

8th National Conference of Practising Company Secretaries

**Friday & Saturday, December 14-15, 2007
THE ATRIA HOTEL, BANGALORE**

Embracing Winning Strategies



The Institute of
Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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PROGRAMME SHEET

Friday & Saturday, December 14-15, 2007

THE ATRIA HOTEL, NO. 1, PALACE ROAD, BANGALORE - 560 001

FRIDAY - DECEMBER 14, 2007

<i>Registration of Delegates</i>	9.00 A.M. to 10.00 A.M.
INAUGURAL SESSION (10.00 A.M. to 11.00 A.M.)	
<i>Welcome Address</i>	Shri C Sudhir Babu, <i>Council Member, The ICSI and Programme Director</i>
<i>Introduction of Chief Guest and Key-Note Speaker</i>	Shri S Diraviam, <i>Chairman, SIRC of The ICSI and Programme Coordinator</i>
<i>Theme Introduction</i>	Shri Nesar Ahmad, <i>Chairman, PCS Committee</i>
<i>Address by</i>	Shri Keyoor Bakshi, <i>Vice President, The ICSI</i>
<i>Presidential Address</i>	Ms. Preeti Malhotra, <i>President, The ICSI</i>
<i>Key-Note Address</i>	Shri S D Shibulal, <i>COO, Co-founder & Member of the Board, Infosys Technologies Ltd.</i>
<i>Inaugural Address</i>	Dr. A Jayagovind, <i>Vice Chancellor, National Law School of India University, Bangalore</i>
<i>Arranging Release of</i>	
<i>Guidance Note on Preferential Issue of Shares</i>	Shri G V Srinivasa Murthy, <i>Chairman, Bangalore Chapter of The ICSI</i>
<i>Vote of Thanks</i>	Shri N.K. Jain, <i>Secretary & Chief Executive Officer, The ICSI</i>
<i>National Anthem</i>	
<i>Tea Break</i>	11.00 A.M. to 11.30 A.M.
FIRST TECHNICAL SESSION (11.30 A.M. to 1.00 P.M.)	
Interactive Session on MCA 21	Shri Y S Malik, <i>Joint Secretary, Ministry of Corporate Affairs</i>
<i>Lunch Break</i>	1.00 P.M. to 2.00 P.M.
SECOND TECHNICAL SESSION (2.00 P.M. to 3.30 P.M.)	
Communication Skills & Service Deliverables	Shri Ian Faria, <i>Principal Trainer & Founder, Academy PEP, Bangalore</i>
<i>Tea Break</i>	3.30 P.M. to 3.45 P.M.
THIRD TECHNICAL SESSION (3.45 P.M. to 5.00 P.M.)	
Challenges, Risks & Opportunities for PCS	Shri Mahesh Anant Athavale, <i>Past President, The ICSI & Partner, Kanj & Associates, Company Secretaries, Pune</i>
	Shri V Raghuraman, <i>Advocate, Bangalore</i>
Get Together & Dinner	7.00 P.M. onwards
(Venue : Century Club, Cubbon Park)	

SATURDAY DECEMBER 15, 2007

Interaction with President, Vice President Secretary & CEO and PCS Committee Members	9.00 A.M. to 10.30 A.M.
<i>Tea Break</i>	10.30 A.M. to 10.45 A.M.
FOURTH TECHNICAL SESSION (10.45 A.M. to 12.15 P.M.)	
Public Offers and Role of PCS	Shri K Sethuraman, <i>President Secretarial Reliance Industries Limited</i>
	Shri Arjun Lall, <i>Principal Associate, Amarchand & Mangaldas & Suresh A. Shroff & Co., Bangalore</i>
FIFTH TECHNICAL SESSION (12.15 P.M. to 1.45 P.M.)	
Emerging Scenario — Competition Law	Shri G R Bhatia, <i>(Former Addl. Director General, CCI), Head Competition Law Practice, Luthra & Luthra Law Firm, New Delhi</i>
Limited Liability Partnership	Shri A Murali, <i>Partner, AZB & Partners, Advocates & Solicitors, Mumbai, New Delhi & Bangalore.</i>
VOTE OF THANKS (1.45 P.M. to 2.00 P.M.)	
	Shri N K Jain, <i>Secretary & CEO, The ICSI</i>
<i>Lunch</i>	2.00 P.M. to 3.00 p.m.

ARTICLES

PROFESSIONAL EXCELLENCE AND VALUE ADDITION — MUTUAL CAUSAL RELATIONSHIP

N K JAIN*

With reference to the primeval cause, the philosophy tells us that the cause and effect relationship is inscrutable. Which is the cause of which, or the effect of which is a question beyond explicability. Yet the primeval cause and effect, that is its creation, holds a mutual, inalienable relationship. This perplexity of inscrutable relationship is the beauty of the Creator and His creation. Professional excellence and value addition to business, perhaps, share the same relationship. Whether value addition leads to professional excellence or professional excellence leads to value addition to business may therefore remain a mystical unanswered question.

Value creation is a process. Like in any other creation, the creator needs to bring the value out of her through enormous transformation. To take a cue from Angie Watkins [TOI, July 29, 2007]:

“It is like a caterpillar that eventually metamorphoses in to a beautiful butterfly. All of God’s creations, and professionals are the preferred ones i believe, have the ability to turn into beautiful butterflies.

“But not all God’s creations will become beautiful butterflies. Why is that? A caterpillar does not allow itself to be free from self. Whether it is through weakness or fear, a caterpillar must break free from what is holding it back by realizing it can become a butterfly.

“A butterfly is free from the restraints of self. A butterfly has to grow out from self and now seeks to love others with all the love it has while a caterpillar is still seeking to be loved by others. Unfortunately, many caterpillars do not know they have the ability to become butterflies and so remain in their cocoon until they die.

“Come out of your cocoon and be the butterfly you were always meant to become. Learn to know who you are by having a truly honest relationship with yourself. Grow out of any negativities that may be wedged into your mental and spiritual capabilities.

“Low selfworth, fear, mistrust, insecurities, sin and unbelief will keep you from discovering the natural and true person you really are.”

THE VISION

The Institute’s vision is to be global leader in developing professionals specializing in corporate governance. Corporate governance, without in any way undermining the importance of compliance, is a creative process. Whether you look at corporate governance applying the Agency Theory; Stewardship Theory; Stakeholders Theory or Sociological Theory, corporate governance is corporate performance. Performance is essentially adding value and creating a strong chain of continuous value addition in multiple dimensions.

The creative aspect of corporate governance possesses several daunting challenges especially in the context of globalisation of corporate affairs. Without its being creative and impeccably value-additive, how can governance in a company enable it to

- Give employees a world-class environment to work and learn
- Give them a high quality of life and wealth creation opportunities
- Replace obsolete technology regularly to remain at the cutting edge

* Secretary & CEO, The ICSI. The article has been published in the Backgrounder of the 35th National Convention of Company Secretaries held on September 20-22, 2007 at Jaipur.

- Emphasize on quality by benchmarking against the best processes in the world
- Commit itself to business ethics and corporate compliance ?

DISCIPLINES

As specialist in corporate governance, Company Secretaries need to continuously own the responsibility that the corporate sector creates a governance culture that is able to generate wealth in a sustainable, ethical and socially beneficial manner. Value addition and value creation are not mere buzzwords. Today they have become disciplines. Customer centric culture and customer orientation are the primeval causes. The linkage between the causes and the resultant value is a process that involves continuous creativity. Creativity comes handy when we give a go-by to deductive logic and vertical thinking and adopt lateral thinking, reverse logic and, above all, orient ourselves to customer centric thought and action. Value may not be generated by a thought or behaviour that is rooted in selfishness and self centric trepidation. A release from oneself, a drive to come out of the restrictive personal or professional cocoon, unleashes creativity and value generation process.

VALUE

Value must necessarily be quantifiable and quantified. Value is either an accretion to an asset or to an asset generating capacity or an income or an income generating capacity that is added to the business. The asset may be intangible or tangible. An intangible asset is difficult to perceive, let alone to develop, sharpen and to bring it into being. It is also difficult to measure and quantify an intangible value. The difficulty is further intensified because services, especially professional services like those of Company Secretaries create intangible value. It is, therefore, essential that Company Secretaries do learn to ascertain the opportunities to identify, process and bring into existence intangible assets or income generating streams for the companies they are working for either in employment or in practice. Some professional services rendered by Company Secretaries may yet be amenable to be directly linked to a quantifiable benefit that accrues to the corporate. The examples are registration of a company, procurement of a license, registration of a patent, tax planning and tax saving. Yet the value must be unlocked from those services and professional time booked on an assignment by carrying out hard search for the value generated. In fact by proper planning, communication and co-creation of value before the booking of the professional time on an assignment, the professional will be able to create a sound platform for generation and acceptance of value generated through his professional work.

CHAMPIONING THE CAUSE

It is better that a Company Secretary regards herself as a champion for generating business value that is well defined, crystallized and anticipated in a given situation. This will enable him to take and seize the initiative, take the responsibility for carrying it through and thus ensure that the plan of action and implementation chosen by him has really added value that has been accepted and anticipated right from the beginning by those who matter. Now, this requires and presupposes thorough and updated knowledge, un-learning and de-learning a lot in order to imbibe the latest expected in a given situation and the mastering of skills, hard and soft.

With globalisation many opportunities and variety of openings are arising for adding value to business processes. Because of globalisation business are integrating, networking and collaborating even amidst competition. In fact cooperation is overtaking competition even where both are catering to the same market space. Information and communication technologies have especially contributed to bringing about this change of attitude and approach. This change of scene has created wonderful avenues for adding value to business only if the professional decides to live on the edge and reduce the space he is occupying by refusing to un-learn, de-learn and re-learn.

A champion is essentially made of a different material. Shorn of any negativities like diffidence, complacency, cheerlessness, heavy-footedness, low self-worth, low targets, lack of concentration, unwillingness to change, jealousy, etc., he is, first, a self-leader and works to be a leader of leaders. Championing is a continuous process, hard, harsh and yet heartening if pursued in the right earnest. And yet, in today's world a professional must master this process. Earning soft skills, communication skills, interpersonal skills, presentation skills, marketing skills and many others are the way to mastering the championing process. A little bit of mathematics and algebra, graphics and flow-charting, power point and flash, and a lot of cheer, enthusiasm, hard work, discipline and methodicity will earn the professional an initiation in to the championing process. It also requires thinking small and acting fast; asking questions and thinking results; staying fresh and stretching to grow; be creative and colouring outside the lines. All these and many more according to one's capabilities,

inclinations and skills will give the professional the necessary ground-start to climb up the professional ladder for championing business value.

STAGES

Creation of business value goes through several distinct stages. Identification and clear definition of opportunity to create value is the first stage. Yet it is preceded by an analytical and methodical study of a given business process or a given business objective. These skills of analysis and method in study need to be developed first. A huge amount of reading, observation, passionless and objective listening help the development of these skills. The development of lateral thinking, objective brainstorming, reverse analogy are the techniques the Company Secretary needs to master for this purpose. After identifying and defining the opportunity the Company Secretary needs to share the definition with the client and needs to discuss it in order to obtain his willing concurrence. The persuasive interactive skills come handy for this purpose.

After the opportunity is crystallized, the professional must work on developing the process of realizing the value hidden in the opportunity that is defined and shared. A number of organizational skills and team building help the development of this process as well as its implementation. The cost benefit analysis must proceed continually along the implementation of the process of realizing value. Benefits must be maximized while costs are minimized yet not at the altar of the loss of benefits or augmentation of the benefit.

As the process begins, obstacles are bound to arise. Here the patience, the perseverance, the humility of breaking the “Not-Invented-Here” syndrome will help the Company Secretary to tide over such obstacles and distractions. The attitude of converting obstacles in to value adding opportunities may also help. To give an example, when the sub-prime mortgage crisis hit the American economy and while there was a general feeling that the adverse effect on American economy and companies would affect the business of Indian software and BPO companies in America, the Infosys thought otherwise. It found that precisely because of that crisis American companies would try to find less costly off-shoring opportunities and Infosys would get more business; and still it decided that it should reduce its reliance on the American market that gave it 63% of its business to scale it down to 50% in order to enable it raise its rates 2 to 4% while diversifying to other markets. Many times obstacles come as opportunities in disguise. One’s thinking is the guide to one’s destiny.

COMPLIANCE MANAGEMENT

Corporate laws, corporate processes, corporate procedures, corporate regulatory work are all core domain of Company Secretaries. As crystallized commonsense of the corporate sector and corporate regulators, this vital domain is the wherewithal of Company Secretaries. Yet the master is always in the process of hard and meticulous learning, which is a never-ending process. A real master is humbler than a tentative student. Mastery is always elusive just like the pearls of mercury dropped on the floor. Hence, to keep up the mastery on the domain of core competency the regular practice in corporate laws and corporate secretarial practice through a scientific corporate compliance management will unleash great value for business.

Compliance, as is repeatedly observed, is not merely a tick-box exercise. To be truly understood it requires a systems approach and a systems thinking. It is not merely an exercise of finding faults and discovering shortcomings in observing compliance with the multifarious legal requirements and regulatory dictates. Compliance management should not, therefore, be a traditional management exercise that identifies problems and seeks solutions; identifies shortcomings and works towards causal relationships to remove the causes and remedy the shortcomings; locates errors of omission and commission and rectifies, through new steps, the omissions and reverses the errors of commission. Such a system of management, in the words of Peter Senge [The Fifth Discipline – published by Currency Doubleday] “has destroyed our people...The job of management in education, industry, and Government should be the optimization of a system”. Compliance management therefore, requires, as said earlier, a systems thinking or systems approach in order to maximize benefits and avoid achieving short-term benefits at the cost of long-term dis-benefit.

The postulates of systems thinking, as described by Peter Senge, are as follows:

1. Today’s problems come from yesterday’s solutions
2. The harder you push, the harder the system pushes back in
3. Behaviour grows better before it grows worse

4. The easy way out usually leads back in
5. The cure can be worse than the disease
6. Faster is slower
7. Cause and effect are not closely related in time and space
8. Small changes can produce big results—but the areas of highest leverage are often the least obvious
9. You can have your cake and eat it too—but not at once
10. Dividing an elephant in half does not produce two elephants
11. There is no blame.

Just to explain the last postulate of systems thinking, the thinking points out that we all tend to blame someone else—the competitors, the press, the changing mood of the market place, the Government—for their problems. Systems thinking shows us that there is no separate “other”; that you and the someone else are a part of a single system. The cure lies with your relationship with your “enemy”.

When applied to compliance management, systems thinking or systems approach bring creativity in to the so-thought mundane corporate legal and regulatory compliances. Only such creativity will enable Company Secretary to unleash value and bring in to being the value addition to business.

Systems thinking, when applied to Corporate Compliance Management, gives a wider perspective to the usually imagined tick-box exercise that plays a very limited and, at times, an irritating role. A mechanical approach to compliance management assumes a holier-than-thou role for the Company Secretary. It may lead to a pontificating role on the part of the compliance officer and a guilty role for those who are supposed to be compliant. This creates a dichotomy, which is an anathema to systems thinking. A true professional who wants to add value deliberately shuns such a pontificating role, for it creates only a broken organization that pitches egos against egos and leads to deceleration in value.

For corporate compliance management to become a value adding exercise, Company Secretaries need to imbibe systems thinking and ensure that the compliance management work becomes creative. Information technology is a tool and, as such, has an important yet limited role to play in corporate compliance management. Modern compliance management necessarily depends upon the use of information and communications technology to enrich and expedite the processes involved in compliance management. Company Secretaries need to also master the information and communication technology tools.

CALIBRATING COMPETENCIES

Competencies are innate or acquired and developed capabilities to add value. Competencies that do not add value, or create value but either lie dormant or derogate value, or fail to add value even when put into action, are not worth their salt. Hence they need constant calibration. Such calibration is driven either by the change dynamics that surround the competencies or by the changing expectations of those who demand the exercise of such competencies.

It is first necessary to identify, measure and take stock of available competencies and of the competencies that can be acquired and developed. Identification of competencies should lead to a clear understanding and appreciation of the available competencies through an interactive process, if such competencies are to be used for adding economic value to a business. These are kinds of strengths that are available to be put into effective use for the purpose of creating or adding value. But one should appreciate that many competencies are latent and unrealized. It is here that the professional needs to introspect and think hard so that a path is visualized to work upon, to bring such possible competencies to the fore. While available and identifiable competencies require constraint sharpening to create an edge, the latent and unidentified competencies need to be brought to the fore.

CHANGE-DRIVEN

When calibration of competencies is change driven, it is an enormous task for it is difficult to quantify, understand and estimate the extent and speed of change. One needs to be on top of the change. Since change itself is dynamic and therefore, difficult to behold calibrating competencies to take care of the change appears to

be an impossible task. But for a confident professional impossibility is non-existent. Tougher the challenge, tougher is his attitude and resolve to overcome the challenge. Drawing from the divine dance of change, stratagems are designed to calibrate competencies to meet and beat the expectations of those who matter.

There, where available competencies fall short, networking comes to help to meet the temporary or permanent shortfall. In the multi dimensional challenges that obtain today, if multi-tasking does not prove sufficient, multi-disciplinary networking is the right solution in the professional world.

New areas of professional work, new challenges, new opportunities and fluid circumstances throw up better avenues to calibrate competencies, acquire new competencies and support them by development of new skills for rendering value through professional services. Professional symposia, conferences, workshops, training programmes and soft skill development are some of the methods for such calibration and Company Secretaries need to go through all such exercises to keep competitive and in demand for value addition.

GLOBAL DIMENSIONS

Globalization, glocalization and think-global-act-local are not mere catch phrases today. Economies of the world are integrating faster than expected. One needs to understand a lot and derive tremendous lessons from the following short list of great global acts by India Inc:

Dishman Pharma & Chemicals taking over Solutia Inc, \$74.5 million; Jain irrigation Systems taking over 3 US Companies in Agro products, irrigation & manufacturing; GHCL taking over Best Manufacturing Group of US, \$35 million; Gitanjali Gems taking over Tri Star Worldwide, \$48 Million & Samuel Jewellers, \$44 million; Jubilant Organosys taking over PSI NV of Belgium; Wockhardt taking over Negma Laboratories, \$265 million; Ranbaxy taking over RPG Aventis; Tata Tea taking over Tetley; Suzlon Energy taking over Hanson Transmission of Belgium; Reliance Infocom taking over Flag Telecom of US; Asian Paints taking over Berger International in Singapore; Apollo Tyres taking over Dunlop of South Africa; Mphasis BPL taking over Princeton Consulting in UK; Patni Computers taking over Cymbal Corp in USA; Tata taking over Corus; Hindalco taking over Mount Garden Copper Mines, Australia; Tata Steel taking over Carborough Downs Coal project in Australia; Gujarat NRE Coke taking over Resource Pacific Holdings in Australia; ONGC Videsh along with Sinopec of China taking over Omimex of Texas.

Not an exhaustive list, yet an indicative list that gives the initiatives and forays of India Inc. into corporates abroad, this list makes one stand up to acknowledge what opportunities are being created for Company Secretaries. When such takeovers happen, the ball is set rolling in to different areas of corporate work. Every corporate department and function have to stretch and strain to keep pace with the work culture, compliance culture, behavioural change, cultural shocks, technology absorption and other multifarious aspects of situational fluidity. That is what creates special and undreamt of opportunities for Company Secretaries and other corporate professionals.

