post membership experience is mandatory in all the above cases.

ARBITRATION

Company secretaries are not only corporate legal experts but due to the very nature of profession, their knowledge is far superior in respect of commercial understanding. They have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner. Since they are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising to the client.

Thus company secretaries in practice can act as strategist and authorized representative in arbitral proceedings. The only precaution they have to take is that they should develop thorough knowledge about the civil procedure code and Indian Evidence Act as many a times the proceedings are conducted in accordance

with these laws though it is not compulsory as per the Act. However, given the competence of the company secretaries, it is not a difficult task.

Secondly, if company secretaries act as arbitrators, the society can get the benefit of their knowledge and expertise in commercial and legal matters. This is possible only after an awareness is created among the society about this new role of company secretaries. The company secretaries in practice can help in creating this awareness in the society. If this happens, the day is not far when even the Chief Justices of the various High Courts will appoint company secretaries as arbitrators under the powers vested in them under the Act.

The constitution of the Arbitration Council of India as comprising of the Chairperson, a Chief Executive Officer and various members has also been laid down in perfunctory detail. For greater clarity on the exact scope of the powers and functions of the Arbitration Council of India, and its internal constitution, one would have to await the introduction of the relevant regulations in this regard which the Central Government has been empowered to frame and prescribe.

The following Act of Parliament received the assent of the President on the 9th August, 2019. An Act further to amend the Arbitration and Conciliation Act, 1996.

The President of India has given his assent for the latest amendments in the Arbitration and Conciliation Act, 1996 and the same has been published in the Official Gazette of India as Arbitration and Conciliation (Amendment) Act, 2019 for general information.

Arbitration and Conciliation Services

- a. Advising on arbitration, negotiation and conciliation in commercial disputes between parties,
- b. Acting as Arbitrator/Conciliator in domestic and international commercial disputes,
- c. Drafting Arbitration/Conciliation Agreement/Clause.

FORENSIC AUDIT

A Forensic Auditor is appointed to analyze, interpret, summarize and present complex financial and business-related issues in a manner that is both understandable and properly supported.

Forensic Auditors can be engaged in Practice or employed by Insurance companies, banks, police forces, government agencies and other organizations.

The Role of Company Secretary as a Forensic Auditor may be understood as follows:-

1. Criminal Investigations:-

A Company Secretary would use his/her investigative accounting and Legal skills to examine the documentary and other available evidence to give his/her expert opinion on the matter. Their services could also be required by Government departments, the Revenue Commissioners, the Fire Brigade, etc. for investigative purposes. Practicing forensic accountants could be called upon by the police to assist them in criminal investigations which could either relate to individuals or corporate bodies.

2. Personal Injury Claims:-

Where losses arise as a result of personal injury, insurance companies sometimes seek expert opinion from a forensic auditors before deciding whether the claim is valid and how much to pay.

3. Fraud Investigations:-

A Company Secretary might be called upon to assist in business investigations which could involve funds tracing, asset identification and recovery, forensic intelligence gathering and due diligence review.

In cases involving fraud perpetrated by an employee, the forensic auditors will be required to give his/her expert opinion about the nature and extent of fraud and the likely individual or group of individuals who have committed the crime. The forensic expert undertakes a detailed review of the available documentary evidence and forms his/ her opinion based on the information gleaned during the course of that review.

4. Investigation and Inspection:-

Company Secretary may help the Police, and other investigating authorities in collecting evidences and other investigation purposes. For example, section 157 Cr.P.C, 1973; sections 17 and 18 of the Prevention of Corruption Act, 1988; Section 6 of The Bankers Books Evidence Act, 1891; Section 78 of Information Technology Act, 2000; Section 447 of the Companies Act, 2013 wherein the Court or Police may require the skills of Forensic Auditors while inspecting any books in so far as related to the accounts of an accused.

5. Expert Opinion:-

Company Secretaries see and carefully examine the accounts and balance sheets and use their skills to find out whether there is any fraud committed or any anomaly associated with it by giving his expert opinion. This finds place in section 45, section 118 of Indian Evidence Act, 1872; section 293 of Cr. P.C, 1973.

6. Professional Negligence:-

The forensic auditor might be approached in a professional negligence matter to investigate whether professional negligence has taken place and to quantify the loss which has resulted from the negligence.

