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Revamping of Offences under the Companies Act, 2013

*K G Saraf**

A Prelude

The Companies Act is one of the voluminous pieces of legislation under the Indian Constitution to administer the affairs of Joint stock companies that deal exclusively with governance of Corporate entities. These entities carry on their operations with resources from public at large or borrow funds from Banks and Financial Institutions.

Ever since the dawn of Companies Act, 1956 the law inculcated under some of its provisions , monitoring the offences committed by Corporate, its Directors and officers in defaults was in vogue. These offences are broadly categorised as follows:

- (a) Offences punishable under the Act where only penalties are imposed and these offences are compoundable.
- (b) Offences punishable with fine or imprisonment compoundable or otherwise.
- (c) Offences punishable with fine and imprisonment not compoundable, being offences of serious nature. These may be civil wrongs also.

Under the provisions of the Companies Act, 2013 some of the civil wrong doings, not being in the nature of criminal acts compoundable on which penalties are levied by adjudicating authorities. The regulation on compounding of offences were legislated in the year 2006, wherein the accused need not appear personally before the adjudicating authority and can be discharged on payment of composition fees. Compoundable offences correspond to areas such as filing resolution and agreement, declaration of beneficial interest under Section 89 of the Companies Act, 2013 *etc.* There are about 229 offences falling under all categories out of which 83 offences are compoundable under the Act including those relating Managerial remuneration, Independent Directors *etc.*

Few of the illustrative instances where fines, penalties and imprisonment have been prescribed under the Companies Act, 2013 are narrated below for the sake of better understanding.

* *FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



CHART ON PENALTIES – COMPANIES ACT, 2013

I. Only Penalties [Compoundable]

Sr. No.	Section	Section Name	Penalty Heading	Penalty Description
1.	Section 3	Formation of company	Default in complying with the requirements of this section	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees and where the contravention is continuing one with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
2.	Section 73	Prohibition on acceptance of deposits from public	Contravention in complying with the provisions of the rules	Company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rupees five thousand and where the contravention is continuing one with a further fine which may extend to rupees five hundred rupees for every day after the first during which the contravention continues.
3.	Section 92	Annual return	Certification of the annual return otherwise than in conformity with the requirements of section 92 or the rules made thereunder	Where a Company Secretary in whole-time practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, such Company Secretary shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees.

II. Fine or Imprisonment [Compoundable or otherwise]

Sr. No.	Section	Section Name	Penalty Heading	Penalty Description
1.	Section 8	Formation of companies with charitable objects, etc.	Default in complying with any of the requirements laid down in this section concerning formation of Companies with Charitable objects.	Company shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors of the company and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 Years or with fine which shall



Sr. No.	Section	Section Name	Penalty Heading	Penalty Description
				not be less than twenty five thousand rupees but which may extend to twenty five lakhs rupees or with both.
2.	Section 26	Matters to be stated in prospectus	Issue of Prospectus in contravention of the provisions of this section	The company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
3.	Section 59	Rectification of register of members	Default in complying with the order of the Tribunal under this section, concerning rectification of register of members	The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
4.	Section 77	Duty to register charges, etc.	Default in complying with any requirement under this section	The Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or with both.
5.	Section 148	Central Government to specify audit of items of cost in respect of certain companies.	Default in complying with any requirement under this section	The company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees or with both.



III. Fine and Imprisonment [Non -Compoundable]

Sr. No.	Section	Section Name	Penalty Heading	Penalty Description
1.	Section 7	Incorporation of company	Furnishing any false or incorrect particulars of any information or suppression of any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, shall be liable for fraud.	Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
2.	Section 46	Certificate of shares	Issue of a duplicate share certificate with an intent to defraud	The company shall be punishable with fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate but which may extend to 10 times the face value of such shares or ten crore rupees, whichever is higher and every officer who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
3.	Section 67	Restrictions on purchase by company or giving of loans by it for purchase of its shares	Contravention of the provisions of this section	The Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
4.	Section 143	Powers and duties of auditors and auditing standards	Failure to comply with requirement of this section by the Auditor	Where it is proved that an auditor has knowingly or wilfully contravened any of the provisions of the aforesaid sections, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than



Sr. No.	Section	Section Name	Penalty Heading	Penalty Description
				<p>one lakh rupees but which may extend to twenty-five lakh rupees or with both.</p> <p><i>Note 1</i> : Where an auditor has been convicted as aforesaid, he shall be liable to—</p> <p>(i) refund the remuneration received by him to the company; and</p> <p>(ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.</p> <p><i>Note 2</i> : Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.</p>
5.	Section 182	Prohibitions and restrictions regarding political contributions	Making any contribution in contravention of the provisions of this section concerning prohibition and restrictions regarding political Contributions	The company shall be punishable with fine which may extend to 5 times the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to 6 months and with fine which may extend to 5 times the amount so contributed.
6.	Section 186	Loan and investment by company	Default in complying with any requirement under this section	The Company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.



Over the years several cases have been tried in the Courts by MCA leaving in lurch the adjudicating authorities and company directors / officers with several imponderables.

Rationale behind Decriminalisation of Companies Act, 2013

The Companies Act, 2013 *inter alia* included more rigorous punishments and penalties for contravention of various provisions and rules under the Act as compared to the Companies Act, 1956. After 4 years of implementation of the Act, Ministry's decision to re-examine the provisions of certain offences will certainly give major relief to industries in as much as it would provide a platform for ease of doing business in India. This would certainly meet the aspiration of our Prime Minister Narendra Modi in the manifestation of his goal towards ease of doing business.

In order to streamline these offences the Central Government has now rightly conceived of offering relief to corporate bodies by introducing what is known as "Decriminalisation of offences". This is sought to be done by way of constitution of a 10 Members committee headed by Shri Injeti Shrinivas, IAS (Chairman) Secretary, Ministry of Company Affairs, (MCA) New Delhi, to clean up the law with the high profile members such as Banker Shri Uday Kotak & Corporate Lawyer Shradul Shroff. The committee will identify areas where decriminalisation can be undertaken with proper justification. The committee will also take call to ascertain as to whether any such offences be reckoned as merely defaults where penalty may be imposed in the first place and only consequent to further non-compliance of the order of such authority will it be categorised as an offence for trial by Special Courts. In other words, it amounts to decriminalisation of first offences by Companies. MCA, for instance, surrounded by constant thoughts whether Independent Directors, who are not looking after day to day operations of the company should be made criminally liable for any malpractice in the company. The committee shall examine comprehensively if non compoundable offences which are punishable with imprisonment only or punishable with fine and imprisonment under the Companies Act may be made compoundable.

The intent and objective of formulation of the High profile Committee are broadly :

- (1) To examine the nature of all acts categorised as Compoundable offences viz., 1) Offences punishable with fine only 2) punishable with fine or imprisonment or 3) Both under the Act (fine and imprisonment) and recommend if any such acts be re-categorised as acts which attract civil liabilities wherein the Company and Officer's in default are liable for penalty.
- (2) To review the provisions relating to non-compoundable offences and recommend within any such provisions need to be re-categorised as compoundable offences.
- (3) To examine the existing mechanism of levy of penalties under the Act and recommend improvements therein, strategise the broad contours of an in-house adjudicating mechanism where penalties may be levied in a MCA-21 system driven manner so that discretion is minimised. Human intervention in determining penalties could be obviated. This would also allow trial courts to pay more attention to offences of serious nature.
- (4) To initiate formation of draft changes in law.
- (5) Any other matter relevant in this regard.

This Committee would submit its report within a short duration of 30 days. Accordingly, amendments in the Act could be incorporated, as quickly as possible.

It is observed that over the years a large number of cases have been piled up in Courts on offences under the Companies Act owing to ill defined application of minds which otherwise earlier could have been dealt

with smoothly by imposing penalties . It is desirable that minor offence could be dealt with by imposing reasonable monetary penalties. The real intent is to offer relief to Companies by way of quickening the process of adjudication of offences through establishment of Special Courts . Perhaps, the recent success which the Govt has achieved in trying the IBC(Insolvency & Bankruptcy Code) before NCLT (National Company Law Tribunal) by empowering Home Buyers could be case in reference. In the process ,MCA would be in a position to concentrate vehemently on most serious violations under the Companies Act and bring the offenders to justice within a shortest span of time.

Conclusion

It can be said that revamping and overhauling in this regard is a welcome step till recently announced by Central Government, which will serve as a major relief to the Corporate Sector.

ICSI Vision 2022-A Step Towards The Development Of Profession

Charu Vinayak*

Introduction

The world is witnessing multifaceted and rapid changes in all spheres of human endeavors namely, business, agriculture, industrial, economic, political, legal, technological and social. The Institute of Companies Secretaries of India (ICSI) has always been alive to the changes and been proactive to assimilate changes for the benefit of all stakeholders. ICSI commenced its journey in 1968 as a company incorporated under section 25 of the Companies Act, 1956 by the Government of India. Subsequently, it was converted into a statutory body under the Company Secretaries Act, 1980 with effect from 1st January 1981 entrusted with the responsibility of development and regulation of the profession of Company Secretaries.

In the year 2011, the ICSI adopted Vision 2020, formulated by the core group constituted by the Council of the Institute, comprising of eminent persons and experts from multidisciplinary areas. But need was felt to make certain course amendments in ICSI's journey crafted in its Vision-2020 document and a decision was taken to review ICSI Vision in its Golden Jubilee Year when Hon'ble Prime Minister has launched Vision of New India-2022. It was in this backdrop, ICSI has felt the need of formulating 'Vision New ICSI-2022'. The essence of the raison d'être of Vision New ICSI – 2022 can be summarized in the following *shloka* from the *Bhagavad Gita*:

न जायते म्रियते वा कदाचि- न्नायं भूत्वा भविता वा न भूयः ।
अजो नित्यः शाश्वतोऽयं पुराणो- न हन्यते हन्यमाने शरीरे ॥

which means "For the soul there is never birth nor death. Nor, having once been, does he ever cease to be. He is unborn, eternal, ever-existing, undying and primeval. He is not slain when the body is slain". To align it with the Institute, it would be fit to say that "People may come and people may go, but Institutions, and one of the statures such as this one, go on forever". And for things which are here to stay, plans are made not just for the day but ages ahead. This vision would drive each and every stakeholder of the Institute; their skills, competence and excellence towards innovative, constructive, eloquent and effective implementation of governance and compliance culture worldwide.

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The ICSI has achieved significant landmarks during the last five years in line with the goals set up in the Vision 2020

- Increase in number of students to more than three lakhs;
- Increase in membership crossing fifty thousand;
- New physical infrastructure created across the country;
- New recognitions and expansion of scope for the profession due to continuous interaction with the government, regulators, trade and industry;
- Enhancement in placement opportunities with the creation of separate placement system;
- Enhanced visibility and branding of the profession with sustained efforts;
- Sound financial position of the ICSI;
- Leadership role in the corporate governance at national and international level;
- Improvement in service delivery system to the stakeholders.

Objective and Strategies for Students

The objective of the Vision New ICSI 2022 for the students is to equip them with relevant education, training and skills meeting the expectations of trade and industry, Government and regulators. New strategies are required to be explored and implemented to achieve this objective

- An Academic Board may be constituted comprising of eminent academicians, Professionals, Corporate leaders, Regulators and other experts for planning and implementing all academic activities related to the students;
- Syllabus may be redesigned to focus on core areas of specialization and to enable students to acquire competence and professional skills to develop themselves into 'Corporate Managers' 'Corporate Advisors';
- Syllabus may be divided into Core Subjects, Ancillary Subjects and Hybrid Subjects accordingly to the working areas for the profession of Company Secretaries;
- Communication, Legal, Managerial and Information Technology skills may be developed through syllabus and training which are required for effective performance of the role of Company Secretary;
- Certification Courses and Post Membership qualification courses may be conducted for attaining specialization;
- CS Executive Entrance Test (CSEET) may be introduced, in place of Foundation Programme, for assessing the quality and aptitude for admission in the Company Secretary course;
- Students may be provided opportunity for study through class room education, e-learning and postal education;
- An Online Pre-Examination Test may be introduced enabling the students to assess their Preparedness for the examination of Executive and Professional programmes;



- Examination and evaluation system may be revamped by improving the quality of question papers by focusing on analytical questions, case-laws, case studies and problem solving approach;
- A robust training structure be introduced comprising of total six months of in-house training in two phases and eighteen months of practical training after passing of Executive Programme;
- A Project/ Research Report and Viva thereon may be made a part of the training programme;
- Secretarial Executive Certificate may be provided to the Executive Programme passed students after completion of the requisite training enabling them to serve as Secretarial Executives;

Objective and Strategies for Members

The objective of the Vision New ICSI 2022 for the members is to equip members in employment with knowledge and skills necessary to act as “Corporate Managers” and members in practice to act as “Corporate Advisors”.

- The functions of the members of the ICSI, whether in employment and practice, can be classified under the heads as Advisory, Procedural, Compliance, Certification, Audit, Representation and Appointment as scrutinizer, valuer, liquidator, KMP, Company Secretary etc.
- The Members need to be equipped in communication, legal, management and IT skills for effective performance. These skills may be developed through curriculum, training programmes, professional development programmes and publications.
- Opportunities for the increasing number of members may be enhanced through creation of Brand Equity in Core areas, interaction with industry and regulators, recognitions, diversification into new and emerging areas, nomination as Independent Director on Central and State Public Enterprises, banks etc.
- The strategy for capacity building and professional development of the Members is continuous process and can be achieved through Programmes, Workshops, Certification Courses, Post Membership Qualification Courses, collaborative programmes with specialized institutes and international programmes.
- Knowledge and skills of the members need to be updated and enhanced continuously through updates on new laws, changes in existing laws, publications, Chartered Secretary Journal and Research and Case Studies on the topics relevant for the members.
- Industry expects quality services from the members. Mandatory orientation programme for members who wish to start practice will help them to provide quality services to the industry.
- Strengthening Peer Review System, monitoring of the Certification and Audit work by the members, independent disciplinary mechanism, enforcement of hierarchy of standards etc. are suggested measures to enhance the quality of service by the members to the industry.
- Refresher Course once in five years will help the member to update their knowledge and skills.
- Creation of multi-disciplinary Mega Firms may be encouraged to provide single window multiple and quality services to the trade and industry.



Objectives and Strategies for the Institute and Profession

Mission

“To develop high calibre professionals, facilitating good corporate governance”

A. Strategy for Building Brand Equity

A.1 Brand Equity

The Brand Equity of the ICSI and profession would emanate from –

- Quality of students and members;
- Governance of the ICSI;
- Relationship with industry, government and regulators;
- Sharing knowledge with stakeholders;
- Communication with the stakeholders.

The objective of the Brand Equity should be to create a distinct brand for the ICSI and profession in the eyes of trade and industry, regulators and society at large. Strategy to strengthen the Brand Equity is outlined below.