Company Secretaries must muster courage, vision and necessary sophistication in their attitudes and work culture in order to grab the vast and multiple opportunities that can be milked out of these phenomena. The uniqueness of a professional career is that the professional has to be both a mentor and a mentee or stooge of himself. In other words, she has to be the teacher and the taught, the guru and the disciple, in order to develop the competencies and skills required in the globalized corporate world. She has to develop the following attributes that Sunil Unny Guptan lists in his book "Mentoring" [Response Books Publications], namely:

1. Investment in learning and development
2. Success orientation
3. Altruism
4. Heightened self-awareness
5. Technical expertise in the chosen field
6. Focused approach / goal clarity
7. Communication skills
8. Empathy and sensitivity
9. Relationship skills
10. Conceptualization skills

To talk only about the conceptualization skill, "this is the one skill that normally lurks along the fringes, but is, in the case of the mentor, crucial to the work he has taken on. This is the ability to put things in perspective, evolve a pattern and concept out of the clutter of happenings, issues, behaviours etc. This has a very strong foundation in the ability to hold together a large number of divergent aspects of various things and see patterns and commonalities in them, to put them in some form of order, and in a sense create a concept out of them. This makes for approaching similar or comparable situations with better preparedness and familiarity."

It helps him understand and grasp the significance of apparently unconnected things and lead a more fruitful life, understanding how the various pieces fit into the bigger picture.

"Wider exposure to the ideas and thinking of the people with this particular skill, keeping an open mind, having the curiosity and inquisitiveness to explore, and trying to work out the rationale behind happenings goes in to building up conceptualization skills. This is one skill that takes long to acquire, but once acquired it is there to stay."

Even listening is an active activity. It involves in itself a repertoire of subtle skills: patience, understanding, awareness and clarity about the cues and messages, providing feedback. Effective listening and observation are crucial for developing the sophistication expected for adding value in the global context in which corporates operate today.

Globalization requires the professional accept increasing responsibility and to work towards that. Sunil Unni Guptan quotes Mother Teresa, "Give till it hurts". Increasing value addition at a lesser cost demands that professionals keep on increasing their value through up-to-date knowledge and skill inputs to themselves. When a professional does that, the entire company may start valuing him, at least to some extent, as a mentor and look for his advise. That is what calls for continuous investment in learning and development. This requires humility that comes with the belief that oneself can be a learner who can muster unbridled openness widening one's mental horizons with mind rooted to reality and practical possibilities. Such an attitude in the professional creates a positive energy and acts as a positive contagion.

CONCLUSION

It is said that excellence is exceeding all expectations. It is also said that anything that comes easy comes wrong. As professionals, Company Secretaries know that to do it well, to achieve success and to excel the excellence, client orientation, value addition and self -development are crucial factors. But well done is better than well said and all glory comes from the daring to begin. Today's times are challenging, corporates and clientele are demanding; the constant clamour is for value addition and value creation. It is only the essential values in life that lead to creation of economic value. It is truer for the professional than for anyone else. Yet ingenuity plus courage plus work equals miracles. Putting your heart into whatever you do creates positive energy and positive results for others too. A thinking head on the shoulders and a sensitive heart within helps one to mentor oneself into greater heights of achievement, enhancing self-worth, adding value and being recognized as a champion of excellence.

INDIAN ACQUISITIONS ABROAD — ROLE OF PROFESSIONALS IN CHANGING PARADIGM

V K AGGARWAL*

Indian companies, over the last decade, have been gradually gearing up to spread their reach in other jurisdictions to become transnationals. India Inc. is not only scaling up the size of its overseas acquisitions, but there have been several instances of Indian companies buying out companies abroad that are far larger in size compared to them.

World Investment Report, 2006 recognises that "India dominates the list of leading Transnational Corporations (TNCs) from South Asian Region. With the increased openness of the economy since the mid-1990s, Indian firms have begun to go global. In several industries - software and IT services, pharmaceuticals and biotechnology, hotels and hospitality, automotives and other branded products - they have diversified their operations and investments across the world. Although most Indian outward FDI stock is still in manufacturing, overseas investment in software and IT services has grown rapidly along with pharmaceuticals. Large Indian companies in industries such as steel and chemicals have also begun to internationalize by acquiring upstream companies".

ACCENTURE SURVEY

Accenture and the Economist Intelligence Unit in the first half of 2006, surveyed senior executives in North America, Europe and Asia on their mergers and acquisitions (M&A) activities and their experiences in integrating companies. Similar survey was also administered to 156 executives based in India during the fourth quarter of 2006.

Of the total respondents in India, 40% were senior-level. About 64% were from companies that had global annual revenues of US\$100m or more and 36% had revenues of US\$1bn or more. 45% executives mainly played roles in strategy and business development and 42% in general management. Their companies were from a wide range of industries, including financial services (25%), IT and technology (21%) and professional services (13%).

Key findings of the survey and their comparisons with the North America/Europe and Asia presents the following picture :

M&A is becoming more important as a growth strategy. When asked to estimate the percentage of their company's total global revenue growth that has come from M&As in the last three years, only a quarter of respondents said that it was 20% or more. But when asked to forecast what would happen in the next three years, 57% of respondents said that this amount of growth would come from M&As. About 74% of the respondents had made an acquisition, and of these, 54% reported that the most recently acquired companies were domestic. In fact, 67% agreed that they find cross-border acquisitions generally more difficult than acquisitions in the domestic market. Far more domestic deals were conducted by Chinese (98% of respondents) and Japanese (84%) companies recently. In contrast, companies surveyed from North America and Europe conducted more cross-border acquisitions (58% of those who conducted M&As) recently.

Nevertheless, respondents from India said that companies in their industry will be driven to conduct cross-border deals in the next five years mainly to guarantee the profitability of the business (58%), to meet corporate strategy targets (52%) and to diversify the company's know-how (48%). This was similar to the results from the other countries.

* Principal Advisor, The ICSI. The article has been published in the Backgrounder of 35th National Convention of Company Secretaries held on September 20-22, 2007 at Jaipur.

Most Indian companies have a clear M&A strategy. About 71% of the Indian executives said that they have a clear strategy for the markets they want to enter and 40% said that they have identified specific target companies. Similarly, 77% of the respondents from western countries made similar statement. However, they were less confident given that only 18% stated that their company had identified targets. In complete contrast, only 13% of Japanese executives said that their company had a clear strategy and only 3% were sure that specific targets were identified.

US, India and the UK - Top M&A Markets : When asked which countries would be of greatest interest for M&A activity in the next three years, Indian respondents most often expected a deal in USA followed by UK and Brazil. The most popular response by Western executives was also the US. The Chinese executives were most interested in a domestic deal, followed by USA, Brazil and Canada. Japanese respondents showed most interest in their domestic market, followed by other Asian markets (China and Thailand) and India.

Regulations and Local Management Integration : Respondents from Indian companies cited legal and regulatory compliance and local management integration as the top two challenges for making cross-border acquisitions. These issues also topped the list of major concerns for Western executives, but they also included conducting due diligence. Japanese respondents also said that management integration was a challenge, but most problematic was conducting due diligence.

Due Diligence : Respondents in India said that the most critical element for a successful domestic or cross-border M&A transaction is conducting due diligence. This was also one of the top responses for Western executives, but the most popular was orchestrating and executing the integration process. Chinese executives believed that the most important element was to develop an M&A strategy.

Organisational Structure and Cultural Issues : Organisational structure and cultural issues were found to determine the success of integrations. To ensure successful integration of a domestic company, establishing clear organisational structure and accountabilities was most frequently viewed as critical (by about 43% of respondents in India). For integrating a cross-border company, 33% stated that addressing cultural issues was critical. These views were also shared by Western executives.

PARADIGM SHIFT

The year 2006 would be seen as most exciting year in the history of corporate India. It was a year when Indian companies went shopping across the globe and acquired a number of strategically significant companies. Indian outbound deals, or global merger and acquisition valued at USD 4.3 billion in 2005, crossed the USD 15 billion mark in 2006 and it is estimated, it could breach the USD 35 billion level in the year 2007.

In the first half of the year 2006, for the first time ever, the total value of outbound deals exceeded that of inbound deals. In the first nine months of 2006, Indian companies announced 115 foreign acquisitions with a value totaling \$7.4 billion registering roughly a seven-fold increase from 2000.

DRIVERS OF CHANGE

A combination of factors is responsible for this paradigm shift in outbound merger and acquisition activities in India. Major among others include -

PROFITABILITY AND THE COST ADVANTAGE

One of the attributes of the booming economy is that the incomes of Indian companies in some sectors have grown phenomenally, enabling them to have access to significantly more capital than in the past. Additionally, many companies do not have much debt and hence, their capacity to borrow is better. They can borrow sizeable amounts of cash, which can be deployed for acquisitions. Finally, the cost effectiveness of Indian companies is the key driving factor that helps to ensure value for dollar for the global consumer.

WILLINGNESS TO TAKE ON RISK

Indian companies are high on organic growth and are increasingly going global because home markets do not have the scale or the resources to allow them to deliver the levels of shareholder value and competitive advantage they aspire to achieve. Today, Indian companies are willing to take on a greater degree of risk than before. The companies are now realizing the benefits that taking on additional and calculated risk can bring. The financial strength is also contributing to the confidence of Indian companies to take calculated risk.

CHANGING REGULATORY ENVIRONMENT

Regulatory changes in India, resulting from market oriented policies being pursued since 1991, have made it easier for companies to go for overseas acquisitions. It has played the role of a facilitator in realizing the global ambitions of the Indian corporate sector. As foreign exchange reserves have grown, the RBI has progressively relaxed the controls on outbound investments making it easier for Indian companies to acquire or invest abroad. A number of amendments to the RBI guidelines have effectively raised permissible investment limits and streamlined processes.

The emerging paradigm reflects that India Inc. is going to dominate international business scenario by achieving truly global character. This will require our professionals particularly Company Secretaries to attune themselves to contribute to the global vision of corporate India. The expectations from professionals may be gauged from the article. "Global Corporation" authored by Dr. J J Irani. He observed that a corporation, to be considered truly global, must possess certain key attributes. It must have a global reach; it must be instantly recognisable in global markets; it must have global finance at its disposal and it must be staffed by representatives of a global population. Its products should have global appeal and it should meet the aspirations of global communities. Its stakeholders too should be a global community. Unless all these criteria are fulfilled, no organisation can claim to be a global corporation.

It must be remembered that globalisation is not just the sum of individual parts; it is not enough for a few companies in the group to demonstrate global competitiveness. The whole corporation must display a global presence. There are other things that distinguish a truly global corporation. There must be a seamless movement of people, processes and technology across all the locations in which the corporation operates. There can be no geographical or racial boundaries. Each part of a global corporation must have access to the other units across the globe. There must be a feeling of belonging to the greater whole.

The advantage of a truly global corporation is its ability to move its products, monies and its skilled people quickly and efficiently to those areas where they are most required at a given moment of time. Another advantage is the leveraging of financial strength across geographical boundaries. The availability of appropriate finances at the right location and time is a tremendous advantage for multinationals and crucial in making a corporation globally successful. Investments in one region might require a considerable outlay of money and if that region cannot provide it, the global corporation has the advantage of leveraging its financial strength from other areas of the world where it has already built up reserves.

Being a global entity involves having employees, assets, manufacturing facilities and marketing offices in multiple countries overseas. A company is dependent on the overseas economy when it becomes a global company.

The product quality and pricing of a company must be competitive with those of global players. A company can call itself globalised only when it meets competition both inside and outside the country.

Leveraging the nation's comparative advantage of knowledge, Indian companies have grown through acquisitions, built best-in-class competency and become large-scale players. These companies have been growing organically and also inorganically, through strategic overseas acquisitions which give them access to new technology and proximity to new and lucrative markets.

ROLE OF PROFESSIONALS IN CHANGING PARADIGM

The results of Accenture survey which indicates towards cross border ambitions and strategies and the critical issues and Dr. J J Irani's prescription of a global corporation, clearly present a road map for professionals to prepare for changing paradigm. We have seen that the mergers and acquisitions (M&A) today is a growing route for businesses to expand globally. Therefore, Company Secretaries need to be aware of the laws in various jurisdictions. In international M&A, companies play in a jurisdiction where they are not too familiar with local regulations and socio-political issues. The due diligence process is very different and cultural issues are also significant.

Another major factor is the environmental risk. If an Indian company acquires a domestic company, it knows provisions of the environmental pollution laws to comply with. But if an Indian company acquires a company in the US, it becomes important to learn more about environmental laws. The viability of the project can be affected

by environmental issues. Issues of tax and transfer pricing also becomes critically important before engaging in business overseas. Thanks to advancements in information technology and getting knowledge has now become easy. Now any one can access the government website and download the relevant law and other information.

Different Scenario : The business and regulatory environment in India differs from the environment in other jurisdictions. Each country has its own set of regulatory framework in terms of legal and judicial system, tax regime, social and cultural peculiarities and business dynamics. There are very few jurisdictions having similar conditions of doing business. This infact requires professionals to have wider perspective and understanding of not only legal and regulatory environment, but also social and cultural conditions of country(ies) in which a company wishes to expand its reach and operations.

Essential Factors : There are a number of factors which may not be important in the case of domestic M&As, become critical in international acquisitions. For example, violation of environmental laws may not be taken very seriously in one country while in others there may be very stringent penalties including closure of a production facility for even minor environmental violations. This necessitates a very comprehensive environmental due diligence exercise that has to be adhered to in an international acquisition.

Objective of Acquisition : The factors that need to be focussed in an acquisition is to understand the strategic objectives of the acquisition. The Accenture survey clearly points out that most Indian companies have a clear M&A strategy. About 71% Indian executives said they have a clear strategy for markets they want to enter and 40% said that they have identified specific companies. Setting clear objectives indeed helps prepare a check list and undertake exercise due diligence exercise accordingly.

Team of Experts : It is important for an acquisition to be successful that a team of experts with complementary skills and knowledge is put together to help in the jurisdiction in which the acquisition has been made. There should also be an investment banker to guide in structuring the transaction and evaluating the target, and a local professional who is familiar with the jurisdiction and understands the legal nuances, a tax expert, a finance expert, an environmental specialist, a manufacturing expert, an industry expert, etc.

Researching Target Company : A key factor in a merger and acquisition deal is the research involved on both the target company and its country. In this exercise internet can be of great help as it may provide most of the information necessary in such transactions. This would help company to be familiar with the country's legal/ tax environment, economic system and other issues, even before the exercise begins.

It is important that most of the companies which are up for sale prefer international competitive bidding. The bidding process is dictated either by the target company or its promoters. The company fixes a date and a time for conducting the due diligence and keeps the data ready in a data room. In this process one may require interpreters in the data room as the documents may not always be in English. With technology advancements and the increasing number of cross border deals, targets have been making documents available to potential bidders through a 'virtual data room'. With the password protected internet link one can conduct an online due diligence sitting in his office.

Time is the essence : The time is of great importance in a Merger and Acquisition transaction, as the same is driven by timelines set by the target company and their investment bankers. So adhering the specified timeline becomes an essential ingredient of a successful M&A transaction. On the other hand, in the event of failure to abide by timelines, competing bidders will have the advantage of a head start.

Due Diligence : Due diligence, a critical factor in mergers and acquisitions is the process of examining all aspects of a company including manufacturing, financial, legal, taxation, IT systems, labour regulatory as well as issues relating to Intellectual Property Rights, the environment and other factors. The due diligence process is undertaken to investigate and evaluate a potential company for acquisition purposes. It helps acquiring company to determine whether it is worth pursuing a target and at what price.

As far as legal due diligence is concerned it covers contractual documentation, litigation, ownership of movable, fixed and intangible assets like patents, trade marks, brand names and other intellectual property rights, etc. It also looks at any contracts on which there could be onerous covenants or which may become infructuous by reason of change in control of the target following the acquisition. All these aspects could significantly impact the valuation of the target company.

The due diligence report aims at factoring all critical issues impacting the decision on valuation of the target, becomes the basis for negotiating and providing in the transaction documentation comprehensive representations and warranties - where the target company or its promoters provide indemnity for their representations and warranties. It may, however, be noted that issues that cannot be immediately resolved before closing the deal are put under what is called as 'Conditions Subsequent' and certain percentage of the purchase consideration is held back in an escrow account and released only when those conditions are met by the target company or its promoters.

Valuation of Target : The valuation of the target is decided only after the due diligence exercise is completed and the valuer has considered how the findings impact the valuation. It may be noted that the tentative figure which one may have in mind based on the financials of the target evaluated in accordance with internationally accepted norms of valuation, usually changes significantly once the due diligence findings are factored in. This is the point when acquiring company knows the actual value of the target company — whether the cash flow is sustainable in the future; assets are legally held in the name of the company; major liabilities and contingent liabilities etc.

The exercise becomes difficult if the target company has a presence in several countries. In such situations one needs to rely on local experts in each jurisdiction to get the flavour of local regulatory and tax issues and to factor them into the valuation exercise as well as in the contractual documentation to protect one's interests. The varying accounting standards in different jurisdictions is another challenge in valuation process, as the different countries adopt different accounting standards for accounting treatment of different items, this poses a significant challenge in ascertaining the true value of the target company.

Regulatory Approvals : A cross-border merger and acquisition transaction requires regulatory approvals not only in India but also in the jurisdiction in which the target company is located. However, in western countries, competition related issues such as whether the proposed acquisition would lead to market dominance by the acquirer, are of paramount consideration in approval of merger and acquisitions.

In the United States and European Union, the anti-trust laws are very stringent. One requires approval from the Federal Trade Commission or the Department of Justice for any acquisition in the US and from the European Commission for any target in EU. In most jurisdictions where the target company has business presence, it requires pre-merger notification. In India also the pre-merger notification has been made compulsory by the Competition (Amendment) Act, 2007.

Further, European Commission examines in great detail whether the acquisition would lead to a distortion in market competition. The acquisition of corus by TATA and Arcelor by Mittal Steel are recent examples.

Human and Cultural Factors

Accenture Survey points out that for integrating a cross border company, 43% respondents found addressing cultural issues as critical. The real challenge, after an acquisition is, therefore, the integration of the two companies. That is why the integration should be given a focused attention. There should be a focus on aligning the acquired company's processes through the business excellence model.

Human Factor

Studies on post-acquisition performance have primarily been a centre of interest of researchers in strategy, economics and finance. The identified factors of performance variations have usually ranged from the industry match (complementary of assets, similarities of markets and products, synergies in production, strategic orientation, etc.), pricing policy, financing and size of the operation and type of the transaction, bidding conditions, etc.

By contrast to quantitative measurements from finance and economics, the research, which has focused on the organisational and human side of M&As, has mostly dealt with identifying factors that might have played a role in the integration process of the merging entities and led to successful outcomes. Despite the absence of a direct causal correlation, several dimensions have been identified as having an important impact on M&A performance, these include psychological, cultural and managerial factors, knowing that the human factor covers at the same time employees and managers of the companies.

Psychological Factors : A large part of the existing research has looked at the psychological effects of M&A on employees. Scholars have pointed out the strong impact that the operations could have on employees, in

particular the resulting increase in stress and anxiety due to changes in work practices and tasks, managerial routines, colleagues environment, the hierarchy, etc. Further, merger and acquisitions often introduce an environment of uncertainty among employees about job losses and future career development. It has been pointed out that stress and insecurity may lead to employee resistance to change, absenteeism and lack of commitment to work and the organisation. Employee resistance prevents the building up of a well functioning organisation and constructive cooperative environment. Lack of work commitments have a negative impact on individual and organisational performance measured in terms of productivity, quality, and service. Moreover, a relationship between organisational and financial performance has also been identified which may have consequences for the market value of company.

