PCS
INDUCTION MANUAL
C O N T E N T S

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Need for maintenance of a good office with support facilities

While office with infrastructural facilities is an essential requirement it should be clearly borne in mind that the real work place is the market and with the market i.e., the client. The entire office and its paraphernalia must be geared to the requirements of the market sensitised in an emphathetic manner to the needs of the client organizations. Therefore it must be borne in mind that while the office will be the nucleus and the hub of the professional activities, its tentacles will always be extroverted to imbibe flexibility and responsiveness to the external changes. Therefore it is absolutely essential that while the office and its facilities should be slimmed and trimmed. They should never be bulky and heavy both on finances and time. Otherwise the competitive edge would be eroded.

Market orientation is the keyword today and the professional and the staff should be on the move to judge, appreciate and react to the changing external needs. In the support facilities priority will always be to those which give adequate latest information about the changes in the work requirements. The office must be equipped with latest journals in the area of work chosen by the professional and his colleagues.

The second requirement which is equally important is the communication system, be it e-mail, fax, telephone, a telex machine or a simple typewriter.

It may be kept in mind that one of the American authors studying Japanese economic miracle had identified one single factor responsible for the outstanding achievement by Japan viz. INFORMATIONALISATION
It may be obvious to surmise that informationalisation is possible only through latest books and periodicals and through efficient communication system. By efficiency in communication we mean quickness, timeliness and presentation. Each individual working in the professional’s office must be trained and tuned to this end.

One measure of efficiency from support facilities in the office would be the time within which any single inward communication (emerging from an outside source) is responded to. The response time should be minimum and the response given should satisfy the originator who is understood by means of the empathy developed. It may be pointed out that even a giant size organisation like IBM responds to any communication from the client within less than 24 hours. A professional is also in service industry and his performance will only judged by the quickness of response from his office facilities.

It is also essential that the people in the office are trained, informed, educated and updated on a continuous basis.

All these will require colossal patience, infinite respect for the other and continuous attempt to inform, explain, enthuse and stimulate the people in the office.

**Traits and Qualities Required in a Member in Practice**

Profession is tough and very demanding. But at the same time it is bound to reward the dedicated professional with great satisfaction, great joy and fun as well as monetary surplus. But the last is always the last and later than expected. This will be more so in public practice than in industrial service.

If that be so, then why go to practice at all? There will always be comparison with others who have gone far ahead in life, while the practicing person keeps on slogging hard to earn his daily bread and to keep his shelter.

The decision has to be taken by the member and it will be his decision alone, and let him take it fully faced with facts and an objective analysis if he wants to develop clean practice which alone can sustain him in the long run.

The practicing professional must first of all be happy and cheerful with himself. He must believe in hard and disciplined toil carried out
with cheer and positive disposition day in and day out. For the first few years at least he should prepare himself for 365 days-a-year and 24 hours-a-day occupation. He should carry a missionary zeal and relentless patience.

**Professional Work**

By its very nature it is inspiring, stimulating and challenging. It works with knowledge; with people; with organizations and with the self. Professional work has every increasing possibilities of interactive stimulation both for the body and the intellect. The professional has to be constantly on his toes and has to develop abilities to think rightly and quickly and solve that variety of problems that may be thrust upon him by client, the laws and the people.

Change and the rapid change is the hallmark of professional environment. This demands constant adaptability and flexibility on the part of the professional. This requires him to develop problem solving abilities without compromising with the ethics of the profession and eternal values of the society.

A professional has to be polite and firm without sacrificing his confidence, inspiring ability and well recognized values. In independent practice, because of the general outlook of pessimism the individual is susceptible to the pressures of the environment around him but the professional has the chance to wield tremendous influence to retrieve the values. This strength must be discovered by the professional for his own long term advantage.

An independent practice must not be started without a long term vision and without a sense of life long commitment to struggle against all odds with cheer and smile.

All said and done for success in the professional one should have two inevitable factors which are more of a mental and willpower category, then any physical features like handsomeness or polished manners. These two vital factors are:

(i) *Empathy*: It means ability to put oneself into the shoes of and into the frame of mind of every other person one comes across in the course of his professional work and ability to understand in order to mould.
(ii) *The need to succeed*: Success is not a matter of wishful thinking or a day dream. It is always borne out of the deeply ingrained commitment to succeed. Success should be an inevitable and unavoidable need. That alone will help him to succeed whether in convincing a client or in convincing a staunch tax collector or to convince a discerning Tribunal.

Empathy and the need to succeed combined together will surcharge the professional and his colleagues or juniors in the office to sweat both bodily and intellectually to acquire the distinct requirements of a professional life.

Having imbibed these two essential qualities the professional must develop the ability to set realistic goals at three levels:

(i) The immediate level
(ii) The short term level
(iii) The medium term level

The long term goal will be like an objective or may be a mission. The goals should be sent in the following spheres of activity:

(i) Personal goals
(ii) Knowledge goals
(iii) Financial goals
(iv) Market goals
(v) Books and equipment goals
(vi) Social goals

The process of goal setting can be simplified to overcome the psychological inertia and consequent procrastination. One can place on the table ten sheets of paper duly spread out marking personal goals, knowledge etc. Then immediately write down the goals that spontaneously come to mind according to the type to which they belong.

The same thing can be repeated after a week or fortnight and with attempt to reconcile into definite goals. They can then be categorized over the immediate, short term and medium term categories.
The exercise of goal-setting is a continuous exercise. It is very essential that progress against each category of goals is achieved simultaneously. In the profession it often happens that the progress is lopsided. In the exuberance of achieving professional excellence professional may forget or neglect family or social goals. This may create imbalance in the professional’s life. In order to avoid this, time slots should be allocated over a week or over a month for different goals set by the professional. Self appraisal of the performance may tend to become convenient or soft. Hence the professional should always keep his mind open towards criticism from different groups like clients, employees and colleagues, the Institute, the family members and the casual visitors. Just as in a factory environment the machinery and the technology will be constantly upgraded, in a professional environment it is essential to keep on imbibing new skills, manners, attitudes and response mechanisms.

For the purpose of achieving the above, the professional must inculcate within himself an extremely supple and flexible attitude. Keeping eyes and ears open may be easy but keeping the mind open is an extremely difficult task. Then the mechanism of the professional’s life becomes outdated, dilapidated and obsolete. Watching the habits and initiating process of changing them, — whether they be physical or mental or attitudinal — should be made second nature by the professional. Just as change and improvement is essential in life, in the world of professional service the change should be more palpable and perceptible in attitudes and behaviour patterns.

It has now become an ubiquitous practice to judge the person by his manners, and body language. In the professional environment it is the judgement and perception about the professional developed by the clients or other interested people which assume tremendous importance. Therefore the professional must continuously watch his ‘self’. Manner of speech, movement of hands, posture of standing or way of sitting in front of the client or any other person are all very important for the professional. He must remember that he is being constantly judged by reference to his outward appearance as a manifestation of his mental framework. Folding hands for example convey a protective and defensive attitude. Sitting with a curved body, with back into the back of the chair indicate nervous temperament. Standing on one leg instead of in a balance manner
or two legs indicates that the person is not fully chance. The professional, therefore, must learn etiquettes and mannerisms which point out a vigorous and positive, courageous and optimistic attitude. Such manners alone inspire confidence in the mind of the client or the employees.