A matter such as this could arise between any professional and their client. The professional might be an accountant, a lawyer, company secretary etc. The forensic expert uses his/her investigative skills to provide the services required for this assignment.

7. Expert Witness Cases:-

Company Secretary as Forensic Auditor often attend court to testify in civil and criminal court hearings, as expert witnesses. In such cases, they attend to present investigative evidence to the court so as to assist the presiding Judge in deciding the outcome of the case.

8. Mediation and Arbitration:-

Some forensic auditors because of their specialist training they would have received in legal mediation and arbitration, have extended their forensic auditing practices to include providing Alternative Dispute Resolution (ADR) services, in absence of which a matter could be expensive and time consuming for individuals or businesses involved in commercial disputes with a third party.

9. Litigation Consultancy:-

Company Secretaries are eligible to be engaged in litigation and assisting with evidence, strategy and case preparation. Computer Forensics: Assisting in electronic data recovery and enforcement of IP rights etc.

10. Computer Forensics:-

A Company Secretary is trained to assist in electronic data recovery and enforcement of IP rights etc.

Power and Duties of Auditors and Accounting Standards:-

- 1) Role of Company Secretary in Mitigating the Corporate Frauds.
- 2) The financial/ corporate frauds and scams which have taken place in India, required the attention of the Law makers.

- 3) It was high time to evaluate the high standards in corporate governance and implement stringent provisions to tackle corporate Fraud.
- 4) The problem was on the rise both in its frequency and severity. The increasing rate of white-collar crimes demanded stiff penalties, exemplary punishments and effective enforcement of law with the right spirit.

Examples: Our country has witnessed several corporate Frauds, till date e.g. Rs. 5,000 crore Harshad Mehta scam in 1992, Rs. 7,000 crore Satyam fiasco in 2009, the Rs. 27,000 crore Sahara fraud case which started in 2010 and was tackled strictly by the Supreme Court of the country.

Therefore, the government via the Companies Act, 2013 has introduced the definition of fraud for the corporates and also settled down provisions of the regulatory authority and professionals to take measures against the corporate frauds in the country.

INTELLECTUAL PROPERTY RIGHTS

Besides the patent, copyright, trademark areas, Company Secretary professionals can also work in the field of industrial design, layout design of integrated circuit, geographical indication, trade secrets and protection of plant varieties, information and communication technology law (cyber laws).

IP Professionals work with numerous clients from small business owners to top management of law corporations, from garage inventors to prize winning scientists and provide services such as registration, enforcement, drafting, filing, litigation and licensing of intellectual properties like trade marks, designs, patents, copyrights etc.

Some things that are necessary to make a career in the IPR, we already have it

1. Critical thinking,
2. Analytical reasoning,
3. Negotiation,
4. Research and writing skills,
5. Knowledge of scientific and legal concepts,
6. Mathematical or computer-related skills,
7. Excellent communication and competence to manage IPR.

Since IPR law is an innovation-oriented profession, Intellectual Property rights professionals should possess scientific, technical, technological and business skills. They should possess an eye for detail to understand all kinds of information and must have some technical skills in engineering, technology, physics, chemistry or biology.

Role of a Company Secretary under Intellectual Property Rights

Any invention is the result of creative thinking, time, efforts, and consistency and Intellectual Property Rights is purely a legal framework to protect the interests of these creators and innovators who created or invented such things. This framework assures an inventor or creator that their inventions are protected from piracy or misuse and such prohibited acts under laws are strictly punishable with respective penalties. In India, Intellectual Property Rights are protected by the following laws that strictly prohibit the circulation of duplicated copies by giving the originator an exclusive right to his/her intellectual inventions under:-

1. The Patents Act, 1970;
2. The Trade Marks Act, 1999;
3. The Copyright Act, 1957;
4. The Designs Act, 2000;

5. The Geographical Indications of Goods (Registration & Protection) Act, 1999;
6. The Semiconductor Integrated Circuits Layout Design Act, 2000;
7. The Biological Diversity Act, 2002;
8. The Protection of Plant Varieties and Farmers' Rights Act, 2001.

The government through above Laws provide very strong protection to Intellectual property rights (IPRs) and therefore scope for company secretaries, to be well-versed with the framework of Intellectual property laws and procedures has become important since the Company Secretary deals with various Corporate Laws.

Trademarks Registration

Trademark defined under Section 2 (zb) of the Trade Marks Act, 1999 as, “trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging, and combination of colors.”