On the other hand, it has been argued that satisfied employees are presumed to work harder, better, and longer with higher productivity records. Even though a direct relationship between job satisfaction and corporate performance remains to be established with certainty, it appears that lower job satisfaction is a cause of higher absenteeism, which, in turn is shown to have a negative influence on organisational performance.

Cultural factors

Cultural differences look like playing both ways. Although distant cultural environments make the integration process harder, the lack of culture-fit or cultural compatibility has often been used to explain M&A failure. Cultural differences have also been considered a source of lower commitment to work, making co-operation more difficult, particularly from employees of the acquired company. In this regard, scholars have largely given account of the lack of co-operation momentum stemming from a "we" versus "them" attitude, resulting in hostility among employees.

It is, therefore, no surprise that strong cultural differences are usually associated with a negative impact on M&A performance, since the integration process is less easy and deals with higher employee resistance, communication problems, and lower interest in co-operation. Noticeably, cultural clashes are likely to be more prominent in cross-national than domestic acquisitions, since such mergers bring together not only two companies that have different organisational cultures but also organisational cultures rooted in national diversity. The scholars have identified building up of a common culture as essential for the success of merger and acquisitions. Researchers have found that high levels of employees' social identification with the organization's identity results in increased work effort, higher performance, reduced staff turnover and more frequent involvement in positive organisational citizenship.

CONCLUSION

The preceding discussion makes it clear that the canvas of responsibilities of and expectations from professionals is expanding with every M&A transaction, be it domestic or cross border. The changing paradigm, therefore, casts upon the professionals an onerous responsibility to help corporate India in achieving its global ambitions and to contribute in maintaining 8% plus economic growth.

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COMPANY SECRETARIES FIRMS : SUCCESS SANS COMPETITION THROUGH “BLUE OCEAN STRATEGY”

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In the professional life today one always finds oneself or one's professional firm in competition for securing various kinds of professional work, professional recognitions and professional success at multiple levels and in multiple contexts. The competitive onslaught is more a perception, perhaps than a reality. As it is said the best competition is the competition with one's own self and not with others. Comparisons with others are odious and self-decelerating. It is also quite often forgotten, in practical life, that competition is best overcome by collaboration and networking even with the perceived-to-be competitor.

It is in this context that this Paper explores what W Chan Kim and Renee Mauborgne of Harvard, in their recent release, “Blue Ocean Strategy” [Harvard Business School Press, 2005] have said about creating uncontested market space and making competition irrelevant. If Company Secretaries, particularly in practice, can follow the new strategy that these authors have discovered out of their research; it is submitted and believed that the success for them will be enormous. Although the research by the authors is woven around companies in business rather than around professional firms engaged in professional services, a discerning reader can find ways to improve the strategy to suit professional service firms.

Globalisation imposes the challenge of competition, a further intensified competition. It is an opportunity to rediscover your relevance to the world of business and to succeed notwithstanding the ferocity of global market stage. It forces us to make a difference, to create a profitable organization that builds a future where customers, employees, shareholders and society win.

To improve the quality of our success we need to study what we did that made a positive difference and understand how to replicate it systematically. A quiet thinking on core competencies is necessary vis-à-vis the impact or value-add achieved for the customer. Then a plan can be drawn up for replicating the same for other components of the market.

So far the overriding focus of strategic thinking has been on competition-based red ocean strategies. Red ocean denotes a market space where industry boundaries are defined and accepted, and the competitive rules of the game are known. Here organizations try to outperform their rivals to grab a greater share of existing demand. The market space gets crowded, prospects for profit and growth are reduced. Products become commodities, and cutthroat competition turns the red ocean bloody.

To take a crude example, a hair-cutting saloon in order to outbeat competitors adds hair-dyeing services. Then the competing saloon also adds the hair-dyeing services and to have an upper hand also adds manicure services. The first saloon then after adding manicure services also starts providing pedicure services to its customers. In doing this, both the saloons go on adding costs and additional time for the customers in the waiting and do not necessarily add value to the services. The red ocean war only increases costs and not necessarily profits and value add to the customers. In such a red ocean if a particular saloon starts providing only and purely hair-cutting services promising customers that they would step out after having had a satisfactory hair-cut in not more than 6-8 minutes, the customers who need only the hair-cut will flock to this shop giving that shop a blue ocean exclusivity. They will save their waiting time while other customers have various services rendered to them. The particular shop will become popular with customers who mean business and are hard-pressed for time; while making the competitors irrelevant and saving costs of adding more and more services this firm can navigate and prosper peacefully in the quiet blue ocean.

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It will always be important to swim successfully in the red ocean by out competing rivals. Red oceans will always be a fact of life.

But with supply exceeding demand in more industries, competing for a share of contracting markets will not be sufficient to sustain high performance.

We need to go beyond competing. To seize new profit and growth opportunities, we need to create blue oceans.

Blue ocean strategy challenges us to break out of the red ocean of bloody competition by creating uncontested market space that makes the competition irrelevant.

Instead of dividing up existing—and often shrinking—demand and benchmarking competitors, blue ocean strategy is about growing demand and breaking away from the competition.

Consider this. The Blountville-Arkansas based American retail giant Wal-mart had to wind up its operations in Germany and sell of the business at less than the asset value to Metro, the German retailer. The reason was that it tried to compete with German retail only on the basis of reduced prices and delivery point pampering of customers by helping them pack their purchases. This was done just to set new benchmarks in serving the customer, so that they compare the new retailer in Germany with the existing German competitors. This was a red ocean strategy aimed at bleeding the competitors, without any real value-add for the customer. The German customers did not like this. Result was huge losses to Wal-mart.

BLUE OCEANS

Blue oceans are defined by uncontested market space, demand creation, and the opportunity for highly profitable growth. Although some blue oceans are created well beyond existing industry boundaries, most are created from within red oceans by expanding existing industry boundaries.

In blue oceans, competition is irrelevant because the rules of the game are waiting to be set.

The dominant focus of strategy work over the past twenty-five years has been on competition-based red ocean strategy. The result has been a fairly good understanding of how to compete skillfully in red waters, from analyzing the underlying economic structure of an existing industry, to choosing a strategic position of low cost or differentiation or focus, to benchmarking the competition.

We need to look at systematic pursuit and capture of blue oceans.

We need to break from the status quo, create a winning future strategy, and execute this fast at low cost. We need a strategy with a creative, non-combatative, approach. There should be emphases on value innovation and stakeholder engagement.

So far its roots in military strategy heavily influence business strategy. The very language of strategy is deeply imbued with bloodshed.

In red ocean terms 'strategy' is about confronting an opponent and fighting over a given piece of land that has never been constant; rather blue oceans have continuously been created over time.

To focus on the red ocean is therefore to accept the key constraining factors of war -- limited terrain and the need to beat an enemy to succeed. This denies the distinctive strength of the business world – The capacity to create new market space that is uncontested. Competition based on red ocean strategy has certain assumptions. For example, it assumes that an industry's structural conditions are given and that firms must compete within the given conditions. Academicians call this the structuralist view or environmental determinism [Joe S Bain, 1956, 1959].

A study of business launches of 108 companies found that 86 per cent of the launches were line extensions, that is, incremental improvements within the red ocean of existing market space. Yet they accounted for only 62% of total revenues and a mere 39% of total profits.

The remaining 14% of the launches were aimed at creating blue oceans. They generated 38% of total revenues and 61% of total profits.

As a result of technological advances, in increasing number of industries, supply exceeds demand. Then again, globalisation dismantles trade barriers between nations and regions. Niche markets and heavens for monopoly continue to disappear as information on products and prices becomes instantly and globally available. As supply is on the rise, global competition is on the increase, there is no increase in global demand.

The business environment in which most strategy and management approaches of the twentieth century evolved is increasingly disappearing.

As red oceans become increasingly bloody, management will need to be more concerned with blue oceans than the current cohort of managers is accustomed to.

There is, in reality, no perpetually high performing company. The same company can be brilliant at one moment and wrongheaded at another. Company is not an appropriate unit of analysis in exploring the roots of high performance and blue oceans.

The strategic move and not the company or industry is the right unit of analysis for explaining the creation of blue oceans and sustained high performance.

A strategic move is the set of managerial actions and decisions involved in making a major market creating business offering.

Companies caught in the red ocean follow a conventional approach, racing to beat the competition by building a defensible position within the existing industry order. The creators at Blue Ocean do not use the competition as their benchmark.

They follow a different strategic logic called value innovation. “Value innovation” because, instead of focusing on beating the competition, they focus on making the competition irrelevant by creating a leap in value for the buyers thereby opening up new and uncontested market space.

Value innovation places equal emphasis on both value and innovation. Value without innovation tends to focus on value creation on an incremental scale, something that improves value but is not sufficient to make you stand out in the market place. Innovation without value tends to be technology driven, market pioneering, or futuristic, often shooting beyond what buyers are ready to accept and pay for.

Creating blue oceans is neither in bleeding-edge technology nor in “timing for market entry”. It involves a high and intense degree of customer oriented thinking that creates value for both the customer and the business entity.

VALUE INNOVATION

Value innovation occurs only when companies align innovation with utility, price and cost positions. Value innovation is enabled where a company’s actions favorably affect both the cost structures and its value proposition to the buyers. Eliminating and reducing the factors an industry competes on, make cost savings. By raising and creating elements the industry has never offered, you can create buyer value. Costs reduce further as a function of time as scale economies creep in due to high sales volumes that superior value generates.

Value innovation does not adopt the structuralist view or the environmental determinism. It is based on the view that market boundaries and industry structures are not given; industry players can reconstruct them by their actions and beliefs. This may be called the reconstructionist view.

Companies that work along the red ocean strategy race to beat the competition by building a defensible position within the existing industry order [Peter Drucker, 1985]. Creation of blue oceans does not use competition as the benchmark. To create Blue Ocean, you need to follow the strategy of value innovation. Instead of focusing on beating the competition, you focus on making the competition irrelevant by creating a leap in value for buyers and your company, thereby opening up new and uncontested market space.

Value innovation is a new way of thinking about and executing strategy. This results in the creation of a blue ocean and a break from the competition. Value innovation defies one of the most commonly accepted dogmas of competition-based strategy: the value-cost trade-off [Charles W L Hill (1988) and R W White (1986)]. It has been a conventional belief that companies can either create greater value to customers at a higher cost or create reasonable value at lower cost. The strategy is to make a choice between differentiation and low cost.

In contrast, those that seek to create blue oceans pursue differentiation and low cost simultaneously. Thus value innovation is more than innovation. It is about strategy that embraces the entire system of a company's activities [Porter 1996]. Value innovation requires companies to orient the whole system toward achieving a leap in value for both buyers and themselves.

THE PRINCIPLES

The authors delineate six principles of Blue Ocean strategy; these are:

1. Reconstruct market boundaries;
2. Focus on big picture, not the numbers;
3. Reach beyond existing demand;
4. Get the strategic sequence right;
5. Overcome key organizational hurdles;
6. Build execution into strategy.

They lay down the Four Actions Framework for creating blue oceans, by reconstructing buyer value elements in crafting a new value curve:

- Which of the factors that the industry takes for granted should be eliminated?
- Which factors should be reduced well below the industry's standard ?
- Which factors should be raised well above the industry's standard ?
- Which standards should be created that the industry has never offered ?

The first question makes you eliminate factors that companies in your industry have long competed on. Those factors are often taken for granted even though they no longer have value or may even detract from value. Sometimes there is a fundamental change in what buyers value, but companies that are focused on benchmarking one another do not act on, or even perceive, the change.

The second question focuses on whether products or services have been over-designed in the race to match and beat the competition. Sometimes companies over serve customers, increasing their cost structure for no gain.

The third question requires you to uncover and eliminate the compromises your industry forces customers to make.

The fourth question helps you to discover entirely new sources of value for buyers and to create new demand and shift the strategic pricing of the industry.

By pursuing the first two questions that you gain insight into how to drop your cost structure vis-à-vis competitors. Rarely do managers systematically set out to eliminate and reduce their investments in factors that an industry competes on. The result is mounting cost structures and complex business models.

By pursuing the last two questions you get an insight into how to enhance buyer value and create new demand.

Collectively, the four questions allow you to systematically explore how you can reconstruct buyer value elements across alternative industries to offer buyers an entirely new experience, while simultaneously keeping your cost structure low. The existing rules of competition then become irrelevant. When you apply the four actions framework to the strategy canvas of your industry, you get a revealing new look at old perceived truths.

BUYER UTILITY

In order to arrive at the Blue Ocean idea, Kim and Mauborgne give the sequence of the Blue Ocean Strategy in very clear steps. The sequence is as follows:

1. First is buyer utility. You have to ask: Is there exceptional buyer utility in your business idea? If not you will rethink the business idea.

2. Is your price easily accessible to mass of buyers? If not, you will have to rethink on that.
3. Can you attain your cost target to profit at your strategic price ? If not, rethink on your cost.
4. What are the adoption hurdles in actualizing your business idea ? Are you addressing them upfront ? If not, rethink.

When all these steps are successfully crossed will you arrive at a commercially viable Blue Ocean idea.

The starting point is buyer utility. You have to have an offering unlocking an exceptional utility. There should be compelling reason for the mass of people to buy it. Without this, there is no blue ocean potential to begin with. The authors advise you to park the idea or rethink it until you reach an affirmative answer.

In order to test the business idea for exceptional utility, they give a buyer utility matrix. In it are the Six Stages of the Buyer Experience Cycle and the Six Utility Levers.

The Buyer Experience Cycle, on the horizontal horizon consists of the following six stages:

1. Purchase
2. Delivery
3. Use
4. Supplements
5. Maintenance
6. Disposal

The six Utility levers on the vertical axis are as follows:

1. Customer productivity
2. Simplicity
3. Convenience
4. Risk
5. Fun and image
6. Environmental friendliness.

You must apply your mind to find out at which stage there are biggest blocks to customer productivity; simplicity; convenience; reducing risk; fun and image; and environmental friendliness. This will lead to you discover where are the greatest blocks to utility across the buyer experience cycle for your customers and non-customers. The aim is to check whether your offering passes the exceptional utility test. You then start refining your business idea.

The authors give example of Ford Model T. Before its debut more than five hundred automakers in the US focused on building custom-made luxury autos for the wealthy. In terms the buyer utility matrix, the entire industry focused on image in the use phase, creating luxury cars for fashionable weekend outings.

The greatest blocks to utility for the mass of people, however, were not in refining the auto's luxury or stylish image. Rather they had to do with two other factors. One was convenience in the use phase. The bumpy and muddy dirt roads often prevented finely crafted cars from passing. This significantly limited where and when cars could travel, making the use of cars limited and inconvenient. The second block to utility was risk in the maintenance phase. The cars being finely crafted often broke down requiring experts to fix them and experts were expensive and in short supply.

Model T eliminated these two utility blocks. It was called the car for the great multitude. It came in only black colour and one model, with scant options. In this way Ford eliminated investments in image in the use phase. Instead of creating cars for weekends in the countryside—a luxury few could justify—Ford's Model T was made

for everyday use. It was reliable. It was durable; it was designed to travel effortlessly over dirt roads. It was easy to fix and use. People could learn to drive it in one day.

The buyer utility matrix created by the authors highlights the differences between ideas that genuinely create new and exceptional utility and those that are essentially revisions of existing offerings or technological breakthroughs not linked to value. The aim is to check whether your offering passes the exceptional utility test. By applying this diagnostic, you can find how your idea needs to be refined.

You need to test blocks to utility across the buyer experience cycle for your customers and noncustomers?

- Does your offering effectively eliminate these blocks? If it does not, chances are your offering is innovation for innovation's sake or a revision of existing offerings. Your offering must pass this test, if you are to get out of the red ocean bloody war with lose-lose [instead of win-win] effects.

After creating the exceptional utility, the firm must set the right strategic price. This ensures that buyers not only will want to buy your offering but will also have a compelling ability to pay for it. It is important to know what price will quickly capture the mass of target buyers. The strategic price you set for your offering must not only attract buyers in large numbers but also help you to retain them. An offering's reputation must be earned on day one, because brand building increasingly relies heavily on word-of-mouth recommendations spreading rapidly through the networked society.

Thereafter comes target costing. This addresses profit side of business. To maximize the profit potential of the blue ocean idea, a company should start with the strategic price and then deduct its desired profit margin from the price to arrive at the target cost. This is price-minus costing and not cost-plus pricing. Beyond streamlining operations and introducing cost innovations, second level companies can pull to meet their target cost is partnering. You should not try to carry out all production and distribution activities yourself. Partnering provides a way for companies to secure needed capabilities fast and effectively while dropping their cost structure. It enables a company to leverage other companies' expertise and economies of scale.

EXECUTING STRATEGY

Conceiving blue ocean ideas is all right. But its execution through the organization poses a number of hurdles. The challenge is steep. Red ocean fighting habits may not show a path to future profitable growth, but they are within the comfort zones of the people in the organization. It may have served the organization well until now. Blue ocean strategy will rock the boat and everyone will feel uncomfortable. This is the cognitive hurdle.

The second hurdle is limited resources. The greater the shift in strategy the greater it is assumed are the resources needed to execute it. The authors point out that in the organizations they studied, resources were being cut and not raised in implementing the blue ocean strategy.

The third hurdle is motivation. You have to motivate key players to move fast and tenaciously to carry out a break from the status quo.

And of course, politics is the hurdle everywhere. In many organizations you get shot down before you stand up.

How to triumph over those hurdles is the key to attenuating organizational risk. You must overcome key organizational hurdles to make blue ocean strategy happen in action. A key to do this is to abandon perceived wisdom on effecting change. Conventional wisdom asserts that greater the change, the greater the resources and time you will need to bring about results. The authors give examples of how the hurdle of conventional wisdom was broken in reality.

The authors define three roles for an organization to overcome the hurdles to blue ocean strategy. The first are called 'angels' who are those who have the most to gain from the strategic shift. The second are 'devils', i.e., those who have the most to lose from it. Then there are 'consigliere' that is one who is politically adept but highly insider who knows in advance all the land mines, including who will fight the blue ocean strategy and those who will support it. They suggest that the consigliere must be secured on the top management team.

The authors also give a statement of the fair process that must be followed by and in the organization in achieving the strategic shift. Employees normally see only the negative side of the shift. Their reactions to the

new moves are bound to show a lot of misunderstanding. You must, through a series of meetings, openly discuss the declining business conditions and the need for the organization to change its strategic course to break from the competition and to simultaneously achieve higher value at lower cost.

FAIR PROCESS

There are three elements that define the fair process: engagement; explanation; and clarity of expectation.

Engagement means involving individuals in the strategic decisions that affect them. You should ask for their inputs and allow them to refute the merits of one another's ideas and assumptions. Engagement communicates management's respect for individuals and their ideas. If you encourage refutation, you sharpen everyone's thinking and build better collective wisdom. Engagement results in better strategic decisions by management and greater commitment from all involved to execute those decisions.

Explanation means that everyone involved and affected should understand why final strategic decisions are made as they are. An explanation of thinking that underlies decisions makes people confident that managers have considered their opinions and have made decisions impartially in the overall interest of the company. Explanation also serves as a powerful feedback loop that enhances learning.

Expectation clarity requires that after a strategy is set, managers state clearly the new rules of the game. Expectations may be demanding. Employees must know what standards they will be judged by and the penalties for failure. There should be clarity about the goals of the new strategy; new targets and milestones; precise responsibilities for the milestones.

