14th National Conference of Practising Company Secretaries

Theme
Integrating Growth, Governance and Challenges Beyond

Friday & Saturday, July 19-20, 2013

Venue
The Vedic Village Spa Resort
Shikharpur, P.O.–Bagu–Rajarhat–Kolkata-700135

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

Hon’ble Vice President of India is happy to know that the Institute of Company Secretaries of India is organizing 14th National Conference of Practising Company Secretaries on the theme "Integrating Growth, Governance and Challenges Beyond" on July 19-20, 2013.

The Vice President of India extends his greetings and good wishes to the organizers and the participants and wishes the Conference all success.

(NAGESH SINGH)

New Delhi
28th June, 2013
The Prime Minister is happy to know that the Institute of Company Secretaries of India is organizing its 14th National Conference of Practising Company Secretaries during 19th - 20th July, 2013 on the theme of “Integrating Growth, Governance and Challenges Beyond” at Kolkata.

The Institute of Company Secretaries of India is dedicated to developing and growing the study and practice of secretaryship to improve professional practice and to improve organizational performance. The Prime Minister hopes that deliberation from this Conference will help the profession to keep pace with global developments in integrating growth, governance and face challenges.

I am happy to convey the greetings and good wishes of the Prime Minister for successful Conference.

(Pankaj Pachauri)

July 3, 2013
Message

I am glad to learn that The Institute of Company Secretaries of India is organising the 14th National Conference of Practising Company Secretaries on 19th and 20th July, 2013 on the theme “Integrating Growth, Governance and Challenges Beyond.”

I am sure that this National Conference will prove to be a useful platform for sharing knowledge and enhancing the quality of service provided by practising Company Secretaries.

I wish the conference all success.

M. K. NARAYANAN
Message

I am glad to learn that The Institute of Company Secretaries of India (ICSI) will organize its 14th National Conference of Practising Company Secretaries on 19th-20th July, 2013 at Kolkata on the theme “Integrating Growth, Governance and Challenges Beyond” and to commemorate the occasion, a souvenir will also be brought out.

I am hopeful that the conference will turn out to be an enriching experience for the participants and wish it all success.

(MAMATA BANERJEE)
It gives me immense pleasure to know that Institute of Company Secretaries of India is organizing the "14th National Conference of Practicing Company Secretaries" on the theme "Integrating Growth, Governance and Challenges Beyond" at Shikharpur, Kolkata. It gives me added pleasure to know that a souvenir is also being brought out on this occasion.

A large number of Professionals, Directors, Advocates, Senior Officials and Corporate Executives will make this Conference a memorable event. I do hope that the Conference will witness rich deliberations and concrete outputs in support of its topic.

I wish the Institute and its forthcoming conference all success.
Message

It gives me immense pleasure to note that the 14th National Conference of Practising Company Secretaries is being organized on the theme "Integrating Growth, Governance and Challenges Beyond", on July 19-20, 2013 at Kolkata.

Practising Company Secretaries act as catalysts in ensuring that the corporate sector creates a governance culture that is able to generate wealth in a sustainable; ethical and socially beneficial manner and fulfils its obligations towards all the stakeholders.

I hope that the forthcoming conference would create an enabling platform to network and share experiences.

I wish the conference all success.

(SACHIN PILOT)
Message

It gives me immense pleasure to note that the 14th National Conference of Practicing Company Secretaries will be held on the theme "Integrating Growth, Governance and Challenges Beyond" from July 19-20, 2013 at Kolkata.

The theme is of tremendous relevance in the light of increasing role of Company Secretaries in the arena of corporate governance. I am confident that the conference will bring together on a single platform, a kaleidoscope of vibrant ideas and healthy deliberations on challenges before the profession of Company Secretary in a fast changing and fluid global economic scenario.

(Renuka Kumar)
I am happy to know that the Institute of Company Secretaries of India is organising its 14th National Conference of Practising Company Secretaries on the theme "Integrating Growth, Governance and Challenges Beyond".

As the Institute has a vital role in promoting good corporate governance, the theme chosen by the Institute is timely and perspicacious. In emerging and evolving regulatory regimes, the responsibility of practicing professionals in meeting the compliance norms has increased manifold.

I hope the present Conference would help in integrating growth with governance by equipping the participants to contribute to the economic growth in an ethical manner.

I wish the Institute all success in its endeavours.

June 25, 2013

(Ashok Chawla)
Most economists would agree that governance is one of the critical factors determining the growth prospects of countries. Good governance secures justice, empowerment, employment and efficient delivery of services and Integrated Growth. Over the past two decades, countries across the development spectrum have instituted corporate governance reforms, one of the key elements of improving microeconomic efficiency. Corporate governance affects the development and functioning of capital markets and exerts a strong influence on resource allocation. It impacts upon the behaviour and performance of firms, R&D and innovative activity, entrepreneurship, and the development of an active SME sector and thus impinges upon economic growth. In an era of increasing capital mobility and globalisation, corporate governance has become an important framework condition affecting the industrial competitiveness of the country.

Growth comes with challenges. India is facing significant challenges to achieving three key objectives of high growth, inclusive development, and improved governance. The economy is experiencing a growth slowdown, persistently high inflation, and infrastructure and energy deficits. Policy reforms are hampered by several recent incidences. Growth-enhancing governance capabilities, that allow developing countries to manage with the property right instability of early development, manage technological catching up, and maintain political stability in a context of endemic and structural dependence.

I am glad to know ICSI is organizing “14th National Conference of Practicing Company Secretaries” on a very relevant Theme “Integrating Growth, Governance and Challenges Beyond” at Kolkata. I am sure the event will help to create greater awareness and realization amongst all concerned. I wish the event a satisfactory and successful completion and extend my best wishes to the participants.

With Best Wishes,

Rajkumar Dhoot, MP
President, ASSOCHAM
Naina Lal Kidwai
President, FICCI

Message

I am delighted that the Institute of Company Secretaries of India is organizing its 14th National Conference of Practising Company Secretaries on the theme “Integrating Growth, Governance and Challenges Beyond”. I first congratulate the Institute for being in the frontline to promote good corporate governance and for its constant endeavour to raise awareness among professionals in this area.

Governance and growth are intricately linked. Government, civil society and businesses need to work in tandem in the endeavour to attain good governance. As India engages more globally given the economic stage of our development, good governance will be critical to give us a competitive edge and all of us need to work towards this endeavour. Most successful corporations in the world have imbibed such principles in their corporate constitution to increase their market share and unlock value for shareholders and employees. It is also essential for companies to embed a culture of social responsibility in the functioning of our companies. This will create a positive environment for sustainable growth which will be of value to society, Government and the business sector.

I wish the Convention a huge success.

Naina Lal Kidwai
I am happy to learn that the Institute of Company Secretaries of India is organizing its 14th National Conference of Practicing Company Secretaries in Kolkata on the Theme "Integrating Growth, Governance and Challenges Beyond" from 19th - 20th July 2013.

Implementing good corporate governance practices within a company leads to its effective, transparent and accountable governance of affairs. Corporate governance systems in place should be based on decision-making processes that hold individuals accountable, encourages stakeholder participation and facilitates the flow of information across all organs of the company's structure.

I am confident that the Conference would be a useful platform for exchange of ideas and best practices and will benefit the participants and corporates.

I congratulate the Institute for organizing the National Conference and wish the programme a grand success.

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

The Institute has on its rolls about 33,000 members including over 5,500 members holding certificate of practice. The number of current students is over 3,80,000.

Vision

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

Mission

“To develop high calibre professionals facilitating good corporate governance”

ICSI Nationwide Network

Head Office - New Delhi

Chapters - 69

Counsellors - 112

Examination Centres - 123

Regional Councils - Chennai, Kolkata, Mumbai, New Delhi

Centre for Corporate Governance Research & Training (CCGRT) - Navi Mumbai
Objectives and Functions

The Institute

• develops a cadre of highly competent Company Secretaries for ensuring good corporate governance and effective management by registering students with 10+2 and graduate qualifications for Foundation and Executive Programmes of Company Secretaryship Course respectively with course contents in Law, Tax, Management, Accounting and Finance disciplines;

• provides postal/oral/web-based coaching and training enabling students to qualify as Company Secretaries;

• conducts Company Secretaryship Examination twice a year in June and December, at 123 centres spread all over India and an overseas centre at Dubai;

• arranges practical training for Executive/Professional Programme pass Students with Companies/Practising Company Secretaries empanelled with the Institute for the purpose;

• enrols qualified persons as Associate/ Fellow Members of the Institute and issues Certificate of Practice to members taking up practice;

• conducts Post Membership Qualification Courses for Members of the Institute;

• publishes widely read and highly acclaimed monthly journal 'Chartered Secretary' disseminating information, expeditiously;

• brings out 'Student Company Secretary' and 'CS Foundation Course Bulletin' for the benefit of Students;

• circulates CS Updates containing current notifications and circulars relating to various corporate and related laws, daily;

• exercises professional supervision over the Members of the Institute both in practice and in employment on matters pertaining to Professional Ethics and Code of Conduct;

• undertakes research in Law, Management, Finance, Capital Market, Corporate Governance and CSR and brings out research publications;

• formulates Secretarial Standards and brings out Guidance Notes thereon;

• renders expert advisory services to Members on intricate issues relating to various corporate laws;

• organises Professional Development and Continuing Education Programme(s), International/National/ Regional Conventions and Conference(s) directly or through its Regional Councils and Chapters, Chambers of Commerce, Department of Public Enterprises, Sister Professional Institutes and other Professional Development/ Management Bodies;

• interacts with various National and Regional Chambers of Commerce with regard to various Government Policies and Legislations;

• interacts with various international/multilateral bodies/institutions with regard to issues relating to the Corporate Governance, Business Ethics, Sustainability and Corporate Social Responsibility;

• interacts with Government both at Centre and States on various issues concerning the profession;
• undertakes benevolence of members and employees;
• interacts with Members of Corporate Secretaries International Association (CSIA) and Company Secretaries Institutes in other jurisdictions;
• bestows ICSI National Award for Excellence in Corporate Governance to best governed companies;
• bestows ICSI Lifetime Achievement Award to eminent corporate personalities for Translating Excellence in Corporate Governance into Reality;
• conducts Investor Awareness Programmes throughout the country on behalf of the Investor Education & Protection Fund, Ministry of Corporate Affairs;
• undertakes Research Projects on behalf of Government and its agencies / Institutions.

Building Future Professionals to Guide Corporate India

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

Stages of Company Secretaryship Course

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

• **Foundation Programme**: Candidates who have passed Senior Secondary Examination (10+2) are eligible for admission to Foundation Programme.

• **Executive Programme**: Graduates in any stream excluding Fine Arts or candidates who have passed the Foundation Examination are eligible to join Executive Programme.

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

Training

The candidates are also required to complete the following trainings:

• Seven days Student Induction Programme (SIP) within six months of registration to the Executive Programme

• 72 Hours Computer Training

• Eight days Executive Development Programme (EDP) after passing Executive Programme

• Fifteen months whole time training after passing Executive Programme

• Fifteen days training in a specialized agency such as Office of Registrar of Companies, stock exchange, commodity stock exchange, financial or banking institution or management consultancy firm, etc.

• Fifteen days Management Skills Orientation Programme (MSOP)

The Company Secretaryship course is conducted through distance learning and supplemented by Classroom teaching as well as e-learning.

Associate Membership

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

Fellow Membership

A member of the Institute is entitled to get himself enrolled as a fellow, if he is an Associate Member for atleast five years.
Company Secretary – A Lead Professional

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

Company Secretary in Employment

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

A Company Secretary in Employment,

• acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities
• plays a key role in ensuring that the Board procedures are followed and regularly reviewed
• provides the Board with guidance as to its duties, responsibilities and powers under various laws, rules and regulations
• acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional departments of the company on various corporate, business, economic and tax laws
• is an important member of the corporate management team and acts as conscience seeker of the company

Company Secretary in Practice

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

Code of Conduct for Members

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

Regulatory Supervision

The Institute maintains strict regulatory supervision over its practising members through issuing Guidelines in accordance with the provisions of Company Secretaries Act, 1980.

• Guidelines for Compulsory Attendance of Professional Development Programmes
• Guidelines for Advertisement by Company Secretary in Practice
• Guidelines for issuing Compliance Certificates and Annual Returns
• Guidelines for Requirement of Maintenance of a Register of Attestation/Certification services rendered by Practicing Company Secretary/Firm of Practicing Company Secretaries

Disciplinary Control

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

President
S N Ananthasubramanian

Vice-President
Harish K Vaid

Members

Anil Murarka
Arun Balakrishnan
Atul H Mehta
Gopalakrishna Hegde
Nesar Ahmad
Renuka Kumar (Ms.)
P Sesh Kumar
C Sudhir Babu
Umesh H Ved

Secretary
M S Sahoo

Chief Executive
Sutanu Sinha

Practising Company Secretaries Committee

Chairman
R Sridharan

Members

Ashok Pareek
B Narasimhan
Sudhir Babu C
Vikas Y Khare

Atul H Mehta
Sanjay Grover
Umesh H Ved

14th National Conference of Practising Company Secretaries

Programme Director
CS Ashok Pareek
Council Member, The ICSI

Programme Co-ordinator
CS Deepak Kumar Khaitan
Chairman, EIRC of The ICSI

Programme Facilitator
CS Arun Kumar Khandelia
Vice Chairman, EIRC of The ICSI
Eastern India Regional Council  
*(ICSI-EIRC)*

**Deepak Kumar Khaitan**  
Chairman

**Arun Kumar Khandelia**  
Vice-Chairman

**Sunita Mohanty (Ms.)**  
Secretary & Treasurer

**Mukesh Chaturvedi**  
Member

**Anjan Kumar Roy**  
Member

**Ranjeet Kumar Kanodia**  
Member

**Anil Murarka**  
Ex-officio

**Arun Kumar Khandelia**  
Ex-officio

**Navrang Saini (Dr.)**  
Co-opted

**D K Vyas**  
Co-opted

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14th  
**PCS Conference Organising Committee**

**Ashok Pareek**  
Chairman

**Anil Murarka**  
Member

**R Sridharan**  
Member

**Anjan Kumar Roy**  
Member

**Arun Kumar Khandelia**  
Member

**Deepak Kumar Khaitan**  
Member

**Mukesh Chaturvedi**  
Member

**Ranjeet Kumar Kanodia**  
Member

**Sunita Mohanty (Ms.)**  
Member
14th
PCS Conference Organising Sub-committees

Advisory Committee
CS Anil Murarka, Chairman

Reception Committee
CS Deepak Kumar Khaitan, Chairman

Souvenir Committee
CS Anjan Kumar Roy, Chairman

Delegates Committee
CS Anjan Kumar Roy, Chairman

Fund Raising Committee
CS Arun Kumar Khandelia, Chairman

Cultural Committee
CS Mukesh Chaturvedi, Chairman

Hospitality Committee
CS Sunita Mohanty, Chairperson

Tour and Transport Committee
CS Ranjeet Kumar Kanodia, Chairman

Public Relation Committee
CS Arun Kumar Khandelia, Chairman
INAUGURAL SESSION
SOMNATH CHATTERJEE

Shri Somnath Chatterjee is an eminent politician from West Bengal and a former member of the CPI (M). He is also a trade unionist and a social worker. He enjoyed huge support of the people from the Bolpur Constituency in West Bengal, from where he was re-elected 9 times to the Assembly. He is remembered for his non partisan stand when he was required to decide between his party ethics and follow his duties as a Speaker, though he was expelled from his party later. He has won various accolades for being the best parliamentarian.

He was born in Tezpur, Assam. He received his early education at Mitra Institution School. Later he went to Presidency College and then to the University of Calcutta. He studied B.A in 1952 and M.A in 1957, both degrees were done in law at Jesus College, Cambridge.

He, recently, published his autobiography titled “Keeping the faith: Memoirs of a Parliamentarian”. He won the “Outstanding Parliamentarian Award” in 1996 for his works. When Jyoti Basu was the Chief Minister of West Bengal, he became the chairman of West Bengal Industrial Development Corporation (WBIDC). He promoted Foreign Direct Investment or FDI in West Bengal by frequently visiting foreign shores. He has also written various books on varying subjects and contributed articles in leading news dailies and various print media, including Lok Sabha publications. He is the first communist in India to become the speaker of the Lok Sabha. As the Speaker, he introduced a lot of parliamentary reforms. He worked passionately towards introducing better transparency and also accountability into the working of the Lok Sabha. He televised the proceedings of the “Zero Hour” of the house. He introduced a 24- hour Lok Sabha Television channel that came into force on July 24, 2006.

M DAMODARAN

Shri M Damodaran an IAS of 1971 batch of Manipur-Tripura cadre is the Ex. Chairman, Securities and Exchange Board of India (SEBI). He is presently, Chairman, Excellence Enablers Private Limited, Glocal Healthcare Systems, and TVS Automobile Solution. Shri Damodaran is Advisor and Chief Representative in India for the ING Bank of Netherlands. He is an Independent Director on the Boards of Hero MotoCorp, Tech Mahindra, Larsen and Toubro, Bennett, Coleman & Co., Sobha Developers, L&T Infra Investment Partners, L&T Infrastructure Finance, Hindalco Industries and UltraTech Cement and Member of the Advisory Boards of Experian Credit Information
Company of India, Aureos Capital, Atos India and Macquarie Group India. He is a Senior Director of Albright Stonebridge Group.

Shri M. Damodaran has held a number of important positions in both the Central and State Governments and in India’s Financial Sector, before demitting office as Chairman, SEBI in 2008. After a career spanning several regulatory and developmental assignments in the state of Tripura, he was appointed as its Chief Secretary in 1992. Thereafter, he worked as Joint Secretary in the Ministry of Finance, Banking Division, for five years, dealing with Government’s ownership functions of Public Sector Banks and being its interface with Reserve Bank of India (RBI). In 2001, he was appointed the Chairman of Unit Trust of India (UTI) to rescue India’s largest and oldest investment institution which had collapsed. His restoring of UTI to health and strength is widely acknowledged as the most successful turnaround story in India’s Financial Sector. He was simultaneously given charge of Industrial Development Bank of India (IDBI).

Shri Damodaran has been appointed Chairman of Ministry of Corporate Affairs Committee for Reforming the Regulatory Environment for doing Business in India and appointed by the Government of India as the first Chairman of the Society and Board of Governors of the Indian Institute of Management (IIM), Tiruchirappalli. He is also a member of the Managing Committee of Bharatiya Vidyay Bhavan’s Delhi Kendra Committee and the Governing Body of Hans Raj College of Delhi University. He is also a part of the Development Evaluation Planning Committee of the Planning Commission of India, India’s apex planning body.

He is widely acknowledged as one of India’s foremost champion of Corporate Governance and has won Life Time Achievement Award in Public Governance by Asian Centre for Corporate Governance and Sustainability in 2013, V. C. Padmanabhan Memorial Award for Excellence in Public Administration in 2012, Public Service Excellence Award in 2009 by All India Management Association and a host of other awards for his contribution in the field of Public service.

His areas of expertise include Financial Management, Securities Markets, Corporate Governance, Public Administration and Leadership. He is presently an independent consultant and corporate advisor, coach and mentor and sits on the Boards of several reputed companies.
M. J. JOSEPH

Shri M. J. Joseph, Additional Secretary, Ministry of Corporate Affairs, Government of India, is a post graduate in International Economic Relations and also holds degrees in Business Administration and Economics.

In his service career, Shri Joseph has served in various capacities in the field of public financial management and administration. In 1998, he was selected by the then President Shri K. R. Narayanan to serve as Joint Secretary in the President’s Secretariat.

Shri Joseph has been associated with several budgetary and Government accounting related reform projects in the Ministry of Finance, mainly in the areas of automation of tax payments, improved financial reporting and enhancing service delivery.

Shri Joseph worked with the International Monetary Fund (IMF) from 2008-10 as a Public Financial Management Adviser and was posted at Dar es Salaam, Tanzania. During this appointment, he provided technical and capacity building assistance in Public Financial Management to the Government’s of Eritrea, Ethiopia, Kenya, Tanzania, Malawi, and Rwanda.

Shri Joseph has authored a coffee-table book titled “Sentinels of Raisina Hill”, which was released by the Hon’ble Chief Minister of Delhi in December, 2011 to mark the centenary celebrations of New Delhi.

CS S N ANANTHASUBRAMANIAN

CS S N Ananthasubramanian is President of the Institute of Company Secretaries of India (ICSI). He is a member of the Central Council of ICSI for the term 2011-2014. He was also a member of the Central Council of ICSI from 2007 to 2010.

CS Ananthasubramanian is associated with several listed Public Sector Banks advising them on various issues of Board Composition, Listing compliances, Governance issues etc. He is also associated with some of the leading listed corporates, private and public companies in matters of Consulting, Certification, Secretarial Audit, Securities Audit, Governance, Due Diligence, etc. He has been associated with Life Insurance Corporation of India and many Insurance joint-ventures in the country including the setting up of the First Pension Fund Company in the country.

It was due to the initiatives taken by CS Ananthasubramanian that the RBI introduced in the year 2008 Diligence Report for
Banks to be obtained from professionals preferably, Practising Company Secretaries by borrowing Companies in respect of multiple-banking arrangements.

CS Ananthasubramanian has been actively associated with the introduction of Networth Certificate by PCS in respect of broking firms by BSE and NSE; formulation of IPO/FPO Certification; formulation of Compliance Certificate for companies seeking listing on the SME platform of BSE and NSE.

A strong votary of good governance practices, CS Ananthasubramanian attended the Training of Trainers programme organised by the Global Corporate Governance Forum, IFC, Washington. A regular speaker at Seminars, Workshops, Conferences, his views and articles have appeared in newspapers in India. He is also associated with public charitable institutions in Thane and Mumbai.

HARISH K VAID

CS Harish K Vaid is the Vice-President of the Institute of Company Secretaries of India (ICSI). He is a member of the Central Council of ICSI for the term 2011-2014.

CS Vaid, a Commerce & Law Graduate, is a Fellow Member of ICSI. Besides being a Life Member of Indian Law Institute, Member of All India Management Association, Fellow Member of the Institute of Administrative Management and Member of various Committees on Corporate Laws constituted by ASSOCHAM, Confederation of Indian Industries and PHD Chambers of Commerce & Industry.

Before joining the profession of Company Secretary 31 years ago, he had served 7 years in various capacities in the Office of the Registrar of Companies and Ministry of Corporate Affairs, New Delhi. Presently heading the Corporate and Legal Departments of the well diversified Jaypee Group, he is designated as Sr. President (Corporate Affairs) & Company Secretary of Jaiprakash Associates Limited. He is also Director on the Boards of various companies in India and abroad and member of Managing Committee of various Societies, Trusts and Educational Institutions.

He had been Chairman of the NIRC of the ICSI in the year 1987 and has been elected to the Central Council of the Institute for six terms, including the present term.

He is a Member of the Quality Review Board constituted by the Government of India for the ICSI. He had been Member, Editorial Advisory Board of Chartered Secretary; the Journal of the ICSI;
Member, Managing Committee of Company Secretaries Benevolent Fund and Member of the various Committees constituted by the ICSI and Ministry of Corporate Affairs.

He has authored articles/technical papers, addressed & moderated various technical Seminars, symposia, talks, study circle meetings organized by various forums including the Institute of Company Secretaries of India, Institute of Cost & Works Accountants of India, Field Offices of Ministry of Corporate Affairs and other Professional bodies, both in India & abroad.

ASHOK PAREEK

CS Ashok Pareek, Council Member of the Institute of Company Secretaries of India (ICSI) and Former Chairman of the Eastern India Regional Council of the ICSI, is Commerce Graduate and Fellow Member of the ICSI and having over 23 Years’ experience in Investment Banking, Corporate & Securities Laws and Finance & Taxation.

He is working with SREI Capital Markets Ltd. as its Executive Director.

He is associated with various Professional bodies and Chambers of Commerce, Trade & Industry. He is active in numerous educational, sports and social welfare and community organizations. Recently, he got elected as Vice District Governor of the Lions Clubs International, 322B2 for the year 2013-14.

R SRIDHARAN

CS R Sridharan, a Commerce graduate and a Fellow Member of the Institute of Company Secretaries of India, started his career with Best & Crompton. After serving 14 years there, he moved to Murugappa Group and was Secretary of TI Diamond Chain Ltd., Chennai, heading their Secretarial Division. Subsequently, he set up his practice and acted as an adviser to a number of reputed companies in Chennai.

He is having an abiding interest in teaching and was faculty for a long time at oral coaching classes of SIRC. He is equally passionate about the students’ activities and involves himself actively in various programmes organized for the students. He has presented articles/papers at Seminars and was a speaker at various programmes organised by the Institute, besides being a regular faculty at other reputed institutions.
He is a regular faculty at MSOP organised by SIRC of ICSI. He has been elected to the Council of the Institute for the two consecutive terms 2007-2010 and 2011-2014, has actively involved himself in various activities of the Institute. He is member of various specialised committees and Chairman of the Practicing Company Secretaries Committee of the Council.

Keen Rotarian, he is associated with Rotary Club of Madras, Ashok Nagar.

M. S. SAHHO

CS M. S. Sahoo, a Fellow Member of the Institute of Company Secretaries of India is Secretary, ICSI w.e.f. 1st January, 2013.

CS M.S. Sahoo, an M. Phil, M.A. (Economics), LL.B., FCS, PGDM, has over three decades of rich work experience in self-employment, private sector, public sector, regulator and Government in varied functional areas such as reforms, policy, regulations, research and analysis. Before joining the ICSI, he was an eminent legal practitioner in the field of securities laws. He was a Whole Time Member of the Securities and Exchange Board of India (SEBI) during 2008-11. Prior to this, he served as the Joint Secretary (non-functional), Director and Joint Director in the Ministry of Finance, as the Chief General Manager with SEBI, and as Economic Adviser with National Stock Exchange of India Limited (NSE). As an officer of Indian Economic Service (1985 batch), he served the Government of India for 22 years.

CS Sahoo played a key role in designing of major reforms in securities market, including dematerialization of securities, trading of derivatives, corporatisation and demutualization of exchanges, building regulatory and market infrastructural institutions, enforcement process / actions. He was instrumental in development of human resource capacity in securities markets through various interventions such as NSE’s Certification in Financial Markets (NCFM), National Institute of Securities Markets (NISM) and a number of reputed publications. He has served / serves as a member on several expert committees / boards and professional groups. He currently serves on the Boards of Management Development Institute, National Institute of Securities Markets and IFCI Factors Ltd. He has delivered talks at various national and international fora and written over 100 articles.
SUTANU SINHA

CS Sutanu Sinha is a Fellow Member of the Institute of Company Secretaries of India (ICSI) and also a Member of the Institute of Chartered Secretaries and Administrators, London (UK). A Post Graduate in Commerce from the Calcutta University, he stood First Class First in the Post Graduate Diploma in German Examination of the Calcutta University.

Before assuming the office of Chief Executive from 1st January, 2013, he was heading the Academics & Professional Development Directorate of the Institute of Company Secretaries of India (ICSI) and was appointed as Chief Executive Designate from 31st August, 2012 to 31st December, 2012 by the Council of the ICSI.

He has over twenty five years of professional experience in the Company Secretarial and Corporate Functioning. He possesses a vast work experience in Corporate Planning, Finance, International Trade and other allied areas in the course of his previous assignments in MNCs / PSUs. An avid reader and a corporate analyst, he has contributed several important papers and articles on different aspects of Governance and Management and addressed at various Workshops, Seminars and Conferences, both in India and abroad.

His areas of specialization include Corporate Governance, Sustainability and Enterprise Resource Planning. He is also Global Corporate Governance Forum (GCGF), Washington (World Bank Group) trained Trainer for Directors Development Progammes.

Recently, he participated at the Company Secretary’s Pilot workshop for developing Company Secretaries Toolkit organised by Global Corporate Governance Forum, IFC, an arm of World Bank, at Johannesburg, South Africa in May 2013. He was also granted scholarship by Cambridge University for attending ‘The Prince of Wales - Business and Sustainability’ programme at Cape Town, South Africa in May, 2013.

He has contributed significantly in Institute’s initiatives to promote Corporate Governance in India and overseas.

He has been appointed by the Government of India as Director on the Board of Canara Bank, which is one of the leading Public Sector Banks of the Country. Fluent in many foreign languages, his hobbies traverse from instrumental music, painting, photography to Documentary Film-making.
DEEPAK KUMAR KHAITAN

CS Deepak Kumar Khaitan, a Company Secretary in whole-time practice is the Chairman, ICSI-EIRC for the year 2013-14. He served as Secretary of ICSI-EIRC for two consecutive years - 2011-2012 & 2012-2013. He has been associated as Chairman of different Committees of ICSI-EIRC at different times.

He is a Fellow Member of ICSI and holds a Master’s Degree in Commerce from University of Calcutta. He has undergone Post Membership Qualification in Corporate Governance (Part-I) from ICSI. He is certified as an Accredited Management Teacher from All India Management Association. He passed the Entrepreneurship Educators’ Course conducted by IIM-Bangalore, Standford University – TVP & National Entrepreneurship Network (NEN). He is a Certified Mentor from London Business School, Goldman Sachs & NEN.

CS Khaitan has been a faculty at St. Xavier’s College (Kolkata), The International School; Shri Shikshayatan College; J. D. Birla Institute and is a regular invitee as a resource person to the events / lectures / sessions organised by various Institutions from time to time, including The West Bengal National University of Juridical Sciences; IIMs (Calcutta, Indore, Lucknow); IIT (Mumbai); KIIT University etc. He has also authored the new Study Material, Law Papers of ICAI introduced in 2006.

ARUN KUMAR KHANDELIA

CS Arun Kumar Khandelia is the Vice-chairman of the Institute of Company Secretaries of India, Eastern India Regional Council (EIRC) and a fellow member of the Institute of Company Secretaries of India. CS Khandelia a Commerce and Law Graduate from Calcutta University and has been Practising as a Company Secretary since 1995. During his tenure of practice, he appeared before the several Authorities for and on behalf of his clients.

He is Regional Council member of Eastern India Regional Council (EIRC) for the term 2011-2015. During the first year of his tenure in Council, he held the post of Treasurer of Eastern India Regional Council (EIRC).

At present he is Secretary, Babu Lal Nandlal Bohra Chhatra Niwass, Kolkata; Member, Direct Taxes Professional Association, Kolkata; Life Member, Association of Corporate Advisors & Executives, Kolkata; Life Member, Burra Bazar Library Alumni Association. He is also the member of Kolkata’s prestigious clubs viz., Space Circle Club & Resorts (P) Ltd and The Conclave.
FIRST TECHNICAL SESSION
NAGENDRA PRASAD

Shri Nagendra Prasad is In-charge Superintendent of Police, Central Bureau of Investigation, ACB, Kolkata. Appointed Direct Officer of CBI in 1984. He is a Science graduate and holds a masters degree in Business Administration.

He has undergone Basic Police Training at National Police Academy, Hyderabad and also underwent other courses like Company Law Course, DDO Course, Abuse of official position & award of contract, and attended Criminal Misconduct, Investigation of Trap / DA Cases, Stress Management Course, etc., at CBI Academy.

In recognition to his hard work and dedication to duty, Government of India awarded Shri Prasad, Police Medal for Meritorious Service in 2011. While posted at different branches of CBI, his investigating skills, sincerity, discipline and devotion to duty have been well acknowledged by Central Bureau of Investigation.

SANJAY GUPTA

CS Sanjay Gupta is Practising Company Secretary since 1989. He served Eastern Regional Council in various capacities as Chairman, Vice-Chairman and Secretary. He served the profession in various capacities e.g. Paper writer, Speaker, Chairman/Convener of Committees of various programmes and is an invitee as Guest speaker by many other Institutes on Corporate and legal matters. He has organized a number of Conferences.

Since 1991, he is serving as a director on the Boards of several private and listed companies and also acting as the Chairman of the Audit Committee of a listed company.

Shri Gupta served the Bengal National Chamber of Commerce & Industry (BNCCI) in various capacities such as Member, Company Affairs Standing Committee 1989 to 1997 and was its convener during 1992 & 1993, Member, Environment & Civic Amenities Standing Committee from 1992 to 1997, Member, Membership Development Standing Committee – for the years 1993 to 1997.
SECOND TECHNICAL SESSION
ARDHENDU SEN

Shri Ardhendu Sen served as a member of the Indian Administrative Service in the West Bengal cadre from 1976 to 2010 and is the ex-Chief Secretary, Government of West Bengal. During his service, he worked in several departments of the State Government and also in the Ministry of Petroleum at the Central Government.

Shri Sen is the Government Nominee Member to the Central Council of ICSI. He also serves as an Independent Director in North Eastern Electric Power Company, NBPPL and the West Bengal Power Development Corporation Ltd.

He did his M.Sc. in Physics from Delhi University. Later he obtained a Diploma in Development Studies from the University of Cambridge. He has published a number of journal papers on energy and environment issues and also written a book on the subject.

G SRINIVASAN

Shri G. Srinivasan, a commerce graduate is an Associate Member of Institute of Cost Accountants of India and a Fellow of Insurance Institute of India. Presently, he is the Chairman and Managing Director of The New India Assurance Co. Ltd. He has 34 years of experience in General Insurance Industry at various places in India and abroad, both at operations and Corporate in the New India Assurance Co. Ltd. Previously, he was Managing Director of the New India Assurance Co. (Trinidad & Tobago) Ltd., in the Caribbean and was CMD of United India Insurance Co. Ltd during 2007-2012.

Currently, he is Director on the Boards of GIC Housing Finance Limited, Mumbai, The New India Assurance CO. (T&T) Ltd, Port of Spain, Prestige Assurance Plc., Lagos, Nigeria and India International Insurance Pte. Ltd., Singapore. He is also a Governing Board Member, National Insurance Academy and Chairman, Governing Body of Insurance Council.

Shri Srinivasan bagged the Award for “ICON OF THE YEAR 2011” given by ICWAI for his contribution to the General Insurance industry and was awarded SKOTCH award for Financial Inclusion initiatives in 2012. He has also presented papers in many National and International Conferences on various topics related to Insurance.
A. P. SINGH

Lion A.P. Singh, popularly known as “A.P”, joined Lionism in 1984 and has held various offices at the club and district level. Lion Singh served as District Governor of the undivided District 322B and in the following year 2001-2002, he was elected as the Multiple Council Chairman for Multiple District 322. He was elected as the International Director for the year 2004-06.

A brilliant student, A.P. graduated from St.Xavier’s College with Hons. and a rank in Calcutta university. A Chartered Accountant, he ranked first in Eastern India in his Inter Exams and fourth in the Final Exams. His oratory skills have been his hallmark and he touches the hearts of those he addresses.

Lion A.P. Singh has gained recognition through a number of initiatives. He introduced the Lions of India on the internet years ago, and to the concept of Regional Institutes. He has regularly served as a faculty on various L.C.I. Leadership institutes, and training programs in ISAAME.

Lion A.P. Singh has been credited with several International Awards including the highest award “Ambassador of Goodwill Award”.
THIRD TECHNICAL SESSION
AMALESH BANDOPADHYAY

Shri Amalesh Bandopadhyay is a Science Graduate with Physics Hons. from Presidency College, Calcutta and M.Sc. (Physics) from Science College, Calcutta and a Law Graduate from Delhi University. He joined Indian Revenue Service in 1980 and worked as Dy. Commissioner/Addl. Commissioner/Commissioner of Income Tax in Calcutta, Delhi, Mumbai & Dehradun, for about 32 years, looking after Assessment/Collection/Recovery of taxes and providing legal support service for fighting the cases of Revenue in ITAT/High Court/Supreme Court etc.

Shri Bandopadhyay worked in CBDT for 4 years, looking after enforcement actions, like search & seizure and was involved in budget exercise and legislation process of Income Tax Department. He studied Tax Withholding System at Canada and implemented TDS Software as Pilot Project in Mumbai.

Shri Bandopadhyay joined as Member (Technical) of Company Law Board on 04th May, 2012 at Kolkata for adjudication of Company Law matters and is still continuing to work in the same capacity.

PROFESSOR (DR.) SUMAN K. MUKERJEE

Professor (Dr.) Suman K. Mukerjee is Senior Professor and Principal cum Dean - Bharatiya Vidya Bhavan Institute of Management Science. He graduated from St. Xavier’s College, Calcutta, in Economics (Hons.) and did his M.A. (Economics) from St. Stephen’s College, Delhi University. He was Research Fellow, Agricultural Economics Research Centre, Delhi and also Research Scholar, Delhi School of Economics, Delhi. He obtained his Doctorate from Jadavpur University on the Research Topic “Economics of the Small Sector”. Dr. Mukerjee is a Fellow, All India Management Association, Environmental Fellow, USAEP (under USAID), Member of Indo British Scholars’ Association and Visiting Professor, Newcastle Business School, Northumbria University, UK since 2004.

Dr. Mukerjee has more than 39 years of teaching and research experience at Delhi University Colleges, IIT (Delhi), St Xavier’s College, Calcutta and as Professor to XLRI, Jamshedpur and IISWBM, Calcutta University and Visiting Professor of Economics and Management, Sellinger School of Business and Management, Loyola College, Baltimore, USA. He is Director of J.D. Birla Institute, Birla School of Management and All Institutions under Sukriti Education Society and Director, Calcutta Business School.

Professor (Dr.) Suman is the Author of 'The Text book of Economic
Development’, an Orient Longman Publication and a Prominent public speaker and TV personality. He was awarded ‘Rashtriya Vidya Saraswati Puraskar’ in the year 2006.

UTPAL CHATTERJEE

Among the most acclaimed of Indian journalists, Rtn. Utpal Chatterjee, who was until recently, the Honourable Sheriff of Calcutta and its first citizen, has interviewed 18 Heads of State, nine Nobel Laureates and travelled with three Indian Prime Ministers as part of their respective media delegations. That apart, he has twice covered the U.S. Presidential Elections, coast to coast, interviewing prospective Presidents and also the first and last open election in the erstwhile U.S.S.R. during the tenure of President Mikhail Gorbachev (whom he also interviewed). He has travelled abroad on other official assignments at least 45 times across all the continents except Africa and Australia.

Now the Editor, India, of LEADERS, the niche global journal headquartered in New York, he has worked for several Indian newspapers and journals that include, among others, the Amrita Bazar Patrika, The Independent and The Times of India. He also has the experience of being among the first lot of news presenters & Election anchors for Doordarshan. Since 1997, he is also on the panel of experts for the South Asia Desk of the BBC Radio, London. Having completed 35 years in journalism, he has also been an active Rotarian since 1997 and devoted himself to all avenues of service. As a Major Donor, he has received several awards and recognitions, "Outstanding Rotarian of the Year" being one of them. He has led the Group Study Exchange team to Germany in 2006. Incidentally, he was Inter Act President of his School in 1964, a year after the birth of the Inter Act movement. His interests include books, cinema, theatre, sports, music and debating.

His passions include social welfare, a couple of villages that he and his fellow Rotarians have adopted and the cleaning and greening of Kolkata.

ANINDYA MITRA

Sri Anindya Mitra graduated from Presidency College with Honours in 1955 and was called to the English Bar by the Hon’ble Society of Lincoln’s Inn in 1959. Upon return, he joined the Chamber of R.C. Deb and then the Chamber of Sri Somnath Chatterjee. He was appointed as Addl. Solicitor General of India, Eastern India in the January, 1997 and resigned after holding
the post for 15 months. He was appointed Advocate General for the State of West Bengal in May, 2011 and held the post till February, 2013 when he resigned.

He now is one of the Senior most Advocates of the High Court and practicing in the High Court at Kolkata.

DR KUNAL SARKAR

Dr. Kunal Sarkar is Senior Vice Chairman of Medica Super Speciality Hospitals, leading the Cardiac Programme and President of Indian Association Cardiothoracic Surgeons.

Dr. Sarkar, graduated from Medical College, Calcutta with Gold Medal in Surgery. He trained in cardiac surgery in England and is a Fellow of Royal College of Surgeons, faculty of imperial college London.

He continues to contribute to various literatures to Bengali, English Publications and is an avid debater and founder member of Calcutta Debating Circle.
R. BANDYOPADHYAY

Shri R. Bandyopadhyay, Former Secretary, Ministry of Corporate Affairs, Government of India, is a first class First in M.Sc. Physics from Calcutta University, a Post-M.Sc. from Saha Institute of Nuclear Physics, Calcutta and a Masters’ in Development Studies in the University of East Anglia, Norwich, U.K.

Under his stewardship the Ministry of Corporate Affairs has taken a motto of “Corporate growth with enlightened regulations”. Shri Bandyopadhyay has also taken a number of important initiatives like “India Corporate Week”, the enactment of a new Company Law, Limited Liability Partnership Act, convergence of Indian Accounting Standards with International Financial Reporting Standards (IFRS), introducing e-stamping with MCA-21 to further facilitate the e-registration of the companies and also making the Competition Commission and Competition Appellate Tribunal functional.

As Secretary, Ministry of Corporate Affairs, he also held the posts of Secretary, Minority Affairs, Secretary, Ministry of Information and Broadcasting and Secretary, Department of Youth Affairs as additional charges, for different periods. Shri Bandyopadhyay was also a Member of the ‘Committee on Financial Inclusion’, headed by Dr. C. Rangarajan, ex-Governor, RBI.

Before joining as Secretary, MCA, he functioned as Secretary, Department of Public Enterprises in the Ministry of Heavy Industry and Public Enterprises, Government of India. During his tenure, a real boost was given to the functioning of the Public Sector Enterprises and the number of Navratna companies had grown from 12 to 18. He also developed the concept of ‘Maharatna’ for very large profit-making Central Public Sector Enterprises, enabling them to become Multi-National Companies in the true sense of the term.

In the State of West Bengal, he functioned as Principal Secretary/Secretary/Sp Secretary in the Power, Urban Development, Water Investigations, Industrial Reconstruction, Planning and Development, Commerce and Industries Departments at various points of time. At the field level, he has worked as ADM/DM/Divisional Commissioner in the State of West Bengal.

In addition to his official work, Shri Bandyopadhyay has also functioned as the Chairman of the Board of Directors in International Centre for Promotion of Enterprises (ICPE), Ljubljana, Slovenia and was a member of the Board Management of Institute of Public Enterprises, Hyderabad. He has also been on the Board of Governors in Indian Institute of Management,
Calcutta and functioned as Member SEBI, the premier Market Regulator.

He is a prolific speaker and has championed the cause of corporate governance and corporate social responsibility in various National and International meetings. He has been interviewed at Wharton Business School (University of Pennsylvania, USA), which has been published in Knowledge@Wharton, an online business journal of the Wharton School. The highlight of this interview was his bold declaration, as Secretary, Ministry of Corporate Affairs, Government of India, that “CSR is not a charity; but a win-win situation”, which has, since become a trend-setter in all such discussions.
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ARTICLES
The growth and expansion of corporate sector due to liberalization and globalization has resulted growth in demand for specialists in almost every sphere. Though the youngest among the three professional Institutes associated with the Ministry of Corporate Affairs (MCA), namely Institute of Chartered Accountants (ICAI), Institute of Cost Accountants (ICAI) and Institute of Company Secretaries (ICSI), the ICSI has been taking a number of initiatives to help and encourage its members to mould them into such specialized professionals. A company secretary is one who is responsible for efficient management of the corporate sector and acts quite often as an advisor in Corporate-legal matters. He needs to co-ordinate various departments of the organization, ensures compliance of company legislations and advises directors on statutory requirements of the company. Apart from this, many a time he is also called upon to look after or assist the financial, accounts, legal, personnel and administrative functions of the organisation.

The Institute of Company Secretaries of India (ICSI) has the responsibility to regulate the profession of Company Secretaries in India. Section 383A of the Companies Act, 1956 provides for the statutory requirement regarding appointment of a whole time secretary where the paid up capital of the Company exceeds Rs. 5 crores. In case where the capital is less than Rs. 5 crores, the company is required to obtain a secretarial compliance certificate and attach the same to the Directors’ Report and file it with the Registrar of Companies. In addition, the companies seeking listing on stock exchange are required to have a full-time qualified company secretary. These provisions are quite unique in the Company Act and provide ample career opportunities for Company Secretaries while ensuring the smooth running of the companies.

A Company Secretary can aspire to get employment opportunities in government as well as in law departments. Most of the qualified company secretaries can find well-paid positions in the public sector and corporate sector, banks and financial institutions, stock exchanges, company law boards and government departments. Exposure to detailed study and practical training in various fields adds to versatility of a company secretary. Small firms usually employ company secretaries on retainership basis for professional advice and support e.g. licenses, registrations, loans, taxes, partnership deeds etc. There is plenty of scope for specialization and moving into general management and administration at the highest level in business houses or CS firms.
A company secretary is a senior position in the managerial ladder in a private company or in a public organisation. In the United States these positions are designated as corporate secretary.

Company secretaries in all sectors have high level responsibilities including governance structures and mechanisms, corporate conduct within an organization’s regulatory environment, board, shareholder and trustee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executives and trustees, contact with regulatory and external bodies, reports and circulars to shareholders/trustees, management of employee benefits such as pensions and employee share schemes, insurance administration and organisation, the negotiation of contracts, risk management, property administration and organisation and the interpretation of financial accounts.

Company secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning.

Among public companies in North America, providing advice on corporate governance issues is an increasingly important role for corporate secretaries. Many shareholders, particularly institutional investors, view sound corporate governance as essential to board and company performance. They are quite vocal in encouraging boards to perform frequent corporate governance reviews and to issue written statements of corporate governance principles. The corporate secretary is usually the executive to assist directors in these efforts, providing information on the practices of other companies, and helping the board to tailor corporate governance principles and practices to fit the board’s needs and expectations of investors.

In view of the important roles the company secretary plays in business and large companies require the company secretary to be suitably trained and professionally qualified for these responsibilities and ICSI is under duty to trained all upcoming professionals for following necessary requirements;

— Promote the professional status of suitably qualified company secretaries, corporate secretaries, board secretaries and other governance professionals.
— Establish and maintain good relations and exchanges between organisations dedicated to the promotion and practice of secretary ship and/or the promotion of good governance.
— Develop and improve their services and professionalism of their members.
— Assist in the creation of such organisations in countries or regions in which they do not currently exist.
— Promote the growth, development, study and practice of secretary ship and assist their members develop and improve their services and professional standards.
— Advocate for good governance through carrying out research, developing standards and raising awareness.
— Promote the recognition and influence in respect of secretary ship and its professional practitioners to national governments and their supplementary/sponsored organisations, international organisations and the global business community.
Statutory declarations of compliance under various other provisions of the Companies Act, 1956 are also to be certified by practicing company secretaries. Under the MCA 21 e-filing regime several forms (including some, exclusively) are required to be pre-certified by practicing company secretaries.

In the case of companies listed on recognized stock exchanges, the annual returns are to be signed by a practicing company secretary.

Further, the Securities and Exchange Board of India (SEBI) also recognizes the Company Secretary as the Compliance Officer and the practicing company secretary to issue various certificates under its Regulations. Further, the practicing Company Secretaries are also authorised to certify compliance of conditions of corporate governance in case of listed companies.

The Reserve Bank of India also authorizes company secretaries to issue various certificates.

Secretarial Audit has become a reality now. As an officer of the company at the centre of the decision making process, the Company Secretary is in a powerful position of influence. The Company Secretary should assist and guide the directors in their pursuit of profit and growth but should also act with integrity and independence to protect the interests of the company, its shareholders and its employees. Today’s Company Secretary should play a proactive and central role in the governance of the company. This requires excellent communication skills, a thorough knowledge of the company’s business and applicable regulations, strength of character, integrity, and above all a professional approach.