It is understood from the above that a registered trademark gives a distinctive value and identity to your business and makes sure that your goodwill and reputation are safe and cannot be illegally used by anyone else.

Trademark Certificate allows trademark proprietors to stabilize their right to the mark or brand or trademark in the court of law. Registered trademark holder also deters piracy and prevents the use of same or similar packing, packaging, insignia, phrase, series of words, device, brand, heading, label, ticket, name, signature, word, tagline, letter, sound, a voucher, or on the product from being registered by other business owners or entrepreneurs. However Various trademarks get rejected due to the selection of wrong or similar or weak trademarks, hence it is always advisable to hire a professional who has the expertise in this area who can help you with the following:-

- To conduct a detailed search of Trademark Registered or on record in India or other countries.
- To find domain registration details and database.
- To Check the Name of the Company at the Ministry of Corporate Affairs, in India whether it is already registered or pending for registration, and make sure your brand name does not conflict with Registered Trademark or pending trademarks.
- To File the application of brand / trade name registration with concerned Registry as per the due process and with all required documentation including affidavit, copy of the trademark; Power of attorney etc.
- After the Registrar accepts the Trademark Application for ABA (advertised before acceptance), it is then published in Trademark Journal and is open for 3rd party opposition for 4 months.

Patents Registration

“Patent system is a contract between the inventor and authority whereby the inventor gets exclusive rights for 20 years in return for disclosing full details of the invention under the Indian Patent Act 1970”

A Patent in simple terms is an exclusive monopoly granted to the inventor for own use or licensing the use of his/her invention. Drafting a patent application needs detailed particulars of inventions including technical as well as legal, only a person qualified in both areas will be able to meet the obligations of the patent undertaking. Hence a Compliance Professional like Company Secretary would be the best to help you with the preparation and filing of your patent application and supporting the enforcement of your property right by:

- Performing patent searches for all related invention in the world.
- Drafting of patent application in FORM-1 accompanied by a patent specification in FORM-2.
- Filing the patent application in India and Declaration as to inventor ship in FORM-5 and FORM-28 to be filed in case applicant is a start-ups and small entities.

- Publishing of patent applications in the official patent journal after 18 months of applying.
- Once the application is determined and all the objections, if any, raised by the officer through FER [First Examination Report] is resolved, the patent is granted.

Copyrights Registration

Copyright is also type of an intellectual property protecting the creators or owners of the original artistic or literary work, dramatic, cinematographic film or sound recordings from illegal use or copying of the work under the Copyrights Act, 1957. This makes sure that copyright protects the work and ensures that the original work is not copied, imitated, or reproduced without the consent of the owner. Here is how a compliance professional can help in the registration of copyright or creation:

- Preparing application in the format of FORM IV along with all types of legal documents in support thereof that need to be submitted to the concerned authority.
- Preparing Vakalatnama or a Power of attorney as needed.
- Noting the diary no. and timely replying to objections, if any, received against the application.
- Once the objections are resolved, the scrutinizer will scrutinize the application and approve the application.

ROLE OF COMPANY SECRETARY -- COMPLIANCE UNDER POSH

In an attempt to enable a safe working environment for women, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and the Rules (collectively known as POSH Laws) have been enacted and passed by the Ministry of Women and Child Welfare in the year 2013. These laws are applicable upon every workplace, establishment, company, and organization, inclusive of MNCs, firms, shops, restaurants, etc.

Applicability:

The Prevention of Sexual Harassment (POSH) at workplace Act is applicable to every workplace, establishment, company or organization employing 10 or more employees (full time, part time, interns or consultants included) irrespective of its location or nature of industry.

Compliance of Posh ACT:

1. Committee: Each organisation with more than 10 employees is required to form an Internal Complaints Committee headed by a “female presiding officer”.
2. Policy: Formulation of an internal POSH policy for the prevention and redressal of sexual harassment at workplaces.
3. Training Programme: Orientation and training programmes are also required to be carried out by the organisation.
4. Annual Report: The organizations are also required to file an annual report with the information of the number of sexual harassment complaints received in a year, the number of complaints disposed of in a year, cases pending for more than 90 days, etc.

Reporting under Directors Report: The Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014, in accordance with the request made by the Ministry of Women and Child Welfare.