FOR COMPANY SECRETARIES

After discussing salient features of the Blue Ocean Strategy the authors describe and prescribe, one is tempted, in the context of professional services to quote a saintly advice that reflects the starting point for the blue ocean strategy for professionals like Company Secretaries. The quote reads: “Subdue pride by modesty; overcome hypocrisy by simplicity; dissolve greed by contentment.” Competing with oneself and not with others and even networking with competitors is a lesson that can be learnt from Information Technology industry, which is verily a service industry.

Without appearing to lay down any straightjacket prescriptions and confessing explicitly that the blue oceans of modest specializations in services can be discovered only in the matter-of-fact live situations by those who are living therein, a few areas and ideas are listed here. Specialist partners in mega firms of practicing Company Secretaries or small proprietary or partnership firms can apply these ideas. In the context of the multi-disciplinary firms that are in the offing, Company Secretaries partners can apply the following ideas of Blue Ocean:

- Utilising their superior legal drafting skills Company Secretaries can specialize only in drafting the Statement of Facts and Grounds of Appeal before specific Appellate Authorities either in direct or indirect tax areas. They can do this better and faster and compile the entire appellate pleadings to be submitted before, say, Commissioner (Appeals) and Appellate Tribunal in the Income Tax or Indirect Tax areas. The appearance before the Appellate Authority may be left to other professionals. This professional skill and service can be carried forward into drafting of writ petitions or statutory appeals before the High Court or Supreme Court. The Company Secretary drafting the appeal and petitions before the Court can also deliver the service of briefing the other professional who will argue the case before the Appellate Authority or the Court and support him during the argument.
- A firm of Company Secretaries or Company Secretaries in mega/multi-disciplinary firms may specialise only in preparing and arguing anti-dumping matters before the Anti-dumping Authorities and the Tribunal. The firm may collaborate with Cost Accountants for preparation of the costing database that is required in anti-dumping matters. The mastery of Company Secretaries over anti-dumping law and rules as well as case laws in anti-dumping matters will enable them to do the legal job faster and better, while they rely upon the costing data and certification by Cost Accountants both for the Indian manufacturer/exporter and corresponding foreign exporter/manufacturer.
- Some Company Secretaries may specialize in petitions and argument of the case before Company Law Board only from the corporate side. Others may specialize in these matters only from the shareholder or

other petitioner's side. Such specialization will enhance the speed and quality of service and make competition irrelevant.

- They may specialize in FEMA matters and liaising with FEMA authorities delivering critical services fast and efficiently only in these areas.
- A partner or two from a Company Secretaries firm may specialize only in corporate governance certification under Clause 49 of the Listing Agreement and go on refining and adding value through these services.
- The trust format for holding and investing money of Non-Resident Indians in Indian securities is becoming popular. Some Company Secretaries can specialize in the drafting, filing and managing trust documents assisting the investment advisor in legal matters.

The above, to stress it once again, is only a freethinking and illustrative list of some Blue Oceans for practicing Company Secretaries. In reality, the individuals and partners working in the field have to apply the concepts delineated in this Paper and work out their Blue Oceans themselves. Having zeroed upon respective Blue Oceans through self-thinking and analysis, they can proceed to refine skills and services in the particular areas. After succeeding through patience, hard work and other professional virtues, they can then work for the sustainability of the particular Blue Ocean.

SUSTAINABILITY

The authors recognize that creating blue oceans is not a static achievement. Competitive imitations of blue ocean strategy begin to appear sooner or later. The timing of the company reaching out to create a new blue ocean also becomes relevant.

Inherent in a blue ocean strategy are the barriers to imitation; some operational and some cognitive.

Eventually, however, even such a strategy gets imitated. The company should, therefore, be on its guard in renewing the blue ocean strategy.

ROLE OF COMPANY SECRETARIES IN COMPLIANCE OF COMPETITION LAW

DR. S K DIXIT* & VINAY KUMAR SANDUJA**

INTRODUCTION

Competition is a complex and technical subject which does not lend itself to easy summary or concise clarification. Of late, with globalisation and opening of the markets, it has become a subject of great practical importance. It involves the establishment and development of concepts, legal principles and policies for the benefit of consumers. The principles and policies are applied to a wide range of private agreements and arrangements, which commercial undertakings enter into for themselves or with each other.

In the absence of a generally accepted definition of the phenomenon of competition, it has to be regarded as the object fostered and protected by competition policy and law. OECD-World Bank in its report *"A Framework for the Design and Implementation of Competition Law and Policy"* defines the competition as a situation in a market in which firms or sellers independently strives for the buyers' patronage in order to achieve a particular business objective, for example, profits, sales or market share.

EVOLUTION AND DEVELOPMENT OF COMPETITION REGIME IN INDIA

There are evidences to establish that vibrant and effective competition is one of the key elements of a successful economy. It delivers significant benefits to consumers and encourages the efficient use of resources. Enterprises can compete to attract their customers by offering better products, and services at reasonable prices. The competitive process provides incentive for businesses to continually improve, enhances economic growth and ultimately provides a higher standards of living for all.

In recognition to the benefits of promoting competition in the wake of globalization of markets and market oriented policies, large number of countries have taken initiatives either to enact new competition law or modify the existing ones to suit the changing market conditions. The number of countries with modern competition law has grown to more than hundred.

India, since attaining independence in 1947, adopted and pursued command and control policies, and enacted Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) to prevent the concentration of economic power to the common detriment; to control monopolies; and to prohibit monopolistic and restrictive trade practices. In the wake of new industrial policy adopted by the Government in July 1991 far reaching changes were brought about in the MRTP Act and the need for new competition law was recognised.

Subsequently, the process of formulating new competition law in India found its origin in Finance Minister's Budget Speech in 1999 followed by setting up of High Level Committee on Competition Policy and Law. The submission of the report by the Committee in 2000 led to introduction of the Competition Bill, 2000 in Parliament and enactment of Competition Act, 2002. The basic purpose of competition law is to ensure that markets remain competitive to the benefit of both businesses and consumers.

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The Competition Act, 2002 seeks to:

- (1) Prohibit anti-competitive agreements (including cartels) which determine prices, limit or control or share markets or result in bid rigging, etc which causes or is likely to cause appreciable adverse effect on competition within India.,
- (2) Prohibit abuse of dominant position through unfair or discriminatory prices or conditions (including predatory pricing) limiting or restricting production or development, denying of market access, etc.,
- (3) Regulate combinations, (i.e., mergers, acquisitions, etc.) that cause or are likely to cause an appreciable adverse effect on competition.

In other words, sections 3, 4, 5 and 6 are the essence of Competition Act, 2002 and deals respectively with prohibition of anti-competitive agreements, abuse of dominant position and regulation of combinations.

Enforcement of Competition Act, 2002

Overall responsibility for the implementation and to carry out the objectives of the Act, has been cast on Competition Commission of India (CCI), which includes initiating inquiry and imposing penalty in relation to violations of the Act. In terms of Section 18 of the Act, a duty has been cast on the Commission to eliminate practices having adverse effect on competition; to promote and sustain competition; to protect interests of consumers and to ensure freedom of trade carried on by other participants, in markets in India. Section 18 also empowers the Commission to enter into any memorandum or arrangement, with the prior approval of the Central Government, for the purpose of discharging the duties and functions with any agency of any foreign country.

As mentioned above, the mandate of Competition Commission of India (CCI) is to carry out the objectives of the Competition Act, 2002. In this context, it is important to note the objectives of the Competition Act, 2002 is, as explained in its preamble, to provide, keeping in view the economic development the country, for the establishment of Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto."

COMPETITION ACT, 2002 – TOUCH STONES

I Appreciable Adverse Effect on Competition

Competition Act, 2002 uses the term "Appreciable adverse effect on Competition" at various places. Substantive provisions relating to prohibition of anti-competitive agreements and regulation of Combinations provides for determination of appreciable adverse effect on competition for determining whether there is a violation of section 3 or section 6 respectively.

Term "Appreciable adverse effect on competition" has not been defined under the Act. However, the Act provides for various factors which must be taken into account by Competition Commission of India in determining whether there has been appreciable adverse effect on competition.

Section 3 provides that any agreement which causes or is likely to cause an appreciable adverse effect on competition within India shall be void. While inquiring as to whether an agreement is void or not in terms of section 3, the Act requires Competition Commission to determine whether an agreement has an appreciable adverse effect on competition under section 3, and to give due regard to all or any of the specified factors, as provided under section 19(3) of the Competition Act, 2002 namely –

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;
- (e) improvements in production or distribution of goods or provision of services;
- (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Section 6 of the Act provides that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void.

While inquiring as to whether a combination causes or is likely to cause an appreciable adverse effect on competition, the Act under section 20 (4) requires that Competition Commission to have due regard to all or any of the specified factors, namely,

- (i) actual and potential level of competition through imports in the market;
- (ii) extent of barriers to entry into the market;
- (iii) level of combination in the market;
- (iv) degree of countervailing power in the market;
- (v) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (vi) extent of effective competition likely to sustain in a market;
- (vii) extent to which substitutes are available or are likely to be available in the market;
- (viii) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (ix) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (x) nature and extent of vertical integration in the market;
- (xi) possibility of a failing business;
- (xii) nature and extent of innovation;
- (xiii) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (xiv) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

II Relevant market

The inquiry into anti competitive agreements, abuse of dominance, regulation of combination requires delineation of the relevant market. In other words, determination of the relevant market is critical to the matters pertaining to anti competitive agreements, abuse of dominance and regulation of combinations. The Act stipulates as to what constitutes relevant market, and provides parameters to be taken into account by the Competition Commission while determining relevant market.

In terms of section 2(r), the term relevant market has been defined to mean the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Thus, relevant market may comprise of relevant product market or the relevant geographic market or both.

In this context "relevant geographic market" as defined under section 2 (s), means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas. Act also defines the "relevant product market" under section 2(t) to mean a market comprising all those products or services which are regarded as inter changeable or substitutable by the consumer, by reason or characteristics of the products or services, their prices and intended use.

For determining the "relevant product market", section 19 (7) requires Competition Commission to consider the specified factors, namely :

- (a) physical characteristics or end-use of goods;
- (b) price of goods or services;
- (c) consumer preferences;

- (d) exclusion of in-house production;
- (e) existence of specialized producers;
- (f) classification of industrial products.

Relevant geographical market is the second element to be taken into account in determining the relevant market. It may be described broadly as the area in which sellers of a particular product or service operate. The relevant geographical market may be limited, for example, to a small city, state, country or it may be the whole international market.

For determining the “relevant geographic market”, section 19(6) requires Competition Commission to consider the specified factors, namely :

- (a) regulatory trade barriers;
- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumers preferences;
- (h) need for secure or regular supplies or rapid after sales services.

SUBSTANTIVE PROVISIONS UNDER THE COMPETITION ACT, 2002

ANTI-COMPETITIVE AGREEMENTS (SECTION 3)

The provisions relating to anti-competitive agreements, contained in section 3 of the Act prohibits such agreements or practices, or decision taken which causes or is likely to cause an appreciable adverse effect on competition within India.

It is important to note that in order to apply the provisions of section 3 prohibition there must be an agreement in terms of section 2 (b) of the Act.

In this context it is worth mentioning that in *Registrar of Restrictive Trade Agreements v. WH Smith & Sons, (1968) 3 All ER 721*, the court observed, “people who combine together to keep up prices do not shout it from the house tops. They keep it quiet. They make their arrangements in the cellar, where no one can see. They will not put anything into writing nor even into words. A nod or wink will do.

Section 2(b) defines an agreement as to include any arrangement or understanding or any action in concert, whether or not such agreement, understanding or action, is formal or in writing or intended to be enforceable by legal proceedings.

Section 3 requires the agreement to be related to (i) production, (ii) supply, (iii) distribution, (iv) storage, (v) acquisition or (vi) control of goods or (vii) provision of services.

The provisions of section 3 applies to agreements entered into by, (i) enterprises or association of enterprises; or (ii) person or association of persons; or (iii) between any person or enterprise.

Agreements under section 3 would be analysed on the basis of Rule of Reason and Rule of presumption. In this context, section 3(4) provides inclusive list of agreements amongst enterprises or persons at different stages or levels of production chain in different markets, which will be determined under Rule of Reason for ascertaining whether the agreement causes or is likely to cause appreciable adverse effect on competition within India. However, in terms of section 3 (3), certain agreements shall be presumed to have an appreciable adverse effect on competition. Therefore, such agreements will be determined on the basis of Rule of Presumption.

Types of Anti-competitive Agreements

For the purposes of ascertaining as to whether an agreement is anti-competitive in terms of section 3, i.e it causes or is likely to cause an appreciable adverse effect on competition within India, agreements can be categorized as “horizontal” and “vertical” agreements. Though the Act does not use the term “horizontal”

and “vertical” agreements, it may be pointed out that the agreements of the kind mentioned under section 3(3) are Horizontal Agreements and would be presumed to have appreciable adverse affect on competition. Horizontal agreements are agreements between two or more enterprises that are at the same stage of the production chain and, in the same market. Being at the same stage of the production chain implies that all the parties to the agreement are either producers, or retailers or wholesalers. In other words, Horizontal agreements are agreements between actual or potential competitors.

The kind of agreements mentioned under section 3(4) of the Act are vertical agreements and would be analysed under Rule of Reason. Vertical agreements, are agreements between enterprises that are at different stages or levels of the production chain and, therefore, in different markets. In other words, vertical agreements are agreements or concerted practices between two or more enterprises (each of which operates, for the purpose of the agreement, at a different stage of the production or distribution chain) which affect the conditions under which the parties can buy, sell or re-sell certain goods or services.

Jurisdiction of Competition Commission in Relation to Anti-competitive Agreements

Section 19 of the Act, dealing with inquiry into certain agreements and dominant position of enterprise, empowers the Competition Commission to inquire into any agreement entered into by any enterprise or association of enterprises or person or association of persons in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services which causes or is likely to cause an appreciable adverse affect on competition within India.

The Commission has been empowered to make such an inquiry either on its own motion or on receipt of any information in such manner and accompanied by prescribed fee, from any person, consumer or consumer association or trade association; or a reference made to it by the Central Government or State Government or a Statutory Authority.

Examination of Anti-competitive Agreements

Section 3 declares an agreement void, if such agreement provides agreement causes or is likely to cause appreciable adverse effect on competition in India.

As noted above appreciable adverse effect on competition has to be determined in relation to relevant market in India. Thus, determination of relevant market is the first step in the examination of anti-competitive agreements.

Rule of Presumption

As stated earlier, the agreements specified under section 3(3) shall be presumed to have appreciable adverse effect on competition and thus the burden of proof shall lie on the enterprise or person against which the charge is levelled. The agreement under section 3(3) relates to :

- (a) directly or indirectly fixing the prices;
- (b) limiting or controlling production, supply, markets, technical development, investment or provision of services;
- (c) sharing or allocation of geographical area of market, customers or in any other similar way; and
- (d) directly or indirectly resulting in bid-rigging or collusive bidding.

In terms of explanation to section 3(3) bid rigging signifies any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

Cartels' have also been included in the category of agreements, which shall be presumed to have appreciable adverse effect on competition. The term 'Cartel' is explicitly defined in the Act to include association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of service.

Rule of Reason

Apart from agreements mentioned under section 3(3), all other agreements are to be evaluated on the basis of Rule of Reason, which involves a factual inquiry into overall effect of agreement on competition. Rule of

Reason entails an inquiry and may vary in focus and detail depending on the nature of the agreement and market circumstances.

Under the Rule of Reason, the central question to be examined would be as to whether the relevant agreement is likely to harm competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what would likely to prevail in the absence of that agreement.

List of types of agreements mentioned under section 3(4) is inclusive and includes

- *Tie-in arrangements*, which include any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
- *Exclusive supply agreement*, which include any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.
- *Exclusive distribution agreement*, which include any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.
- *Refusal to deal*, which includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.
- *Resale price maintenance*, which includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Efficiency Enhancing Joint Ventures

Efficiency enhancing joint ventures have been exempted from the application of Rule of Presumption under section 3(3). But such joint ventures are not exempt from the application of section 3(1), hence, can be examined under the Rule of Reason.

Intellectual Property Rights

Section 3 (5) recognises the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under IPR statutes as specified under the Act. It may be pointed out that the Competition Commission may exercise its jurisdiction under the Act where unreasonable conditions have been imposed by the owner of intellectual property rights. In other words, intellectual property rights are excluded from the purview of the Act but if the owner of intellectual property rights imposes unreasonable restrictions then cognizance can be taken by the Competition Commission.

The expression "reasonable conditions" has not been defined or explained in the Act. By implication, unreasonable conditions that attach to an IPR will attract section 3. In other words, licensing arrangements likely to affect adversely the prices, quantities, quality or varieties of goods and services will fall within the contours of competition law as long as they are not in reasonable juxtaposition with the bundle of rights that go with IPRs. This may happen when the firms in a manufacturing industry decide to pool their patents and agree not to grant licenses to third parties, at the same time fixing quotas and prices.

Exports

Section 3 of the Act recognises the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export. Rationale for not subjecting exports to section 3 prohibition appears to lie in the fact that the effect of such exports will fall outside India and gathering data and other information may not be possible

ABUSE OF DOMINANT POSITION (SECTION 4)

Section 4 dealing with abuse of dominant position is one of the most important provisions of the Act. In terms of section 4, the Act does not prohibit mere possession of dominant position, but only its abuse, thus recognizing that a dominant position may have been achieved through superior economic performance. Section 4, therefore, only applies to abuse of a dominant position, and does not restricts enterprises or group from holding and maintaining a dominant position or striving to achieve the dominant position.

As mentioned above, section 4 restricts an enterprise from abusing its dominant position. In this context, it is apt to note the definition of the term enterprise.

The term 'Enterprise' has been defined under section 2(h) of the Act to mean a person or a department of the Government, who or which is or has been engaged in any activity, relating to production, storage, supply, distribution, acquisition or control of **articles** or goods or provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries whether such **unit or division** or subsidiary is located at same place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Terms 'Activity', 'a unit or division', 'article' occurring under the definition of enterprise have also been clarified by section 2 (h) by way of explanation wherein the term 'Activity' includes profession or occupation. Similarly the term 'article' includes a new article and service includes a new service. Similarly, term 'a unit or division' includes a plant or factory established for production, supply, distribution, acquisition or control of any goods or any branch or office established for provision of any service.

In considering whether there is or has been an abuse of dominance, the Competition Commission has been empowered to conduct a detailed inquiry of the relevant markets concerned. Section 4(2) enumerates conditions/circumstances, the presence of which may render a dominant enterprise liable for abuse of its dominance.

Essential Elements of Dominance

In order to attract the provisions of section 4 an enterprise must be shown to be in dominant position in the relevant market.

Term "dominant position" has been defined under explanation (a) to section 4 to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to —

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour.

It is pertinent to note that dominant position of an enterprise is to be determined in the context of the relevant market and to assess whether an enterprise is dominant, Competition Commission is required to determine relevant market as the market with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

Determination of dominant position

For the purposes of determining dominant position of an enterprise, Competition Commission is required to give due regard to factors listed under section 19 (4) such as market structure and size of market; market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprise, or sale or service network of such enterprise; dependence of consumers on the enterprise; monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector enterprise or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; social obligations and social costs; relative advantage, by way of contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; any other factor which the Competition Commission may consider relevant for the inquiry.

Abuse of dominant position

Section 4(2) provides circumstances the presence of which may be treated as abuse of dominant position by an enterprise or group. The circumstances under section 4(2) leading to abuse of dominant position may be classified under two categories, e.g. (i) Exploitative Abuses, such as unfair or discriminatory conditions or prices and (ii) Exclusionary Abuses such as denial of market access. Here, it is pertinent to note that the list of abuses mentioned under section 4(2) are exhaustive and not merely illustrative.