- Organize training programmes for corporates and directors;
- Organize seminars and professional development programmes in collaboration with the Chambers of Commerce at all levels, i.e., district, state and national ;
- Showcase the profession as knowledge house;
- Collaborate with Government, Regulators and Industry to create distinct and specialized brand for the profession;
- Appoint / identify coordinators for focused single point interaction and coordination with the Government, Regulators and Chambers;
- Conduct research and bring out research papers / studies on current issues of relevance like Independent Directors, Board Evaluation, Woman Directors and submit to the Government and Regulators to consider policy formulation;
- Carry out planned campaigns on issues of public interest like :
 - Placement support need to be strengthened both for fresh and experienced members. E-governance, Digital payments etc.;
 - Invite leaders from Trade and industry in the ICSI events;
 - Highlight the achievements of the members who are at the helm of affairs in their respective fields;
 - Identify top members of the profession and promote them as Brand Ambassadors who may represent the ICSI before the Government, Regulators, Industry and also appear in interviews on TV, radio and press;



- Nominate such brand ambassadors on the Committees of the industry associations, Government and Regulators;
- Make-over of the Council and Secretariat through training to enhance Brand Equity;
- Data base of Members may be used as a tool to strengthen networking and brand.

A.2 Visibility

- Persuading the Government, Public sector Undertakings for creating awareness of Company Secretary profession and role of Company Secretaries;
 - Reach out the sectors and segments of the trade and industry where the presence of Company Secretaries is currently not prevalent;
 - Social media platforms, like Facebook, Twitter, LinkedIn, You-tube be optimally utilized for leveraging maximum benefits;
 - Partnering with large H R firms for organizing seminars on Company Secretary Profession;
 - The ICSI may have its own TV Channel with different shows for Members, Students, Parents, Industry, Regulators and other stakeholders;
 - Sharing of success stories of members with students, members and society;
 - Increasing networking among members through virtual platform;
 - Career awareness campaigns, preferably through alumni, in reputed schools and colleges should be designed with the objective of attracting the brightest students to choose Company Secretary as a preferred career by choice.
 - Institute, Regional Councils and Chapters should actively participate in social issues and programmes such as blood donation camps, health checkup camps, tree plantings, investor awareness, *etc.*
 - Intra and inter-schools and colleges Debates, Essay Writing Competitions, Quiz Programmes, Moot Courts, *etc.* under the auspices of the ICSI or jointly with other Institutions should be organized Pan India basis on prefixed dates.
 - The complimentary copies of Chartered Secretary journal may be sent to the Members of Parliament, Judges and Members of the Tribunals.
- Financial literacy and Investor Education may be promoted through programmes, publicity and literature.

The Vision New ICSI 2022 has been approved and adopted by the Council. Thereafter, all the activities and resources are being focused for achievement of the objectives of the Vision New ICSI 2022 Plan. The Council and the subsequent Councils of the ICSI shall be bound to implement the Vision Plan in a systematic manner with proper monitoring and control. There shall be no deviation from the Vision Plan unless such deviation is unanimously approved by the Council. The Vision Plan shall be communicated to all the employees of the ICSI at different locations to take them on board about its objectives and strategies and to obtain their cooperation and commitment for its successful implantation. The Council shall prepare yearly implementation schedule to achieve the overall objectives of the Vision Plan by 2022. A MIS may be placed at each meeting of the Council about the progress of the implementation of the Vision Plan. An exclusive meeting of the Council



may be conducted at least once in a year to review the implementation and take suitable action wherever required to ensure the achievement of the objectives of the Vision Plan.

The updated progress of the implementation of the Vision Plan be placed on the website of the Institute on half yearly basis. The Council shall place a Report about the progress of the implementation of the Vision Plan in the Annual Report of the Institute.

KARMANYE VADHIKARASTE MAPHALESHU KADACHANA.

There is no salvation without Karma. We must overcome inaction, indecisiveness and state of paralysis, which are diseases more dangerous than the cancer. We must make every positive and fruitful effort's to accomplish all visions for the betterment and upliftment of profession.

Reference

www.icsi.edu.

ICSI Vision 2022.



Vision New ICSI 2022 - Role of Company Secretary in Enhancing Brand Equity of the Profession

*Anil K. Sehgal**

Vision New ICSI 2022

The Hon. Prime Minister Shri Narendra Modi, while inaugurating the Institute of Company Secretaries of India's Golden Jubilee Year Celebrations' Function on 4th October, 2017 at Vigyan Bhawan, New Delhi, complimented the Institute for attaining institutional excellence and being a torch bearer for the cause of Good Corporate Governance for the last 50 years. On that momentous occasion, he urged the Institute and its stakeholders for selfless dedication towards attaining the Country's vision of 'New India 2022'.

In line with the Hon. Prime Minister's Vision New India 2022, ICSI came up with Vision New ICSI 2022, which was released by the Hon. Prime Minister of India in the same inaugural function. This Vision of ICSI dedicatedly associates with New India, 2022 and will create a New ICSI in 2022, which will meet the growing and changing expectations of the stakeholders especially the Trade and Industry, Government and Regulators and the Society.

Top 10 Goals for the Vision New ICSI 2022

The top 10 Goals for the Vision New ICSI 2022 shall be :

1. Creating Brand Equity for the Profession of Company Secretary;
2. Enhancement of the Quality of the future Members;
3. Professional development and capacity building of the members;
4. Enhancing quality of services by the members to the industry;
5. Research based development of the Profession and the ICSI ;
6. Globalization of the Profession of Company Secretary;
7. Promoting good Corporate Governance;
8. Development of alternate sources of revenue;

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9. Ensuring implementation of the Vision Plan 2022;
10. Creating Brand ICSI.

The above top 10 Goals for the Vision New ICSI 2022 include (1) Creating Brand Equity for the Profession of Company Secretary (2) Creating Brand ICSI.

Brand/Brand Equity

Brand

As per Investopedia, a brand is an identifying symbol, mark, logo, name, word and/or sentence that companies use to distinguish their product from others

As per Business dictionary, Brand is unique design, sign, symbol, words, or a combination of these, employed in creating an image that identifies a product and differentiates it from its competitors.

As per Wikipedia, a brand is a name, term, design, symbol, or other feature that distinguishes an organization or product from its rivals in the eyes of the customer. Brands are used in business, marketing, and advertising. Name brands are sometimes distinguished from generic or store brands.

Brand Equity

As per Wikipedia, Brand equity' is a phrase used in the marketing industry which describes the value of having a well-known brand name, based on the idea that the owner of a well-known brand name can generate more revenue simply from brand recognition; that is from products with that brand name than from products with a less well known name, as consumers believe that a product with a well-known name is better than products with less well-known names.

Brand equity can be classified as the "Perception or desire about a brand in meeting the promised benefits". When the brand equity is more, the customers pull the brand for success. Further, the brand equity varies from person to person as it is an individual construct. As brand equity leads to the creation of brand value, the higher the equity, the higher the value.

The key difference is that while brand equity begins with the customer, brand value begins with the organization.

About Brand Equity in Vision New ICSI 2022

In Vision New ICSI 2022, "Brand Equity" finds itself at placed mentioned below :

Executive Summary

Objective and Strategies for Members

"Opportunities for the increasing number of members may be enhanced through creation of Brand Equity in Core areas, interaction with industry and regulators, recognitions, diversification into new and emerging areas, nomination as Independent Director on Central and State Public Enterprises, banks etc."

Objectives And Strategies for the Institute and Profession

The ICSI should create a Brand Equity of the ICSI and profession through enhancing quality of students and members, internal governance, relationship with trade, industry, government and regulators, sharing knowledge and communicating with stakeholders.



Strategy for Enhancing Opportunities for Members

Brand Equity in Core Areas

The ICSI should build Brand Equity in the following 'Core Areas':-

- Companies Act 2013;
- Securities Laws;
- Insolvency and Bankruptcy Code, 2016;
- Foreign Exchange Management Law;
- Goods and Services Tax (GST).

Strategy for Building Brand Equity

Brand Equity

The Brand Equity of the ICSI and profession would emanate from –

- Quality of students and members;
- Governance of the ICSI;
- Relationship with industry, government and regulators;
- Sharing knowledge with stakeholders;
- Communication with the stakeholders.

It is also mentioned that the objective of the Brand Equity should be to create a distinct brand for the ICSI and profession in the eyes of trade and industry, regulators and society at large. The following Strategy to strengthen the Brand Equity has been outlined in the document:

- Organize training programmes for corporates and directors;
- Organize seminars and professional development programmes in collaboration with the Chambers of Commerce at all levels, *i.e.*, district, state and national;
- Showcase the profession as knowledge house;
- Collaborate with Government, Regulators and Industry to create distinct and specialized brand for the profession;
- Appoint / identify coordinators for focused single point interaction and coordination with the Government, Regulators and Chambers;
- Conduct research and bring out research papers / studies on current issues of relevance like Independent Directors, Board Evaluation, Woman Directors and submit to the Government and Regulators to consider policy formulation;
- Carry out planned campaigns on issues of public interest like Investor Education, Compliances, E-governance, Digital payments *etc.*;
- Invite leaders from Trade and industry in the ICSI events;



- Highlight the achievements of the members who are at the helm of affairs in their respective fields;
- Identify top members of the profession and promote them as Brand Ambassadors who may represent the ICSI before the Government, Regulators, Industry and also appear in interviews on TV, radio and press;
- Nominate such brand ambassadors on the Committees of the industry associations, Government and Regulators;
- Make-over of the Council and Secretariat through training to enhance Brand Equity;
- Data base of Members may be used as a tool to strengthen networking and brand.”

Annual National Convention

National Convention should be well planned and well thought of event for Brand Equity and Visibility of the ICSI and Profession :

Journey of Company Secretary Profession

In the Publication “Golden Years of ICSI Journey”, it is stated that “In the last five decades of its existence, the pioneering support and association for building the culture of good governance throughout the corporate landscape has certainly contributed for the inclusive growth of the nation as a step ahead.” This has resulted in creating vast Brand Equity for the Profession.

The position of Company Secretary at present is that he has come to be accepted by all as an independent and indispensable professional. The role of company secretary has not merely changed; it has transformed itself into new dimensions. He is a full-fledged Governance Professional. He is included in ‘Senior Management’ and occupies a critical place in the company's organizational hierarchy and maintains a very high standard of self discipline. He balances the interests of the Management, Board, Shareholders and other stakeholders. He is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities and all other stakeholders. Initial journey of the position of the Company Secretary can be gauged from the following paragraphs.

The position of Company Secretary In England in the 19th Century was summed up by Lord Esher, M. R in the 1887 case of *Barnett Hoares & Co. v. South London Tramways Co.*, said, “...a secretary is a mere servant. His position is that he has to do what he is told, and no person can assume that he has any authority to represent anything at all, nor can anyone assume that statements made by him are necessary to be accepted as trustworthy without further inquiry. In 1902 Lord Macnaghten in *George Whitechurch Limited v. Cavenagh* described the duties of a Secretary as “of a limited and of a somewhat humble character”. This dictum of Lord Esher, which was approved by the House of Lords in *George White-church Limited v. Cavanagh* was followed by the Madras High Court in *K.A. Krishna vs. Indo Union Assurance Co. Ltd.*(1944)14 Com. Cases 10(Mad). Thereafter, Company secretary expressly was declared to come within the term “officer” by Companies Act 1948 of U.K. In the Indian Companies Act, 1956, Secretary was included in the Definition of ‘Officer in Default’. The position considerably changed in 1971 when In *Panorama Developments Ltd., vs. Fidelis Furnishing Fabrics Ltd.*, (1971), it was observed, *inter alia*, by Lord Denning that, "A company secretary is a much important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities.” The position of Secretary went on improving thereafter. In 1981 Companies Act of U.K. introduced a qualification standard for public company secretaries.



The Report of the Committee on the Financial Aspects of Corporate Governance (the Cadbury Report) in December, 1992 contained, inter alia, that “The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how those responsibilities should be discharged... It stated further that “All directors should have the access to the advice and services of the company secretary and should recognise that the chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board. It should be standard practice for the company secretary to administer, attend and prepare minutes of board meetings.

Enhancing Brand Equity of the Profession

Brand Equity of any Profession depends on the extent of fulfilment of the Expectations of the Stakeholders, mainly of which in the case of Company Secretary Profession are Trade and Industry, Government/Regulators and the Society. Let us see what Company Secretaries should do with respect to these stakeholders for enhancing brand equity of the Profession.

Trade and Industry

For providing services to Trade and Industry, a Company Secretary should pay attention to the following aspects:

- He needs to widen his horizon to the new and emerging areas and update his knowledge and skills in such areas, a few examples of which are as follows:
 - Presently, Goods Services Tax is an area where Trade and Industry expects and needs capable professionals. Company Secretaries should fill this gap by enhancing their knowledge in this area.
 - Trade and Industry expects professionals to contribute in the areas of fund management, wealth creation and business management. Company Secretaries should prepare themselves to be foremost in rendering advice in such areas.
 - Risk management has emerged very fast as an area for professional support and Company Secretary, who is the closest competent person to discharge the role of a risk manager, should specialise in this area.
- Globalization being an opportunity as well as a challenge for the profession, CS should provide necessary assistance in conducting global business and managing global alliances. For the purpose, CS is desired to enhance his exposure to international laws and corporate laws of the major economies.
- CS should re-orient himself towards the objective of value addition and wealth maximization through understanding the business model, assessing the business needs, getting involved in frontline activities and exhibiting a business attitude for the holistic growth of the company; He should get exhibit a business perspective for holistic growth of the company and get himself involved in frontline activities.
- India has a very big SME sector. MSMEs cannot afford multiple professionals and there is dearth of professional support to this sector, particularly in rural areas and in tier II and tier III cities. So, there should be sincere efforts to provide value added support to this sector. Networking through cooperation, better linkages and synergy among the members is needed for growth.



- Beyond statutory as well as Mandatory compliances, Company Secretaries, with their knowledge and expertise, should play a lead role in guiding promoters, directors and society at large in voluntarily adopting good Corporate Governance practices.
- Minimum Government and Maximum Governance is order of the day. CS must remain updated about regulatory changes and must update and keep abreast the management of changes in the applicable laws and their likely impact on the organization.
- A Company Secretary in practice should carve out his USP *vis-a-vis* other professionals.
- CS needs to be a Critical Thinker and Problem Solver.
- CS should ensure updated knowledge of both current developments affecting governance and also best practice in corporate governance.
- CS must possess discretion, diplomacy, tact, emotional intelligence and good negotiation skills, Integrity and independence.
- As the 'keeper of the organisation's conscience', must possess outstanding integrity and be courageous, knowledgeable, strong-willed with a high emotional quotient to provide impartial, frank and fearless guidance and advice.
- Besides Corporate compliances, Company Secretaries should enhance his skills in Communication – both written and verbal, Drafting, articulation and art of advocacy so that they can directly appear before Tribunals and other bodies thereby economizing on the costs of legal proceedings for the Trade and Industry. Further, he should concentrate on developing executive skills like decision making, leadership, teamwork and inter-personal relations He should sharpen Soft skills with the present business trends and expectations and act as proactive business managers.
- CS should create his demand in the Industry by displaying their knowledge and skills and ability for adding value to the business.
- CS should display multi-tasking capability and should become a versatile and strategic resource for industry.
- CS should improve his Personality and Personal traits.