The Company Secretary is key to the efficiency and effectiveness of the board and to the smooth running of the company. To fulfil the role, the Company Secretary must not only keep up to date with relevant legal, statutory and regulatory requirements but also be able to give impartial advice and support to directors (in particular, non-executive directors who might not have such detailed knowledge of the company as the executive directors).

Core Duties of the Company Secretary

The following includes both those duties which are legal obligations as well as those which result from best practice. This is not a comprehensive list and the Company Secretary may have to use his/her initiative to ensure that all core duties are fulfilled. The Company Secretary may also need to refer to other pertinent acts. The Company Secretary will need to fulfil the following duties.

Board Meetings

Facilitating the smooth operation of the company’s formal decision making and reporting machinery; organizing board and board committees meetings (e.g. audit, remuneration, nomination committees etc.); formulating meeting agendas with the chairman and/or the chief executive and advising management on content and organisation of memoranda or presentations for the meeting; collecting, organizing and distributing such information, documents or other papers required for the meeting; ensuring that all meetings are minuted and that the minute books are maintained with certified copies of the minutes and that all board committees are properly constituted and provided with clear terms of reference.
General Meetings

Ensuring that an annual general meeting is held in accordance with the requirements of the Companies Act and the companies’ Articles of Association; obtaining internal and external agreement to all documentation for circulation to shareholders; preparing and issuing notices of meetings, and distributing proxy forms; trying to prepare directors for any shareholder questions and helping them create briefing materials; overseeing the preparations for security arrangements. At meetings, ensuring that proxy forms are correctly processed and that the voting is carried out accurately; co-ordinating the administration and minuting of meetings.

Memorandum & Articles of Association

Ensuring that the company complies with its Memorandum and Articles of Association and, drafting and incorporating amendments in accordance with correct procedures.

Stock Exchange Requirements

Monitoring and ensuring compliance with the Stock Exchange through the company’s brokers; releasing information to the market; ensuring the security of unreleased price-sensitive information; making applications for listing of additional issues of securities.

Statutory Registers

Maintaining the following statutory registers:

— members
— company charges
— directors and secretary
— directors’ interests in shares and debentures
— interests in voting shares (substantial holdings & those notified in pursuance of a s.212 notice)
— Debenture holders (if applicable).

Statutory Returns

— Filing information with the Registrar of Companies to report certain changes regarding the company or to comply with requirements for periodic filing. Of particular importance in this regard are:

— annual returns
— report & accounts
— amended Memorandum & Articles of Association
— returns of allotments
— notices of appointment, removal & resignation of directors and the secretary
— notices of removal or resignation of the auditors
— change of registered office
— Resolutions in accordance with The Companies Act.
Report & Accounts

Co-ordinating the publication and distribution of the company’s annual report and accounts and interim statements, in consultation with the company’s internal and external advisers, in particular, when preparing the directors’ report. All the requirements of the Secretarial Audit, as introduced, needs to be complied with.

Share Registration

Maintaining the company’s register of members; dealing with transfers and other matters affecting shareholdings; dealing with queries and requests from shareholders.

Shareholder Communications

Communicating with the shareholders (e.g. through circulars); arranging payment of dividends and interest; issuing documentation regarding rights issues and capitalisation issues; maintaining good general shareholder relations; maintaining good relations with institutional shareholders and their investment committees.

Shareholder Monitoring

Monitoring movements on the register of members to identify any apparent ‘stakebuilding’ in the company’s shares by potential take-over bidders; making appropriate inquiries of members as to beneficial ownership of holdings.

Share and Capital Issues and Restructuring

Implementing properly authorised changes in the structure of the company’s share and loan capital; devising, implementing and administering directors’ and employees’ share participation schemes.

Acquisitions, Disposals & Mergers

Participating as a key member of the company team established to implement corporate acquisitions, disposals and mergers; protecting the company’s interests by ensuring the effectiveness of all documentation; ensuring that due diligence disclosures enable proper commercial evaluation prior to completion of a transaction; ensuring that the correct authority is in place to allow timely execution of documentation.

Corporate Governance

Continually reviewing developments in corporate governance; facilitating the proper induction of directors into their role; advising and assisting the directors with respect to their duties and responsibilities, in particular compliance with company law and, if applicable, Stock Exchange requirements; counselling them when preparing presentations and memoranda.

Non-Executive Directors

Acting as a channel of communication and information for non-executive directors.

Company Seal

Ensuring the safe custody and proper use of any company seals.
Registered Office

Establishing and administering the registered office; attending to the receipt, coordination and distribution of official correspondence received by the company, sent to its registered office; ensuring the provision of facilities for the public inspection of company documents.

Company Identity

Ensuring that all business letters, notices and other official publications of the company show the name of the company and any other information as required by the statutes and that company name plates are displayed in a conspicuous place.

Subsidiary Companies

Ensuring that procedures are in place for the correct administration of subsidiary companies and that correct information is given to the holding company; maintaining a record of the group’s structure.

General Compliance

Monitoring and laying in place procedures which allow for compliance with relevant regulatory and legal requirements, particularly under the Companies Acts including legal requirements on retention of documents; retaining the minimum set of records required for commercial reasons; ensuring that procedures are in place to allow adequate historical archive to be maintained.

Company Secretary is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities. Ensures that Board procedures are both followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws. He Commands high position in the value chain and acts as conscience seeker of the company. A Company Secretary being multidisciplinary professional renders services in following areas:

CORPORATE GOVERNANCE AND SECRETARIAL SERVICES

Corporate Governance Services

Advising on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made there under.

Corporate Secretarial Services

— Promotion, formation and incorporation of companies and matters related therewith.
— Filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative.
— Maintenance of secretarial records, statutory books and registers Arranging board/general meetings and preparing minutes thereof.
— All work relating to shares and their transfer and transmission Secretarial/Compliance Audit and Certification Services.
— Secretarial/Compliance Audit.
— Compliance certificate for companies not required to employ a whole time Secretary Signing of Annual Return.
— Other declaration, attestations and certifications under the Companies Act, 1956.

CORPORATE LAWS ADVISORY AND REPRESENTATION SERVICES

Corporate Laws Advisory Services
Advising companies on Compliance of legal and procedural aspects, particularly under –
— SEBI Act, SCRA and rules and regulations made thereunder
— Foreign Exchange Management Act
— Consumer Protection Act
— Depositories Act
— Environment and Pollution Control Laws
— Labour and Industrial Laws
— Co-operative Societies Act
— Mergers and Amalgamations and Strategic Alliances
— Foreign Collaborations and Joint Ventures
— Setting up subsidiaries abroad
— Competition Policy and Anti-Competitive Practices
— IPR Protection, Management, Valuation and Audit
— Drafting of Legal documents.

Representation Services
Representing on behalf of a company and other persons before –
— Company Law Board
— National Company Law Tribunal
— Competition Commission of India
— Securities Appellate Tribunal
— Registrar of Companies
— Consumer Forums
— Telecom Disputes Settlement and Appellate Tribunal
— Tax Authorities
— Other quasi-judicial bodies and Tribunals
— Arbitration and Conciliation Services
— Advising on arbitration, negotiation and conciliation in commercial disputes between the parties
— Acting as arbitration/conciliator in domestic and international commercial disputes
— Drafting Arbitration/Conciliation Agreement-Clause

**FINANCIAL MARKETS SERVICES**

— Public Issue, Listing and Securities Management
— Advisor/consultant in issue of shares and other securities
— Preparation of Projects Reports and Feasibility Studies
— Syndication of Loans from banks & financial institutions
— Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers
— Loan Documentation, registration of charges, status and search reports
— Listing of securities/delisting of securities with recognized stock exchange
— Private placement of shares and other securities
— Buy-back of shares and other securities
— Raising of funds from international markets – ADR/GDR/ECB
— Takeover Code and Insider Trading
— Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard
— Acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of Insider Trading) Regulations, 1992 including maintenance of various documents.

**Securities Compliance and Certification Services**

Compliance with rules and regulations in the securities market particularly –
— Internal Audit of Depository Participants
— Certification under SEBI (ICDR) Regulations
— Audit in relation to Reconciliation of shares
— Certificate in respect of compliance of Private Limited and Unlisted Public Company (Buy Back Securities) Rules

**FINANCE AND ACCOUNTING SERVICES**

— Internal Audit
— Secretary to Audit Committee
— Working capital and liquidity management
— Determination of an appropriate capital structure
— Analysis of capital investment proposals
— Business valuations prior to mergers and/or acquisitions
— Loan syndication
— Budgetary controls
— Accounting and compilation of financial statements

**TAXATION SERVICES**

— Advisory services to companies on tax management and tax planning under Income Tax, Excise and Customs Laws
— Preparing/reviewing various returns and reports required for compliance with the tax laws and regulations
— Representing companies and other persons before the tax authorities and tribunals

**INTERNATIONAL TRADE AND WTO SERVICES**

— Advising on all matters related to IPRs and TRIPs Agreement of WTO
— Advising on matters relating to antidumping, subsidies and countervailing duties
— International Commercial Arbitration
— Advising on and issuing certificates on Exim Policy and Procedures
— Advising on Intellectual Property licensing and drafting of Agreement
— Acting as registered Trade Mark Agent

**MANAGEMENT SERVICES**

— General/Strategic Management
— Advising on Legal Structure of the organization
— Business policy strategy and planning
— Formulation of the organizational structure
— Acting as management representative to obtain ISO Certification
— Corporate Communications and Public Relations
— Communication with shareholders, stakeholders, Government and Regulators, Authorities, etc.
— Advisory services for Brand equity and image building

**Human Resources Management**

— Manpower planning and development
— Audit of the HR function
— Performance appraisal
— Motivation and remuneration strategies
— Industrial relations
— Office management, work studies and performance standards
— Advising on industrial and labour laws

**Information Technology**
— Compliance with cyber laws
— Conducting Board Meetings through video-conferencing and teleconferencing
— Advising on software copyright and licensing
— Development of management reports and controls
— Maintenance of statutory records in electronic form
— Sending notices to shareholders by electronic mode
— Filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities

Last but not the least company secretaries are required to address the new emerging multifaceted challenges in various developing areas like Competition Law, SME Sector, IFRS and XBRL because in this fast changing world, opportunities are unlimited and future belongs to those, who grasp these opportunities before they become a necessity. I am hopeful that this conference will be proved successful in examining the adaptability of Company Secretaries for these areas. Ministry of Corporate Affairs has already issued the Voluntary Corporate Governance guidelines which will be institutionalized in once the New Company Bill, which has already been passed in the Lok Sabha, will become the Law. This challenge of implementing the provisions of this Law, both in letter and spirit, in order to ensure the proper and ethical Corporate Governance in our country, will squarely and effectively lie, in future days to come, on the professionals like Company Secretaries.

I wish the organisers and the participants the very best.
The issue of Guidelines for Peer Review of Attestation Services by Practising Company Secretaries ("the Guidelines") by the Institute of Company Secretaries of India ("the Institute") is an exemplary step towards maintaining and enhancing the quality of attestation services rendered by the members of the Institute in practice. These Guidelines shall act as a mechanism to uphold the standards of the profession and instil a sense of greater trust and confidence in the eyes of the various stakeholders.

We know that the process of peer review encompasses an examination and review of the systems, procedures and practices by a Peer Reviewer to determine whether they have been put in place by the Practice Unit for ensuring the quality of attestation services as envisaged and implied / mandated by the Technical Standards and whether these were effective or not during the period under review.

Peer Review Methodology

The methodology of conducting a Peer Review consists of four stages, namely, preparation, planning, execution and reporting as explained below:

Stage I - Preparation

Embarking on a peer review, this stage includes selection of a Practice Unit for conducting peer review, notification of an impending review to the Practice Unit, the appointment of a Reviewer and intimation of his appointment.

(a) Notification to the Practice Unit :- A Practice Unit which has been selected for a Peer Review will be notified in writing by the Peer Review Board ("the Board"). The Practice Unit so selected will also be sent a Questionnaire (as per prescribed format) together with a panel of three suggested reviewers for selection by the Practice Unit.

(b) Selection and Appointment of Reviewer :- The Practice Unit will select one out of the three Reviewers and intimate to the Board within fifteen days of receipt of the panel and the Board will intimate the Reviewer so selected.

(c) Intimation to the Practice Unit :- On receipt of consent by the selected Reviewer, the Practice unit will be notified of such acceptance.
Stage II - Planning

(a) Information to be furnished by Practice Unit: The Practice Unit shall within one month of being notified about peer review, furnish the following information to the Reviewer:

(i) Completed Questionnaire sent by the Board.

(ii) Complete list of attestation service clients for the year in respect of which the review is being done.

Apart from the above, the Reviewer may also seek from the Practice Unit any other information or further/ additional clarification on the information already furnished in order to facilitate selection of sample attestation services for review.

(b) Selection of Sample Attestation services Engagements by the Reviewer: On receiving the information from the Practice Unit, the Reviewer shall select a sample of the attestation services that he would like to review and intimate the same to the Practice Unit. The sample should cover a fair cross-section of the Practice Unit's attestation services engagements. The Reviewer shall give the Practice Unit at least two weeks time to make available the necessary records of the selected attestation services for review.

(c) Confirmation of visit: The Reviewer will plan for an on-site review visit or initial meeting in consultation with and mutual consent of the Practice Unit in such a manner that the entire review process is completed within sixty days from the date of notification to the Practice Unit about its selection for review.

Stage III - Execution

(a) On-site review: Peer Review visits will be conducted at the Practice Unit's head office or other officially noted/recorded place of office. This on-site review should not extend beyond three working days.

(b) Initial meeting with the Practice Unit: Before the commencement of the actual review, an initial meeting will be held between the Reviewer and the Practice Unit to discuss the agenda of the peer review and accuracy of the information given in the Questionnaire. This will help the Reviewer to understand the system prevailing in the Practice Unit and to form a preliminary evaluation of the adequacy of the systems.

(c) Compliance Review-General Controls: The Reviewer is required to carry out a compliance review of the following General Controls to understand the functioning of the office of the Practice Unit and to evaluate the degree of reliance to be placed upon them for effective review:

- Independence
- Maintenance of Professional Skills and Standards
- Outside Consultation
- Staff Supervision and Development
- Office Administration.
(d) Selection of Attestation Service Engagements for Review:– The number of assurance service engagements to be reviewed shall depend upon various factors such as the number of practicing members involved in attestation service engagements in the Practice Unit, standard of quality controls generally prevailing and their reliability and the total number of attestation service engagements undertaken by the Practice Unit for the period under review. From the initial sample selected at the planning stage, the Reviewer, in consultation with the Practice Unit, may reduce or enlarge the initial sample size of attestation service engagements for review.

(e) Review of Records:– In the conduct of peer review, the Reviewer may adopt a compliance approach or substantive approach or combination of both. As per the Guidelines, the compliance approach is to assess whether proper control procedures have been established / followed by the Practice Unit and sufficient documentation maintained to ensure that attestation services are being performed in accordance with Technical Standards. The Reviewer should ensure that the general controls on which he intends to rely upon is generally evident and functioning effectively in the Practice Unit during the period under review. Based on such evaluation, the reviewer needs to decide on the nature and extent of substantive procedures to obtain sufficient appropriate review evidence that the Practice Unit’s attestation processes meet the professional standards expected of it by the Institute. On the basis of his judgement, if the Reviewer chooses to rely upon the general controls, then a lower level of substantive testing may be justified. In cases, where the Reviewer chooses not to rely upon the general controls or is of the opinion that the standard of compliance is not satisfactory or appropriate, then he should adopt a higher level of substantive testing which involves a review of the attestation working papers (documentation) in order to establish whether the attestation work has been carried out as per the Technical Standards. Where the size of a Practice Unit is small or medium or not having elaborate general controls, the Reviewer should adopt substantive approach for conduct of review.

Stage IV - Reporting

(a) Preliminary Report:– After completion of the on-site review, the Reviewer shall, before making his report to the Board, communicate to the Practice Unit, a preliminary report on the areas where the systems and procedures are deficient or non-compliant with reference to any matter that has been noticed by him. Within twenty-one days after the date of receipt of the preliminary report, the Practice Unit shall make any submissions or representations, in writing to the Reviewer.

(b) Interim Report:–

(i) If the Reviewer is satisfied with the reply received from the Practice Unit, he shall submit a Peer Review Report to the Peer Review Board along with his initial findings, response by the Practice Unit and the manner in which the responses have been dealt with. A copy of the report shall also be forwarded to the Practice Unit.

(ii) In case the Reviewer is of the opinion that the response by the Practice Unit is not satisfactory, the Reviewer shall accordingly submit an Interim Report to the Peer
Review Board incorporating his reasons for the same. In such case, the Peer Review Board may make recommendations to the Practice Unit regarding the application by it of Technical Standards and shall issue instructions for a "Follow Up" review not earlier than six months from the date on which the instruction is issued.

(c) Final Report :- Subsequent to follow-up review, the Reviewer shall submit a final report to the Peer Review Board incorporating the findings as discussed with the Practice Unit. In case the Reviewer is dissatisfied even at the follow-up review, then he shall submit his final report incorporating the reasons for dissatisfaction. On the basis of the Reviewer's final report and the Practice Unit's submissions, the Board may either issue Peer Review Certificate to the Practice Unit or issue instructions to the Reviewer for a "Follow-up" review.

The process of peer review explained above shall also focus on the examination of office systems and procedures followed by the Practice Unit with regard to compliance of attestation services and training and capacity building programs for staff (particularly, the Apprentice Trainees).

Review of Office Systems and Procedures

Every Practice Unit is expected to put in place office systems and procedures including appropriate infrastructure to ensure that the attestation services are being carried out in accordance with the applicable Technical Standards and the quality of reporting is maintained. The applicability of office systems and procedures shall vary depending on the size and level of the Practice Unit. The Peer Reviewer shall verify whether the office systems and procedures followed by the Practice Unit were effective and operating continuously during the period under review. We provide below some efficient office systems and procedures which should be established and continuously followed by a Practice Unit to ensure quality control and the existence and effectiveness of the same shall be reviewed by the Peer Reviewer during the conduct of peer review process:

(i) Acceptance of assignment :- Before accepting any attestation engagements, the Practice Unit must follow the procedure of receiving an appointment/ engagement letter (also includes emails) from its client and also provide written confirmation of acceptance of the attestation engagement. The appointment letter should contain details about the nature and scope of the assignment, professional fee details and billing arrangements, management’s responsibility and other important terms and conditions. The proprietor/ partner of the Practice Unit must invariably ensure communication with the previous PCS about his acceptance of the assignment as prescribed under the Code of Conduct for PCS issued by the Institute.

(ii) Allocation/Delegation of work assignments :- The Practice unit should ensure that the work responsibility allocated to staff is commensurate with his/ her professional competence. The assistants should be given proper directions, explained their responsibilities and objectives of what they are doing before taking up the assignment. There should exist a system for scheduling of tasks, planning the time required and setting up realistic time frames within which a particular engagement may be completed which would help in time management.

(iii) Review of work done :- The managers/supervisors should monitor and periodically
review the work done by the assistant(s) / Apprentice trainee(s). Before signing the reports/ certificates prepared by the Apprentice trainee(s), the proprietor/ partner must review the report on the basis of working papers collected and maintained by the Apprentice Trainee(s).

(iv) **Document management system** :- The Practice Unit must have a well established records management system to ensure easy filing, storage and retrieval of information. The record management system should be kept simple and easy to understand and manage. However, it is well acknowledged that document storage of paper documents is less convenient and more time consuming when documents are in need of retrieval. In today’s era of digitisation, the Practice Unit should also follow digital or electronic records management system by scanning the physical documents into digital format and then storing on an individual computer hard drive or on an individual hard drive which can be accessed via all the computers on a particular network. Digital document management keeps important documents and digital files at our fingertips, eliminates walls of filing cabinets, and provides the utmost in information security and disaster recovery.

(v) **Maintenance of office library including e-library** :- The Practice Unit should also set up an office library consisting of reference books and literature which would not only help the staff/ Apprentice Trainee(s) in augmenting their theoretical knowledge but also provide in-house consultation. The library should be easily accessible at all times. Apart from maintaining a physical library, the Practice Unit should also have access to a Digital Library. Digital libraries facilitate creation, organization and management of multimedia digital content and provide search, retrieval and other information services over computer networks and other electronic media. Digital libraries not only offer significant and unparalleled improvement and value addition to library services but also save the precious time, strength and the energy of the users. Some of the important points to be considered in developing a digital library are digital collection or material selection, conversion of existing print, audio and video into digital format, cataloguing or metadata creation, storing, creating portals or gateway to the electronic collection available on the web and integrated access interface.

(vi) **Office Décor and Infrastructure** :- The Practice Unit must ensure that the décor/ appearance of the office is satisfactory and cluster/ dirt free. The office must be well equipped with necessary machines such as computers, printers, scanners, shredders, fax, telephones, etc. and easy access should be facilitated to the users at all times.

The above is not an exhaustive list and only illustrates certain important aspects of examination. The Peer Reviewer, on the basis of his judgment and depending on the size of the Practice Unit, may examine any other matters also.

**Review of training and capacity building programs for staff**

In a Practice Unit, the field work for attestation assignments is usually delegated to Apprentice Trainee(s)/ assistants depending on their professional competence and the Partners / Proprietor of the Practice Unit authenticate their reports on the basis of the field work done by them and the working papers maintained. During discharge of their duties, the Trainees and staff are also required to interact and communicate with the clients. As
such it is very important for a Practice Unit that the Apprentice Trainee and other staff are imparted periodical training and ensure that they take part in capacity building and professional development programmes. It is beyond doubt that the training sharpens practical skills of trainees and provides a platform where education and experience merge in a subtle way and it is this confluence which makes for a better professional. The need for imparting adequate training to the staff and ensuring their participation in capacity building programs can be emphasised as follows:

— Providing adequate theoretical knowledge for on the job practical application
— Improving professional skill and competence
— Development of personal/managerial skills
— Development of professional attitude
— Inculcating professional ethics

Obligations of the Practice Unit

— The Apprentice Trainee and other staff must be imparted periodical training through well planned in-house mechanism for training and upgrading the technical skills of the staff.

— The Practice Unit should also ensure that the Apprentice Trainee(s) take part in capacity building and professional development programmes including seminars, workshops, lectures organised by the Regional councils of the Institute.

— The staff must have access at all times to office library, internet and other sources of updated technical knowledge for necessary consultation.

Model Office of a Practising Company Secretary

While discussing or reading about the topic, peer review of Practising Company Secretaries, one question that naturally crops up is how should an ideal office of a Practising Company Secretary be? Though there are no laid down standard rules, office systems or procedures for administration for a Practising Company Secretary, we have made an attempt to put forward the ingredients of a successful working environment in the office of a Practising Company Secretary.

Proper office environment is necessary for the efficiency of work and quality of performance by employees in an office. Putting in place simple office systems and procedures would not only ensure smooth running of the office but also allow performance of work in an efficient manner bringing fewer frustrations, lower costs, more time and value to the business.

(i) 5S Methodology

The office 5S management methodology is an important organisational technique that originated from Japan. The term ‘5S’ is coined from the first letters of each of the 5 Japanese words that form the basis of this philosophy. This method is used for organising a workplace and is excellent for optimising an office environment.

(a) Seiri (Sorting) :- This is the basic principle requiring removal of non-essential items from the office space resulting into an uncluttered office space. All those
items which are not needed should be discarded and what one can do without for a long time should be filed or stored in a separate area. It can be implemented by sifting through the items in the office and appropriately tagging those that need to be discarded or stored.

(b) Set in Order (Seiton) :- This phase involves straightening up the office area by arranging needed items so that they are readily accessible and labeled so that anyone can find them or put them away. It focuses on the need for arranging tools and equipment in an order that promotes optimum work flow. Having designated locations for all items in the work area enables employees to take control over their operations. Employees will be able to immediately see if things are out of place and if more materials, supplies, or tools need to be ordered.

(c) Shine/ Sweep (Seiso) :- The third phase is dedicated to cleanliness. It is about creating a work environment that people want to work in. Each and every item in the office should be kept in immaculate condition. The Shine step includes three primary activities which include getting the workplace clean, maintaining its appearance, and using preventative measures to keep it clean. The key purpose is to keep everything in top condition so that when someone needs to use something, it is ready to be used. Striving to maintain each item in its best condition extends its usability in the long term and also helps in making work easier.

(d) Standardize (Seiketsu) :- Bringing standardization into the office allows for systems to be put in place so everyone follows procedures the same way. It can be achieved by laying down systems and procedures, developing checklists, office procedure manuals and other mechanisms leading to lower error rate. Standards should be easily understood and easy to communicate.

(e) Sustain (Shitsuke) :- The fifth and final "S" is about creating habits. The attitudes and activities must be institutionalized and repeated until they become part of the culture and the fabric of everyday work. Education about the 5S System and its benefits is a useful tool to sustain the program. Regular audits should be conducted to measure 5-S performance in each work area and the results should be posted in public areas. Appropriate recognition and reward should be provided to team members who have successfully implemented the 5S methodology.

Further, office administration is now a combination of human resource management, information technology management, office resource management, written communication and verbal communication.

(ii) Human Resource Management

Human resource management is the management of an organization's workforce, or human resources and focuses on recruitment of, management of, and providing direction for the organisation's employees. It enables employees to contribute effectively and productively to the overall direction and the accomplishment of goals and objectives of the organisation. In relation to the office of a Practising Company Secretary, this function comprises of:

— Staff Induction Programme to acquaint the new appointee with the office policies and systems and the existing Staff.
— Imparting training of Trainees/ Other Staff, both in-house and on-the-job to provide adequate theoretical knowledge and matching the same to the practical experience.

— Assignment of work on the basis of required skills and competence.

— Maintaining motivation by providing incentives.

— Staff Supervision and Development including development of managerial skills, professional attitude and ethics.

— Review of work to satisfy that in carrying out the assignment the policies and procedures established by the firm has been followed ensuring compliance with the applicable Technical Standards and providing guidance in the areas of further improvement.

— Performance appraisal and Awarding recognition for excellence in work performance in the form of any title such as "Employee/ Trainee of the Month" or cash bonuses, etc.

— Ensuring employee welfare by providing favourable working conditions and amenities such as rest and lunch rooms, transport, medical assistance, health and safety, etc.

— Ensuring availability of expertise for in-house as well as outside consultation.

(iii) Information Technology Management

Information technology management is concerned with the management of all the technology resources of a firm according to its needs and priorities. These resources may include tangible investments like computer hardware, software, data, networks and data centre facilities, as well as the staffs who are hired to maintain them. It entails the following activities:

— Setting up sufficient number of workstations (computer units) ensuring uninterrupted work flow.

— Necessary and latest software installations on computers to aid completion of work in an easier and faster way.

— Protecting computers from viruses by installing Antivirus software and updating it regularly.

— Periodically updating computer operating systems to stay in tune with technology requirements and to fix security holes.

— Taking regular data backup to protect against any unfortunate loss of data and to store a copy of backup offsite.

— Password-protecting important documents, files and folders.

— Preventive maintenance of computer hardware and software.

(iv) Office Resource Management

Office resource management deals with the management of available office resources
in the most efficient way possible including human resources and technology resources, which have already been discussed above. It constitutes the following functions:

— Maintaining simple, spacious and cluster-free office space.

— Following proper document management system to ensure easy filing, storage and retrieval of information.

— Placing charts/lists/circulars on walls or setting up a paper file centrally in the office to provide everyone easy access to certain important information.

— Time management by keeping task lists, planning time and setting realistic time frames.

— Setting up an office library comprising of reference books, books on literature for consultation.

— Maintaining office equipments, furnitures and other tangible assets in clean and working condition

(v) Written and Verbal Communication:

Communication plays a very important role in the administration of any office. Further, in our profession also, regular communication with the clients, either written or verbal, is inevitable. So it is quite imperative to ensure that communication of opinions, ideas, thoughts or directions to staff should be clear and precise in order to achieve the desired result.

Written Communication

— Written communication is a permanent means of communication and is useful where record maintenance is required.

— While preparing audit reports, issuing certificates or expressing opinions on legal/secretarial matters to clients or in the course of sending or replying to e-mails, attention should be given that the communication is understandable, brief, truthful and comprehensive.

— Effective writing involves careful choice of words, their organization in correct order in sentences formation as well as cohesive composition of sentences. Here it should be noted that it is not necessary to use difficult language or heavy words in your communication; it may be written in very simple language. The important thing is that the message should be clearly conveyed without any ambiguity.

It is essential for the Company Secretaries, whether in practice or employment, to develop effective written communication skills and to encourage the same in all employees through proper training.

Verbal/Oral Communication

People communicate in businesses with each other most often by oral communication. Verbal communication can be used to inform, inquire, argue and discuss topics of all kinds. It is vital to teaching and learning, as well as forming bonds and building relationships with
other people. Interpersonal communication and public speaking are the two basic types of verbal communication. Etiquette is very important in interpersonal speaking and hierarchal communication. To be an effective communicator one must speak in a manner that is not offending to the receiver. It is necessary to pay attention to what you say and how you say it. Speaking clearly and enunciating words and being conscious of nonverbal aspects such as eye contact, posture and facial expressions will produce the desired effect.

Concept of Audit Trails and Audit Diary

A Practising Company Secretary is required to issue various reports and certificates to its clients from time to time with regard to the state of compliance with the applicable laws, rules, regulations, circulars, or notifications as stipulated by the statutory and regulatory authorities. Before issuing any such certificate or report, it is requisite for the PCS to perform audit of the relevant records, documents, files, registers, etc. based on the certification requirements of his clients in order to form his own opinion. The auditing assignments normally undertaken by a Practising Company Secretary includes the following:

(a) Secretarial audit for issuing Secretarial Audit Report,
(b) Compliance audit for issuing Compliance certificate in terms of Section 383(1A) of the Companies Act, 1956,
(c) Corporate governance audit for issuing Corporate Governance Certificate in terms of Clause 49 of the Listing Agreement,
(d) Annual Return audit for signing of Annual Return of a listed company under Section 161 of the Companies Act, 1956,
(e) Share Transfer Audit of listed companies for issue of Certificate under Clause 47(c) of the Listing Agreement.

Audit Trails

Audit Trail refers to the series of documents, computer files, and other records that are examined during an audit, and shows how the company has complied with the relevant and applicable statutory laws, rules, regulations, circulars, notifications, etc. during a particular year or the period of review or for a particular event. An Audit Trail is a chain of evidence that can be used to trace the various actions performed by the company as required under various statutory laws and it helps to verify whether the actions were in adherence/compliance with the rules and regulations laid down by the statute. An audit trail can be either a paper or electronic trail that provides documented history of a transaction in a company.

Audit trails can be simplistic or complicated, depending on the scope and complexity of the audit i.e. various statutes, laws, rules and regulations being covered for the purpose of audit. The wider the scope of audit, the greater number of documents needs to be examined by the PCS for issuing the report. The presence of a reliable and easy to follow audit trail is an indicator of good internal controls instituted by a company, and forms the basis of objectivity. An audit trail consisting of careful record keeping will provide the necessary documentation. Maintaining an organized, easy-to-use filing system keeps these documents within easy reach at all times and also speeds the audit process.
While conducting peer review of a Practice Unit, the Peer Reviewer should also verify whether the Practice Unit has followed proper Audit Trail during the course of audit for issuing various reports and certificates and whether working papers and copies of supporting documents/evidence/details obtained from the clients during the course of audit have been properly maintained.

**Audit Diary**

The Apprentice Trainees and other staff must maintain diaries to record daily activities undertaken during the course of an audit including proceedings of any meeting/discussion held, verbal explanations and clarifications given, observations made etc. Audit Diary is an important tool in the hands of the auditor/audit team which provides information on the following:

- Who - who has carried out the audit?
- Where - where has the audit been conducted?
- When - when is audit undertaken?
- What - what is purpose and scope of audit?

The contents of the diary, *inter alia*, include name and basic info of the company, Information of the auditor, scope & objective of the audit being carried out, methodology of audit, period of audit, documents verified during the course of audit, the important points which need further clarification/discussion, etc. Such diaries should be periodically inspected by the PCS to maintain proper records about the progress of training imparted to the Apprentice Trainees.

Maintaining audit diary by the members of the audit team of the Practice Unit is undoubtedly of great importance because of the reasons enumerated as follows:

- There are less chances of missing any observations/irregularities as they are instantaneously recorded in the audit diary.
- It works as a proof of the work done during the audit.
- It can be used as evidence in a case of negligence charge against the PCS.
- It can be used for future guidance and reference.
- It helps in completing the audit work smoothly.

**Conclusion**

On a plain reading of the peer review methodology, it is true that it appears to be a simple and obvious process without much complexity. However, with each practical application of the peer review process, the areas of improvement would be discernible and accordingly, the process will gradually get refined. Also, an office of a Practising Company Secretary must have certain established systems, policies and procedures to ensure quality control of the attestation assignments handled by it depending on the size and level of the Practice Unit. Putting in place simple office systems and procedures would not only ensure smooth running of the office but also allow performance of work in an efficient manner bringing fewer frustrations, lower costs, more time and value to the business.
PEER REVIEW OF COMPANY SECRETARIES IN PRACTICE - AN OVERVIEW

CS R Sridharan* CS Golki Beswala**

The enactment of Section 383A of the Companies Act, 1956 which came into force from 1st February, 1975 recognised Company Secretary as an important professional in the efficient management of corporate sector. Since then, the profession of Company Secretaries, in particular the concept of whole-time practice, has undergone great transformation. Globalisation has redefined the role of Company Secretaries and with the Government and regulatory authorities increasingly and continuously reposing greater trust and confidence in the profession, today there lies a numerous opportunities for the Company Secretaries in practice including but not limited to issue of certificates under various laws, secretarial audit, due diligence audit, attestation engagements, etc.

Trustworthiness is an important ingredient of any professional relationship. The undoubted trust and confidence reposed in a professional by his client must be reciprocated by him in terms of excellent performance and quality service. Excellence is the hallmark of success in a competitive environment. In order to maintain and enhance the level of excellence and quality of services in a professional performance, self learning and constant review of performance by peers are very important.

Peer Review - Concept

The term "peer" means "a person of the same age, status, or ability as another specified person" and the word "review" means "a report on or evaluation of a subject or past events". In the context of profession, the term "peer review" refers to the evaluation of work or performance of a professional by other people in the same profession in order to maintain or enhance the quality of the work or performance in that profession. It is essentially a process of self-regulation by a profession involving qualified individuals within the relevant field to maintain standards, improve performance and provide credibility to their profession.

Peer Review - Global Scenario

Globally, peer review is used extensively in a variety of professional fields, including academic and scientific research, medicine, law, accounting and computer software development. Peer review is statutorily mandated in some situations, particularly in law and medicine. In others it is required by tradition and/or by administrative rules.

Looking at parallel professions, peer review is already in existence in the field of financial reporting by public accountancy firms in most of the developed countries of the world. The

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

**Peer Review of Company Secretaries in India**

Taking a step further in its continuous endeavour to raise the standards of the profession and with a view to enhance the quality of attestation services rendered by Practising Company Secretaries (PCS) in the public interest, ICSI issued the Guidelines for Peer Review of Attestation Services by Practising Company Secretaries ("the Guidelines") effective from 1st October 2011. Peer Review is a process used for examining the work performed by one’s equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

Peer Review process is based on the principle of systematic monitoring of the procedures adopted and records maintained while carrying out attestation services in the course of one’s professional responsibility to ensure and sustain quality of service rendered. Peer Review is primarily directed towards ensuring as well as enhancing the quality of attestation services of Company Secretaries in practice.

Peer review is intended to be a remedial and an educational tool, and hence the process does not merely contemplate finding deficiencies by a Peer Reviewer in the services provided by the Practice Unit. In fact, it is the self regulation process by the members of ICSI in practice aiming at achieving the broader objective of maintaining and enhancing the quality of attestation services rendered by them and receiving guidance in the areas of improvement from their peer members during periodic evaluation of their attestation services engagements.

**Peer Review Process**

Briefly, the process of peer review involves (i) selection of an individual PCS or a firm of PCS, (Practice Unit) by the Peer Review Board for conduct of review, (ii) appointment of a Peer Reviewer from among the panel of reviewers, consisting of members of the ICSI possessing requisite qualifications, (iii) a review and examination of the quality of attestation services provided by the Practice Unit by a Peer Reviewer, in order to determine whether (a) the Practice Unit has complied with the Technical Standards issued by ICSI and various other statutory and regulatory requirements in the performance of the attestation services; and (b) the systems, procedures and practices have been put in place and were effective during the period under review to ensure the quality of attestation services rendered, (iv) submission of final report by the Peer Reviewer to the Peer Review Board and (v) issue of a Peer Review Certificate, if deemed fit, to the Practice Unit.

**Understanding the term "Attestation Services"**

As per the Guidelines, peer review means an examination and review of the systems,
procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/mandated by the Technical Standards and whether these were effective or not during the period under review.

Here, it is pertinent to note the definition of "attestation services" as provided in the Guidelines. The phrase "attestation services" have been used in the Guidelines interchangeably with secretarial or compliance audit services, attestation functions and secretarial audit functions. As per the Guidelines, attestation services include secretarial audit, issuing of various certificates, but does not include the following:

- Management consulting engagement
- Representing a client before the Authorities
- Testifying as expert witness
- Providing expert opinions on points of principle, such as Secretarial Standards or the applicability of certain laws based on the facts provided by the clients.

**Peer Review - Why Needed?**

In today's era of globalisation and increasing competition, excellence is the hallmark of success and the process of peer review assists in achieving the excellence in the performance of the professional services. Following are some of the reasons substantiating the need for peer review of attestation services rendered by PCS:

(i) Evaluation of attestation services provided by the PCS.

(ii) Maintenance and enhancement of the quality of attestation services.

(iii) Assurance of compliance with the Technical Standards issued by ICSI from time to time and other regulatory and statutory requirements.

(iv) Assisting members in identifying the areas of improvement and receiving guidance from their peer members.

(v) Upholding the standards of the profession and building greater faith and confidence in the eyes of the stakeholders.

(vi) Sharing of good practices, experience and mutual learning among peer members of ICSI.

(vii) Recognition of quality performance by PCS in the form of issue of Peer Review Certificate.

(viii) Improving global presence of the members of ICSI in practice.

**Independent Peer Review Board**

To ensure the effective implementation of the Guidelines, the Council of the ICSI has constituted a Peer Review Board consisting of maximum of seven members, of whom at least four shall be Council Members and the balance members shall be from amongst prominent members of high integrity and reputation, which may also include former public officials,
regulatory authorities, etc. The provision for representation of outside bodies on the Board will not only ensure independent and unbiased decision making but also enhance the credibility of decisions taken by the Peer Review Board.

Peer Review process has no relationship whatsoever with any disciplinary or any other regulatory mechanism. By ensuring that the members of the Disciplinary Committee of the ICSI do not serve concurrently on the Peer Review Board, a "Chinese wall" is created between the Peer Review Process and Disciplinary Proceedings.

The Peer Review Board shall have the powers to maintain a panel of Reviewers, to define the terms of their appointment and also to remove any of them from the panel of reviewers in case the quality of the review/report fails to match the desired standard.

Objectives and Scope of Peer Review

The goal of peer review process is to promote quality in the attestation services provided by the PCS subject to the Technical Standards in the public interest. Through the implementation of the Peer Review Guidelines, ICSI seeks to ensure that while carrying out their services, the PCS (a) has complied with the Technical Standards laid down by the Institute and (b) has in place proper systems for maintaining the quality of the services they provide.

In the first stage, the process of Peer Review shall cover only the following six attestation services of a Practice Unit:

(iii) Issuance of Certificate of Securities Transfers under Clause 47(c) of the Listing Agreement.
(iv) Issuance of Certificate under Clause 49 of the Listing Agreement.
(v) Issuance of Certificate of Reconciliation of Capital, updation of Register of Members, etc. as per SEBI Circular D&CC/Cir-16/2002 dated December 31, 2002.
(vi) Conduct of Internal Audit of Operations of the Depository Participants.

The attestation engagement records of a Practice Unit pertaining to the immediately preceding financial year shall only be subjected to review and the scope of the entire peer review shall revolve around the following focus areas:

(i) Compliance with Technical Standards
(ii) Quality of Reporting or Attestation Services
(iii) Office Systems and procedures with regard to compliance of services including appropriate infrastructure
(iv) Training and capacity building Programs for staff (particularly the Apprentice Trainee).

As per the Guidelines, the term "Technical Standards" includes secretarial standards; guidance notes; notifications/directions; and relevant legislation in the context of specific
engagement. Therefore, the reviewer shall have to concentrate on compliance with all standards, guidance notes, notifications and relevant legislative requirements in respect of services rendered by the Practice Unit while performing a particular attestation engagement.

**Selection of Practice Unit for Peer Review & Cost involved**

For the purpose of peer review, the Practice Unit shall be selected on random sample basis by the Peer Review Board. A Practice Unit may also *suo moto* apply to the Board for the conduct of its peer review and the Board shall take due cognizance of such request. Peer review may also be conducted at the request of a company/concern where the Practice Unit is acting as a secretarial auditor in such company/concern or at the request of Council/Government or any regulatory body.

In all cases, the cost of Peer Review shall be borne by the Practice Unit, except, in a case, where a company/concern requests for peer review of a Practice Unit, the cost of peer review shall be borne by such company/concern. The cost of peer review involves a fee of Rs.10,000/- (inclusive of TA/DA or any out of pocket expenses) to be paid to the Reviewer or such other sum as may be prescribed by the Peer Review Board from time to time.

**Periodicity of Peer Review**

Every Practice Unit shall be mandatorily subject to peer review at least once in a block of five years. However, a Practice Unit may be subjected to peer review at a shorter interval also either at its own request or at the instance of the Peer Review Board.

**Eligibility of a Peer Reviewer**

Peer review of a Practice Unit shall be carried out by Reviewers empanelled with the Peer Review Board. The criteria for empanelment as a Reviewer is that a person should be (i) a member of ICSI having at least ten years of post membership experience and (ii) should currently be in whole time practice as a Company Secretary. It has been clarified that a member of ICSI who has been under employment for a decade can also seek empanelment as a Reviewer provided the member is holding a certificate of practice from ICSI on the date of making of application for empanelment as a reviewer.

While conducting peer review, the reviewer must remember that every peer review could not be the same because they all include a level of professional judgement and subjectivity depending on the nature and complexity of the peer review.

**Peer Review Methodology**

The methodology of conducting a Peer Review consists of four stages, namely, preparation, planning, execution and reporting. The entire peer review process has been explained with the help of a following flow chart:
FLOW CHART EXPLAINING THE PEER REVIEW PROCESS

1. SELECTION OF A PRACTICE UNIT (PU) FOR PEER REVIEW

2. INTIMATION TO PU ABOUT IMPENDING PEER REVIEW BY THE PEER REVIEW BOARD (BOARD) ALONG WITH A QUESTIONNAIRE AND A PANEL OF 3 REVIEWERS

3. PU INFORMS THE NAME OF THE REVIEWER TO THE BOARD WITHIN 15 DAYS

4. DUTY FILLED-IN QUESTIONNAIRE ENCLOSING A LIST OF ATTESTATION SERVICES CLIENTS TO BE SENT BY PU TO THE SELECTED REVIEWER WITHIN ONE MONTH

5. PU TO PROVIDE ANY OTHER INFORMATION AS MAY BE DESIRED BY THE REVIEWER

6. SELECTION OF INITIAL SAMPLE OF ATTESTATION SERVICES BY THE REVIEWER

7. PU WILL BE NOTIFIED OF THE SELECTION OF INITIAL SAMPLE TWO WEEKS IN ADVANCE OF VISIT BY THE REVIEWER

8. FIXATION OF DATE OF ON-SITE VISIT WHICH SHOULD BE WITHIN 60 DAYS OF THE DATE OF INTIMATION TO PU ABOUT THE IMPENDING PEER REVIEW

9. INITIAL MEETING BETWEEN THE PU AND THE REVIEWER

10. COMPLIANCE REVIEW OF GENERAL CONTROLS AND EVALUATION OF DEGREE OF RELIANCE TO BE PLACED ON THEM

11. FINAL SELECTION OF ATTESTATION SERVICES ENGAGEMENTS TO BE REVIEWED

12. REVIEW OF RECORDS

13. WHICH REVIEW APPROACH TO ADOPT?

14. COMPLIANCE APPROACH

15. SUBSTANTIVE APPROACH

16. WHETHER REVIEWER IS SATISFIED WITH THE SYSTEMS AND PROCEDURES PUT IN PLACE BY THE PRACTICE UNIT?

17. YES

18. SUBMIT FINAL REPORT TO THE BOARD

19. NO

A

B
Guidelines on Peer Review - Other Significant Features

There are certain clauses present in the Guidelines which would go a long way in enhancing
the robustness of the peer review process. These clauses act as in-built safeguards to facilitate easy implementation of the Guidelines.

(i) **Statement of Confidentiality**: High level of integrity is commanded in the conduct of peer review process and all those persons involved in the peer review process, viz, reviewers, members of the Peer Review Board and others who may assist them are subject to the secrecy provision contained under Clause 19 of the Guidelines on Peer Review. Before accepting to undertake a Peer Review, the Reviewer and Authorised Assistant, if any, are required to sign a Statement of Confidentiality and submit the same to the Peer Review Board.

(ii) **Existence of "Chinese Wall"**: In view of the necessity of safeguarding the Practice Unit’s interest, ICSI has ensured that there exists a "Chinese wall" between the Peer Review Process and Disciplinary Proceedings by providing in the Guidelines that in the event of any deficiencies noticed by the Peer Reviewer in the attestation services provided/ policies and procedures adopted by the Practice Unit, no Disciplinary Proceedings under the Company Secretaries Act, 1980 shall be initiated against the Practice Unit.

(iii) **Immunity from liability**: It is provided in the Guidelines that a Practice Unit which makes available records or documents to a reviewer shall not be liable for violation of the Code of Conduct under the Company Secretaries Act, 1980.

(iv) **Dispute Resolution Mechanism**: As per Clause 17 of the Guidelines, in the event of any dispute arising between the Practice Unit and the Reviewer on any matter relating to peer review, they may refer the dispute, in writing, to the Board within 2 months and the Board shall decide the dispute within 6 months. Further, if a Practice unit is dissatisfied with the Board’s decision, it may refer the matter to the ICSI Council within 2 months.

As concluding remarks, peer review is an outstanding tool, not only for the reviewed firms to improve their practices and users of PCS services to make decisions on who to hire, but also for governmental entities and regulators. In times to come "Peer Review Certificate" issued by ICSI shall become the hallmark of excellence in professional services rendered by a Company Secretary in Practice. Here, it would be precise to state that the Guidelines for Peer Review shall act as a mechanism to uphold the standards of the profession and instil a sense of greater trust and confidence in the attestation services provided by the Practising Company Secretaries in the eyes of the various stakeholders. This process of peer review shall open new vistas of professional opportunities for the Peer Reviewed Practice Units, both in India and internationally.
INTEGRATING GROWTH, GOVERNANCE & CHALLENGES BEYOND

CS Alka Kapoor*

The goal of governance initiatives should be to develop capacities that are needed to realise development that gives priority to the poor, advances women, sustains the environment and creates needed opportunities for employment and other livelihoods.

UNDP 1994 Initiatives for Change

Governance has three legs: economic, political and administrative. Economic governance includes decision-making processes that affect a country’s economic activities and its relationships with other economies. It clearly has major implications for equity, poverty and quality of life. Political governance is the process of decision-making to formulate policy. Administrative governance is the system of policy implementation. Encompassing all three, good governance defines the processes and structures that guide political and socio-economic relationships.

Governance encompasses the state, but it transcends the state by including the private sector and civil society organisations. Primary concern is how effectively the governance of state serves the needs of its people. The private sector covers private enterprises (manufacturing, trade, banking, cooperatives and so on) and the informal sector in the marketplace. Some say that the private sector is part of civil society. But the private sector is separate to the extent that private sector players influence social, economic and political policies in ways that create a more conducive environment for the marketplace and enterprises.