Competition Commission is required, while determining abuse of dominance, to take into account factors enumerated under section 4(2) of the Act which are discussed below:

- (a) *Imposition of unfair or discriminatory conditions*: In terms of section 4(2)(a), an enterprise would be considered to have abused its dominant position, if such enterprise – directly or indirectly imposes unfair or discriminatory condition in purchase or sale of goods or service; or if such enterprise directly or indirectly imposes unfair or discriminatory price in purchase or sale (including predatory price) of goods or service.
- (b) *Imposition of limitations or restrictions*: In terms of section 4(2)(b), an enterprise would be considered to have abused its dominant position, if such enterprise - (i) limits or restricts production of goods or provision of services or market therefor; or (ii) limits or restricts technical or scientific development relating to goods or services to the prejudice of consumers.
- (c) *Indulging in practice(s) denying market access in any manner*: In terms of section 4(2)(c), an enterprise would be considered to have abused its dominant position, if such enterprise indulges in practice or practices resulting in denial of market access.
- (d) *Making contracts subject to unconnected supplementary obligations*: In terms of section 4(2)(d) an enterprise would be considered to have abused its dominant position, if such enterprise makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (e) *Using dominance in one market to enter/protect other market*: In terms of section 4(2)(e), an enterprise would be considered to have abused its dominant position, if such enterprise uses its dominant position in one relevant market to enter into, or protect, other relevant market including relevant product market.

Jurisdiction of Competition Commission in Relation to Abuse of Dominant Position

Section 19 of the Act dealing with inquiry into certain agreements and dominant position of enterprise, empowers the Competition Commission to inquire into any abuse of dominant position by enterprise or a group which falls under any of the clauses (a) to (e) of section 4 (2), mentioned above.

The Commission has been empowered to make such an inquiry either on its own motion or on receipt of any information in such manner and accompanied by prescribed fee, from any person, consumer or consumer association or trade association; or a reference made to it by the Central Government or State Government or a Statutory Authority.

REGULATION OF COMBINATIONS (SECTION 5 & 6)

Regulation of Combinations is one of the core provisions of Act. Substantive provisions relating to regulation of combinations are contained in section 5 and section 6 of the Act. Combination for the purposes of the Act has been defined under section 5, whereas regulation of combinations is provided under section 6. A breach of section 6 pertaining to regulation of combinations occurs where a combination as defined under section 5 has the effect of causing appreciable adverse effect on competition in the relevant market in India.

The combination in terms of section 5 denotes that the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, which are above the certain prescribed size in terms of assets or turnover.

Section 5 provides certain size-related thresholds and only an acquisition, acquiring of control, merger, or amalgamation above these thresholds is covered by the definition of combination. The threshold is Rs.1,000 crores in terms of assets or Rs.3,000 crores in terms of turnover in India, being the assets or turnover, as the case may be, jointly of the parties to the combination. In the case of enterprises having assets or turnover within and outside India, the threshold is US\$ 500 million of assets or US\$ 1,500 million of turnover. In case the combination involving a group of enterprises, the corresponding threshold is Rs.4,000 crores of assets or Rs.12,000 crores of turnover in India, or in the case of enterprises having assets or turnover within and outside India, US\$ 2 billion of assets or US \$ 6 billion of turnover. In case of combinations involving foreign entity and Indian entity asset value of at least rupees 500 crores and turnover of at least rupees 1500 crores for operation in India is also required in addition to the existing global asset or turnover limits as provided under the Competition Act, 2002.

Thus, combinations below the specified thresholds are beyond the jurisdiction of the Commission insofar as regulation of combinations is concerned. Section 20(3) provides that these thresholds are subject to periodic revision by the Central Government so as to account *inter alia* for inflation and exchange rate fluctuations.¹²

Section 6 of the Act dealing with regulation of combinations provides that any person or enterprise entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed, it shall be void.

However, in terms of Section 6(4), provisions relating to regulation of combinations does not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement. This exemption appears to have been provided to facilitate raising of fund by an enterprise in the course of its normal business. Under section 6(5), the public financial institution, foreign institutional investor, bank or venture capital fund, are required to file with the Competition Commission in prescribed form, details of the control, the circumstances for exercise of such control and the consequences of default arising out of loan agreement or investment agreement, within seven days from the date of such acquisition or entering into such agreement, as the case may be.

In terms of section 6 (2A), any person or enterprise, who or which proposes to enter into any combination shall give a notice of forming a combination to the Commission, in the prescribed form, together with the fee prescribed under regulations. Such intimation should be submitted within thirty days of – (a) approval of the proposal relating to merger or amalgamation, referred to in Section 5(c), by the board of directors of the enterprise concerned with such merger or amalgamation, as the case may be; (b) execution of any agreement or other document for acquisition referred to in Section 5(a) or acquiring of control referred to in Section 5(b).

In terms of section 6 (2A) of the Competition Act, 2002 no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

Jurisdiction of Competition Commission in Relation to Regulation of Combination

Competition Commission has been vested with the jurisdiction in relation to regulation of combination in situations, if the parties who wish to enter into any combination, give a notice of forming a combination to the Commission, in the prescribed form together with the fee prescribed by regulations under section 6 (2), or it can *suo motu* take action against the combinations, if the commission has reason to believe that combination will cause appreciable adverse effect on competition in relevant market in India.

COMPLIANCE OF COMPETITION LAW

There has been a paradigm shift in the way compliance is approached. New levels of accountability, arising from the expectations of a broader stakeholder group, have elevated the concerns at board level of ensuring that effective, and reliable compliance systems and processes are in place and being utilised.

The most important aspect of compliances is the creation of a compliance-conscious environment at every level of the company and the education and training of employees to avoid engaging in activities that might raise compliance concerns.

There are more practical reasons as to why compliance with competition law is particularly important. On a broad level, the basic purpose of competition law is to ensure that markets remain competitive and its compliance ensures that this aim is achieved to the benefit of both businesses and consumers. At an individual level, businesses that comply with the law could avoid the serious consequences of non-compliance.

Compliance with competition law, rules etc. may relieve an enterprise of serious consequences of non-compliance in terms of:

- Inquiry by Competition Commission
- Hefty financial penalties.
- Agreements being unenforceable, and void.
- Adverse publicity.

- Loss of reputation and goodwill
- Damages.
- Possibility of being sued for damages

The message is clear that a well devised competition compliance programme can be of immense benefit to all enterprises irrespective of their size, area of operation, nature of products or services and also to companies, their directors and key corporate executives in avoiding monetary fines, civil imprisonment, beside loss of hard-earned reputation.

The benefit of setting up a competition compliance programme is that it can perform the role of a watchdog on the various anti competitive practices resorted against an enterprise by its suppliers of goods and services, the competitors, the trade association, its own dealers/stockists and their associations, as it can facilitate timely remedial action. The competition compliance programme may also help enterprises to track from time to time various laws, statues, rules, regulations, policies of Government to which it is subject to.

In an era of global competition, voluntary compliance with competition law is becoming a global standard led by the world's most prominent international corporations. This is due to the growing recognition that breach of competition law brings about managerial burdens rather than market benefits to individual companies. Corporations are thus obliged to firmly build up a business philosophy of abiding by established rules of fair market competition. In recognition of these facts, it becomes essential that all companies strive for voluntary observance of fair market discipline, and in the process help lay a cornerstone for a mature culture of corporate compliance.

A compliance programme therefore provides a formal internal framework for ensuring that businesses, i.e., the management and individual employees, comply with competition law. It may include such elements as training to raise awareness of law, use of checklists to ensure compliance by individual staff with company policies, recording systems to document any permitted contacts that employees have with competitors and independent reviews of agreements, behavior and staff to monitor ongoing compliance. It can also help identify actual or potential infringements at an early stage, enabling the company to take appropriate remedial action.

When considering whether it is necessary to implement a compliance programme, companies should bear in mind that if they do commit an infringement, the Competition Commission may take a lenient view where they can show that they have taken adequate steps to achieve compliance. The larger the business and the greater the risk of infringement, the more likely it is that adequate steps will include the introduction of a compliance programme. As a starting point it is helpful to assess the extent to which competition law will affect the business and the risk of committing an infringement. In case the risk of infringement is high, more elaborate measures may be required to ensure compliance.

Further, if employees understand competition law, they will also be able to recognize when the business is a victim of anti-competitive agreements or conduct, and be better-placed to protect the business' interests by making a reasoned complaint to the Competition Commission. As the consequences of infringement can be serious, a compliance programme must be capable of meeting the changing requirements of business and must make efforts as part of the regular evaluation process to ensure that the compliance programme continues to be relevant. The prescription of behavioral standards under the compliance programme not only prevents officers and employees of an enterprise from unconsciously violating the competition laws, but at the same time, relieve the employees of the fear that accompanies breach of Competition law.

ROLE OF COMPANY SECRETARIES

Competition authorities, the world over, encourage companies to seek advice from professional experts in compliance of competition law to assist them in designing, implementing and maintaining an effective compliance program. It is in this context, the Company Secretaries are the most suitable professional to play a wider role in compliance of competition law. Company Secretaries are the professionals, who have expertise in providing total compliance solutions and imbibing good corporate governance practices in the veneer of company strategy, formulation, implementation and other aspects of company policies as a coherent whole.

As a compliance officer, a Company Secretary can assist the companies in designing, implementing and monitoring an effective competition compliance program by:

- developing and implementing a compliance program, including preparing a compliance manual particularly addressing issues likely to arise for the organisation;

- conducting staff training on compliance issues;
- reviewing companies compliance line of reporting;
- reviewing company website from a compliance perspective;
- reviewing the effectiveness of company compliance program to encompass changes to legislation etc.

Company secretary is a knowledge professional with a compliance bent of mind and analytical approach. They are not only conversant with the technicalities and provisions of the corporate legal areas but are highly specialized professionals in the matters of procedural and practical aspects involved in the compliances enjoined under various statutes and the rules, regulations, bye-laws and guidelines made thereunder. This is within his core competence that the area of compliance belongs to him.

MCA - 21 — A CRITICAL REVIEW

ALKA KAPOOR* & DEEPA KHATRI**

It has been over 22 months since the launch of MCA-21 project, an ambitious e-governance initiative of Ministry of Corporate Affairs. The project was visionary in nature aimed at repositioning the Ministry of Corporate Affairs as a dynamic and modern organisation, capable of fulfilling the aspirations of stakeholders in the 21st century. As a result of this, the various stakeholders i.e. public, professionals, financial institutions, government and others were expected to enjoy the benefits of modern information technology that would help in bringing greater transparency and enhanced accountability. MCA-21 programme was envisioned to provide the public, corporate entities, professionals and others an easy and secure online access to the information at any time and from anywhere. A paperless corporate environment was conceived coupled with convenience for statutory compliance and inspection.

In fact, the government has chalked out a National E-Governance Plan (NEGP) for implementation of various e-governance initiatives, including those for tax payers. MCA-21 programme is a part of this NEGP and builds on Government of India's vision to introduce a service oriented approach in design and delivery of government services, establish a healthy business eco-system and make the country wholly competitive.

Globally, countries like UK, Canada, Australia, USA, Singapore, Hong Kong have taken proactive measures to bring the benefits of IT to the masses. They have framed policies and procedures to achieve the mission set. Suitable Governance structures have been put in place with tight monitoring to achieve the Electronic Service Delivery targets (ESD).

In Australia since 2001, all appropriate federal government services are being delivered electronically via internet. In Canada, all key government services are fully online since 2004. U.K. has sought to make 100% of government services carried out electronically. In Hong Kong, 90% of those services which are amenable to ESD are e-enabled. In China, 80% of the administrative services of municipal government agencies are being delivered via the internet since 2005.

MCA-21 programme aimed at moving from paper based to nearly paper-less environment. In words of Dr. Manmohan Singh, Hon'ble Prime Minister of India, **"E-Governance has the potential to transform governance and contribute to the reform of administration by enabling greater speed and efficiency in official transactions. The commissioning of the MCA-21 project is a landmark measure for advancing the cause of the national e-governance plan and implementing it"**.

While the new system under MCA -21 has brought about a sea change, the time has now come to take a critical review of this visionary project. No doubt there have been teething problems which surfaced on the practical implementation of the project. It took time for corporates, the professionals, even banks and financial institutions to understand the working of the new system. There were even technological difficulties including retrieving and uploading the forms, filling up the required data in various forms as well as in e-inspection. However, the openness of the MCA to suggestions and their resolve to find effective solution has resulted in a number of difficulties being alleviated. The project has fully automated all processes related to the proactive enforcement and compliance of the legal requirements under the Companies Act, 1956. **E-filing facility includes incorporation of new companies, filing annual and other statutory returns, registration and verification**

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of charges and processing of various approvals/ clearances etc. applied on time. Besides, inspection of company documents, request for certified copies is also facilitated through MCA portal.

The project has achieved the mammoth task of eliminating around 6 crore sheets of paper routinely filed by companies.

Nonetheless, some of the difficulties still being faced by corporates and professionals alike are:

- Power failure : In some states, there is frequent power cut for several hours each day. This severely affects working on line on MCA system.
- Quite often, it becomes difficult to upload/file e-forms due to server problems caused due to maintenance or simultaneous access of the MCA portal by a large number of stakeholders. Due to this, uploading of e-forms takes a long time.
- After paying Challan for on line inspection of records, only 3 hours are allowed for viewing. In these three hours there may be a power cut or connectivity problem due to which a person may not be able to inspect the records.
- There is often a problem of expiration of session wherein a “session expired” message appears on the MCA portal.
- At times various error messages are displayed on the portal at the following stages while filing the eForm:
 - check form
 - pre-scrutiny
 - uploading
 - payment of fees.

Examples of error messages are :

- “server error http 1.0/403 forbidden”,
- “bad gateway”
- “Pre-scrutiny not done” even when pre-scrutiny is done.

Such messages are not understood. As a result it becomes difficult for companies to take corrective action.

- At the time of annual filing, perhaps due to the heavy pressure on the system, the system does not accept the documents being filed. Consequently, the companies may not be able to file the annual documents on time, due to none of their fault.
- Even after submitting all the necessary documents for updating, sometimes updated information is not shown on MCA web site.
- Sometimes, errors are committed by companies while filing various forms. Similarly, errors are committed by ROC officials while processing the forms and applications. Such errors, though inadvertent, lead to wrong information being filed, processed and uploaded for public view. A system for rectification of such errors needs to be evolved such that correct information is available on MCA portal.

Not only systems related problems, there are certain other issues on which corporates are facing difficulties specifically those relating to Director Identification Number viz. DIN. With effect from 1st July 2007, the government has made it mandatory to mention Director Identification Number in e-form 32, without which the form cannot be filed. This has led to a number of difficulties being encountered by companies. Some of these are listed below:

- In case of a person who was a director but had obtained only provisional DIN prior to 1.7.2007 and his office of director was either vacated under the provisions of Section 283 of the Companies Act, 1956, or he was removed from the office of director under the provisions of Section 284 of the Companies Act, 1956, it becomes impossible for the company to file e-form 32 any time effective from 1.7.2007 which requires information regarding DIN of the director.

- Where the director who had obtained only provisional DIN, resigned from the Board and resignation was duly accepted by the Board immediately before 1.7.2007, the company is unable to file e-form 32 in the absence of DIN of the director who has resigned.
- In case of death of a Director who had not yet obtained DIN number, the problem persists as to how to obtain a DIN for the deceased Director and complete the process of filing of DIN 2 and DIN 3 in order to file e-form 32.

The Ministry of Corporate Affairs has so far been very open to views and suggestions and it is expected that they would try and resolve the above issues also for the benefit of all stakeholders. The users are expected to take part in interacting with the Ministry by discussing the problems they face as well as to give constructive suggestions for solving the problem.

This is an e-governance era. It benefits all concerned through reduced duplication of work. In addition, the processes of data collection, analysis and audit are simplified, and become less tedious. Communication between the various government departments improves, information sharing is much better which aids governance, business transactions, and stimulates the growth of a new economy. The largest benefit of e-governance is its potential to give birth to an entire web-based economy. Manoj Kunkalienkar, executive director, ICICI Infotech has rightly said, "As far as e-governance projects are concerned, the government is gradually changing its role from an 'implementer' to a 'facilitator and regulator.' In the words of Shivaji Chatterjee, senior director, sales and marketing, Hughes Escorts Communications, "IT has a vital role to play in all transactions that the government undertakes. It helps the government cut red-tapism, avoid corruption, and reach citizens directly."

The benefits that can be derived from this e-governance initiative of the government are futuristic and can be huge especially those related to the mammoth data that is being created on the web. Once the initial resistance to the new system has subsided, the inherent benefits are becoming evident. These are:

- Through the system of CIN and DIN, a mammoth database repository of corporates including their directors is being built up on the web. This database of MCA is the most authentic centralised database of all the companies registered in India and foreign companies having branch or liaison office in India which could be used for statistical purposes. The database will also be helpful to other concerned departments like the SEBI, income tax, service tax, VAT etc. as they can verify the documents filed with them. Further, it is a great source of information for researchers, corporates, analysts etc., based on which a system for study, analysis and research of performance of companies, region wise and on a national basis can be built up.
- Cross-referencing of financial as well as other vital data of companies filed with Registrar of Companies and other Regulatory Institutions like Tax Authorities, RBI and SEBI is possible with e-governance. Also, various professionals associated with the corporate sector, the individual investors, the Investor Protection Groups and the Prosecuting Agencies of the government will be benefited from this database. Banks and financial institutions can use such database for improving credit evaluation norms and also the overall quality of credit.
- With the introduction of concept of DIN, complete identification of Directors is available including their address, phone number, e-mail id, etc. This would facilitate effective legal action against the directors who commit any fraud. Service of Court notice/summons on the directors of companies in liquidation and companies which default in legal compliances had been a massive problem for law enforcement agencies. With data availability under CIN and DIN, the official liquidators attached to various High Courts and prosecutors on behalf of Registrar of Companies will be able to expedite disposal of cases. The system would ultimately lead to curbing the practice of companies vanishing after raising funds from the public.
- If a director becomes a director of more than 15 companies that are statutorily required under Companies Act, 1956, it will be easily detected.
- Availability of data/details in the MCA website will also enable other government departments to keep a vigil on the companies specially with regard to timely compliances by the companies of all other connected economic laws and regulations.

- E-governance i.e. web based governance is helping the business community by becoming a catalyst and a channel for e-business.
- The inherent transparency which the system brings, has helped the government by reducing corruption. Also, it has reduced redundancy and duplication. Further, besides data collection process, analysis and audit have become much easier.
- Under the proposed Limited Liability Partnership Law, every designated partner of a limited liability partnership shall be required to obtain Permanent Identification Number (PIN) from the Central Government.

Since limited liability partnership administration will be under the regime of the Ministry of Corporate Affairs (the MCA) which is already managing the allocation of DIN, designated partners having DIN may be exempted from obtaining separate PIN. For the purpose of allocation of PIN in such cases, information from respective DIN may be obtained. This would make the procedure simple and non-repetitive.

- Banks and financial institutions have been availing the services of Practising Company Secretaries (PCS) in connection with various matters relating to registration of charges. Professional expertise of company secretaries in practice has also been generally availed of in connection with compilation and filing of charges, preparation of search/status reports, preparation of petition/ appearance before Company Law Board (CLB) and attending to various other formalities. Banks avail services of professionals for getting charge registration information and inspection of charge documents for credit evaluation of its clients. With e-governance it has become our easy task.
- E-governance has facilitated charge registration. It has facilitated cross-referencing of charge creation document at the time of filing a new charge document. At the time of new charge creation and registration of a company, data which is already there in electronic repository gets automatically filled.