But at the same time smartness and cleverness in behaviour should be singularly avoided. Sincerity and truthfulness often pay in the long run than the so-called smart behaviour. In order to change with the changing requirements of the professional world, the professional must develop flexibility of the body and the mind. A certain amount of varied exercise and yoga regularly every day would certainly help.

Above all it is necessary to develop a cheerful and positive outlook if one has to withstand vociferous demands of professional life.

To include, one may point to the stance from Katha Upanishad “A razor’s edge is difficult to pass over. So the wise say the path to Salvation is hard,” it is no more the Truth in any other sphere of work as it is in the world or professional practice. The only difference is that in professional practice one has to live in cheer more close to this harsh Truth, day in and day out than in any other walk of life.

**Infrastructure Necessary to Set Up Independent Professional Practice**

Any business entity needs basic facilities called infrastructure. The extent, the variety and the quality of the facilities will vary according to the size of the firm, needs of operation, area of operation and finance available.

In order to identify, choose and install infrastructural facilities one must have a possible list of such facilities before him:

1. Office space with flexibility to expand in foreseeable future.
2. Adequate furniture with work tables and chairs, shelves/cupboards for books, files, computer and stationery.
3. Internet connection, telephone connection with telex or fax if necessary.
4. Own vehicle.
5. Books with previous Law Reports, where necessary.
6. Projectors.

7. Dictaphone.

8. Telephone answering machine, if necessary.

9. Computer, photocopier and scanner, if necessary.

10. Facility to have confidential discussions.

11. Black board or acrylic writing wall-board for use in discussions or training.

12. Office manual giving information regarding timings, nature of work, nature of clients, organisation structure, rules and norms of conduct, control over expenses, time-reporting, work progress reporting methods, performance evaluation methods etc.


The professional should have a plan to acquire the required items from the above over a period of time.

The professional must also have a plan to suitably upgrade the infrastructural facilities over a period of time. He must be on the lookout for the changes taking place in these and make financial provision for such upgradation over a period of time.

**Importance of Quality of Service**

In planning for professional office one all-time fundamental should never be lost sight of. This is obvious but that is why it needs to be said, and said again and again. Quality is, was and will always remain the watchword, whether it be in the world of concrete products or in the subtle world of professional service. It is hard to define difficult to measure; and tough to achieve. Professionals must ask and answer three questions in order to attain intrinsic excellence in the firm’s activities:

1. Quality: What is it?

2. Quality: How to measure it?

3. Quality: How to build it?
Quality may be defined as ‘perceived value of professional service’. But that is just to coin a short phrase. As said earlier it is hard to define, but defined it must be. The following chart may be studied and constantly improved by a professional firm.

### QUALITY

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
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<tbody>
<tr>
<td><strong>1.1</strong> Timeliness of Service</td>
<td><strong>2.1</strong> Days beyond committed date</td>
<td><strong>3.1.1</strong> Preplanning</td>
</tr>
<tr>
<td><strong>1.2</strong> Appearance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>1.2.1</strong> Papers</td>
<td><strong>2.2.1</strong> Grammar, Style Typing, Quality of paper, Report Design</td>
<td><strong>3.2.1</strong> Quality control before delivery-stationery planning</td>
</tr>
<tr>
<td><strong>1.2.2</strong> People</td>
<td><strong>2.2.2</strong> Clothes, Shoes, Wishing, Sitting Neatness, Diplomacy, Politeness, Presentation, Smile</td>
<td><strong>3.2.2</strong> Training, Nurturing of Culture Discipline</td>
</tr>
<tr>
<td><strong>1.2.3</strong> Office</td>
<td><strong>2.2.3</strong> Cleanliness, Décor, Neat arrangement of files, Attendance Confidence, Facility</td>
<td><strong>3.2.3</strong> Discipline</td>
</tr>
<tr>
<td><strong>1.2.4</strong> Telephone</td>
<td><strong>2.2.4</strong> Completeness of information, Quick Reply</td>
<td><strong>3.2.4</strong> Training telephone operator</td>
</tr>
<tr>
<td><strong>1.3</strong> Value Addition</td>
<td><strong>2.3.1</strong> Cost Saving Effected</td>
<td><strong>3.3.1</strong> Cost consciousness for Client work – Speed of work; Clear vision</td>
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<tr>
<td></td>
<td><strong>2.3.2</strong> Tax Saving</td>
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<td></td>
<td><strong>2.3.3</strong> Time Saved</td>
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<tr>
<td>2.3.4</td>
<td>Innovation</td>
<td></td>
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<tr>
<td>1.4</td>
<td>Expertise Depth &amp; Breadth</td>
<td>2.4.1 Vertical &amp; Horizontal variety in work</td>
</tr>
<tr>
<td>2.4.2</td>
<td>Number of Periodicals read &amp; digested</td>
<td>3.4.1 Staff stability and internal mobility</td>
</tr>
<tr>
<td>2.4.3</td>
<td>Practical Solutions offered</td>
<td>3.4.2 Paper Contribution in seminars article writing</td>
</tr>
<tr>
<td>1.5</td>
<td>Clarity</td>
<td>2.5.1 Absence of re-work/further queries from clients</td>
</tr>
<tr>
<td>2.5.2</td>
<td>Quick acceptance of reports</td>
<td>3.5.1 Scientific selection of Professional staff</td>
</tr>
<tr>
<td>1.6</td>
<td>Maintenance of Confidentially</td>
<td>3.6</td>
</tr>
<tr>
<td>1.7</td>
<td>Working Papers</td>
<td>2.7.1 Instances of paper untraceability</td>
</tr>
<tr>
<td>2.7.2</td>
<td>Instances of having to check back with the concerned professional for clarification of work done by him</td>
<td>3.7.1 Proper filing system</td>
</tr>
<tr>
<td>2.7.3</td>
<td></td>
<td>3.7.2 Indexing each file</td>
</tr>
<tr>
<td>3.7.3</td>
<td></td>
<td>3.7.3 Intra office communication made frequent and more purposeful</td>
</tr>
<tr>
<td>1.8</td>
<td>Client convenience</td>
<td>2.8.1 Appointment missed</td>
</tr>
<tr>
<td>2.8.2</td>
<td>No. of client complaints</td>
<td>3.8.1 Client listening &amp; Client rapport</td>
</tr>
<tr>
<td>3.8.2</td>
<td></td>
<td>Pre-planning of work on each file</td>
</tr>
<tr>
<td>3.8.3</td>
<td></td>
<td>Special attention to each client’s need.</td>
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So much has been written on the aspect of planning for quality; but it is still woefully inadequate. A lot of thorough and considered action is required in planning for quality of professional services.

Quality alone is the long term strategy to ensure continued success. Perfection is the hallmark of professional services; an attribute that is forever elusive and yet must forever be cherished.
Setting up of an office for running professional practice requires capital expenditure. A fresh Company Secretary may not have the wherewithal to arrange the sources for meeting such initial capital expenditure. One of the options available to such a professional is to opt for a low cost loan.