Civil society, lies between the individual and the state, comprises individuals and groups (organised or unorganised) interacting socially, politically and economically - regulated by formal and informal rules and laws. Civil society organisations are the host of associations around which society voluntarily organises. They include trade unions; non-governmental organisations; gender, language, cultural and religious groups; charities; business associations; social and sports clubs; cooperatives and community development organisations; environmental groups; professional associations; academic and policy institutions; and media outlets.

The argument put forth by the corporate leaders across the globe is that ‘growth-enhancing governance’ refers to governance capabilities for correcting significant market failures. The discussion on integrating growth, governance and challenges has become more interesting recently with the regulators coming out with Voluntary Codes for Self Regulation

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with the comply or explain principle. There can be no alternative to growth and given the way business was done hitherto in India, it is imperative that growth can be achieved only through good governance. Mere compliance with the regulatory prescriptions may not be good governance in the true sense.

**What is governance? And what is good governance?**

The challenge for all societies is to create a system of governance that promotes, supports and sustains economic development – with special consideration to environment and long term sustainability.

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.

Participation by both men and women is a key cornerstone of good governance. Participation could be either direct or through legitimate intermediate institutions or representatives. Hence relationship between governance and human development is essential for improving governance. This essentially refers to expanding the choices for all people in society.

Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible force.

Accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. In general an organization or an institution is accountable to those who will be affected by its decisions or actions.

Governance can no longer be considered a closed system. The state's task is to find a balance between taking advantage of globalisation and providing a secure and stable social and economic domestic environment, particularly for the most vulnerable. Globalisation is also placing governments under greater scrutiny, leading to improved state conduct and more responsible economic policies.

In all economies, the state is being compelled to redefine its role in social and economic activity - to reduce it, reorient it, and reconfigure it. The pressures for change stem from three sources:

- The private sector wants a more conducive market environment and a better balance between state and market.
- Citizens want increased accountability and responsiveness from government, as well as greater decentralisation.
- Global pressures from supranationals and worldwide social and economic trends are challenging the identity and nature of the state.

**The private sector**

The state is a big force for development - but it is not the only one. Sustainable economic
development depends on optimum utilization of resources in a sustainable manner for
maximum profits and well being of the society. Private sector plays an important role in
creating jobs that provide enough income to improve living standards. Economies have now
realized that the private sector is the primary source of opportunities for productive
employment. Economic globalisation is fundamentally changing the ways in which industries
and enterprises operate. In many developing countries, private enterprise must be encouraged
and supported to be more transparent and competitive in the international marketplace.
State or the Government has outlined a philosophy for governance that is responsive and
participative. They are working on the concept of inclusive growth; which reflects that the
Government must work in partnership with its stakeholders. Public partnership for sustainable
growth and intuitive good governance has gained immense momentum, which reflects the
importance of private sector in governance model of any economy.

Civil society

Strengthening the enabling environment for sustainable economic development including
the human development depends not only on a state that governs well and a private sector
that provides jobs that generate income. It also depends on civil society organisations that
make political and social interaction easier and that mobilise society to participate in economic,
social and political activities.

Civil society also has to protect the rights of all citizens. As the state and the private
sector are being reshaped and their relationships redefined, civil society is changing in
important ways. Unresponsive government and unrelenting economic and social pressure
have undermined some traditional civil society organisations and strengthened others - and
in many cases forced people to organise in new ways. Civil society is thus more than just
society. It is the part of society that connects individuals with the public realm and the state-it is the political face of society.

Civil society organisations channel people’s participation in economic and social activities
and organise them into more powerful groups to influence public policies and gain access to
public resources, especially for the poor. They can provide checks and balances on government
power and monitor social abuses. They also offer opportunities for people to develop their
capacities and improve their standards of living - by monitoring the environment, assisting
the disadvantaged, developing human resources, helping communication among business
people.

The NGO sector has been doing a marvellous job towards nation building and supporting
various programmes of the government. But, the way the affairs of the NGOs are managed
has raised serious doubts on the end use of funds received by such organisations and the
natural apprehension that such NGOs are not well governed. The regulators themselves are
finding it hard to tighten the noose on such NGOs in the absence of specific laws providing
guidelines for governance of such organisations.

NGOs concerned with development face the management of a complex and diverse range
of issues. They face internal management issues, for example questions of strategic planning,
budgeting, staffing, and the governing structure of the organization, growth and change
within the organization. NGOs also face the management of external relationships; relations
with government, the private sector, other NGOs and with their target communities. All of
these come to bear on the possibility of NGOs managing development. The effectiveness of
NGOs as actors in development and change depends on successful engagement with both internal and external management questions and also on the successful articulation between issues of internal and external management.

**Empowering growth through corporate governance**

Good corporate governance practices are sine qua non for sustainable business that aims at generating long term value to all its stakeholders. Good Corporate Governance practices are essential to ensure inclusive growth, wherein every section of society enjoys the fruits of the corporate growth. Sound and efficient corporate governance practices are the basis for stimulating the performance of companies, maximizing their operational efficiency, achieving sustained productivity as well as ensuring protection of shareholders’ interests. It ensures the health of the economies and their stability.

It is considered necessary to create a corporate culture of consciousness, transparency, confidence among investors and prospective investing public. It refers to a combination of laws, rules, regulations, procedures and voluntary practices to enable companies to maximise shareholders’ long-term value. It provides a mechanism which improves the efficiency, transparency, accountability of the corporate sector and leads to increased customer satisfaction, shareholder value and wealth creation. Corporate Governance represents the value, ethical and moral framework under which business decisions are taken.

"Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society."


Corporate governance is not about enhancing shareholder value. It is about enhancing economic growth, entrepreneurship, innovation and value creation. This concerns all aspects of corporate governance in relation to: the structure of company boards - independent directors, induction and servicing of new board members; the conduct of boards in terms of risks, audit committees, risk management committees, and the determinants of executive compensation, executive compensation committees and shareholder voice over executive compensation; and relationships between investors and firms - information, transparency, shareholder activism, and shareholder engagement in corporate activities. It is directly related to the policies being promoted at national and international levels in regard to the development of better legal systems and contractual rights, stronger investor protection, more say on pay, more power given to shareholders in terms of putting up shareholder resolutions and more creditor rights.

Corporate governance is entering a phase of global convergence, driven by the growing recognition that countries need to attract and protect all investors, both foreign and domestic. Deepening economic globalization, and increasing migration, trade and capital flows and climate change and increased activities in the resource domains that do not fall within the jurisdiction of any one particular country, and to which all nations have access – make
individual States more susceptible to policies adopted by others. Therefore, increased coherence, coordination and collective decision-making at the global level, grounded in international human rights standards and guided by the human rights commitments of the international community, are necessary. The equation is clear: global capital will generally flow at favorable rates to where it is best protected, but will not flow at all or will flow at higher-risk rates where protections are uncertain or nonexistent. Solid corporate governance is becoming increasingly crucial to attracting investment capital. Developing countries in particular stand to gain by adopting systems that bolster investor trust through transparency and rule of law.

Corporates need to demonstrate adoption of corporate governance principles so as to foster investor trust and attract capital, which will in turn lead to investment and economic growth. Of course, these principles need to be tailored to fit local needs. Investor interests have become increasingly paramount as a result of the global nature of modern investments, the rise of the institutional investor as a dominant player, and the related focus on protecting investment—regardless of where the corporate headquarters are located.

How Does Corporate Governance Affect Development?

— Increased access to external financing by firms, which can lead to greater investment, higher growth, and more employment creation.
— Lower cost of capital and associated higher firm valuation, which makes more investments attractive to investors and leads to growth and employment.
— Better operational performance, through better allocation of resources and better management, which creates wealth.
— Reduced risk of financial crises, a particularly important effect, as financial crises can impose large economic and social costs.
— Better relationships with all stakeholders, which helps improve social and labor relationships and areas such as environmental protection.

Source: Stijn Claessens “Corporate Governance and Development” Global Corporate Governance Forum Focus I Publication, www.gcgf.org

Corporate governance is a viable solution to many democratic problems. Traditionally, it has been viewed as the domain of large companies in developing economies – something of interest to investors and CEOs. However, as experiences of the past several decades show, corporate governance is much more than that. It helps to clean up the governance environment, exposing insider relationship and injecting values of transparency and accountability in both private and public transactions. Corporate governance is also an effective means of building up a functional small and medium-sized enterprise sector which can be capable of generating jobs and attracting investment – recognized sustainable solutions to poverty. In all, as good governance in the private sector is inseparable from good governance in the public sector, corporate governance can be viewed as one of the important tools to make democracies deliver for all segments of society.

According to an article “From Sustainable Companies to Sustainable Economies Corporate Governance as a Transformational Development Tool” by Aleksandr Shkolnikov and Andrew
Wilson in the book titled “Corporate Governance: the intersection of public and private reform”:

— Governance has a much broader application than improving internal company procedures, important in their own right. Corporate governance encompasses a wide variety of tools that also address the environment within which companies operate – i.e. issues associated with the institutional development of countries.

— In addition to attracting investment, improving competitiveness, and managing risks, corporate governance is fundamental to changing the relationship between business and state in many emerging markets. By injecting transparency into the equation, corporate governance helps to remove cronyism, corporatism, and favoritism, instead facilitating an open exchange between the private sector and government.

— By helping countries to attract investment, facilitating institutional reform, reducing opportunities for corruption, increasing competitiveness, and promoting minority shareholders rights protection, corporate governance helps to build a foundation for economic growth, job creation, and private sector-led poverty alleviation.

— There are two types of drivers of corporate governance reform. One set of drivers is associated with failures and collapses. A more proactive set of drivers has much to do with companies’ and countries’ search for investment, the need to improve competitiveness, and gaining access to regional and international markets. Both have been responsible for increased attention paid to corporate governance over the past decade.

— In many emerging markets, the emphasis must be placed on the enforcement of the existing corporate governance mechanisms. While developing new tools is important, reformers must pay closer attention to the already existing mechanisms and seek ways to ensure that they are consistently implemented and enforced for all market players.

— Ultimately, the creation of corporate governance value systems combined with the strengthening of basic rights and legal institutions contribute to the development of stable and democratic societies.

Investment in corporate governance is proving to be the necessary foundation for businesses that inspire confidence among investors, employees, and regulators, and for practices that lead to sustained economic growth.

The key challenge in many countries today is not so much how to design better corporate governance laws and regulations but how to enforce them effectively. Many economies are struggling due to overregulation that proves to be difficult to enforce.

**THE ROLE OF THE COMPANY SECRETARY**

Being the governance professional, Company Secretary is entrusted with effective guidance and execution of board’s governance practices. He is on an alleviated position in the corporate hierarchy and is a key corporate link in the top down approach between the management and the stakeholders; hence his role is important and significant.

As an officer of the company at the centre of the decision-making process, the Company
Secretary has a major duty in ensuring that good corporate governance is practised. He assists and guides the directors in their pursuit of company’s goals and also acts with integrity and impartially to protect the interests of the company, its shareholders, its employees and other stakeholders including the regulators. Company Secretary plays a pro-active and central role in corporate governance. The role of company secretary was first envisaged in the Adrian Cadbury Report on The Financial Aspects of Corporate Governance as under:

“The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged. All directors should have access to the advice and services of the company secretary and should recognise that the chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board. It should be standard practice for the company secretary to administer, attend and prepare minutes of board proceedings”.

The Profession of Company Secretaries – Global perspective

Company secretary is a competent officer to ensure compliances which is the reason why today, appointment of a Company Secretary is being made mandatory in various jurisdictions. Singapore, Malaysia, Maldives, Hong Kong, Kenya are some of the countries which have made the appointment of a Company Secretary mandatory for all companies.

In U.K. it is mandatory for every public company to have a Company Secretary. In South Africa, a public company or state-owned company must appoint a person knowledgeable or experienced in relevant laws as a company secretary. In Australia, a company other than a proprietary company must have a Company Secretary. In Mauritius, every company other than a small private company or a company holding Category 2 Global Business Licence should have a Company Secretary.

UK Corporate Governance Code 2012

The Code provides that the Company Secretary’s responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required. The Company Secretary should be responsible for advising the board through the chairman on all governance matters. All directors should have access to the advice and services of the Company Secretary, who is responsible to the board for ensuring that board procedures are complied with.

South Africa- King Committee Report- 2009

Principle 2.21: The board should be assisted by a competent, suitably qualified and experienced company secretary

— The board should appoint and remove the company secretary.
— The board should empower the individual to enable him to properly fulfil his duties.

The company secretary should:
— have an arms-length relationship with the board;
— not be a director of the company;
— assist the nominations committee with the appointment of directors;
— assist with the director induction and training programmes;
— provide guidance to the board on the duties of the directors and good governance;
— ensure board and committee charters are kept up to date;
— prepare and circulate board papers;
— elicit responses, input, feedback for board and board committee meetings;
— assist in drafting yearly work plans;
— ensure preparation and circulation of minutes of board and committee meetings;

In South Africa, Section 88 of Companies Act, 2008 provides for the duties of Company secretary. It provides thus—

A company’s secretary is accountable to the company’s board. A company secretary’s duties include, but are not restricted to—

— providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;
— making the directors aware of any law relevant to or affecting the company;
— reporting to the company’s board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;
— ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company’s audit committee, are properly recorded;
— certifying in the company’s annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;
— ensuring that a copy of the company’s annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and
— carrying out the functions of a person designated for the purpose of annual return compliance.

Australia-ASX Corporate Governance Principles and Recommendations with 2010 Amendments

The Company Secretary plays an important role in supporting the effectiveness of the board by monitoring that board policy and procedures that are followed, and coordinating the timely completion and dispatch of board agenda and briefing material.

It is important that all directors have access to the company secretary. The company secretary should be accountable to the board, through the chair, on all governance matters

Singapore Code on Corporate Governance, 2012

Directors should have separate and independent access to the company secretary. The role of the company secretary should be clearly defined and should include responsibility for ensuring that board procedures are followed and that applicable rules and regulations are
complied with. Under the direction of the Chairman, the company secretary’s responsibilities include ensuring good information flows within the Board and its committees and between senior management and non-executive directors, advising the Board through the Chairman on all governance matters, as well as facilitating orientation and assisting with professional development as required. The company secretary should attend all board meetings.

**The Code of Corporate Governance for Mauritius, 2004**

The company secretary plays a key role in the application of corporate governance in a company.

The company secretary should ensure that the company complies with its constitution and all relevant statutory and regulatory requirements, codes of conduct and rules established by the board.

The company secretary must provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company.

The company secretary is a central source of guidance and advice to the board on matters of ethics and good governance. The company secretary is the focal point of contact within a company for institutional and other shareholders.

Considering the role of company secretary as an advisor, partner, resource and ombudsman Michael Barrett, Chief Operating Officer at Gay Lea Foods Co-operative Limited, Canada quotes that “The role of the Corporate Secretary continues to evolve... Gone are the days of the horn-rimmed, pencil sharpened, visor clad, minute taker; the Corporate Secretary is now:

— an active partner with the directors to ensure board effectiveness and good governance;
— an advisor to the board to ensure that policy and intent are manifested correctly;
— a resource to provide trends and information; and
— the ombudsman for all members of the co-operative community to ensure a commitment to the values that we hold dear.

The Corporate Secretary is an integral part of the effectiveness of any co-operative.”

**COMPANY SECRETARY- THE CHIEF GOVERNANCE OFFICER**

Debacles of corporations such as Enron, Tyco International, Xerox Corporation, Global crossing, Satyam Software Services to name a few, have started an era of corporate governance. The economies are still recovering from the financial crisis; European crisis has led to weak economic development. A global economic growth requires unparallel governance norms and uncompromising adherence to ethical code, and, Corporate Governance has the potential that when adopted in spirit shall bring in responsibility, accountability, fairness and transparency into the corporate system.

Governance is a thriving process of learning and practice, which needs to be followed with pervasive enthusiasm from members of company secretaries’ profession. It is a source of competitive advantage and a critical input for achieving professional excellence in all operational pursuits.
The governance enriched new Companies Bill substantially enhances and elevates the role of company secretary as it includes him as a “Key Managerial Personnel” in a company. This provision in the bill envisages the strategic importance of the Company secretary in governance architecture of a corporate.

The Companies Bill brings in a self regulated regime which seeks to provide ‘substantive oversight’ role to company secretaries. The time is ripe for company secretaries to well recognise the expected change and adapt accordingly. The profession needs to adopt ‘responsible compliance’ thereby being assertive and taking advantage of the enhanced role.

The need, therefore, is to think and act to bring a fundamental difference to the profession. We have witnessed the growth of the profession from a record keeper to compliance officer to corporate adviser, and we are marching ahead towards being Chief Governance Officers (CGO). As Governance professionals they are the guardians of not only huge funds invested in the corporates but also of the stakeholder trust, and they need to ensure that such trust is not breached, and funds are utilized towards sustainable growth. The Company secretary professionals are now the “Guardians of company’s governance and an independent adviser to a corporate”.

The new wave of regulation for corporates focuses on how boards should be run; the processes and structures to support board performance; building sustainable businesses and regime of strategic thinkers as Chief Governance Officers. In this path progression, challenges are bound to arise. The challenges before professionals can be met by upgrading skills, updating knowledge base, and continuously raising the benchmarks for service delivery. It is the right time to grab the bag full of fortunes and elevate the profession of Company Secretaries to a level of Chief Governance Officers.

The emerging role of the Corporate Secretary is that of a senior, strategic-level corporate officer who leads the company’s corporate governance. The possible breakdown of the governance responsibilities and duties of governance for a Chief Governance officer are enumerated as under:

— keeping board members apprised of governance trends and developments through the provision of briefing materials in order to assist in formulating and developing effective policies and making informed and contextual decisions to ensure the company operates within the confines of its best business practices;

— researching, developing and proposing innovative corporate governance policies and best practices by recommending policies and procedures, while balancing governance needs and the company’s goals;

— providing expertise, advice and recommendations related to a broad range of corporate governance and board issues by identifying concerns and developmental needs, and providing strategic advice to the board, committees, and CEO;

— promoting and facilitating open and full communication links, and ensuring an effective flow of information between the board, its committees, management, and outside advisors;
— acting as advocate for the board with management with respect to roles and accountabilities, and how these contribute to organizational success;

— monitoring and evaluating the implementation of governance policies and directives, risk management and recommending proposals to address deficiencies in order to achieve the company’s overall strategic objectives;

— supporting and directing governance processes, including:
  — supporting the board in ensuring an effective director nomination process;
  — orientation of new directors and ongoing board education;
  — developing and implementing guidelines, criteria and instruments to evaluate and enhance individual member and board performance;
  — support board succession planning and overseeing independent directors’ rotation.

— contribute to the drafting of the directors’ remuneration policy and may ensure its compliance. Accordingly, disclosure requirements as per Corporate Governance norms may also be complied with.

— As a corporate governance head of the company it is the responsibility of the company secretary to ensure timely dissemination of information on governance developments.

Source: The Corporate Secretary from Record keeper to Gate Keeper, Governance Matters, Canadian Co-operative Association, 2005.

The role of a company secretary needs to be evolved within an organization and this depends on self realization of moving beyond managing critical regulatory governance challenges. A Company Secretary should strive to be a part of the management team which ensures that business demonstrates profitability with long term vision and sustainability at its core. They are expected to be well versed with the commercial aspirations of the company. They need to understand the intricacies of business-stakeholder relationship and have some extraordinary skills to ensure and protect the trust of the company yet not surpass the interest of the stakeholders including the regulators.

This broader strategic view will help Company Secretary to achieve excellence and gain proficiency. As a strategic board level consultant, a CGO should guide Boards on various emerging areas of law, governance and sustainability issues. Business Responsibility Reports is one of the areas which can be developed as forte of company secretaries. The circular issued by SEBI in this regard in August 2012, defines newer responsibilities which the company secretary should shoulder and provide consultancy and guidance to the Boards in objective decision making. This shall further ensure that the companies develop and implement strategies that mitigate environmental and social risks thereby achieving sustainable economic development.
Adherence to Code of Conduct

A key expectation of members of self-governing professions is that they accept legal and ethical responsibility for their work and hold the interest of the public and society as paramount. One of the essential traits of a profession is to be subject to strict codes of conduct enshrining rigorous ethical and moral obligations. In a self regulated regime, Company Secretary subjected to a strict code of conduct is looked upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector.

It is a moral duty of the Company Secretaries to strictly abide by the Code of Conduct laid down by the Council of the Institute. A true professional always adheres to the code of conduct, guidelines, set of principles and prudently discharges their duties. The codes allow the profession to draw a standard of conduct and ensure that individual practitioners meet these standards.

Enhancing Quality

Quality is a route to excellence and excellence is the hallmark of success in a competitive environment. The performance of a professional can be kept at the level of excellence not only by continuous self learning, professional development but also by a system of review of professional services by peers. Peer review is used in working groups for many professional occupations, only to strengthen systems and infrastructure to enhance the quality of professional services.

Professional peer review focuses on the performance of professionals, with a view to improving quality, upholding standards, or providing certification. Peer review for practicing company secretaries was introduced to periodically evaluate the quality, sufficiency of systems, procedures and practices, of a PCS so that excellence in their performance is maintained.

The Institute has a panel of peer reviewers, but to take the initiative forward in right earnestness, it needs more peer reviewers. Further, the nature and complexity of peer review requires the exercise of professional judgement and for the purpose the Institute regularly conducts training programmes.

Challenge of Values & Ethics

‘Values make a man’ goes an old saying. Who we are as human beings is determined by the values we hold. It is our values that make us wake up every morning, determine the work we want to do, the friends that we have, the way we manage our relationships, and ultimately the way we conduct ourselves in our professional and personal lives. All our decisions and actions are influenced to a great extent by the value system that we possess and practice. Values help us keep vital. Any conflict with value system makes us feel imposed, artificial, out of step and ultimately choked and suffocated. And when such conflict continues constantly for a longer time it makes us physically and mentally weak, bogged down by routine life and loss of confidence.

Perspectives of value based management are multifold. One is creation of value to customer through economic value addition and other is adoption of ethical value which helps
in enhancing the economic value. Governance Professional has a vital role to play in Board Professionalism, Corporate reporting, Governance and Sustainability issues etc. A right advise on these issues would result in the enhanced trust of corporate which will automatically increase the economic value addition for the professional and hence excellence. Professionals today need to have broader strategic view, adhere to highest ethical standards and integrate sustainability within their business models.

A rapidly expanding marketplace (globalization), increasing competition and stakeholders’ awareness is emerging as the dominant influence on accountability. This development will require changes in the roles and structure of regulation, professionalism, and accreditation in assuring accountability.

Professionalism implies the mastery of a body of technical knowledge and the ability to apply that knowledge to a variety of situations by independent thought and analysis.

**Professionals’ Accountability, Responsibility**

Professional responsibility starts with being accountable. Accountability for quality of services has been driven by professionalism tied to the regulatory regime. While there have been attempts to create regulations that are more responsive to ensure quality, all these forces viz. Accountability, responsibility and regulation go hand in hand.

As a governance professional accountability is at a wide scale, not just the regulators, shareholders; the whole society and environment call for response. The stakeholders are largely connected with the company through the company secretaries. When they become the face of the company for the stakeholders, they need to ensure that the company adheres to ethical, moral consciousness of business.

**Conclusion**

Better corporate governance adds value by improving firm performance through more efficient management, better asset allocation, better labor policies, and other efficiency improvements. The firm has no choice but to behave “responsibly” toward stakeholders: the firm cannot operate without them, and stakeholders have other opportunities if the firm does not treat them well. So, acting responsibly toward stakeholders is likely to benefit the firm as well, financially and otherwise.

A large majority of private companies (80%) are adopting specific corporate governance practices to help them successfully navigate an increasingly complex and volatile business landscape, according to PwC US’s latest Private Company Trendsetter Barometer survey, 2012. According to the survey private-company executives increasingly appreciate the principles of corporate governance and their corresponding business benefits — particularly better risk management and a stronger bottom line.

The importance of corporate governance for access to financing, cost of capital, valuation, and performance cannot be ignored. The research shows that better corporate governance leads to higher returns on equity and greater efficiency.

According to The Emerging Market Survey (2010) by International Finance Corporation (IFC), an arm of the World Bank, Corporate governance is a critical factor in emerging market investment decisions.
THE EMERGING MARKET INVESTOR SURVEY, IFC

TWENTY-NINE RESPONDENTS, CULLED FROM A TOTAL UNIVERSE OF 1,000 EMERGING MARKET INVESTMENT FIRMS.

The investment premium for good governance in emerging markets

<table>
<thead>
<tr>
<th>Statement read to 29 emerging market investment decision-makers</th>
<th>Percentage of respondents who agreed with statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>My firm would pay a larger governance premium for emerging market companies than for developed market companies</td>
<td>100%</td>
</tr>
<tr>
<td>My firm would pay a premium of at least 10 percent for good governance in an emerging market company</td>
<td>55%</td>
</tr>
<tr>
<td>My firm would pay a premium of at least 20 percent for good governance in an emerging market company</td>
<td>38%</td>
</tr>
<tr>
<td>My firm considers governance a threshold for an emerging market investment decision, and for how much of a premium we would be willing to pay</td>
<td>41%</td>
</tr>
</tbody>
</table>

According to an article "The Corporate Governance Officer- From company secretary to manager of governance processes" by Ulrich Steger & Preston Bottger in the book titled "Leading in the top TEAM – The CXO Challenge”-

“The Chief Governance Officer plays a key role in championing the role that good corporate governance. Corporate governance will continue to be subject to continuous changes and external influences. In turn, this will continue to affect the role of the CGO in the future. As these changes cannot be foreseen, the role of the CGO must remain forward-looking and flexible. Ensuring that companies practise sound corporate governance practices will lead to the ultimate goal of successful business performance.

Following is a summary of the role of the future CGO:

**Purpose**

— Ensuring that the interests of owners are represented and protected in key board and management decisions;

— Ensures that the interests of stakeholders beyond the owners are represented in key board and management decisions;

— Ensures that company policies are upheld and as necessary reviewed and revised to match key stakeholder interests.

**Direction**

— Ensures that in the management structure of the company there are clear lines of responsibility, accountability and transparency;
— Provides consultation for the board on matters of best practice of corporate governance;
— Provides monitoring to ensure compliance with principles of corporate governance;
— As invited by the board, provides consultation on chair succession, and on structure of board committees.

Focus
— Ensures the organizing of effective board meetings;
— Ensures the quality and completeness of board papers, both in preparation for, and following board meetings;
— Provides board members with critical information that is relevant to imminent board decisions and relevant for emerging board topics.”

The spirit of corporate governance is more important than the form. Values are the essence of corporate governance and these will have to be clearly articulated and systems and procedures devised, so that these values are practiced. As we talk of finding independent directors, ensuring shareholder democracy, sustainability commitments etc, the bottom line flows towards the mindset of the people and the organizational culture. This change will have to come from within. The government or the regulatory agencies at best can provide certain environment, which is conducive for such a mindset taking place, but the primary responsibility, is of people especially the members of the board of directors and the top management.

"It is clear that good corporate governance makes good sense. The name of the game for a company in the 21st Century will be conform while it performs.”

Mervyn King, Chairman – King Report

References
— Corporate Governance The intersection of public and private reform, CIPE, 2009.
— UN System Task Team on the Post 2015 UN Development Agenda, Thematic Think Piece, January 2013.
— Role of Company Secretary in Corporate Governance, The ICSI Publication.
The present day Company Secretary in practice is passing through a very challenging
time and the future Practising Company Secretaries have to start a new era which would be
full of opportunities provided they can deliver. Practising Company Secretaries need to unfold
and look beyond. The due diligence, the compliance reporting, form filling, CLB cases shall
continue to be there but sooner or later these areas cannot sustain and fulfill the aspirations
of new generation Company Secretaries in practice. They need to understand and appreciate
that the profession has a much wider role to play than restricting to compliance and due
diligence. The vast area of Indirect Taxation is conspicuously and albeit deliberately being
shied away by the Company Secretary presently in practice as well as the new Company
Secretaries coming into practice.

Excise duty planning and management is one area where Company Secretaries in practice
can play a very significant role in any manufacturing firm. Today we hardly find Company
secretaries in practice sincerely looking into practicing in this area baring a minuscule. More
so when this miniscule has tested success already in a very short span of time. Today corporate
have a huge demand for excise duty management and planning. Every corporate is trying
today for cost saving and cost leadership for survival. Excise duty is one area where there
can be substantial saving if planned and executed properly. Our friends in brother profession
are doing reasonably well in this area and I have no hesitation in stating that their knowledge
domain is no-where near us even in this area. However because of their challenge taking
ability and the sheer urge to unfold has led to such success in this area.

Similarly in Service Tax also by proper management and planning substantial savings
can be brought by the consultant. The company secretaries in practice can be excellent
Service Tax Consultant and can bring fortune for the Company and themselves. A penny
saved is a penny earned and it is very easy to understand that a consultant who brings
savings to the Company, is highly sought after and he can command his fees as well. Today
there are a few Company Secretaries in practice who are doing exceedingly well in this area
and have become experts in a very short time. The opportunities are vast and ever increasing
and the Service Tax is going to be the tax for the future. It is highly dynamic and hence
corporate look for consultancy and guidance in this area.

The other area is VAT which is again an area for saving and in this area also our friends in
brother profession has made substantial progress as we have not dared to venture. There
are unique instances of interpretation and case laws applicable in different states which can

* Company Secretary, Phillips Carbon Black Ltd., Kolkata.
very well be managed by the Company Secretaries in practice and can bring a fortune for the Company as well as for him.

Further area for company secretaries in practice can be the area of Customs and Insurance where in also there is acute dearth of expert professionals and company secretaries in practice because of their domain knowledge, legal bent of mind can venture in these untapped areas.

What is happening today is not the ideal or the desirable scenario. All the budding Company Secretaries in practice and the existing one are focusing on few limited areas of practice. As a result there could be in the immediate future or even now a kind of “saturation”. This saturation is leading to various unprofessional conduct which raises questions on the ethics of profession.

Sitting on the other side as a company secretary in employment from the zero hour, I, witness this deterioration mainly arising out of this saturation. Though it is restricted to quite a few now but it can spread like a wild fire. Unless we spread out for new areas this menace is not going to stop, however strong disciplinary action we may continue to take as it will be then a question of “survival by whatever means”. Having said that, the new budding Company Secretaries in practice must understand by cutting fees, you do not save cost of the corporate but you demean yourself in the eyes of the corporate. You should command your fees rather than cut your fees. The professional should deserve the fees he demands and every corporate is bound to honour that provided you deserve that. As I started by saying the challenge lies ahead and challenges can only bring opportunities and fortune. I wish the Company Secretaries in practice to move in this direction and take the profession of Company Secretary in practice to the next level sooner the better for the sustenance and development of Company Secretaries in practice.
Overview

Micro Small and Medium Enterprises (MSMEs, also called generally as SMEs) are the backbone of a fast developing economy. And India is no exception! SMEs have been playing a vital role in growth of Indian economy. SME, as a segment, has been the fountain head for numerous products and innovations for the Indian and international markets. Indian SMEs represent a diverse asset class of emerging companies from both traditional sectors and new age economy sectors.

<table>
<thead>
<tr>
<th>Contribution of SMEs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to GDP</td>
<td>8.7%</td>
</tr>
<tr>
<td>Share of Industrial Output</td>
<td>45%</td>
</tr>
<tr>
<td>Share of Exports</td>
<td>40%</td>
</tr>
<tr>
<td>Total Employment</td>
<td>69 million</td>
</tr>
<tr>
<td>Job creation every year</td>
<td>1.3 million</td>
</tr>
</tbody>
</table>

Source: Ministry of Micro, Small and Medium Enterprises, GOI

SMEs in India contribute significantly to the GDP, exports and employment. As per Government statistics, MSMEs provide 45% of the manufactured output, and accounts for 40% of the Country’s exports. As an estimate, there exist about 2.6 crore MSMEs which are the biggest generators of employment in the economy. In recent times, SMEs are exposed to greater opportunities than ever for expansion and diversification in rapidly growing Indian market across the sectors.

Special role for SMEs were earmarked in India with the advent of planned economy from 1951 and through subsequent industrial policies. The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 provide for facilitating the promotion, development and enhancing the competitiveness of MSMEs and for the related matters.

SME Exchange

An ‘SME Exchange’ is a stock exchange dedicated for listing and trading of shares of SMEs which otherwise find difficult to get listed on the main exchanges. SME exchanges or
trading platforms are prevalent globally albeit known by different names, such as ‘Alternate Investment markets’ or ‘growth enterprises market’, ‘SME Board’ etc.

The global trend in recent times is towards creation of new forms of capital markets specifically designed to meet the funding needs of SMEs. Recent years have witnessed the emergence of numerous SME exchanges or platforms, and these are playing an increasingly significant role in development of alternative avenues for raising funds by SMEs.

Most of the SME exchanges across the globe are part of larger exchanges like NYSE, NASDAQ and London Stock Exchange. These exchanges were initially started to promote domestic SMEs but have now transformed into global financing hub. The prominent SME exchanges are AIM of London, Mothers of Japan, GEM of Hong Kong & Catalist of Singapore.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Indian SME Exchanges*</th>
<th>AIM* UK</th>
<th>GEM* HK</th>
<th>Mothers* Japan</th>
<th>Catalist* S’pore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Platform/Exchange</td>
<td>Separate trading platform of BSE &amp; NSE</td>
<td>Separate trading platform of LSE</td>
<td>Separate dedicated stock exchange</td>
<td>Separate trading platform of TSX</td>
<td>Separate trading platform of SGX</td>
</tr>
<tr>
<td>No of companies listed</td>
<td>26</td>
<td>3338</td>
<td>183</td>
<td>179</td>
<td>141</td>
</tr>
<tr>
<td>Funds raised till date</td>
<td>INR 25.08 Mn</td>
<td>GBP 81.3 Bn</td>
<td>HK$ 9.6 Bn</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Market Capital</td>
<td>INR 1.33 Bn</td>
<td>GBP 63.9 Bn</td>
<td>HK$ 99.4 Bn</td>
<td>JPY 2,331.3 Bn</td>
<td>S$ 6.78 Bn</td>
</tr>
</tbody>
</table>

* As on 14th June, 2013
# As on 31st May, 2013

Considering the lack of avenues for SMEs to raise funds, there was an urgent need felt for developing a dedicated stock exchange/platform for the SMEs in India. In 2010, the Prime Minister’s Task Force recommended setting up a dedicated stock exchange Platform for MSMEs. SEBI vide circular dated May 18, 2010 laid down regulations for setting up a stock exchange trading platform or an ‘SME Exchange’.

Subsequently, SEBI (Issue of Capital And Disclosure Requirements) Regulations, 2009 were amended and a new Chapter was inserted dealing with SME IPOs. In terms of the said provisions, “SME Exchange” is a trading platform of a recognized stock exchange or a dedicated exchange permitted by SEBI to list the securities issued in accordance with Chapter XB of SEBI (ICDR) Regulations and this excludes the Main Board (which is in turn is defined as a recognized stock exchange having nationwide trading terminals, other than SME exchange).

Both BSE and NSE have launched their respective platforms for SMEs in 2013; MCX too is gearing up for SME Exchange. The move aims at providing an opportunity to SME entrepreneurs to raise growth capital and reap benefits of listed space. Both BSE and NSE are leveraging their existing equity platforms for SME Exchange Platforms.
Regulatory Norms for SME IPO & Listing in India

SEBI Regulations - Highlights

— An issuer with post issue face value capital of up to Rs. 10 crores is covered under the SME Exchange. An issuer with post issue face value capital between Rs. 10 crores to Rs. 25 crores may get listed on either SME Exchange or main board. An issuer with post issue face value capital exceeding Rs. 25 crores cannot be listed on an SME Exchange and needs to approach main board for listing.

— The minimum application and minimum trading lot has been kept at Rs. 100,000.

— All the issues will be 100% underwritten, and merchant bankers to the issuer shall be underwriting 15% in their own account.

— The merchant bankers shall be responsible for ensuring market making for a minimum period of 3 years.

— Minimum number of investors at the time of IPO is 50.

— Provision for migration to/from main board from/to SME Exchange.

Key Requirements and Eligibility norms of Stock Exchanges - Synopsis

<table>
<thead>
<tr>
<th>Norms</th>
<th>BSE</th>
<th>NSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post Issue Capital (Face Value)</td>
<td>— Maximum of Rs. 25 crores</td>
<td>— Minimum of Rs. 1 crores</td>
</tr>
<tr>
<td>Track Record</td>
<td>— Net Tangible Assets of Rs. 1 crores</td>
<td>— Track record of at least 3 years</td>
</tr>
<tr>
<td></td>
<td>— Net Worth (excl rev Res) Rs. 1 crore or Rs. 3 crores, if no track records</td>
<td>— Positive cash accruals (EBDT) from operations and positive net worth for at least 2 financial years preceding the application</td>
</tr>
<tr>
<td></td>
<td>— Track record of distributable profits for at least 2 years out of preceding 3 completed financial years</td>
<td>— In case the above conditions are not fulfilled, Exchange Authority (MD &amp; Joint MD) to decide.</td>
</tr>
<tr>
<td>Other Requirements</td>
<td>— Mandatory facilitation of trading in Demat Securities</td>
<td>— Mandatory facilitation of trading in Demat Securities</td>
</tr>
<tr>
<td></td>
<td>— Certificate that no winding up petition or reference is been made to BIFR</td>
<td>— Certificate that no winding up petition or reference has been made to BIFR</td>
</tr>
<tr>
<td></td>
<td>— Mandatory Corporate Websites</td>
<td>— Mandatory Corporate Website</td>
</tr>
<tr>
<td></td>
<td>— Promoters to attend to interview with Listing Advisory Committee of BSE</td>
<td>— Promoters to attend to interview with Listing Advisory Committee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>— Additional Certification / Disclosures on litigation, etc.</td>
</tr>
</tbody>
</table>
Benefits of SME Listing

— **Operational Benefits**

— *Access to capital and financing opportunities*: What can be attributed more as a benefit of listing than the enormous financing opportunities that it presents both in terms of raising equity and the beneficial treatment in terms of cost at which funds can be raised. SME listing provides with the opportunity of raising funds and reaching to the investor class which otherwise may not be possible.

— *Currency Value*: Listing shares, having their value established in the market, act as currency. Listed shares can be used as collateral to raise funds. Listed securities act as a viable M&A currency and help avoid the cost and time involved in M&A transactions.

— *Reduced cost of borrowing*: Listing often leads to improvement in credit rating, which in turn enables raising of loans at a reduced rate of interest.

— *Stakeholders’ Comfort*: Listing adds to the comfort of stakeholders such as customers/lenders/creditors of the company, which in turn, often, results in increased order book, better negotiated business terms like credit period, margin requirements, less-onerous contractual covenants etc.

— *Case Study*: The following is a hypothetical case demonstrating potential operational benefits of a listed company compared to an unlisted company.

### Operational Benefits of Listing - Illustrative Case Study

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Unlisted</th>
<th>Listed</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales</td>
<td>2000</td>
<td>2200</td>
<td>Branding &amp; visibility may help increase sales/orders</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>1500</td>
<td>1550</td>
<td>Expenses increases but at lesser rate due to scale benefits such as higher bargaining power, bulkdiscounts etc.</td>
</tr>
<tr>
<td>EBITDA</td>
<td>500</td>
<td>650</td>
<td>Increase in sales at reduced expenses result in</td>
</tr>
<tr>
<td>EBITDA%</td>
<td>25</td>
<td>29.55</td>
<td>Increased EBITDA &amp; EBITDA Margin</td>
</tr>
<tr>
<td>Interest</td>
<td>28</td>
<td>22</td>
<td>Listing often result in cheaper cost of funding (assumed debt of INR 300 lakhs @ int rate of 14% pre-listing and 11% post-listing)</td>
</tr>
<tr>
<td>Dep.</td>
<td>5</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>PBT</td>
<td>473</td>
<td>623</td>
<td></td>
</tr>
<tr>
<td>PAT</td>
<td>331</td>
<td>436</td>
<td>Increase in PAT and PAT margins due to increased</td>
</tr>
<tr>
<td>PAT%</td>
<td>16.56</td>
<td>19.82</td>
<td>EBITDA and reduced borrowing cost</td>
</tr>
</tbody>
</table>

Amount in INR Lakhs.
— **Tax Benefits**

— *No long term capital gains*: Under Income-tax Act, 1961, the long term capital gains are exempt on transfer of listed shares held for more than 12 months. SME listing offers the opportunity to avail this exemption, subject of course to the holding period of one year. Even, short term capital gains tax is payable at a reduced rate of 15% in case of shares are listed.

— *No tax on equity infusion in the company*: As per the Finance Act, 2012, a company is liable to tax on equity infusion, if the equity shares are issued to an investor other than a registered venture fund at premium exceeding the fair price. Such a tax is not applicable in case the shares are listed.

— *No tax on distressed business purchase*: As per the Income-tax Act, there lies a tax liability on the investor if the shares of an unlisted company are bought below its book net-worth. Such a tax incidence could be mitigated if the shares are listed.

— *No tax on buy-back of shares*: As per the amendments in this year’s Union Budget, companies are subject to tax @ 20% on buy back of shares. Such a tax is not applicable if the shares are listed.

— **Other Benefits**

— *Unlocking Value*: The value is often locked or not benchmarked for the companies not having trading platform. The companies listed on an exchange are in a position to unlock/benchmark their fair value.

— *ESOPs - Talent retention tool*: ESOPs, typically, serve as a tool for retaining/incentivizing the talent and also act as a wealth creator for employees. The benefits of listing can be attributed to unlocking the value of the company and making ESOPs effective, thus aiding to talent retention.

— *Visibility – Profile Building*: The companies listed in the stock exchange get recognition, as well as are followed by investors and analysts. Listing of a company provides a platform for recognition and visibility.

— *Overseas Listing possible*: Listed companies can issue depository receipts overseas. Thus SME listing opens up global platform to raise funds abroad.

— *Corporate Governance – Internal Systems*: Though the requirements for a company listed on SME Exchange are not as stringent, but in it is adequately drawn up so as to incentivize the company for putting in place the internal control systems and corporate governance.
Typical Process of an SME IPO

- Appointment of Merchant Banker
  - Exchange approval
  - Filing of Prospectus with ROC
  - Restructuring of capital
    - Filing of Draft Prospectus with Exchange
    - ROC Approval
    - Listing & Market Making
  - Due Diligence & Pre-IPO preparation
    - Appointment of other intermediaries
    - IPO Launch
    - Issue Pricing & Allocation
  - Preparation of Draft Prospectus
    - Marketing Strategy
    - Receipt of Applications IPO Management
    - IPO Closes

Role of PCSs and Concluding Remarks

PCSs have a significant role to play in the overall value chain of SME IPO and listing. A PCS can play a pivotal role in initial due diligence and pre-IPO restructuring. To help members conduct due diligence, ICSI has issued a due diligence certification format for an SME IPO. BSE has issued a circular, dated November 26, 2012, desiring issuers to take PCS due diligence certificate during IPO.

PCS can also play a significant role at prospectus drafting stage. This calls for thorough understanding of business model of the company, commercial aspects and financial knowledge, besides the corporate law aspects. Further, PCSs ensures corporate law compliances including ROC approval. PCSs can also ensure completion of initial listing compliances. Needless to mention, PCSs have ongoing involvement post-issue for meeting post-issue compliance requirements and further corporate actions. Thus, SME IPOs and listing throw numerous opportunities for practicing professionals.

Overall, the measures like simplified process, reduced reporting & compliance requirements, post listing handholding by merchant bankers, underwriting, market making etc. aim to ensure liquidity & protection to investors making Indian SME Exchange model balanced and sustainable. Indian SME markets posses a huge potential given that the next level of growth for this economy is expected from SME sector. What’s now needed is an increasing awareness and knowledge sharing so that more and more SMEs can reap the benefits of SME Capital Markets. Needless to mention, policy makers should continue exploring further ways and means to make SME Capital Markets even more attractive and to widen the SME investor base.
OVERVIEW OF HOSPITALITY INDUSTRY

CS Kunal Sen*

1. ECONOMIC OVERVIEW

The Indian economic growth was slightly subdued in 2012-13 because of various factors, both global and internal. Headline inflation surged sharply to its highest level in more than a year. The most serious challenge currently facing the Indian economy is inflation, which was 8.8% in 2011-12. Rising fuel prices & the move to more expensive sources of fuel have raised the level of public expenditure. Industrial growth during the year slumped to 3.3 per cent with high interest rates affecting the factory output. Eight core infrastructure sectors of crude oil, petroleum refinery products, natural gas, fertilizers, coal, electricity, cement and finished steel logged a 3.5% growth down from 4.4% expansion witnessed in the previous year.

2. HOSPITALITY & TOURISM INDUSTRY OVERVIEW

• Future

The Indian Hospitality Industry is one of the fastest growing sectors of the Indian economy. Riding on the economic growth and rising income levels that India has been experiencing in the past few years, it has emerged as one of the key sectors driving the country’s economy. Currently its market size is USD 23 billion accounting for 22% of the GDP within the Hospitality Industry there are a number of key industries, prominent amongst them are Hotels & Restaurants each of which has witnessed a surge in their growth over the past few years. The Indian Restaurant sector is USD 6 billion Industry & is expected to be a USD 10 billion market by 2018.

• Overall Performance

The year 2011-12 was a period of resilience for the Indian hotel industry. A slowing Indian economy coupled with depressed global economic conditions posed a threat to the industry. Nationwide occupancy, however, witnessed only a marginal decline of 1.9% in 2011-12 as compared to 2010-11. Average rate, on the other hand, increased by 2.2% in 2011-12 over that in 2010-11.

The more serious challenge currently facing the hospitality industry is inflation, which was recorded at 8.8% in 2011-12. High inflation levels throughout the year resulted in increased overhead costs. Consequently, although the top line improved in 2011-12 over 2010-11, the net income percentage declined by 3.1%. In particular, the increase in departmental expenses as a percentage of revenue

* Executive Director, Peerless Hotels Limited.
together with the PAR increases in Administrative & General and Energy costs resulted in the reduction in bottom lines.

• **Shortfall of Trained Manpower**

The hotel industry is at an interesting stage, where it is witnessing a flood of international and domestic hotel companies opening new hotels across market positioning and locations. Additionally, with the growing disposable income of the Indian consumer, we see that the domestic traveller is becoming far more discerning and demands superior products and services. One of the biggest challenges facing most hotel companies today as they try to keep pace with the growing supply of new hotels is the recruitment of trained manpower, to maintain quality and professional service delivery and product up-keep. This year’s survey reveals that the average percentage of trained employees per hotel is 83.3%. While this average has witnessed a growth of 6% over that in the previous year, none of the staffing levels (manager/supervisor/staff) have achieved an average of 100%. Going forward with supply expected to increase by nearly 11% in the next five years, the demand for high quality professionals will continue to increase and will also lead to a steady rise in compensation levels. Additionally, there has been a decline in the quality of service offered by hotels in India confirming the lack of trained manpower. There has been a shortage of skilled staff in the two-star and three-star categories of hotels. In order to cultivate a suitably trained workforce, more vocational institutions will need to be set up. Moreover, hotels would need to maintain considerable focus on training, development and multi-skilling of their manpower to ensure efficient utilisation and to cope with rising manpower costs.