By this amendment, it is now mandatory to disclose that the company has implemented the provisions of the Sexual Harassment Act. It is now compulsory for a company to make a statement in the Director's Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC). This

amendment came as a major step towards making the workplaces in the private sector safer for women, thereby casting higher responsibility on the Board of Directors to ensure compliance under the POSH Laws. Penal provisions that ensue in case of non-disclosure under Section 134 of the Companies Act will now be levied in the matters of non-disclosure of the implementation of the Sexual Harassment Act as well.

A. Internal Control Committee:

Every employer is obliged to constitute an ICC through a written order.

The ICC will be composed of the following members:

S.No	Member	Eligibility
1	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2	Members (minimum)	From amongst employees committed to the cause of women have legal knowledge / experience in social work
3	Member	From amongst NGO / associations committed to the cause of women or a person familiar with the issue of Sexual Harassment.

B. Sexual Harassment at Workplace Policy Employers/District Officers are responsible for complying with prohibition, prevention and redressal of workplace sexual harassment. In practice, this means having a policy that:

- (1) prohibits unwelcome behaviour that constitutes workplace sexual harassment;
- (2) champions prevention of workplace sexual harassment through orientation, awareness and sensitization sessions; and
- (3) provides a detailed framework for redressal.

C. Dissemination of Information and Awareness generation- Employers/ District Officers have a legal responsibility to:

1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment and provides a detailed framework for prevention, and redressal processes.
2. Carry out awareness and orientation for all employees.
3. Create forums for dialogue i.e. Panchayati Raj Institutions, Gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as appropriate.
4. Ensure capacity and skill building of Complaints Committees.
5. Widely publicize names and contact details of Complaints Committee members.

D. Annual Report: As per Prevention of Sexual Harassment Act, 2013, there are 2 reports to be submitted by the employer:

1. It is the duty of the ICC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer and district office.
2. The employer has a statutory obligation to ensure this report is included in the annual report of the organization filed to the Registrar of companies.

WHO IS A DISTRICT OFFICER (DO)?

State Governments will notify a District Magistrate/Additional District Magistrate/ Collector/ Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).

PART-I Section 21 – Internal Committee to submit annual report:

As per the Act – “(l) The Internal Committee or the Local Committee shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

PART-I The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

1. No. of complaints received;
2. No. of complaints disposed of;
3. No. of cases pending for more than 90 days;
4. No. of workshops/awareness programmes carried out;
5. Nature of action taken by the employer/DO; The Report of ICC will be forwarded to the DO through the employer.

Section 22- Employer to include information in the Annual report As per the Act –“The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.”

The latest Director's Report submitted under the Companies Act has a section to capture the compliance to the PoSH Act, 2013. This report is filed along with the Annual return to the Registrar of companies. Penalty Provisions:

An employer can be subjected to a penalty of up to INR 50,000 for:

Failure to constitute Internal Complaints Committee, Failure to act upon recommendations of the Complaints Committee; or Failure to file an annual report to the District Officer where required; or Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to: Twice the punishment or higher punishment if prescribed under any other law for the same offence. Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Value Driven Services by Practising Company Secretary:-

- ✓ 1-Financial Markets
- ✓ 2-Audit:- Internal Audit, Secretarial Audit and Forensic Audit
- ✓ 3-Companies Act, 2013
- ✓ 4-Corporate Governance
- ✓ 5-Pleadings and Appearances Before Courts and Tribunals
- ✓ 6-Risk and Compliance Management
- ✓ 7-Taxation:- Income Tax and GST
- ✓ 8-Due Diligence and Reporting

PCS ROLES:

- ✓ As an Advisor
- ✓ As an Auditor
- ✓ As a Consultant
- ✓ As an Academician
- ✓ As a Researcher
- ✓ As a Director
- ✓ As an Entrepreneur
- ✓ As a People's Representative

**WE THANKFULLY ACKNOWLEDGE
THE SUPPORT OF OUR SPONSORS**

Axar Digital Services Private Limited

Bank of Baroda Financial Solutions Limited

BSE Investors' Protection Fund

Stock Holding Corporation of India Limited

Sundae Capital Advisors Private Limited



SUNDAE

Sundae Capital Advisors Private Limited

India's First Entity

Registered with
SEBI as Category I
Merchant Banker &
IBBI as Registered Valuer-SFA

OUR SERVICES

Capital Markets

- Pre IPO Advisory
- IPO and Rights Issue
- Buyback
- Open Offer
- Delisting
- Capital Re-structuring
- Qualified Institutional Placement
- Listing of securities
- Due Diligence: ALFs