**Corp Professional - Loan for Professionals for acquiring office premises**

**Corp Professional - for acquiring Office premises by professionals**

1. **Purpose**

To finance acquisition of office premises for self occupation by the Registered Medical Practitioners, practicing Advocates, Chartered Accountants, Company Secretaries, consulting Engineers and Architects.

For purchase of ready built office premises/ premises under construction in commercial complexes/ independent building, construction of office premises in the land already owned. OR purchase of site and construction of office premises thereon.

Where loan is for purchase of site and construction of office premises, value of the land not to exceed 50% of the project cost.

Loan for purchase of office furniture & fixture, solar water/electricity systems also considered for use at the office premises acquired under the Scheme.

Maximum age of the ready built property - 20 years.
2. **Eligibility**

Professionals, individually/jointly or as a Partnership firm/Company, having an established practice with a minimum experience of three years, in the age group of 25 to 65 years.

The applicant should be an Income Tax assessee with Minimum NET annual income of Rs. 1,50,000/-. The applicant not having any outstanding statutory dues.

Spouse having regular/independent income also can join as co applicant to supplement repayment capacity.

Businessmen not eligible for finance under this Scheme.

3. **Nature of facility**

Loan in the form of Term Loan.

4. **Quantum of Loan**

Upto Rs. 100 lakh in Metro & Port-town, Rs. 50 lakh in Urban, Rs. 25 lakh in Semi-urban and Rs. 5 lakh in Rural places.

Loan amount as above is based on the location of the property and not category of the Branch.

5. **Margin**

Uniform margin of 35% on cost of construction/purchase consideration [the agreement value inclusive of stamp duty/registration, etc..] 40 % for furniture and fixtures etc..

Where loan is for purchase of site and construction of office premises, value of the land not to exceed 50% of the project cost.

6. **Rate of Interest**

Visit the nearest Corporation Bank’s branch for details.

7. **Security**

Fully secured by Equitable Mortgage of Office Premises. Also, hypothecation of furniture & fixtures financed.
8. **Guarantee**

Third party guarantee not mandatory.

9. **Repayment**

The loan is repayable in EMI, in maximum period of 10 years, including initial moratorium of upto 12 months.

Repayment capacity is based on Debt Service Coverage Ratio (DSCR), irrespective of loan amount.

10. **Processing Charges**

0.75% of loan amount subject to a minimum of Rs. 5,000/-. 

*Note*: The charges are exclusive of applicable service tax.

11. **Prepayment Charges** - Nil.

12. **Professionals**

"Professionals" for the Scheme would mean and include:

- Medical Practitioners, Chartered Accountants, Cost Accountants, Company Secretaries, Lawyers, Solicitors, Engineers, Architects, Surveyors, Construction Contractors, Management Consultants, Free-Lance accredited Journalists/Cameramen OR a person trained in any other art or craft who holds either a Degree OR Diploma from any institution established, aided or recognized by Government OR a person who is considered by the Bank as technically qualified OR skilled in the field in which he is engaged etc.
As Company Secretaries, you are quite commonly required to draft legal documents, resolutions, minutes, notices etc. and give opinions on interpretation of various corporate laws. Since Practicing Company Secretaries (PCS) are now also allowed to practice before the NCLT, you as PCS, may be required to even draft ‘statement of case’. Hence, it is very important for you to develop these skills.

Effective Writing

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

• *Be clear.* The meaning should spring instantly from the words and should not need to be pondered, reread or analysed. An opinion may try to explain a complex situation so that it can be understood. A statement of case tries to define issues and bring them into the open. It follows that there is a great need for clarity in what a drafter writes. If it cannot be understood by those reading it, or if it is open to different interpretations, not only is it poorly written, but it has failed to serve the very purpose for which it was written. Clarity of expression can never be achieved without clarity of thought behind it.

• *Avoid ambiguity.* Ambiguity is a loser. Too much ambiguity has great potential for misunderstandings. When you are writing in a legal context you must be aware of all different viewpoints from your words might be seen and ensure that what you write is genuinely unambiguous. You should reckon that if what you write could reasonably bear another meaning than that which you intend, someone somewhere
will probably try to read it in that way. Learn to be aware of and avoid all possible ambiguities.

• Be precise. Everything you should ideally say exactly what you want to say, neither more nor less. There are degrees of precision. You will have to write with great degree of precision. This is particularly true of opinions and advices and quite fundamental in drafting. In statements of case there have to be absolute precision. The words you use must be chosen for their precise meaning; the sentences you write must be composed to convey a precise sense. Lack of precision will result in a degree of confusion or at worst it may mean you are in effect telling lies.

• Be concise. Write what you have to write in a reasonably brief manner. This does not mean it should be abbreviated, or even short; rather it should be succinct and to the point. Try to avoid repetition and long-windedness. Leave out what is unnecessary or that which obstructs your flow or meaning without adding anything. But beware of trying to be too concise. If what you are writing merely becomes a summary of what you mean to say, it will not do. Note that clarity is more important than brevity.

• Be complete. This is a quality which must be balanced with conciseness. When you write, you must express your ideas completely. If incomplete, it is almost certainly imprecise, ambiguous and unclear. Especially in contracts, if you don’t cover something, it’s up to the judge. Boilerplate is not really necessary, yet it is usually used for a reason — it is comprehensive in most cases. Just make sure to tailor your writing to the appropriate contract.

• Have logical structure. Clarity very much depends on the structure of what is being written. The whole piece of writing needs to be composed in a clear and coherent manner. This means that the structure should be logical. Remember to organize things logically, and make it so that if someone is looking for the integration clause, he or she doesn’t have to flip through all pages.

• Avoid spelling errors. Spelling errors make you look
unprofessional. Take all reasonable steps towards eliminating them. The first step is to accept that spelling matters. In the modern age a great many spelling mistakes occur not because the writer cannot spell, but because he or she is clumsy on the keyboard makes typographical errors, and then fails to correct them. A computerised spell checker can pick up a great many of them, but never all. A spell checker will often suggest a wrong word and certainly is not capable of identifying correct homonyms (e.g., "suite" versus "sweet") or pointing out all typos (e.g., if you typed "then" when you meant to type "the"). It is, therefore, your responsibility, not your computer’s, to make sure your spelling is correct. Of particular importance in the professional world is to spell names correctly especially that of your client. Always study the spelling of any name you are given and make sure you reproduce it precisely.

- **Avoid grammatical errors.** The rules of grammar dictate word forms, word order and sentence structure. If a very is in a wrong tense, an adverb in the wrong place or a sentence improperly composed, the only possible result is obscurity of meaning. Grammar is particularly important where you are using long sentences. Any grammatical inconsistency is therefore likely to destroy the value of the long sentence. You cannot write clearly if your writing is not grammatical.

- **Use Proper Punctuation.** Punctuation can be crucial to the meaning of a legal document. Take care to use full stops, commas, semicolons and colons properly and the right places. The sense of a sentence can be destroyed by a wrong punctuation at a wrong place. Take particular care over punctuation when drafting. Drafting can occasionally involve complex grammatical structures, long sentences and numbered sub clauses. The wrong punctuation can easily destroy the whole relationship between various parts of the sentence or detach a sub clause from the main clause to which it belongs. The choice of punctuation marks is just as much a part of drafting as the choice of words.