• **Changing Market Segmentation**

The Indian hotel industry at large caters to more business guests as compared to leisure travelers. This is mainly because a major portion of the hotel supply is located in key metropolitan cities which are primarily business destinations. This year’s survey reveals an interesting trend: a decline in the ratio of business travellers to leisure travellers. The percentage of business guests decreased to 58.8% from 60% last year. The increasing use of internet and video conferencing tools to conduct meetings coupled with cost-cutting initiatives in a depressed global economic scenario has resulted in a decline in overall business travel. Also, the average length of stay of business guests decreased to 2.7 nights from 3.0 nights last year.

The Leisure segment, on the other hand, grew by 3% over last year. Additionally, the overall average length of stay of leisure guests has improved from 2.3 nights last year to 3.0 nights this year. This increase has been led mainly by domestic travelers who, as mentioned earlier, have improved disposable incomes and a greater keenness to travel. The domestic leisure segment is drawing more and more attention from the industry, with family vacation packages and wellness and rejuvenation holidays marketed extensively by hotels and travel companies, especially during the summer months when schools break for holidays and over long weekends and festivals.
• **Mix of Country of Origin of Guests**

The United Kingdom and the United States of America remain the largest international source markets for the Indian hospitality sector, contributing 24% of the overall demand. Although these countries continue to contribute the biggest portion in percentage terms, their share has declined by 14% since 2007-08. While it is expected this trend to continue in future, demand from SAARC nations and Middle Eastern countries has grown steadily. Also, hotel guests from countries such as China and Japan have shown healthy increases over last year (8% each). The rise in visitation from Asia and Middle Eastern regions may be attributed to improved connectivity, easier visa norms, infrastructure development, and strong marketing efforts.

• **Sustainable Operations**

This year’s survey reveals an overall increase of approximately 9% in energy costs on a PAR basis as compared to the previous year. Given the increasing demand and cost of electricity and the rapidly declining water table levels, it has become essential for hotels to invest in environmental sustainability. The impact of increasing demand for electricity can result in non-fiscal consequences as well, such as mandatory reduction in power consumptions stipulated by local electricity boards, or the simple non-availability of fresh potable water. Adopting “Green Practices” have been proven to lower operating costs, resulting in improved GOP margins.

• **Tourism Industry**

In 2012, one billion people travelled internationally. Tourism contributes to one out of eleven jobs globally. While Goldman Sachs predicts that the global economy will grow more in 2011-2020 than it has in the last three decades, the source of growth will radically change. Growth in travel will be driven by the Asian tigers as opposed to the Western world. The demographics of travelers will change drastically as well. 60% of the western population has travelled internationally whereas only 5% of the eastern population has travelled internationally. The number of eastern travels will continue to grow rapidly and as a result the global products will need to redesign themselves to cater to the Asian requirements. The rise of the urban middle class will also change the dynamics predicted by 2021, 41% of the population will constitute of the middle class. The rise of low-cost carriers will also impact the travel industry as these carriers have witnessed a growth of market share from 0% - 52% in the last ten years. There will be a noticeable shift to experiential tourism and mass tourism will be a casualty.

3. **RISK MANAGEMENT**

**Risks and Concerns**

*Economic Risks*: Hotel business in general is sensitive to fluctuations in the economy. The hotel sector may be unfavorably affected by changes in global and domestic economies, changes in local market conditions, excess room supply, reduced international or local demand for hotel rooms and associates services, competition in
the industry, government policies and regulations, fluctuations in interest rates and foreign exchange rates and other natural and social factors. Since demand for hotels is affected by world economic growth, a global recession could lead to a downturn in the hotel industry.

**Socio-Political Risks**: The Hotel Industry faces risk from volatile socio-political environment, internationally as well as within the country. India, being one of the fastest growing economies of the world in the recent past, continues to attract investments. However, any adverse events such as political instability, conflict between nations, terrorist attacks or spread of any epidemic or security threats to any countries may affect the level of travel and business activity.

**Security Risks**: The Hotel Industry demands peace at all times to flourish. The biggest villain in South East Asia has been terrorism supplemented by political instability. Subsequent to the Mumbai terror attacks in November 2008, the hotel industry has invested substantially on security and intelligence. The security concerns have been duly addressed instilling confidence in the customer by providing international standards of safety.

**Company-specific Risks**

**Heavy Dependence on India**

**Risk of wage inflation**: The hotel industry needs quality employees and with demand for the same improving across the industry, the Company feels that wage inflation would be a critical factor in determining costs for the Company. Thus, your Company will continue to focus on improving manpower efficiencies and creating a lean organisation, while maximizing effectiveness in terms of customer service and satisfaction, which is an area of great importance for your Company.

**Foreign Exchange Risk**: Your Company may be impacted by the fluctuation of the Indian Rupee against other foreign currencies. To mitigate this risk the Company has migrated to single currency billing in Indian Rupees.

**Project Implementation Risk**: Your Company may be impacted by delays in implementation of projects which would result in increasing project cost and loss of potential revenue. To mitigate this risk, the Company has in the place an experienced project team supported by the leading external technical consultants and a dedicated project management company. The Company will endeavour to complete its projects on time at optimal cost so as to maximize the profitability.

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4. **OPPORTUNITIES AND THREATS**

**Opportunities**

India’s size and massive natural, geographic, cultural and artistic diversity offers enormous opportunities for the travel and tourism industry.

Medical tourism in India has gained considerable popularity in recent years. India has a major cost advantage in this field compared with other countries. In addition to cost advantages, Indian healthcare industry offers state-of-the-art equipment, technological advancement, qualified and experienced medical personnel and a blend
of modern and traditional medicines. Thus, medical tourism has immense potential in India.

Other forms of tourism such as agri tourism, pilgrimage tourism, heritage tourism, and MICE tourism also hold enormous potential.

The promotion and aggressive marketing measures undertaken by the government is expected to aid influx of tourists. The industry would also benefit from introduction of new forms of tourism and development of niche segments.

Infrastructure needs for the travel and tourism industry range from physical infrastructure such as airports, sea ports, modes of transport to urban infrastructure such as access roads, electricity, water supply, sewerage and telecommunication is being developed by the Government.

**Threats**

Various challenges are faced by the Hotel industry:

*Tax structure* - Various taxes imposed on the hospitality industry is having an adverse effect.

*Skilled manpower* - Availability of skilled manpower is a major challenge faced. To sustain growth, trained manpower is required at each level — managerial, supervisory, skilled or semi-skilled. Challenges faced at each level are different. At mid and senior management levels, the industry faces talent crunch and at the frontline staff level, although human resources are adequate, a boom in other service industries such as banking, retail, airline and BPO have resulted in shortage of manpower at this level and increased attrition level. Thus, the industry has no alternative but to fill the void with untrained resources. Such a high proportion of untrained manpower is adversely affecting quality of services offered to the guests.

*Security* - Security has been a major problem as well for growth of tourism for a number of years. Terrorist attacks or political unrest in different parts of the country have adversely affected sentiments of foreign tourists. Security at tourist spots, airports and hotels has been beefed up to regain confidence of tourists.

*Regulatory issues* - A number of projects in the hotels industry are delayed due to non-attainment of licenses and approvals on time. The Government recently cleared the long-standing proposal for single window clearance for hotel projects to hasten the process of infrastructure development. Implementation of this proposal would help development of tourism and hospitality infrastructure in the country. There is a greater need for speedier clearances and approvals for all projects related to the industry.

**References**

*Some of the data points in this Article have been taken from HVS S FHRAI’s Indian Hotel Industry Survey.*
DEMERGER - AN INSIGHT

CS Saurabh Agrawal*

Introduction

In Corporate world, we generally hear about takeover, merger, acquisition and demerger. Demerger is opposite side of same coin where on one side there are takeover/merger/acquisitions. On other side there is demerger. Thus Demerger is reverse of takeover/merger/acquisition. In case of merger, two or more companies are merged into one company which may be either of existing company or new company whereby old companies are dissolved. Alternatively by way of demerger, two or more units/undertakings of a company can be demerged/spin off into two companies whereby existing company may either be carried on or can be dissolved. For demerger, we have to have one existing company of which one or more units/undertaking are to be demerged and another company which absorb one of more units/undertakings of demerged company.

Definitions and Analysis

The term Demerger, demerged company, resulting company are nowhere defined in Companies Act, 1956 and Company (Court) Rules, 1959. Though in Income-tax Act, 1961, Section 2 (19AAA) defines demerged company which is as under:

“Demerged company” means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

Section 2 (41A) of Income-tax Act, 1961 defines resulting company as:

“Resulting Company” means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

From these definitions, provisions mentioned under section 391 to 394 of Companies Act, 1956, Company (Court) Rules, 1959 (Rule 61 to 87), we may draw inferences that:

(1) Demerger is a scheme of arrangement under section 391 to 394 of Companies Act, 1956 requiring approval by:

(a) Majority of shareholders holding shares representing three-fourth value in meeting convened for the purpose,

* FCS, Delhi.
(b) Sanction of High Court of the state in which registered office of Transferor Company is situated.

(2) Demerger involves “transfer of one or more undertaking”

(3) The transfer of ‘undertaking’ is by demerged company, which is otherwise known as transferor company/demerged company. The company to which undertaking is transferred is known as resulting company/transferee company.

Section 391 to 396A of Companies Act, 1956, Company (Court) Rules, 1959 (Rule 61 to 87) governs detailed procedure to be followed for merger/demerger of companies. Titles/headings of these sections and rules are given, hereunder, for the sake of brevity.

**Provisions of Section 391 to 396A of Companies Act, 1956**

Chapter V Companies Act, 1956 contains provisions relating to Arbitration, Compromise, Arrangements and Reconstruction etc

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<td>Section 392</td>
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<td>Section 396A</td>
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**Provisions of Rule 61 to 87 of Company (Court) Rule, 1959 enlightens us to follow detailed procedures to be followed in High Court/ROC/Regional Director/Official Liquidator and creditors/members meeting.**

<table>
<thead>
<tr>
<th>Rules</th>
<th>Titles/Headings</th>
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<td>Rule 68</td>
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<td>Rule 70</td>
<td>Proxies</td>
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<tr>
<td>Rule 71</td>
<td>Application for stay</td>
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<tr>
<td>Rule 72</td>
<td>Application to vacate or vary order of stay</td>
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</tbody>
</table>
Section 2(19AA) of Income-tax Act, 1961

Section 2 (19AA) of Income-tax Act, 1961 is one of very draconian section that need worth consideration. Because various judicial precedents are main cause of contention between corporates and income tax authorities. This section mandates various conditions to be followed in case of demerger and if any of the condition is violated, Income Tax authorities do not hesitate in pronouncing that transaction of demerger is basically slump sale under section 50B of Income-tax Act, 1961 and liable to Capital Gain tax merely on the ground that conditions mentioned under section 2(19AA) are not met.

Section 2 (19AA) contains conditions to be satisfied. One vital condition, that creates much chaos, is resulting company issues shares to shareholder of demerged company on Proportionate Basis. However, as per Finance Act, 2012 this proportionate allotment of shares condition need not to be satisfied if resulting company is shareholder in demerged company to the extent of shares held by resulting company in transferor company. This amendment might be introduced to provide solution to a problem that section 2(19AA) mandates to allot shares to shareholder of demerged company but what about resulting company, itself, is shareholder in transferor company and in case of demerger how resulting company can issue shares to itself. Section 2(19AA) of Income-tax Act, 1961 is reproduced ver-batim as under:

Sub Section 19AA of Section 2 of Income-tax Act, 1961:

[(19AA) “demerger”, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a
demerged company of its one or more undertakings to any resulting company in such a manner that—

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under subsection (5) of section 72A by the Central Government in this behalf.

Explanation 1.—For the purposes of this clause, “undertaking” shall include any part of an undertaking, or a unit or division of an undertaking or business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2.—For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include—

(a) the liabilities which arise out of the activities or operations of the undertaking;

(b) the specific loans or borrowings (including debentures) raised, incurred and utilized solely for the activities or operations of the undertaking; and

(c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

Explanation 3.—For determining the value of the property referred to in sub-clause (iii), any change in the value of assets consequent to their revaluation shall be ignored.

Explanation 4.—For the purposes of this clause, the splitting up or the reconstruction of
any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfills [such conditions as may be notified in the Official Gazette, by the Central Government].

**SUMMARY OF SECTION 2 (19AA)**

— All property and liability are transferred by transferor company to transferee company on going concern basis

— Transferee company issue shares to not less than ¾ value of shareholders of transferor company on proportionate basis

— Demerger is in accordance with conditions if any notified by Central Government under section 72A(5) of Income-tax Act

**Section 47 (vib), 47 (vic) and 47 (vid) of Income-tax governs capital gain tax payable and when in case of allotment of shares and sale of those shares**

On sale of various capital assets, assessee is liable to pay capital gain tax. Capital assets include shares also. So in case of sale/transfer of shares, assessee is liable to pay capital gain tax depending upon its nature short term or long term. Shares are held as short term if period of holding of shares is less than 12 month and long term if period of holding is not less than 12 month. Long term shares being Securities Transaction paid are exempt from capital gain tax. But Section 47 (vib) of Income-tax Act, 1961 provides relief from capital gain tax on allotment of share under demerger. This case of allotment of shares is not regarded as transfer as defined in section 2(47) of Income-tax Act, 1961 which defines term “Transfer” and hence no capital gain tax arises on allotment of share by transferor company to shareholder of transferor company.

But section 47 (vid) provides that capital gain tax arises at the time of subsequent sale of shares by shareholder to another person subject to other provisions relating to capital gain tax.

As per section 47 (vic), where a foreign company holds any shares in an Indian company and transfer the same to resulting company in the course of demerger, such transfer will not be regarded as transfer for the purpose of capital gain, if following conditions are satisfied:

— 75% of the shareholders of demerged foreign company continue to remain shareholders of the resulting foreign company.

— Capital gains tax is not attracted on the demerged foreign company in the country of its incorporation and section 391 to section 394 of the Companies Act will not be applicable.

**How Period of Holding is calculated**

In calculation of period of holding of shares by shareholder, period of holding of shares in transferor company shall also be included while calculating period of holding in transferee company.
Section 35DD of Income-tax Act, 1961

Section 35DD permits to amortize expenditures incurred on demerger to be set off in five equal installments starting from first year in which demerger took place.

Allowability of depreciation under section 32 and set off carried forward of losses as per section 72A of Income-tax Act, 1961

Depreciation is allowed to be claimed under section 32 of Income-tax Act, 1961. Depreciation is allowed to be claimed by both transferor and transferee company in the ratio of period of holding of fixed assets. Unabsorbed depreciation and carried forward of loss are allowed to be carried forward and set off by transferee/resulting company also for remaining period for which transferor/demerged company was actually allowed to carried forward and set off as if demerger had not taken place.

Summary of procedure to be followed in demerger

A detailed procedure is to be followed for demerger. The same has been briefed as under;

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<tr>
<th>S.No</th>
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<tr>
<td>Step-1</td>
<td>Preparation of scheme of demerger.</td>
</tr>
<tr>
<td>Step-2</td>
<td>Application to High Court for direction to hold meeting of the members/creditors or to dispense with meeting of members/creditors.</td>
</tr>
<tr>
<td>Step-3</td>
<td>Obtaining court order for holding meetings of members/creditors/or dispensation with that meeting.</td>
</tr>
<tr>
<td>Step-4</td>
<td>Notice of meetings of members/creditors to be forwarded.</td>
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<tr>
<td>Step-5</td>
<td>Holding meeting(s) of members/creditors.</td>
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<tr>
<td>Step-6</td>
<td>Reporting result of meeting by chairman to High Court.</td>
</tr>
<tr>
<td>Step-7</td>
<td>Petition to High Court for sanctioning scheme of demerger.</td>
</tr>
<tr>
<td>Step-8</td>
<td>Forward copy of petition filled in High Court to Official Liquidator and Regional Director.</td>
</tr>
<tr>
<td>Step-9</td>
<td>To furnish required documents/explanations to Official Liquidator and Regional Director.</td>
</tr>
<tr>
<td>Step 10</td>
<td>Obtain order of High Court sanctioning scheme of demerger.</td>
</tr>
<tr>
<td>Step 11</td>
<td>Court order on petition sanctioning the scheme of demerger to file in ROC.</td>
</tr>
<tr>
<td>Step-12</td>
<td>To file letter to ROC regarding increase/decrease of authorized capital of the transferor/transferee company as the case may be, if applicable.</td>
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</table>

Critical Issues

There are certain critical issues in demerger process like valuation of net worth of demerged undertaking vis-a-vis remaining undertaking to calculate swap/exchange ratio. For that
purpose, a statement of assets and liabilities need to be prepared of demerged undertaking and remaining undertaking taking into account assets at net realizable method that is a critical aspect to satisfy creditors and shareholders of remaining undertaking. Further each state has separate stamp duty provisions, so in case if there is transfer of land or like asset that need stamp duty to be paid has to looked into as there is a need to pay stamp duty on transfer of land etc. transferred from transferor company to transferee company by virtue of demerger. Drafting of demerger scheme has to be done very carefully in terms of past, existing and future plans of both transferor company and transferee company. As there are carrying over of assets and liabilities as well as all legal and other proceedings by and against demerged undertaking are also transferred from transferor company to transferee company. Sometimes lenders/creditors may not be convinced in the meeting of creditors/members held regarding sanction of demerger scheme of company. These matters are also to be looked into before going into demerger process.

Judicial Precedents

There are many Judicial Precedents passed by various forums whereby set off and carried forward of losses have been disallowed which were claimed by the transferee company. So we must take care of set off and carried forward of losses provisions allowable to transferee company. Transferee Company is allowed to set off and carried losses for that year only which were allowed to transferor company as if demerger had not taken place. (Areva T & D India Ltd. vs The Deputy Commissioner Of ... on 30 March, 2012)

To add further, there are many decided cases laws on section 2(19AA) of Income-tax Act, wherein it have been pronounced by various Judicial Bodies/Courts that if any condition mentioned under section 2(19AA) is violated, transfer shall be regarded as slump sale under section 50B of Income-tax Act and no benefit of demerger will be available and hence capital gain tax would also be applicable accordingly.

Conclusion

In the backdrop of above facts and circumstances, we may infer conclusion that there are merits and demerits of demerger. We may convert demerits into merits by way of drafting of right scheme of demerger for which right consultant may be approached so that no problem arises in whole demerger process and there is a win-win situation to all stakeholders of transferor as well as transferee company.

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— Companies Act, 1956
— Income-tax Act, 1961
— Company (Court) Rule, 1959
— Areva T & D India Ltd. vs The Deputy Commissioner Of ... on 30 March, 2012
INTERNATIONAL TAXATION
CONCEPT OF TAX TREATY

CS Timir Baran Chatterjee*

(a) What is Tax Treaty?
Many countries have agreed with other countries in treaties to mitigate the effects of double taxation (Double Tax Avoidance Agreement). Tax treaties may cover income taxes, inheritance taxes, value added taxes, or other taxes. Besides bilateral treaties, also multilateral countries are in place: Countries of the European Union (EU) have also entered into a multilateral agreement with respect to value added taxes under auspices of the EU, while a joint treaty of the Council of Europe and the OECD exists open to all nations.

(b) Purpose of Tax Treaty

Tax treaties tend to reduce taxes of one treaty country for residents of the other treaty country in order to reduce double taxation of the same income. The provisions and goals vary highly; very few tax treaties are alike. Most treaties:

- define which taxes are covered and who is a resident and eligible for benefits,
- reduce the amounts of tax withheld from interest, dividends, and royalties paid by a resident of one country to residents of the other country,
- limit tax of one country on business income of a resident of the other country to that income from a permanent establishment in the first country,
- define circumstances in which income of individuals resident in one country will be taxed in the other country, including salary, self-employment, pension, and other income,
- provide for exemption of certain types of organizations or individuals, and
- provide procedural frameworks for enforcement and dispute resolution.

The stated goals for entering into a treaty often include reduction of double taxation, eliminating tax evasion, and encouraging cross-border trade efficiency. It is generally accepted that tax treaties improve certainty for taxpayers and tax authorities in their international dealings.

(c) Treaty Shopping

From the above it is clear that the advantage of treaty is available provided both the countries entered into a Tax Treaty arrangement. The practice of structuring a

* Sr. Executive VP and Company Secretary, DIC India Limited.
multinational business to take advantage of more favourable tax treaties available in certain jurisdictions. A business that resides in a home country that doesn’t have a tax treaty with the source country from which it receives income can establish an operation in a second source country that does have a favourable tax treaty in order to minimize its tax liability with the home country. Most countries have established anti-treaty shopping laws to circumvent the practice.

(d) No. of tax treaties entered into between India and other Countries

India has so far entered into tax treaties with about 70 countries which include inter alia Australia, Austria, Bangladesh, Brazil, Canada, China, Cyprus, Denmark, Germany, Greece, Hungary, Iran, Israel, Japan, Italy, Kenya, Korea, Kuwait, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Oman, Pakistan, Saudi Arabia, South Africa, Singapore, Sri Lanka, Thailand, Turkey, UK, UAE, USA, Vietnam etc.

(e) Permanent Establishment

Most treaties provide that business profits (sometimes defined in the treaty) of a resident of one country are subject to tax in the other country only if the profits arise through a permanent establishment in the other country. Many treaties, however, address certain types of business profits (such as directors’ fees or income from the activities of athletes and entertainers) separately. Such treaties also define what constitutes a permanent establishment (PE). Most but not all tax treaties follow the definition of PE in the OECD Model Treaty. Under the OECD definition, a PE is a fixed place of business through which the business of an enterprise is carried on. Certain locations are specifically enumerated as examples of PEs, including branches, offices, workshops, and others. Specific exceptions from the definition of PE are also provided, such as a site where only preliminary or ancillary activities (such as warehousing of inventory, purchasing of goods, or collection of information) are conducted.

While in general, tax treaties do not specify a period of time for which business activities must be conducted through a location before it gives rise to a PE, most OECD member countries do not find a PE in cases in which a place of business exists for less than six months, absent special circumstances. Many treaties explicitly provide a longer threshold, commonly one year or more, for which a construction site must exist before it gives rise to a permanent establishment. In addition, some treaties, most commonly those in which at least one party is a developing country, contain provisions which deem a PE to exist if certain activities (such as services) are conducted for certain periods of time, even where a PE would not otherwise exist.

Even where a resident of one country does not conduct its business activities in another country through a fixed place or business, a PE may still be found to exist in that other country where the business is carried out through a person in that other country that has the authority to conclude contracts on behalf of the resident of the first country. Thus, a resident of one country cannot avoid being treated as having a PE by acting through a dependent agent rather than conducting its business directly. However, carrying on business through an independent agent will generally not result in a PE.
(f) Withholding taxes

Many tax systems provide for collection of tax from nonresidents by requiring payers of certain types of income to withhold tax from the payment and remit it to the government. Such income often includes interest, dividends, royalties, and payments for technical assistance. Most tax treaties reduce or eliminate the amount of tax required to be withheld with respect to residents of a treaty country.

(g) Income from employment

Most treaties provide mechanisms eliminating taxation of residents of one country by the other country where the amount or duration of performance of services is minimal but also taxing the income in the country performed where it is not minimal. Most treaties also provide special provisions for entertainers and athletes of one country having income in the other country, though such provisions vary highly. Also most treaties provide for limits to taxation of pension or other retirement income.

(h) Tax exemptions

Most treaties eliminate from taxation income of certain diplomatic personnel. Most tax treaties also provide that certain entities exempt from tax in one country are also exempt from tax in the other. Entities typically exempt include charities, pension trusts, and government owned entities. Many treaties provide for other exemptions from taxation that one or both countries as considered relevant under their governmental or economic system.

(i) Double tax relief

Nearly all tax treaties provide a specific mechanism for eliminating it, but the risk of double taxation is still potentially present. This mechanism usually requires that each country grant a credit for the taxes of the other country to reduce the taxes of a resident of the country. The treaty may or may not provide mechanisms for limiting this credit, and may or may not limit the application of local law mechanisms to do the same.
PIERCING CORPORATE VEIL –
MOVING TOWARDS A PRINCIPLED APPROACH

CS Nivedita Shankar*

A company being a juridical entity is run by its agents being its directors or shareholders. As much as directors are supposed to discharge duties only in their fiduciary capacity, yet quite often it is seen that a company is used as a front to shield fraudulent activities. Thus, the concept of piercing of corporate veil emerged. The earliest case of lifting of the corporate veil was in Salomon v. Salomon, where the House of Lords affirmed the separate legal personality of company from a shareholder. The real idea behind piercing the corporate veil is to determine the people who are in actual control of the company to pin down the real cause for any illegal activity carried on by the company. Ironically, this very phrase finds no mention in any legislation and resultantly, we have to look to judgements to understand the true meaning and purpose of “piercing of corporate veil”.

Over the years, the concept of “piercing the corporate veil” has undergone a change and the jury is still not out as to when can this actually be done. Over the years “piercing of corporate veil” seemed more like a “smell test” i.e. it was upto the courts entirely to decide on the same based on subjectivity and facts of the case alone. However, when the identity of a company is widely acknowledged as a separate legal entity, the lifting of its veil tantamounts to temporarily destroying the corporate facade which is fatal to the corporate structure. Thus, to take such an important step which may have serious repercussions, subjective approach in itself is not sufficient. Thus, the need for a principled approach is necessary whereby definite reasons can be penned down rather than only relying on the principles of justice.

We discuss below the case of VTB Capital Plc v. Nutritek International Corp & Others1, whereby the English Court of Appeal has clarified the principles upon which the corporate veil can be pierced. What sets this case apart is the fact that the judgement in this case came out in the year 2012 and proved that courts are now moving towards a principled approach for “lifting of corporate veil” whereby mere notion or belief of injustice shall not comprise enough reason to “lift the corporate veil”.

When can corporate veil be pierced according to English Law subsequent to the judgement in VTB Capital Plc v. Nutritek International Corp & Others?

Brief background of the case

The case pertained to VTB lending money to Russagroprom LLC (“LLC”) to fund the acquisition of six Russian dairy plants and associated companies from Nutriek. The LLC

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1 http://www.bailii.org/ew/cases/EWCA/Civ/2012/808.html
defaulted on its loan and VTB was left with a considerable shortfall after realising its securities. VTB contended that it had entered into an agreement for grant of loan to LLC based on the fraudulent representation that Nutriek and LLC were under the same management and faulty valuation report of dairy companies.

Among the many claims sought by VTB, one such was to amend the Particulars of Claim to allege that once the “corporate veil” of the LLC is pierced, those who controlled it and Nutriek, in this case being Marcap BVI, Marcap Moscow and Mr Malofeev, shall also become the parties to the facility agreement.

The House of Lords discussed obiter dicta in reference to the case of Salomon v. A. Salomon and Company Limited that the corporate veil can be pierced to identify the company with those in control of it. In cases in which that is done, the authorities show that it will or may lead to the granting of remedies against the company which, veil piercing apart, might appear in principle to be available only against those controlling it; and, equally, against the controllers when they might appear in principle to be available only against the company. The House of Lords passed its judgements based on the following grounds:

1. Analogy with law relating to undisclosed principals – this contention raised by the counsel for VTB was rejected on the basis that no undisclosed principal can be sued or sue unless it has granted express or implied authority to its agent to enter into a contract. Considering the facts of the present case, the House of Lords could not draw any parallel with this principle of law. It was also stated that, to consider a stranger as a part of a contract, would be possible only in some exceptional cases, the present case being not one of them.

2. Although courts can in any appropriate case pierce the corporate veil, however, this can be done only in consequence to a holding either that the puppet company was a party to the puppeteer’s contract, or vice versa.

3. The House of Lords also reasoned that there is no logic requiring the corporate veil to be pierced only because consequently, the revelation of the true facts will show Marcap BVI, Marcap Moscow or Mr Malofeev to be parties to either of the relevant contracts. It was opined that such a step would at most prove that VTB was induced by them to enter into contracts by mis-representation. It was viewed that the suggestion to pierce the corporate veil in the present case was only an appeal to decide that the three defendants were original, additional parties to the contract and would require the court to determine the same based on pure fiction.

4. The House of Lords referred to the “veil piercing” principle as a limited one which provided a practical solution in certain factual cases. The House of Lords stated that in certain cases corporate veil was pierced, only because the same was just and convenient. But none of these cases treated the company’s identity as other than a legal person which is separate and distinct from its puppeteers. This would have been in direct contrast to the principles laid down in Solomon vs. Solomon. Thus, there was no precedence to treat the puppeteer as a party to the contract to which he was never a party.
The House of Lords on the basis of the discussion above did not allow amendment to the Particulars of Claim and rejected to pierce the corporate veil of LLC.

**The position after VTB ruling**

Being a recent verdict, the VTB ruling stands out as the House of Lords refused to pierce the corporate veil only on the basis that the three defendants were indirectly the parties to the facility agreements entered into. On the grounds of just and equitable alone, the corporate veil cannot be pierced. Thus, the doctrine of privity of contract was upheld. However, the House of Lords fell short of ruling when can the corporate veil actually be pierced.

**Indian scenario**

Unlike English courts, the Indian scenario is based on statutory requirements to pierce the corporate veil. One of the referred case in Indian history is that of *Life Insurance Corporation of India v. Escorts Limited*\(^2\), whereby the Supreme Court stated that:

> “the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be in reality, part of one concern.”

Thus, the Apex Court opined that lifting of corporate veil is permissible only to the extent of findings required under a particular statute.

This case was referred to in *Walnut Packaging Private Limited vs. The Sirpur Paper Mills Limited And Another*\(^3\), whereby the Andhra High Court referred to cases of *Kapila Hingorani v. State of Bihar*\(^4\) and *Singer India Limited vs. Chander Mohan Chadha & Ors*\(^5\), whereby, it can be established that for courts to pierce the corporate veil of any corporate it has to be established that doing the same will be in the larger interest of public good.\(^6\) The quantum of public good was taken to be “an iota”. In the same case, the Hon’ble Court also held that the principle of corporate veil piercing of a holding company shall not be required or available when its subsidiary company is ordered to be wound up.

Another facet of piercing of corporate veil was discussed in *Krishi Foundry Employees Union vs. Krishi Engines Ltd.*\(^7\), whereby the Andhra High Court stated that if the company uses other concern; a firm, society or association, only to facilitate evasion of legal obligation like payment of direct or indirect taxes or denial of statutory benefits to workmen, the Court has to disregard the separate legal entity of the company. In such an event the question before the Court is one of company law, and the corporate personality of the company is of secondary importance.

\(^2\) 1986 AIR 1370

\(^3\) http://indiankanoon.org/doc/1524768/

\(^4\) http://indiankanoon.org/doc/1255780/

\(^5\) http://indiankanoon.org/doc/1134266/

\(^6\) See also *Krishi Foundry Employees Union vs. Krishi Engines Ltd.* at http://indiankanoon.org/doc/293842/

\(^7\) http://indiankanoon.org/doc/293842/. See also *M/S.Yella Constructions Limited vs. The East Coast Railway, Rail Vihar* at http://indiankanoon.org/doc/1332213/
Our viewpoint

The viewpoints in the case of piercing the corporate veil is different in English and Indian courts. While English courts are moving towards a principled approach whereby mere apprehension of deceit or mis-representation shall not suffice, Indian courts are still emphasizing on larger public interest. The VTB case proves there should be a definite link or involvement in the contract or agreement on the basis of which sham has been alleged. Thus, the principle of privity of contract is still a vital point of consideration. Whereas, in Indian cases, if the case so demands, corporate veil could be pierced. As dynamic that the principle of piercing the corporate veil is, it is still a wait and watch game for all corporate law followers to pen down an exhaustible list of circumstances, when the corporate veil can be pierced.
SAFEGUARDING LEGITIMATE EXPECTATION
IN OPPRESSION PROCEEDINGS

Aditi Jhunjhunwala*

Sections 397/398 of the Companies Act, 1956 (the Act) provide important tools of minority protection in corporate laws. Companies, like most of our institutions, run on majority rule. However, when the majority runs the company, the majority cannot run entirely at their whims and fancies and particularly not so as to strangulate the minority. This is where oppression and mismanagement proceedings come. With the Act giving variety of powers to the majority shareholders and vesting the fiduciary duty with the management, the Act has also empowered the minority to raise a voice in event of any kind of prejudice to their rights and interest and which may be oppressive in nature to them.

There are also cases where such malafide acts may not affect the minority directly but yet be against the interest of the shareholders and the company; in such cases the minority can approach the Company Law Board against the mismanagement under the provisions of section 398 of the Act. This Section only comes into play as the marginal note shows, when there is actual mismanagement or apprehension of mismanagement of the affairs of the company. It may be contrasted with section 397 which deals with oppression in the minority shareholders, whether there is prejudice to the company or not. Question of law can be raised at any point and in relation to any aspect that may act as deterrent in providing the relief sought for or alternatively in meeting ends of justice. In this article we analyse the aspect of legitimate expectation under the oppression proceedings in light of legal provisions and judicial pronouncements.

Do shareholders owe fiduciary duty?

Directors are quite often called fiduciaries for they need to act for the benefit of the shareholders. A fiduciary in a layman’s language would mean a trustee or a legal or ethical relationship between two or more parties. A fiduciary is obliged to act for someone else’s benefit while subordinating his personal interest to that of the other person. Any person bound in a fiduciary character to protect the interest of another person should not put himself in a position where his interest and duty conflict. If he does so and gains for himself a pecuniary advantage, he must hold it for the benefit of the other person. The onus is on the fiduciary to establish affirmatively that the transaction was righteous and that he did not gain any pecuniary advantage. Therefore, it can be said that the directors owe fiduciary duty towards the shareholders of a company and that they act as trustee for the benefit of the shareholders.

The question that arises now is that are shareholders also fiduciaries? Can shareholders
also act as trustees? If the shareholders do not have fiduciary duty towards each other, then they may resort to running the company to their own interest and benefit disregarding the interest of the other shareholders in the company. On the contrary, if the shareholders are fiduciaries, they shall have to take into consideration the larger interest of the company beneficial to all the shareholders. Therefore, what follows from here is that in case of closely held companies where most of the decisions are taken by shareholders, if such shareholders do not act as fiduciary for each other, this may lead to unwanted situations of dispute between the groups. Acts against the will of other shareholders to sub-serve their own interest then can become rampant if shareholders do not have this fiduciary duty towards each other.

**Management rights: contractual and expectation based**

*Legality of act for oppression*

One of the common grievances becoming rampant in oppression proceedings is removal of directors. First of all, it must be noted that oppression proceedings are not all about legality. Every illegality is not per-se oppressive. A removal from directorship may be perfectly legal, but still be oppressive. An illegal act though committed may really not be oppressive. For example, a company declares dividend without transferring profits to reserves. The act of the company here is in violation in law, but surely not against the interest of the shareholders, hence, not oppressive. So, a conduct technically legal and correct may nevertheless be such so as to justify oppression and conversely, a conduct involving illegality and contravention of the Act may not suffice to warrant the remedy of oppression. There should be always an unfair abuse of powers and an impairment of confidence in the probity with which the company’s affairs are being conducted so as prove oppression. The same has been discussed at length in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd.*, (1981) 51 Com Cases 743 at 777.

So where a director is legally removed, can he complain that such removal was oppressive? The scope of section 397 does not extend to violation of directorship rights but that of rights as a shareholder. Therefore, in such circumstances what is the remedy available to such a director? If the directorship of the concerned director is coming by way of shareholding in the company, then surely he can approach under section 397.

The question that may arise now is that where does this right from shareholding come from? The right to directorship can either come from the Articles of Association (Articles) of the company, or from a shareholders agreement, or from a memorandum of understanding between partners forming company in nature of quasi-partnership, or based on “legitimate expectations”.

**Legitimate expectation**

There is a substantial difference between small companies and large companies when it comes to management rights. Small companies may be quasi partnerships, joint ownerships or family companies. Each of these has their own characteristics. Each involves lifting of the corporate veil to see the real relationship among the shareholders. Are they bound by any mutual understanding other than just that of incorporation? For example, in quasi partnership

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1 http://www.indiankanoon.org/doc/292160/
the shareholders are really partners. Legitimate expectation calls for superimposition of equitable consideration which may arise only if there are any of the following ingredients:

(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence—this element will often be found where a pre-existing partnership has been converted into a limited company;

(ii) an agreement, or understanding, that all, or some (for there may be ‘sleeping’ members), of the shareholders shall participate in the conduct of the business;

(iii) restriction upon the transfer of the members’ interest in the company—so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere as held in Re, Westbourne Galleries Ltd., (1972) 2 All ER 492 (HL).

Family companies and quasi-partnerships

There is room in company law for recognition of the fact that behind the company, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Act and by the Articles by which shareholders agree to be bound. Therefore, the company is nothing but managed in the garb of family principles or quasi-partnership or joint ownership.

The concept of quasi-partnership was first recognized in Ebrahimi v. Westbourne Galleries. In case of quasi partnerships, it may be contended that any removal from management is oppressive, since partnerships do not have any distinction between ownership and management. Every partner is also engaged in management. Where in a family company being carried on as a quasi-partnership, there was equal shareholding between two family groups, it was held that the act of one group in issuing more shares to its members to the exclusion of the other group and appointment of additional directors without the knowledge or participation of the other group was an act of oppression as held by the Company Law Board in Pushpa Prabhudas Vora v. Vora Exclusive Tools (P.) Ltd., (2000) 3 Comp LJ 271.

In family companies too, the company is nothing but coming together of the family members and running the company as a family business. In a family company it is almost a certain phenomenon that all members entertain the expectation of participation in management and therefore, ousting from management would create a ground for applying for relief. The outcome would certainly depend upon many other factors as well. In cases where there is an agreement, express or implied, between the family members or partners, or a provision in the Articles that all the shareholders would have the right to participate in management, the above becomes true. Therefore, the exclusion or ouster from management in such circumstances could be considered as an act of oppression.

Large companies

However, in case of larger companies, can a director contend that he has legitimate expectation that he should not be removed? A shareholder in a quoted public company

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3 http://www.indiankanoon.org/doc/1205032/
obviously has no legitimate expectation without more to participate in management. There is no room for the superimposition of any equitable rights to management participation. There cannot be any legitimate expectation as there was no mutual confidence between the company and the shareholder nor any personal relationship or a personal dealing of any kind between the persons seeking to exercise a legal right and others seeking to restrain such exercise, such that it would affect the conscience of the former. In the absence of any such relationship, the shareholders cannot reasonably and legitimately expect anything more than this that the directors would act in accordance with their fiduciary duties and that the affairs of the company would be conducted in accordance with the company’s Articles and applicable legal provisions.

History of the expression from the UK Rulings

Section 397 gives right to the aggrieved shareholder to come forward in case of “oppression”, whereas similar rights have been given to shareholders under the UK Companies Act, 1985 under section 459 and thereafter, in section 994 of the 2006 Act, in case the shareholder has reasons to prove that the conduct is “unfairly prejudicial”. It has been held that the term unfairly prejudicial is much wider in scope than oppression. Oppression is an act which is exercised to be burdensome and harmful on the aggrieved. The scope of the phrase “unfairly prejudicial” was said that the same are general words and they should be applied flexibly to meet the circumstances of the particular case. A shareholder can legitimately complain, however, if the directors exceed the powers vested in them or exercise their powers for some illegitimate or ulterior purpose. Though in general members of a company have no legitimate expectations going beyond the legal rights conferred on them by the constitution of the company, additional legitimate expectations may be superimposed in certain circumstances. These may arise from agreements or understandings between the members or between the members and the directors. These guidelines were cited by ARDEN J in BSB Holdings Ltd. (No. 2), Re, (1996) 1 BCLC 155 at 242 (Ch D).

Lord Hoffman in In Re Saul D. Harrison & Sons Plc. [1995] 1 B.C.L.C. 14, brought in the concept of “legitimate expectations”, which, he later explained in O’Neill v. Philipps [1999] 1 WLR 1092 as follows:

“...In Re Saul D. Harrison & Sons Plc. [1995] 1 B.C.L.C. 14, I used the term “legitimate expectation,” borrowed from public law, as a label for the “correlative right” to which a relationship between company members may give rise in a case when, on equitable principles, it would be regarded as unfair for a majority to exercise a power conferred upon them by the Articles to the prejudice of another member. I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms. The aggrieved member could be said to have had a “legitimate expectation” that he would be able to participate in the management or withdraw from the company.”

Expression used in Indian Law

Indian law continues to use the term “oppression” instead of “unfair prejudice”. In addition
to that the Companies Act, 1956 continues to apply the condition of, just-and-equitable-to-wind-up. This basically is a means of putting the end to the company rather than providing any solution for its survival. The distinction between the words appearing in Indian law and the UK has been noted by the Division Bench of Bombay High court in Vaishnav Shorilal Puri v. Kishore Kundan Sippy 131 CC 690 Bom. It has been contended that the legitimate expectation theory being product of the amendments to UK law, were not applicable to India. However, judicial authorities have only been willing to expand and not narrow down the scope of shareholder remedies under this section. Therefore, the terms were thereafter used in Indian rulings as well in several cases of Company Law Board. Even the Supreme Court referred to the legitimate expectations principle in Shri V.S. Krishnan & Ors vs. M/S Westfort Hi-Tech Hospital, (2008) 2 MLJ 1192 (SC), but on facts concluded that there could not be legitimate expectations for appointment to directorship by the petitioner. Sure enough one cannot claim to have a legitimate expectation of being appointed as a director unlike in case of expulsion or removal from directorship.

A legitimate expectation is likewise in case of transfer of shares where it is expected that the shares will be first offered by the outgoing party to the existing shareholders as the whole basis of legitimate expectation is from coming together of friends or relatives based on mutual confidence. Same is in case of allotment of shares where it is expected that each partner will be allotted shares in the same proportion. Any violation of such expectation leads to loss of the substratum of such entity by which they came together.

**Shareholder agreements not incorporated in Articles – can they be enforced?**

Shareholder agreements are very common in today’s business environment where day in and day out in case of investment in companies. The same are very common in case of family companies, quasi-partnerships, joint venture companies as so on. We have discussed above that based on some agreed principles the partners or family members come together and form a company. These agreed principles are usually incorporated in private arrangements vide agreement which may be for that matter even a memorandum of understanding. Having discussed on concept of legitimate expectation, it is important to also discuss whether such agreements based on which such expectation arises in a company, can be enforced and if yes, then how. Such arrangements may or may not be a part of the Articles of the company. Further, many a times, the company is made a consenting party to such agreements and the enforceability of these agreements on the companies is under question.

Essentially, Articles constitute an agreement between the company and its members as well as members inter se and is binding on all the members whether he was a member originally or becomes later on. An agreement outside the Articles between shareholders as to how they are to exercise their voting rights on a resolution to alter the Articles would not necessarily be invalid. This opens up for agreements that changes, or even distorts, the system of the Articles, and this is one of the questions that we will be discussing in this article.

Some of the common provisions that are seen in private agreements are:

— drag-along rights,
— tag-along rights,
— right of first refusal (ROFR),
— composition of board of directors,
— maintaining a particular structure for the company,
— specific provision as to quorum requirement for board and general meetings,
— veto or supermajority rights available to certain shareholders at board or shareholder level,
— providing private arbitration of disputes.

These clauses sometimes may even go against the company legislation. It is under these circumstances then one needs to see whether any rights can be exercised by enforcement of such arrangements. Courts have either refused to recognize clauses in such agreements or, even when consistent with company legislation, enforced such clauses only and only if they have been incorporated in the Articles of the company. In V.B. Rangaraj v. V.B. Gopalakrishnan (AIR 1992 SC 453) it has been held that where there is any conflict between the Articles and the shareholders’ agreement, the former shall prevail.

In a recent ruling of Supreme Court in Chatterjee Petrochem (I) v. Haldia Petrochemicals Ltd. & Ors5, it was held that “relief against oppression can be invoked only when a shareholder feels aggrieved or oppressed that his rights as shareholder are being affected. A shareholder has certain rights conferred by the Companies Act, which are statutory rights and certain rights are conferred by the Articles. In both these cases, if the shareholders rights are affected, they can allege oppression. It was held by the Apex Court that pure enforcement of shareholders’ contracts is outside the scope of section 397.

The courts have usually held that the rights of the company get fettered through such agreements which infringe the company’s statutory power. However, legitimate expectation arises only through such agreements. Thus, it is important for courts to reconsider the enforceability of such agreements.

Analysis

Shareholders’ agreement is germane to the formation of the company where the people come together based on personal relationships and mutual faith. This relation and this coming together give rise to legitimate expectation. In case there is a breach of such agreement, there is a total loss of mutual faith and therefore, should surely come under the provisions of section 397. As discussed above, legitimate expectation gives right to a shareholder to come under section 397. Therefore, what follows from the above discussion is that sure enough section 397 is not wrongful actions of the company - it is wrongful actions of the majority that are oppressive on the minority especially even in case of legitimate expectation. Legitimate expectation flows only from a private arrangement between parties and therefore such arrangements should be capable of being enforced under the provisions of section 397. Though the Indian courts have recognized the need to protect “legitimate expectation”, there is still a gap to protect such interest when such shareholder arrangements are not incorporated in the Articles of a company.

5 http://indiankanoon.org/doc/1814805/
ROLE OF COMPANY SECRETARIES IN PRACTICE IN SERVICE INDUSTRY

CS Deepa Khatri*

The Indian economy is incredibly diverse – made up of traditional industries such as village farming, fishing, and handicrafts, as well as modern sectors such as telecommunications, transportation, and tourism. In the Indian economy, the service Industry has an important role to play.

The Indian services sector accounts for a large part of the Indian economy – be it in terms of employment potential or its contribution to the national income. Making-up for almost 60 per cent of Asia’s third largest economy, the industry spans from sophisticated fields like telecommunications, satellite mapping, and computer software to simple services like those performed by the barber, the carpenter, and the plumber; highly capital-intensive activities like civil aviation and shipping to employment-oriented activities like tourism, real estate, and housing; infrastructure-related activities like railways, roadways, and ports to social sector related activities like health and education. Thus, there is no ‘concrete and definite’ definition of services.

Today, services is the fastest growing sector in India, contributing significantly to GDP, GDP growth, employment, trade and investment. Key Statistics show that the share of services in India’s gross domestic product (GDP) at factor cost (at current prices) has expanded from 33.3 per cent in 1950-51 to 56.5 per cent in 2012-13 as per Advance Estimates (AE). Including construction, the contribution would increase to 64.8 per cent for 2012-13. Trade, hotels and restaurants as a group is the largest contributor (18 per cent) among the various services sub-sectors, followed by financing, insurance, real estate, and business services with a 16.6 per cent share. Indian service sector enjoyed foreign direct investment (FDI) inflows amounting to US$ 4.75 billion during April-February 2012-13, according to the recent statistics released by the Department of Industrial Policy and Promotion (DIPP).

Even during the global economic slowdown from 2008 to 2009, the services sector remained resilient to external shocks. From 2000-2010, transport, storage and communication services were the fastest growing services sub-sector, followed by financing and business services. IT enabled services, such as Business Process Outsourcing, have also grown rapidly in the recent years and will continue to rise. The Indian government though hopes that growth in tourism and tourism-related services, such as hotels, will hold large potential for job creation, while India’s large English-speaking skilled work force can make the nation a major exporter of software services and skilled manpower.

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The leading economists working on the Indian economy collectively emphasize the importance of drafting of effective policies by the respective Regulators and implementation of such policies, for sustained growth of the sectors.

**Regulation of Indian Industries by relying on Professionals**

Now —a— days Government has begun to rely on professionals so as to perpetuate its policy of control by exception which is an important tenet of management principle. Thus, professionals have been given a very onerous duty to discharge in the governance of various sectors. The various certification requirements insisted upon by Government are nothing but the reflection of Government’s confidence on professionals. The various liberalisation, rationalisation and simplification measures introduced within the overall concept of a regulated economy, have in fact, shifted the onus from the bureaucracy to the corporate management and the community of professionals with the imposition of self-regulatory measures.