Pre-certification

- Pre-certification in e-governance scenario has come as a boon to the regulator and the corporates alike. Pre-certification means certification of correctness of the contents of any document by an independent professional before the same is filed with the Registrar along with the prescribed fee.
- 'Pre-certification' acts as a pre-emptive check to monitor compliances with the requirements of the Companies Act and the Rules made thereunder. It has the capacity to improve compliance rate, reduce prosecutions and ensure proper filling and filing of documents. The independent professional thoroughly checks the correctness of the particulars stated in the form after due consideration of the provisions of the Companies Act and rules and regulations made thereunder. He also ensures that the particulars stated in the form are in agreement with the books and records of the company. If he notices any defect or finds that the information provided in the form is incomplete, he takes steps for rectification of the defect and gets the document completed before filing the same with the Registrar. This means that the Registrar can rely on the certification and take the document on record without any further examination. The documents and forms filed with ROCs are therefore becoming available for public inspection within a short span of their filing.
- It is however, unfortunate that pre-certification of e-form 8, which was mandatory when the e-form was introduced, has been done away. It would benefit the government itself if it were to look into the matter of restoring the pre-certification of e-form 8 by PCS. Such certification would ensure that records relating to charges are correctly filed and are upto date. Also, it would be in line with the policy of professionalism and orderly development of corporate sector.

The advantages of MCA-21 project are countless. With electronic filing of forms, ROC offices have got rid of the time consuming work of physical filing of forms and returns, their verification and registration, voluminous paperwork involved in maintaining document files, registration of charges, lakhs of correspondence etc., search and inspection of document files including register of charges at ROC offices, and manual scrutiny of balance sheets. ROCs can now devote time and resources to more important tasks of analysing balance sheets and directors report; qualitative analysis of database of all the companies registered in India or foreign companies

having branch or liaison office in India; surveillance; monitoring of professionals; investigation or prosecution; investor grievance handling and bringing out innovative schemes for corporate sector.

The implementation of MCA-21 has been a herculean task. Since this was a totally new method of working, there were bound to be some confusions and technical problems, which the government is keen to resolve and has to a great extent done so. The initiative is a major step forward towards making Indian business globally competitive. With the joint efforts of experts, professional bodies, chambers of commerce, the project can further develop thereby fulfilling the objective of the National E-governance Project. The following quote by Vincet Van Glogh reinforces the above statement : "Great things are not done by impulse, but by a series of small things brought together."

COMMUNICATION SKILLS AND PROFESSIONAL EXCELLENCE

ARCHANA KAUL*

“To effectively communicate, we must realize that we are all different in the way we perceive the world and use this understanding as a guide to our communication with others.”

Anthony Robbins

INTRODUCTION

Communication is the mechanism through which human relations are developed. A person's communication style has the greatest impact on his or her professional reputation. In fact, what you say and how you say it, can make or break your image in the workplace. The ability to communicate is being rated the most important factor in making an executive promotable than ambition, education and capacity for hard work. One can significantly boost his marketability by seizing any academic and professional opportunities offered to him for honing his communication skills.

A survey conducted by the University of Pittsburgh's Katz Business School has revealed that communication skills are an important decisive factor in choosing managers. The survey conducted of recruiters from companies with more than 50,000 employees' points out that communication skills including written and oral presentations as well as an ability to work with others, are the main factors contributing to job success.

In spite of the increasing importance placed on communication skills, many professionals though struggling for the same, are unable to communicate their thoughts and ideas effectively. This inability creates roadblocks for them to compete effectively in the workplace and stands in the way of their career progression. To be an effective communicator and to get your point across without misunderstanding and confusion, you need to tune up your communication skills.

PROFESSIONALS IN THE CHANGING BUSINESS SCENARIO

The role of business in the changing global competitive environment is far more pervasive than before. Its constituency is global. Before discussing how professionals are viewed in the changing scenario, it seems to be pertinent to point out that business in truth is a process of creating value. During the process, the resources of the community are converted into a different form by adding value through technology, workmanship, conversion, and other in-process resources. Value is created with the ultimate customer in mind in order to make a decent profit for not only the proprietors or owners but for various other stakeholders, like, employees, suppliers, lenders, management, and the society at large. In the context of increasing market competition, the process of creation of value has become more customer-focused and customer-oriented.

The role and responsibilities of the professionals in the competitive business environment have expanded to a great extent. In fact, the pace of technology revolution has exceeded all expectations. New fast paced competitive economy requires professionals to be agile to suit changing conditions in markets as well as in technology. Corporates require professionals who possess effective leadership qualities, innovative thinking and are fully equipped in terms of competence and knowledge to encounter the challenges that lie ahead in terms of quality of service and professional excellence. They have to perform multifarious jobs so as to gain a competitive edge and achieve excellence in the profession. It is being speculated that the next twenty years will see huge changes in technology, and hence in the business and working environment in which professionals have to work.

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Achieving excellence in professional career is not an easy task particularly in the changing global scenario where changes are taking place at a rapid pace and the boundaries of the profession are blurring. A Company Secretary who would aim for excellence and a continuous improvement towards perfectionism is the one who will recognize the preciousness and surpassing propriety of the process of value creation. A profound approach to nudge creative and beautiful solutions to various kinds of business problems will require the excellence of professional mind that is continuously generating energy, cheer and positive attitude. To understand business problems from the point of view of the customer and to co-create value by finding out the best and cost effective solutions to those problems will require a high quality of knowledgeable interactive skills.

VARIOUS ATTRIBUTES TO ACHIEVE SUCCESS

Experts from time to time have pointed out various attributes/skills that a professional must possess to achieve success in the changing environment. These *inter-alia* include: *Technical skills* which means knowledge and proficiency in activities involving methods, processes and procedures in technical areas; ii) *Human skills* i.e. the ability to work with people and lead them; iii) *Conceptual skills* i.e. the creative ability to first conceive the model in your mind and then to construct a proto type; iv) *Design skills* which are basically innovative, are important for those who are doing pioneering work like researchers, infotech engineers, scientists etc. and v) *Analytical and problem solving skills*. Analytical and problem solving skills are perhaps the most emphasized skills which professionals should possess because every problem represents an opportunity for the skilled professional.

Besides, *Computational skills and IT skills, Motivational skills and Interactive skills* are equally important for a professional to succeed and achieve excellence in the profession. Apart from the abilities mentioned above, the changing scenario calls upon a professional to be an expert in his discipline and simultaneously to have the capacity to deliver value by application of other disciplines through collaborative communication

COMMUNICATION SKILLS AND ITS SIGNIFICANCE FOR PROFESSIONALS

Communication is the immediate touchstone for assessing an individual's abilities at the threshold. It is an effective tool to win over people to your side. Knowing an audience is not always easy. This is as pointed out by psychologists that each one of us is uniquely different from anyone else. The person with whom we communicate sees things differently than anyone else including ourselves. So if we have to persuade such people, good and effective communication skills are a must.

The purpose of communication is to get your message across to others. This is a process that involves both the sender of the message as well as the receiver. If the message is misinterpreted by any of the parties, it leaves room for error causing unnecessary confusion. If we are able to communicate effectively, the chances of any ambiguity or confusion are minimized. In fact, a message is successful only when both the sender and the receiver perceive it in the same way.

Effective communication depends not merely on mechanical skills such as correct grammar, but also on the ability to communicate in styles appropriate to different audiences, and the ability to know what needs to be communicated, to whom, and when. The information age has resulted in an unprecedented number of daily exchanges through everything from voice mail and e-mail to cell phones, videoconferencing and corporate intranets. While technology is more sophisticated than ever, people using these advanced tools must themselves be skilled communicators or the message is lost.

Professionals have to spend a considerable amount of their time in communicating at many levels. They have to either persuade people of their ideas or interact with people at various business forums to communicate their ideas/ business proposals etc. Rarely are they alone in their seats thinking, planning or contemplating alternatives. Their time is spent largely in face-to-face or telephonic communication with subordinates, peers, supervisors, suppliers, or customers. When not conferencing with others in person or on the telephone, they may be writing or dictating letters, memos or reports sent to them. Even, in those few periods when they are alone, they are frequently interrupted by communications. The time spent by professionals on communication and the attention it receives from them, speak about the importance of communication. Therefore, strengthening communication skills is a must to be able to communicate flawlessly and effectively. Needless to mention that in global competitive environment, there is no greater secret weapon in business than to know how to persuade people of your ideas. The vital aspect of progressing is getting your message across to others and to succeed in this, you must understand what your message is, what audience you are sending it to, and how it will be perceived. Also you must weigh-in the circumstances surrounding your communications, such as situational and cultural context.

WRITTEN AND VERBAL COMMUNICATION SKILLS

When we talk of communication, it is both verbal and written. Writing skills are crucial for professional success. Writing may not in itself be what you do for a living, but it informs every aspect of how other people perceive what you do. Creating a good impression with your writing is the first way to demonstrate to customers, funding bodies and potential business partners that you are organized, efficient and professional. To write is actually to say or express yourself on a piece of paper or on computer. Only difference is that writing gives you much more time and space to have your say recorded clearly. The skill of effective writing consists in holding the attention of the reader and makes it a happy or pleasant experience for him to read what you say. Personally, you may not be an attractive individual or you may not have the voice of an Amitabh Bachhan or an Amin Sayani. But writing does not require you to be one. It gives you the comfort and space to make your communication much more effective. Whilst not every piece of writing needs to be formal and elegant - indeed, simplicity can make a stronger impression. The words you write create sounds in the mind of the reader and set him in motion to do what you want him to do in much more masterly manner than the Director of a film scene makes the actors to act the way he wants.

To express your self, first you need to find the proper word. Your thoughts are, at first, mere agitations at the ideational level in your mind without a form or a sound. You need to find the proper word. In other words, you have to reverse the process, which you follow in using the Dictionary. There you travel from the word to the meaning thereof in order to understand the writer. When you are a writer, you need to go from meaning to the word, for which you use the Thesaurus. You need to keep it handy and to make friends with it.

Thereafter, you need to learn construction of easy, palatable and sweet sentences. For this purpose, you need to read a lot, widely and in depth. You need to watch how good writers convey their ideas, expand their thoughts, give examples and illustrations that drive home the point. You need to love reading; you need to immerse your self in reading good writings. You also need to read and love poetry, because a poet says a lot in a very small number of words. You need to appreciate poetry. This creates beauty and music in your writing. This makes your sentence building simpler and sweeter.

Good writing will give you natural authority and improve the confidence with which you are able to approach other aspects of business. It will make you independent of copywriters and editors and will put you in full control of the impression your company gives. Within a large company, it could lead to an improvement in your status. If you are an independent professional, it will help you to make good contacts and establish yourself within the corporate network.

PRESENTATION SKILLS

Art of presentation is an important component of communication skills. Presentations are a way of communicating ideas and information to a group. Presentation skills mean ability to communicate effectively whether it is a business proposal, information or ideas, to a group of people or at a business function. You might be a good writer or speaker but how you present your ideas makes a lot of difference. Presentation skills are important because it defines your abilities to present information to others and is a critical skill which professionals in particular must develop in view of the business world which has enormously changed in recent decades with its technology and globalization, pushing us to work longer, harder, smarter and faster. Since the requirements of the dynamic business environment keep on changing, professionals will need these skills more than ever in the coming years to encounter the future challenges boldly.

Individuals in particular professionals with powerful effective presentation, skills understand how critical these skills are to their success in presenting their messages and proposals. They are often, as you know in great demand just because of these skills. Although many professionals have developed their own styles of presenting information to others and they have become comfortable with their presentation methods. Nevertheless, there are many who have not. Whenever they have been asked to present something that requires them to stand up and speak to a group of people, such as presenting a report, briefing, presentation, or even being asked to become a guest speaker at some social or business function either in a formal or informal setting, they panic and become nervous. This panic attack and the nervousness is the main reason why many fear speaking and would rather try to move heaven and earth in order to keep from speaking in public. Therefore, one has to polish his presentation skills to speak with confidence, clarity and conviction.

Professional speakers have pointed out that a great presentation does not just happen. It is planned, rehearsed then delivered with flair. A good presenter is one who learns the skills of presentation. You can be a good presenter if you learn the skills for presentation success. You will be a great speaker if you learn from every presentation you deliver. Great presenters start as poor speakers – then they get better.

LISTENING SKILLS

Listening skills as well are equally important. How well you listen is critical to effective communication. Whenever any misunderstanding occurs at work, it is usually attributed to lack of communication, which implies that the person who delivered the message did not do the job effectively. But we tend to ignore the other side, i.e., the listener. It makes difference between success and failure in business environment if you listen effectively to your clients, employees, customers and peers etc. Professionals today need to listen more and talk less. That doesn't mean sitting back passively; it means listening hard to what's being said — with feeling, empathy and understanding. I remember one senior-level manager in a software company, who seemed to possess all the skills one might expect from such a person achieving his level of management. When someone talked to him, he would look squarely into the person's eyes, nod his head, and now and then say, uh-huh giving the impression that he really cared about what was said. There was only one small problem: he was not really listening.

Effective listening means more than just hearing what is being said. It means thinking about what is being said; how it is being said; the context in which it is being said. An effective listener actively processes what they are hearing. Think of doctors. How they listen to the patient before making a diagnosis. The best doctors listen attentively to the patient's words and tune in to any unusual symptoms. While being keenly aware of what's "going around," doctors listen so as not to jump to any conclusions. Then, after sifting through all the available information, the doctor can make an accurate diagnosis.

How do you listen most effectively? What is the importance of listening? Why is listening skill so vital for your professional career building? One has to address these questions most reverently. When you listen, you not only listen with your ears. You listen with your whole existence, your mind is spread throughout the minutest particles of your body. So you listen with the power of the mind distributed throughout all particles of your body. Hence your entire existence becomes ears. Your thoughts and experiences, i.e., your narrow personal thoughts and experiences have gone out of existence when you are listening with all intensity. You listen not only to the words being spoken; you also listen to the silences in between. As you are aware, silence is more eloquent than speech. The tape of your narrow thoughts that is constantly playing in your mental tape reorder is stilled into utter silence when you are really listening. If you are going to listen to a lecture on, say, company law or finance or taxation or management, mind you, your listening starts before you reach the lecture hall, continues during the lecture and prolongs even after the lecture is over. This is because the speaker starts framing the thoughts for his lecture well in advance and you start collecting his thoughts that have been expressed even after the lecture is over through your physical and metaphysical experiences. These thoughts are then happening.

Listening is so powerful a tool of learning that you need to sharpen your skills of listening every day if not every hour through your own harsh self-examination, review, refreshment and reinvention. The powerful speeches of world leaders now available only in books are actually resonating in the air. As the Bible says "In the beginning there was the Word and the Word was with the Lord". The beginning is endless and continues to reverberate through the skies, clouds, leaves, grass, the mother earth, the rains, the sunshine, the streams and what not. As you take your morning walk, train your mind to listen to these divine phenomena. Perhaps you would hear the talks given by Swami Vivekananda, Abraham Lincoln, Jesus to his disciples, Lord Krishna to Arjun; Lord Rama to Hanuman. Listening is an endless learning. The more you learn to listen, the better will be your knowledge and personality development - both must for a professional.

CONCLUSION

As pointed out earlier, the importance of good communication skills cannot be ignored as communication is the immediate touchstone for assessing an individual's abilities at the threshold. The root of a large number of organizational problems is poor communications. Effective communication is an essential component of organizational success whether it is at the interpersonal, intergroup, intragroup, organizational, or external levels.

Communication in reality happens internally. It is an internal process deep inside the individual. Effective communication emanates from within. That is why Steven Cohen calls it an "inside-out" approach. Check your emotions, feelings, thought process, clarity, and convictions from deep within. Do this before you translate these

into gestures, expressions, words and other forms of communication. Unless you achieve the purity and politeness of thought and mind, your interaction and communication with the outside world will not achieve successful happenings. Therefore look within first. Change within first. Then only you will start achieving the level of communication that influences others positively. Then only the real creativity will flow out of you. That will give you the confidence to be your real glorious self. That then will lead to creating the perception in others that you are a person to be taken seriously if they are to benefit. Effective communication exudes out of such a person. It leads others into happy interaction and positive chain of actions unfolds. The happiness born out of purity and sincerity and politeness within begets further happiness and positivism in others. Your language, your words, your expression, your communication, verbal as well as non verbal, all attain strong leadership. You start a new journey that exhilarates you as well as others. A joyous relationship emerges and multiplies. That, I believe, is the secret of communication.

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CERTIFICATION BY PCS ON DECLARATIONS MADE BY MEMBERS OF BSE/NSE

LAKSHMI ARUN*

A Practising Company Secretary is authorized to certify declarations/documents which are filed with Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) by its members.

These declarations/documents relate Networth, Details of directors/proprietor, Details of shareholding pattern/sharing pattern, Details of Dominant group, Undertaking from Corporates supporting dominant promoter group etc.

A. CERTIFICATION REQUIREMENTS FOR NSE MEMBERS.

NSE vide its Circular No.541, Ref. NSE/MEM/7835 dated September 06, 2006 requires its members to submit Annual Returns for the financial year ending 31st March, by October 31 i.e within 6 months from the end of the financial year. As part of the annual submissions, following documents are to be submitted by the Trading Member in hard copy as well as electronically using Electronic NSE Interface (ENIT).

- Balance Sheet, P&L, Auditors Report, Directors Report
- Net worth Certificate along with the relevant computation as given above (FORMAT C-1)
- Details of Other Exchange membership (FORMAT C-2)
- Details of directors/proprietor (FORMAT C-3)
- Details of shareholding pattern/sharing pattern (FORMAT C-6)
- Details of Dominant Group (FORMAT C-7)
- Undertaking for Relative / Corporate Support to the Dominant Group (FORMAT C-8)
- Listing details of listed corporate Trading Member (FORMAT C-9)

NSE has authorized Practising Company Secretary to issue the following certifications on certain formats, forming part of Annual Submissions to be made by its members.

1. DETAILS OF DIRECTORS/PROPRIETOR- FORMAT C-3

Format C-3 is for declaration of director/proprietor as at March 31 which discloses information such as Names, Experience (Number of years), Education (Graduate & above/below graduate), Qualification, Designated Director, Equity Share-holding (number, amount and percentage of total), Preference Share-holding (number, amount and percentage of total), Date of Birth, Residential Address, Contact Number, Father's Name, Directorship/Controlling shareholding in other companies.

Here a designated director is a person who essentially looks after the stock market operations of a trading member entity and shall be atleast a graduate/CA/ICWA/CS etc. He should possess atleast 2 years of experience in securities market/as investment consultant/as portfolio manager. Prior approval of SEBI/Stock exchange is required to appoint a designated director. It has to be ensured that there are atleast two designated directors.

* Education Officer, The ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.

This form has to be signed by director/compliance officer of the trading member and to be certified by a Practising Company Secretary/Chartered accountant for its correctness.

2. DETAILS OF SHARE-HOLDING/SHARING PATTERN - FORMAT C-6

Format C-6 is for declaration of shareholding/sharing pattern in respect of corporates/firms.

Share-holding Pattern for Corporates

Format C-6 submitted by corporates discloses the details of shareholding (both for equity and preference shares to be given in separate forms) as at March 31, which contains information such as Names, Number of Shares held, Face Value per Share (Rs), Amount paid-up (Rs. In lakhs) and Percentage of total.