Government and Regulators

The Government and Regulators feel that Company Secretaries have good knowledge and expertise in Company Law matters. They are highly valued and relied upon by regulators for compliances and they are considered as the first level regulators at the corporate level. In effect, they are considered an extended arm of the regulatory mechanism. They act as the link and interface between industry and regulators. Regulators appreciate the role of CS in Company law and expect more to be delivered by CS professionals.

Brand Equity of the Profession in the eyes of the Government and the Regulators can be enhanced by a Company Secretary by

- ensuring compliance management in letter and spirit and educating the industry about the compliance requirements and changes therein from time to time;
- facilitating the Government in building legislative and regulatory framework;
- educating the trade and industry about the new laws, policies and initiatives of the Government and supporting the Government in implementation of the new policies and initiatives;



- exhibiting highest level of professional knowledge and skill in discharging his duties in certification and audit work;
- following the high standards of professional conduct, ethics and values;
- developing expertise in drafting and documentation, as well as strengthening Presentation, analytical and pleading skills;
- showing enthusiasm about capitalizing on new opportunities and should get motivated to take challenges in new areas.

Society

Growth of the corporate sector is imperative for development and welfare of society, which provides the necessary inputs to the corporate sector and expects the sector to work for its welfare and interest. India is facing various problems like poverty, healthcare, sanitation, education, scarcity of drinking water, lack of infrastructure; environment and pollution problems, safety and security of citizens; regional imbalances, communalism, casteism and terrorism which need to be addressed at all levels. The companies need to understand the expectations of society from them and should strive to give maximum for the society according to the needs. Due to the separation of ownership and management, society depends largely upon professionals like Company Secretaries for the healthy growth of corporates and protection, of the interests of the society. Thus, a Company Secretary, as the 'keeper of the organisation's conscience, has to ensure that the Company in which he works :

- runs their businesses in accordance with the laws of the land;
- follows ethical and honest practices in business;
- protects and promote the interests of investors who invest their hard earned savings in the capital of the company;
- maintains transparency and provide correct and adequate information and disclosures about their business activities;
- runs their business in a sustainable manner;
- works in the larger interests of society;
- plays its role in promoting inclusive growth and discharges its Corporate Social Responsibility;
- respects human rights and democratic institutions, and promotes them, wherever practicable;
- recognizes government's legitimate obligation to society at large and supports public policies and practices that promote social capital;
- collaborates with community initiatives seeking to raise standards of health, education, workplace safety and economic well-being.
- promotes sustainable development in order to preserve and enhance the physical environment while conserving the earth's resources;
- supports peace, security and the rule of law;
- respects social diversity including local cultures and minority communities;



- be a good corporate citizen through ongoing community investment and supports for employee participation in community;
- maintains transparency and provide correct and adequate information and disclosures about its business activities;
- protects and promotes the interests of investors; Investor Education and Protection.

Voluntary Services

Further, Members must be ready and be at the forefront, whenever any social service is required, at the time of need. The members may contribute to the society by means of cleanliness drive, tree plantations, blood donations, voluntary services, creating awareness about protecting the environment, *etc.*

Conclusion

First of the top Ten Goals of Vision ICSI 2022 is “Creating Brand Equity for the Profession of Company Secretary”. In fact, Brand Equity for the Profession has already been created during Golden Years of ICSI Journey. However, there is always room for improvement and our esteemed Institute is taking necessary action in this regard. In this process, every member of the Institute has to play his/her role to take Brand Equity of the Profession to new heights in the years to come by coming up to the expectations of the Trade and Industry, Government and Regulators and above all the Society.



Economic Growth and Nation Building - Role of A Company Secretary

*Anishrava Agrawal**

Introduction - Indian Economy's Current Scenario

"In India democracy, demography and dynamism are giving shape to development and destiny"
– Shri Narendra Modi, Honorable Prime Minister at World Economic Forum, Davos..

The Economy of India is a developing mixed economy. It is the world's sixth-largest economy by nominal GDP and the third-largest by purchasing power parity (PPP). India has emerged as the fastest growing major economy in the world as per the Central Statistics Organisation (CSO) and International Monetary Fund (IMF) and it is expected to be one of the top three economic powers of the world over the next 10-15 years, backed by its strong democracy and partnerships. India's GDP is estimated to have increased 6.6 per cent in 2017-18 and is expected to grow 7.3 per cent in 2018-19. After two sub-par years, interjected by demonetisation and rollout of the Goods and Services Tax (GST), growth is seen recuperating to a respectable 7.5% next fiscal.

The long-term growth prospective of the Indian economy is positive due to its young population, corresponding low dependency ratio, healthy savings and investment rates, and increasing integration into the global economy. India topped the World Bank's growth outlook for the first time in fiscal year 2015–16, during which the economy grew 7.6%. India's gross domestic product (GDP) is expected to reach US\$ 6 trillion by FY27 and achieve upper-middle income status on the back of digitisation, globalisation, favourable demographics, and reforms. India is expected to be the third largest consumer economy as its consumption may triple to US\$ 4 trillion by 2025, owing to shift in consumer behaviour and expenditure pattern, according to a Boston Consulting Group (BCG) report; and is estimated to surpass USA to become the second largest economy in terms of purchasing power parity (PPP) by the year 2040, according to a report by Price Waterhouse Coopers. India is ranked 100th out of 190 countries in the World Bank's 2018 ease of doing business index, up 30 points from the last year's 130. This is first time in history where India got into the top 100 rank.

These attractive figures are indicative of a developing, prosperous and a strong India. However, sadly this is not exactly the scenario. Economic contrast is one of the fundamental barriers to realize the dream of a strong India. Inequality in the society is one of the major roadblocks to building a better nation. According to the latest world inequality report 2018, the top 1% earners corner a massive 22% of the national wealth, while the

* *Company Secretary, HiGlance Laboratories Pvt. Ltd. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



top 10% corners 56% of the national wealth. This brings us to another important facet to take cognizance of, that is nation building.

Nation Building Concept

The concept of nation-building came to be used especially among American political scientists a decade or so after World War II, to describe the greater integration of state and society, as citizenship brought loyalty to the modern nation-state with it. The term nation-building is often used simultaneously with state-building, democratization, modernization, political development, post-conflict reconstruction, and peacebuilding. But each concept is different, though their evolution is intertwined. The latest conceptualization is essentially that nation-building programs are those in which dysfunctional or unstable or "failed states" or economies are given assistance in the development of governmental infrastructure, civil society, dispute resolution mechanisms, as well as economic assistance, in order to increase stability. Nation-building generally assumes that someone or something is doing the building intentionally.

Nation-building in Indian context would aim at the unification of the people within the state so that it remains politically stable and viable in the long run. Nation Building is a multidimensional concept, and it involves the active participation of its citizens in various walks of life. There are various facets of Nation building among which the most important ones at this moment in time seems to be the tapping the potential of its human resource, reducing the social and economic disparity that exists in the society and creating an enabling environment, wherein individuals can live freely and attain their best in life.

"Nations are not built by governments alone. The government can at best be a facilitator, and a trigger for society's innate entrepreneurial and creative instincts..."

Each citizen of India is a nation-builder."

- Shri Ram Nath Kovind, Hon'ble President of India

Nation-building is usually identified with the achievements or failures of individual leaders. However, the two other building blocks of a successful nation state get far less attention than they deserve - the commitment of its citizens as well as the quality of its institutions. But even the most talented individuals need to work within an institutional framework that allows them to do their best; be it a laboratory, a bureaucracy, a business enterprise, a civil society group or a regulatory body. It is said that a great institution is one that encourages even ordinary people to do extraordinary work.

Essential Steps of Nation Building

Nation-building is a very difficult and risky undertaking, especially in countries with deep religious, ethnic and/or political divisions within the population. If the country or region has a good skills base and used to function effectively, nation building has a good chance of success. The aim in nation-building is to make sure that these countries become viable, stable and prosperous.

People involved in nation-building are called nation builders – they take the initiative and try to foster a feeling of community through government programs, including national content mass schooling and military conscription. Experienced nation-builders say that, in addition to sufficient financial resources, international political will, and time, the priorities are:



Security: guaranteeing citizens a safe environment.

Political reform: building a civil society, developing strong local and provincial governments, and ensuring freedom of the press and other civil liberties.

Economic reconstruction: restoring economic infrastructure by establishing lines of credit for business, restarting industry, and creating jobs, especially in the agricultural sector.

Strengthening legal institutions: ensuring a functional and independent

Nation Building, Economic Growth and Corporate India

The basic objective of business is to develop, produce and supply goods and services to customers. Astute entrepreneurs often demonstrate an almost intuitive understanding of the synergies that create success. The growth of knowledge and information-based society has made it all the more important for companies to gather knowledge about the needs and expectations of their stakeholders, and so the charting of stakeholders and their views has become commonplace.

Good profitability, environmental accountability and social responsibility are all connected: If profitability is ignored, it will be difficult in the long term to finance environmental improvements and responsibilities towards the community: If the environment is ignored, companies risk their reputation, customers and business options, all affecting profitability: If companies ignore their social responsibilities – regarding human resources issues, for example – they may lose skills, which would also affect profitability.

Corporate India plays a key role in nation building and its economic growth, and corporate governance is an integral part of the broader governance of the country. Corporate governance practices, in today's era, play a major role in recognising leading corporates as promising entrepreneurs, emerging SMEs and the broader community at large. Corporate Social Responsibility is a voluntary responsibility above and beyond the demands of national legislation and which encompasses issues such as human rights, environmental responsibility and civic freedoms.

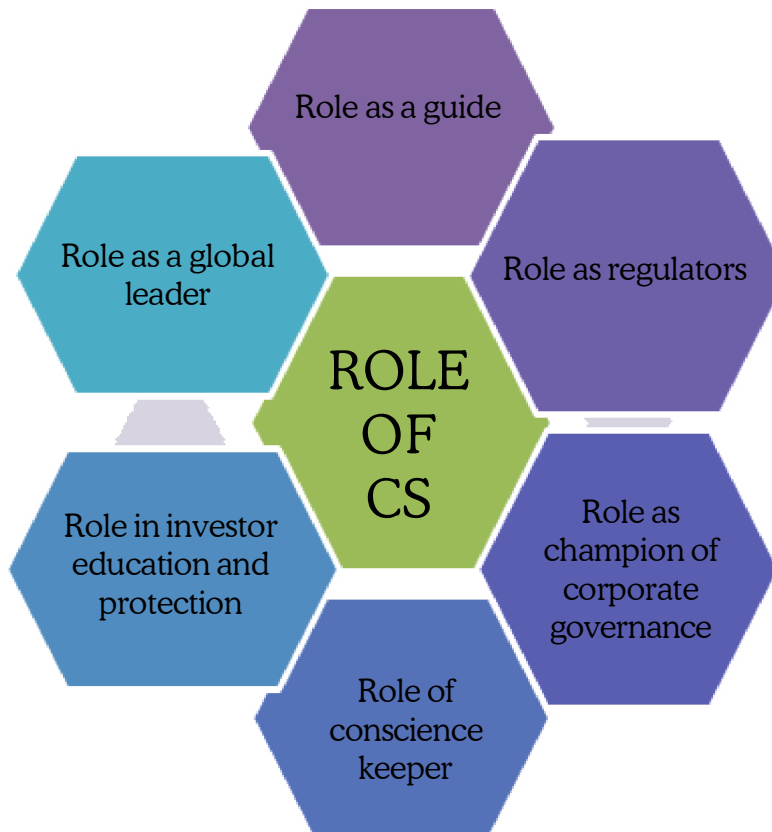
Company Secretary's Role in Economic Growth and Nation Building

"There cannot be a firmly established political state unless there is a teaching body with definitely recognized principles. If a child is not taught from the infancy that he ought to be a republican or a monarchist, a Catholic or a free thinker, the state will not constitute a nation, it will rest on uncertain and shifting foundations: and it will be constantly exposed to disorder and change."
- Napoléon Bonaparte

In India the profession of company secretary began its roots in 50's when Government diploma in Company Secretaryship was introduced. In 1968 the Institute of Company Secretary was set up as section 25 company to take over the charge of work relating to Company Secretaries examination and allied matters. In the year



1980, the government moved the Company Secretaries Bill, 1980 to convert the Institute into a statutory body. The law has undergone vast amendments ever since the Companies Act, 1956 came into existence and now most lately the Companies Act, 2013 has accorded an exalted status to a Company Secretary bracketing him as Key Managerial Personnel along with the Managing Director /CEO&CFO. The Insolvency Professionals, i.e. the IPR professionals, the Registered Valuers are just a few of the roles played by Company Secretaries. A liberalised economy giving equal standing to a variety of business organisations having plethora of laws encasing them, needs to be supported by such professionals at a higher level to keep the governance intact and various corporate issues under control. It goes without saying that the development of any economy is sustainable only when the backbone is formed by a sound governance framework. It is only befitting that the task of strengthening and maintaining such framework is entrusted upon dedicated professionals and Company Secretaries have fit in this role perfectly. Traditional barriers have given way to a broad vision and a modern mindset. Value addition and stakeholder wealth maximization are the 'key mantras' to be able to adapt, survive and grow in the market place. CS as a governance professional is vital to nation building. A lot of activities by Company Secretaries fall within the ambit of the responsibility structure. From ensuring compliance with the applicable laws and secretarial standards to guiding the directors, from conducting secretarial audits to representing the company before Regulators, from obtaining requisite approvals from designated authorities to assisting the Board, the India Inc surely witnesses a plenty of occasions where services of CS are solicited.





Role as a Guide

Company Secretaries, with their knowledge and expertise, play a lead role in guiding promoters, directors and society at large in adopting good Corporate Governance practices, beyond the merely legal prescriptions that adds value to the business by enhancing its image among its customers. They provide support in conducting global business and managing global alliances. A Corporate Secretary is now:

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

The main strength of CS lies in his/ her legal knowledge especially in the fields of business, corporate and monetary laws. As law has various branches, it is seldom possible for a company to involve large number of professionals at a time. CS is rightly the profession which can provide a single window in legal matters. A company secretary ensures compliance in all internal rules and external laws and regulations applicable to the company. Thus, besides Company law, other laws generally applicable to the companies like Direct Tax, Indirect Tax, GST, Labour laws, FEMA, as well as laws relating to securities & SEBI guidelines (for listed companies) relevant for secretarial compliance report to the Board fall in his ambit. Compliance needs to become part of the company culture, and as a Governance Professional, CS spearheads this effort.