Regulatory landscape across various sectors is witnessing dynamism at a never before rate. As the regulatory environment become more and more challenging, the risk and cost of non-compliance escalates. Governance, risk management and compliances practically revolve around the micro objective to meet the requirements of a regulatory body and to avert risk associated with non compliance to their directives. However, we need to see these issues from the macro objective of complying with the spirit of the legislations, perceive beyond the present regulatory needs and shift gear to what may transpire in this fast paced decade to 2020.

Innovative solutions are extensions to compliance issues. Compliance is no doubt a lethal tool for governance, innovation and creativity in operations are pertinent means towards sustainable economic development. Professionals play an important role in Compliance management with innovative solutions.

**Role of Company Secretary**

The role of Company Secretaries as the front line compliance officer is increasing over the years under the various laws. Company Secretaries liaison between Board of Directors, stakeholders, banks and regulatory authorities like SEBI, ROC, RBI, IRDA and Stock Exchanges, etc. and are responsible for disseminating regulatory information.

Regulators had in various regulations made Company Secretaries’ the nodal officer for all compliance such as under listing agreement the company secretary should be designated as the compliance officer of the company; under Companies Bill, 2012, he is required to ensure all the compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company.

On the issue of sudden resignation by Company Secretary, Mr. S.N.Ananthasubramanian, President, ICSI said that ‘With Company Secretaries’—who are increasingly seen as custodians of compliance and finer aspect of governance—seeking to don the mantle of chief governance officers, their exits from listed companies’ should indeed receive regulatory attention.

**Competencies of Company Secretary**

In drafting effective Policies (assisting Regulator):
— Keeping abreast with the updated globalised position on various laws;
Research and analysis on new concepts aligning with the Indian economy;

Legal drafting;

Analyzing changing trends.

In implementation of Policies (assisting Industries):

Advising on compliance with relevant legislation, regulation and governance;

Maintaining effective relations with key bodies, e.g. investors, auditors, government, media and regulators;

Contributing to statutory and regulatory reporting, e.g. through website, annual returns and annual report;

Maintaining and advising on the organisation’s policies, practices, records and risk management;

Advocacy skills;

Improving decision-making by drawing on professional experience and knowledge of the organisation;

Making choices taking into account long-term implications;

In introducing new ways of doing things which deliver efficiencies and value for money.

Service Industries, laws applicable to them and role of Company Secretary therein

Major industries in India are Tourism; Aviation; Hotel; Travel; Banking; Insurance; Electricity and Telecommunications.

In this article, the role, various laws applicable and the role of company secretaries in the following service industries is covered:

Tourism Industry;

Insurance Industry

Tourism Industry

Tourism is travel for recreational, leisure, or business purposes. The World Tourism Organization defines tourists as people “traveling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes”.

Travel & tourism industry’s contribution to Indian industry is immense. Tourism in India has registered significant growth in the recent years and India has tremendous potential to become a major global tourist destination. Travel and tourism industry is the second highest foreign exchange earner for India, and according to an estimate total direct employment in the tourism sector is around 20 million. India’s tourism industry is thriving due to an increase in foreign tourists arrivals and greater than before travel by Indians to domestic destinations. In the past few years the real growth has come from within the domestic sector as around 30 million Indians travel within the country in a year. Global tourist arrivals are expected to increase by 43 million every year on an average from 2010 to 2030. As per Economic Survey
in February, 2013, domestic tourism is also an important contributor to the growth of this sector with a 14.34 per cent CAGR of domestic tourist visits from 1991 to 2011. During 2011, there were 851 million domestic tourists.

**Benefits from Tourism Industry**

- Fulfilling Travel needs
- Foreign Exchange Earner
- High Indirect & Direct employment

**What is required as per the Economic Survey in February 2013**

- India’s tourism sector needs an urgent image makeover and higher investment in infrastructure, including through PPP (public private partnership) mode to capitalise on opportunities provided by overall growth in world tourist arrivals;

- On the taxation issues, the survey said refunding VAT as done in countries like Thailand and Singapore can also help the tourism sector.

**Legal Framework**

(a) *Organisation Type (Constitution)*

Generally a public company listed on the Stock Exchanges.

(b) *Applicable Laws*

Beside statutes, which are applicable to all listed companies irrespective of their nature of business, following are some of the important statues, which are applicable to the companies in tourism industry:

- Aviation Laws
- Foreign Exchange Management Act
- Competition Act
- Consumer Protection Act
- Contract Act
- Reserve Bank of India’s rules and regulations
- Insurance Act and IRDA rules and regulations
- Exim Policy
- Tax Treaties
- Service Tax Law
- Information Technology Act

If the Company has business overseas then Company Secretary of the Company has to comply with applicable laws of that country also. He also has to follow International Arbitration Rules in case of any dispute.

(c) *Concerned Regulators*

- Securities and Exchange Board of India
— Stock Exchanges
— Insurance Regulatory and Development Authority
— Reserve Bank of India
— Registrar of Companies
— International Air Transport Association (IATA) (Passenger/Cargo)

Company Secretary of the company having overseas businesses has to approach various regulatory authorities in that country for taking necessary approvals for effectively carrying out companies business.

(d) Concerned Tribunal
— Securities Appellate Tribunal
— Consumer Forums
— National Company Law Tribunal
— Insurance Regulatory and Development Authority
— Income Tax Appellate Tribunal

(e) Concerned Ministries
— Ministry of Tourism
— Ministry of Commerce and Industry
— Ministry of Civil Aviation
— Ministry of Finance
— Ministry of Corporate Affairs
— Ministry of Law and Justice

FUNCTIONS OF COMPANY SECRETARY IN TOURISM INDUSTRY

A CS who is in employment and a CS in practice, both have a major role to play in the tourism industry.

For the CS who is employed in the tourism industry, the responsibility will include guiding the businesses, framing the policies, team building, and overall development of the company.

As a CS in the tourism sector, he not only has the responsibility of adhering to the applicable laws of India but also of the countries where the company has presence. Apart from an advisory role, a CS has the responsibility to act for and represent the company in case of litigations against or on behalf of the company. The CS plays a role of a decision maker to initiate proceedings or contest in case of disputes especially after taking into consideration the cost involved and benefits arising there from.

Role of Company Secretary in Practice

(a) Compliance and Procedural
— Secretarial Audit from time to time with a view to adherence of applicable laws.
— Retainer ship for compliance of various laws;
— RBI approvals under FEMA, 1999

(b) Due Diligence and Certification
— Secretarial/Compliance Audit Report
— Annual Return certification
— Due Diligence in case of Amalgamations/ Mergers/ Takeovers
— Certifications under Exim Policy

Charles Bacon, CEO, Association of Due Diligence Professionals defines Due Diligence as, ‘to provide a framework within which organisations can continuously confirm that their actions and transactions are supported by the policies, procedures, and management decision-making methodologies.’

(c) Advisory and Representation
— Advising in Service Tax matters
— Advising in Amalgamations/ Mergers/ Takeovers
— Representation before National Company Law Tribunal
— Representation before Director General of Foreign Trade
— Opinion on various legal intricacies

INSURANCE INDUSTRY

Insurance sector in India is one of the most booming sectors of the economy and is growing at the rate of 15-20 percent per annum. In India, insurance is a flourishing industry, with several national and international players competing with each other and growing at rapid rates. Due to the growing demand for insurance, more and more companies are now emerging in the Indian insurance sector. The economy of India is the eleventh largest in the world by nominal GDP and the forth largest by Purchasing Power Parity (PPP).

Insurance Company is a major instrument for the mobilization of savings of people particularly from the middle and lower income groups. These savings are channelized into investment for economic growth. Insurance serves a number of valuable economic functions that are largely distinct from other types of financial intermediaries. The insurance sector contributes in improving solvency levels, risk management in such companies, development of national manpower of the insurance sector, development of underwriting mechanisms, provision of products and risk measurement.

Legal Framework

Organisation Type (Constitution)
All are companies.

Applicable Laws
Regulated by the Insurance Regulatory and Development Authority.
Main Acts - Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 & the Rules, Regulations framed by the IRDA from time to time.

Other Acts are:
- Marine Insurance Act, 1963
- Deposit Insurance and Credit Guarantee Corporation Act, 1961
- LIC Act, 1956,
- LIC Agents Regulations, 1972
- GIC Act, 1972,
- Motor Vehicles Act, 1988,
- Personal Injuries (Compensation Insurance) Act, 1963
- Public Liability Insurance Act, 1991
- Transfer of Property Act, 1882
- The Indian Stamp Act, 1899
- Workmen’s Compensation Act, 1923

Concerned Regulators
Insurance Regulatory and Development Authority

Concerned Ministries
Ministry of Finance

ROLE OF COMPANY SECRETARY

1. Renewal of Registration

As per section 3A of the Insurance Act, 1938 an insurer who has been granted a certificate of registration under section 3 is required to renew registration every year. The application to Authority is required to be made in Form IRDA/R5 appended to Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000.

In accordance with Regulation 10 of Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000, an applicant is required to make an application in Form IRDA/R2 appended thereto for grant of certificate of registration. As per regulation 10(2)(k), every application is to be accompanied by a certificate from a practising chartered accountant or a practising company secretary certifying that all the requirements relating to registration fees, share capital, deposits, and other requirements of the Act have been complied with by the applicant.

It is proposed that for every renewal of registration the compliance of all requirements for fresh registration must be insisted upon.

In line with Regulation 10 of the IRDA (Registration of Indian Insurance Companies) Regulations, 2000, we suggest that for every renewal of the registration, every
application in Form IRDA/R6 is to be accompanied by a certificate from a practising company secretary certifying that all the requirements under the Insurance act, 1938 and regulations made there under have been complied with by the applicant. The same certificate may be required to be attached to Annual Report made to Shareholders and/or policyholders.

Compliance certificate will not only act as an effective mechanism to ensure that the legal and procedural requirements under the Insurance Act, 1938 are duly complied with but also instill professional discipline in the working of the Insurance Company besides building up the necessary confidence in the state of affairs of the company.

2. Returns of Investments to be submitted by the Insurer

Every insurer is required to submit to the Authority the returns of Investments as indicated under regulation 6 of Insurance Regulatory and Development Authority (Investment) Regulations, 2000. These are required to be verified/certified by Principal Officer/ Chief (Investment).

Besides, every insurer carrying on the business of life insurance is required to submit to the Authority, within thirty-one days from the beginning of the year a return showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with and such return is required to be certified by a principal officer of the insurer. Every such insurer is also required to furnish, within fifteen days from the last day of March, June and September, a return certified as aforesaid showing as at the end of each of said months the assets held invested in accordance with section 27.

As per Circulars issued by the Authority, every insurer is required to file the required information along with Certificate from the custodian, under section 28(2A), 28(2B) and 28B (3) on a quarterly basis and also at the end of the financial year along with the other “Investment Returns”, to the effect that the custodian is holding such securities, on behalf of the insurer, free of encumbrance, charge, hypothecation or lien.

Besides, they are required to furnish the prescribed details pertaining to their “Investments” on a quarterly basis along with the other Quarterly “Investment Returns”.

All the returns mentioned above are required to be verified/certified by the Insurer/ Principal Officer/ Chief (Investment) of the Insurer. It is proposed that these returns may be verified and certified to be correct by a practising company secretary so that the Authority can rely on them to be authentic and take immediately on record.

3. Licensing of agents

A person desiring to obtain or renew a licence to act as an insurance agent or a composite insurance agent is required to make application in Form IRDA-Agents-VA appended to Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000.
It is proposed that for every renewal of the licence, every application form is to be accompanied by a certificate from a practising company secretary certifying that all the requirements under the Insurance Act, 1938 and regulations made there under have been complied with by the applicant. In addition to this, a practising company secretary may vet and certify application in Form IRDA-Agents-VA to be correct.

A person desiring to obtain or renew a licence to act as corporate agent or a composite corporate agent is required to make application in Form IRDA-Corporate Agents-A-1 appended to Insurance Regulatory and Development Authority (Licensing of Corporate Agents) Regulations, 2002.

It is suggested that for every renewal of the licence by a corporate agent, every application form is to be accompanied by a certificate from a practising company secretary certifying that all the requirements under the Insurance Act, 1938 and regulations made there under have been complied with by the applicant. In addition to this, a practising company secretary may vet and certify application in Form IRDA-Agents-VA to be correct. He may provide the same certification services in respect of application by an individual desiring to become a Specified Person of a corporate agent/composite corporate agent, through the corporate agent/composite corporate agent in Form IRDA-Corporate Agent-A-2 to the insurer.

Insurers can, thus satisfy themselves that the Designated person specified by an insurer and authorised by the Authority to issue or renew licences under the regulations, has granted the licence only to bonafide persons to act as Agents and Corporate agents.

4. **Insurance broker and Surveyor and Loss Assessor**

A person desiring to obtain or renew a licence to act as an insurance broker is required to make application in Form A appended to Insurance Regulatory and Development Authority (Insurance Brokers) Regulations, 2002.

It is suggested that for every renewal of the licence, every application form can be vetted and certified to be correct and complete by a practising company secretary.

Every person intending to act as a surveyor and loss assessor in respect of general insurance business is required to apply to the Authority for grant of licence in FORM-IRDA-1-AF as given in the Schedule to Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000.

It is suggested that for every renewal of the licence, every application form can be vetted and certified to be correct and complete by a practising company secretary.

Further, it is suggested that, every ‘Insurance Broker’ and ‘Surveyor and Loss Assessor’ may be required to file with the Authority a compliance certificate issued by a practising company secretary certifying that all the requirements under the Insurance Act, 1938 and regulations made there under have been complied with by them.

5. **Third Party Administrator**

A Company desiring to obtain or renew a licence to act as ‘Third Party Administrator’ is required to make application to the Authority in Form TPA-1 appended to the

It is suggested that for every renewal of the licence, every application form can be vetted and certified to be correct and complete by a practising company secretary.

It is also suggested that, every 'Third Party Administrator' may be required to file with the Authority a compliance certificate issued by a practising company secretary certifying that all the requirements under the Insurance Act, 1938 and regulations made there under have been complied with by them.

6. Quasi-judicial functions

The Authority in regulating the insurance sector also performs quasi-judicial functions. One of such functions is performed under section 33 of the Insurance Act, 1938. The Authority may, at any time, by order in writing, direct any person to be called as “Investigating Authority” specified in the order to investigate the affairs of any insurer and to report to the Authority on any investigation made by such Investigating Authority. Investigating Authority may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section. The Company Secretaries, by the very nature of their legal knowledge, have gained professional attainments not only with respect to compliance with the legal requirements but are taking an active managerial outlook in the insurance field. Hence, they are able to understand criticalities of this sector. In view of this, company secretaries in whole time practice may be recognized to be employed by Investigating Authority appointed under section 33 of the Act for the purpose of assisting him in any investigation.

7. Assistance in Grievance Redressal Procedure

The Central Government has framed rules known as Redressal of Public Grievances Rules, 1998. The institution of Ombudsman set up under these rules has evoked a good deal of appreciation and public confidence in the insurance sector due to their performance for the protection of interests of policyholders. An analysis of the complaints disposed off by them at different centres indicates that total number of complaints received by them has increased by 60%. The number of complaints received by insurance ombudsmen almost doubled from 12,812 in 2008-09 to 23,334 in 2010-11. Ombudsmen disposed 17,239 cases in 2010-11, against 11,417 cases in 2008-09.

It is suggested that the Company Secretaries can be appointed to assist these Ombudsmen. This will expedite the grievance handling procedure and ensure 100% customer satisfaction and public confidence in the system.

8. Position in Value Chain

The CS being a generalist has an important role in Taxation, Actuarial, Marketing, Legal and customer service areas. Since the industry is highly regulated, compliance is a vital area where the CS can contribute significantly.
9. Vertical and Horizontal Reporting

Vertical reporting to the Managing Director and to the Board of Directors. Also direct reporting to the IRDA for compliance purposes. Horizontal - Giving clearances for various activities of other departments in relation to legal and regulatory requirements.

FUNCTIONS OF CS IN EMPLOYMENT IN INDUSTRY

Management

Advise and guide the management on the various laws and developments in the insurance industry like taxation laws, consumer cases, procedural lapses, stamp duty laws, legal opinions, etc.

Compliance and Procedural

The Company Secretary is usually overall in-charge of all compliance requirements of the company and is also expected to ensure that the processes adopted by the company are in line with the regulators requirements.

Advisory and Representation

Gives tax and other legal advice to various departments and customers. Represents before Consumer Forums, the IRDA and also various Government institutions like Ministry of Commerce, RBI, Ministry of Finance, Employees Provident Fund Organisation etc., for bringing about changes in the respective laws affecting the insurance industry.

FUNCTIONS OF CS IN PRACTICE FOR INDUSTRY

Compliance and Procedural

The CS in practice can take up compliance assignments with various intermediaries like Corporate Agents, Brokers, Surveyors, Third Party Administrators etc., who are directly regulated by the IRDA.

Due Diligence and Certification

There is a need to approach the IRDA to recognise the practising professional for periodic certification of compliance and due diligence requirements.

Advisory and Representation

The Practising CS can provide valuable advise on taxation and other laws. Insurance being a retail market, eventually there will be scope for consumer cases etc., which can be represented by the practicing CS. The insurance sector is in its evolving stage and there are numerous inventions and developments being implemented. These would entail registrations under the Trademarks and Copyrights laws where the practising CS can represent the insurance company.

Conclusion

Company Secretaries are professionals with a diverse set of skills unique among many professions. Trained in corporate law, finance, governance, company secretarship and
management, Company Secretaries are having a right mix of knowledge of the conduct of business, governance and compliance.

Although there is not a legal requirement under various regulations to engage the services of a company secretary, his involvement can prevent repercussions of non compliances i.e. heavy fines and imprisonment.

It is expected that a company secretary to be sought after for the value he brings to a company and its stakeholders rather than taking shelter under formal mechanisms of protection.

Reference

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GOOD GOVERNANCE GEARING THE GROWTH

Chittaranjan Pal*

Introduction

Good governance is a precondition for economic development. The quality of governance plays a vital role in the economic development of countries. The need for good governance is widely recognised for development. Development is a global phenomenon and there is a relationship between good governance and economic development.

For the OECD, governance denotes “the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development”. The UNDP is more encompassing and views governance as “the exercise of economic, political, and administrative authority to manage a country’s affair at all levels. It comprises mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences”. In the same line, the UN Secretary-General claims that good governance is “ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration”.

Aspects of good governance

Good governance is important for countries at all stages of development. The World Bank identifies major aspects of good governance as under:

— Public sector management: Government must manage its financial and personal resources effectively through appropriate budgeting, accounting and reporting systems and by rooting out inefficiency particularly in the parastatal sector.

— Accountability: public officials must be held responsible for their actions. This involves effective accounting and auditing, decentralization, micro-level accountability to consumers and a role for non-governmental organizations.

— The legal framework for development: there must be a set of rules known in advance, these must be enforced, conflicts must be resolved by independent judicial bodies and there must be mechanisms for amending rules when they no longer serve their purpose.

— Information on economic efficiency.

— Transparency

Without transparency, governance is just words on paper. Transparency as disclosure to see how rules are implanted; transparency in decision-making ensures fairness

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and peer review. Transparency matters for the ability of citizens to hold their governments accountable. Transparency is a representation of reality. Transparency, generally accepted as both legitimate in itself and essential to modern governance, is often seen as part of a basic right of access to government information. The ultimate objective of transparency is systemic stability.

**Governance Indicators**

Six broad governance indicators which enhance governance reforms are given below:

1. **Voice and Accountability** — measuring political, civil and human rights
2. **Political Instability and Violence** — measuring the likelihood of violent threats to, or changes in, government, including terrorism
3. **Government Effectiveness** — measuring the competence of the bureaucracy and the quality of public service delivery
4. **Regulatory Burden** — measuring the incidence of market-unfriendly policies
5. **Rule of Law** — measuring the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence
6. **Control of Corruption** — measuring the exercise of public power for private gain, including both petty and grand corruption and state capture.

**Pillars of Governance**

Governance is unique in its ability to have a far-reaching impact on the full spectrum of development. An effective governance falls into three pillars:

- Delivering better services through:
  - improved government efficiency and effectiveness
  - more accountable, open and responsive governments
- Improved security and enhanced justice
- Enhanced human rights.

**Corporate Governance**

Corporate governance is entering a phase of global convergence, driven by the growing recognition that countries need to attract and protect all investors, both foreign and domestic. Global capital will generally flow at favorable rates to where it is best protected, but will not flow at all or will flow at higher-risk rates where protections are uncertain or non-existent.

Corporate governance comprises a combination of regulatory rules and private sector-driven guidelines. In countries with more sophisticated financial markets, corporate governance rules and structures are contained in laws protecting property rights and shareholder rights through legislation, accompanying regulations, judicial decisions, and stock exchange listing rules. This is the essential enabling governmental infrastructure. In addition to formal rules, corporations adopt best-practice principles and guidelines in response to prevailing market conditions and investor demands. Corporate governance principles so
as to foster investor trust and attract capital, which will in turn lead to investment and economic growth.

**Corporate Governance matter for Growth**

Some of the channels through which corporate governance affects the growth and development are as under:

— Increased access to external financing by firms can lead, in turn, to larger investment, higher growth, and greater employment creation.

— Lowering of the cost of capital and associated higher firm valuation makes more investments attractive to investors, also leading to growth and more employment.

— Better operational performance through better allocation of resources and better management creates wealth more generally.

— Good corporate governance can be associated with a reduced risk of financial crises, which is particularly important given that financial crises can have large economic and social costs.

— Good corporate governance can mean generally better relationships with all stakeholders, which helps improve social and labour relationships, helps address such issues as environmental protection, and can help further reduce poverty and inequality.

All these channels matter for growth, employment, poverty alleviation, and well-being more generally. Empirical evidence using various techniques has documented these relationships at the level of the country, the sector, and the individual firm and from investor perspectives.

**Conclusion**

More generally, poor corporate governance can affect the functioning of a country’s financial markets and the volume of cross border financing. For instance, weaker corporate governance can increase financial volatility. The research shows that better corporate governance leads to higher returns on equity and greater efficiency.

Good governance is an emerging priority and considered more pragmatic for meeting the public demands, promoting efficiency and development of a country. Without improving the key indicators of good governance, like rule of law, voice and democratic accountability, stable political regimes, government effectiveness and control of corruption it is not possible to achieve rapid per capita income and improve other social indicators. Mis-governance has serious implications such as unattainability of growth path, suffering of pro poor strategies, lack of foreign investment, unstable political regimes etc.

Good governance is an important determinant of the pace and character of economic development. The establishment of the rule of law, protection of property rights, safeguarding of human and fundamental rights, the implementation of justice, the eradication of waste, prudence in public expenditure and minimizing of bribery and corruption are among the facets of good governance that must prevail for the economy to grow to its full potential. Without good governance economic growth would be stifled.
The relationship amongst good governance, corporate governance and growth should be based on the rules of the game, the interests and beliefs of the players and the way the game is played.

**Source**

5. FOCUS Corporate Governance and Development- An Update by Stijn Claessens and Burcin Yurtoglu-Global Corporate Governance Forum Publication.
CORPORATE DOMAIN IN GOVERNANCE REGIME – CS AS CGO

CS Disha Kant*

‘The company secretary is perfectly placed to say what skills are required on the board.’

Fiona Boxall Director, Boxall Wallace Wells (BWW)

INTRODUCTION

Corporate Governance is a reflection of how the board of any company is pursuing its fiduciary objectives. In a climate of increased focus on corporate governance, boards themselves need to ensure that fundamental governance practices and processes are in place in their companies. It is a well known fact that governance stands on the pillars of responsibility, accountability, fairness, and transparency.

Corporate Governance is corporate managing and monitoring system that involves relationship between shareholders, board of directors, senior executives, independent auditors, and other stakeholders modelled in a manner to preserve and enhance business viability in the long term. While the executive role is primarily to run the business operations efficiently and effectively, the governance role is concerned with giving overall direction to the enterprise, with overseeing and controlling the executive actions of management within the transparent and accountable boundaries of stakeholders and regulators.

The most significant feature of an effective corporate board is the strong leadership and strong commitment to governance principles. The essential requirement to ensure the implementation of sound governance principles and practices is strong legal and organizational board support, provided by an excellent corporate secretary. Considering the current outlook of shareholder activism and responsible investment, it is difficult for the Board of Directors to overlook the value of fundamental boardroom best practice and delivering good governance, as corporate governance plays a crucial role in building corporate reputation and corporate secretary inalienable tool to guide the board on the same.

COMPANY SECRETARY- GOVERNANCE PILLAR

When we assess the governance architecture of a company, we realize that company secretary’s role is exclusive and unique. Indeed, role of Company Secretary was exemplified way back in Adrian Cadbury Report on The Financial Aspects of Corporate Governance as under:

"The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations

* Assistant Education Officer, The ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
**Corporate Domain in Governance Regime – CS as CGO**

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**to which they are subject and on how those responsibilities** should be discharged. All directors should have access to the advice and services of the company secretary and should recognise that the chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board. It should be standard practice for the company secretary to administer, attend and prepare minutes of board proceedings”.

The role of corporate secretary is increasingly important and visible one as the person in that role is generally responsible for the company’s corporate governance. The professionals who manage the corporate secretary function effectively combine practical knowledge of the detailed requirements with sound practices and processes to ensure a high standard of governance.

The role of the corporate secretary is much beyond the responsibility for appropriate record keeping of board and committee materials, and developing agendas that capture required board action. The time has come when the role of a corporate secretary should not be restricted to compiling of resolutions for board consideration and drafting artful minutes demonstrating the board’s diligence, rather time is now ripe to take on new opportunities and convert them as the core advantage.

**Company Secretary, Corporate Secretary as governance professional:**

— Motivates, cultivates and nurtures the best governance practices in a corporate;
— Exhibits, professes the overall compliance framework to safeguard the corporate from compliance failures;
— Realizing the fact that corporate governance is stakeholder imperative, provides a cushion to stakeholder interest and guide management and board on related issues;
— Promotes high standards of ethical and corporate behaviour thereby driving towards transparent, responsible and accountable model of corporate behaviour.

The periphery or the circumstances in which the company secretary operates also define the governance culture in any organisation. According to an Article “**Oiling Board Processes The dynamic evolution from “Company Secretary” to “Corporate Governance Officer”**” by Ulrich Steger & Gertrud Erismann-Peyer:

Each type of company secretary has a different basic job description, different tasks, and ultimately a different impact on the company’s corporate governance.

1. The **“chair’s proxy”** is a secretary with considerable competence, who reports to the board’s chair and functions as his/her “eyes and ears”. If the chair is a strong personality, this type of secretary is an influential person, perhaps even an “éminence grise” at the helm of the company.

2. A **“go-between”** has a high competence level, reports to top management, and is a confidant of the CEO with the additional task of providing top-level support to the board. The go-between’s objective is to ensure that the board accepts the proposals from the CEO and management. The go-between controls process rather than content.

3. The **“compliance ensurer”** holds a position with a lower level of competence and reports to the board (mostly to the chair). In general, the compliance ensurer does
not control or influence the preparation of board meetings or the processes during the meetings. Instead, this type of secretary responds to individual requests, for example from the chair, and provides the requested documentation.

4. The “administrator” role does not comprise major competencies and is characterized by a direct reporting line to management. The tasks of this type of secretary are predominantly administrative. Administrators” are often seconded to the chair’s office from among staff members of the corporate legal department and only temporarily delegated to the chair’s office.

Post global financial crisis, Board of Directors is under pressure to quickly redesign their business model and adopt the new governance landscape. The Board of Directors have to ensure that the pillars of corporate governance i.e. transparency, accountability, responsibility, fairness are complied with. It is very important to build transparent, sustainable and value based business model, but it is not the board that shall look after the implementation and effectiveness of corporate governance practices in the organisation. “Company Secretary” or “Corporate Governance Professional (CGO)” is the most appropriate strategic –level corporate officer who shall implement, monitor the governance in a company.

A Board Consultant, resource and ombudsman

Company Secretary is expected to be fully equipped with knowledge in various areas to offer support and advise to Board of Directors to enable them to make sound and ethical business decisions. If Company Secretary fails to provide right advise to Board of Directors at the right time and in right amount, it can result in costly mistakes.

Does that mean a company secretary has to have knowledge of all the areas?

Company secretary shall become the Corporate Governance Professional of tomorrow; the Companies Bill, 2012 has defined company secretary so as to mean any person defined as company secretary under Company Secretaries Act, 1980 and who is appointed by a company to perform the functions of a company secretary under the Bill. The bill has provided for inclusive functions of company secretary under clause 205 which are enlisted below:

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
(b) to ensure that the company complies with the applicable secretarial standards;
(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

The way regulation has developed over the years has really catapulted the company secretary into view. The very first function enumerated above gives a holistic view of the expectations of the regulators from Company secretaries. With this entire compliance domain of the company comes under the purview of Company secretary. The company secretary shall serve as an extended arm of the regulators. The regulation has tasked Company Secretaries to look beyond the board room. This is a transformation phase for the profession.
BEHIND THE SCENES

The company secretary’s function was seen as a more administrative and support role. The times have changed, due to the changes in corporate governance architecture, the role of the company secretary as an advisor to the chairman is far more important now. The profession is moving towards a more strategic role. This is probably because as an advisor to the chairman who is ultimately responsible for ensuring the correct information flows to the board, the company secretary has a crucial strategic role to play, providing inputs to the chairman.

The company secretary has to know what is going in the organisation, and what is and what isn’t important to the chairman in terms of information flows. He or she must also assist the chairman in managing board composition, in terms of making sure you have both the right quality of non-executive directors on the board and in terms of assisting the training and development of directors.

Quoting from an article “The Corporate Governance Officer- From company secretary to manager of governance processes” by Ulrich Steger & Preston Bottger in the book titled “Leading in the top TEAM – The CXO Challenge”.

"My predecessor was a lawyer, whereas I clearly have a strong background. I studied business, then started working in our group’s headquarter and then moved on to several management positions in foreign subsidiaries. Prior to my appointment as corporate governance officer, I worked on the post-merger strategy and integration of our biggest acquisition deal ever.

The reason the board chose me is simply that our company wants the board to have a strong strategic influence and more involvement in the day-to-day business.

(A CGO whose predecessor’s title was company secretary).”

THE TRANSFORMATION

The article further enlists the variety of the tasks for which a CGO might be responsible in future. These responsibilities have been determined on the basis of the national and international legal jurisdictions that the company operates in, and policy choices made by the board to ensure that the desired messages are given both to internal and external stakeholders.

Suggested list includes:

— **Facilitating governance processes** : This involves helping the chair set the agenda, presenting management reports to the board and its committees, and ensuring that the board follows established procedures.

— **Supporting board meeting** : The CGO is responsible for preparing board documents, drafting and distributing the minutes, and follow-up after the meetings.

— **Ensuring compliance** : The CGO must ensure compliance will all internal rules and external laws and regulations applicable to the company. Compliance needs to become part of the company culture, and the CGO often spearheads this effort.
— **Shareholder management**: This entails managing the entire process for the annual general meeting of shareholders, including recording and archiving minutes and keeping the shareholder register.

— **Integrating new directors**: The CGO facilitates the integration of new, non-executive directors into the business and their role on the board. The CGO also assists with the ongoing training and development of directors.

— **Tracking key changes in the environment**: The CGO must be able to read emerging pressures in the political and legal environment, and give the board and management early warning of changes that may affect the company.

The proportion of global players entering emerging markets has increased; established players in several sectors are now exposed to more intense competition. Cost, quality, innovation, and pricing will hold the key to future success. Today’s CEO more than ever before needs support to succeed in an increasingly complex and globalized economy and it is here that corporate governance can become a true differentiator. The challenge lies in using corporate governance as a tool to build sustainable holistic changes to strategies and capabilities that go well beyond financial success.

A Company Secretary is the key to implementation of Corporate Governance norms in a company. The new Companies Bill substantially enhances and elevates the role of company secretary as it includes him as a “Key Managerial Personnel” in a company, showcasing strategic importance of the Company secretary in governance of a company. The Bill seeks to provide ‘substantive oversight’ role to company secretaries as against a technical compliance role envisaged so far under the existing company law. It is upto the company secretaries to realize the strength of the profession and recognise the changed circumstances.

**FUTURE AS CHIEF GOVERNANCE OFFICER**

Lintstock ltd., UK in a study “Elevating the Role of the Company Secretary” conducted via questionnaires and interviews with 252 Board Directors and 166 Company Secretaries in the FTSE All Share Index, on the role of the Company Secretary in May 2012, quotes “Most respondents felt that the importance of the role of the Company Secretary would increase over the next five years. It was often stated that the role ought to enjoy a higher position within the business, with the caveat, particularly from Board member respondents, that the right to an elevated position should be dependent on the individual being able to demonstrate the ability to add value beyond administrative efficiency.”

**A recurring theme throughout the review was the uniqueness of the position of the Company Secretary as the interface between the Board and management. Many thought that the Company Secretary might make more of this position by proactively managing the agenda of the Board and representing the Board within the business to management. In particular, it was suggested that the Company Secretary should enjoy the status of the “voice of the Board” within the business, and can perform a valuable role in coaching management to understand the expectations of, and value brought by, the Board.”**

Corporate governance earthquakes and high profile bankruptcies in the past have resulted in dramatic shift corporate governance was seen earlier and rise in board room pressures,
thereby increasing the pressure for the tough governance maverick of the company, i.e. the Company secretary or Chief Governance Officer.

Now in the ‘post Enron’ corporate Governance era, the role of company secretary is more for value-adding than trouble-shooting. According to the article by Ulrich Steger & Preston Bottger mentioned above, with the increased demands on individual board members a CGO can expect an increasingly-heavy and complex workload:

- **Increased workload of board members**: The quantity and complexity of work has increased for every board member, including those already heavily involved (i.e. the chair). The main reasons are simply more board meetings throughout the year, more committee and preparatory work and more responsibility.

- **Increasing scope of board duties**: Boards will continue to face more statutory duties. In addition, the work of monitoring and scrutinizing the performance of executives is increasing. If this leads to more departures of CEOs and CFOs, the board will have more work to ensure continuity of top management functions.

- **Increased information flow to the board**: As boards have become involved in more issues, reporting to the board has increased. Not only is management providing extensive information to the board, the board members themselves are requesting more information and reports from the company.

According to Lintstock study many respondents stressed on Company Secretary in acting as “the conduit for information to the Board”. The Company Secretary was also described as the “first port of call” for the Non-Executives in ensuring that they are in receipt of the appropriate information.

Further quoting from the study “Essentially as gatekeeper driving out papers of the right quality at the right time to be useful to the Board and circulating other information as received on an ad-hoc basis to make sure that the NEDs are up to speed both with matters internal to the Company and also affecting the sector.”

Greater demand for documentation of board processes and decisions: The documentation of board meetings now reflects the detailed deliberations of every decision – only sound business judgment protects against shareholder lawsuits.

The main and most value-adding tasks will be appropriate representation of corporate governance towards board and management, integrating the legitimate interests of company external stakeholders and meeting shareholders’ information demands. For this, board agenda setting and board information management shall become crucial.

The company secretary should endeavor to achieve excellence and gain proficiency, the professionals need to take broader strategic view about their company needs; acquire significant business knowledge of processes and systems of the company and utilize the same in driving board level consultancy.

With the increased demands, boards will require higher levels of support. As a result, the role of a company secretary, or CGO, will continue to be elevated in terms of level in the hierarchy.
ENHANCED GOVERNANCE PORTFOLIO

The major areas of governance wherein CGO’s can pitch in are as under:

External & Internal Compliance Management:

Once a company comes into existence a plethora of legislations, codes, standards and guidelines come into play. It is important that the CGO keeps abreast of the differences and forthcoming issues of law and corporate governance in all the company’s markets, in order to operate successfully in this complex environment. Recent SEBI circular on Business Responsibility Reports in August 2012, mandating the inclusion of Business Responsibility Reports (“BR reports”) as part of the Annual Reports for listed entities presently for top 100 listed entities based on market capitalisation at BSE and NSE as on March 31, 2012 is one such example. This new clause 55 in the listing agreement emphasizes on the responsibilities that a company secretary can efficiently shoulder. It is for the company secretaries to be prepared to shoulder the responsibility of guiding 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.

A company secretary is expected to be well versed with internal code and guidelines and should ensure adherence of the same in spirit. Ensure that all risk management tools are effectively set in the company.

Acting as ‘interface’ between the Board and Business

The increased involvement of the board in the company and the more frequent interaction between board members and management would result in opportunities of disagreement. The key role for a CGO would be to proactively detect such situations and propose proceedings to resolve such dilemmas.

CONCLUSION

The strength of knowledge shall undermine the odds, leading beyond legal parameters the Company secretary professionals or the Chief Governance Officers will soon be recognised as the “Guardians of Company’s Governance and an independent adviser to any corporate”.

Quoting from Lintstock Study FTSE 100 Company Secretary says

“I think the role can become more commercial and Company Secretaries should be gaining a greater insight into the business and working more closely with other business areas especially IR, Corporate Communications and the Corporate Responsibility teams but also Group Strategy and Business Development. The thrust will be corporate governance - ensuring that the company is working within its governance framework.”

In today’s scenario, a Company Secretary is instrumental in establishing good corporate governance practices and robust systems necessary for sustainability and a prosperous economy. Company Secretary is looked upon by the regulators, as ethical and trustworthy professional whose professional judgment and competence has made a mark in the corporate sector.

To live upto the expectations of not only the regulators but also other stakeholders, Company secretaries should proactively strive to turn the wheels and drive the governance regime.
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PROFESSIONAL’S RESPONSIBILITY, ACCOUNTABILITY AND REGULATION

CS Sudhir Kumar Saklani*

Introduction

Responsibility, accountability and Regulation are the troikas of all Professions including the company secretaries. These play a significant role in the advancement of profession.

Meaning

The term accountability has been described as, _the obligation of one party to provide a justification and to be held responsible for its actions by another interested party._

Accountability in this very broad sense is basically an evaluative, not an analytical concept. It comes close to ‘responsiveness’ and ‘a sense of responsibility’, a willingness to act in a transparent, fair, and equitable way.

_Winston Churchill once said the price of greatness is responsibility._ Whenever responsibility is defined, it appears to be in relation to accountability. This suggests the two are synonymous, but this is not the case. While there is correlation between the two, they are not interchangeable and have different meanings. At the most basic level, responsibility means to be responsible for an act one undertakes, while accountability simply means to be called to account. There is also a difference between being responsible to, identifying the person or office to which one is responsible and responsible for, and identifying the action, task or role for which one is responsible. Taking responsibility does not necessarily mean one will be asked to give an account – undertaking the action will fulfil the responsibility one has. The focus of responsibility is on the task, not on accounting for it.

The meaning of the term regulation is “a rule or directive made and maintained by an authority.” The term regulation connotes the legal sanctions. There is no indication of what constitutes a “good regulation”, nor is any moral or political justification provided for them. It is simply asserted.

Present Conditions

Accountability is one of those golden concepts that no one can be against. It is increasingly used in political and economic discourse because it conveys an image of transparency and trustworthiness. A great many social and economic relationships carry an element of accountability within.

Tomorrow’s professional will be working within a much more extensive framework of

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accountability than yesterday’s. Some of the transition has already been made over the last few years as professionals have responded to and accepted the more explicit professional standards which now exist and the commitment to the quality agenda. Discharging this more diverse form of accountability brings with it responsibility to a new style of practice - more multidisciplinary. Finally, accountability can no longer be seen as entirely a matter for the individual professional. Institute too has a responsibility to provide the culture, the support, and the systems so that the individual professional’s accountability for providing high quality can be delivered.

Self Accountability

The accountability to self is foremost responsibility of any individual. Here in Company Secretary Profession, the relationship lies with the Institute and the members. The Institute laid down codes of conduct and standards for acceptable practice that are binding for all members.

Accountability to the Client

The foremost accountability of the company secretary is to the client. You hold yourself out to the client as someone having the special knowledge, training and skills associated with company secretaryship. Once this reliance has been established you have a duty to your client to provide the standard of professional services. If you breach this standard you could damage your client and incur liability. You are accountable to know the limits of your competency and to work within those limitations. If you undertake to perform an action which you are not competent to perform, you must answer for the consequences; no one else can answer for you. If you are not directly involved in the negligent action and did not contribute to it, you could not be held responsible for it.

Accountability to Profession

As a professional you are accountable to meet the standards of your profession. You should not be required to perform any professional service which is outside the scope of your work. It is your responsibility to maintain and keep current with your standards of practice.

The Institute has developed the concept of Peer Review. The peer review of Practising Units is conducted by Peer Reviewer.

Accountability, transparency and ethics in business have become more important than ever in the wake of the global financial crisis. Company Secretaries are crucial business advisors, helping protect the interests of stakeholders in every industry. The Institute of Company Secretaries of India (ICSI) is at the forefront of promoting and ensuring ethical business and corporate governance practices, with Company Secretaries working in every industry and sector.

Role of Ethics in Practice

Ethics are the cornerstone of Company Secretary’s profession. Clear, visible and honest reporting allows company stakeholders to make informed decisions about the business and ensures businesses are meeting relevant legal and regulatory standards. Public confidence in business was severely dented by the effects of the global financial crisis, leading to increased scrutiny of companies’ governance and decisions. As a result, company secretaries’ role is
more than ever seen as important to business, with company secretaries operating as trusted advisors to the Board who champion Organisational integrity, sound financial management and enhanced Corporate Governance Practices.

**Regulation of Profession of Company Secretaries**

The profession of company secretaries is regulated by the Institute of Company Secretaries of India setup under the Company Secretaries Act, 1980 and the regulations made thereunder. The ICSI is a statutory body that sets the code of Conduct and standards for Company Secretaries in India. The Code of conduct is based on fundamental principles of integrity, objectivity, professional competence, due care, confidentiality and professional behaviour. It provides guidance to company secretaries in the events of an ethical dilemma/moral call, personal interest and professional choice and encourages ethical behaviour as a priority of the profession. Under the provisions of the Code, Company Secretaries are obliged to always act in the public interest and debar from the activities which disrepute and defiles the brand image or reputation of the Institute.

The Institute has a dedicated disciplinary directorate, which is responsible for upholding the ethical, professional standards of the Company Secretaries profession. The Institute can take disciplinary action against members who contravene the Code of conduct or professional standards and act against the repute of the Institute. Institute’s members take a module on ethics and their application in business, as the part of their Company Secretaries qualification. This module is essential in helping candidates develop their ability to deliver sound professional judgment in business.

**Conclusion**

Accountability denotes professionalism. it is a higher standard than responsibility and encompasses being able to accept accountability for one’s actions and being able to justify one’s actions – knowing when to and when not to do something. Liability takes this one step further because it acknowledges that, where the professional has not met a required standard, they may be sanctioned by a regulatory body or court of law on the basis of the account they provide. The new and emerging opportunities are opening up for Company Secretaries in practice as well as in service and now it becomes necessary for company secretaries to acquaint themselves with the challenges that these opportunities are going to pose before the profession.

A Company Secretary is not only responsible for ensuring that the records, or minutes of the Board’s actions during a Board meeting, reflect the proper exercise of those fiduciary duties; now he plays a leading role in the company’s corporate governance.

The time has come for the professional’s self regulation. The self regulation can be availed only when the work of professional is based upon ethics. The ethical behavior among professionals can only form such professional’s Ram Rajya.
NON GOVERNMENT ORGANIZATION — ROLE OF PRACTICING COMPANY SECRETARIES IN GOOD GOVERNANCE

Mahesh Airan*

INTRODUCTION

Non Governmental Organizations (NGOs) include organizations engaged in public service, based on ethical, cultural, social, economic, political, religious, spiritual, philanthropic or scientific & technological considerations. NGOs popularly known as Voluntary organization (VOs) and non-profit organization include formal as well as informal groups, such as: community-based organizations (CBOs); non-governmental development organizations (NGDOs); charitable organizations; support organizations; networks or federations of such organizations; as well as professional membership associations. An organization that is independent of government, not constituted as a political party, non-profit and non-criminal.

NGOs (Non-governmental organizations) are increasingly becoming an important force, in part because of claims that they are efficient and effective and are innovative, flexible, independent, and responsive to the problems of poor people at the grass-roots level. The growth of such NGOs over the past two decades has given them an increasingly important role and has led them forming a distinctive sector within civil society. They have been engaged in all sectors of social life, such as relief, rehabilitation, health, education, development programs, peace, human rights, and environmental issues, using finance raised from voluntary agencies, private sources, and donor agencies, and managing themselves autonomously at local, national and international levels.

In non-profit organizations, good governance works in much the same way as another. An organization exercises good governance when it has an internal system of checks and balances that ensures the public interest is served. Good NGO governance is based on the distinction between organizational entities (management and the governing body) and the distribution of decision-making power between them. This arrangement helps restrain and moderate the control of any one person or group, ensure the organization’s resources are well managed, and safeguard the NGO’s public-service orientation.

Governance of NGOs is a key, overlooked issue in reform in transition and developing countries. Voluntary Organisations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. They have been contributing immensely for quite sometime towards various development programmes. They work at grassroots level even in remote areas and, therefore,

* Assistant Education Officer, The ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
their reach is much wider. They are closer to ground realities and know the needs of the communities. Their approach with target group is direct, emphatic and therefore they are able to draw more contextualized plans of action. They also manage to develop intimate contacts with the people and develop confidence amongst them.

**Evolution**

The term, “non-governmental organization” or NGO, came into use in 1945 because of the need for the UN to differentiate in its Charter between participation rights for intergovernmental specialized agencies and those for international private organizations.

In India, beginning of NGOs started pre-independence which include the Social welfare, Constructive work (inspired by Gandhian philosophy) and very much in line with independence movement. The non-government sector came into prominence in the late 1960s when a new generation was maturing in post-independence India. This was a generation that measured legitimacy of a political party according to its skills in meeting popular aspirations. In late 1960s-1970s entire growth of NGOs had started. Social welfare, Govt. funded and managed NGO like Khadi Industries. India’s five year’s development plans came into existence, Most of the development works were rested with NGO’s. NGO’s started highlighting that why govt. programme not yielding positive results for poor and marginalized & presented new model for development with people’s participation. With this new model, NGO’s covered vast program areas like education, primary health care, drinking water, sanitation, small irrigation, forest regeneration, tribal development, women’s development, child labour, pollution safety etc. later on many of these models were included in government programme and policies. The main reason of developing NGOs is economic recession, end of cold war, privatization, growing demands etc. In the late 90’s GO-NGO partnership got a boost; NGO focus is more on Self Help Groups, Micro Credit, Livelihood. NGO participation is ensured in policy formation and programme implementation

As per Central Statistical Organization, 70% of current NGOs emerged post liberalization.

**Non-Governmental Organizations-third sector in India**

Non-governmental organizations (NGOs) are now recognized as key third sector actors on the landscapes of development, human rights, humanitarian action, environment, and many other areas of public action. India has around 3.2 million registered non-government organisations (NGOs). The Central Statistical Organisation of India states there are around four NGOs for every 1,000 people in urban areas and 2.3 NGOs for every 1,000 rural population. Their work spans a wide spectrum, from judiciary to legislatures to media. There is hardly any ministry that does not support or engage an NGO. Due to its wider reach it is often called the third sector.

“Final Report on Non-Profit Institutions in India - A Profile and Satellite Accounts in the Framework of System of National Accounts”, prepared by the National Accounts Division of the Central Statistics Office, Ministry of Statistics and Programme Implementation, Government of India released in March 2012 states that the contribution of NGOs, of voluntary organizations or Non-Profit Institution (NPI) sector, in monetary terms, is Rs 41,292 crore a year.
Study also states that more than 31.7 lakh non-profit institutions are engaged in social work of which 58.7% are located in rural areas. The activities of Non-Profit Institutions are funded by various sources such as grants, donations and offerings, income/receipts from operations (such as sale of products or services) other incomes/receipts such as interest, dividend, rent etc. as well as membership subscription. More than half, 53.5% of the funding for the societies comes from grants while 16.4% is from donations and offerings and 16.2% from income/receipts from operations. The remaining 13.8% comes from other sources viz. other incomes/receipts, membership subscription and interest, dividend, rent etc.

