"Amendments to the Company Secretaries Act, 1980

The Council in its meeting held on November 22, 2013 unanimously decided to approach Central Government seeking the following amendments to the Company Secretaries Act, 1980 on priority:

a. While the name of the Institute remains ICSI, its members may be named as governance professionals;
b. All consequential amendments (in relation to naming the members) in the Act as well as in other Acts such as Companies Act, Securities laws, FEMA, CCI Act, etc. may also be carried out;
c. Keeping in view increasing responsibilities of company secretaries / governance professionals, the regulatory regime may be amended to provide for an adjudication panel, chief regulatory officer, and appeals on the lines envisaged by the Srikrishna Committee. The details under this item may be finalised by President and Mr. Ahmad, Immediate Past President.

2. The Council, however, felt that since there were only eight members present in the meeting, the above decision may be taken up with Central Government only if another four members give positive consent so that the approval is with the support of substantial strength of the Council. It authorised President to seek consent of every member who was not present in the meeting and send a proposal to Central Government only after receiving consent of four more members. The Council also decided to place on its web site the communication made to Government in this regard.

3. President and Immediate Past President had several meetings to finalise the proposal for consideration of Central Government. However, both of them held the view that the change in the regulatory regime would require extensive consultation within the Cabinet, Government and Parliament and hence this may be taken up separately along with the recommendations of Justice Srikrishna Committee. To meet the immediate need, they decided to seek amendments only to change the nomenclature from company secretary to governance professional and incidental matters.

4. In the meantime positive consent was received from four members of the Council. Accordingly, President has sent a letter dated December 4, 2013 (Annexed) to Central Government seeking amendments to the Company Secretaries Act, 1980. "
To
Shri Naved Masood, IAS
Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan, New Delhi.

December 4, 2013

Dear Shri. Naved Masoodji,

Sub: Amendment to the Company Secretaries Act, 1980

The Council of the Institute of Company Secretaries of India feels that it is necessary to amend the Company Secretaries Act, 1980 to keep it relevant and appropriate to the current environment. While it has constituted a Committee under the Chairmanship of Justice B. N. Srikrishna, former Judge of Supreme Court of India to comprehensively review the Act, it decided, in its meeting on November 22, 2013, to seek an amendment to the Act to meet an urgent need.

2. The nomenclature ‘Company Secretary’ does not adequately capture or reflect what a company secretary typically does. Keeping in view his enlarged role envisaged under the Companies Act, 2013 and various other legislations and the role he has been performing on the ground over the years, it is felt appropriate that he/she be rechristened as ‘Governance Professional’ on priority.

3. We, therefore, seek an amendment to the Act on priority to rename the members of the Institute as governance professionals and consequential and incidental amendments to the Act and other legislations. A draft amendment bill in this regard is enclosed.

4. We would be very happy to provide any clarification as may be necessary.

Yours sincerely,

S. N. Ananthasubramanian

(CS S. N. Ananthasubramanian)

President

CC:
Shri Sachin Pilot
Hon’ble Minister for Corporate Affairs
Shastri Bhawan, New Delhi

Encl.: As above
Bill No. ------ 2014
The Company Secretaries (Amendment) Bill, 2014

A Bill further to amend the Company Secretaries Act, 1980.

Be it enacted by the Parliament in the sixty fourth year of the Republic of India as follows:--

1. Short title and commencement

   (i) This Act may be called the Company Secretaries (Amendment) Act, 2014.
   
   (ii) It shall come into force on such date as the Central Government may, by notification in the official gazette, appoint.

   Provided that different dates may be appointed for different provisions of this Act and any reference in any such provisions to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Amendment of Preamble

   In preamble to the Company Secretaries Act, 1980 (hereinafter referred to as the principal Act), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

3. In section 2 of the principal Act,

   (i) in sub-section (1),-

      (a) for clause (b), the following shall be substituted, namely,-

      “(b) “Companies Act” means the Companies Act, 2013 (18 of 2013)”

   (b) in clause (c), for the words “Company Secretary”, the words “Governance Professional” shall be substituted;

   (c) in clause (j), for the words “Company Secretary”, the words “Governance Professional” shall be substituted;

   (ii) in sub-section (2),-

      (a) in clause (a), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.
(b) in clause (c), for sub-clause (vi), the following clause shall be substituted, namely:

“(vi) an adviser to a company on governance, including any legal or procedural matter falling under the Companies Act, 2013 (18 of 2013), the Competition Act, 2002 (12 of 2003), the Depositories Act, 1996 (22 of 1996), the Foreign Exchange Management Act, 1999 (42 of 1999), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or any other laws for the time being in force,”

(c) in clause (d), for the words “Company Secretary”, the words “Governance Professional” shall be substituted.