- **Avoid passive voice.**

- **Be plain and straightforward.** Legal language remains largely
unintelligible to most members of the community. It even causes problems for the members of legal profession. It is very easy to fall into the habit of writing like this, because such language is all around you, in precedents, forms, contracts, statutes etc. This kind of legal writing presents a barrier to effective communication. Being cute or clever when it isn't necessary can be distracting. Plain, clear English is what you need — not too much Latin and five-syllable words or legalese.

- **Be Elegant.** Elegance is something we recognise and appreciate when reading a piece of writing. It is a matter of artistic impression. It is also very much a matter of flow and rhythm. No one can tell you how to write elegantly. It is for you to decide. Elegance should be sacrificed to some degree if it is in conflict with precision, non-ambiguity, completeness or clarity.

- **Be polite.** It may feel good to make those stinging, snide comments about the other company or to the other side…but this won't be your only case or dealing with them. If you need to get a point across, doing so tactfully is better.

- **Appeal visually.** It will help make your proposal attractive. Do use white space and short paragraphs. Tables of contents can be used as well and are greatly appreciated in lengthier drafts. Breaking up long paragraphs into subparagraphs and numbered lists is nice too — it makes it easier to pinpoint cite a particular provision. This also goes for most documents, such as articles of incorporation, etc.

- **Have the reader in mind** when you write. An opinion or a legal document may be addressed to anyone but frequently a lay client will wish to read it and it should be comprehensible to him or her. Always be aware of the characteristics and background of the likely reader of what you write and gear it to that reader.

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

1. Have a strong mindset to improve your writing skills and believe that you can do anything and everything.

2. Read writings of others regularly. While reading, underline those words for which you don't know the meaning. Then, refer the dictionary and know the meaning. Try to find meaning for at least 30 to 50 words a day. Also, try to understand the whole sentence where you find the word. You need to do this for a minimum of 6 months to one year and many professionals and even successful personalities do this throughout their life.

3. You should know basic grammar. Refer basic grammar books and understand the substance. Concentrate on basics first.

4. Before starting to write anything, make sure what you want to say.

5. Practice writing. Write something regularly. Note down your experience, send mails and write an article.

6. If you are uncertain of the spelling of a particular word, use a dictionary.

7. If you cannot think of the word which conveys precisely what you want to convey, use a thesaurus.

8. After doing all the things referred to above for some time, then, communicate with others in English and participate in discussions with friends and intellectuals in English. But get basics first before going to speak in English.

9. While doing all these things, you tend to be good at professional drafting. It’s all practice and it makes one perfect.

10. Ultimately, you should constantly read and write and it should be your hobby and in the course, you will be master in communication.

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

Drafting means the composition of legal documents; or any other piece of writing with a legal content or which serves a legal purpose. When composing legal documents; every word counts, every word must be chosen with care, every phrase must be apt, every sentence should be immaculately constructed. This means that there is less fluency in the writing process. Drafting involves trial and error, chopping and changing, until what you have is right.

Whatever document you are composing, it is intended to serve a purpose or fulfill a function. Your aim should always be to make sure it serves that purpose or fulfills that function to perfection. If it is to do this, it must have all qualities of good writing as explained above. When you approach the task of composing, you must always know what purpose the document is to serve, exactly what you want to say in it, for whose benefit it is being written and what pitfalls you want to avoid.

In choosing to become a professional, you have chosen to put yourself forward as someone who can and will write to such a professional standard. This means that you must be highly skilled in the English language. You must be able to write without error. You must understand the precise meaning of every word you use. You must understand the structure of sentences and how to punctuate them. You must be able to develop an argument over a series of paragraphs. You must convey your meaning and reasoning accurately in words.

Basic drafting skills are transferable i.e. if you can draft well, you can draft anything.
Basic Approach towards drafting

It has been said that there is no such thing as good writing: only good rewriting. If true, this is particularly apt in drafting. You cannot get away with your first attempt. You need trial and error. You also need a structured approach. No matter what you are drafting, the following basis approach will almost certainly work.

1. Analyse and research

The starting points are the facts and the law. You should know the facts of your case. You either know or can look up or research the law. The law then shows you how to organise and give legal significance to the facts.

2. Determine the essential content of your draft

You must identify – may be in your head, may be in list form, may be through various notes – everything that you must include in your draft. This may be dictated by law (for example, the essential ingredients of a cause of action when you are drafting a claim), by the needs of your client (for example, when you are drafting an injunction order), by your own logic (for example, in a skeleton argument) or by what is needed to prove a case (for example, in a witness statement). There may also be rules of court that require certain content, and this will need to be added to your list. Without this content properly identified, it is impossible to go further.

3. Create a skeleton plan

Always plan your draft first. Never begin to actually draft until you have a skeleton plan, showing how many paragraphs you are going to have, what the content of each paragraph will be, in what order the paragraphs will come, and so on. Try to give each paragraph a ‘name’. This may turn into a subheading, or it may just be for your own use. But it helps you to focus the content of each paragraph and keep to the point. Then note fairly fully everything that you will want to put in each paragraph. This does not mean you start to draft it, but you should ensure that every essential detail is clearly placed in its appropriate paragraph. If you are superficial or
simplistic about this process, you are likely to miss out something important.

4. **Check the plan against your list**

   Go back to the list you created at step 2, and ensure that your content and structure are perfectly matched and organised.

5. **Draft one paragraph at a time**

   Now start to draft. You should work on your draft one paragraph at a time, knowing exactly what you are trying to say in that paragraph. You have already worked out the contents in the skeleton plan. Thus, you can concentrate only on the language. This makes the paragraph easier to draft.

   Work on each paragraph in turn, experimenting until the words say just what you want them to say and in the right way. Remember the ‘name’ you gave to the paragraph. You should ideally draft it in such a way as to signal early on what it is all about. This aids comprehension.

   By the time you have finished with that paragraph, it should be instantly comprehensible, precise, unambiguous, concise, grammatically correct, elegant, and, as far as possible, in plain English. Once this is achieved, you can go on to the next paragraph.

6. **Look back over your draft**

   Never just assume you have finished your draft when you get to the end of the last paragraph. Read it several times. Look particularly at the bits where as you were drafting you thought. It should be rare indeed that you do not find improvements or alterations that you want to make.

**General guidelines for drafting in plain English**

1. Use plain words and phrases that most people are familiar with.

2. Keep sentences length short, not more than 15-20 words.

3. Avoid verbiage. Eliminate the words which are superfluous.

4. Prefer single word instead of a group of words.
5. Replace legalese (words which have no special legal meaning but have legal flavour) by simple, familiar words.

6. Prefer active voice unless passive voice is more effective.

7. Avoid non-English (mainly Latin) words and phrases.

8. Avoid archaic, outdated, old-fashioned words and phrases.

9. Do not use two or more words where one would be enough.

10. Use verbs instead of nouns.

**Drafting Statements of Case**

Statements of case are court documents which include the claim form, particulars of claim, the defence, a counterclaim, reply to the defence and requests for further information and clarification. Taken together, these documents indicate the facts that are in dispute between the parties and the relief sought. Statements of case contain the factual basis upon which the claimant or defendant relies in making their claim or defence, and set out the facts that the party to the legal proceedings relies upon to prove its case; i.e. how the litigant pleads its case. Such documents are summaries of the material facts relied upon by the party drawing the document, must be supported by a statement of truth and sometimes referred to as pleadings.