The survey indicates that of the 31,74,420 NGOs identified 18,63,381 societies, comprising of 58.7% of total registered, are located in rural areas. This percentage share is highest in Himachal Pradesh (93%) and lowest in the urban territories of Chandigarh (5%) and Delhi (0%).

Of the total registered societies, 13,10,911 (41%) are working in the area of Social Services, 6,15,954 (19%) in Education & Research, 3,69,912 (12%) in Culture & Recreation, 2,30,017 (7%) organizing (trade) unions, 1,58,666 (5%) engaged in Development & Housing, 1,52,288 (5%) into religious activities, 59,507 (2%) working on Health. As many as 27,632 (1%) work on Environment, 18,395 (1%) on Philanthropic intermediaries and voluntarism promotion, 3,072 (0.10%) on Law, Advocacy & Politics, International activities, and others. The survey could not elicit the nature of work of 60,874 (2%) societies. The top three activities account for 72% of the registered societies.

The concept of capacity building in NGOs is similar to the concept of organizational development, organizational effectiveness and/or organizational performance management in other organisations. Capacity building efforts can include a broad range of approaches, i.e., granting operating funds, granting management development funds, providing training and development sessions, providing coaching, supporting collaboration with other NGOs, etc. Prominent methods of organizational performance management in NGOs are beginning to be mentioned in discussions about capacity building, as well, for example, the Balanced Scorecard, principles of organizational change, cultural change, organizational learning, etc.

Structure of NGOs in India

In India, societies, associations, organizations, trusts or companies registered under the Societies Registration Act, 1860; the Indian Trusts Act, 1882; the Charitable & Religious Trusts Act, 1920 or as a charitable company under Section 25 of the Companies Act, 1956 are considered as VOs / NGOs. In addition, there are informal groups working at grassroots level without being registered under any legislation but may also be considered as part of voluntary sector. VOs may be working in the field of welfare of disabled; development of other disadvantaged sections like SCs/STs, children & women in education; environment; human rights; and on issues like resettlement & rehabilitation of oustees by big projects, right to information and so on. VOs may take up issues concerning a particular village or a community to the global issues like impact of WTO or global warming. The range of associations or societies may vary from a resident welfare association to an advocacy organisation. The substantive areas of work of VOs have changed considerably over time.
Present Scenario

The basis for NGO governance is usually a country’s legal code, which assigns an internal governance structure depending on the type of organization. More specifically, an organization’s governing body (or bodies) should be identified as required by law in its “basic documents”—that is, the act of incorporation, statute, charter, and other government documents. Explicit designation of the governing body by name is important, for it clarifies where fundamental decision-making and oversight responsibilities reside in the organization. An explicit governance structure is the first step toward establishing a stable and predictable framework for accountability in the NGO. NGOs are best-known for two different, but often interrelated, types of activity – the delivery of services to people in need, and the organization of policy advocacy, and public campaigns in pursuit of social transformation.

NGOs are also active in a wide range of other specialized roles such as democracy building, conflict resolution, human rights work, cultural preservation, environmental activism, policy analysis, research, and information provision.

In today’s era, the work undertaken by NGOs is wide-ranging but NGO roles can be usefully analyzed as having three main components: implementer, catalyst, and partner. The implementer role is concerned with the mobilization of resources to provide goods and services to people who need them. Service delivery is carried out by NGOs across a wide range of fields such as healthcare, microfinance, agricultural extension, emergency relief, and human rights.

This role has increased as NGOs have been increasingly “contracted” by governments and donors with governance reform and privatization policies to carry out specific tasks in return for payment; it has also become more prominent as NGOs are increasingly responding to man-made emergencies or natural disasters with humanitarian assistance.

The catalyst role can be defined as an NGO’s ability to inspire, facilitate or contribute to improved thinking and action to promote social transformation. This effort may be directed towards individuals or groups in local communities, or among other actors in development such as government, business or donors. It may include grassroots organizing and group formation, gender and empowerment work, lobbying and advocacy work, and attempts to influence wider policy processes through innovation, and policy entrepreneurship.

The role of partner reflects the growing trend for NGOs to work with government, donors and the private sector on joint activities, such as providing specific inputs within a broader multiagency program or project, or undertaking socially responsible business initiatives. It also includes activities that take place among NGOs and with communities such as “capacity building” work which seeks to develop and strengthen capabilities. The current policy rhetoric of “partnership” seeks to bring NGOs into mutually beneficial relationships with these other sectors.

Registration of NGOs

An NGO can be a registered NGO or an unregistered NGO. However it is wise for an NGO
to get registered under any of the following applicable laws in order to facilitate easy inflow of funds and grants and to receive governmental support.

(i) As a charitable trust, by formulating a trust deed.

(ii) As a society under the Societies Registration Act, 1860

(iii) As a company under section 25 of the Companies Act, 1956

In case of unregistered NGO, prior permission of central government is required while accepting the foreign contribution and also will give intimation to the central government about the amount of foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilized by it.

Financial Management

All organizations need money. Alongside staff, money is the one thing that takes up most management time. Good financial management involves the following four building blocks:

1. Keeping Records

   The foundations of all accounting are basic records that describe your earnings and spending. These basic records prove that each and every transaction has taken place. They are the cornerstones of being accountable. You must make sure that all these records are carefully filed and kept safe.

2. Internal Control

   Make sure that organization has proper controls in place so that money cannot be misused. Controls always have to be adapted to different organizations. However, some controls that are often used include:

   — Keeping cash in a safe place (ideally in a bank account).

   — Making sure that all expenditure is properly authorized.

   — Following the budget.

   — Monitoring how much money has been spent on what every month.

   — Employing qualified finance staff.

   — Having an audit every year.

   — Carrying out a ‘bank reconciliation’ every month - which means checking that the amount of cash you have in the bank is the same as the amount that your cashbook tells you that you ought to have.
LIVE A MEGA LIFE - HEALTHY, YOUTHFUL & PEACEFUL

Vishal Avtaar*

We all want to live a life with great physical health, fulfilling relationships, promising career and wealth. We are all born divine. We came in this world radiating joy & peace through our innocence & divinity. Yet we forgot this connection and got into the rat race of proving our existence.

We can all live a Mega life, a dream life. Just give yourself sometime everyday and you will live a long, healthy, peaceful & joyful life.

I am living such a mega life and here I share how.

Do not carry your stress long, PUT IT DOWN…

A psychologist walked around a room while teaching stress management to an audience. As she raised a glass of water, everyone expected they’d be asked the “half empty or half full” question. Instead, with a smile on her face, she inquired: “How heavy is this glass of water?”

Answers called out ranged from 80 gms to 200 gms.

She replied, “The absolute weight doesn’t matter. It depends on how long I hold it. If I hold it for a minute, it’s not a problem. If I hold it for an hour, I’ll have an ache in my arm. If I hold it for a day, my arm will feel numb and paralyzed. In each case, the weight of the glass doesn’t change, but the longer I hold it, the heavier it becomes.” She continued, “The stresses and worries in life are like that glass of water. Think about them for a while and nothing happens. Think about them a bit longer and they begin to hurt. And if you think about them all day long, you will feel paralyzed – incapable of doing anything.”

It’s important to remember to let go of your stresses. As early in the evening as you can, put all your burdens down. Don’t carry them through the evening and into the night. Remember to put the glass down!

Empty your cup, FREE YOU MIND…

Once a philosopher went to meet a very well known saint high up into the mountains. As he climbed up to the cottage of the saint and finally met him, he started telling about his degrees, his specialized fields of knowledge etc. The saint offered tea and started pouring tea from kettle into the cup. The cup was filled up and he kept pouring the tea and tea spilled over in the plate. The philosopher was wondering and finally he said “Sir, the cup is full… Sir, the cup is full…” At this point the saint replied “… and so is your mind dear”. The philosopher understood and he thanked the saint for his practical wisdom.

Our minds are also full of all the things that were put into it since our birth. Our minds are full of beliefs, presumptions, doubts, inhibitions, fears etc. We all must free our minds once everyday at least to realize and use it to its highest potential.

* Founder, World Peace Foundation, Kolkata.
Feeling SOUL POWER…

Once we consciously rest our body and empty our minds of thoughts, we can transcend our consciousness to a level - SOUL…

The greatest, safest and best way to put down our stress, free our mind and transcend to the stage where we can feel SOUL POWER is Meditation…

MEDITATION – The essence of our being…

What is meditation?

Meditation is a peaceful & silent state of mind, our natural state of BEING. In fact, meditation is a state of thoughtlessness. All the chit-chat of mind simply vanishes when we are in meditation.

How to do? (process)

Meditation is doing nothing but BEING, so, we do not do meditation. We simply BE in Meditation.

Meditation means closing the eyes and being with your breath. Patience is required. Whatever may be the turbulence in the mind, eyes shall always be closed. Attention of the mind should be constantly brought back on to the breath. The mind wanders... but it should be collected and brought back... to... the... breath.

The important steps are as follows:
1. Take ANY COMFORTABLE POSTURE.
2. Clasp your hands.
3. Close the eyes.
4. Observe the breath

We have to be aware of our natural & normal breath only and nothing else, i.e., our total attention should be on breathing alone. When one is actively doing conscious breathing, one’s normal mind’s broadcasting and receptor functions totally ceases and one is in a ‘thoughtless’ state.

Benefits of Meditation
1. Mind Always Stays in a Peaceful and Joyful State
2. Healing of All Diseases
3. Thought Power is Tremendously Increased
4. Sleep-time Requirements get Reduced
5. Memory Power Increases
6. Wasteful Habits Die a Natural Death
7. Relationships become More Qualitative and Fulfilling

What meditation is “not”

Meditation is primarily NOT an intellectual or mental exertion.

Meditation is NOT ‘Contemplation’ in English language, the phrase “meditate upon” is often used, which means “contemplate deeply” or “reflect upon the pros and cons”, or “ponder on” etc. However, in spiritual parlance, the term ‘Meditation’ does not refer to ‘contemplation’ or ‘pondering’.
**Meditation is NOT 'Chanting'**

In Hindu tradition, Meditation or Dhyana is usually misunderstood as ‘chanting’ or repeating a divine name’. In fact, that is only “japa”. Japa is constant repetition of a name or Mantra. Japa is very commonly resorted to still the mind. However, stilling the mind through Japa is a very, very long drawn-out process.

**Meditation is NOT 'Prayer'**

‘Prayer’ is nothing but a ‘petition’ to some unknown power, with a request to take care of one’s difficulties. Supposedly, the ‘Gods’ are to be carried away by the eulogizing and Petitioning and will readily resort to granting all the requested boons!

**Meditation is ‘Seeing’:**

Meditation is, primarily stilling all the waves of the Mind, and secondarily, it is ‘seeing’, or ‘witnessing’ the activity of the ‘Self’ or ‘Consciousness’. Meditation is a non-intellectual, non-mental and non-verbal phenomenon.

**When and where should we meditate?**

Any time is right time for Meditation! Any place is the right place for Meditation! Just find a calm place where you can sit comfortably.

**How long should we meditate?**

If your age is 20 years then meditate for at least 20 minutes, if your age is 60 years then meditate for at least 60 minutes in one sitting every day. It means meditation 1 minute for 1 year of your age. Simple...

**Overcoming Difficulties**

Sufficient scientific research made in the past 4 decades shows that an average human mind goes through 60,000 thoughts everyday in waking state. It means more than one thought per second. Are you aware of your thoughts? No, not at all. Generally, we are not aware of our thoughts but of our emotions and we consider our emotions as thoughts.

When we sit in meditation with our body and mind get relaxed, for the first time we become aware of our thoughts that keep coming at a great speed, most of them negative or wasteful. This disturbs us a lot and that is why initially, most people complain that they cannot meditate.

This is just an initial phase. When you encounter such difficulty, do not get up; just bring your attention back to your breath; with practice the speed & number of your thoughts would reduce dramatically and you enter into a state of no thoughts...

**Spiritual Intelligence (SI / SQ)**

— All along it was IQ that was thought to be supreme- the cognitive and rational intelligence.

— Then came the concept of emotional intelligence (EI) and emotional quotient (EQ) sometime during mid 1990s. It was thought that our emotions & those of others and how to manage them were even more important. EQ was thought to be the basic requirement for better use of IQ. (Daniel Goleman in his book Emotional Intelligence)

— It is known that if the brain areas with which we feel get damaged, we would think less effectively.

— And lately, we have added a new dimension to human intelligence- the SQ. It is considered to be the ultimate intelligence.
It is believed that it is through SQ that we are in a position to solve the issues related with meaning and value.

Some examples of the issues related to meaning and value are the constant search of human beings for answers to the fundamental and ultimate questions like: Why was I born? What is the meaning of my life? Does my work give me the satisfaction I need? Do I relate to myself and to the other people well? What way am I contributing to my and others’ happiness? Should I go on even when I am tired or depressed? What makes it all worthwhile?

Answers to such questions lead us to happiness and SQ helps to answer these questions better than what IQ and EQ in their separate capacities are capable of.

**SQ Defined**

- IQ + EQ + LQ + awareness of all = SQ

- Human beings are different from animals and computers because of SQ. Animals can have EQ and computers can have IQ but they won’t have SQ.

- SQ is all about holistic approach to life: the wholesomeness, self-awareness, compassion, creativity, ability to think, ability to reason out etc; all of this together.

- SI equips us to look at and solve the problems of meaning and value and then we begin to direct our thoughts, actions and so, our lives towards wider and meaningful horizons.

- With SI or SQ, we can distinguish more clearly the right from the wrong. It empowers us to compare various life paths.

- SQ is the foundation on which should lie our IQ and EQ.

- SI is the ultimate intelligence.

To evolve as a great leader, we need to enhance our SQ by practicing the following:

1. *Meditate everyday*
2. *Read inspirational books regularly*
3. *Share your experiences and learning*
This last control is particularly important. It proves that the amounts recorded in the cashbook and the reports based on it are accurate.

3. Budgeting

For good financial management, you need to prepare accurate budgets, in order to know how much money you will need to carry out your work.

A budget is only useful if it is worked out by carefully forecasting how much you expect to spend on your activities.

The first step in preparing a good budget is to identify exactly what you hope to do and how you will do it. List your activities, then plan how much they will cost and how much income they will generate.

4. Financial Reporting

The fourth building block is writing and reviewing financial reports. A financial report summarizes your income and expenditure over a certain period of time. Financial reports are created by adding together similar transactions. Financial reports summarize the information held in the cashbook. This is normally done using a system of codes, to allocate transactions to different categories.

Accountability of NGOs and Maintenance of Accounts

Every NGO shall give the timely information as prescribed to the Central Government the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received and the purposes for which and the manner in which such foreign contribution was utilised by it, if any NGO violates this accountability or provides false or untimely information, the Central Government may, by notification in the Official Gazette, direct that such association shall not, after the date of issue of such notification, accept any foreign contribution without the prior permission of the Central Government.

In order to the accountability of NGOs, the organization has to maintain the account of any foreign contribution received by it and a record as to the manner in which such contribution has been utilized. In case if, any organization/association fails to furnish any return as per the prescribed time, central government may, by general or special order authorize a gazetted officer to audit any books of account kept or maintained by such organization or association.

Principles for Good governance and Role of Practising Company Secretaries

Role of NGOs have been changing. It starts from the registration of NGO itself. Earlier it used to be family oriented NGOs but now lots of commitments and professional requirements are there. So designing the objectives, vision, and mission are very important from governance point of view and as far as governance policies are concerned, lots of experimentation has been happening to implement the best policies for NGOs. One can start with having a governance cell in the organization which looks at the various functioning patterns of the organization usually known as Governance officers or NGO officers. They can be one amongst
the staff or Company Secretary who knows all board policies and processes. Role of Practising Company Secretary in good governance of NGOs are as follows:

1. The governance framework shall promote transparent and efficient Non-government Organizations (NGOs) within the legal and regulatory framework of the country and also within the international regulatory norms: PCS being a governance professional may assist the NGO for its formation and registration either under Trust Act, Societies Act or Companies Act, 1956 and help to follow the international regulatory norms. In case of unregistered NGOs, assist the NGO in getting the permission from central government while accepting any foreign contribution.

2. The governance framework should facilitate participation of stakeholders in key decisions such as modification of the vision and mission, and nomination and election of trustees (or board members) and major shift in the mode of functioning: PCS may assist in the development of vision and mission statements and help in establishing bye laws and board policies.

3. The governance professionals should promote ethical practices in transacting with donors, volunteers and beneficiaries.

4. The governance professionals should ensure that timely and accurate disclosure is made on all material matters regarding the organization, including the financial position, performance, and governance of the organization.

5. The governance professionals should ensure that the rights and interests of beneficiaries are protected and the activity of the organization promoted their wellbeing.

6. PCS should assist NGOs in financial management and Risk Management

7. For effective and efficient working of NGOs, a good internal control system is required for which consultation from PCS may be taken.

8. Representation may be made with the government and other authorities regarding the various sanctions and permissions required in conducting various value based programs.

9. Preparation of Financial Statements and verification of transactions to track the sources and application of funds granted to NGO.

10. Assisting in legal compliance under legal and regulatory framework.

11. Audit of NGOs ensuring goal based activities and a check on integrity of officers of the administration running NGOs.


13. Act as an arbitrator


**End Note**

The Companies Bill is likely to see the light of the day in the near future. The New Bill mandatorily provides for CSR activities for some class of companies. It will definitely increase
the role of NGOs; as the companies have been mandated to spend some portion of profit on CSR activities. The companies may not be able to directly spend such amount or may not be able to make presence in those areas or work effectively. The activities which may be covered under the provisions are related with LAD Plan (Local Area Development Plan). The companies need to spend on the affected areas first. The priority areas spending may be done with the help of NGOs working in those areas or through some community development programmes, the most effective way to spend.

In such cases, the company may require the certification on spending of such amount by the NGO on such LAD plan. The certification may also be required at the moment the annual accounts which is going to be signed by the Practising Company Secretaries.

The role of Practising Company Secretaries is widening day by day. It started from a clerk reaching at the position of Governance Professional; the governance of Corporate, NGOs and Government. The Practising Company Secretaries are shining on the path towards a prosperous future.

As in the commercial sector, good governance has become an issue of increasing importance to NGOs. Many NGOs have learned that an effective, strong board can be critical to the successful pursuit of their mission. To their dismay, many have also learned that the opposite is true. Well-published failures in governance have not only threatened the trust people have in such organizations but, in some cases, even their very existence. Furthermore, the size and importance of NGOs in the Indian economy is leading Central and State agencies to impose, or think about imposing, governance related legislation and regulations on the NGOs. Foundations and other funders of NGOs also are considering governance practices in their grant-making processes.

Being aware of legal requirements and governance best practices not only helps to reduce the risk of personal liability as a Committee member, but can make the difference between an organization that is effective in accomplishing its mission and one that is not.

References


— www.caaa.in, Adukia and Associates, Chartered Accountants.


— NGO non-governance, The Indian Express, July 08, 2010 Issue.

GUIDELINES FOR PROFESSIONAL DRESS
OF COMPANY SECRETARIES

With a view to enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India at its 148th Meeting held on 27th & 28th March, 2004 at New Delhi, has prescribed the following guidelines for professional dress for members while appearing before judicial / quasi-judicial bodies and tribunals:

(a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.

(b) The professional dress for female members will be saree or any other dress of a sober colour with a Navy Blue jacket.

(c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.

(d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.
GUIDELINES FOR REQUIREMENT OF MAINTENANCE OF A
REGISTER OF ATTESTATION [/CERTIFICATION]¹ SERVICES
RENDERED BY PRACTISING COMPANY SECRETARY/FIRM
OF PRACTISING COMPANY SECRETARIES

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. For the purpose of maintaining quality of attestation [/certification]¹ services provided by Company Secretaries in Practice, every Practicing Company Secretary /Firm of Practicing Company Secretary shall maintain a register regarding attestation [/certification]¹ services provided by him/her/it, which shall be open for inspection by such person as may be authorised.

2. The Format of the register to be maintained by a Practising Company Secretary/Firm of Practising Company Secretaries regarding attestation [/certification]¹ services is as under:

<table>
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<tr>
<th>Sl. No.</th>
<th>Name and Registration No. of the company to which attestation [/certification]¹ services* provided</th>
<th>Services rendered</th>
<th>Date of signing of Certificate Return/Audit Report</th>
<th>Signature of the PCS</th>
<th>Signature of the person authorised for verification</th>
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</tbody>
</table>

* The various attestation [/certification]¹ services mean :

(i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.


1. Inserted by the Council in its 178th Meeting held on 29th December, 2007.
(ii) Issue of Compliance Certificate pursuant to proviso to sub-section (1) of section 383A of the Companies Act, 1956.

(iii) Issue of certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.

(iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India’s Circular DGCC/FITTC/Cir-16/2002 dated December 31, 2002.

(v) Conduct of Internal Audit of Operations of the Depository Participants.

(vi) [Certification under Clause 49 of the Listing Agreement]1.

3. These Guidelines are effective from 1st January, 2008.

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1. Inserted by the Council in its 178th Meeting held on 29th December, 2007.
GUIDELINES FOR ISSUING COMPLIANCE CERTIFICATE AND SIGNING OF ANNUAL RETURN*

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. A member of the Institute in practice who is entitled –
   (i) to issue compliance certificate pursuant to the proviso to sub-section (1) of Section 383A of the Companies Act, 1956 (1 of 1956); and/or
   (ii) to sign an Annual Return pursuant to the proviso to sub-section (1) of Section 161 of the Companies Act, 1956 (1 of 1956),
   shall be deemed to be guilty of professional misconduct if he –
   — issues compliance certificates; and/or
   — signs Annual Return

   for more than eighty companies in aggregate, in a calendar year.

   Provided, however, that in the case of a firm of Company Secretaries, the ceiling of eighty companies aforesaid would apply to each partner therein who is entitled to (i) sign the compliance certificate in terms of the proviso to Sub-section (1) of Section 383A of the Companies Act, 1956; (ii) sign Annual Return in terms of the proviso to sub-section (1) of Section 161 of the Companies Act, 1956.

2. These Guidelines are effective from 1st January, 2008.

GUIDELINES FRAMED BY THE COUNCIL RELATING TO APPROVAL OF PROPRIETORSHIP CONCERN/FIRM’S NAME UNDER REGULATION 169 OF THE COMPANY SECRETARIES REGULATIONS, 1982

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

2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manners:
   (i) For Sole proprietorship concern
      (a) Name comprising surname, first name and/or middle name of the member
      (b) Full first name or its initial and surname of the member
      (c) Initials of the first name and/or middle name with full surname
      (d) Initials of full name
      (e) Any combination as permissible above.
   (ii) For Partnership
      (a) Full surname of two or more partners
      (b) Full first name of two or more partners
      (c) Combination of first names and/or surnames of two or more partners
      (d) Combination of initials of first names and/or middle names or surnames of the two or more partners
      (e) Combination of first names, middle names, surnames or initials of two or more partners
      (f) Initials of names of two or more partners.

3. General
   (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of offices of firms.
   (ii) The trade or firm name shall be suffixed by the suffixes “& Co.”, “& Company” or “& Associates” or their equivalents. Suffixes like “& Partners”, “& Fellows” and other words as may be considered undesirable shall not be allowed by the Council.
(iii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.

(iv) Descriptive trade/firm names shall not be allowed.

(v) Trade/firm names, which denote publicity, shall not be allowed.

(vi) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.

(vii) In case any change in the status of the firm i.e. from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.

(viii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members upto a period of three years of the closer of the firm. In event or removal of name of a practicing member, the firm name shall be reserved for a period of three years from the date of approval. After expiry of period of three years, the said trade/firm name may be allowed to any member or members who are eligible for allotment of such name under the guidelines.

(ix) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of Firm/trade name in accordance with the same, he may be permitted to adopted or coin a Firm/ trade name out of the names of his/her family members provided that such name was not already registered by some other members. The term “family” for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.

(x) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.”
GUIDELINES FOR ADVERTISEMENT BY
COMPANY SECRETARY IN PRACTICE

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
(Constituted under the Company Secretaries Act, 1980)

ICSI Guideline No. 4 of December, 2007

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

1. Introduction

1.1 The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.

1.2 The areas in which the Company Secretaries in Practice can and do render their services and the names, addresses and other particulars of Company Secretaries in Practice are displayed on the website of the Institute.

1.3 Members of the Institute are required under the Act to maintain high standards of professional conduct.

1.4 Part I of the First schedule of the Company Secretaries Act, 1980, enumerates professional misconduct in relation to a member in practice and inter-alia includes if such a member:

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:
Provided that nothing herein contained shall be construed as preventing or prohibiting–

(i) any company secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in Practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or
expressions other than Company Secretary on professional documents, visiting
cards, letterheads or sign boards, unless it be a degree of a University established
by law in India or recognized by the Central Government or a title indicating
membership of the Institute of Company Secretaries of India or of any other
institution that has been recognized by the Central Government or may be
recognized by the Council:

Provided that a member in practice may advertise through a write up setting out
— the services provided by him or his firm and
— particulars of his firm subject to such guidelines as may be issued by the Council;

1.5 The Council of the Institute of Company Secretaries of India at its 178th meeting
held on 29th December, 2007 approved the following Guidelines for
Advertisement by Company Secretary in Practice.

1.6 The Guidelines herein, as issued by the Central Council of the Institute on 29th
December, 2007 deal with the manner in which a Company Secretary in Practice
can advertise the services provided by him or his firm and the particulars of his
firm through a write-up.

1.7 Any non compliance or violation of these Guidelines as may be in force from time
to time in any manner whatsoever shall be deemed to be an act of professional
misconduct and the concerned member shall be liable to disciplinary proceedings
under the Act.

2. Key Definitions

For the purposes of these Guidelines,

2.1 The “Act” means the Company Secretaries Act, 1980.

2.2 “Institute” means the Institute of Company Secretaries of India.

2.3 “Advertisement or advertising” means advertisement or advertising in any mode
including written, recorded, displayed communication through print or electronic
mode or otherwise including in newspapers, journals, internet, online, websites,
banners, letters, circulars issued, circulated or published in accordance with these
guidelines.

2.4 “Company Secretary in Practice” means a member of the Institute who holds a
Certificate of Practice issued to him by the Institute.

2.5 “Firm of Company Secretaries” means sole proprietorship concern, the sole
proprietor of which is a Company Secretary in Practice or a firm, wherein all
partners are Company Secretaries and such firm is approved by the Council.

2.6 “write up” includes any writing or display setting out services rendered by a
Company Secretary in Practice or firm of company secretaries and any writing or
display of the particulars of the Company Secretary in Practice or of firm of company
secretaries issued, circulated or published in accordance with these guidelines.
The terms not defined herein have the same meaning as assigned to them in the Company Secretaries Act, 1980 and the rules and regulations made thereunder.

3. **Prohibition to Advertise**

3.1 No Company Secretary or a firm of Company Secretaries is permitted to advertise the services as specified in the Act, rules, regulations framed thereunder except through a write-up as defined in Clause 2.6.

4. **The Write-up shall be made in compliance with the following:**

4.1 **Applicability**

These guidelines shall apply to advertisements issued by a Company Secretary in Practice not only in India but would also apply to those circulated, communicated, published, issued or allowed to be issued abroad.

4.2 **Permitted list of information**

4.2.1 Name of Company Secretary, Membership number, Certificate of Practice Number and date of issue (for each partner in case of firm)

4.2.2 Address and website (if any), telephone, mobile, e-mail, fax number of the member

4.2.3 Name of the firm in which the member is a partner

4.2.4 Year of Establishment

4.2.5 Date and place of Issue of Advertisement

4.2.6 Age

4.2.7 Gender

4.2.8 Additional recognized qualifications

4.2.9 Languages spoken by the partner(s)

4.2.10 Honours or awards in the field of teaching, research, authorship etc. conferred by nationally accredited institutions

4.2.11 Current teaching or research appointments at a university or college of advanced education or professional Institute

4.2.12 Name of firm in case of partnership

4.2.13 Details of networking through own office or through formal association in other places within & outside India

4.2.14 Number, name of employees of the firm and their qualifications and other particulars

4.2.15 Business address, telephone numbers (including email, fax and other details) of the firm

4.2.16 Office hours and after office hours availability
4.2.17 Advertisement about setting up of certified filing centers

4.2.18 Frequently Asked Questions (FAQs) in conformity to these guidelines

4.2.19 Declaration indicating

(a) willingness to accept work, either generally or in particular areas of practice;

(b) unwillingness to accept work in particular areas;

(c) willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.

4.2.20 The write-up may display the passport size photograph of the member or partners of the firm of Company Secretaries

4.2.21 Fees:

(a) Willingness to give written estimates of fees;

(b) Methods for determining fees;

(c) Mode of Acceptance of Fees.

4.2.22 Speed of Service

(a) willingness to give written estimates concerning completion of particular work;

(b) maximum time within which specific services will be completed.

4.2.23 Write-up may include the names of clients and services rendered

4.2.24 Particulars of Services

(i) The write-up to be circulated, distributed, published, issued by or on behalf of Company Secretary in Practice shall set out the professional services rendered or to be rendered by the advertiser.

(ii) The write-up may explain the nature and usefulness of the professional services rendered by the Company Secretary in Practice.

(iii) The write-up may include the names of clients and services rendered provided that the Company Secretary in Practice shall maintain record of his having provided such professional services.

4.2.25 In case of advertisement through website:

(a) A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice.

(b) While designing and/or hosting the particulars on the website, certain keywords should be provided so as to enable the search engine/s to locate the website and these keywords will not be visible or displayed on the website. Any one of the following key words may be used for this purpose. Company Secretary/Company Secretary in Whole-time Practice/Company Secretary in Practice/Practising Company Secretary/
Indian Chartered Secretary/Indian Certified Corporate Secretary/Indian CS/Indian Company Secretary/Corporate Advisor/Company Law Consultant/Secretarial Auditor/Secretarial Consultant/Indian Certified Public Secretary/CS/ACS/FCS/PCS/CSP.

However, the keywords shall not be materially different from the designations used for a Company Secretary.

(c) The website may provide a hyperlink to the website of ICSI, its Regional Councils and Chapters and other regulatory bodies of the Government, after obtaining necessary permission from the concerned body.

(d) A Company Secretary in Practice may provide online advice to their clients or other members/firms of Company Secretaries who specifically request for the same.

(e) A Company Secretary or a firm of Company Secretaries may disclose the fact that he/she or their firm has been Peer Reviewed. Any such disclosure shall clearly state the period for which the Peer Review has been conducted and in case the member has more than one office or place of practice, then it shall be mentioned that the Peer Review has been done for which branch office.*

4.2.26 Changes in any of the above particulars.

4.3 Restrictions

The write-up shall:

(i) not be false or misleading;
(ii) not claim superiority over any or all other Company Secretaries in Practice;
(iii) not be indecent, sensational or otherwise of such nature as to be likely to bring the profession into disrepute;
(iv) not contain testimonials or endorsements concerning the Company Secretary in Practice.
(v) not refer the Company Secretaries in practice in terms such as “specialists” or “experts”.

(vi) In case of advertisement through website:

(a) A Company Secretary in Practice or a firm of Company Secretaries shall ensure that no information contained in the website is circulated to other websites/e-mail accounts etc. through e-mail or otherwise without the same having been specifically requested for.

(b) A Company Secretary in Practice or a firm of Company Secretaries shall not use logo(s) unless otherwise permitted by the Institute.

* Inserted by the Council at its 216th Meeting held at New Delhi on June 21-22, 2013.
4.4 **Declaration**

The Advertiser shall declare that the contents of the advertisement are true to the best of his knowledge and belief and are in conformity with these Guidelines.

4.5 **Disclaimer**

The Advertiser shall also include the following Statement of Responsibility and Disclaimer in the Advertisement:

**Disclaimer:** The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

5. **Responsibility for the observance of these Guidelines**

5.1 The responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

6. **EFFECTIVE DATE**

6.1 These guidelines become effective from 1st January, 2008 and consequently the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.
MODEL ADVERTISEMENT

(i) Name of Company Secretary
(ii) Membership number
(iii) Certificate of Practice number and date of issue
(iv) Website (if any)
(v) Name of the sole proprietary concern under which the member is practicing/Name of the partnership in which the member is a partner
(vi) Age
(vii) Gender
(viii) Languages spoken
(ix) Number, name of employees and their qualifications and other particulars
(x) Business address telephone numbers (including email, fax and other details)
(xi) Office hours and after office hours availability
(xii) Additional recognized qualifications
(xiii) Current teaching or research appointments at a university or college of advanced education or professional Institute
(xiv) Honours or awards conferred
(xv) Frequently Asked Questions (FAQs)
(xvi) Declaration indicating:
  • willingness to accept work, either generally or in particular areas of practice;
  • unwillingness to accept work in particular areas;
  • willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
(xvii) Fees :
  • Mode of Acceptance of Fees
  • Methods for determining fees
  • Willingness to give written estimates of fees
(xviii) Speed of Service :
  • willingness to give written estimates concerning completion of particular work;
  • maximum time within which specific services will be completed.
(xix) Particulars of Services:
(xx) Declaration : I …………………. declare that the contents of the advertisement are true to the best of my knowledge and belief and are in conformity with these Guidelines.
(xxi) Disclaimer : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.
(xxii) Date and Place of Issue of Advertisement : ………………….
GUIDELINES FOR COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES BY THE MEMBERS¹

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. INTRODUCTION

The Company Secretaries Act, 1980 was enacted to make provisions for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

Members of the Institute in employment occupy important positions in industry. The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain category of companies. Our members in practice are also being recognized for issuing various certificates by various regulatory authorities.

In the present day scenario, a profession cannot maintain its cutting edge competencies unless its members regularly update their knowledge. Attendance and participation in Professional Development Programs, Participative Certificate Programs organized by the Headquarters and Centre for Corporate Governance Research and Training (CCGRT), and Seminars, Conferences, Study Circle Meetings organised by the Council, Regional Councils, Chapters and other recognised bodies enable members to –

1. Constantly upgrade professional competence and skills.
2. Sensitize them to new and emerging opportunities for service.
3. Assure users of professional services that they possess adequate skills commensurate with their professional responsibilities.
4. Improve their level of confidence to meet ever-changing demands on the profession.

The Perspective Planning Group constituted by the Council had recommended compulsory attendance by members at Professional Development Programmes as a means of ensuring constant updation of knowledge and skills of members. The ICSI, drawing strength from these recommendations, has now decided that the following guidelines are required to be

¹ As amended by the Council in its 207th Meeting held at New Delhi on March 16-17, 2012.
followed for giving and recording credit as well as eligible programmes and the number of Program Credit Hours to be given for each program.

2. **KEY DEFINITIONS**

2.1 “Approved Learning Program” means any Professional Development Program, Continuing Education Program, Participative Certificate Program of the ICSI, *Programmes organised through electronic/distance mode* or any other program, Seminar or study circle meeting organised by the Council, Regional Council, Chapter or Satellite Chapter of the Institute, and programmes organised [jointly with professional bodies or Chambers of Commerce].

2.2 “Year” for the purposes of these guidelines shall mean the period commencing from 1st day of April and ending on 31st day of March following.

2.3 “Learning Program Centre” (LPC) means any wing of the ICSI which conducts programs and includes the Council, any Committee of the Council, Regional Councils, Chapters and shall include any other centre, wing or any other entity as may be recognized by the Council from time to time for this purpose.

3. **AUTHORISATION AND METHOD OF REGULATION**

3.1 Under Section 9 of the Company Secretaries Act, 1980, the responsibility for management of the affairs of the Institute and for discharging the functions assigned under the said Act vests with the Council.

3.2 The Council considers that in the context of the liberalised economy and the competitive environment, proper regulation and maintenance of the status and standards of the Members is necessary for ensuring competency of the members.

3.3 Pursuant to the above-mentioned authorizations, these guidelines are therefore being issued for implementation.

3.4 Compliance with these guidelines is mandatory for the members in practice and recommendatory for other members.

3.5 For the removal of doubts, it is clarified that all issues relating to the implementation and interpretation of terms used in these guidelines shall be the responsibility of the Professional Development Committee constituted by the Council. The Committee may discharge its duties in this regard (including issue of supplementary guidelines from time to time) for implementation within the limits of its authority as specified or prescribed by the Council.

4. **POWER TO MODIFY GUIDELINES**

To ensure that these guidelines are dynamic, the requirements, conditions or terms specified in these guidelines may be modified from time to time at the discretion of the Council on the recommendations of the Professional Development Committee of the Council.

* Amended by the Council in its 192nd meeting held on March 18-19, 2010 at New Delhi.
5. **APPLICABILITY OF THE GUIDELINES**

5.1 It is mandatory for all members in practice of the Institute, except those specified in para 6.2 to secure **15 Program Credit Hours (PCH) in a year or 50 Program Credit Hours in a block of 3 years by attendance of approved learning program**. However, no carry forward for excess Program Credit Hours from block of three years to another block of three years will be allowed.

5.1.1 It would be sufficient if a member obtains at least **fifteen credit hours in a year or 50 credit hours in a block of three years**. If a member takes a Certificate of Practice during the block, the requirement for obtaining Credit Hours shall be as under:

<table>
<thead>
<tr>
<th>Certificate of Practice taken during</th>
<th>The requirement of Credit Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st April to 30th September of the first year of the block</td>
<td><strong>Fifteen</strong> Credit Hours in a year or <strong>50</strong> Credit hours in the block of three years</td>
</tr>
<tr>
<td>1st October to 31st March of the first year of the block</td>
<td>No requirement of Credit Hours in the First Year of the block. <strong>Fifteen</strong> Credit Hours each in the second and third year of the block</td>
</tr>
<tr>
<td>1st April to 30th September of the second year of the block</td>
<td><strong>Fifteen</strong> Credit Hours each in the second and third year of the block</td>
</tr>
<tr>
<td>1st October to 31st March of the second year of the block</td>
<td>No requirement of Credit Hours in the second year of the block. <strong>Fifteen</strong> Credit Hours in the third Year of the block</td>
</tr>
<tr>
<td>1st April to 30th September of the third year of the block</td>
<td><strong>Fifteen</strong> credit Hours in that year</td>
</tr>
<tr>
<td>1st October to 31st March of the third year of the block</td>
<td>No requirement of Credit Hours in that block</td>
</tr>
</tbody>
</table>

No credit hours will be given to a participant who attends the programme partially.

Members whose reply to prize queries is published in the Chartered Secretary will be entitled to **four Programme Credit Hours**.

Members above the age of 60 years shall be required to obtain **50% of the PCH required to be obtained by the members below 60 years w.e.f. April 01, 2011**.

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2 Amended by the Council in its 200th meeting held on March 18, 2011.
5.1.2 Members in employment (i.e. members in whose name Form 32 has been filed to work as Company Secretary under the provisions of Section 383A of the Companies Act, 1956) shall be required to obtain 10 Programme Credit Hours in each year or 35 Programme Credit Hours in a block of three years.

5.2 The requirement specified above shall not apply to a member to whom the Professional Development Committee may in their absolute discretion grant partial/full exemption on account of facts and circumstances of the case which, in the opinion of the said Committee, prevents such member from compliance with these guidelines.

6. FUNCTIONS OF THE LEARNING PROGRAM CENTRES

6.1 To conduct programs on current topics for the benefit of the members.

6.2 To maintain attendance record of the member attending the program in a manner which will be prescribed.

6.3 To furnish periodic Activity and Attendance Report to the Headquarters of the ICSI for updation in the master database.

7. OBLIGATIONS OF THE MEMBER

7.1 A personal record of compliance with the requirements of Program Credit Hours is required to be maintained by each member on an annual basis. This record shall be open to verification by the Institute.

7.2 At the time of payment of annual membership fees, every member is required to confirm that they have secured the minimum annual Program Credit Hours (PCH) and that the record can be produced to the Institute for verification on request.

8. MANNER OF CALCULATION OF PROGRAM CREDIT HOURS (PCH)

8.1 No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.

8.2 The basis of calculation of Program Credit Hours will be as under:

<table>
<thead>
<tr>
<th>No. of hours of Learning Program attended by the member</th>
<th>Program Credit Hours (PCH)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beyond 1 hour and upto 2 hours</td>
<td>1</td>
</tr>
<tr>
<td>Beyond 2 hours and upto 4 hours in a single day</td>
<td>2</td>
</tr>
<tr>
<td>Beyond 4 hours in a single day</td>
<td>4</td>
</tr>
<tr>
<td>Program spanning 1 ½ days</td>
<td>6</td>
</tr>
<tr>
<td>Program spanning 2 days</td>
<td>8</td>
</tr>
<tr>
<td>Program spanning 2 ½ days and above/National Convention</td>
<td>10</td>
</tr>
</tbody>
</table>
8.3 A member whose article is published in the “Chartered Secretary” will be entitled to 4 Program Credit Hours.

In respect of joint authorship of the article, the two credit hours be awarded to each author. However, the joint authorship should be limited to two authors only.

The article published in the Souvenir of National Convention be treated at par with the article published in the Chartered Secretary for the purposes of grant of credit hours.

8.4 If the Course Coordinator attends the full program, full credit of the Program Credit Hours allotted for the program will be given.

8.5 No Program Credit Hours shall be given to a member for acting as a faculty in Oral Tuition Classes.

8.6 There may be cases of members contributing articles in newspapers, working on research projects, preparation of or vetting of background or technical material, participating in interactive media programs, etc. All such cases will be decided by the Committee on case to case basis until fresh guidelines covering such instances are drawn up.

8.7 A member who acts as a Chairman or Speaker in any technical session at a Workshop, Seminar or Conference organised by the Program Learning Centre will be entitled to equivalent number of Program Credit Hours as is available for the said technical session.

8.8 For Members who reside in places beyond 100 km from the nearest Regional Council/Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled. However this will not apply to attendance at the National Convention/ National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. *Such members have also the option to prepare a research paper on a topic recommended by the Secretariat.*

Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.

The Research paper includes:

(i) A concept paper on emerging areas of practice for Company Secretaries
(ii) A Referencer/backgrounder on contemporary topics relevant to Company Secretaries
(iii) A booklet on any topic relating to the areas of practice for Company Secretaries
(iv) A monograph on any contemporary topic relevant to the Practising Company Secretaries
(v) An empirical study of practical relevance to the Practising Company Secretaries Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter will be entitled for Eight Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

8A. Programme Credit Hours for Unstructured Learning Activities

The members shall be granted Programme Credit Hours (PCH) under these Guidelines for undertaking any of the following unstructured learning activities subject to a maximum of five PCH in each year of the block:

<table>
<thead>
<tr>
<th>Learning Activity</th>
<th>PCH</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Web based learning including elearning, subject to the production of Certificate, per year.</td>
<td>4</td>
</tr>
<tr>
<td>2. Publication of article in a journal of repute other than the Chartered Secretary Journal.</td>
<td>4</td>
</tr>
<tr>
<td>3. Publication of book(s).</td>
<td>8</td>
</tr>
<tr>
<td>4. Revision of Published Book</td>
<td>4</td>
</tr>
<tr>
<td>5. Acting as Guide / Supervisor for M.Phil. / LL.M. / Ph.D.</td>
<td>6</td>
</tr>
<tr>
<td>6. Suggestions on Questionnaires / Consultative Papers / Exposure Draft, etc. sought by the Institute.</td>
<td>2</td>
</tr>
<tr>
<td>7. Reviewing of Articles / Guideline Answers / Study Material and other publications of the Institute.</td>
<td>4</td>
</tr>
<tr>
<td>8. Publication of Research findings / Studies on the areas relevant to Corporate Sector, Capital Markets and Professional interest.</td>
<td>4</td>
</tr>
<tr>
<td>9. Publication of articles of professional interest in national dailies.</td>
<td>4</td>
</tr>
<tr>
<td>10. Visit to foreign countries as part of government delegation.</td>
<td>4</td>
</tr>
<tr>
<td>11. Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National importance.</td>
<td>4</td>
</tr>
</tbody>
</table>

9. MONITORING REQUIREMENTS

9.1 The Professional Development Committee will monitor and review the programs conducted by the various Program Learning Centres from time to time and appraise the Council of the progress.

9.2 The said Committee shall set up an appropriate monitoring mechanism and provide clarifications (as it considers necessary) to all concerned for effective implementation of these guidelines as per Annexure.
10. These Guidelines are effective from 1st January, 2008.

Annexure

MECHANISM FOR MAINTENANCE OF ATTENDANCE RECORDS OF MEMBERS AT PROFESSIONAL DEVELOPMENT PROGRAMMES AND ISSUANCE OF CERTIFICATES FOR PROGRAMME CREDIT HOURS (PCH)

The Council has considered and approved the following mechanism for maintenance of attendance records of members at professional development programmes and issuance of certificates for Program Credit Hours under the Guidelines for Compulsory Attendance of Professional Development Programmes by Members:

1. The Program Centre shall ensure the quality of the programmes organized by it by inviting faculty having adequate knowledge, expertise and experience in the given subject/topic for discussion.

   *The brochure for every professional development programme should indicate the programme Credit Hours to be awarded to the participants.*

2. The Program Centre will record the attendance of the participants and maintain the same for future reference and issue the certificates for Program Credit Hours in the prescribed format.

3. The Directorate of Information Technology in the Headquarters will develop software for recording and maintaining the attendance of members at the Professional Development Programmes and send to all Regional Councils/Chapters.

4. The headquarters will initially provide to Regional Councils printed blank formats of certificates, which will be serially numbered.

5. Regional Councils/Chapters will maintain the list of names and membership numbers of the participants as well as faculty/Chairman/Speaker and Program Credit Hours given to each of them together with their signatures duly authenticated by competent authority for this purpose.

   *Explanation*: Competent authority means (i) in the case of Regional Council Chairman or Secretary of the Regional Council or Executive Officer (ii) in the case of Chapter/Satellite Chapter, Chairman or Secretary or Executive Officer, if any, of the Chapter/Satellite Chapter.

   A Register be prepared for recording names of participants and obtaining their signatures both at the beginning as well as at the end of the programme.

6. At the time of renewal of membership every year, the members will send a declaration stating the name of the programmes attended, program learning centre, place, date, duration and number of Program Credit Hours secured during the calendar year to the Directorate of Training and Membership of the ICSI.
THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
Northern/Eastern/Western/Southern India Regional Council

CERTIFICATE FOR PROGRAM CREDIT HOURS

Name of the Program Learning Centre: ...........................................

This is to certify that Ms./Mr ..................................... attended .............................................
(Name of the Programme) held on ................................ at ........................................... for ................................
days/hours ........................................ as a participant/faculty/speaker/ course coordinator/chairman
in a technical session.

According to the Institute’s Guidelines for Compulsory Attendance of Professional
Development Programmes by Members, she/he is hereby awarded ................................
Program Credit Hours.

Competent Authority

Date
Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr ..................................... has contributed an article in Chartered
Secretary/Convention Souvenir, which was published in the Month of ..................................

According to the Institute’s Guidelines for Compulsory Attendance of Professional
Development Programmes by Members, she/he is hereby awarded ................................
Program Credit Hours.

Competent Authority

Date
Place

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

CERTIFICATE FOR PROGRAM CREDIT HOURS

This is to certify that Ms./Mr ..................................... has contributed an article in ......................... a
Newspaper/worked on research project/prepared or vetted backgrounder or technical material/
participated in interactive media programs ......................... .

According to the Institute’s Guidelines for Compulsory Attendance of Professional
Development Programmes by Members and as per the decision of the Professional
Development Committee at its meeting held on ......................... she/he is hereby awarded
......................... Program Credit Hours.