Corporate Advisory & Transaction Services

- Pre-transaction: Transaction advisory, tax advisory, identifying alternative structures
- Transaction execution: Documentation, approvals, liaison and co-ordination with intermediaries
- Post transaction: Listing approval, 19(2)9b listing and other approvals

Valuations

- Merger / Demerger / Fairness Opinion
- Allotment of securities
- Inward / Outward remittances (FEMA)
- Under Income Tax
- Under IND AS
- ESOP / option valuation / Sweat Equity
- Portfolio Valuation
- Acquisition / disposal
- Intangibles & IPRs

Stock Incentive Plans (SIP)

- Advising on the structure & Implementation
- Drafting of SIP and related documents
- ESOP Trust formation
- Accounting and taxation advisory
- Assistance for allotment and listing

MUMBAI | DELHI | BENGALURU | INDORE

SEBI Registration No : INM000012494 | IBBI Registration No.: IBBI/RV-E/03/2021/136

Email : valuation@sundaecapital.com | info@sundaecapital.com

www.sundaecapital.com




Bank of Baroda
Credit Card



Make Every Moment Precious!

With Bank of Baroda RuPay ICSI Diamond Credit Card

A one-of-a-kind credit card only for ICSI members; loaded with world-class privileges and up to 50 days of interest-free credit

 **5X Rewards**

 **FREE Airport Lounge Access**

 **Welcome gift of Rs. 15,000**

 **Milestone & Bonus Rewards**

APPLY ONLINE
to get your
LIFETIME FREE
Bank of Baroda Credit Card



APPLY AT
www.bobfinancial.com



Follow Us:



- **A Pioneer in Financial & Capital Market Services.**
- **Trusted by Millions of Customers, over last 3 decades.**
- **Professionals with strong domain knowledge.**
- **Free Fast Forward Account (All Investments at one place).**



Download the StockHolding Mobile App

www.stockholding.com

[f](#) [t](#) [v](#) [i](#) [i](#) /StockHoldingIN

Now just a Whatsapp away!

Connect with StockHolding SHAW on 9967422422

Increasing Financial Literacy in India,
along with Safety and Security of
Investments Since 1986

 **StockHolding**[®]



COMPANY SECRETARIES BENEVOLENT FUND

Be a proud member of CSBF

The Company Secretaries Benevolent Fund (CSBF) provides safety net to the Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860 Recognised under Section 12A of the Income Tax Act, 1961
- Subscription/Contribution to the Fund qualifies for deduction under section 80G of the Income Tax Act, 1961
- Has a membership of over 14000

Eligibility

A member of the Institute of Company Secretaries of India (ICSI) is eligible for the membership of the CSBF.

How to join

- By making an application in Form A (available at <https://www.icsi.edu/csbf/home/>) along with one time subscription of ₹10,000 (being increased to ₹12,500 soon)
- One can submit Form A and also the subscription amount on ₹10,000 (being increased to ₹12,500 soon) online through Institute's web portal : www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft payable at Delhi or Cheque at par for ₹10,000 (being increased to ₹12,500 soon) drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Office of the Institute/ Regional Offices/Chapters.

Benefits

- ₹10,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 3,00,000 in the event of death of a member above the age of 60 years (to dependent spouse only)
- Upto ₹50,000 per child on time (upto two children) for education of minor children of a deceased member upto the age of 60 years.
- Upto ₹75,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Donation

The donation to CSBF can be made online at link www.icsi.in/ICSIDonation

Contact

For further information / clarification, please write at email id csbf@icsi.edu or contact on telephone no. 0120-4522000

For more details please visit <https://www.icsi.edu/csbf/home/>



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)



VISION

"To be a global leader in promoting good corporate governance"

ICSI Motto

सत्यं वद। धर्मं चर। इष्टं कुरु। तृप्तये। अनेके तु ते। इव।

MISSION

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI

www.icsi.edu | [f](#) [t](#) [in](#) [v](#) [o](#) | **Online Helpdesk : <http://support.icsi.edu>**

Motto

सत्यं वद। धर्मं चर।
इण्डेअरु केड तुराके. अडेवेड डु केड डरु.

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**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarter

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
tel 011- 4534 1000 fax +91-11-2462 6727 email info@icsi.edu