Role as a Regulator

Company Secretaries are highly valued and relied upon by regulators for compliances and they are considered as the first level regulators at the corporate level. In effect, they are considered an extended arm of the regulatory mechanism. They act as the link and interface between industry and regulators. Laws are getting liberal as well as complex and changing very fast. CS must be updated about regulatory changes and must educate and update management about changes in the applicable laws and their likely impact on the company and the domestic environment as well as economy as a whole. Being corporate governance professionals, regulators depend and rely on Company Secretaries for implementation of good governance practices. Company Secretaries enjoy the confidence of industry as well as regulators for their professional conduct, ethics and values.

Role as a Champion of Good Corporate Governance

Due to the separation of ownership and management, society depends largely upon professionals for the healthy growth of corporates and protection of the interests of the society. Therefore, Company Secretaries have played a vital role as a bridge between society and business.

The profession of Company Secretaries is seen by society as the champion of good corporate governance, in ensuring that corporates:

- run their businesses in accordance with the laws of the land;
- follow ethical and honest practices in business;
- protect and promote the interests of investors who invest their hard earned savings in the capital of the company;
- maintain transparency and provide correct and adequate information and disclosures about their business activities;



- run their business in a sustainable manner; and
- work in the larger interests of society.

The Companies now are setting up specific departments and teams that develop policies, strategies and goals which are for their Corporate Social Responsibility (CSR) programs and allocate separate budgets to support them. These programs are based on well-defined social beliefs or are carefully aligned with the companies' business domain. The programs are put into practice by the employees who are crucial to this process. This means having policies and procedures in place which integrate social, environmental, ethical, human rights or consumer concerns into business operations and core strategy – all in close collaboration with stakeholders. Corporate Social Responsibility under the guidance of Company Secretary moving far ahead from its age old domain of philanthropy and charity, has now reached to a new hallmark of Corporate responsiveness and action to social issues in order to advance further towards a new era of a collective future.

Role in Investor Education and Protection

An informed investor is more precious than the investment. Investors provide the much needed capital which, combined with entrepreneurial skills, results in successful corporate. These corporates provide goods and services, taxes, and employment, and fuel economic growth. Therefore, it is very important that investors are educated, enlightened and well informed to be able to take sound investment decisions and to protect their interests. Recognising the importance of shareholder rights and investor protection, the Companies Act, 2013 introduced some important changes to the company law regime in India and has plugged many loopholes. It upholds shareholders democracy and investor protection in many ways. A significant development has been the inclusion pertaining to 'Class Action Suit' (Section 245) to strengthen the concept of shareholders democracy.

The ICSI as a national body, and its members as corporate governance professionals, have played a very significant role in the area of investor education and protection. Under various securities laws such as Securities Contracts (Regulation) Act, 1956, Depositories Act, 1996, Regulations and Guidelines issued by SEBI under SEBI Act, 1992 and the Listing Agreement of the Stock Exchanges for Equity, Debt listing, IDRs, Company Secretaries have been recognized to verify compliances and to issue certificates. A better regulated capital market automatically brings development for the country and a strong regulated capital market instils confidence among the investors that their money is safe. Of course the Company Secretaries are expected to exercise sensitive professional and moral judgments in all their activities, while carrying out their professional responsibilities. They should accept the obligation to act in a way that will serve public interest, honour public trust, and demonstrate commitment to professionalism. The CS is expected to maintain and broaden public confidence and perform all professional responsibilities with the highest sense of integrity.

Role as a Global Leader

The changing global business environment has not only brought changes in the role and responsibilities of the Company Secretaries but has transformed it into new dimensions obliterating almost the concept of their role in a company performed by them hitherto. The changes have thrown up new challenges and opportunities that have spurred the professional instincts of Company Secretaries to identify themselves with the totality of business and managerial responsibilities. Thus, a Company Secretary has emerged as a key professional in the corporate management providing solutions to the core management team and harmonise the basic decision making process to bring it in line with key factors of the corporate world.

Global leadership may be referred to as capacity to unify a diverse workforce around a single purposeful vision, through demonstration of personal mastery, thinking globally, anticipating opportunity and using shared leadership networks. A global leader must continuously practice personal mastery and provide organizational leadership through internal/external influence. Thus a company secretary as a global leader



thinks globally, anticipates opportunity, creates a shared vision, develops and empowers people, appreciates cultural diversity, builds teamwork and partnerships, embraces change, encourages constructive challenge, ensures customer satisfaction, achieves a competitive advantage, demonstrates personal mastery, shares leadership and lives the values.

Role of Conscience Keeper

Based on historical, socio-religious, political and economic factors, Indian society has its unique problems and characteristics. Poverty, illiteracy, employment, drinking water, sanitation and health, environment, regional imbalances etc., are problems which need to be addressed at all levels. The government is continuously making efforts to improve the situation and the corporate sector, as it has the requisite size, resources and reach, has the social responsibility to augment and support the efforts of the government. The profession of Company Secretary plays the role of conscience keeper and torch bearer in educating and motivating corporates to play their role in promoting growth.

Concluding Thoughts

Company Secretaries as professionals have immense responsibility towards the nation. A company secretary can give his contribution in several areas such as Direct and Indirect Taxation, Corporate governance, Arbitration & Conciliation, Corporate Communication & Public Relations, Human Resources, Corporate Laws, Corporate Administration, Foreign Exchange matters, Board and shareholders meetings, Corporate Compliance Management, Stock exchanges and Listing agreement, Mergers and Amalgamations, Arbitrations and Reconciliation and many more. The CS profession is commanding respect not only in the corporate sector but is well regarded by other professionals as well as by governmental authorities and agencies concerned with corporate governance in India.

The Institute of Company Secretaries of India has formally adopted the Golden Quote “Satyam Vada, Dharmam Chara – Speak the Truth, Abide by the Law” as “ICSI Motto”. The suggestions given by Company Secretaries influence the nations’ corporate governance framework, so the adherence to the motto in letter and spirit by all the professionals would become a boon for the country and give rise to well-governed business boosting the economic sector, helping the nation towards ‘New India’. The massive growth in Indian economy will provide immense economic power in the hands of the Government, which can be appropriately used for the public welfare and to solve the problems of inequality, poverty, education, health etc., making India one of the greatest nations in the world.

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CS in Economic Growth and Nation Building

*Ravina Jaiswal**

Introduction

The purpose of this article intends to deliberate the Economic Growth, its indicators and the role of company secretaries in economic growth. It recognizes the role played by Company Secretaries as a torch bearer in the path of Nation Building and Economic Development. Apart from this, it highlights the relevant areas and importance of Economic Development for depicting the real picture of the country.

Economic growth is a positive change in the level of goods and services produced by a country over a certain period of time. It is never uniform or same in all sectors of an economy. It is conventionally measured as the percent rate of increase in real gross domestic product, or real GDP. It is associated with economic progress and advancement.

Apart from the Agriculture Sector, the corporate sector of India is playing a major role in adding to the Economic Growth and Nation Building process. While talking about Companies, the first word which comes into mind is of a Company Secretary who acts as a link between Company and its various stakeholders.

Human Resource is one of the most important determinants of economic growth of a country. The quality and quantity of available human resource can directly affect the growth of an economy.

The quality of human resource is dependent on its skills, creative abilities, training, and education. If the human resource of a country is well skilled and trained then the output would also be of high quality. Here emerges the role of the Company Secretaries whose function is not only limited within the boundaries of closed Board Room, but who empowers in the process of nation building.

Besides these, Company Secretaries also accelerate the other growth engines of the Economy and Nation Building like adding value to the Natural Resources, better Capital Formation, Appropriate Technological Development, ensuring strict adherence to the laws, Rules and Regulations.

Through their quality services, the CS brings about improvement in the level of production in an economy along with the advancement of technology, improvement in living standards and so on due to which there is an upward movement in the National Income. Together with the Human Resources Director, the CS keeps in touch with the debate on Corporate Social Responsibility and stakeholders, and monitoring all developments in this area and advising the Board in relation to its policy and practices with regard to Corporate Social Responsibility and its reporting on that matter.

* *Company Secretary, BRG Iron & Steel Co. Pvt. Ltd. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



The role of the Company Secretary has developed into much more than complying with the basic statutory requirements of company law, making the necessary filings with the Registrar of Companies such as annual returns, financial statements and maintaining certain statutory registers, etc. They are considered the extended arm of the regulatory mechanism.

Company Secretaries be it the one in employment or those who are in practice, are high caliber professionals who promote good Corporate Governance and are dedicated towards developing with its vision of being a global leader in promoting the growth of Economy. They ensure that the company functions within the ambit of the legal and regulatory framework.

In this era of new legislative framework, where the Laws and Rules are changing with a fast pace, in order to foster the Nation building and development process can be done while abiding with the laws, the corporate board and other managerial personnel call upon to the company secretary for guidance on what their responsibilities are under the rules and regulations of the laws to which they are subject to and on how those responsibilities should be discharged. They also update management about changes in the applicable laws and their likely impact on the company and the domestic environment as well as economy as a whole.

The regulatory bodies also have realized the importance of the Company Secretaries and the other professionals and thus are focusing on the development of professional management.

The Company Secretaries evolve out as a corporate savior and serve as a beacon to the corporate sector so that it can evolve and function in tune with changing needs of time, and the social responsibilities that this important segment of the economy has to shoulder. As a corporate development planner he identifies expansion opportunities, arranges collaborations, amalgamation, mergers, acquisitions, takeovers, divestment, setting up of subsidiaries and joint ventures within and outside India.

Company Secretaries with their versatility and strategic resource provide strategic value addition to the board, promoters and shareholders. They are also involved in frontline activities and exhibit a business perspective for holistic growth of the company.

The government is making continued endeavours to bring about a more vibrant, ethical and responsible corporate India as it has the requisite size, resources and reach, has the social responsibility to augment and support the efforts of the government. Here too, a CS plays the role of torch bearer in educating and motivating corporate to play their role in promoting inclusive growth.

Indicators of Economic Growth

1. Life expectancy

A variety of factors may contribute to differences in life expectancy, including:

- a. The stability of food supplies
- b. War
- c. The incidence of disease and natural disasters

2. Adult literacy

The percentage of those aged 15 and above who are able to read and write a simple statement on their everyday life.

More extensive definitions of literacy include those based on the International Adult Literacy Survey. This survey tests the ability to understand text, interpret documents and perform basic arithmetic.



3. *Gross Domestic Product*

Gross Domestic Product (GDP) per capita is the commonest indicator of material standards of living, and hence is included in the index of development. It is found by measuring Gross Domestic Product in a year, and dividing it by the population.

4. *Evaluation of the HDI*

The Human Development Index (HDI) is a composite statistic of life expectancy, education, and income per capita indicators. A country scores higher HDI when the life expectancy at birth is longer, the education period is longer, and the income per capita is higher. It is used to distinguish whether the country is a developed, a developing or an underdeveloped country. India's human development index (HDI) ranking for the year 2016 is 131 as per the Human Development Report 2016 Team, which was released by United Nations Development Programme.

Despite the widespread use of the HDI there are a number of criticisms that can be made, including:

- The HDI index is for a single country, and as such does not distinguish between different rates of development within a country, such as between urban and traditional rural communities.
- Development is largely about freedom, but the index does not directly measure this. For example, access to the internet might be regarded by many as a freedom which improves the quality of people's lives.
- In addition, the HDI excludes many aspects of economic and social life that could be regarded as contributing to or constraining development, such as crime, corruption, poverty, deprivation, and negative externalities.

The London-based Centre for Economics and Business Research, a consultancy, said at the end of last year that India would overtake both Britain and France this year in terms of GDP, and had a good chance to become the world's third-biggest economy by 2032.

As a professional class, Company Secretaries will in the year ahead, need to emerge as an extremely reliable source of assessing existing or potential compliance risks in the corporate sector. They are the source whose integrity will be relied upon by various regulators and agencies, and indeed the corporate sector itself.

Global leadership may be referred to as capacity to unify a diverse workforce around a single purposeful vision, through demonstration of personal mastery, thinking globally, anticipating opportunity and using shared leadership networks. A global leader must continuously practice personal mastery and provide organizational leadership through internal/external influence. Thus a global leader is one who thinks globally, anticipates opportunity, creates a shared vision, develops and empowers people, appreciates cultural diversity, builds teamwork and partnerships, embraces change, encourages constructive challenge, ensures customer satisfaction, achieves a competitive advantage, demonstrates personal mastery, shares leadership and lives the values. The efforts aimed at creating and propagating the brand CS on the international horizon, received an encouraging response with the establishment of Chartered Secretaries International Association (CSIA) having a total membership of 14 countries comprising developed, developing, emerging and least developed countries.

In the light of economic developments in recent years stakeholders of companies, particularly in the financial services sector, are increasingly concerned with the conduct of the affairs of the company and therefore it is essential that best practice is adhered to at all times and evidence is available to demonstrate same. The



requirement for higher standards in this sector can be further evidenced by the introduction by the Central Bank of a series of corporate governance codes including fitness and probity standards for certain pre-approval controlled functions or persons who perform controlled functions. Controlled functions include “ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations”.

It has been evidenced from the past that the monitoring of compliance in the financial services sector has traditionally been outsourced. With the frequently changing laws and introduction of amendments, there is more caution in the provision of such services which are more likely in the future to be laid at the feet of the company secretary. It is true to say that the role of the company secretary also includes keeping the Board informed of new legislation and how it applies to them. With this increased focus on corporate governance, the role of the company secretary has been extended such that the secretary is now seen as the guardian of the company’s compliance with legislative requirements and best practice

As the importance of effective corporate governance continues to be critical in today’s environment, not least due to the global financial crisis, there has been increased focus on the role of the company secretary.

Company Secretaries have been among the most valued professionals in terms of importance and impact. Creating a brand new avenue for students of commerce, the Company Secretaries Act, 1980 came in with the intention of academically and professionally structuring the role of a Company Secretary in a company.

Despite the name, the role of a Company Secretary is not a clerical or secretarial one in the usual sense. In fact, a Company Secretary is typically a senior managerial person in the corporate structure ensuring efficient administration of the company and certifying the company's compliance with the provisions of the Act. A Company Secretary helps the company to comply with the Act, avoiding failures to comply which can be very debilitating.

There is an inspiring quote written by Swami Vivekananda – “Every Nation has a message to deliver, a mission to fulfill, a destiny to reach. The Mission of India has been to guide humanity.”

The role of a Company Secretary is pervasive throughout the organization. Some duties which are just a broad guideline of what is expected of a Company Secretary, handling legal aspects that need to be covered for incorporation, formation, promotion, amalgamation, reorganization or winding up of a company, are the responsibilities of a Company Secretary. All legalities involved with inter-corporate investments and loans are looked after by a Company Secretary. All responsibilities attached to meetings of Board of Directors are attached to the Company Secretary. He or she is responsible for scheduling them in consultation with other members of the management team, conduct the meetings and maintain all records related to the meetings. If a company goes public, then management of the public issue falls under the ambit of a Company Secretary's responsibility. Looking into the details of processing applications for management appointments and their remuneration is also the responsibility of a Company Secretary. A Company Secretary handles matters related to obtaining institutional finance. Responsibilities in this regard would include getting project approvals, obtaining relevant licences and permits, zeroing in on all requirements under the MRTP (Monopolies and Restrictive Trade Practices Act, 1969) and FEMA (Foreign Exchange Management Act, 1999) and any other relevant legislation.