**Contents of Statement of Case**

A. Title of the proceedings stating the claim number, the court in which the claim is proceeding, the full name of each party and his status in the proceedings (i.e. Claimant / Defendant)

B. Particulars of claim / defence including a concise statement of the facts on which the claimant / defendant relies. The claimant should set out the facts which (1) constitute the specific cause(s) of action, (2) give rise to damage being suffered, (3) show causation between the acts of the defendant, and (4) the damage suffered. The remedies sought should form part of the prayers at the end of the particulars of claim. A defence should set out where applicable (1) why the cause of action of the claimant cannot be maintained, (2) damage has not arisen, (3) the reasons why the defendant is not liable for damage suffered by the claimant.
C. May or may not contain evidence.

D. State all the material facts. Do not include law and evidence. Be concise. Use plain English.

**Things to remember while drafting the statement of facts:**

1. You should present only the information which is relevant to understanding those points which are in dispute and the arguments which you will present on those points.

2. Remember at all times that you are not neutral; you are advocating your client’s position. This means that you should emphasize the facts that are favorable to your client, that you should present them forcefully, and that you should use affirmative language to describe them. This does not mean that you may misstate facts, be untruthful or disregard critical facts that are adverse to your client.

3. You must point out adverse facts. The surest way to undermine your brief is to omit facts that are important to the case. If you ignore critical adverse facts, the opposing counsel will discredit your brief by pointing them out. This does not mean, however, that you must make the opposing counsel’s case. While you must be truthful and candid in relating adverse facts, you should not present them forcefully or affirmatively, as the opposing counsel surely will. It is possible to minimize the impact of adverse facts while being truthful and accurate. Two techniques are to use the passive voice and weak descriptive terms, especially verbs.

4. Use detailed facts to paint the picture you want the court to see. However, use only those details that are essential to that picture. If dates, names and numbers are not important, do not include them.

5. Do not use conclusory facts that only hint at what happened. Be specific in explaining what happened.

6. Organize your presentation of the facts in some logical order. Most of the time, the best method is to present the facts chronologically. Some, however, prefer to organize the facts around the issues as they will appear in the arguments section of the brief. This can be tricky, so you use the chronological approach.
7. Check your grammar and spelling carefully.

8. Consider the statement of the case that you have written as a draft that you will consult often as you write the argument section of the brief. After you have finished the argument section, re-write or make adjustments to the statement of the case. Add any facts not in the statement but which you refer to in your argument.

**Drafting Legal Documents**

A legal document is a document that states some contractual relationship or grants some right.

**Principles of Legal Drafting & Care to be taken**

*General Rules*

- Instructions, Identify the end object: - All documents produced by a CS are produced in order to carry out a client’s instructions. The PCS must work out with the client what needs to be done, applying legal knowledge and skills to the client’s business or personal situation. As with any work, it is important to check that instructions have been given by the appropriate person. If not, make sure the instructions are checked with the appropriate person or people. It is also always necessary to consider whether the instructions can be accepted at all. You must of course consider whether you can accept the instructions in light of professional conduct rules. When taking instructions, do not assume that the person instructing you knows the law. Your job is to arrive at the correct legal solution to the client’s problem. You may appreciate that there may be more than one solution, and you must identify with the client the client’s primary goals and concerns.

- Analyse all the relevant factual & legal issues, applicable law, case law: - You must assimilate and analyse the actual factual context according to your instructions. Only then can you formulate a clear idea of what the draft document should contain. Equal importance should be afforded to consideration of the law affecting the agreement to be prepared. Are there any restrictions to what is being
proposed? Check up by researching the texts and original sources. Time spent before drafting on analysing the factual situation and the legal context into which the document is to be set is never time wasted.

• Determine the nature of document(s) to be drafted i.e. a sale deed, lease agreement, arbitration agreement, Director’s Appointment Agreement, Specific Power of Attorney etc.

• Responsibility for drafting:— When drafting an agreement between two or more parties it is necessary to establish which party will be responsible for producing the first draft. In some common transactions there are conventions: (a) In conveyancing, the seller will usually prepare the draft contract, whilst the buyer will prepare the draft conveyance or transfer (b) In share purchase transactions, normally the purchaser will prepare the agreement and deed of indemnity and, by incorporating various warranties, require disclosure by the vending shareholders. (c) In a leasehold context, it will be the landlord’s solicitor who will prepare the lease and any licences. In other matters the parties should agree where the responsibility for the production of the first draft lies.

• Identify different structures of the draft and choose the most appropriate one after considering stamp duty saving, tax efficiency.

• Using a precedent:— Precedents can be very helpful in drafting, but they must be used with care. A precedent should be seen as a checklist against which you ensure your draft does not omit material matters. Before you can find the precedent or precedent clauses most appropriate to your needs, you must have analysed the precise factual and legal context. Then read the precedent. Never simply reproduce it.

• Coverage of all aspects:— You should give each clause an appropriate heading and number each clause and sub-clause consecutively. Provided the numbering (or even lettering) is consistent and internal references correct, adopt the style you find most comfortable. The draft should follow your skeleton outline which you prepared from your client’s instructions.
Once drafted, read through the document carefully to make sure that clauses do not conflict with each other.

- Appearance, style and content of the draft: Proper spacing & numbering, consistent use of definitions, Use of grammar, punctuation marks and active voice.

- Amendments, deletions, new clauses should be seen as track mode. Whichever method of amendment you adopt, make sure that both the content and the position of your amendments are obvious. Always check that your amendment has been considered. If you delete a clause, ensure that any consequential renumbering is also made and that cross-references are suitably amended. If there is more than one document under consideration, for example, in a share purchase with deeds of indemnity, schedules of warranties and option agreements ensure that your amendment operates consistently throughout the documentation.

- Checklists:
  - Execution & closing.
  - Post closing document maintenance.

**Sections of a legal document**

(a) Date;
(b) Specification of the nature of document;
(c) Description of Parties;
(d) Recitals;
(e) Definitions;
(f) Main agreement:
  - Operative clause
  - Consideration, mode and manner of payment and receipt
  - Representation & Warranties
  - Indemnity
  - Covenants
  - Options : put, call, tag along, drag along
• Non-compete
• Right of First Refusal / Right of First Offer

(g) Boilerplate clauses: jurisdiction, **entire agreement**, arbitration in the event of disputes, service of notices; waiver; confidentiality; assignment, survival, governing law;

(h) Signature clauses;

(i) Schedules & tables;

(j) Plans;

(k) Formats of future docs.

There's a distinct, stereotypical legal style, and an effective legal style. Usually they are worlds apart. Who needs to reread 10 times some paragraph that is packed like Humpty Dumpty's portmanteau words? Reading some contract filled to the brim with "whereas the party of the first part asserts to the party of the second part" is just dull. It lessens understanding, even if you can show off your vocabulary to the max as well as confuse the issue.