Competent Authority

Date
Place
GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTISING COMPANY SECRETARIES*

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain size of companies. Our members in practice are also being recognised for issuing certificates under various laws.

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

The Council of the Institute of Company Secretaries of India has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that “the duties of carrying out the provisions of this Act shall be vested in the Council” and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the

* ICSI Guideline No. 1 of 2011.

Approved by the Council in its 202nd Meeting held on 25-26 August, 2011.
Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.

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

2.3 These guidelines provide a framework of the peer review process and the requirements of what is expected of a member during the conduct of a peer review.

3. **Key Definitions** - For the purpose of these guidelines.

3.1 *Attestation Services* - Means services involving the secretarial audit issuing of various certificates, but does not include:

- Management consulting Engagement;
- Representing a client before the Authorities;
- Testifying as expert witness; and
- Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client;
- The phrase ‘Attestation Services’ is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.

3.2 *Member* - Means a member of the Institute of Company Secretaries of India.

3.3 *Practice Unit* - Means members in practice, whether practicing individually or a firm of Company Secretaries.

3.4 *Peer Review* - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/mandated by the Technical Standards and whether these were effective or not during the period under review.

3.5 *Peer Review Board* - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression "Peer Review Board" is hereinafter referred to as "Board".

3.6 *Regulator* - Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.
3.7 Reviewer - Means any member engaged to carry out peer review of practice unit from the panel of reviewers.

3.8 Technical Standards - Mean and include:
- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

3.9 Qualified Assistant - means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of Clause 15.1 of the Guidelines.

3.10 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations. 1982 framed thereunder.

4. Authority of the Guidelines on Peer Review

4.1 The guidelines on Peer Review shall apply to all or any of the following cases:
(a) Whenever a peer review is mandated
(b) Whenever a peer review is requested
(c) Whenever peer review is conducted.

4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:
- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

5. Powers of the Council
- To constitute the Board and to fill in the vacancies arising in the Board from time to time.
• To decide upon, from time to time, the Technical Standards the implementation of which fall within the purview of the peer review process.
• To refer such matters to the Board as the Council may deem fit.

6. Peer Review Board

6.1 Establishment and Appointment

(1) The Board shall be established by the Council.
(2) The Board shall consist of a maximum of seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
(3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to, former public officials, regulatory authorities etc.
(4) The Council shall appoint the Chairman and the Vice-Chairman from amongst the Members of the Council.
(5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
(6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
(7) Any vacancy(ies) on the Board shall be filled in by the Council.
(8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.

6.2 Meetings

(1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairman or, in his absence, the Vice-Chairman,
(2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairman or, in his absence, the Vice-Chairman.
(3) The Board shall meet not less than four times in a year.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of the meeting to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services of a practice unit.
(1) Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review. Provided that the records of attestation services relating to years prior to the financial year beginning 1.04.2004 shall not be subjected to review.
(2) The Review shall focus on:
   (i) Compliance with Technical Standards.
   (ii) Quality of Reporting.
   (iii) Office systems and procedures with regard to compliance of attestation services systems and procedures.
   (iv) Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

8. Powers of the Board

8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.

8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:

   (1) To call for information from practice units in such form as it deem fit.
   (2) To maintain a panel of Reviewers.
   (3) To define the terms of appointment of the reviewers.
   (4) To send a Panel of at least three reviewers (from the Board’s own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it;

       Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.

   (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
   (6) To arrange for such training programs for reviewers as may be deemed appropriate;
   (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
   (8) On considering the Report of a reviewer, to do any or all of the following:

       (a) To issue recommendations to the practice unit;
       (b) To order a further peer review to be carried out;

   (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.

   (10) To guide the members on best practices on peer review.
8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:

(i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.

(ii) Its own suggestions for further improvement in quality of attestation services.

8.4 The Board may perform any other thing or act as may be incidental to, or, which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of sub-committees and regional benches of the Board for specific tasks.

9. **Compliance with Peer Review Guidelines**

9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as notified to the members.

10. **Qualifications of the Reviewer**

10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:

(a) be a member;

(b) possess at least ten years experience; and

(c) be currently in the practice as Company Secretary in Practice.

10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

11. **Members/ Firms Subject to Review**

11.1 Peer review will be implemented on the basis of random selections from the practice units or at the request of practice unit.

11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.

11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.

11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.
12. **Obligations of the Practice Unit**

12.1 Provisions of access to any record or document to a reviewer:

(1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:

(i) Produce to the reviewer or afford him access to, any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require;

(ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and

(iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.

(2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form, with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.

(3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.

(4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. **Periodicity of Peer Review**

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. **Cost of Peer Review**

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer
has to conduct second review, the same rate would apply to the second review also. Each of the branch/office under review would be considered separately.

15. **Training and Development**

15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall/be provided, from time to time, to the Reviewer(s) and other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. **Review Framework**

16.1 Essentially, a peer review entails a review of attestation engagement records and related financial/other statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

16.2 The methodological approach involved in peer review can be defined in terms of three stages viz., planning, execution and reporting, which are summarized below:

(i) **Planning**

— Notification - A practice unit will be notified in writing about an impending peer review and will be sent a Questionnaire for completion together with a panel of three suggested names of reviewers. The practice unit will have to give its choice of reviewer within a period of 15 days from the day of receipt of the panel sent by the Board.

— Return of completed Questionnaire - The practice unit shall have to complete and return the Questionnaire to the reviewer within one month of receipt. The information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services clients, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services engagements, representative of the practice unit’s client portfolio, for review.

(ii) **Sample of Attestation Services Engagements**

(a) From the complete attestation services client list, an initial sample will be selected by the reviewer. Practice units will be notified of the selection in writing about two weeks in advance, requesting the relevant records of the selected attestation services clients to be made available for review.

(b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit’s attestation services engagements, he may make further selections.
(iii) Confirmation of visit

In consultation with the practice unit date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within sixty days of notification.

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

(ii) Initial meeting

An initial meeting will be held between the reviewer and a partner/sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should have a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) Compliance Review-General Controls

(a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following five key controls will be considered as General Controls:

• Independence
• Maintenance of Professional Skills and standards
• Outside Consultation
• Staff Supervision and Development
• Office Administration

Practice units are expected to address each of the five key control areas.

(b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.
(c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.

(iv) Selection of Attestation Services Engagements to be Reviewed

(a) The number of attestation services engagements to be reviewed depends upon:

- the number of practicing members involved in attestation services engagements in the practice unit;
- the degree of reliance placed, if any, on general quality controls; and
- the total number of attestation services engagements undertaken by the practice units for the period under review.

(b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit’s attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services client list.

(v) Review of records

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

(a) Compliance approach-Attestation services Engagements

- The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
- Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.

(b) Substantive approach-Attestation services Engagements

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

16.3 Reporting

(i) Preliminary Report of Reviewer

- At the end of an on-site review, the reviewer shall, before making his report to
the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.

- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21 days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(ii) Interim Report of Reviewer

(a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board. In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.

(b) In pursuance of the provisions contained in the above clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.

(c) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:

- make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
- if it is of the opinion that
  
  (1) in case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
  
  (2) in case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;

  Then:

  (3) issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and

  (4) specify in the instruction, the matters as regards which the review is to be carried out;
(d) The Board will make recommendations to the practice unit where:

based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(e) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

(f) In case the reviewer is not satisfied even at the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) Final Report of Reviewer

(a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.

(b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

(iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17. Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within two months in such manner as may be prescribed by the Board in these regards.
17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-

- shall decide the dispute within six months and communicate such decision to each of the parties to the dispute;
- may issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them;
- shall convey its decision in these regards to the appellant within 15 days from the date of the decision, so as to provide the appellant sufficient time to respond.

17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within two months in such manner as may be prescribed.

18. Immunity

18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review.

18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

19.2 Those persons subject to the secrecy provision:

(1) Shall at all times after his/their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.

(2) Shall not at any time communicate any such matter to any other person.

(3) Shall not at any time permit any other person to have any access to any record, document or any other material if any form which is in his/their possession or under his/their control by virtue of his/their being or having been so appointed or
his/their having performed or having assisted any other person in the performance of such a function.

19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.

19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20. **Procedural Departures**

20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.
Statement of Confidentiality

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To,
The Chairman
Peer Review Board
The Institute of Company Secretaries of India

Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whenever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit’s attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.

I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature :
Name :
Designation :
Date :
Place :
Taken on record on (date)

By
Signature :
Name :
Designation :
RESOLUTION PASSED BY THE COUNCIL UNDER REGULATION 168 OF THE COMPANY SECRETARIES REGULATIONS, 1982

The Council of the Institute at its 156th Meeting held on March 19-20, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 has accorded general permission to its members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

It must be clarified that under section 26 of the Company Secretaries Act, 1980 no company can practise as Company Secretary.

The Council has further allowed members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The Council in its resolution adopted at the said meeting defined the term non-executive director as to mean an ordinary director who is required to attend the meetings of the Board or its committees only, not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Practising Company Secretaries can now take up teaching assignment with any organization apart from the coaching organization of the Institute. Further the condition has been relaxed for teaching hours from average three hours to four hours in a day. General permission has been given to Practising Company Secretaries to act as Recovery Consultants in the Banking Sector. With the specific permission of the Council a member in practice can have interest in agricultural and allied activities carried on with the help, if required, of hired labour and editorship of journals other than professional journals.

Text of the Resolution Passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982

"Resolved that in supercession of all earlier resolutions passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982 allowing members in practice to engage in any other business or occupation, the Council hereby permits the members in practice to engage in the following other business or occupation under Regulation 168 of the Company Secretaries Regulations, 1982:
Permission granted generally

(i) Private tutorship.
(ii) Authorship of books and articles.
(iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
(iv) Holding of public elective offices such as M.P., M.L.A., M.L.C.
(v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
(vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
(vii) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
(viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
(ix) Editorship of professional journals.
(x) Acting as ISO lead auditor.
(xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
(xii) Acting as Recovery Consultant in the Banking Sector.
(xiii) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.
(xiv) Becoming non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Permission to be granted specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

(i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
(ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
(iii) Editorship of journals other than professional journals.
For the purpose of the above resolution:

(i) A non-executive director means an ordinary director who fulfils the following conditions:

(a) he is required to attend the meetings of the Board or its committees only.

(b) he is not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director.

(c) he is devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

(ii) a member shall be deemed to have a “substantial interest” in a concern:

(a) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of voting power at any time during the previous year, are owned beneficially by such member.

(b) in the case of any other concern, if such member is entitled at any time during the previous year, to not less than 25% of the profits of such concern.

Further Resolved that in cases of permission to be granted specifically the Council will, however, be always entitled to refuse permission in individual cases.”
RESOLUTION UNDER REGULATION 168 OF THE COMPANY SECRETARIES REGULATIONS, 1982 ALLOWING MEMBERS IN PRACTICE TO CARRY OUT NON-ATTESTATION SERVICES THROUGH THE NEW BUSINESS STRUCTURE OF LIMITED LIABILITY PARTNERSHIP.

The Council had at the 156th meeting held on 19th – 20th March, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 accorded general permission to members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

The Council had also allowed members in practice to become non-executive directors/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The term non-executive director was defined to mean an ordinary director who is required to attend the meetings of the board or its committees only, not paid any remuneration except the sitting fees for attending the board/committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the board or committee thereof and not for any other purpose.

In line with the aforesaid decisions, the Council has passed the following resolution under regulation 168 allowing Company Secretaries in Practice to become partners of LLP, the objects of which include areas which fall within the scope of non-attestation services of the profession of Company Secretaries or in any other business or occupation.

"Resolved that under regulation 168 of the Company Secretaries Regulations, 1982, the Council gives general permission to the members in practice to:

(a) become passive partner of a limited liability partnership (LLP) the objects of which include carrying out non-attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;

(b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

(i) "Attestation Services" include services which require signing any certificate, document, report or any other statements relating thereto on behalf of a Company Secretary in Practice or a firm of such Company Secretaries in his or its professional capacity or which require signing anything that is required to be signed by a Company Secretary in practice.

(ii) "Non-attestation Services" means services which are not attestation services.

(iii) A "passive partner" means a partner of LLP who fulfils the following conditions:

(a) he must not be a designated partner;
(b) subject to the LLP agreement, he may make agreed contribution to the capital of LLP and receive share in the profits of the LLP; and

(c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

(1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).

(2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.

(3) Approving or disapproving an amendment to the partnership agreement.

(4) Reviewing and approving the accounts of the LLP;

(5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –

(a) the dissolution and winding up of the LLP;

(b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;

(c) a change in the nature of the activities of the LLP;

(d) the admission or removal of a partner of the LLP;

(e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;

(f) any amendment to the LLP agreement;

(iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.”
SERVICES THAT CAN BE RENDERED AS PER THE RESOLUTION
PASSED BY THE COUNCIL UNDER CLAUSE (f) OF
SUB-SECTION 2 OF SECTION 2 OF
THE COMPANY SECRETARIES ACT, 1980*

Section 2(2) of the Company Secretaries Act, 1980 provides that a member of the Institute shall be “deemed to be in practice” when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognized professions as may be prescribed, he, in consideration of remuneration received or to be received,

(a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or

(b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or

(c) offers to perform or performs such services as may be performed by –

(i) an authorized representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,

(ii) a share transfer agent,

(iii) an issue house,

(iv) a share and stock broker,

(v) a secretarial auditor or consultant,

(vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development & Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or by-laws made by a recognized stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), or under any other law for the time being in force,

(vii) Issuing certificates on behalf of, or for the purposes of, a company; or

(d) holds himself out to the public as a Company Secretary in practice; or

* Published in the May 2006 issue of Chartered Secretary at pp. 820-821.
(e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or

(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

and the words “to be in practice” with their grammatical variations and cognate expressions, shall be construed accordingly.


"Resolved that pursuant to the powers granted under clause (f) of sub-section (2) of section 2 of the Company Secretaries Act, 1980, the Council of the Institute hereby specifies the following categories of Management, Advisory and Other Services, which may be rendered by a Company Secretary in Practice. Any of such services may be rendered by practising members to corporations, bodies corporate, societies, trusts, associations, enterprises, undertakings, clubs, non-trading corporations, industrial co-operatives, co-operative societies, non-government organizations, local self government bodies, estates, firms, small, medium and large industrial undertakings, entrepreneurs, investors, and other persons in carrying out their activities and operations:

• Providing all services in MCA-21 Systems including those relating to Front Office, Facilitation Centre, Filing Centre, Local Registration Authority of Digital Signature Certificate Providers.

• Conceptualisation, identification, crystallization of business enterprise, industrial-project or business activity.

• Carrying out feasibility studies, preparation of project reports, proposals for business operations including setting up a new unit or enterprise, as well as expansion, or diversification and also representations, follow-up with financial institutions, Government and other authorities for procurement of the requisite approval, clearance or permission in respect of such proposals.

• Guidance and support in relation to collaborations, joint-ventures, business agreements, arrangements, restructuring, contracts, tie-ups in India and abroad.

• Business planning, policy and management in all fields including manpower, recruitment, employment, industrial relations, human resource development, management information systems, marketing, publicity and public relations.

• Planning, supervision and carrying out of internal audit, systems audit, labour audit, management audit, operational audit, quality audit, social audit, environment audit and energy audit.

• Risk management of properties, profits, resources, know-how and operations.

• Management, planning, representation and protection of trade marks, patents and intellectual property service.

• Procurement and management of materials and inventories."
• Assessment, procurement and management of financial requirements and resources including project finance, working capital finance, forex management, loan syndication, portfolio management.

• Evaluation and management of deployment of funds in investments, assets and securities, loans, collaborations, tie-ups, joint-ventures.

• Formulating and implementing all activities relating to capital structure including creation, issue, offer, allotment, placement, procurement, listing of shares, debentures, bonds, deposits, coupons, ADR, GDR, IDR and all types of financial instruments.

• Recovery-consultant in banking and financial sector.

• Insurance advisor and other related activities.

• Acting as an arbitrator, mediator or conciliator for settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.

• Acting as advisor to investors, depositors, mutual fund unit holders and stakeholders.

• Acting as advisor in relation to intermediary in securities and commodities markets.

• Due diligence and legal services.

• Corporate governance services.

• Competition law and practice.

• Business process outsourcing, knowledge process outsourcing and legal outsourcing.

• Valuer, surveyor and loss assessor.

• Investigator, private liquidator, insolvency practitioner; operating agency.”
FAQs ON GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN PRACTICE*

1. Are the Advertisement Guidelines complementary to the Website Guidelines issued by the Council earlier?

No, the Guidelines for Advertisement by Company Secretary in Practice are a separate set of guidelines. Clause 6.1 of these guidelines clearly states that with the coming into effect of these guidelines the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

2. In case of contradiction between the Advertisement Guidelines and the Website Guidelines which one would prevail?

Since the Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed w.e.f. 1st January, 2008 there arises no question of their applicability. The Guidelines for Advertisement by Company Secretary in Practice shall have an overriding effect on the issues related to websites.

3. Do I need to get my advertisements approved from ICSI before issue?

No. Clause 5.1 of these Guidelines provides that the responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

Hence, there is no need to get any advertisements approved from ICSI before issue.

4. I am in the process of designing a website. Is there any mechanism in ICSI to check the website before it is hosted in the server to ensure compliance with the Guidelines for Advertisement?

Under the Guidelines for Advertisement by Company Secretary in Practice there is no need to check the website before it is hosted on the server by a PCS.

5. What is the status on the use of logo and whether it could be used in the website?

In terms of Clause 4.3(vi)(b) of the guidelines a Company Secretary in Practice or a firm of Company Secretaries shall not use his /its logo(s).

* Published in the May 2008 issue of Chartered Secretary at pp. 699-700.
6. **Do I need to get the domain name for my website approved from ICSI before registering the same?**

No. The Guidelines do not provide for prior approval of domain name for website by the ICSI.

7. **Are there any specific guidelines for domain names?**

No. There are no specific guidelines for domain names. You may choose any domain name as long as it is not undesirable or unethical or immoral or opposed to public policy.

8. **Is there any list of undesirable domain names?**

No. There is no list of undesirable domain names.

9. **In which media can I issue advertisements?**

Advertisements may be issued in the print as well as the electronic media.

10. **Do I need to follow the pattern of the model advertisement only?**

No. The model advertisement has been provided for guidance only.

11. **Is all the information provided by the guidelines compulsory to be included in the advertisement?**

No. The guidelines provide only for the permitted list of information that may be included in the advertisement. You may omit any of the information from the advertisement which you feel not relevant from your point of view.

12. **If my PCS firm publishes some newsletter does it constitute surrogate advertising under these guidelines?**

Printing and publication of newsletter by a firm of Practicing Company Secretaries does not amount to issue of an advertisement under these Guidelines.

13. **Who is the relevant authority for reporting cases of violation of these guidelines?**

Matters relating to violation of these guidelines may be construed as acts of misconduct and shall be dealt by the disciplinary committee.

14. **How will the cases of violation of these guidelines be dealt with?**

In terms of Clause 1 of Part II of Schedule II of the Company Secretaries Act, 1980 a member shall be deemed to be guilty of professional misconduct, if he contravened any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council and any such act or omission shall be dealt in accordance with the provisions of Chapter V of the Company Secretaries Act, 1980 which deals with Misconduct.

15. **Is there any limit on the number of advertisements that can be issued by a PCS in a specified period?**

No. There is no limit on the number of advertisements that can be issued by a PCS in any relevant period.
16. **What is the maximum frequency at which advertisements can be issued?**

The Guidelines do not provide for any frequency at which advertisements can be issued.

17. **Do I need to intimate the ICSI of any updation or changes in my website?**

No. The Guidelines do not provide for any intimation to the ICSI in regard to any updation or changes in your website.

18. **Do I need to intimate the ICSI in case of any corrigendum in any advertisement issued by me?**

No. The Guidelines do not provide for any intimation to the ICSI in regard to any corrigendum in any advertisement issued by you.

19. **Can I revoke an advertisement issued by me? If yes, what is the process in this regard?**

Yes you may revoke any advertisement issued by you. There is no specific procedure to be followed in this regard but you may issue another advertisement in the same media in which the previous advertisement was published intimating revocation of the earlier advertisement in part or in full.

20. **Is there any specific guidance note issued by the ICSI in regard to these guidelines?**

No. The ICSI has not issued any specific guidance note in regard to these guidelines.

21. **In case of persons having multiple professional qualifications can a single advertisement be issued in regard to services offered under each qualification?**

No. A PCS can only practice the profession of Company Secretaries and not as a member of any other professional body. There is no question of advertising services which cannot be rendered by a PCS.

22. **Can I advertise about services which are not specifically rendered by PCS?**

No. The outer boundary in respect of advertisement is limited to advertising through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council. Hence, services which can be provided as a PCS can only be advertised under these Guidelines.

23. **Can I issue advertisements to overseas clients also?**

Yes. You may issue advertisements to your clients anywhere in the world.
FAQs ON PROFESSIONAL DEVELOPMENT

1. **What is PCH?**

   The term PCH refers to Programme Credit Hours. Credit Hours represent attendance by a member at approved learning programmes.

2. **How many PCH are to be obtained by a member?**

   The Council of the Institute at its 200th Meeting held at New Delhi on March 18, 2011 decided that the minimum number of credit hours to be obtained by each member of the Institute upto March 31, 2014 would be as under:

<table>
<thead>
<tr>
<th></th>
<th>Member's below the age of 60 years</th>
<th>Member's above the age of 60 years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Members in Employment</td>
<td>Members in Practice</td>
</tr>
<tr>
<td>PCH in each year</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>PCH in a block of 3 years</td>
<td>35</td>
<td>50</td>
</tr>
<tr>
<td>Certificate of Practice / Employment taken during</td>
<td>Members in Employment</td>
<td>Members in Practice</td>
</tr>
<tr>
<td>01 Apr., 2011 to 30 Sep., 2011</td>
<td>35</td>
<td>50</td>
</tr>
<tr>
<td>01 Oct., 2011 to 31 Mar., 2012</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>01 Apr., 2012 to 30 Sep., 2012</td>
<td>20</td>
<td>30</td>
</tr>
<tr>
<td>01 Oct., 2012 to 31 Mar., 2013</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>01 Apr., 2013 to 30 Sep., 2013</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>After 01 Oct., 2013</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

3. **How do I get PCH?**

   A member of the Institute is granted PCH for attending approved learning programmes or for carrying out unstructured learning activities.

4. **What is approved learning program?**

   Approved Learning Program means any Professional Development Program, Continuing Education Program, Participative Certificate Program of ICSI. Programmes organised through electronic/distance mode or any other program, seminar or study circle meeting organised by the Council, Regional Council, Chapter of the Institute, and programmes organised jointly with professional bodies or Chambers of Commerce.
5. **What is the manner of calculation of Programme Credit Hours?**

No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.

The basis of calculation of Program Credit Hours will be as under:

<table>
<thead>
<tr>
<th>No. of hours of Learning Program attended by the member</th>
<th>Program Credit Hours (PCH)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beyond 1 hour and upto 2 hours</td>
<td>1</td>
</tr>
<tr>
<td>Beyond 2 hours and upto 4 hours</td>
<td>2</td>
</tr>
<tr>
<td>in a single day</td>
<td></td>
</tr>
<tr>
<td>Beyond 4 hours in a single day</td>
<td>4</td>
</tr>
<tr>
<td>Program spanning 1½ days</td>
<td>6</td>
</tr>
<tr>
<td>Program spanning 2 days</td>
<td>8</td>
</tr>
<tr>
<td>Program spanning 2½ days and above</td>
<td>10</td>
</tr>
</tbody>
</table>

6. **What are unstructured learning activities?**

The members may be granted Programme Credit Hours under the Guidelines for Compulsory Attendance of Professional Development Programmes by the Members for undertaking any of the following unstructured learning activities:

1. Web based learning including e-learning on the production of Certificate.
2. Publication of article in a journal of repute other than the Chartered Secretary Journal.
3. Publication of book(s).
4. Acting as Guide / Supervisor for M.Phil. / LL.M. / Ph.D.
5. Suggestions on Questionnaires / Consultative Papers / Exposure Draft, etc. sought by the Institute.
7. Publication of Research findings / Studies on the areas relevant to Corporate Sector, Capital Markets and Professional interest.
8. Publication of articles of professional interest in national dailies.
9. Visit to foreign countries as part of government delegation.
10. Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National importance.

13. **Where do I find the details of programmes being organised by the ICSI for its members?**

The details of programmes organised by the ICSI are available on the ICSI website, CS Updates and the Chartered Secretary Journal. For programmes organised by the Regional Councils and Chapters of the Institute, members may contact the respective Regional Council / Chapter offices or refer to their newsletters.
14. **What is the current block?**

   The current block of three years is from April 01, 2011 to March 31, 2014.

15. **What are the consequences if I do not obtain the mandatory Programme Credit Hours within the stipulated time?**

   A member who fails to obtain the mandatory Programme Credit Hours during the stipulated period would be liable to disciplinary action for non-compliance with the Guidelines issued by the Council under the provisions of the Company Secretaries Act, 1980 and the CS Regulations.

16. **What is the fee for attending the Professional Development Programmes?**

   The Fee for each programme organised by the Institute or its Regional Councils and Chapters is disclosed in the programme announcement.

17. **Where can I find the information of the Programme Credit Hours obtained by me till date?**

   The Institute does not issue physical certificate for Programme Credit Hours, a member may check the status of Programme Credit Hours obtained by him/her by logging in to the ICSI portal for members i.e. www.icsi.edu.

18. **Where can I find the PCH Guidelines?**

   The Guidelines for Compulsory Attendance of Professional Development Programmes by the Members may be downloaded from the ICSI website at the link:

   http://www.icsi.edu/WebModules/CP/PDPGuidelines3.pdf

19. **I am a very senior member of the Institute, do I still require to obtain PCH?**

   Every member of the Institute holding a Certificate of Practice or in employment (i.e. in whose name form 32 has been filed with the RoC) is required to obtain the mandatory number of PCH each year.

20. **I am residing in a remote area where there is no chapter of the Institute. To attend a programme I have to travel 100 kms, can I claim exemption from PCH?**

   For Members who reside in places beyond 100 km from the nearest Regional Council/Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled.

   However this will not apply to attendance at the National Convention/National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. Such members have also the option to prepare a research paper on a Topic recommended by the Secretariat.

   Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.
The Research paper includes:

(i) A concept paper on emerging areas of practice for Company Secretaries
(ii) A Referencer/backgrounder on contemporary topics relevant to Company Secretaries
(iii) A booklet on any topic relating to the areas of practice for Company Secretaries
(iv) A monograph on any contemporary topic relevant to the Practising Company Secretaries
(v) An empirical study of practical relevance to the Practising Company Secretaries

Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter/Satellite Chapters will be entitled for Eight Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

21. I am a senior citizen, doctor has advised me not to travel long distances, can I be granted exemption from obtaining Programme Credit Hours?

The Professional Development Committee of the Council of the Institute may at its discretion grant exemption to any member on a case to case basis.

22. I have a baby of three months to take care of at home, can I be exempted from obtaining PCH?

Such members may acquire PCH through unstructured learning activities.

23. My earnings from practice just enable me to run my family, can I be exempted from payment of fees for attending Professional Development Programmes?

Such members may acquire PCH through unstructured learning activities.

24. If I am in employment for partial period during a year and unemployed for some time and then I take up practice, then how will the requirement of PCH apply to me?

Please refer the answer to Question no. 2

25. If I attend Professional Development Programmes organised by the ICAI or ICAI-CMA, will I be given Programme Credit Hours?

You may be granted Programme Credit Hours for learning programmes organised by other professional bodies only if the programme has been organised jointly with ICSI.

26. I wish to be faculty at the Professional Development Programmes organised by ICSI, whom do I contact?

You may send your bio data and areas of interest to the Directorate of Professional Development, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003.
FAQs ON PEER REVIEW*

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

2. **When will Peer Review start?**
   The Peer Review Board proposes to start the process of Peer Review from December 2011.

3. **To whom all would Peer Review be applicable?**
   Peer Review is applicable to all Practicing Company Secretaries.

4. **What is the meaning of Practice Unit?**
   Practice Unit means members in practice, whether practicing individually or a firm of Company Secretaries.

5. **What are the practice areas covered under the scope of Peer Review?**
   To begin with, the Review would only be in respect of the following services:
   a. Signing of Annual Return pursuant to Section 161(1) of the Companies Act, 1956
   b. Issue of Compliance Certificate pursuant to Section 383A(1) of the Companies Act, 1956
   c. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges
   d. Certificate of reconciliation of Capital as per SEBI Circular dated Dec. 31, 2002
   e. Conduct of Internal Audit of Operations of Depository Participants
   f. Certification under Clause 49 of Listing Agreement

6. **Whether the concept of Peer Review exists for CWA's and CA's?**
   The Institute of Chartered Accountants of India has a mechanism of Peer Review of their Members in Practice.

* ICSI Guideline No. 1 of 2011 - Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries.
7. **What are the advantages of the Peer Review to the Practice Unit (PU)?**

   It is expected to
   (a) enhance the quality of attestation services.
   (b) enhance credibility and provide competitive advantage.
   (c) provide a forum for Guidance and knowledge sharing.

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

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

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

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

10. **How will I be selected for Peer Review?**

    You may apply to be peer reviewed or it may be done through random selection by the Peer Review Board.

11. **If I have been Peer Reviewed can I disclose this on my website?**

    Only the fact of being Peer Reviewed can be stated. However, neither the Certificate nor the Peer Review Report may be given on the website.

12. **Can I become a Peer Reviewer?**

    Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-
    (a) possesses at least 10 years of post membership experience
    (b) is currently in practice as a Company Secretary.

13. **Will the information disclosed by me be kept confidential by the reviewer?**

    The Peer Reviewer is bound by a Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by you he may be subject to disciplinary action by the Institute.

14. **If I am Peer Reviewed and it is found that I have not maintained adequate records will I be liable for any disciplinary action?**

    No.

15. **Is the Peer Reviewer exposed to any liability?**

    The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.
16. After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?

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

17. What do I do if I am not satisfied with the Report of the Peer Reviewer?

You may refer your case to the Peer Review Board.

18. If I am selected for Peer Review is it mandatory for me to offer myself for Peer Review?

Yes

19. Do I need to disclose the records of my clients to the reviewers?

No

20. (a) Can any of my clients ask the Institute to get me peer reviewed?

Yes

(b) Who will pay the cost of such Peer Review?

The client shall pay the cost of such Peer Review.

21. Will ICSI be issuing any Certificate after Peer review?

Yes.

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

Yes

23. What are my obligations as a Practice Unit?

Refer Cl. 12 of the Guidelines

24. Can I volunteer to get Peer Reviewed?

Yes

25. I have been Peer Reviewed once, will I be Peer Reviewed again?

Yes, if the Peer Review Board so decides.

26. Can I choose my Peer Reviewer?

The Peer Review Board would send you a panel of at least three reviewers and you may choose any one name out of the panel sent to you.

27. Can I reject all the reviewers mentioned in the panel and ask for another reviewer from the same State or region?

No.
28. **If I want a Peer Reviewer from outside my State or region what should I do?**

   You may make a special request to the Peer Review Board to provide names of such Peer Reviewers. However, in such a case you would have to bear the extra cost that would be incurred for TA/DA etc.

29. **If I am not satisfied with the order of the Peer Review Board can I appeal to the Council?**

   Yes. You may appeal against the Order of the Peer Review Board to the Central Council of the Institute. (Refer cl. 17.3 of the Guidelines)

30. **Can I refuse to get myself Peer Reviewed?**

   No. Any refusal to get Peer Reviewed shall be a misconduct under the Code of Conduct.
**[21. Disciplinary Directorate**

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.]

**[21A. Board of Discipline**

(1) The Council shall constitute a Board of Discipline consisting of –

(a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section (16);

** For foot notes, see at the end of the Text.

1. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.
(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:–

(a) reprimand the member;
(b) remove the name of the member from the Register up to a period of three months;
(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

2[21B. Disciplinary Committee

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:–

(a) Reprimand the member;
(b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
(c) Impose such fine as it may think fit, which may extend to rupees five lakhs.

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2. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.
(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

3[21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation – For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

4[21D. Transitional provisions

All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006.

5[22. Professional or other misconduct defined

For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

6[22A. Constitution of Appellate Authority

The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of...
this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;

7[22B. Term of office of members of Authority]

A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier.

8[22C. Procedure, etc. of Authority]

The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.]

9[22D. Officers and other staff of Authority]

(1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

10[22E. Appeal to Authority]

(1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section

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7. Inserted, ibid.
8. Inserted, ibid.
9. Inserted, ibid.
10. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.
21A and sub-section (3) of section 21B and may –
(a) confirm, modify or set aside the order;
(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
(d) pass such other order as the Authority thinks fit:
Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.]

**[THE FIRST SCHEDULE**
[See sections 21 (3), 21A(3) and 22]

**PART I**

Professional misconduct in relation to Company Secretaries in Practice

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

(1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.

Explanation. – In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

(4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body or

**** For foot notes, see at the end of the Text.
body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting–

(i) any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

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

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

(1) not being a Fellow of the Institute, acts as a Fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if –

(1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.]
PART I

Professional misconduct in relation to Company Secretaries in Practice

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

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;

(6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

(4) defalcates or embezzles moneys received in his professional capacity.

**PART III**

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

**FOOTNOTES**

** Substituted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, section 21 read as under:

21. Procedure in inquiries relating to misconduct of members of the Institute

(1) Where on receipt of information by, or a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely: –

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where the Council is of opinion that the case is one in which the
name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:–

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;
(b) reprimand the member;
(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I. – In this section, “High Court” means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II. – For the purposes of this section, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested
in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of
the following matters, namely:—
(a) summoning and enforcing the attendance of any person and examining him
on oath;
(b) the discovery and production of any document; and
(c) receiving evidence on affidavits.

*** Omitted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its omission, section 30 read as under:

CHAPTER VIII

APPEALS

30. Appeal

(1) Any member of the Institute aggrieved by any order of the Council imposing on him
any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section
21, may, within thirty days of the date on which the order is communicated to him,
prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the
said period of thirty days, if it is satisfied that the member was prevented by sufficient
cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of
any case, revise any order made by the Council under sub-section (2) or sub-section
(4) of section 21 and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed
by the order;

(c) remit case to the Council for such further enquiry as the High Court considers
proper in the circumstances of the case;

(d) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council
has been given an opportunity of being heard and no order imposing or enhancing a
penalty shall be passed unless the person concerned has been given an opportunity
of being heard.

Explanation. – In this section “High Court” and “member of the Institute” have
the same meanings as in section 21.

**** Substituted for “The First Schedule” vide the Company Secretaries (Amendment) Act,
2006, w.e.f. 17.11.2006.
Prior to its substitution, “The First Schedule” read as under:

THE FIRST SCHEDULE

[See section 21(4) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice

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

1. allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognized profession as may be prescribed in this behalf, and is in partnership with or employed by him;

2. pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation. – In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

3. accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognized professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;

4. enters into partnership with any person other than a Company Secretary in practice or a member of any other recognized profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;

5. secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;

6. solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

7. advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognized by the Central Government or may be recognized by the Council;
(8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act;

(11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;

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

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person –

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he –

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a Fellow styles himself as a Fellow;

(3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;
(4) defalcates or embezzles moneys received in his professional capacity.


Prior to its substitution, “The Second Schedule” read as under:

**THE SECOND SCHEDULE**

[See section 21(5) and 22]

**PART I**

Professional misconduct in relation to members of the Institute in practice requiring action by a High Court

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

(1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;

(6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;

(7) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.
PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

(1) contravenes any of the provisions of this Act or the regulations made thereunder;

(2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.
GIST OF SELECTED CASES PERTAINING TO PROFESSIONAL
OR OTHER MISCONDUCT

1. The complaint of professional or other misconduct against Ms. Sakshi Mittal, ACS–25515 (CP No. 9460).

The Institute had received a complaint of professional or other misconduct against Ms. Sakshi Mittal, ACS – 25515 (CP No. 9460). The Complainant had inter-alia alleged that Ms. Sakshi Mittal, the Respondent had certified Form 23 and Form 32 pertaining to his removal as the promoter Director of a company, without exercising due diligence. Ms. Sakshi Mittal, the Respondent on the other hand had denied the allegations leveled against her.

The Disciplinary Committee after considering the prima-facie opinion of the Director (Discipline), the material on record and after providing an opportunity of being heard to Ms. Sakshi Mittal concluded that the Respondent is 'Guilty' of Professional Misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the Respondent had certified and filed Form 32 for cessation of directorship of the Complainant from the Board of Directors of the Company and Form 23 for the special Resolution for removal of the Complainant from the Board of Directors of the company without checking the authority of the Director.

The Disciplinary Committee passed the order of 'Reprimand'.

2. The complaint of professional or other misconduct against Shri Arvind Kumar Tiwari, ACS – 22646 (CP No. 8121).

The Institute had received a complaint of professional or other misconduct against Shri Arvind Kumar Tiwari, ACS – 22646 (CP No. 8121).

The Complainant had inter-alia alleged that the Respondent had committed the wrongful and criminal act of forging and fabricating the records of a company, by certifying, signing and filing three e-Forms 32 knowing the contents of the same to be false.

The Respondent had denied the allegations made by the Complainant and stated that he had verified three e-Forms 32 on the basis of certified copy of the resolution passed in the Board meeting and the Extraordinary General Meeting of the company.

The Disciplinary Committee after considering the prima-facie opinion of the Director (Discipline), the material on record and after providing an opportunity of being heard to Shri Arvind Kumar Tiwari, ACS – 22646 (CP No. 8121) concluded that the Respondent is ‘Guilty’ of Professional Misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as the e-form 32 filed for alleged resignation was digitally signed by the Respondent. The Respondent had failed to notice the difference in the date of the resignation letter vis-a-vis the date
of the Board Meeting. He had also failed to verify and check the difference in timings recorded in the extracts of resolution and the minute book submitted. The resignation letter, the certified copy of the resolution and the minutes are vital documents for verification of Form 32. The other two Forms filed by the Respondent were ostensibly found to be in order.

The Disciplinary Committee passed the order of ‘Reprimand’.

3. **Information received against Shri Tushar Sharma, ACS-15953.**

An Information was received against Shri Tushar Sharma, ACS-15953 alleging that he while holding Certificate of Practice of the Institute was also in employment.

The Director (Discipline) had held Shri Tushar Sharma *prima-facie* ‘Guilty’ of professional misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980, as he had violated the resolution dated the 12th May, 1991, passed by the Council prohibiting the members holding Certificate of Practice to accept the employment. Shri Tushar Sharma had admitted his mistake.

The Disciplinary Committee after considering the *prima-facie* opinion of the Director (Discipline), the material on record and after providing the opportunity of being heard to Tushar Sharma, ACS-15953, came to the conclusion that Shri Tushar Sharma, ACS-15953 is ‘Guilty’ of professional misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980, as, while holding the Certificate of Practice of the Institute is also in employment.

The Disciplinary Committee passed the order of ‘Reprimand’ and also imposed a fine of Rs. 5000/-.

4. **The complaint of professional or other misconduct against Ms. Hema Vijaykumar, ACS-11483 (CP No. 4683).**

The Institute had received a complaint of professional or other misconduct against Ms. Hema Vijaykumar, ACS-11483 (CP No. 4683). The Complainant had *inter-alia* alleged that the Respondent had certified/ issued the Compliance Certificates under Section 383A of the Companies Act, 1956 in respect of a company as a Practicing Company Secretary without exercising due diligence.

The Respondent submitted that she had issued the said Compliance Certificates to the company based on the examination of documents and explanations furnished by the company and denied all the allegations leveled against her.

The Disciplinary Committee after considering the *prima-facie* opinion of the Director (Discipline), the material on record and after providing an opportunity of being heard to Ms. Hema Vijaykumar, ACS-11483 (CP No. 4683) concluded that there has been some laxity on the part of the Respondent in verifying the exact amount of authorized capital and the issued, subscribed and paid up capital of the company as there have been contrary figures in the Annual Returns and in the balance sheets for those years and, therefore, the Respondent is ‘Guilty’ of professional misconduct under Clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as she did not exercise due diligence. The respondent has admitted her mistake.

The Disciplinary Committee passed the order of ‘Reprimand’.
# QUESTIONNAIRE FOR CREATION OF DATABASE OF COMPANY SECRETARIES IN PRACTICE

<table>
<thead>
<tr>
<th>1. NAME (Mr./Ms.)</th>
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<tbody>
<tr>
<td>Date of Birth</td>
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<tr>
<td>ACS/FCS No.</td>
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<tr>
<td>C.P. No.</td>
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<td>Date of Issue of CP</td>
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<tr>
<th>2. QUALIFICATIONS</th>
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<tbody>
<tr>
<td>(i) Professional Address</td>
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<tr>
<td>City</td>
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<tr>
<td>State</td>
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<tr>
<td>Pin Code</td>
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<td>Telephone No.</td>
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<td>Mobile No.</td>
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<td>Website</td>
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<td>E-mail</td>
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<td>(ii) Residential Address</td>
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<td>City</td>
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<tr>
<td>State</td>
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<td>Pin Code</td>
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<tr>
<td>Telephone No.</td>
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| (iii) Address(es) of Branch Office(s), if any |  |
| Address            |  |
| City               |  |
| State              |  |
| Pin Code           |  |
| Telephone No.      |  |
| Mobile No.         |  |
| Fax No.            |  |
| Website            |  |
| E-mail             |  |
| Member-in-charge   |  |
| Name               |  |
| Membership No.     |  |

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<thead>
<tr>
<th>3. Whether practising as</th>
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<tbody>
<tr>
<td>(i) Sole Proprietor or</td>
<td>Yes/No</td>
</tr>
<tr>
<td>(ii) Partner in a Firm of Company Secretaries or</td>
<td>Yes/No</td>
</tr>
<tr>
<td>(iii) Sole Proprietor as well as Partner in one or more Firms of Company Secretaries</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>
4. If you are a partner in a firm, please give following further information:

Name(s) of Firm(s)

5. Particulars of Partner(s)

(Please specify separately for each partner)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
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<tbody>
<tr>
<td>(a) Name (Mr./Ms)</td>
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<td>(b) Date of Birth</td>
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<td>(c) ACS/FCS No.</td>
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<td>(d) CP No.</td>
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<td>(e) Date of issue of CP</td>
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<td>(f) Qualifications</td>
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</tbody>
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6. Post Qualification Experience (No. of years)

(i) In service
(ii) In practice
(iii) Any other

7. Please tick the industries in which you have BEEN ASSOCIATED/HAVE worked from the list given below:

- Banking
- Engineering
- Food Processing
- Textile
- Telecommunications
- IT
- Cement
- Entertainment
- Housing
- Steel
- Petroleum
- Petrochemicals
- Financial Services
- FMCG
- Insurance
- Pharmaceuticals
- Power
- Any other, Please specify

8. Whether you have been/are a director on the Board of any Company, if Yes, give details:

Name of Company

Year

From ................. To .................

9. Whether you are a member of any Committee of Trade Association/Chambers of Commerce/Other bodies, etc., if yes, give details

Name of Organisation

Year

From ................. To .................

10. If you are a member of any other Professional Body, if yes, give details

Name of Professional body

Membership Number

11. Areas of Practice (mention your area, an indicative list of areas is placed at the annexure given at the end).

12. Type of services rendered so far-Consultative/retainership basis/assignment basis/certificate/search reports/any other (specify)
### 13. Infrastructure details

<table>
<thead>
<tr>
<th>(a) Office</th>
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<tbody>
<tr>
<td>Carpet area (in sq. feet)</td>
<td>Own/Rented</td>
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<tr>
<td>(b) Number of staff</td>
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<tr>
<td>(c) Particulars of staff (Please specify separately for each staff)</td>
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<tr>
<td>(i) Designation</td>
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<td>(ii) Qualification</td>
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<td>(iii) Whether whole time or part time</td>
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<tr>
<td>(d) No. of trainees</td>
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<td>(e) No. of seats</td>
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<tr>
<td>(i) Current no. of apprentices employed</td>
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<tr>
<td>(ii) Total No. of Trainees who have completed training</td>
<td></td>
</tr>
</tbody>
</table>

Tick infrastructure facilities in your office:

- [ ] Computer
- [ ] Internet
- [ ] Laptop
- [ ] Printer
- [ ] JRE (Java Runtime Environment)
- [ ] Acrobat Reader
- [ ] Scanner
- [ ] Website
- [ ] Any other infrastructure not covered above …………………………..

14. Whether obtained Digital Signature Certificate - Yes/No

15. (a) Details of Publications/Articles authored/papers presented and Professional Development Programmes addressed.

(b) Any other distinction

16. Lecture(s) delivered at various fora/teaching assignments undertaken in Universities/Management Institutes/oral tuition classes

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**Declaration:** I certify that data/information contained in this form is true and correct to the best of my knowledge and belief. I understand that by signing this form I agree to be bound by the terms and conditions as have been or may be laid down by the Institute of Company Secretaries in regard to preparation and maintenance of database of Company Secretaries in practice.