Company Secretaries serve the trade and industry and play an important role in the areas of Advocacy on Legislative and Regulatory matters. They also appear before the Tribunals and other authorities.

Company Secretaries play the role of a facilitator for due compliances under GST and be an asset to the general business community and corporate world. She or he can comprehensively interpret the law of GST



and provide complete guidance and advisory to the business entities. Company Secretaries are more suited for their services because of their knowledge of laws and good communication skills.

In order to carry out their duties, Company Secretaries need to be guided by a code of conduct which stipulates the core values and responsibilities of the profession. The code of conduct is usually developed by the profession to guide and to prevent exploitative behaviour and to preserve the integrity of the profession. The code sets a framework for meeting standards and provides disciplinary guidelines for unprofessional behaviour. However, it must be understood that codes of conduct are not only meant to serve as a disciplinary guidebook but also outline ideal ethical standards. In order to be effective, Codes of Conduct should be understood and used by all professionals in their day to day activities. This has contributed to a strong, independent and impartial civil service, whatever their political persuasions that are able to serve different governments in line with the requirements of the code of conduct. In order to enhance professionalism in both public and private sectors, it is key that professions demonstrate high ethical standards and values. A robust and strong level of ethics can be achieved by providing ethics training as a component of continuous professional development. Although qualified professionals may be competent in their fields, it is vital to test their ethical knowledge.

What ICSI needs to focus is that there should be standardisation of audit fee based on the net worth of the auditee subject to a minimum fee. This course of action will motivate the auditors to maintain the quality of audit and express an unbiased opinion of the true and fairness of the financial statements. Thirdly, the Professional work should be assigned to the professional on an appropriate base. The distribution of professional work should be should be equal specially the audit work. At presents only professionals working at a large scale are considered during allotment of Secretarial Audit work by the government authorities. Small and medium practitioners are not getting the proper attention on the part of government. Since most of the work gets centralized only to big firms, these firms are not able to deliver the quality work. There are the cases where large firms reassigned their work to some other firms due to over burden of work but even in such cases small firms are not able to deliver the quality work due to sharing of remuneration or working at a very low margin.

Since economic growth deals with increase in the level of output, but economic development is related to increase in output coupled with improvement in social and political welfare of people within a country. Therefore, economic development encompasses both growth and welfare values.

Dependency theorists argue that poor countries have sometimes experienced economic growth with little or no economic development initiatives; for instance, in cases where they have functioned mainly as resource-providers to wealthy industrialized countries. There is an opposing argument, however, that growth causes development because some of the increase in income gets spent on human development such as education and health.

The development of a country has been associated with different concepts but generally encompasses economic growth through higher productivity, political systems that represent as accurately as possible the preferences of its citizens, the extension of rights to all social groups and the opportunities to get demand the proper functionality of institutions and organizations that are able to attend more technically and logistically complex tasks (i.e., raise taxes and deliver public services). These processes describe the State's capabilities to manage its economy, polity, society and public administration. Generally, economic development policies attempt to solve issues in these topics.

International trade and exchange rates are a key issue in economic development. Currencies are often either under-valued or over-valued, resulting in trade surpluses or deficits. Furthermore, the growth of globalization has linked economic development with trends on international trade and participation in



global value chains (GVCs) and international financial markets. The last financial crisis had a huge effect on economies in developing countries.

A country's economic development is usually indicated by an increase in citizens' quality of life. 'Quality of life' is often measured using the Human Development Index, which is an economic model that considers intrinsic personal factors not considered in economic growth, such as literacy rates, life expectancy and poverty rates.

Economic development is an ever-changing field, and the strongest local economies are often those that are nimble and responsive to changing conditions, even before they occur. How do local economic development strategies need to evolve to address demographic changes in our population, technological innovation, and increasing global competitiveness? The International Economic Development Council's (IEDC) recent report, "Looking Around the Corner: The Future of Economic Development," focuses on the macro trends and projections that have bearing on economic development approaches of tomorrow.

Conclusion

We should ensure that economic development brings development to all to attain that some key factors must be brought to the fore to address issues that prevent the nation building process. A successful development strategy must focus on improving the skills of the workforce and making available the resources which business needs to thrive in the competitive global economy.

Economic development has to be sustained and sustainable and has to enrich every human life so that an educated and peaceful nation is built which will further ensure that we have a world where all people can enjoy peace and prosperity.



CS in a Dynamic Regulatory Landscape

*G Prasanna Bairy**

Introduction

Past decade has been watershed from the perspective of Indian regulatory environment. Many landmark legislations/regulations such as Companies Act, SEBI (LODR) Regulations, GST, IBC etc., have been promulgated and many more are on the cards. For certain types of companies, way of preparing and presenting the financial statements has also undergone sea change with 'Indian GAAP' paving way for 'Indian Accounting Standards' (Ind AS). Regulatory environment has become so dynamic and ever evolving. More than any new legislation, frequency of changes to the existing legislations are more menacing. Penalties for even minor lapses have skyrocketed and business entities cannot afford to miss even minor compliances. Banking system is awry with burgeoning bad loans for a variety of reasons. Government is keen to eradicate the black money and increase the tax base through stringent implementation of various legislations.

In such a backdrop, need for competent professionals has increased multifold. As top management finds it very difficult to simultaneously drive the business as well as compliance mechanism, importance and responsibilities of a Company Secretary as a 'Compliance Officer' has dramatically increased. Business entities have realized that it is prudent to trust and handover the byzantine responsibility of handling the compliance aspects to Company Secretaries so that they can handle the business with ease.

Important Regulatory changes in the last few months

Many regulatory changes have been witnessed in the last few months, especially from the perspective of listed entities. In the subsequent paragraphs, an attempt has been made to briefly touch upon the important regulatory changes and the role which a Company Secretary can play to handle the compliances as envisaged by the respective legislations.

Some of the important regulatory changes during the last six months are as under:

- (1) SEBI Circular dated April 20, 2018 towards strengthening the Guidelines and raising industry standards for RTA, Issuer Companies and Banker to an issue.
- (2) SEBI Circular dated May 3, 2018 as regards penal provisions for non-compliance with the provisions of SEBI (LODR) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of securities.

* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.

- (3) Promulgation of SEBI (LODR) (Amendment) Regulations, 2018.
- (4) SEBI Circular dated May 10, 2018 for implementation of certain recommendations of the Committee on Corporate Governance.
- (5) SEBI Circulars on Monitoring the Foreign Investment limits in Indian Companies.
- (6) RBI Circular on Single Master Form (SMF) for integrating the reporting structures on various types of foreign investment in India.
- (7) SEBI Circular dated May 28, 2018 in connection with System-driven disclosures in Securities Market.

SEBI Circular dated April 20, 2018 towards Strengthening the Guidelines and raising industry standards for RTA, Issuer Companies and Banker to an issue

Through this Circular, SEBI has mandated stringent guidelines as regards payment of dividend/interest/redemption, Transfer/Transmission/Correction of errors as well as compulsory internal audit of RTAs. This Circular has reiterated the need to maintain the documents for a period of 8 years after completion of transactions. The Circular also speaks about the plethora of documents to be maintained for different types of transactions. The Circular is applicable with immediate effect.

As regards the requirements of this Circular, Company Secretary as a Compliance Officer has a very important role to play. He has to ensure that revalidation/reissue requests of dividend/interest/redemption are properly maintained by the RTA with all the necessary details. He has to ensure that proper audit trail is available as regards various transactions executed by the RTA. The problem here is multifaceted as the documents are maintained in the premises of RTA and Company Secretary will have limited physical control over such documents.

Company Secretary can play a very important role in framing the written policy (as required by the Circular) for exercising the strict control over stationery such as blank certificates, dividend/interest/redemption warrants. He can also periodically physically verify the documents and satisfy himself about the correctness of documents. He can conduct an audit to confirm that the PAN and Bank details of all the security holders have been collected by the RTA and the records have been updated. The Company Secretary can also check the compulsory internal audit report submitted by the RTA and study the shortcomings in the design and operation of RTA system and corrective measures taken by RTA, if any.

SEBI Circular dated May 3, 2018 as regards penal provisions for non-compliance with the provisions of SEBI (LODR) Regulations, 2015 and the Standard Operating Procedure for suspension and revocation of trading of securities

This Circular has clearly spelled out the penalties to be imposed by Stock Exchanges for non-compliance with the provisions of SEBI (LODR) Regulations, 2015, Standard Operating Procedure (SOP) for suspension and revocation of trading of specified securities and the procedure for freezing or unfreezing of promoter shareholding by the depositories. This Circular is applicable for compliance period on or after September 30, 2018.

Stock Exchanges have been advised to display the non-compliance by the listed entities and details of the fine levied/action taken. If the penalty is not paid within 15 days, Stock Exchanges are required to intimate the depositories to freeze the entire shareholding of promoter and promoter group as well as other securities held in such demat accounts. The listed entities are also required to place all such actions by the Stock Exchanges before its Board and comments by the Board shall be intimated to Stock Exchanges for dissemination. In case of continuing non-compliances, Stock Exchanges have been instructed to move the scrip to 'Z' category and



suspend the trading. They have also been instructed to suspend the trading in case of non-payment of fines within 6 months.

It is a primary responsibility of the Company Secretary to ensure that all the requirements of SEBI (LODR) Regulations, 2015 are complied with in letter and spirit. Hence, the importance of this Circular need not be overemphasized. The Company Secretary will have no moral right to continue in the Company, if he is not able to safeguard the interest of the Company. Hence, he need to ensure that the compliance framework has adequate checks and balances to highlight the redflags, if any, in the system.

SEBI (LODR) (Amendment) Regulations, 2018

SEBI (LODR) (Amendment) Regulations are applicable from April 1, 2019, unless otherwise specified.

Significant changes in the regulations, as compared to current legislation are as under:

Independent Director's definition – To be an independent director of a Company, he/she shall not be in the Board of another company where any non-independent director of the Company is an independent director.

Material Subsidiary definition – a subsidiary whose income or net worth exceeds 10% (earlier 20%) of the consolidated income or net worth respectively of the listed entity and its subsidiaries in the preceding accounting year.

No person who has attained the age of 75 years can be appointed or continued as non-executive director unless a special resolution is passed to that effect with necessary justification.

Evaluation of independent directors shall include the performance of the directors and fulfilment of the independence criteria as specified in the regulations and their independence from the management.

Maximum number of directorships specified.

Some changes have been specified as regards meeting of Committees – quorum, minimum number of meetings in a year.

Chairman of SRC shall compulsorily be present at the AGM to answer the queries of shareholders.

Related Party Transactions – clear threshold limits to be specified by the Board and the RPT policy to be reviewed at least once in every 3 years.

Royalty payment to a related party exceeding 2% of the annual consolidated turnover will be treated as material.

Half-Yearly RPTs to be published within 30 days of publication of Half-Year results in the format specified in accounting standards.

Secretarial Audit specified for listed entity and its material unlisted subsidiaries.

Independent Director shall confirm his/her independence in every Board Meeting.

Submission of quarterly Consolidated results is compulsory.

Cash Flow Statement has to be submitted along with Half-Yearly results.

While publishing the unaudited results, listed entity has to ensure that 80% of the consolidated revenue, assets and profits respectively shall be subjected to limited review.



Notice of AGM & Annual Report to be submitted to Stock Exchange not later than the day of commencement of dispatch of notice to shareholders.

Documents to be filed with Stock Exchanges to be in searchable format.

NRC to recommend to Board, all remuneration, in whatever form, payable to the senior management.

Role of SRC specified including but not limited to review of measures taken by the listed entity to reduce the quantum of unpaid dividends.

In 'Management Discussion and Analysis' significant changes (25% of more) in key financial ratios i.e., Debtors/ Inventory Turnover, Interest Coverage, Current, Debt Equity, Operating Profit Margin, Net Profit Margin to be given.

In 'Corporate Governance' section of the Annual Report, a chart or matrix setting out the skills/expertise/ competence of the Board of Directors necessary for functioning as well as name of directors possessing such skills need to be given.

Once the Amendment Regulations come in to force, responsibilities of a Company Secretary will increase manifold. Apart from monitoring the eligibility of directors (independence, age limit), evaluation etc., he needs to work closely with finance team for monitoring the material subsidiaries, Secretarial Audit of material subsidiaries, Related Party Transactions, publication of results in prescribed format along with other information. He also should work closely with Stakeholders' Relationship Committee to reduce the quantum of unpaid dividends. He also should take care of documents in searchable format. He can use the software such as PDF Document Converter for this purpose.

SEBI Circular dated May 10, 2018 for implementation of certain recommendations of the Committee on Corporate Governance

SEBI Circular dated May 10, 2018 speaks about the acceptance of certain recommendations of Committee on Corporate Governance under the Chairmanship of Shri Uday Kotak. Important recommendations are:

Board evaluation to be carried out annually. Previous year's observations and actions taken as well as proposed actions based on current year's observations need to be considered.

Medium and long-term strategy – may be disclosed under 'Management Discussion and Analysis' section of the Annual Report.

Board evaluation was specified in SEBI (LODR) Regulations, 2015 as well. However, this Circular has further accentuated the same. As Company Secretary has traditionally been part of Board Evaluation process and mechanism, there is no change in his responsibilities in this front. However, he needs to pay more attention to medium and long-term strategies which will henceforth be part of Management Discussion and Analysis' section of the Annual Report.

SEBI Circulars on Monitoring the Foreign Investment limits in Indian Companies

SEBI has issued three Circulars in connection with Monitoring of Foreign Investment limits in listed Indian Companies. Recent Circular dated May 17, 2018 amended the earlier Circulars and required the listed entities to appoint one of the depositories (NSDL/CDSL) as a 'Designated Depository' and electronically submit the details of NRI/OCI investments on repatriation basis as well as investment by Foreign Portfolio Investors (FPI).

The Circular envisages the sharing of information sharing between Stock Exchanges and depositories. The Company is required to intimate the 'Designated Depository' about any change in the details pertaining to the



Company *i.e.*, increase/decrease in aggregate FPI/NRI limits, change in the sectoral caps or change in the sector of the company.

Company Secretary due to his thorough knowledge of FEMA, is expected to play a key role in monitoring the NRI/OCI limits (normal limit of 10% and with special resolution 24%) as well as FPI limits (10% per FPI, 24% for aggregate investments by all FPIs and up to sectoral cap with the approval of Board/Shareholders through special resolution). Since FEMA violation has far reaching consequences, experience of Company Secretary will help the Company in treading the right path.