There is a great deal to learn and a great deal to be said about drafting. But, in the end, you learn to draft by experience and practice, not by being told how to do it, which is why this is a comparatively short introduction. There is only one way to develop your drafting skills by having a go and trying it out for yourself. What, at first sight, seems daunting becomes relatively straight forward with experience and practice.

**Drafting Resolutions & Minutes**

*Style of writing minutes*

The term 'minutes' (used in plural) denotes an official record of what was said and done at a meeting, convention, etc; the official record of the proceedings at a meeting; a summarized record of the proceedings at a meeting. It denotes records of business transacted at general meetings, board meetings, and meetings of committees of directors.

Minutes contain record of proceedings of meetings, including decisions taken and resolutions passed at it.
Every company is required, under section 193 of the Companies Act, 1956 to keep minutes of all proceedings of-

- Every meeting of the board;
- Every meeting of every committee of the board; and
- Every general meeting.

Section 193 of the Companies Act, 1956 requires the minutes of each meeting to contain a fair and correct summary of the proceedings there at.

The Act does not give any guidance as to the style of drafting minutes. Conventionally, there are two styles of minutes: (1) minutes of resolutions; and (2) minutes of narration. It is often useful and appropriate to combine elements of the two.

A resolution included in the notice or agenda of a meeting is a proposal (to be considered in the future) whereas a resolution recorded in the minutes is decision taken (in the past). Traditionally, a resolution written in both these documents is the same though one is for the future and the other is of the past. Both are written in the present tense. The difference is only in the preamble. For example, in the notice of a board meeting, it is usually written: “The following resolution shall be (or ‘will be’) placed before the Board.” And in the notice of a general meeting it is written: “To consider and pass the following resolution as an ordinary resolution.” After the meeting, the minutes usually state: “The following resolution was passed unanimously (or ‘by majority’).” So, the text of the resolution as stated in the notice/agenda and as recorded in the minutes is the same.

Specific guidelines for drafting resolutions

(1) Use plain alternatives for trite words and phrases.

(2) Keep sentence length limited to 20-25 words. Use lists with numbers or bullets to break long sentences.

(3) Don’t use the phrase For the purpose of considering, and if thought fit, passing, with or without modification(s), the following resolution as an Ordinary Resolution (or its twin To consider, and, if thought fit, to pass, with or without modification(s), the following resolution as an Ordinary
Resolution. This wordy phrase is a needless appendage without meaningful contribution and not legally required.

(4) Omit all unnecessary words, phrases and sentences which contribute nothing to the substance of the resolution. For example, after "the Companies Act, 1956" the words (including any statutory modification(s) or re-enactment thereof for the time being in force) contributes nothing. At the most say the Companies Act, 1956 or the new Act, if enacted in its place.

(5) Prefer plain words and phrases to the conventional heavy words.

(6) Avoid separating the parts of a sentence, clause or phrase, or the parts of a compound verb, by inserting another verb, clause or phrase.

(7) Use one-word alternatives rather than a group of words, such as directorship for office of director.

(8) Give details which are nothing but formal appendages, which contribute nothing to the substance of the resolution, separately, even below the resolution with asterisk or note, or in the preamble or explanatory statement such as the agreement a copy of which duly initialed by the chairman was placed on the table; in respect of whom the company has received a notice under section 257 of the Companies Act, 1956 etc.

(9) Get rid of the notion that a short resolution is a crime or that it is invalid and that a resolution has always to be clumsy, involved and unintelligible piece of writing.

**Specimen resolutions**

1. **Board Resolution**

   "RESOLVED that pursuant to section 295 and all other applicable provisions of the Companies Act, 1956 and subject to the approval of the Central Government, a loan of Rs.5,00,000 be given to Mr. A, a director of the company which is repayable over a period of five years at an interest of 2% p.a. and other terms and conditions as laid down in the"
agreement placed before this meeting and initialed by the Chairman for the purpose of identification.

RESOLVED FURTHER that the Secretary of the company be authorized to make the necessary application to the Central Government for obtaining approval and to take steps that may be necessary in connection therewith.

2. General Meeting – Ordinary Resolution

“RESOLVED that subject to the sanction of the Central Government, consent be and is hereby accorded to the lending of a sum of Rs. 5,00,000 to Mr. A, a director of the company repayable over a period of five years with an interest @ 2% p.a. payable in equal monthly installments and on such other terms and conditions as may be approved by the Board of Directors.

RESOLVED FURTHER that the Secretary of the Company be authorised to make necessary application to the Central Government for obtaining approval and to take steps that may be necessary in connection therewith.”
OPINION WRITING

Introduction

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

Need for a Legal Opinion

• Interpretation of statutes or documents
• Advise a transaction structure
• Opinion for guidance of decision makers in commerce, industry or government
• Opinion to Lenders on enforceability of Finance Documents
• Opinion for Investors for compliance by Target Companies
• Opinion on Foreign Direct Investment
• Determining provision for contingent liabilities or determination of contingent assets
• Merits or demerits of legal proceedings
• Provision for contingent liabilities or Identification of contingent assets
• Merits or demerits of legal proceedings
• Initiating civil or criminal proceedings
• Drafting a pleading
• Preparation for trial of arbitral or legal proceeding
• Opinion for guidance of decision makers in commerce, industry or government
• Ascertain compliance level for issue of securities and identification of risk factors for investors
• Valuation of business.

Formulation of a Legal Opinion

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

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

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

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

I. The Mental Attitude

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

(a) You are dealing with a real situation.

(b) The facts are more fundamental than the law.

(c) The law is a means to an end.

(d) Answer the question.

II. The Thinking Process

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

(a) Read and Digest your Instructions :- Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.

(b) Answer the primary question :- You must have a clear idea of what your client wants to know if you are to address your mind to the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.

(c) Digest & Organise the facts :- The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not. A legal opinion must focus on the relevant facts, but it may also be necessary to specifically advise that certain things are not relevant. The first stage will be about organising the facts of the case into these categories. It is a matter of personal preference how this is done, but charts and schedules are often useful and a chronology should be a starting point for every fact marshalling exercise.

(d) Construct a legal framework :- Once the facts are at your finger tips, a legal framework needs to be constructed into which these facts can be logically slotted. Different types of cases will involve different legal frameworks, but
whatever the legal issue, the legal opinion must be continuously advising on the strength of the client’s position in the case. One question which is implicit in every request for a legal opinion is ‘what should be done next?’ This should be decided at the planning stage and should inform the legal opinion throughout.

(e) Look at the case as a whole :- What should also be borne in mind throughout the planning stage should be the opposing case. A legal opinion will be useless if it considers the client’s case in isolation. Evidential issues must also be considered. A good legal opinion will always address how a particular factual situation can be proved.

(f) Consider your advice :- What your client needs is good practical advice, so you should consider also the practical steps that you advise your client to take.

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

III. The Writing Process

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

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

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

The subsequent paragraphs should set out your reasons for
reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each issue should be taken in its logical order. Each section should include your opinion on that issue and the reasons for it.

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

**Using the Law in a Legal Opinion**

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

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

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

Structuring a Legal Opinion

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

Issues and law must fit together so they may be presented in a way that they hang together and present a coherent image.