(d) in clause (e), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

(e) in clause (f), for the words “Company Secretary”, the words “Governance Professional” shall be substituted.

4. In section 4 of the principal Act, in sub-section (5), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

5. In section 5 of the principal Act,-

(i) in sub-section (2), for the letters “A.C.S.”, the letters “A.G.P.” shall be substituted.

(ii) in sub-section (3), for the words “Company Secretary” wherever they occur, the words “Governance Professional” shall be substituted;

(iii) in sub-section (5), for the letters “F.C.S.”, the letters “F.G.P.” shall be substituted.

6. For section 7 of the principal Act, the following section shall be substituted, namely:

“7. Members to be known as Governance Professionals

Every member of the Institute in practice shall, and any other member may, use the designation of a Governance Professional and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other institute whether in India or else-
where as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Governance Professionals.”

7. In section 15 of the principal Act, in clause (h), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

8. In section 15A of the principal Act, in clause (c), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

9. In section 24 of the principal Act,
   (i) in sub-clause (ii) clause (a), for the words “Company Secretary”, the words “Governance Professional” shall be substituted.
   (ii) in sub-clause (iii) of clause (a), for the letters “A.C.S. or F.C.S.”, the letters “A.G.P. or F.G.P.” shall be substituted.
   (iii) in clause (b), for the words “Company Secretary”, the words “Governance Professional” shall be substituted.

10. In section 25 of the principal Act:-
   (i) in the title of the section for the words “Company Secretary”, the words “Governance Professional” shall be substituted;
   (ii) in clause (b) of sub-section (1), for the words “Company Secretaryship”, the words “Governance Professional” shall be substituted;
   (iii) in clause (c) of sub-section (1), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted;

11. In section 26 of the principal Act:-
   (i) in the title of the section, for the words “in Company Secretaryship” the words “as Governance Professional” shall be substituted.
   (ii) in sub-section (1), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

12. In section 27 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

“(1) No person other than a member of the Institute shall sign any document on behalf of a Governance Professional in practice or a firm of such Governance Professionals in his or its professional capacity.”
13. In section 28 of the principal Act, in sub-section (2), for the word “Secretary” wherever occurs, the words “Key Managerial Personnel” shall be substituted.

14. For section 37 of the principal Act, the following section shall be substituted, namely:-

“37. Maintenance of branch offices

(1) Where a Governance Professional in practice or a firm of such Governance Professionals has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute:

Provided that the Council may in suitable cases exempt any Governance Professional in practice or firm of such Governance Professionals in practice from the operation of this sub-section.

(2) Every Governance Professional in practice or firm of such Governance Professionals maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

15. In Section 38 of principal Act, the following section shall be substituted, namely:-

“38. Reciprocity

(1) Where any country notified by the Central Government in this behalf in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute established under this Act or from practising the profession of Governance Professional or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of Governance Professionals in India.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to Governance Professional shall be recognised for the purposes of entry in the Register”.

16. In Section 39 of principal Act,-

(i) in clause (j) of sub-section (2), for the words “Company Secretaries”, the words “Governance Professionals” shall be substituted.

(ii) for sub-section (3), the following sub-section shall be substituted, namely:-
“(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication on its web site or any other electronic mode.”

17. After section 40 of the principal Act, following section shall be inserted, namely:-

“41. Notwithstanding anything contained in any law for the time being in force, the Institute shall not be liable to tax on its wealth, income, expenditure, gift, profits or gains.”

18. In the First Schedule and in the Second Schedule of the principal Act,-

(i) wherever the words “Company Secretary”, “Company Secretaries”, “Company Secretaries in Practice” are appearing, the words “Governance Professional”, “Governance Professionals”, “Governance Professional in Practice”, as the case may be, shall be substituted.

(ii) in proviso to clause (10) of Part-I of the First schedule, for the words “Companies Act, 1956”, the words “Companies Act, 2013” shall be substituted.

19. Consequential Amendments to certain enactments.

On and from the commencement of this Act, for the words ‘Company Secretary’ or ‘Company Secretary in Practice’, wherever they occur in the enactments named below, the words ‘Governance Professional’ or ‘Governance Professional in Practice’, as the case may be, shall be substituted:

(a) the Companies Act, 2013 (18 of 2013);
(b) the Competition Act, 2002 (12 of 2003);
(c) the Depositories Act, 1996 (22 of 1996);
(d) the Foreign Exchange Management Act, 1999 (42 of 1999);
(e) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
(f) the Securities Contracts (Regulation) Act, 1956 (42 of 1956).