RBI Circular on Single Master Form (SMF) for integrating the reporting structures on various types of foreign investment in India

RBI has issued a Circular on June 7, 2018 for introducing a SMF for the purpose of integrating the reporting structures of various types of foreign investment in India. Implementation of SMF would be in two phases *i.e.*, in the first phase, Entity Master would be available for updation of details by entities and in the second phase (expected from August 1, 2018), 9 reports would be made available and reporting of FC-TRS, LLP, ESOP etc., would be done through SMF.

Company Secretary as Compliance Officer would be required to furnish the necessary details through SMF. He has to get himself acclimatized to this reporting environment.

SEBI Circular dated May 28, 2018 in connection with System-driven disclosures in Securities Market

The Circular requires the listed entities to appoint a 'Designated Depositories' and furnish the necessary details for the purpose of compliance with SEBI (SAST) Regulations, 2011 and SEBI (PIT) Regulations, 2015. For the purpose of PIT Regulations, CEO and upto two levels below CEO of a Company shall be deemed as employees for the purpose of system driven disclosures. System driven disclosure system is expected to co-exist with the existing manual system.

Company Secretary shall ensure that the details of all the concerned employees are updated in the interface provided by 'Designated Depository' so that the compliance requirements are met. He is also required to inform the depository about the changes, if any, in the directors/employees within 2 days of such change.

Conclusion

Company Secretary is not just a position; it is an onerous responsibility. The present regulatory trends indicate that one who has the keen eye for details and constantly updates himself about the regulatory changes on regular basis, will be in a better position to effectively discharge his responsibilities. The Company should have a robust compliance mechanism so that any lapses, redflags can be highlighted at the earliest. Quarterly Secretarial Audits (similar to quarterly financial audits) will go a long way in identifying the lapses at the earliest before grave damage is done.



CS In New Age Legislative Paradigm

*Karishma Makhija **

Introduction

As years pass there comes changes.... yes right.... to be precise huge changes.... These changes are at times glorifying or at times horrifying.... it all depends upon the individual perspective.....!!!

Earlier when we heard a term Corporate Secretary (CS), most people coined it as a typical stereotype of a man or women who assists a Board chair or executive director but because of recent changes in corporate governance. Apart from "Company Secretary to mean a person who is a member of Institute of Company Secretaries of India"; today Corporate Secretary holds the responsibility for all that and much more. Despite the name, the role is not clerical or secretarial. Company Secretaries are the legal officers; the responsibilities in the modern day for company secretaries have evolved from that of a "note taker" at board meetings or "administrative servant of the Board" to one which encompasses a much broader role of acting as "Board advisor" and having responsibility for the organization's corporate governance; their work also involves monitoring of compliances in the financial service sector as well. So ideal do their work only relate to Compliances of Legal and Secretarial department or it may extend beyond that?

The year 2013; a big year for the Corporate world, The Companies Act, 2013 ("The Act") which paved the way of a bright future for uncountable Company Secretaries and Compliance officers to come out as a show stopper and much more as a show man in that year, the Act proved a boon for the Company secretaries and may be boon or curse for Corporate world as it made the corporate compliances more stricter; nonetheless it was a change that made a remarkable significance to enhance the role of "We" the Company Secretaries in every area and field that made us grow in every aspect we can.....!!! With the new Companies Act taking effect, firms are setting up teams of company secretaries similar to a business vertical. The Companies Act, 2013 also brought a 360 degree change in the definition of Company Secretaries.

Definition of a Company Secretary as per 2013 Act

A Company Secretary means "a person who is a member of the Institute of Company Secretaries of India". [Sec. 2(i) (c) of the Company Secretaries Act, 1980],

From :

According to Section 2(45) of the Companies Act, 1956, "Secretary means any individual possessing the

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prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties”.

In short the new act gave recognition in many sections to Company Secretaries indicating their utmost importance everywhere such as;

1. Section 203 of Companies Act, 2013 (Appointment of Key Managerial Personnel) where CS is recognized as a KMP.
2. Section 205 of Companies Act, 2013 Functions of Company Secretary.
3. Section 204 of the Companies Act, 2013 states the duty of the Company Secretary in practice to perform secretarial audit of the listed Companies and such other class of prescribed Companies.
4. Secretarial Standards enforcement by section 118 of the Companies Act, 2013.
5. Section 92 of the Companies Act, 2013 has widened the requirement with respect to certification of Annual Returns by Company Secretaries in practice.

With the Emergence of Companies Act, 2013 we realized what growth and change is....!!! As compliance is not only a matter of adherence in corporate world but it is much more above it. The mandatory appointment of Company Secretaries for companies having paid-up share Capital of Rs. 5 crores or above paved the way for its importance in today's corporate world.

Company Secretaries are independent professionals governed by the Code of Conduct provided in the Company Secretaries Act, 1980. In India, the Institute of Company Secretaries of India (ICSI) regulates the profession of Company Secretaries. ICSI is a statutory professional body which has more than 53,000 associate members.

To answer the above question about the limitations in the role of Company Secretaries let's get into current reality; Today the importance of effective Corporate Governance continues to be critical this has directly increased the importance of good corporate professionals like Company Secretaries. The role of Company secretary is transitioning from being a support person to becoming one of the key governance positions within a corporation and widely depending upon the size and nature of the company. In many cases the duties of the Company Secretary are an add-on to other executive responsibility and may be seen as a minor part of that executive's overall position but though company secretary do not take part in the management of the company as this is the responsibility of the directors, nonetheless the role of company secretary is termed of that of legal advisor on the board who needs to have a legal knowledge of all the sectors thus directly indirectly they the Key Managerial Person of the Company. Company secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning.

As per the recent news state and federal laws and regulatory bodies are holding board of directors accountable for law adherence. "Company Secretaries are playing important role in all segments of Industries particularly in banking and financial services" according to Shri R. K. Dubey, Chairman and Managing Director of Canara Bank. Speaking at a seminar on "Capital Market: The Growth Engine" organized by the Institute of Company Secretaries of India (ICSI), in Mangalore, he said that the government is finding it difficult to give more capital to Banks because of fiscal deficit. Banks have been asked to raise capital from the market and there is a greater thrust on disinvestment. In such a situation the company secretaries are playing important role in the areas in banking and financial services,' he said. Historically, a company secretary's core competence has been in compliance and corporate governance. He added they are now



popularly known as governance professional in capital markets, and more frequently called upon to guide the corporate board on various strategic, governance and compliance issues related to capital market,”. The pursuit of reform process requires a renewed focus on capital market reforms and revisiting of the regulatory mechanism for the entire financial sector.

The role of Company Secretaries is now considered as a senior position or above. ITS evolving beyond the administrative work. Chartered Secretaries are employed as chairs, chief executives and non-executive directors, as well as executives and Company Secretaries. Some Chartered Secretaries are also known in their own companies as corporate secretarial executives/managers or corporate secretarial directors. Lord Denning MR acknowledged that, in the decades prior to the case, the role of the secretary had grown into becoming one of the most important within the company. However, he still viewed the role of the secretary as broadly administrative, and the law’s view of the secretary’s role has not changed since then. This is despite the fact that there can be little doubt that the role of the Company Secretary has broadened considerably, especially in larger companies. This is evidenced in a number of ways. Company Secretary is someone who holds a very high rank and position and is next to the Chief Executive including Managing Director, Chief Financial Officer, Whole-Time Directors. Company Secretaries have not just made their presence felt in the corporate sector, there are so many sectors where the need of Company Secretary is felt.

Let’s discuss the role of company secretary in other emerging fields:

Role of Company Secretary in GST:

Company secretaries are the one who are capable of understanding the dynamics of law and taxation system.

Company Secretaries are termed to be masters of law; whether it is in indirect tax laws or the GST law, they were already recognized under the various tax laws and in VAT profiles by various State Governments. Company Secretaries are recognized as one of the Key Managerial Personnel (KMP) of a company under the Companies Act, 2013.

To come to the main topic each reform brings with it something new for the professionals.... And similarly each reform is huge in itself...there is a mindset where we have allotted the reforms of a particular sector to the development of certain professionals only but it is not so that the fruits of the reform cannot be ripped by other professionals, Company Secretaries are playing a pivotal role in corporate management as well as in practice. Various State Governments have recognized the important role being played by the Practicing Company Secretaries and authorised them to do VAT Audit and to appear before the Appellate Authority as the Authorised Representative. Securities Exchange Board of India has recognized Company Secretaries as auditor/internal auditor and the Companies Act, 2013 also recognizes the Company Secretaries for carrying out the Secretarial Audit of prescribed class of Companies. The Certification courses offering Company Secretaries to act as a registered valuer gives them an opportunity to come out of a corporate net shell and explore different areas.

It’s a New tax, New Opportunity!! As after the “One Tax One Nation” rule is applicable, now our working area became wider. Because now this is not related to any particular state but the rules and regulation are all similar across all over nation. One window solution is possible. After GST implementation the work area of professionals become wide and they can provide a single window solution to their client.

We are a developing country where a large number of startups and small companies are working independently. After GST implementation these companies will also work according to the new taxation system. So they will need the professional workers who know about GST. And that’s why the demand of professionals with the GST knowledge will increase.



Model GST Law allowed Company Secretaries to appear before the GST Authorities and Company Secretaries can justify these services based on their performance and practical approach because of their communication skills and interpretation and good knowledge of Laws.

For better administration of new tax regime in the country, it is required to have more and more competent and equipped professionals to facilitate regulators to ensure compliance of various statues and thus help in achieving this ambitious task. The Company Secretaries, who practice in almost all the branches of law and have a strong accounting background, are competent professionals to handle the regulatory compliance under the proposed GST laws. They are skilled professionals who understand legal, financial and compliance dimensions of business entity comprehensively. We look forward to the GST as “Good and Simplified Tax” regime further fuelling the growth of India Inc.

Due diligence is an investigative process for providing the desired comfort level about the potential investment and to minimize the risks such as hidden uncovered liabilities, poor growth prospects, price claimed for proposed investment being on higher side etc. In general due diligence process is transaction based. Thus Company Secretaries who are experts in due Diligence can advise the clients for GST.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company’s compliance with the provision of the Act.

Section 205 has also been added in the Companies Act, 2013. According to Section 205 of the Companies Act, 2013 the Company Secretary shall discharge following functions and duties, this is the first time that the duties of the company secretary have been specified in the company law. The Central Government is to maintain a panel of experts to be called as “Mediation and Conciliation Panel” for mediation between parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the new law. Company secretaries are not only corporate legal experts but due to the very nature of profession, their knowledge is far superior in respect of commercial understanding. They have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner. Since they are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising to the client. Thus company secretaries in practice can act as strategist and authorized representative in arbitral proceedings. Thus, CS can act as arbitrators and the society can get the benefit of their knowledge and expertise in commercial and legal matters.

Thus a Company Secretary can provide assistance in dispute resolution in the field of GST.

Company Secretary can be registered with the GSTN as ‘Tax Consultant’ and advice their clients in getting the high rating under the compliance rating score which would help in establishing good corporate governance of company.

Role of Company Secretary in Banking Sector:

Company secretaries are the primary source of advice on the conduct of business and this can span everythings from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. A lot of opportunities are opening up for Company Secretaries in banks that includes handling regulatory and taxation issues, vetting of documents, due diligence, merchant banking activities and much more. Irrespective of the nature of corporate entities, various banking companies including commercial banks, regional rural banks, non-banking financial companies, development financial institutions and more generates employment opportunities for company secretaries for their detailed know how in legal and other related fields.



Nearly 7,000 companies come under the purview of this audit. For example, bank NPAs develop over a period of time and regular secretarial audits could prevent building up of such NPAs.

We will also talk about the advancement achieved by institute of Company Secretaries of India:

1. There is a collaboration with ICSI and ICAI-UK.
2. ICSI has entered into Memorandum of Association (MOU) with the institute of Chartered Secretaries and Administrations, UK. This MOU with ICSI recognizes company secretaries of both the countries on several conditions. The method of globalization and the means of absolute economic cooperation's that India is instating has also set in considerations mutual recognition agreements between ICSI and institute governing the profession in various other countries.

Rephrase as soaring significance of Company Secretary in foreign countries

- Among public companies in North America, providing advice on corporate governance issues is an increasingly important role for corporate secretary.
- Chartered Secretaries are the sixth highest paid employees in the UK according to the Office for National Statistics Annual Survey of Hours and Earnings (March 2010).
- In China, every listed company is required to have a board secretary. According to article 124 of 2005 Company Law, every listed company is required to have a secretary to the board of directors.
- In South Africa, all public and state-owned company must appoint a company secretary.
- In Sri Lanka, the Companies Act, No. 07 of 2007 requires that each registered company has a Company Secretary.

Conclusion

Seeing the factual and today's scenario there is a lot of scope for company secretaries in India and abroad and the possibility of future growth is high as the corporate governance is spreading its wings all over. The stricter the compliance the more is the requirement of Company Secretary. There are many areas to explore and it's not just the Companies Act. Company Secretary is considered to be one of the top career options today. Governments Initiatives like "Startup India Standup India", "Make in India" and efforts towards improving ease of business there has been further improvement over business sentiments, this scenario has given rise to new companies, ventures, and startups being set up there by opening a whole lot of opportunities for young CS. There is also an added advantage by setting up their own consultancy business after obtaining a certificate of practice. Thus to conclude the same I would state that "Strength and Growth comes only through continuous effort and struggle and the journey is never ending".



Filing and Processing of Charge forms in MCA21 and Precautions to be taken by Professionals

Bhasker Subramanian, Gumpena Vijayalakshmi** & Jasna P.****

Introduction

Filing of charge related documents in MCA21 registry is very crucial for Companies, charge holders and general public. MCA21 portal provides Index of charges containing basic information relating to various charges created/modified/satisfied by companies. In this article authors have made an attempt to provide system perspective on 'charges' related filings in MCA21 registry for the benefit of professionals to help them in e-filing without much hassles.

What is a 'charge' ?

As per Section 2(16) of the Companies Act, 2013, a 'Charge' is defined as 'an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage'. In simple terms, we may say that a charge is nothing but any property or asset given by the company as a security in favor of a creditor/lender with the intent of securing the latter's debt.

Applicable Forms

- Form CHG-1: Application for registration of creation, modification of charge (other than those related to debentures)
- Form CHG-4: Particulars for satisfaction of charge thereof
- Form CHG-6: Notice of appointment or cessation of receiver or manager
- Form CHG-8: Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge
- Form CHG-9: Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures

Registration of charges under the Companies Act, 2013: While charge forms filed electronically by Indian companies are processed by the jurisdictional RoCs on STP/Non-STP mode, whereas forms filed by foreign companies are processed by the Registrar of Companies, Delhi. In case a company acquires a property

* FCS

** ACA

*** ACA, ACMA. The views expressed are personal views of the author(s) and do not necessarily reflect those of the Institute.



which is subjected to charge, the company will have to furnish the details relating to the existing charge on the acquired property. A company can have multiple charges at a given point of time on same asset, if charge holder gives the consent.