Legal Opinion may be sought from Internal CS or External CS i.e. PCS. Both the cases are discussed below.

Opinions from Internal & External Experts

Opinions of Internal CS:

He/she should evaluate:

- Query and Nature of query?
- All facts made available?
- Who needs it?
- Any intended opinion or freedom afforded?
- Time bound or not?
- Referral materials required and available?
- Oral opinion or required in writing?
- Likely need for confirmation from external source?
- Any likelihood of any litigation?
• Destinations of the opinion?
• Privileged Communication or not?

Opinions of External / PCS

Duties of Internal CS

1. Prepare a properly structured ‘case for opinion’ with all essential facts except what you need to share only orally.

2. Decide who is the right person to give opinion in the matter e.g. for labour matter do not go to a corporate lawyer. Go to a right MD and not to an MBBS.

3. Decide whether you need a briefing lawyer or you can handle briefing yourself. Some counsels do not entertain client’s direct briefing!

4. Take appointment for sufficient time so that proper interaction is possible.

5. Carry with you all required papers, files, your research work, bare acts, citations, extra copies of ‘case for opinion’ etc.

6. If the counsel had given opinion in any similar matter earlier (he would have forgotten) keep the same handy.

7. During the conference, keep the concerned departmental person also with you to answer any instant questions on practices, payments, and related issues e.g. how many total workers – permanent and badli, day to day dispatches of goods in terms of number of trucks etc.

Duties of External / PCS

1. Remember your opinion will decide your client’s further course of action and any negligent opinion may cause the client loss of lacs and crores plus loss of reputation.

2. If the ‘case for opinion’ forwarded by the client and the supporting attachments are inadequate, call for whatever the additional details required in advance.

3. Give adequate time to the client during the conference and be patient to address his anxieties and queries.
4. If in your honest considered opinion no favorable suggestions/opinions possible and the consequences are grave, be frank about it.

5. Do not make your opinion long and bulky to simply justify the weight of your bill!

6. Remember on your opinion lies also your reputation. Do not create public opinion that opinion can be procured from you.

Contents of a Good and Respectable Opinion

1. Give brief background of all the facts originally given and additionally called for in the matter along with the materials/documents submitted and perused. Also mention about the legal status and activities of the querist. If necessary, reference to the name of the executive(s) & dept. giving explanations and seeking the opinion may be mentioned.

2. Never fail to touch upon the relevant charging section in case of revenue statute and definition(s) in the Statute (Act), if available or the meaning assigned in General Clauses Act or meaning given in Law Lexicon or where advisable simple common parlance meaning depending on case to case.

3. It is equally important, dependent upon the query to analyse the Constitution of India, Relevant Articles, Seventh Schedule of Constitution- State list, Central List or Concurrent list and Relevant Entries

4. The queries as raised in the case for opinion should be reproduced verbatim in serial order and wherever necessary improve and rephrase the query to bring out better clarity.

5. Answer to the queries should be seriatim and specific. Where necessary, a couple or more related queries may also be clubbed for common opinion if the answer is going to be common. The reader of the opinion should be able to make out the answer is ‘yes’ or ‘no’.

6. If answer to any query does obviate the need to answer other/further query/ies, then you may mention that in view of answer to query no. _____ there is no need to answer query no. ______. Opinions also state “please refer answer to query no. ____”
7. A good opinion is specific and not gool–gool without touching the goal! Poor client on a misleading opinion may reach gaol!

8. Opinion is interpretation. Follow all good rules of interpretations. Reproduce relevant sections, title to the section and preamble too as may be required to bring out the clarity and to justify what you opine.

9. A good opinion fortifies itself by supportive case laws (both of Supreme Court and High Court) which have not been overruled on the date of the opinion. Relevant Circulars, Clarifications Notifications, Press Notes, given by the administering authority like SEBI, FIPB, Ministries & Courts should be relied upon.

10. A better opinion fortifies itself by quoting both supportive and non-supportive case laws on the issues and distinguishing one from another to conclude why the supportive case laws are relevant / decisive for the opinion.

11. Cite foreign case-laws only when absolutely necessary and persuasive and where the Indian jurisprudence is wanting e.g. Competition Law.

12. Mention clearly that the opinion is based on the facts and materials made available and if there comes any variation, the opinion might need modification, even reversal.

13. Keep in mind the end use of the opinion i.e. for internal consumption, Board, for parent company abroad, auditors requirement, to fight demand notices, to play safe, keep on file etc.

14. Sometimes depending on the query and nature of issue, opinion may traverse beyond the queries raised and travel extra mile.

15. Opinion should allow the querist to seek any further clarifications on the given opinion.

16. Opinion should be signed with date. E-mail opinion is fine and binding for internal purposes.

17. Opinion is a personal judgment and not a Court verdict. It does not at all bind any external agency. Nor the external PCS!
30 rules for writing successful legal opinion

1. Know your audience
2. Front Load your document – Context before detail
3. Frame the issue in fewer than 75 words
4. State the facts succinctly
5. Avoid overchronicling – Most dates are Unimportant
6. Headings are signposts – Should be informative
7. Write short paragraphs
8. Form is important – make it look good
9. Check your document carefully
10. Keep it short – Page limit is your friend
11. Use No talking footnotes
12. Citations go in the footnotes
13. Edit, Edit, Edit …..
14. Write short sentences
15. Use mainly active voice
16. Use “But” and “And” to begin sentences
17. Distinguish between “that” and “which”
18. Use the dash, parenthesis, and comma for degrees of emphasis
19. One word is usually enough
20. No parenthetical numerals
21. Hyphenate phrasal adjectives
22. Always question “of”
23. Use the serial comma
24. Avoid unnecessary preambles
25. Purge Lawspeak
26. The Parties have Names
27. Use quotations sparingly
28. Use persuasive language
29. Continue your research
30. Disclaimers

**CHALLENGES FOR COMPANY SECRETARIES**

- Emergence of Professional work culture
- Value Addition v/s Supply of Information
- Ethical legal practice
- Precision, energy, versatility, pragmatism, clarity, creativity and social relevance – the constants in the ever changing world!

**BE ALERT, HONEST, FRANK, TACTFUL AND EFFICIENT PROFESSIONAL AND EARN BETTER REPUTATION**
The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. That apart, a Company Secretary can appear as an authorized representative before Company Law Board / NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT) Telecom Regulatory Authority of India (TRAI) and various other Tribunals.

RIGHT TO LEGAL REPRESENTATION

Under the Companies Act

Section 10GD of the Companies Act, 1956 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

The expression ‘authorised representative’ has been defined under Regulation 2(d) as a person authorized in writing by a party under Regulation 19(2) to function before a Bench as the representative of such party.

Therefore, a person to be authorized must be one of the persons specified in Regulation 19(2) viz. Advocate or Secretary in whole-time practice or a Practising Chartered Accountant, or Practising Cost and Works Accountant. However, a company may also appoint and
authorize its Director or Company Secretary to appear in its behalf, in any proceeding before the Bench. The Central Government, the Regional Director or the Registrar may authorize an officer to appear on its behalf (Regulation 19).

Company Secretaries who are in job can appear for and on behalf of Employer Company, by virtue of powers given under a power of attorney while appearing before CLB/NCLT or Authority Letter but preferably Power of Attorney.