Sharing Pattern for the Firms

Format C-6 submitted by firms discloses the details of name of Partner, Experience, Education, Designated Partners, Capital in the firm, Sharing pattern in profit, Sharing pattern in losses, Date of birth, Residential address, Contact number, Directorship/Partnership/Controlling shareholding in other companies etc.

Here a designated partner is a person who essentially looks after the stock market operations of a trading member entity and shall be atleast a graduate/CA/ICWA/CS etc. He should possess atleast 2 years of experience in dealing in securities /as investment consultant/as portfolio manager. Prior approval of SEBI/ Stock exchange is required to appoint a designated director. It has to be ensured that there are atleast two designated partners.

This form has to be signed by director/compliance officer of the trading member and to be certified by a Practising Company Secretary/Chartered Accountant for its correctness.

3. DETAILS OF DOMINANT GROUP- FORMAT C-7

Format C-7 discloses the details of dominant share holders, person supporting dominant shareholder, relation of a person supporting dominant shareholder etc.

NSE has prescribed the following norms relating to dominant promoters in respect of corporate trading members and dominant partners in respect of partnership firms.

- (a) The persons in control of the trading member corporate shall meet the criteria of fit and proper person similar to the criteria envisaged in the SEBI (Criteria for Fit and Proper Persons) Regulations, 2004 and being applied to intermediaries seeking registration from SEBI.
- (b) In case of unlisted corporate trading members, any person or persons holding 51% on their/his own or together with their/his relatives as defined under Companies Act and/or falling under the definition of 'control' as per the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997 (subject to such persons undertaking to support DP) or with the support of strategic investors in such corporate trading member shall be allowed to be identified as dominant shareholders.
- (c) In case of listed corporate trading members, persons named as promoters in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the corporate trading member under the provisions of the Listing Agreement, whichever is later, shall be deemed to be in control.
- (d) The following persons shall be allowed to extend support to the dominant shareholders on submission of requisite undertaking to the effect:
 - any of the 24 relations specified as per section 6 of Companies Act, 1956;
 - any person falling within the definition of 'control' as per the SEBI (Substantial Acquisition of shares & Takeovers) Regulations, 1997;
 - Any other strategic investors in the trading member;
- (e) In addition to the scheduled banks, central or state government owned finance and/or development institutions, any financial institution registered and regulated by any regulatory authority such as RBI,

SEBI, IRDA or any other entity that is fit to be identified as dominant promoter group in the opinion of relevant authority shall be allowed to be identified as dominant shareholder(s) provided they have a networth of not less than Rs. 50 Crores.

- (f) Inclusion or addition of another shareholder as a part of dominant promoter group shall not be treated as change in control so far as the earlier group of dominant shareholders holds the controlling stake, subject to a condition that the approved inclusion continues to be a part of the dominant promoter group for a period of atleast 3 years.

This form has to be signed by director/compliance officer of the trading member and to be certified by a Practising Company Secretary/Chartered Accountant for its correctness.

4. Undertaking given by the person/s supporting the dominant promoter- FORMAT C-8

Format C-8 contains undertaking from persons/corporates supporting dominant promoter group. It is to be noted that for arriving at the shareholding of persons constituting the dominant promoter group, the shareholding of close relatives, namely, parents, spouse, children and their descendents, brothers and sisters only may be counted provided these relatives give an irrevocable, unconditional support in writing. In respect of corporate also there should be unconditional and irrevocable support in favor of the dominant group by the corporate giving this undertaking, for the purpose of determining dominant promoter group in the trading member company. It should also be ensured that No-objection is given by the person giving this undertaking for his shareholding being reckoned with the shareholding of dominant promoter for the purpose of determining dominant promoter group.

This form has to be signed by director/compliance officer of the trading member and to be certified by a Practising Company Secretary/Chartered Accountant for its correctness.

NSE imposes the following penalties for non-submission of the above mentioned documents.

- Rs.100/- per document per day of delay for the 1st month after due date.
- Rs.500/- per document per day of delay for the next month.
- Rs.1,000/- per document per day thereafter till the date of submission.

CERTIFICATION REQUIREMENTS FOR BSE MEMBERS

Bombay Stock Exchange (BSE) requires its members to maintain a minimum net worth of Rs. 30 lakhs in case of individual members, Rs. 50 lakhs in case of corporate members and Rs. 50 lakhs + 50% for each additional membership right held in case of composite corporate members at all times. To ensure the Compliance, BSE requires its Trading Members to submit to the Exchange the Networth Certificate as on 31st March & 30th September every year. A Practising Company Secretary/Chartered Accountant is authorised to certify the networth of a trading member and to issue the certificate in this regard. Members who have traded even for a single day during the financial year are also required to submit the Audit Report, Audited Accounts and Networth Certificate. Networth Certificate is required to be given on letter head of Practising Company Secretary/Chartered Accountant and should contain the membership no. & seal of the Practising Company Secretary or Chartered Accountant as the case may be.

AT BSE, any Non-submission of networth certificate by due date attracts a penalty of Rs. 100/- per day till the date of submission of the documents and Non-submission of documents after two months of due date attracts a fine of Rs. 500/- per day until submission of the documents.

GUIDELINES

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 Returnfor 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.

By order of the Council

N K JAIN, SECRETARY & CEO

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.1 of November, 2007. [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007

GUIDELINES FOR REQUIREMENT OF MAINTENANCE OF A REGISTER OF ATTESTATION 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 services provided by Company Secretaries in Practice, every Practising Company Secretary (PCS)/Firm of PCS shall maintain a register regarding attestation 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 services is as under:

<i>Sl. No.</i>	<i>Name and Registration No. of the company to which attestation services* provided</i>	<i>Services rendered Certificate/ Return/ Audit Report</i>	<i>Date of signing of authorised for verification</i>	<i>Signature of the PCS</i>	<i>Signature of the person authorised for verification</i>
1.	2.	3.	4.	5.	6.

* The various attestation services mean :

- (i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.
 - (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 D&CC/FITTC/Cir-16/2002 dated December 31, 2002.
 - (v) Conduct of Internal Audit of Operations of the Depository Participants.
3. These Guidelines are effective from 1st January, 2008.

By order of the Council

N K JAIN, SECRETARY & CEO

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.2 of November, 2007 [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007

GUIDELINES FOR COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES FOR THE MEMBERS*

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 Research and Training (CCRT), and Seminars, Conferences, Study Circle Meetings organised by the Council, Regional Councils, Chapters, Satellite 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 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, 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.

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.3 of November, 2007. [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007

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, Satellite 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.

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 **12 Program Credit Hours (PCH) in a year or 40 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 atleast **twelve credit hours in a year or 40 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 :

<i>Certificate of Practice taken during</i>	<i>The requirement of Credit Hours</i>
<i>1st April to 30th September of the first year of the block</i>	Twelve Credit Hours in a year or 40 Credit hours in the block of three years
<i>1st October to 31st March of the first year of the block</i>	<i>No requirement of Credit Hours in the First Year of the block.</i> Twelve Credit Hours each in the second and third year of the block
<i>1st April to 30th September of the second year of the block</i>	Twelve Credit Hours each in the second and third year of the block
<i>1st October to 31st March of the second year of the block</i>	<i>No requirement of Credit Hours in the second year of the block.</i> Twelve Credit Hours in the third Year of the block
<i>1st April to 30th September of the third year of the block</i>	Twelve credit Hours in that year
<i>1st October to 31st March of the third year of the block</i>	<i>No requirement of Credit Hours in that block</i>

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].

5.2 The requirement specified above shall not apply to:

- (i) A member who has attained the age of 65 years.
- (ii) 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:

<i>No. of hours of Learning Program attended by the member</i>	<i>Program Credit Hours (PCH)</i>
Beyond 1 hour and upto 2 hours	1
Beyond 2 hours and upto 4 hours in a single day	2
Beyond 4 hours in a single day	4
Program spanning 1 ½ days	6
Program spanning 2 days	8
Program spanning 2 ½ days and above/National Convention	10

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/Satellite 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.

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.

By order of the Council

N K JAIN, SECRETARY & CEO

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/Satellite Chapters.
4. The headquarters will initially provide to Regional Councils printed blank formats of certificates, which will be serially numbered.
5. *Regional Councils/Chapters/Satellite 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



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 bye 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
- (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.

* Published in the May 2006 issue of Chartered Secretary at pp. 820-821

AT ITS MEETING HELD ON MARCH 24-25, 2006, THE COUNCIL PASSED THE FOLLOWING RESOLUTION PURSUANT TO THE POWERS GRANTED UNDER CLAUSE (f) OF SUB-SECTION (2) OF SECTION 2 OF THE COMPANY SECRETARIES ACT, 1980.

“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.”
-

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."

GUIDELINES FOR AVAILABILITY OF FIRM NAMES*

The Council at its 150th Meeting held on July 17-18, 2004 has revised Guidelines for Approval of Firm's Name under Regulation 169 of the Company Secretaries Regulations, 1982.

The Revised Guidelines are given below:

“Guidelines framed by the Council relating to Approval of 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 firm
 - (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 only suffixes to be allowed in a trade/firm name shall be “& 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.

* As revised by the Council of the Institute in July 2004.

- (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) 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 adopt 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.
 - (ix) 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 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.

EXPOSURE DRAFT OF GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN PRACTICE*

(Last date for comments : 22nd December, 2007)

The following is the text of the Exposure Draft of the 'Guidelines for Advertisement by Company Secretary in Practice', issued by the Council of the Institute of Company Secretaries of India, for comments. The comments and suggestions on the Exposure Draft may be sent to Sh. Sutanu Sinha, Director, The Institute of Company Secretaries of India, 'ICSI House', 22, Institutional Area, Lodi Road, New Delhi – 110 003 (E-mail: ssinha@icsi.edu) so as to reach him by 22nd December, 2007.

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;

* Published in December 2007 issue of Chartered Secretary at pp. 1781-1783.

- 1.5 The Council of the Institute of Company Secretaries of India at its meeting held on 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 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 deviation from 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
- 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 Date and place of Issue of Advertisement

- 4.2.5 Age
- 4.2.6 Gender
- 4.2.7 Additional recognized qualifications
- 4.2.8 Languages spoken
- 4.2.9 Honours or awards conferred
- 4.2.10 Current teaching or research appointments at a university or college of advanced education or professional Institute
- 4.2.11 Name of firm in case of partnership
- 4.2.12 Number, name of employees and their qualifications and other particulars
- 4.2.13 Business address, telephone numbers (including email, fax and other details) of the firm
- 4.2.14 Office hours and after office hours availability
- 4.2.15 Advertisement about setting up of certified filing centers
- 4.2.16 Frequently Asked Questions (FAQs) in conformity to these guidelines
- 4.2.17 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.
- 4.2.18 The write-up may display the passport size photograph of the member or partners of the firm of Company Secretaries
- 4.2.19 Fees:
 - (a) Willingness to give written estimates of fees;
 - (b) Methods for determining fees;
 - (c) Mode of Acceptance of Fees.
- 4.2.20 Speed of Service
 - (a) willingness to give written estimates concerning completion of particular work;
 - (b) maximum time within which specific services will be completed.
- 4.2.21 Write-up may include the names of clients and services rendered
- 4.2.22 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.
- 4.2.23 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.

4.2.24 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.

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

ANNEXURE

MODEL ADVERTISEMENT

- | |
|--------------------------------|
| Passport
Size
Photograph |
|--------------------------------|
- (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 :

REVISED DRAFT QUESTIONNAIRE FOR CREATION OF DATABASE OF COMPANY SECRETARIES IN PRACTICE

In view of the enquiries received from Regulatory and other Bodies from time to time, the Institute has decided to build up a database of Practising Company Secretaries. The database would be provided to Regulatory and other Statutory Bodies as and when sought by them for utilizing the services of Practising Company Secretaries.

For the purpose, a draft of the proforma devised by the Practising Company Secretaries Committee of the Council is placed below. The Practising members would be requested to upload their particulars online in the said proforma.

Comments and suggestions of members are invited on the draft proforma. These may be sent at ssinha@icsi.edu.

Questionnaire for Creation of Database of Company Secretaries in Practice

1.	NAME (Mr./Ms.)	
	Date of Birth	
	ACS/FCS No.	
	C.P. No.	
	Date of Issue of CP	
2.	QUALIFICATIONS	
	(i) Professional Address City State Pin Code Telephone No. Mobile No. Fax No. Website E-mail	
	(ii) Residential Address City State Pin Code Telephone No.	
	(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.	
3.	Whether practising as	
	(i) Sole Proprietor or	Yes/No
	(ii) Partner in a Firm of Company Secretaries or	Yes/No
	(iii) Sole Proprietor as well as Partner in one or more Firms of Company Secretaries	Yes/No
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)	
	Particulars	Partners
		I II III IV
	(a) Name (Mr./Ms)	
	(b) Date of Birth	

	(c) ACS/FCS No.			
	(d) CP No.			
	(e) Date of issue of CP			
	(f) Qualifications			
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	Cement	Financial Services	
	Engineering	Entertainment	FMCG	
	Food Processing	Housing	Insurance	
	Textile	Steel	Pharmaceuticals	
	Telecommunications	Petroleum	Power	
	IT	Petrochemicals	<i>Any other, Please specify.....</i>	
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 Company	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			
	(a) Office Carpet area (in sq. feet) Own/Rented			
	(b) Number of staff			
	(c) Particulars of staff (Please specify separately for each staff)			
	(i) Designation			
	(ii) Qualification			
	(iii) Whether whole time or part time			
	(d) No. of trainees			
	(e) No. of seats			
	(i) Current no. of apprentices employed			
	(ii) Total No. of Trainees who have completed training			
	Tick infrastructure facilities in your office			
	• Computer	• Internet		
	• Laptop	• Printer		

	<ul style="list-style-type: none"> • JRE (Java Runtime Environment) • Acrobat Reader
	<ul style="list-style-type: none"> • Scanner
	<ul style="list-style-type: none"> • Website
	<ul style="list-style-type: none"> • 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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ANNEXURE

INDICATIVE LIST OF AREAS OF PRACTICE

<input type="checkbox"/> Corporate Laws	<input type="checkbox"/> Financial Services and Consultancy
<input type="checkbox"/> SECURITIES/COMMODITIES EXCHANGE Market	<input type="checkbox"/> FINANCE INCLUDING PROJECT/WORKING CAPITAL/LOAN SYNDICATION
<input type="checkbox"/> Corporate Restructuring	<input type="checkbox"/> Excise/CUSTOMS
<input type="checkbox"/> Sales Tax/VAT	<input type="checkbox"/> Income Tax
<input type="checkbox"/> Service Tax	<input type="checkbox"/> Foreign Exchange Management
<input type="checkbox"/> Foreign Collaborations & Joint Ventures	<input type="checkbox"/> Intellectual Property Rights
<input type="checkbox"/> Depositories	<input type="checkbox"/> Monopolies/Restrictive Trade Practices/ Competition Law
<input type="checkbox"/> Consumer Protection Laws	<input type="checkbox"/> Arbitration and Conciliation
<input type="checkbox"/> Import and Export Policy & Procedure	<input type="checkbox"/> Environment Laws
<input type="checkbox"/> Labour and Industrial Laws	<input type="checkbox"/> Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)
<input type="checkbox"/> Financial Consultancy	<input type="checkbox"/> Other Economic Laws
<input type="checkbox"/> SEBI/ Securities Appellate Tribunal	<input type="checkbox"/> Banking and Insurance
<input type="checkbox"/> Any Other Service (Please specify)	

RECOGNITIONS

RECOGNITIONS SECURED FOR COMPANY SECRETARIES

I. FOR A PRACTISING COMPANY SECRETARY

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
I	COMPANY LAW		
1.	The Companies Act, 1956	<p>(a) 'Secretary' in whole-time practice defined as member of the Institute in practice and not in full time employment [section 2(45A)].</p> <p>(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)].</p> <p>(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].</p> <p>(d) To sign the annual return of listed company (section 161).</p> <p>(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].</p> <p>(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 sub-section (1) of section 383A and having paid-up share capital of ten lakh rupees or more [proviso to section 383A(1)].</p>	<p>June, 1988</p> <p>-do-</p> <p>-do-</p> <p>-do-</p> <p>-do-</p> <p>December, 2000</p>

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		(g) (i) 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)].	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)
		(ii) 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]	
		(iii) 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)].	
2.	Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2006	Pre-certification of e-forms: 1. Form No. 2 2. Form No. 3 3. Form No. 5 4. Form No. 10 5. Form No. 17 6. Form No. 18 7. Form No. 23 8. Form No. 24AB 9. Form No. 25C 10. Form No. 32 Declaration: 11. Form No. 1 12. Form No. 19 13. Form No.20 14. Form No.20A 15. Form No.61	February 10, 2006
3.	Companies (Declaration of Dividend out of Reserves) Amendment Rules, 2006	Pre-certification of e-form of application for approval for declaration of dividend out of reserves. [Pursuant to Section 205A (3)].	March 3, 2006
4.	Investor Education and Protection Fund (Awareness and Protection of Investors) (Amendment) Rules, 2006 (Rule 3)	Pre-certification of e-form – Form 1 relating to statement of amounts credited to Investor Education and Protection Fund.	March 3, 2006

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
5.	Companies (Director Identification Number) Rules, 2006 [Rule 6]	To certify form DIN-3 (Form for sending of Director Identification Number intimation by the company to the Registrar)	November 1, 2006
6.	The Companies Regulations, 1956	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)].	July, 1989
7.	Company Law Board Regulations, 1991 ¹ [Reg. 19]	To act as authorised representative before the Company Law Board Benches.	May, 1991
8.	Private Limited Company and Unlisted Public Limited Company (Buy-Back of Securities) Rules, 1999. (Rule 10)	<p>Extinguishment 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.</p> <p>To certify compliance with these Rules including the provisions relating to extinguishment and destruction of share certificates.</p>	July 6, 1999
9.	Unlisted Public Companies (Preferential Allotment) Rules, 2003 [Rule 7]	In case of every issue of shares/warrants/fully convertible debentures/ partly convertible debentures or other financial instruments with conversion option, to certify that the issue of the said instruments is being made in accordance with these Rules.	December 4, 2003
10.	Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 [Rule 11]	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.	December 4, 2003

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
II	CORPORATE AND ECONOMIC LAWS		
11.	Competition Act, 2002 [Section 35]	To act as authorised representative before the Competition Commission of India.	March 31, 2003
12.	Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 1999 (Clause 6)	To act as authorized representative before the Central Electricity Regulatory Commission.	August, 1999
13.	Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (Regulation 23)	To act as authorized representative before the Gujarat Electricity Regulatory Commission.	July, 1999
14.	The Telecom Regulatory Authority of India Act, 1997 (Section 17 and Explanation (b) thereto)	To act as authorized representative before the Telecom Disputes Settlement and Appellate Tribunal.	March, 2000
15.	IRDA (Registration of Indian Insurance Companies) Regulations, 2000 (Regulation 10)	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.	July, 2000
16.	Foreign Trade Policy 2004-2009	<p>Illustrative List of certificates which may be issued by a Company Secretary in Practice is given hereunder:</p> <p>(i) to issue a certificate showing sales turnover of ammunition (indigenous and imported) during the preceding three licensing years [Annexure 5 to Appendix 8].</p> <p>(ii) Certification in respect of Application for grant of Star Export House [Appendix – 17].</p> <p>(iii) Certification in respect of application for grant of One to Five Star Export House for Service Provider [Appendix – 17A].</p>	Originally recognition received in April, 1991 under Exim Policy and continue under Foreign Trade Policy(2004 – 2009)
17.	Special Economic Zones Rules, 2006 (Rule 61)	To act as authorized representative before the Board of Approval	February, 2006
18.	Foreign Exchange Management Act, 1999 (FEMA)	To issue certificates for exchange control purposes. All certificates,	Original recognition received in 1992 under