Various parties involved in the lifecycle of a 'Charge'

- Company
- Charge holder
- ARC/ Assignee
- Practicing Professional
- Registrar of companies

Various stages in the lifecycle of a Charge in MCA21

- *Creation of charge* : Once a charge instrument is created by a company with the charge holder, the registration of such charge with the concerned RoC is required by filing form CHG-1 or CHG-9 containing all particulars.
- *Modification of charge* : Whenever there is any change in terms and conditions of the charge registered, the particulars of such modifications are required to be filed in form CHG-1 or CHG-9 duly signed by the concerned parties.
- *Satisfaction of charge* : On the satisfaction of a charge, it must be intimated to the concerned RoC by filing form CHG-4.

Time limit to file the relevant Charge forms and the process of filing based on the filing date and event date

- *Forms filed within 30 days of event date* - Normal filing of forms (CHG-1 (T+29 days)/CHG-9(T+29 days)/CHG-4(T+30 days)) with all particulars and payment of normal filing fee.
- *Forms filed after 30 days but within 300 days of event date* - Normal filing of forms (CHG-1/CHG-9/CHG-4) with all particulars and payment of additional fee along with the normal filing fee.
- *Forms filed after 300 days of event date* – Filing of forms (CHG-1/CHG-9/CHG-4) shall be allowed with all particulars and payment of additional fee along with the normal filing fee. However, the form is not taken for processing till a condonation order is submitted through INC-28 for the delay. User has to file for the condonation in form CHG-8 and get a Condonation Order. This order of condonation is then submitted in form INC-28 to condone the delay in submitting the relevant charge form. SRN of the relevant charge form is mentioned in form INC-28. Post approval of Form INC-28, ROC user will process the relevant charge form CHG-1/CHG-9/CHG-4.

Processing type of charge forms

- CHG-1/CHG-4 shall be processed under STP mode in case form is filed within 300 days of the event date and signed both by the Company and Chargeholder.



- CHG-1/CHG-4 shall be processed under Non-STP mode in the following scenarios:
 - Form is filed beyond 300 days of the date of event and signed both by the company as well as Chargeholder.
 - Form is filed within 300 days of the date of event and signed only by the Chargeholder.
 - Form is filed beyond 300 days of the date of event and signed only by the Chargeholder.
- Form CHG-9 shall be processed under Non-STP mode for all purposes.

Signatories to the Charge forms

- Chargeholder DSC is mandatory for all scenarios i.e. creation/modification/satisfaction of charges.
- Company DSC is mandatory in the case where 'applicant' who is filing the form is 'Company'.
- Company DSC is optional if form CHG-9 is filed with purpose 'rectification of charge' or in the case where 'applicant' who is filing the form (CHG-1/CHG-4/CHG-9) is a 'Chargeholder'.
- ARC /Assignee signature becomes mandatory only if the charge is modified in their favor.
- Practicing professional's signature is mandatory for companies other than OPC and small companies.

Precautions to be taken by Professionals for successful submission

1. The time limit within which the form is being filed need to be calculated from the 'date of instrument creating or modifying the charge/ date of satisfaction of charge in full' entered in the form. In respect of CHG-1 & 9 due date shall be calculated as T+29 days whereas in respect of CHG-4 & 6 the due date shall be T+30 days. Due care while filing within the said dues dates will avoid additional fee.
2. Where the form is signed by the Chargeholder, system ensures that the PAN mentioned in the form and the PAN with which the affixed DSC is associated are same. However, in order to cater to scenarios where the chargeholder is an entity that has a PAN, system ensures that the affixed DSC is not associated to some other PAN which is already available in MCA database.
3. For faster processing of charge forms, i.e. STP mode of processing, users may ensure that the form is filed within 300 days of the event and relevant DSCs of both company and Chargeholder are affixed.
4. It must be noted that PAN of the chargeholder is mandatory in ALL cases i.e. even where the chargeholder is situated outside India, PAN is a must.
5. In case of modification of charge, stakeholders must ensure that the modifications are filed either by the company or the principal chargeholder in case of more than one chargeholder.
6. Also, in case of modification, Stakeholders must ensure that modifications are filed with the Registrar in a chronological manner since a modification of a previous period shall not be allowed in case a later modification is already filed with the Registrar.

Statistics of charge forms filed during last 3 financial years

Form ID/Purpose	FY 15-16	FY 16-17	FY 17-18	Total
<i>Form CHG-1</i>				
Creation of charge	68,648	82,658	85,220	236,526
Modification of charge	47,532	51,489	51,070	150,091
<i>Form CHG-9</i>	-			
Creation of charge	1,447	2,088	1,998	5,533
Modification of charge	1,378	1,658	1,830	4,866
<i>Form CHG-4</i>	-			
Satisfaction of charge	47,559	57,903	61,129	166,591
<i>Form CHG-8</i>	-			
Application for condonation/ rectification	1,943	2,767	2,672	7,382
Total filings:	168,507	198,563	203,919	570,989

Major issues raised by Professionals while filing charge forms:

Sl.No.	Major issues	Resolution
1	The eform is filed but the same not approved and the status is showing as Pending for Approval.	Form is pending with DH/AO for processing. Please note that processing of form happens based on FIFO basis.
2	Charge form is Uploaded, but certificate not generated.	Certificate gets generated only upon approval of the form and same will be sent to the company through registered E-mail ID.
3	Charge was created on the Company name with Y series SRN. Found below mentioned discrepancies: (i) Charge value is not correct. (ii) Incorrect Charge holder details are getting displayed.	For the charges created before 2006, any discrepancies need to be corrected by contacting the respective ROC. ROC user can update / satisfy / delete the details related to such charges.



<i>Sl.No.</i>	<i>Major issues</i>	<i>Resolution</i>
	<p>(iii) Charge is satisfied before year 2006 but still showing as 'OPEN'.</p> <p>(iv) Charges of one company getting displayed against other company.</p> <p>(v) Duplicate charges are getting displayed.</p>	
4	Index of charges are not displaying all the charges pertaining to the company.	Only if the charge is approved it will get reflected in view index of charges. In case of any further issues, clear cache and try in IE browser.
5	Error is getting displayed at upload even if Yes is selected against the field of 'period within which form is getting filed' i.e. form is filed within 300 days or beyond 300 days.	This is because of incorrect dates entered in the form i.e., user needs to ensure that difference between the filing date and date of instrument of charge is as per the field 'period within which form is filed'.
6	Company has filed INC - 28 for order of Condonation in filing of form CHG-1/CHG-9/CHG-4 and the same is approved but still the charge SRN is not approved.	Please note that the SRNs are processed in FIFO order. In case of further queries relating thereto, you may contact the jurisdictional ROC and seek necessary guidance.
7	Trying to modify the charge which got transferred from Amalgamating company [which has 'charge creation' date as prior to 'incorporation date' of transferee company] and error is getting displayed as 'Please enter a date which is greater than or equal to the date of incorporation'.	<p>In case of amalgamation, the details of open charges get transferred only if INC-28 form has been filed by the transferee company by selecting the relevant sections relating to Amalgamation.</p> <p>In case error is displayed, please file the form INC-28 with the relevant sections and post that one can file the relevant charge form.</p>
8	Trying to file the charge form for 'modification of charge' and getting error 'Please enter a date greater than or equal to the date of creation of charge and last modification of charge for the Charge ID'.	<p>Reason for error could be that there were already approved forms whose date of modification is greater than the 'charge modification date' entered.</p> <p>Belated filing is not allowed as per MCA guidelines for those charges against which modification has already been filed with later date.</p>
9	While uploading charge form after affixing all	If there is some problem in the affixed DSC s/



Sl.No.	Major issues	Resolution
	required DSCs, 'Please attach DSC' error is getting displayed.	Use of Lower Adobe version will face this problem. Please use Adobe reader 11 or above version while filling form fields or attaching the DSC.
10	When Pre-scrutiny button is clicked, no action is happening.	Please remove the affixed DSC and affix the DSC afresh and try again.

Integration of MCA21 Registry with Central Registry of Securitisation Asset Reconstruction and Security Interest (CERSAI)#

MCA21 has been integrated with CERSAI to provide information relating to Charges of Companies. The MCA21 service 'Index of charges' provides a link to the 'debtor details' service at CERSAI portal whereby the entered CIN gets pre-populated so as to enable the user to proceed and view details of charges registered with CERSAI. Pertinent to mention that Central Registry of Securitisation Asset Reconstruction and Security Interest of India is a Government of India Company licensed under section 8 of the Companies Act, 2013. The object of the company is to maintain and operate a Registration System for the purpose of registration of transactions of securitisation, asset reconstruction of financial assets and creation of security interest over property, as contemplated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). CERSAI is providing the platform for filing registrations of transactions of securitisation, asset reconstruction and security interest by the banks and financial institutions. At present the portal provides facility to file security interest in immovables created through all types of mortgages and in units under constructions besides filing of Security Interests in movables, intangibles and factoring transactions is also available on the portal. More than a statutory obligation CERSAI is a risk mitigation tool for the Banks / Housing Finance companies, FIs and public at large to prevent multiple financing against the same property. Online search is available to public to enable them to search and inspect the records maintained by the Registry on payment of fees prescribed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011. The search can be made on the basis of both Asset Details as well as on the basis of Debtor's details. More details can be accessed at <https://www.cersai.org.in/CERSAI/>.

* India Business Unit, Infosys Limited

#Source: <https://www.cersai.org.in/CERSAI/>.

^ Authors would like to profusely thank MCA for the data/statistics relating to charges.

@Views expressed by the authors in the article are personal.



Regulatory changes in investment management industry - Global Perspective

*Iqbal Jugari**

Investment Management industry – Big Picture

As per the Boston Consulting Group report on Global Asset Management 2018¹, global assets under management (AuM) rose by 12% from US \$71.0 trillion in 2016 to US \$79.2 trillion in 2017. Retail segment share of total AuM increased from 37.5% in 2016 to 39% in 2017.

In Asia (excluding Japan, Australia and China), AuM rose by 13% from US \$3.1 trillion in 2016 to US \$3.5 trillion in 2017.

AuM in China and India is US \$4.2 trillion and more than US \$500 billion respectively. China and India have each registered 22% AuM growth in 2017.

Regulatory change

Regulations in financial services industry continue to evolve. Early this year, on 3 January, 2018, most of the provisions of Markets in Financial Instruments II (MiFID II) became effective. and on 25 May 2018 the EU General Data Protection Regulation came into force.

The new rules governing European money market funds will be effective from 21 January, 2019 for existing money market funds. Any new funds launched will be required to comply with the regulations starting from 21 July, 2018.

Regulatory Change Management

Regulatory change management continues to be one of the biggest challenge for compliance officers. This is reflected by regulatory activity data tracked by Thomson Reuters.

Year	No of regulatory alerts	Average daily alerts in 2017
Upto 30 June 2018	Approx. 25,000	216
2017	56,321	
2016	52,506	
2015	51,563	

1. http://image-src.bcg.com/Images/BCG-The-Digital-Metamorphosis-July-2018-R_tcm9-197509.pdf

* *Head of Compliance & Control, Ostrum Asset Management Asia Limited, Singapore. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



In 2017, the number of regulatory alerts in the following Asian markets were:

Markets	Regulatory Alerts
India	4,275
Hong Kong	2,440
China	2,042
Singapore	890
Philippines	877
Indonesia	841
Thailand	580

Source: Thomson Reuters

Note: Tracked activity includes document changes, announcements, and enforcements by regulators. Average Daily Alerts = Total Alerts Year-on-Year / 261 Working Days

As per Thomson Reuters report on Cost of Compliance 2018², 6% of the firms reported spending more than 10 hours in an average week on tracking and analyzing regulatory developments (7 percent in 2017; 12 percent in 2016). The report pointed out that increased use of technology and the use of creative solutions may be a driver for the fall in the %)

Conduct – Putting Clients’ Interest First

Investors look to investment managers to grow their hard-earned savings for their future well-being and / or to fund important life events like child education, buying new home, funding retirement etc.

Investors must have confidence that the investment manager they are dealing with will treat them fairly before they entrust their savings to the investment manager. Incidents of misconduct undermine trust and confidence of investors. It is important that investment managers’ decision-making gives due prominence to customers’ interests.

As per recent global survey on the State of Investor Trust by the CFA Institute³ revealed that only one-third of retail investors and a quarter of institutional investors think their investment adviser or firm consistently puts their interests first. The results for some markets were as follows:

Market	% of retail investors
USA	46%
India	45%
UK	40%
France	16%
Singapore	10%
Hong Kong	7%

2. <https://risk.thomsonreuters.com/content/dam/openweb/documents/pdf/risk/report/cost-of-compliance-special-report-2018.pdf>

3. <https://nextgentrust.cfainstitute.org/wp-content/uploads/2018/04/CFAITrust-Global-Report.pdf>



Asset Management Market Study – United Kingdom

In June 2017, FCA published the final findings of the Asset Management Market Study⁴. The study noted that price competition was weak in a number of areas of the asset management industry. It found that fund manager governance bodies do not typically focus on value for money. There were considerable price clustering on the asset management charge for retail funds, and active charges remained broadly stable over the last 10 years. Further, many active funds offer similar exposure to passive funds, but some charge significantly more.

The study included remedies such as protection to investors who were less able to find better value for money, measures to drive competitive pressure on asset managers, proposals to improve the effectiveness of intermediaries and introducing an all-in fee so that investors in funds can easily see the amount being charged to the fund.

Regulatory change – Pointers

The business / strategic / work plan of regulators do provide insight to the areas of focus by regulators in the coming months / years. Let us look at the plans of few of the regulators.

1. European Securities and Markets Authority (ESMA) - ESMA is an independent European Union (EU) authority that contributes to safeguarding of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets.

As per ESMA work programme 2018⁵ for investment management, ESMA will focus on:

- the development and application of different supervisory convergence tools, as well as exchanges of supervisory experience, in particular on performance fees.
- convergence on entity-level stress testing and work on simulation-based stress tests in the fund industry, in co-operation with national competent authorities.
- creating a central database for money market funds (MMFs) and develop a system to keep a central public register identifying each authorized MMF.

2. Financial Conduct Authority, United Kingdom (FCA)

As per the Business Plan 2018-19 of FCA⁶, some of the main areas of focus are –

- firms' culture and governance and how that drives behaviours and produces outcomes likely to benefit consumers and markets.
- tackling financial crime - includes fraud, scams, anti-money laundering.
- data security – resilience and outsourcing, as technology plays a pivotal role in delivering financial products and services.
- innovation, including big data, technology and competition, which are driving changes in markets.
- treatment of existing customers to ensure they do not get less attention or receive poorer outcomes than new customers.

4. www.fca.org.uk/publications/market-studies/asset-management-market-study ?

5. https://www.esma.europa.eu/sites/default/files/library/esma20-95-619_2018_work_programme.pdf

6. <https://www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf#our-priorities>



Investment management sector priorities 2018/19 – FCA

As per the Business Plan, the key issues in this sector include:

- poor quality and value for money of products – this may lead to investors paying too much for products.
- inadequate disclosure and lack of transparency – which may lead to inappropriate purchases and products that do not deliver or behave as expected by the investors susceptibility to financial crime; and
- cyber and technological resilience risks.