**Under the TRAI Act**

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 (as amended in 2002) authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section ‘Company Secretary’ means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act.

**Under the SEBI Act**

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

**Under the Competition Act**

Competition Authorities and the companies world over avail services of professionals to guide and advise them on various aspects of competition law. Professionals also assist companies in designing, implementing and maintaining effective competition compliance programmes.

Sections 35 and 53S of the Competition Act, 2002 (as amended in 2007) authorises Company Secretaries in practice to appear before Competition Commission of India and Competition Appellate Tribunal. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant
market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

It is important to mention here that the Competition Act has not come into force fully. Most of the provisions of the said Act are yet to be enforced.
MAJOR AREAS OF PRACTICE FOR COMPANY SECRETARIES

Secretarial Audit

A significant area of competence of PCS is “Corporate laws” (comprising, statutes, rules, regulations, notifications, circulars, and clarifications, forms, guidelines and bye-laws) owing to intensive and rigorous coaching, examinations, training and continuing education programmes. PCS is highly specialized professional in matters of statutory, procedural and practical aspects involved in proper compliances under corporate laws. Strong knowledge base makes PCS a competent professional to conduct professional audit.

The CORPORATE GOVERNANCE VOLUNTARY GUIDELINES, 2009 issued by the Ministry of Corporate Affairs in December, 2009 recommended the introduction of Secretarial Audit. Para V of the Guidelines reads:

“Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.”

A company Secretary in Practice has been assigned the role of Secretarial Auditor under section 2(2)(c)(v) of the Company Secretaries Act, 1980.

In order to guide its members with the process of Secretarial Audit, the Institute has brought out a Referencer on Secretarial Audit.
Diligence Report for Banks

The Reserve Bank of India vide its Circular No. DBOD.NO.BP.BC.46/08.12.001/2008-09 dated September 19, 2008 advised all the scheduled commercial Banks (excluding RRBs and LABs) to obtain regular certification (DILIGENCE REPORT) by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions by the borrowing companies that are in vogue. Further RBI vide its Circular dated January 21, 2009 also advised all Primary Urban Co-operative Banks to obtain Diligence Report. Subsequently, the RBI 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. The RBI also advised the Banks to strengthen their information back-up about the borrowers enjoying credit facilities from multiple banks vide Circular No. RBI/2008-2009-313/DBOD. No. B.P.BC. 94/08.12.001/2008-2009 dated December 08, 2008.

The Practising Company Secretaries have been authorised to certify compliance in respect of matters specified in the RBI Circular No. DBOD NO.BP.BC.46/08.12.001/2008-09 dated September 19, 2008. Para (2) (iii) of the RBI Circular specifies that the Diligence Report shall be in the format given in Annex III thereto. The format has been subsequently revised and streamlined by RBI. Annex III to the RBI Notification provides that the Diligence Report shall be made on a half yearly basis.

The Institute has issued Guidance Note on Diligence Report for Banks containing parawise detailed checklists and guidance to Company Secretaries undertaking Diligence Report for Banks.

Compliance Certificate

The Companies (Amendment) Act, 2000 inserted a proviso to sub-section (1) of section 383A of the Companies Act, 1956, with regard to issue of Compliance Certificate, which reads as under:

“S. 383A(1). Every company having such paid-up share capital as may be prescribed shall have a whole-time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company:

Provided that every company not required to employ a whole-
time secretary under sub-section (1) and having a paid-up share capital of ten lakh rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all the provisions of this Act and a copy of such certificate shall be attached with Board’s report referred to in section 217”.

As per rule 2 of the Companies (Appointment and Qualifications of Secretary) Rules, 1988, every company having a paid-up share capital of rupees five crore or more is required to have a whole-time secretary.

Similarly, every company having a paid-up share capital of rupees ten lakhs or more but less than rupees five crore not having a whole-time secretary is required to file with the Registrar of Companies (ROC) a Compliance Certificate from a secretary in whole-time practice and also attach a copy of that certificate with Board’s report.

The Institute has issued Guidance Note on Compliance Certificate to help members in undertaking Compliance Certificate.

**Corporate Governance Compliance Certificate**

Clause 49 of the Listing Agreement provides that a company shall obtain a certificate from either the auditors or practising Company Secretary regarding compliance of the conditions of Corporate Governance.

Clause 49 VII (i) mandates that, the Corporate Governance Compliance Certificate (“CGCC”) shall be annexed to the Directors’ Report, which is required to be sent to all the shareholders of the company. The CGCC is also required to be sent to the Stock Exchange(s) along with the Annual Report filed by the company.

Clause 49 VI (i) provides that, there shall be a separate section on Corporate Governance in the Annual Reports of listed entities, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of Clause 49 of the Listing Agreement with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted in the CGCC.

Para 8.2 of the Guidelines on Corporate Governance for Central
Public Sector Enterprises (CPSEs) issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises provides that the company shall obtain a certificate from either the auditors or practising Company Secretary regarding compliance of conditions of Corporate Governance as stipulated in the Guidelines.

The Institute has issued “Guidance Note on Corporate Governance Certificate” to help members undertaking Corporate Governance Compliance Certification.

**Business Responsibility Report**

Compliance has been the forte of Company Secretaries. Clause 47 of the listing agreement casts duty on the company to appoint the Company Secretary to act as Compliance Officer who will be responsible for monitoring the share transfer process and report to the Company’s Board in each meeting. The compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, etc., and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints of related matter.

In addition to this, listing agreement clause 49 states that the companies shall submit a quarterly compliance report on corporate governance to the stock exchanges within 15 days from the close of quarter, such report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Once we go through the format for BRR we find that Details of BR head have been asked for, other than the details of director/directors for BR. The question arises as to who shall be this BR head? Genuinely when it comes to compliance it should be a Company secretary only. Sustainable development and reporting are the fertile domains for the profession of Company Secretaries which they need to capture upon. Company Secretaries are under obligation to guide the Boards in objective decision making and ensuring that the companies develop and implement strategies that mitigate environmental and social risks and focus on the long-term sustainability of business. They should take the advantage and lead in ensuring, building and internalizing good governance processes in the companies.
Company Secretary in Practice

Profession of Company Secretaries should strive towards becoming Chief Governance Professionals (CGP’s) and thereby guide the Boards in objective decision making and ensuring that the companies develop and implement strategies that mitigate environmental and social risks and focus on the long-term sustainability of business. Company Secretaries Professionals should take a lead in ensuring, building and internalizing good governance processes in the companies. They can become evangelists to sustainable reporting. They should not be involved in finding what is the best solution rather they should be in a position to give the company right solution. The narrative has changed, the expectations are sky-high, as CGP’s Company Secretaries should take a lead in ensuring, building and internalizing good governance processes in the companies. They can become evangelists to sustainable reporting. They should not be involved in finding what is the best solution rather they should be in a position to give the company right solution. The company secretary is expected to be well versed with the core elements of National Voluntary Guidelines on Social Environmental & Economic Responsibilities of Business, 2011(NVG’s), as they are the basis of Business Responsibility Reports, their practical implications and how internal processes can be defined and put in place to ensure the adherence to the aforesaid guidelines.