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		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.	FERA. RBI clarified vide letter dated April 19, 2001, the recognition is valid under FEMA
19.	The Trade Marks Rules, 2002 (Rules 148-161)	Qualified to be registered as a trade marks agent.	September 15, 2003.
III	SECURITIES LAWS AND CAPITAL MARKETS		
20.	The Securities and Exchange Board of India Act, 1992. [Section 15V, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December, 1999
21.	The Depositories Act, 1996 [Section 23C, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December, 1999
22.	SEBI - Circular No. MRD/DoP/SE/Cir-1/06	Certify non-promoter holdings as per clause 35 of Listing Agreement in demat mode in case of the companies which have established connectivity with both the depositories.	January 13, 2006
23.	SEBI – Clause 49 of the Listing Agreement. (Circular No. SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004)	To issue certificate of compliance of conditions of corporate governance.	January , 2006
24.	Model Listing Agreement for Listing of Debt Securities. SEBI/CFD/DIL/CIR-39/2004/11/01	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.	November 01, 2004
25.	Model Listing Agreement for Listing of Debt Securities. SEBI/CFD/DIL/CIR-39/2004/11/01	To issue certificate regarding compliance of conditions of Corporate Governance.	November 01, 2004
26.	Listing Agreement for Indian Depository Receipts (IDRs) SEBI/CFD/DIL/IDR/1/2006/3/4	To issue certificate of compliance of conditions of Corporate Governance.	April 03, 2006
27.	SEBI (Disclosure and Investor Protection) Guidelines, 2000	(i) Certificate to listed companies to the effect that all refund orders/certificates to allottees of the previous issues were	January, 2000

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		<p>dispatched within prescribed time and manner and securities were listed on the stock exchanges as specified in the offer document.</p> <p>(ii) Certificate to the effect that provisions of SEBI Guidelines, 2000 relating to Bonus Shares have been complied with.</p> <p>(iii) Issuer Designated Financial Institutions shall forward a certificate duly signed by itself and duly countersigned by its statutory auditor or by a company secretary in practice to the effect that the terms and conditions for issue of Bonus shares as laid down in the Guidelines have been complied with.</p>	
28.	SEBI (Depositories Participants) Regulations, 1996	To issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter, and in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.	September, 2003.
29.	SEBI's Circular IMD/PMS/ CIR/1/21727/03	To conduct Internal Audit of Portfolio Managers.	November 18, 2003
30.	Bombay Stock Exchange Limited BSE Notice No. 20061031 - 21	To issue Networth Certificate to be submitted by all active members including representative members of Cash segment, Limited Trading members & Trading and/or Clearing members of the Derivatives segment of the Bombay Stock Exchange.	October 31, 2006
31.	National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Details of directors/proprietor in format C-3 as per Annexure 4.3 of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
32.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern/ sharing pattern of corporates in format C-6 as per Annexure 4.4(a)	September 06, 2006

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		of Annual Return submitted by Trading Member to the Stock Exchange	
33.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of shareholding pattern/ sharing pattern of firms in format C-6 as per Annexure 4.4(b) of Annual Return submitted by Trading Member to the Stock Exchange.	September 06, 2006
34.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of corporates in format C-7 as per Annexure 4.5(a) of Annual Return submitted by Trading Member to the Stock Exchange.	September 06, 2006
35.	National Stock Exchange Limited (NSE Circular No.541 Ref. NSE/MEM/7835)	Details of Dominant group of firms in format C-7 as per Annexure 4.5(b) of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
36.	National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Undertaking from Relative of Persons constituting Dominant Promoter Group in format C-8 as per Annexure 4.6(a) of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
37.	National Stock Exchange Limited (NSE Circular No.541, Ref. NSE/MEM/7835)	Undertaking from Corporates supporting Dominant Promoter Group in format C-8 as per Annexure 4.6(b) of Annual Return submitted by Trading Member to the Stock Exchange	September 06, 2006
38.	National Securities Depositories Limited (NSDL)	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.	March, 1999
39.	NSDL Circular No. NSDL/ POLICY/2006/0021	Concurrent Audit in case of Demat Account opening, Control and Verification of Delivery Instruction Slips.	June , 2006
40.	Central Depository Services (India) Limited (CDS)	(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.	September, 1999

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		(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.	
41.	(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).	(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.	December, 1999 August, 1982
	(B) (i) The Ahmedabad Share and Stock Brokers Association, Ahmedabad.	Inspection of books of accounts and other documents of members of stock exchange required by guideline F. No. 1/4/SE/89 dated 29.1.1983.	March 1984
	(ii) Uttar Pradesh Stock Exchange Association Ltd., Kanpur.	- do -	April, 1984
	(iii) The Stock Exchange, Mumbai	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.	February, 1998
	(iv) Pune Stock Exchange	-do-	-do-
	(v) The Calcutta Stock Exchange	-do-	-do-
	(vi) Uttar Pradesh Stock Exchange Association Limited (Kanpur)	-do-	-do-
	(vii) Delhi Stock Exchange	Certificate to the effect that the RTA has completed all transfers within the stipulated time.	-do-
	(viii) Hyderabad Stock Exchange	-do-	-do-
	(ix) Bhubaneswar Stock Exchange Association Limited	-do-	-do-
	(x) Stock Exchange, Ahmedabad	-do-	-do-

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
(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	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.	May, 1999
IV TAXATION			
42.	Income-tax Act, 1961 and Income-tax Rules, 1962 [section 288(2) and Rule 50]	To act as authorised representative before the Income-Tax authorities	July, 1979
43.	Wealth-tax Rules, 1957 [Rule 8A(7)]	Recognised for registering as a valuer of stocks, shares, debentures, etc.	October 8, 1974
44.	Central Excise Act, 1944, and Central Excise (Appeals) Rules, 2001 [section 35Q and Rule 12]	To act as authorised representative before the Customs, Excise and Service Tax Appellate Tribunal and other authorities.	October, 1982
45.	Customs Act, 1962 and Customs (Appeals) Rules, 1982 [section 146A and Rule 9].	- do -	October, 1982
46.	West Bengal Value Added Tax Rules, 2005	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)].	April, 2005

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
47.	Bihar Value Added Tax Act, 2005	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)].	April, 2005
48.	Daman and Diu Value Added Tax Regulation, 2005	Authorised to appear before any VAT authority in connection with any proceedings under this Regulation. [Section 82(1)(b)].	April, 2005
49.	Goa Value Added Tax Act, 2005	Authorised to appear before any VAT authority including the Tribunal in connection with any proceedings under this Act [Section 82(1)(b)].	April, 2005
50.	Gujarat Value Added Tax Act, 2003 read with Gujarat Value Added Tax Rules, 2005.	Authorised to appear before VAT Authorities in connection with any proceedings under this Act [Section 81(1) (c) read with Rule 59 (1) (a)]	January 2005
51.	Karnataka Value Added Tax Act, 2003 read with Karnataka Value Added Tax Rules, 2005	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)].	April, 2005
52.	Arunachal Pradesh Goods Tax Act, 2005 read with Arunachal Pradesh Goods Tax Rules, 2005	To appear and attend before any authority in connection with any proceedings under this Act [Section 83 (1)(c) read with Rule 78(1) (a)].	2005
V FINANCIAL INSTITUTIONS			
53.	All India Financial Institutions	Certification with regard to the following:	
	(i) Industrial Development Bank of India	(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.	July, 1981 December, 1981 July, 1983
	(ii) Industrial Finance Corporation of India	(c) List of Members of a company. (d) Copies of resolutions passed at company meetings to be furnished to financial institutions	
	(iii) Industrial Credit and Investment Corporation of India		

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
	(iv) Unit Trust of India		
	(v) Life Insurance Corporation of India		
	(vi) General Insurance Corporation of India		
	(vii) Industrial Reconstruction Bank of India	- do - (a) to (d)	January, 1986
	(viii) Industrial Development Bank of India	Certification of documents relating to charges.	April, 1991
VI	BANKS		
54.	Indian Banks Association (Circular No. SO/69-73-III-C-82/9565 dated 15.4.1983 and Circular no. SO/69-73-C-86/4763 dated 16.6.1986).	Status/Search Reports for banks	April, 1983
55.	(i) Indian Bank	Certification of documents relating to charges.	December, 1990
	(ii) Bank of India	-do-	February, 1991
	(iii) Andhra Bank (Eastern Region)	-do-	February, 1991
	(iv) Canara Bank	-do-	February, 1991
	(v) United Bank of India	-do-	March, 1991
	(vi) Vijaya Bank	-do-	March, 1991
	(vii) Bank of Baroda ²	-do-	July, 1991
	(viii) Corporation Bank	-do-	August, 1991
	(ix) State Bank of India ²	-do-	September, 1991
	(x) Bharat Overseas Bank	-do-	September, 1991
	(xi) State Bank of Mysore	-do-	October, 1991
	(xii) Indian Overseas Bank	-do-	October, 1991
	(xiii) State Bank of Indore ²	-do-	February, 1992
	(xiv) State Bank of Travancore	-do-	April, 1992
	(xv) Laxmi Vilas Bank Ltd.	-do-	June, 1992
VII	STATE LEVEL AGENCIES		
56.	State Financial/Industrial Investment/ Development Corporations :	A. Certification with regard to the following:	
	(i) Himachal Pradesh Financial Corporation, Shimla	(a) Necessary powers of a company and its directors to enter into an agreement	July, 1982
		(b) Borrowing limits of a company under section 293(1)(d) of the	

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		Companies Act, 1956, including details of share capital, authorised, issued, subscribed and paid-up and the actual borrowing.	
(ii)	West Bengal Financial Corporation ² , Calcutta	-do-	August, 1982
(iii)	Maharashtra State Financial Corporation, Mumbai	-do-	April, 1984
(iv)	UP State Industrial Development Corporation Ltd., Kanpur	-do-	December, 1985
(v)	Assam Industrial Development Corporation Ltd. ² , Guwahati	(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.	March, 1982 October 1988
(vi)	Gujarat Industrial Investment Corpn. Ltd. ² , Ahmedabad	-do- (a) to (d)	October, 1982 August, 1986
(vii)	Nagaland Industrial Dev. Corpn. Ltd., Dimapur	-do- (a) to (d)	September, 1983
(viii)	Uttar Pradesh Financial Corpn., Kanpur	-do- (a) to (d)	September, 1983
(ix)	State Industries Promotion Corpn. of Tamil Nadu Ltd. ² , Chennai	-do- (a) to (d)	October, 1983
(x)	The Tamil Nadu Industrial Investment Corpn. Ltd. ² Chennai	-do- (a) to (d)	November, 1983
(xi)	Karnataka State Indl. Invest. and Dev. Corpn. Ltd. ² , Bangalore	-do- (a) to (d)	July, 1982 February, 1986
(xii)	The Pradeshiya Ind. and Investment Corpn. of UP Ltd., Lucknow	-do- (a) to (d)	March, 1986
(xiii)	Andhra Pradesh State Financial Corpn., Hyderabad	-do- (a) to (d)	June, 1982 March, 1986

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
(xiv)	The Punjab State Indl. Dev. Corpn. Ltd., Chandigarh	-do- (a) to (d)	March, 1986
(xv)	The State Indl. and Investment Corpn. of Maharashtra Ltd ² , Mumbai	-do- (a) to (d)	June, 1982 April, 1984 June, 1984
(xvi)	Haryana Financial Corpn. ² , Chandigarh	-do- (a) to (d)	September, 1982 April, 1986 May, 1988
(xvii)	Punjab Financial Corpn., Chandigarh	-do- (a) to (d)	May, 1986
(xviii)	Andhra Pradesh Indl. Dev., Corpn. Ltd., Hyderabad	-do- (a) to (d)	May, 1982 June, 1986
(xix)	Rajasthan State Indl. Dev. & Inv. Corpn. Ltd., Jaipur	-do- (a) to (d)	August, 1986
(xx)	Indl. Promotion & Inv. Corpn. of Orissa Ltd ² , Bhubaneswar	-do- (a) to (d)	September, 1982 August, 1986
(xxi)	Gujarat State Fin. Corpn. ² , Ahmedabad	-do- (a) to (d)	April, 1982 September, 1986
(xxii)	The Zoram Indl. Dev. Corpn. Ltd., Mizoram	-do- (a) to (d)	March, 1987
(xxiii)	Kerala State Indl. Dev. Corpn. Ltd ² . Thiruvnanthapuram	-do- (a) to (d)	August, 1986
(xxiv)	Rajasthan Financial Corpn. ² , Jaipur	-do- (a) to (d)	September, 1983 July, 1987
(xxv)	West Bengal Indl. Dev. Corpn. Ltd ² , Calcutta	-do- (a) to (d)	July, 1987
(xxvi)	Orissa State Financial Corporation	-do- (a) to (d)	July, 1987
(xxvii)	Bihar State Financial Corpn., Patna	-do- (a) to (d)	January, 1988
(xxviii)	Delhi Financial Corpn. ² , New Delhi	-do- (a) to (d)	August, 1988
(xxix)	Manipur Indl. Dev. Corpn. Ltd. ² , Imphal	-do- (a) to (d)	April, 1990
(xxx)	Pondicherry Indl. Promotion, Dev. & Inv. Corpn. Ltd., Pondicherry	-do- (a) to (d)	December, 1990
(xxxii)	Arunachal Pradesh Indl. Dev. & Financial Corpn. Ltd. ² , Naharlagum	-do- (a) to (d)	August, 1991
(xxxii)	Gujarat Industrial Development Corporation	To issue certificate with regard to shareholders, and share-	May, 1999

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		holdings of companies, for the purposes of transfer of industrial Plot/Shed.	
B. Secretarial Audit			
(xxxiii)	Manipur Industrial Development Corpn. Ltd., Imphal	Secretarial Audit, once a year of the companies assisted by the Corporation	April, 1990
(xxxiv)	Assam Indl. Dev. Corpn. Ltd., Guwahati	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.	July, 1990
(xxv)	Gujarat Industrial Investment Corporation Ltd., Ahmedabad	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.	June, 1991
(xxxvi)	Arunachal Pradesh Industrial Development & Financial Corpn. Ltd., Naharlagun	Secretarial Audit, once a year, of the companies assisted by the Corporation.	August, 1991
C. Due Diligence Certificates/Search Report			
(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. (ii) Preparation of Search Report and other work connected with Registrar of Companies.	May, 1999
VIII. GOVERNMENT DEPARTMENTS			
57.	Department of Agriculture and Cooperation, Ministry of Agriculture	To issue a certificate about certain prescribed details of a company chartering foreign fishing vessels, according to the guidelines issued by the	July, 1987

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
		Department of Agriculture and Co-operation.	
58.	Entrepreneurship Department of Industries, Government of Orissa	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).	August, 1992
IX HIGH COURT			
59.	Calcutta High Court (letter no. Cor. 424 dated 9.2.1983)	Introduction of panel of Practising Company Secretaries for appointment as receivers, arbitrators, trustees and special officers.	February, 1983
X ANCILLARY			
60.	Income-Tax Act, 1961	Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, have notified the profession of Company Secretaries under section 44AA of the Income Tax Act, 1961.	October, 1992

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. 2 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)

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|----|--|--|------------------|
| | | (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. 2 crores. | |
| | | (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 than one lakh in accordance with Census of India 2001 Report and having a paid-up share capital of rupees two crores or more but less than rupees five crores. | October 14, 2003 |
| 4. | Section 581X of the Companies Act, 1956 | 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. | February 6, 2003 |
| 5. | SEBI vide circular Letter No. SMD/POLICY/CIR-12/99 dated 18.5.1999 | 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. | May, 1999 |
| 6. | Government of Andhra Pradesh | For recruitment in public sector under-takings of the State to superior posts. | September, 1981 |
| 7. | Central Government (Ministry of Corporate Affairs) | Qualification for recruitment to Grades I to IV in the Accounts Branch of the Central Company Law Service. | November, 1982 |
| 8. | Ministry of Home Affairs, Department of Personnel and Administrative Reforms | Empanelment of Company Secretaries for assignment of Indian experts to the developing countries of Asia, Africa and Latin America. | March, 1984 |

9.	Government of Gujarat, General Administration, Department Circular No. RDD/1077/1120/K dated 16.1.1978 and letter No. RDD/1081/1781/K dated 23.6.1981	Degrees/diplomas awarded by Universities or other educational Institutes established by an Act of the Central or State legislature or by an Act of Parliament automatically specialize for the purpose of recruitment to the posts and services under the State Government.	January, 1978 June, 1981
10.	Government of Tamil Nadu, Personnel and Administrative Reforms (Personnel) Department, Order No. G.O. Ms. No. 148 dated 7.3.1988	ACS is specialized as one of the qualifications for the purpose of Group 'A' appointments in the State Government Service in the departments concerned with Trade, Commerce, Finance, Commercial Taxes and Industry where such a specialized knowledge is called for.	March, 1988
11.	Government of Kerala, Planning & Economic Affairs (BPE) Department, Thiruvananthapuram, Order No. 10180/BPE – 2/89/Plg. Dated 29.5.1989.	Preference to be given to candidates possessing ACS qualification in addition to ACA/ AICWA qualification, for recruitment to the posts of Finance Directors in State Government Undertakings in Kerala.	May, 1989
12.	Karnataka State Financial Corporation, Letter Pers/P- 3214 dated 10.11.1989	ACS as one of the superior qualification for appointment to executive posts.	November 1989
13.	(a) Govt. of India, Ministry of Personnel, Public Grievances and Pensions(Department of Personnel & Training) O M No. dated 1/2/89-Estt.(Pay.I) dated 09.04.1999. (b) Office of Comptroller & Auditor General of India vide Letter No.284/ NGE(ENTT)/ 44-2005.	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.	9th April, 1999 April, 1991 (revised in 1999)
14.	All India Council for Technical Education (AICTE), New Delhi, Letter No.FD/PSSC/2003-04/20	Fellow Members are eligible for appointment as Director/Professor/ Reader in AICTE approved management institutions.	Sept., 2003
15.	Model Listing Agreement for Listing of Debt Securities SEBI/ CFD/DIL/CIR-39/ 2004/11/01	Company Secretary or any other person to be designated as compliance officer.	November 01, 2004
16.	Model Listing Agreement for Listing of Indian Depository Receipts SEBI/CFD/DIL/IDR/1/ 2006/3/4	Issuer to appoint its Company Secretary as Compliance Officer.	April 03, 2006

PROVISIONS RELATING TO MISCONDUCT CONTAINED IN THE COMPANY SECRETARIES ACT, 1980 AS AMENDED BY THE COMPANY SECRETARIES (AMENDMENT) ACT, 2006

CHAPTER V MISCONDUCT

**[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.]

¹[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);
- (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.

** 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.

(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.

(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.]

2. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

3. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

4. Inserted, *ibid*.

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:

5. Substituted, *ibid*.

Prior to its substitution, section 22 read as under:

22. Professional misconduct defined

For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified 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 Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

6. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

7. Inserted, *ibid*.

8. Inserted, *ibid*.

9. Inserted, *ibid*.

10. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

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 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 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.]

*******[THE SECOND SCHEDULE**

[See sections 21(3), 21(B)(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) 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.

*****Substituted for "The Second Schedule" vide the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006. 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.
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