*Date:* …………………………………

*Signature:* ……………………………

*Place:* ……………………………

*Name:* ……………………………

*CP No.:* ……………………………
ANNEXURE

INDICATIVE LIST OF AREAS OF PRACTICE

<table>
<thead>
<tr>
<th>Corporate Laws</th>
<th>Financial Services and Consultancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Securities / Commodities</td>
<td></td>
</tr>
<tr>
<td>Exchange Market</td>
<td>Finance including Project/ Working</td>
</tr>
<tr>
<td>Capital / Loan Syndication</td>
<td></td>
</tr>
<tr>
<td>Corporate Restructuring</td>
<td>Excise/CUSTOMS</td>
</tr>
<tr>
<td>Sales Tax/VAT</td>
<td>Income Tax</td>
</tr>
<tr>
<td>Service Tax</td>
<td>Foreign Exchange Management</td>
</tr>
<tr>
<td>Foreign Collaborations &amp; Joint Ventures</td>
<td>Intellectual Property Rights</td>
</tr>
<tr>
<td>Depositories</td>
<td>Monopolies/Restrictive Trade Practices/</td>
</tr>
<tr>
<td></td>
<td>Competition Law</td>
</tr>
<tr>
<td>Consumer Protection Laws</td>
<td>Arbitration and Conciliation</td>
</tr>
<tr>
<td>Import and Export Policy &amp; Procedure</td>
<td>Environment Laws</td>
</tr>
<tr>
<td>Labour and Industrial Laws NCTs</td>
<td>Societies/Trusts/Co-operative Societies &amp;</td>
</tr>
<tr>
<td></td>
<td>(Non Co-operative Trust Societies)</td>
</tr>
<tr>
<td>Financial Consultancy</td>
<td>Other Economic Laws</td>
</tr>
<tr>
<td>SEBI / Securities Appellate Tribunal</td>
<td>Banking and Insurance</td>
</tr>
<tr>
<td>Any Other Service (Please specify)</td>
<td></td>
</tr>
</tbody>
</table>

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## RECOGNITIONS SECURED FOR COMPANY SECRETARIES

### I. FOR A PRACTISING COMPANY SECRETARY

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Companies Act, 1956</td>
<td>(a) ‘Secretary’ in whole-time practice defined as member of the Institute in practice and not in full time employment [section 2(45A)].</td>
<td>June 15, 1988</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) To make statutory declaration in Form 1 that all requirements of the Companies Act, 1956 and the rules made thereunder have been complied with in respect of registration of a company and matters precedent and incidental thereto [section 33(2)].</td>
<td>-do</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) To make a verified declaration in Forms 19, 20 and 20A of compliances for obtaining a certificate of commencement of business/commencement of other business [section 149].</td>
<td>-do</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) To sign the annual return of listed company (section 161).</td>
<td>-do</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(e) To certify that requirements of Schedule XIII have been complied with as regards statutory guidelines for appointment of managerial personnel and payment of managerial remuneration to them without the approval of the Central Government [section 269(2) and Schedule XIII].</td>
<td>-do</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(f) To issue compliance certificate as to whether a company has complied with all the provisions of the Companies Act, 1956, for companies not required to employ a whole-time Secretary under subsection (1) of section 383A and having paid-up share capital of ten lakh rupees or more [proviso to section 383A(1)].</td>
<td>December 13, 2000</td>
</tr>
</tbody>
</table>
### Recognitions Secured for Company Secretaries

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) (i)</td>
<td>A member of the Institute having atleast 15 years working experience as a Secretary in whole-time practice is eligible to be appointed as a Technical member of the National Company Law Tribunal [Section 10FD (3)(e)].</td>
<td>To be effective from the date of commencement of the Companies (Second Amendment) Act, 2002, (i.e. from such dates as may be notified by the Central Government)</td>
<td></td>
</tr>
<tr>
<td>(ii)</td>
<td>A Practising Company Secretary may be authorized by any person to present his or its case before the National Company Law Tribunal or National Company Law Appellate Tribunal [Section 10GD]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii)</td>
<td>A professional firm of Company Secretaries may be appointed as an Official Liquidator in respect of winding up of a company by the National Company Law Tribunal [Section 448(1)(a)].</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Companies (Central Government’s) General Rules and Forms (Amendment) Rules, 2006**

Pre-certification of e-forms: February 10, 2006

1. Form No. 1A
2. Form No. 2
3. Form No. 3
4. Form No. 5
5. Form No. 10
6. Form No. 17
7. Form No. 18
8. Form No. 23
9. Form No. 23AC
10. Form No. 23ACA
11. Form No. 23AC-XBRL
12. Form No. 23ACA-XBRL
13. Form No. 24AB
14. Form No. 25C
15. Form No. 32 Declaration:
16. Form No. 1
17. Form No. 19
18. Form No. 20
19. Form No. 20A
20. Form No. 61

3. **Limited Liability Partnership Rules, 2009 LLP forms**

1. Form No.2
2. Form No.3
3. Form No.4
4. Form No.5
5. Form No. 8
6. Form No.11
7. Form No.12

1st April, 2009
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td><strong>Companies (Declaration of Dividend out of Reserves) Amendment Rules, 2006</strong></td>
<td>Pre-certification of e-form of application for approval for declaration of dividend out of reserves. [Pursuant to Section 205A (3)].</td>
<td>March 3, 2006</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Companies (Director Identification Number) Rules, 2006 [Rule 6]</strong></td>
<td>To certify form DIN-3 (Form for sending of Director Identification Number intimation by the company to the Registrar)</td>
<td>November 1, 2006</td>
</tr>
<tr>
<td>7.</td>
<td><strong>The Companies Regulations, 1956</strong></td>
<td>In respect of section 25 companies, to give a declaration to the effect that the Memorandum and Articles of Association have been drawn up in conformity with the provisions of the Companies Act and that all requirements of the Act and the Rules made thereunder have been duly complied with in respect of the registration or matters incidental or supplementary thereto [Regulation 4(ii)].</td>
<td>July, 1989</td>
</tr>
<tr>
<td>9.</td>
<td><strong>Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999. (Rule 10)</strong></td>
<td>Extinction and physical destruction of the bought back share certificates to be done in the presence of a Company Secretary in whole-time practice within seven days from the date of acceptance of shares. To certify compliance with these Rules including the provisions relating to extinction and destruction of share certificates.</td>
<td>July 6, 1999</td>
</tr>
<tr>
<td>10.</td>
<td><strong>Unlisted Public Companies (Preferential Allotment) Rules, 2003 [Rule 7]</strong></td>
<td>In case of every issue of shares/warrants / fully convertible debentures / partly convertible debentures or other financial instruments with conversion</td>
<td>December 4, 2003</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
</tr>
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<tr>
<td>11.</td>
<td>Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 [Rule 11]</td>
<td>In case of every company that has allotted shares under these Rules, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from Practising Company Secretary/auditors of the company that sweat equity shares have been allotted in accordance with the resolution of the company in the general meeting and the Rules in this regard.</td>
<td>December 4, 2003</td>
</tr>
<tr>
<td>II</td>
<td>CORPORATE AND ECONOMIC LAWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>The Telecom Regulatory Authority of India Act, 1997 (Section 17 and Explanation (b) thereto)</td>
<td>To act as authorized representative before the Telecom Disputes Settlement and Appellate Tribunal.</td>
<td>March, 2000</td>
</tr>
<tr>
<td>17.</td>
<td>IRDA (Registration of Indian Insurance Companies) Regulations, 2000 (Regulation 10)</td>
<td>To certify that the company has complied with all the requirements relating to registration fees, share capital, deposits and other requirements of the Insurance Regulatory and Development Authority Act, 1999.</td>
<td>July, 2000</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
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</tr>
<tr>
<td>(ii)</td>
<td>Certificate for EPCG Redemption (Appendix 26A)</td>
<td>To act as authorized representative before the Board of Approval</td>
<td>February, 2006</td>
</tr>
<tr>
<td>(iii)</td>
<td>Certificate showing sales turnover of ammunition (indigenous and imported) during the preceding three licensing years (Annexure ANF 2B)</td>
<td>To issue certificates for exchange control purposes. All certificates, which a Practising Chartered Accountant can issue as documentary evidence in support of certain applications, may also be issued by a Company Secretary in Whole-time Practice.</td>
<td>Original recognition received in 1992 under FERA. RBI clarified vide letter dated April 19, 2001, the recognition is valid under FEMA</td>
</tr>
<tr>
<td>(iv)</td>
<td>Certification in respect of Application for grant of Status Certificate (ANF 3A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>Certification in respect of application for Served from Indian Scheme (annexure ANF 3B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(vi)</td>
<td>Certificate for Agriculture Infrastructure incentive scrip under VKGUY (Annexure to ANF 3D)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Special Economic Zones Rules, 2006 (Rule 61)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td>Foreign Exchange Management Act, 1999 (FEMA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>Foreign Exchange Management (Transfer of Issue of Securities by a Person Resident Outside India) Regulations, 2008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>The Trade Marks Rules, 2002 (Rules 148-161)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>SECURITIES LAWS AND CAPITAL MARKETS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>Clause 47(c) of the Listing Agreement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Certification to the effect that RTA and / or In-house Share transfer facility of Listed Companies have issued all certificates within one month of the lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/ allotment monies. This certificate is to be
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>The Securities and Exchange Board of India Act, 1992. [Section 15V, Explanation (b)]</td>
<td>issued within one month of the end of each half of the financial year.</td>
<td>December, 1999</td>
</tr>
<tr>
<td>25.</td>
<td>The Depositories Act, 1996 [Section 23C, Explanation (b)]</td>
<td>To appear as authorised representative before the Securities Appellate Tribunal</td>
<td>December, 1999</td>
</tr>
<tr>
<td>26.</td>
<td>SEBI - Circular No.MRD/ DoP/SE/Cir-1/06</td>
<td>Certify non-promoter holdings as per clause 35 of Listing Agreement in demat mode in case of companies which have established connectivity with both the depositories.</td>
<td>January 13, 2006</td>
</tr>
<tr>
<td>28.</td>
<td>Model Listing Agreement for Listing of Debt Securities. SEBI/CFD/DIL/CIR-39/2004/11/01</td>
<td>To issue certificate regarding maintenance of adequate security cover in respect of listed debentures by either a Practising Company Secretary or a Practising Chartered Accountant, every quarter.</td>
<td>November 01, 2004</td>
</tr>
<tr>
<td>30.</td>
<td>Listing Agreement for Indian Depository Receipts (IDRs) SEBI/CFD/DIL/IDR/1/2006/3/4</td>
<td>To issue certificate of compliance of conditions of Corporate Governance.</td>
<td>April 03, 2006</td>
</tr>
<tr>
<td>31.</td>
<td>SME Listing Agreement</td>
<td>To certify that all transfers have been completed within stipulated time.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>To certify compliance of conditions of Corporate Governance.</td>
<td></td>
</tr>
<tr>
<td>32.</td>
<td>SEBI (Depositories Participants) Regulations, 1996</td>
<td>To issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed</td>
<td>September, 2003</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
</tr>
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</tr>
<tr>
<td>33.</td>
<td>SEBI’s Circular IMD/PMS/ CIR/1/21727/03</td>
<td>To conduct Internal Audit of Portfolio Managers.</td>
<td>November 18, 2003</td>
</tr>
<tr>
<td>34.</td>
<td>SEBI’s Circular MRD/DMS/ CIR-29/2008</td>
<td>To conduct Internal Audit of Stock Brokers /Trading Members/Clearing Members</td>
<td>October 21, 2008</td>
</tr>
<tr>
<td>35.</td>
<td>SEBI’s Circular IMD/PMS/ CIR/1/21727/03</td>
<td>To conduct Internal Audit of Portfolio Managers.</td>
<td>18 November, 2003</td>
</tr>
<tr>
<td>36.</td>
<td>Bombay Stock Exchange Limited BSE Notice No. 20061031 - 21</td>
<td>To issue Networth Certificate to be submitted by all active members including representative members of Cash segment, Limited Trading members &amp; Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange.</td>
<td>October 31, 2006</td>
</tr>
<tr>
<td>37.</td>
<td>Bombay Stock Exchange Limited</td>
<td>Listing of new equity shares issued to the shareholders of the company pursuant to the reduction of capital/ BIFR order — If there are non-transferable shares in existence, a certificate from Practising Company Secretary specifically certifying that equity share certificates held by promoters, etc. have been stamped &quot;Not to be sold / transferred / hypothecated until …..” (source: <a href="http://www.bseindia.com">www.bseindia.com</a>)</td>
<td></td>
</tr>
<tr>
<td>38.</td>
<td>National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)</td>
<td>Details of directors/ proprietor in format C-3 of Annual Return submitted by Trading Member to the Stock Exchange</td>
<td>September 06, 2006</td>
</tr>
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<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
</tr>
<tr>
<td>--------</td>
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<td>---------------</td>
</tr>
<tr>
<td>42.</td>
<td>National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)</td>
<td>Details of Dominant group of firms in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange</td>
<td>September 06, 2006</td>
</tr>
<tr>
<td>43.</td>
<td>National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)</td>
<td>Undertaking from Relative of Persons constituting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange</td>
<td>September 06, 2006</td>
</tr>
<tr>
<td>44.</td>
<td>National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)</td>
<td>Undertaking from Corporates supporting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange</td>
<td>September 06, 2006</td>
</tr>
<tr>
<td>45.</td>
<td>National Stock Exchange Limited</td>
<td>Grant of approval for listing under clause 24(a) of the Listing Agreement – Certificate from Practising Company Secretary confirming that the entire pre-preferential holding of the allottee (mentioning the quantity) is locked in for the period starting from relevant date up to a period of six months from the date of allotment (source: <a href="http://www.nseindia.com">www.nseindia.com</a>)</td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>National Stock Exchange Limited</td>
<td>Listing of shares arising out of Conversion of Debentures/Warrants/Notes/Bonds into Equity Shares – Certificate from Practising Company Secretary for receipt of money at the time of allotment of Convertible Debentures/Warrants/Notes, etc. (source: <a href="http://www.nseindia.com">www.nseindia.com</a>)</td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>National Stock Exchange Limited</td>
<td>Listing of shares/securities issued on Preferential/Private Placement basis– Certificate from Practising</td>
<td></td>
</tr>
</tbody>
</table>
14th National Conference of Practising Company Secretaries

<table>
<thead>
<tr>
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<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>49.</td>
<td>National Stock Exchange Limited</td>
<td>Listing of shares/securities issued on Preferential/Private Placement basis in case allotment under Section 81(3) of Companies Act – A confirmation signed by the compliance officer of the company duly counter confirmed by the Practising Company Secretary confirming that the said allotment has been made in accordance with the provisions of section 81(3) of the Companies Act, 1956.</td>
<td>(source: <a href="http://www.nseindia.com">www.nseindia.com</a>)</td>
</tr>
<tr>
<td>50.</td>
<td>National Stock Exchange Limited</td>
<td>Certificate from Practising Company Secretary confirming securities under lock-in (the certificate should include the distinctive numbers of securities under lock-in and date from and upto which these shares are under lock-in)</td>
<td>(source: <a href="http://www.nseindia.com">www.nseindia.com</a>)</td>
</tr>
<tr>
<td>51.</td>
<td>National Securities Depositories Limited (NSDL)</td>
<td>Conduct of Internal Audit of operations of the Depository Participants, at intervals of not more than three months and furnish a copy of the internal audit report to the depository.</td>
<td>March, 1999</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------</td>
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<td>---------------</td>
</tr>
<tr>
<td>53.</td>
<td>Central Depository Services (India) Limited (CDS)</td>
<td>(i) Conduct of Internal Audit of operations of the Depository Participants at such intervals as may be specified by CDS from time to time and furnish a copy of the internal audit report to CDS. (ii) For empanelment by CDS as auditors for conduct of audit of the records of the participants in so far as the records and operations relate to CDS.</td>
<td>September, 1999</td>
</tr>
<tr>
<td>54.</td>
<td>(A) Securities Contracts (Regulation) Act, 1956; and Securities Contracts (Regulation) Rules, 1957 [Section 22C, Explanation (b)] (Guideline No. F1/8/SE/82 dt. 20.8.1982).</td>
<td>(i) To appear as authorized representative before the Securities Appellate Tribunal (ii) Certificate to the effect that allotment has been made by the company on the basis approved by the Stock Exchange.</td>
<td>December, 1999</td>
</tr>
<tr>
<td></td>
<td>(ii) Uttar Pradesh Stock Exchange Association Ltd., Kanpur.</td>
<td>- do -</td>
<td>April, 1984</td>
</tr>
<tr>
<td></td>
<td>(iii) The Bombay Stock Exchange Bombay Ltd.</td>
<td>Certification to the effect that RTA and/or In-house Share transfer facility of Listed Companies have issued all certificates within one month of the lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/ allotment monies. This certificate is to be issued within one month of the end of each half of the financial year.</td>
<td>February, 1998</td>
</tr>
<tr>
<td></td>
<td>(iv) Pune Stock Exchange</td>
<td>-do-</td>
<td>-do-</td>
</tr>
<tr>
<td></td>
<td>(v) The Calcutta Stock Exchange</td>
<td>-do-</td>
<td>-do-</td>
</tr>
<tr>
<td></td>
<td>(vi) Uttar Pradesh Stock</td>
<td>-do-</td>
<td>-do-</td>
</tr>
</tbody>
</table>
Exchange Association Limited (Kanpur) -do- -do-
(vii) Delhi Stock Exchange -do- -do- Certificate to the effect that the RTA has completed all transfers within the stipulated time.
(viii) Hyderabad Stock Exchange -do- -do-
(ix) Bhubaneswar Stock Exchange Association Limited -do- -do-
(x) Stock Exchange, Ahmedabad -do- -do-
(xi) Cochin Stock Exchange -do- -do-
(xii) Coimbatore Stock Exchange -do- -do-
(xiii) Ludhiana Stock Exchange Association Limited -do- -do-
(xiv) Magadh Stock Exchange Association -do- -do-
(xv) Madhya Pradesh Stock Exchange -do- -do-
(xvi) National Stock Exchange -do- -do-
(xvii) Bangalore Stock Exchange -do- -do-
(xviii) Madras Stock Exchange -do- -do-
(xix) Udaipur Stock Exchange -do- -do-
(xx) The Stock Exchange, Ahmedabad -do- -do- Verification and authentication of the declarations of the Managing Director of a Company when-
1. the company intimates the stock exchange the forfeiture of its listed securities; or
2. the company approaches the stock exchange for voluntary delisting of securities.

**IV TAXATION**


56. Wealth-tax Rules, 1957 [Rule 8A(7)] Recognised for registering as a valuer of stocks, shares, debentures, etc. October 8, 1974

57. Central Excise Act, 1944 To act as authorised represen- October, 1982
<table>
<thead>
<tr>
<th>Sl. No.</th>
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<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>58.</td>
<td>Customs Act, 1962 and Customs (Appeals) Rules, 1982 [section 146A and Rule 9(c)].</td>
<td>To appeal before Custom Authorities</td>
<td>October, 1982</td>
</tr>
<tr>
<td>59.</td>
<td>West Bengal Value Added Tax Rules, 2005</td>
<td>Authorized to appear before Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner or any person appointed to assist the Commissioner on behalf of a dealer [Rule 2 (1)(a)(iv)].</td>
<td>April, 2005</td>
</tr>
<tr>
<td>60.</td>
<td>Bihar Value Added Tax Act, 2005</td>
<td>Authorised to appear before VAT authorities appointed under Section 10 or the Tribunal or an Officer of the Bureau of Investigation constituted under Section 86 of the Act [Section 87(d)].</td>
<td>April, 2005</td>
</tr>
<tr>
<td>61.</td>
<td>Daman and Diu Value Added Tax Regulations, 2005</td>
<td>Authorised to appear before any VAT authority in connection with any proceedings under this Regulation. [Section 82(1)(b)].</td>
<td>April, 2005</td>
</tr>
<tr>
<td>62.</td>
<td>Goa Value Added Tax Act, 2005</td>
<td>Authorised to appear before any VAT authority including the Tribunal in connection with any proceedings under this Act [Section 82(1)(b)].</td>
<td>April, 2005</td>
</tr>
<tr>
<td>64.</td>
<td>Jharkhand Value Added Tax Act, 2005</td>
<td>To conduct VAT Audit under section 63(1). To appear before VAT authorities under Rule 51(1)(c)</td>
<td>February, 2006</td>
</tr>
<tr>
<td>65.</td>
<td>Karnataka Value Added Tax Act, 2003 read with Karnataka Value Added Tax Rules, 2005</td>
<td>Authorised to appear before any Authority other than the High Court in connection with any proceeding under this Act [Section 86 (c) read with Rule 168(2)(c) (iv)(b)].</td>
<td>April, 2005</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
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<tr>
<td>68.</td>
<td>Delhi Value Added Tax Act, 2004</td>
<td>Authorize to appear before VAT Authorities under section 82 (1)(b)</td>
<td>April 2009</td>
</tr>
<tr>
<td></td>
<td></td>
<td>my proceedings under this Act [Section 86(e)]</td>
<td></td>
</tr>
<tr>
<td>V FINANCIAL INSTITUTIONS</td>
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</tr>
<tr>
<td>69.</td>
<td>All India Financial Institutions</td>
<td>Certification with regard to the following:</td>
<td></td>
</tr>
<tr>
<td>(i)</td>
<td>Industrial Development Bank of India</td>
<td>(a) Necessary powers of a company and its directors to enter into an agreement.</td>
<td>July, 1981</td>
</tr>
<tr>
<td>(ii)</td>
<td>Industrial Finance Corporation of India</td>
<td>(b) Borrowing limits of a company under section 293(1)(d) of the Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up, and the actual borrowing.</td>
<td>December, 1981</td>
</tr>
<tr>
<td>(iii)</td>
<td>Industrial Credit and Investment Corporation of India</td>
<td></td>
<td>July, 1983</td>
</tr>
<tr>
<td>(iv)</td>
<td>Unit Trust of India</td>
<td>(c) List of Members of a company.</td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>Life Insurance Corporation of India</td>
<td>(d) Copies of resolutions passed at company meetings to be furnished to financial institutions</td>
<td>January, 1986</td>
</tr>
<tr>
<td>(vi)</td>
<td>General Insurance Corporation of India</td>
<td>Certification of documents relating to charges.</td>
<td>April, 1991</td>
</tr>
<tr>
<td>(vii)</td>
<td>Industrial Reconstruction Bank of India</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(viii)</td>
<td>Industrial Development Bank of India</td>
<td></td>
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<tr>
<td>VI BANKS</td>
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<tr>
<td>72.</td>
<td>(i) Indian Bank</td>
<td>Certification of documents relating to charges.</td>
<td>December, 1990</td>
</tr>
<tr>
<td></td>
<td>(ii) Bank of India</td>
<td>-do-</td>
<td>February, 1991</td>
</tr>
<tr>
<td></td>
<td>(iii) Andhra Bank (Eastern Region)</td>
<td>-do-</td>
<td>February, 1991</td>
</tr>
<tr>
<td></td>
<td>(vi) Vijaya Bank</td>
<td>-do-</td>
<td>March, 1991</td>
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<td></td>
<td>(ix) State Bank of India²</td>
<td>-do-</td>
<td>September, 1991</td>
</tr>
<tr>
<td></td>
<td>(x) Bharat Overseas Bank</td>
<td>-do-</td>
<td>September, 1991</td>
</tr>
<tr>
<td></td>
<td>(xi) State Bank of Mysore</td>
<td>-do-</td>
<td>October, 1991</td>
</tr>
</tbody>
</table>
### VII STATE LEVEL AGENCIES

#### 73. State Financial/Industrial Investment/Development Corporations:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Himachal Pradesh Financial Corporation, Shimla</td>
<td>(a) Necessary powers of a company and its directors to enter into an agreement. (b) Borrowing limits of a company under section 293(1)(d) of the Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up and the actual borrowing.</td>
<td>July, 1982</td>
</tr>
<tr>
<td>(ii)</td>
<td>West Bengal Financial Corporation², Kolkata</td>
<td>-do-</td>
<td>August, 1982</td>
</tr>
<tr>
<td>(iii)</td>
<td>Maharashtra State Financial Corporation, Mumbai</td>
<td>-do-</td>
<td>April, 1984</td>
</tr>
<tr>
<td>(iv)</td>
<td>UP State Industrial Development Corporation Ltd., Kanpur</td>
<td>-do-</td>
<td>December, 1985</td>
</tr>
<tr>
<td>(v)</td>
<td>Assam Industrial Development Corporation Ltd.², Guwahati</td>
<td>(a) Necessary powers of a company and its directors to enter into an agreement. (b) Borrowing limits of a company under section 293(1)(d) of the Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up and the actual borrowing. (c) List of members of a company. (d) Copies of resolutions passed at company meetings to be furnished to financial institutions.</td>
<td>March, 1982 October 1988</td>
</tr>
<tr>
<td>(vi)</td>
<td>Gujarat Industrial Investment Corpn. Ltd.², Ahmedabad</td>
<td>-do- (a) to (d)</td>
<td>October, 1982 August, 1986</td>
</tr>
<tr>
<td>(vii)</td>
<td>Nagaland Industrial Dev. Corpn. Ltd., Dimapur</td>
<td>-do- (a) to (d)</td>
<td>September, 1983</td>
</tr>
<tr>
<td>(viii)</td>
<td>Uttar Pradesh Financial Corpn., Kanpur</td>
<td>-do- (a) to (d)</td>
<td>September, 1983</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
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<tr>
<td>(ix)</td>
<td>State Industries Promotion Corpn. of Tamil Nadu Ltd.², Chennai</td>
<td>-do- (a) to (d)</td>
<td>October, 1983</td>
</tr>
<tr>
<td>(x)</td>
<td>The Tamil Nadu Industrial Investment Corpn. Ltd.³, Chennai</td>
<td>-do- (a) to (d)</td>
<td>November, 1983</td>
</tr>
<tr>
<td>(xi)</td>
<td>Karnataka State Indl. Invest. and Dev. Corpn. Ltd², Bangalore</td>
<td>-do- (a) to (d)</td>
<td>July, 1982</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>February, 1986</td>
</tr>
<tr>
<td>(xii)</td>
<td>The Pradeshiya Ind. and Investment Corpn. of UP Ltd., Lucknow</td>
<td>-do- (a) to (d)</td>
<td>March, 1986</td>
</tr>
<tr>
<td>(xiii)</td>
<td>Andhra Pradesh State Financial Corpn., Hyderabad</td>
<td>-do- (a) to (d)</td>
<td>June, 1982</td>
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<td></td>
<td></td>
<td></td>
<td>March, 1986</td>
</tr>
<tr>
<td>(xv)</td>
<td>The State Indl. and Investment Corpn. of Maharashtra Ltd², Mumbai</td>
<td>-do- (a) to (d)</td>
<td>June, 1982</td>
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<td></td>
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<td>April, 1984</td>
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<td></td>
<td>June, 1984</td>
</tr>
<tr>
<td>(xvi)</td>
<td>Haryana Financial Corpn.², Chandigarh</td>
<td>-do- (a) to (d)</td>
<td>September, 1982</td>
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<td></td>
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<td>April, 1986</td>
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<td>May, 1988</td>
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<tr>
<td>(xvii)</td>
<td>Punjab Financial Corpn., Chandigarh</td>
<td>-do- (a) to (d)</td>
<td>May, 1986</td>
</tr>
<tr>
<td>(xviii)</td>
<td>Andhra Pradesh Indl. Dev., Corpn. Ltd., Hyderabad</td>
<td>-do- (a) to (d)</td>
<td>May, 1982</td>
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<td></td>
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<td></td>
<td>June, 1986</td>
</tr>
<tr>
<td>(xix)</td>
<td>Rajasthan State Indl. Dev. &amp; Inv. Corpn. Ltd., Jaipur</td>
<td>-do- (a) to (d)</td>
<td>August, 1986</td>
</tr>
<tr>
<td>(xx)</td>
<td>Indl. Promotion &amp; Inv. Corpn. of Orissa Ltd², Bhubaneswar</td>
<td>-do- (a) to (d)</td>
<td>September, 1982</td>
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<td></td>
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<td>August, 1986</td>
</tr>
<tr>
<td>(xxi)</td>
<td>Gujarat State Fin. Corpn², Ahmedabad</td>
<td>-do- (a) to (d)</td>
<td>April, 1982</td>
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<td></td>
<td></td>
<td></td>
<td>September, 1986</td>
</tr>
<tr>
<td>(xxiii)</td>
<td>Kerala State Indl. Dev. Corpn. Ltd², Thiruvananthapuram</td>
<td>-do- (a) to (d)</td>
<td>August, 1986</td>
</tr>
<tr>
<td>(xxiv)</td>
<td>Rajasthan Financial Corpn.², Jaipur</td>
<td>-do- (a) to (d)</td>
<td>September, 1983</td>
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<td></td>
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<td></td>
<td>July, 1987</td>
</tr>
<tr>
<td>(xxv)</td>
<td>West Bengal Indl. Dev. Corpn. Ltd², Calcutta</td>
<td>-do- (a) to (d)</td>
<td>July, 1987</td>
</tr>
<tr>
<td>(xxvi)</td>
<td>Orissa State Financial Corporation</td>
<td>-do- (a) to (d)</td>
<td>July, 1987</td>
</tr>
<tr>
<td>(xxvii)</td>
<td>Bihar State Financial Corpn., Patna</td>
<td>-do- (a) to (d)</td>
<td>January, 1988</td>
</tr>
<tr>
<td>(xxviii)</td>
<td>Delhi Financial Corpn.², New Delhi</td>
<td>-do- (a) to (d)</td>
<td>August, 1988</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
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<tr>
<td>(xxix)</td>
<td>Manipur Indl. Dev. Corpn. Ltd., Imphal</td>
<td>-do- (a) to (d)</td>
<td>April, 1990</td>
</tr>
<tr>
<td>(xxx)</td>
<td>Pondicherry Indl. Promotion, Dev. &amp; Inv. Corpn. Ltd., Pondicherry</td>
<td>-do- (a) to (d)</td>
<td>December, 1990</td>
</tr>
<tr>
<td>(xxxii)</td>
<td>Gujarat Industrial Development Corporation</td>
<td>To issue certificate with regard to shareholders, and shareholdings of companies, for the purposes of transfer of industrial Plot/Shed.</td>
<td>May, 1999</td>
</tr>
<tr>
<td>(xxxiii)</td>
<td>Manipur Industrial Development Corpn. Ltd., Imphal</td>
<td>Secretarial Audit, once a year of the companies assisted by the Corporation</td>
<td>April, 1990</td>
</tr>
<tr>
<td>(xxxiv)</td>
<td>Assam Indl. Dev. Corpn. Ltd., Guwahati</td>
<td>Secretarial Audit, once a year, of the companies assisted by the Corpn. under the IDBI’s Refinance Scheme. However, companies having whole-time secretary need not perform Secretarial Audit, provided such Company Secretary submits a certificate of compliance of various provisions of law.</td>
<td>July, 1990</td>
</tr>
<tr>
<td>(xxv)</td>
<td>Gujarat Industrial Investment Corporation Ltd., Ahmedabad</td>
<td>Secretarial Audit, once a year, of the companies assisted by the Corpn. including the joint/associate sector companies of the corpn. However, companies having whole-time secretary need not perform Secretarial Audit provided such Company Secretary submits a certificate of compliance of various provisions of law.</td>
<td>June, 1991</td>
</tr>
<tr>
<td>(xxxvi)</td>
<td>Arunachal Pradesh Industrial Development &amp; Financial Corpn. Ltd., Naharlagun</td>
<td>Secretarial Audit, once a year, of the companies assisted by the Corporation.</td>
<td>August, 1991</td>
</tr>
</tbody>
</table>

**B. Secretarial Audit**

**C. Due Diligence Certificates/Search Report**

<p>| (xxxvii) | Gujarat State Financial Corporation | (i) Certification with regard to the compliance of various laws such as Factories Act, Safety Provisions and other local Acts, by the concerned borrowers. | May, 1999 |</p>
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
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</thead>
<tbody>
<tr>
<td>(ii)</td>
<td>Preparation of Search Report and other work connected with Registrar of Companies.</td>
<td></td>
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</tr>
<tr>
<td>VIII. GOVERNMENT DEPARTMENTS</td>
<td></td>
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</tr>
<tr>
<td>74.</td>
<td>Department of Agriculture and Cooperation, Ministry of Agriculture</td>
<td>To issue a certificate about certain prescribed details of a company chartering foreign fishing vessels, according to the guidelines issued by the Department of Agriculture and Cooperation.</td>
<td>July, 1987</td>
</tr>
<tr>
<td>75.</td>
<td>Entrepreneurship Department of Industries, Government of Orissa</td>
<td>A Company Secretary setting up industrial unit recognised as 'Special Class Entrepreneur' under the category of technical entrepreneurs (Special class entrepreneurs are eligible for 5% extra capital investment subsidy and other additional privileges for setting up industries).</td>
<td>August, 1992</td>
</tr>
<tr>
<td>76.</td>
<td>Department of Telecommunication, vide its Guidelines No. 820-1/2006-LR, dated 24.8.2007</td>
<td>The “Guidelines and General Information for Grant of Licence for Operating Internet Services” authorise Company Secretaries to issue certificate on net worth of the Companies. The Guidelines provide that a company having ISP licence and a net worth of Rs. One Hundred crore or more can only offer IPTV services subject to approval from Licensor. A certificate from Company Secretary (certifying the net worth of the company) is to be submitted</td>
<td>August, 2007</td>
</tr>
<tr>
<td>77.</td>
<td>Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, vide its ref. no. 18(8)/2005-GM dated 22nd June 2007</td>
<td>The Guidelines on Corporate Governance for Central Public Sector Enterprises 2007 provide that the company shall obtain certificate from practicing Company Secretary regarding compliance of conditions of corporate governance as stipulated in these Guidelines and Annexes.</td>
<td>June, 2007</td>
</tr>
<tr>
<td>IX</td>
<td>HIGH COURT</td>
<td></td>
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</table>
Recognitions Secured for Company Secretaries

<table>
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<tr>
<th>Sl. No.</th>
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<th>Purpose</th>
<th>When Obtained</th>
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<tr>
<td>X</td>
<td>ANCILLARY</td>
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</tbody>
</table>

1. Secretary of Company can also undertake such assignment.
2. In addition, certificate in respect of search reports from the records maintained by the office of the Registrar of Companies will be accepted.

II. FOR A COMPANY SECRETARY IN EMPLOYMENT

1. Ministry of Education
   Appointment of superior posts and services under the Central Government.
   February, 1968
   December, 1971
   July, 1981

2. Section 2(45) of the Companies Act, 1956
   “Secretary” redefined to include, a member of the Institute appointed to perform the duties which may be performed by a secretary under the Act and other ministerial or administrative duties.
   May, 1988
   w.e.f. 15.6.1988

3. Section 383A of the Companies Act, 1956 read with Companies (Appointment & Qualifications of Secretary) Rules, 1988
   (i) Every Company having a paid-up share capital of Rs. 5 crores or more to employ a whole-time secretary who is a member of the Institute.
   February, 1975
   (as amended in December 1988, April 1993, and in June, 2002)
   (ii) Pass in Intermediate examination of the Institute eligible for appointment as whole-time secretary in case of companies having paid-up share capital of less than Rs. 5 crores.
   October 14, 2003
   (iii) Pass in Intermediate examination of the Institute eligible for appointment as a whole-time secretary in case of a company with its registered office and corporate office and works situated in towns with a population of less
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Statute/Authority</th>
<th>Purpose</th>
<th>When Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Section 581X of the Companies Act, 1956</td>
<td>Every producer company having an average annual turnover exceeding five crores rupees in each of three consecutive financial years to have a whole-time secretary who is a member of the Institute.</td>
<td>February 6, 2003</td>
</tr>
<tr>
<td>5.</td>
<td>SEBI vide circular Letter No. SMD/POLICY/CIR-12/99 dated 18.5.1999</td>
<td>Compliance officer to be appointed by Listed companies in Compliance with Circular No. SMD/POLICY/CIR-06/98 dated February, 12, 1988, shall be the Company Secretary of the Company.</td>
<td>May, 1999</td>
</tr>
<tr>
<td>7.</td>
<td>Central Government (Ministry of Corporate Affairs)</td>
<td>Qualification for recruitment to Grades I to IV in the Accounts Branch of the Central Company Law Service.</td>
<td>November, 1982</td>
</tr>
<tr>
<td>8.</td>
<td>Ministry of Home Affairs, Department of Personnel and Administrative Reforms</td>
<td>Empanelment of Company Secretaries for assignment of Indian experts to the developing countries of Asia, Africa and Latin America.</td>
<td>March, 1984</td>
</tr>
<tr>
<td>10.</td>
<td>Government of Tamil Nadu, Personnel and Administrative Reforms (Personnel) Department,</td>
<td>ACS is specialized as one of the qualifications for the purpose of Group ‘A’ appoint-</td>
<td>March, 1988</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Statute/Authority</td>
<td>Purpose</td>
<td>When Obtained</td>
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<tr>
<td></td>
<td>Karnataka State Financial Corporation, Letter Pers/P-3214 dated 10.11.1989</td>
<td>ACS as one of the superior qualification for appointment to executive posts.</td>
<td>November, 1989</td>
</tr>
<tr>
<td>12.</td>
<td>(a) Govt. of India, Ministry of Personnel, Public Grievances and Pensions(Department of Personnel &amp; Training) O M No. dated 1/2/89-Estt.(Pay.I) dated 09.04.1999.</td>
<td>Employees passing Intermediate and Final Examinations of Company Secretaryship course are eligible for lump sum incentives of Rs. 2,000 and Rs. 4,000, respectively.</td>
<td>9th April, 1999</td>
</tr>
<tr>
<td>13.</td>
<td>Model Listing Agreement for Listing of Debt Securities SEBI/CFD/DIL/CIR-39/2004/11/01</td>
<td>Company Secretary or any other person to be designated as compliance officer.</td>
<td>November 01, 2004</td>
</tr>
<tr>
<td>14.</td>
<td>Model Listing Agreement for Listing of Indian Depository Receipts SEBI/CFD/DIL/IDR/1/2006/3/4</td>
<td>Issuer to appoint its Company Secretary as Compliance Officer.</td>
<td>April 03, 2006</td>
</tr>
</tbody>
</table>
INTRODUCTION

The Institute of Company Secretaries of India (ICSI) commenced its journey in 1968 as a company incorporated under section 25 of the Companies Act, 1956 by the Government of India. The Institute, converted into a statutory body under the Company Secretaries Act, 1980 with effect from 1.1.1981, has been entrusted with the responsibility of development and regulation of the profession of Company Secretaries.

The Company Secretaries profession has seen steady yet phenomenal growth, not only in terms of number of students and members, but more importantly in terms of its acceptance by trade and industry, regulators and other stakeholders. Today, the Institute has over 2,30,000 students pursuing the Company Secretaryship course and over 28,000 members, both in employment and in independent practice rendering services to corporates.

As is the case with any profession, the profession of Company Secretaries has evolved much, and that process continues. Factors such as stakeholder expectations, environmental factors, its strengths and weaknesses, the competitive landscape, are driving the pace and direction of the evolutionary process. Therefore, it is critical to track these factors closely, so as to be able to frame the right strategies and responses.

This ICSI Vision 2020 framework is a conscious effort to make such assessment and devise suitable strategies and action plans that will determine the pace and direction of the growth of the profession of Company Secretaries over the decade 2011-2020.

In order to form the Vision of the Institute for the next decade it is very important to ascertain the expectations of the various stakeholders. So the first step towards formulating the ICSI Vision was to conduct a survey to understand the expectations of the stakeholders of ICSI.

STAKEHOLDERS’ EXPECTATIONS

Trade and Industry

Industry, while appreciating the role of Company Secretaries in promoting good governance practices, compliance management and board processes, expect the members:

• to be a versatile and strategic resource to industry and emerge as ‘Corporate Advisors’ and ‘Corporate Managers’;
• to be involved in frontline activities of fund management, wealth creation and business management and to exhibit business attitude;
• to develop executive skills like decision making, leadership, team work and strength in the soft areas such as inter-personal skills;
• to carve out expertise in new areas like indirect taxation, governance of unlisted companies, risk management, SME sector;
• to carve out the USP of the profession as a whole and provide rigorous training to members;
• to develop and conduct sector specific training programmes for members; and
• to collaborate with-sector specific bodies e.g. Indian Banking Association, IRDA, AMFI to conduct joint certification programmes for members rendering services in those sectors.

Regulators

Highly valued and relied upon by the regulators, Company Secretaries need:
• to develop expertise in drafting and documentation, as well as advocacy skills; and
• to be enthusiastic about capitalizing on new opportunities.

The regulators opined that there is a need to improve presentation skills, managerial skills and drafting and pleading skills.

Members in Employment

Members in employment expect a distinct and visible brand image for the profession, enhanced employment opportunities and their positioning not only as ‘Corporate Managers’, but “Top Management” potential. Members feel that more specialized courses at PMQ level/short term courses would help them to diversify into new areas. Better networking with industry, regulators and professional bodies abroad and with international organizations would be required for growth of the profession.

Members in Practice

Members in practice expect more and more exclusive recognitions from the Government, a distinct brand image for the profession, a strong practice side and their positioning as ‘Corporate Advisors’. Members feel that more seminars, trainings, practical exposure and specialized courses at PMQ level/short term courses would help them to diversify into new areas. Better networking with regulators and with industry and professional bodies would be required to strengthen the practice side of the profession.

Students

Students are the life line of the profession. In addition to seeking good career opportunity, students take pride in pursuing a course that is distinct from others, giving them specialized knowledge. They expect quality and timely services, timely upgrading of the syllabus, quality study material, a robust training structure, practical oriented examinations, programs on soft skills and personality development, placement support, good infrastructure at the local Chapters, good oral coaching services and collaborative arrangements with reputed institutions, so as to be able to broad-base their professional knowledge and skills.

Society

Society is the first and foremost stakeholder. It expects the Institute to provide employment opportunities to students by imparting high level knowledge and training; play
the role of conscience keeper and torch bearer in educating the corporate sector about
corporate governance and corporate social responsibility; promote investor education and
protection; train and develop management leaders including independent directors and
organize campaigns in areas such as blood donations, tree planting, cleanliness, voluntary
services, etc.

Employees

Employees are aware that their career prospects will grow in tandem with the growth of
the profession; therefore they expect to focus more on the corporate sector for better
absorption of members and to have better coordination with the government. Employees
wish to make ICSI a world class institution and project it as such.

Environment

The economic reforms initiated by the Government of India in the early-nineties and
since pursued by successive governments, have led to freeing business from the shackles of
licenses and controls. Several sectors such as telecom, automobiles, insurance, electricity,
civil aviation, power, etc. have been thrown open to private participation.

The last two decades have seen the enactment of new laws and amendments of the
existing laws to pave the way for economic reforms. SEBI Act, Depositories Act, TRAI Act,
FEMA, IRDA Act, CERC Act, IT Act, Competition Act etc. are some of these legislations.

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

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

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

The coming decade is expected to broaden the opportunities for the profession. A new
company law, renewed focus on corporate governance standards, demand for corporate social
responsibility, adoption of XBRL, convergence with IFRS etc. - all these are expected to
provide more and diversified opportunities to the members.

The coming decade will require looking beyond traditional and conventional opportunities
to opportunities on a wider canvas. Traditional barriers should give way to a broad vision
and a modern mindset. Value addition and stakeholder wealth maximization will be the key
‘mantras’ to be able to adapt, survive and grow in the market place, whether in employment
or in practice. Multi-tasking and versatility would be among the required skill sets to reach
the pinnacle of the professions. Entrepreneurial skills and intelligent risk taking will also be
critical. In a nutshell, a totally new orientation would be required in the coming decade; a transformation of sorts.

Technology has changed business processes in the last two decades. Even the Government has been shifting its focus towards leveraging Information Technology in all aspects of governance. MCA-21, the e-governance project of Ministry of Corporate Affairs (MCA) and dematerialization of securities are the most successful IT programmes of the last two decades which are directly connected with the profession of Company Secretaries. With the initial inhibitions overcome, it has been proved that technology advancements are not only inevitable but are in fact facilitators of growth. So, the Institute and the profession of Company Secretaries need to leverage advancements in information technology to remain competitive.

MISSION AND VISION

Based on the expectations of various stakeholders the Institute has formulated the new Mission and Vision Statement.

**Mission Statement**

“To develop the high calibre professionals facilitating good Corporate Governance.”

**Vision Statement**

“To be a global leader in promoting Good Corporate Governance”

STRENGTHS-WEAKNESSES-OPPORTUNITIES-THREATS

The profession of Company Secretaries has to realize its strengths and build upon them to harness the full potential in all spheres of its activities, namely student enrolment across the country, quality of education and examination, training, placement, professional development, visibility, global reach, linkages with stakeholders, recognitions and diversification.

Some of the strengths of the Institute and profession to be further augmented and leveraged as a base for carrying the profession to the next level of prominence and proficiency in the coming decade include: statutory recognition, prominent role in promoting compliance management and good corporate governance, student trust and confidence, Government and regulator trust and confidence, industry confidence and recognition, brand value, proximity to the Board and top management, range of services being provided by its professionals, uniqueness of the course supported by strong training structure, continuing education programs for the development of the members, democratic governance and effective administration with efficient disciplinary mechanism, sound financial position of the Institute, and credible performance of the members.

The process of evolution has also thrown some challenges, and these require prompt attention. These could be converted into opportunities by taking focused approach. The steps include creating greater awareness about the course, striking a better balance between growth of students and members, and infrastructure, improving the practical orientation of the course and training contents, examination pattern, placement mechanism, better coordination with industry, improvement in interpersonal skills and developing entrepreneurial skills - these are some of the such areas which would require concerted efforts.
The opportunities are immense and will only increase in the coming decade due to strong demand factors, among them new thrust on corporate governance and corporate social responsibility, diversification of the profession into new areas, emergence of global professional services, new forms of organization such as LLP, OPC etc., potential opportunities in upcoming fields like NCLT, competition laws, insolvency laws, KPOs, LPOs etc. Therefore, the right knowledge, skills and attitude would have to be developed to help the members take full advantage of these opportunities.

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

OBJECTIVES, STRATEGIES AND ACTION PLAN

To meet the expectations of stakeholders and to convert them into implementable propositions, short, medium and long term, objectives, strategies and Action Plan need to be devised. These have to be clear cut and actionable.

Members in Employment

The objective of the strategy for the members in employment shall be to enable them to become ‘Corporate Managers’ responsible for total compliance management and adoption of good corporate governance practices along with adding value and maximizing wealth for the company and its stakeholders as a part of the management through:

- creation of employment opportunities in new sectors and areas through interaction and coordination with industry and regulators;
- institutional placement support mechanism;
- improving knowledge skills and approach commensurate with the demands of a dynamic environment.

The ICSI’s Centre for Corporate Governance, Research and Training will play a significant role in this regard. It is expected to enable the designing and conducting of pilot training programmes for honing the skills particularly of senior members, to create a pool of trained persons who would be in a position to function as Directors. This will help in creating a career path for Company Secretaries.

Members in Practice

The objective of strategy for members in practice shall be to enable them to serve as ‘Corporate Advisors’ providing sound and efficient compliance management, advisory and representational services in all areas of corporate activities through:

- more and exclusive statutory recognitions;
- improvement in advisory and advocacy skills;
- diversification into new and emerging areas;
• capacity building in new areas;
• tapping the SME sector.

Profession

The objective of the strategy for the profession as a whole shall be to continuously develop the highest calibre professionals for facilitating good corporate governance, through:

• more and exclusive recognition from the industry and regulators;
• explore opportunities in sectors that have huge potential, like banking, insurance, PSUs etc.
• creation of visibility and brand value for the profession;
• bringing a global perspective to all aspects of the profession;
• continuous educational and professional development;
• imparting specialized knowledge through specialized courses;
• promotion of good corporate governance nationally and internationally;
• conduct international conferences and seminars;
• quality services to students and members;
• cutting edge research in corporate governance; and
• fulfillment of its obligations towards society.

Students

The objective of the strategy for students in the coming decade shall be to attract bright and talented students, and transform them into versatile corporate professionals by providing the best education and training and enable them to become Corporate Managers/Corporate Advisors through:

• a high quality education and examination system;
• robust training mechanism with special focus on soft skills;
• enhanced placement opportunities;
• quality of services.

THRUSTR AREAS FOR NEXT DECADE

The changing business and regulatory environment and the ever increasing expectations of stakeholders will be the norm in the future. It is extremely important not only to reshape and reposition the profession with long term vision and futuristic thinking but also to design and implement the action plan effectively, and in a timely way. The underlying objectives and focus of the Institute in the next decade shall be to:

1. meet the expectations of the trade and industry in terms of value added services;
2. sustain the faith and trust of the Government and regulators through demonstrating the highest level of professionalism;
3. provide leadership in the promotion of good corporate governance and corporate social responsibility; and to establish benchmarks of good Corporate Governance Practices at its Centre for Corporate Governance, Research and Training;

4. enable members in employment to become “Corporate Managers” occupying management positions involving frontline activities and decision making processes;

5. conduct workshops at Regional and Chapter levels as well as residential workshops at its Centre for Corporate Governance, Research and Training to build capacities of the members in practice to become “Corporate Advisors”;

6. motivate and support members and to help them diversify into new and emerging areas of employment and to become independent professionals;

7. improvement in examination, training, and continuous professional development;

8. transform the Institute into a world class professional body by leveraging technology for upgrading infrastructure facilities at all levels, training and reorientation of employees and improving the quality of services to all its stakeholders;

9. enhance the visibility and brand value of the profession;

10. maintain and enforce the highest standards of professional values and ethics.

**TOP 10 GOALS FOR 2011-14**

The top 10 goals for 2011-14 shall be to:

1. develop a cadre of competent professionals;

2. improve infrastructure with special attention to Regional Offices and Chapters;

3. make ICSI the best institute to deal with;

4. provide best training to the students;

5. continuous interaction with regulators and industry;

6. enhance placement opportunities;

7. improve the visibility of the profession;

8. increase membership strength;

9. enhance financial resources; and

10. provide leadership globally.

*Original Vision 2020 is available at the Institute’s Website [www.icsi.edu](http://www.icsi.edu).*
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<td>(Rs. 400/- for updated edition if any of the previous editions is returned back)</td>
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