3. U.S. Securities and Exchange Commission (SEC)

As per the draft Strategic Plan 2018-2022 of SEC⁷, some of the main areas of focus are –

- pursue enforcement and examination initiatives focused on identifying and addressing misconduct that impacts retail investors.
- examine strategies to address cyber and other system and infrastructure risks faced by capital markets and market participants.
- enhance analytics of market and industry data to prevent, detect and prosecute improper behavior.

4. Securities and Futures Commission, Hong Kong (SFC)

As per the Strategic Priorities contained in Annual Report 2017-18 of SFC⁸, some of the main areas of focus are –

- explore Mutual Recognition of Funds (MRF) with additional overseas jurisdictions. At present, MRF arrangements have been entered with Mainland China, Australia, Malaysia, Taiwan, Switzerland and France.
- enhanced fund data reporting requirements which will expand the scope, depth and frequency of the data submitted by Hong Kong-domiciled, SFC-authorized funds with regard to asset allocation, liquidity and securities financing and borrowing transactions.
- expanding distribution channels and enhancing market infrastructure – (Guidelines on Online Distribution and Advisory Platforms was issued in March 2018).
- the introduction of the open-ended fund company (OFC) regime – (the regime comes into effect from 30 July 2018).

5. Monetary Authority of Singapore (MAS)

As per the Financial Services Industry Transformation Map⁹ contained in the Annual report 2017-18

- Business strategy – Singapore to be the:-
 - o Asian hub for fund management and domiciliation

7. <https://www.sec.gov/files/sec-strategic-plan-2018-2022.pdf>

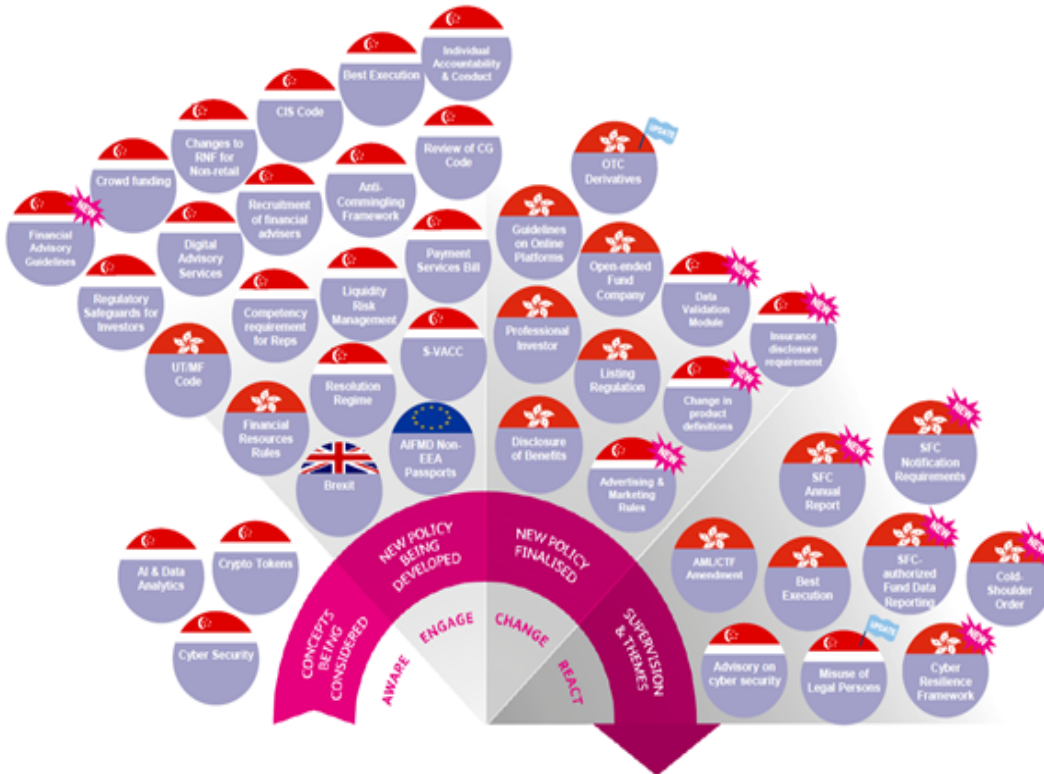
8. https://www.sfc.hk/web/files/ER/Annual%20Report/2017-18/Eng/SFC_Annual_Report_2017-18_Eng_Full.pdf

9. http://www.mas.gov.sg/annual_reports/annual20172018/financial-services-industry-transformation-map.html



- o leading international wealth management hub.
 - Regulation for innovation with soundness – strengthen cyber resilience of financial institutions.
- Mr. Lim Cheng Khai, Executive Director, Monetary Authority of Singapore, at the Investment Management Association of Singapore’s 5th Regulatory / Legal Roundup Forum on 9 February, 2018, shared regulatory priorities of MAS in 2018.
- Singapore variable capital company framework - dedicated corporate structure for investment fund.
 - Culture and Conduct – MAS to engage with asset managers, to understand how they embed the desired conduct and culture in their day-to-day decision-making and operations.
 - Technology Risk Management - cyber security remains an important area of focus for MAS.

Asia Regulatory Radar – July 2018



Source: Bovill Asia



Recent Key Regulatory Changes in Singapore

- Proposed guidelines on Individual Accountability and Conduct

On 26 April 2018, MAS issued a consultation paper, which sets out its proposal to issue a set of new Guidelines on Individual Accountability and Conduct to reinforce the responsibilities of financial institutions in the following key areas:

- o promoting the individual accountability of senior managers.
- o strengthening the oversight of employees in materials risk functions; and
- o embedding standards of proper conduct among all employees.

The Proposed Guidelines are a key part of MAS' broader efforts to foster a culture of ethical behaviour and responsible risk-taking in the financial industry.

Similar, accountability regimes have been implemented in other markets such as the UK's Senior Managers and Certification Regime (SMCR), Hong Kong's Managers-in-Charge (MIC), and Australia's Banking Executive Accountability Regime (BEAR).

Financial Stability Board (FSB) Working Group on Governance Frameworks (WGGF) have developed a toolkit¹⁰ which sets out measures that national authorities and firms can consider implementing, as appropriate to their circumstances, to mitigate misconduct risk.

- Digital tokens
 - o MAS has advised consumers to act with extreme caution and understand the significant risks they take on if they choose to invest in Initial Coin Offerings.
 - o In November 2017, MAS issued a guide to Digital token offerings. The guide provides guidance on the application of the securities laws administered by MAS in relation to offers or issues of digital tokens in Singapore.
- Consultation Paper on Liquidity Risk Management framework

MAS is proposing to introduce a liquidity risk management framework. This framework seeks to provide guidance on sound practices in liquidity risk management of collective investment scheme (CIS), to address the risks to investors from potential liquidity mismatches between the CIS' portfolio liquidity and redemption terms.

A paper issued by FCA also looked at the tension from funds that offer daily redemption terms, while managing assets that are not revalued on a daily basis. It noted the potential harms to investors who are unable to withdraw their money or do not receive a fair sale price for their assets. FCA will consult on a package of new rules and guidance and also consider the wider international agenda, particularly the International Organization of Securities Commission's updated 'Collective Investment Schemes (CIS) Liquidity Risk Management Recommendations' published in January 2018.

10. <http://www.fsb.org/2018/04/fsb-publishes-toolkit-to-mitigate-misconduct-risk/>



Regional developments

- ASEAN CIS

ASEAN CIS Framework was launched in August, 2014. Investment managers based in Singapore, Malaysia and Thailand can offer collective investment scheme constituted and authorised in their home jurisdiction directly to retail investors in the other two ASEAN countries under a streamlined authorisation process.

- Asia Region Funds Passport (ARFP)

ARFP is an initiative led by Asia-Pacific Economic Cooperation (APEC). ARFP is a proposed framework to promote cross-border fund distribution in the Asia-Pacific region. Australia, Japan, New Zealand, South Korea and Thailand have signed a memorandum of understanding to participate in the ARFP. Potential new joiners could include Indonesia, the Philippines, Singapore, Hong Kong and Vietnam.

Conclusion

Investment Management industry is seeing implementation of new digital technologies. Technology reduces some risks and better manages others, but has introduced new risks and vulnerabilities. Investment Managers should assess the emerging issues and risks from new technologies.

“Value for money”, all-in fee, conduct risk, individual accountability of senior managers, cybersecurity risks, risk from new digital technologies like blockchain and liquidity risk management seems to be some of the focus areas of regulators of investment managers.



Corporate Governance & Compliance Management - A Risk Perspective

Srikanth G.

INTRODUCTION

Have you ever been presented with a situation that could potentially get you in a lot of trouble, yet you did it anyway?

When Odysseus had to sail through the Strait of Messina between Italy and Sicily, he was in a predicament.

Scylla and Charybdis, in Greek mythology, are two immortal and irresistible monsters, who beset the narrow waters, traversed by Odysseus in his wanderings. They were later localized in the Strait of Messina. Scylla was a supernatural female creature, from her lair in a cave she devoured whatever ventured within reach, including six of Odysseus's companions. Charybdis, who lurked under a fig tree a bowshot away on the opposite shore, drank down and belched forth the waters thrice a day and was fatal to shipping. Her character was most likely the personification of a whirlpool. They were regarded as maritime hazards located close enough to each other that they posed an inescapable threat to passing sailors; avoiding Charybdis meant passing too close to Scylla and vice versa.

If Odysseus tried too hard to avoid the monster Scylla living on the rocky cliffs of Italy, he and the men on his ship would be further endangered in becoming swallowed whole by Charybdis, the whirlpool off the coast of Sicily. If Odysseus tried too hard to avoid the whirlpool Charybdis, he would inadvertently be pushing himself and the men on his ship closer towards Scylla living on the coast of Italy, making it easier for her to pluck and gobble up all the men on the ship. According to Homer, Odysseus was forced to choose which monster to confront while passing through the strait; he opted to pass by Scylla and lose only a few sailors, rather than risk the loss of his entire ship in the whirlpool.

The Risk, according to German jurisprudence, and later the French, classifies into three major groups in regard to precautionary issues:

- (i) **Certain/Unacceptable Risks**, whose cause-effect link between event and damage is scientifically proven, with the only doubt regarding when; to these risks the prevention principle is applied;
- (ii) **Residual/Acceptable Risks**, deriving from normal human activities, resting upon mere speculations and not supported by science-based evidence (hypothetical risks, which cannot be taken into account in decisional processes, not to determine stall-like effects, nor discriminatory conclusions); and

* *FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



- (iii) **Uncertain Risks**, not yet scientifically proven, but whose existence cannot be ruled out. This category is relevant for precaution-related issues.

A probability or threat of damage, injury, liability, loss, or any other negative occurrence that is caused by external or internal vulnerabilities, and that may be avoided through pre-emptive action. Although factors related to risk can change quickly and broadly, what appears to happen “overnight” usually have roots that were overlooked or discounted until too late.

That means that risk management could be considered to be a tool to effectively manage an organization; in fact, it deals with risks and opportunities affecting the creation or the preservation of an entity’s value. Risk management is defined by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) as: “a process, effected by an entity’s board of directors, management and other personnel, applied in a strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives”.

The definition reflects certain fundamental concepts; in particular, risk management is:

- (i) A process, on-going and flowing through an entity
- (ii) Effected by people at every level of an organization
- (iii) Applied in strategy setting
- (iv) Applied across the enterprise, at every level and unit, and includes taking an entity level portfolio view of risk
- (v) Designed to identify potential events that, if they occur, will affect the entity and to manage risk within its risk appetite
- (vi) Able to provide reasonable assurance to an entity’s management and board of directors
- (vii) Geared to achievement of objectives in one or more separate but overlapping categories

Certain risks have established or required responses that are imposed on us as individuals and/or on organizations as mandatory requirements. For example, in our personal lives, buying insurance for a car is usually a legal requirement, whereas buying insurance for a house is often not, but is good risk management and very sensible.

Organizations face a very wide range of risks that can impact the outcome of their operations. The desired overall aim may be stated as a mission or a set of corporate objectives. The events that can impact an organization may inhibit what it is seeking to achieve (hazard risks), enhance that aim (opportunity risks), or create uncertainty about the outcomes (control risks). Even with sophisticated models of risk exposure in place, companies are becoming more vulnerable to sudden geopolitical crises, natural disasters, and competitive threats.

The Risks from Unexpected and Undesirable Employee Behaviour

The old adage that “People are hired for their talents and fired for their behaviour” is true. People often fail at work by exhibiting patterns of behaviour that are risk to the organization. The “wrong” behaviours may result from poor planning, the proper equipment not being readily available, challenging production goals, or not enough time to carry out the required amount of work. The training received may not address the specific situation workers find themselves in. The task’s demand, lack of appropriate and relevant information, or a



mismatch between the task and the worker's capabilities may also be factors. Further they are also resultants of Aggressiveness, Egotism, Lack of credibility, Passivity, Disorganization, Resistance to change.

Further, Corporations carrying on business are exposed to two broad types of risk arising from the conduct of employees:

- Actions by employees intended to benefit them personally at the expense of the corporation and;
- Actions by employees, which under the prevailing legal principles result in the employer being liable for the consequences of those actions (principal liability).

The Roles of Internal Controls, Codes Of Conduct, and Boundary Systems

Internal controls are essential to the effective operation of companies. Simply put, internal controls are activities or procedures designed to provide reasonable assurance that operations are "going according to plan." Without adequate internal controls, management has little assurance that its goals and objectives will be achieved. Properly designed and functioning controls reduce the likelihood that significant errors or fraud will occur and remain undetected. Internal controls also help ensure that departments (other than the main finance office) are performing as expected.

Toshiba, a 140-year-old pillar of Japan Inc, had caught up in the Japan's accounting scandal. In July 2015, Toshiba Corp president Hisao Tanaka and his two predecessors quit after investigators found that the company inflated earnings by at least \$1.2 billion during the period 2009-2014. The investigation committee observes, "According to the division of duties rules of Toshiba, the corporate audit division is in charge of auditing the corporate divisions, the companies, branch companies, and affiliated companies. However, in reality the corporate audit division mainly provided consultation services for the 'management' being carried out at each of the companies, etc. (as part of the business operations audit), and it rarely conducted any services from the perspective of an accounting audit into whether or not an accounting treatment was appropriate." This had lead Toshiba into various legal risks.

The Risks from Uncontrollable External Events

Some risks arise from events outside the company and are beyond its influence or control. Sources of these risks include natural and political disasters and major macroeconomic shifts.

Vale SA, the Brazilian mining company, has generally organized itself well in its investments in Mozambique, making an enormous effort to develop a refined understanding of that country. On the other hand, it experienced striking difficulties in neighbouring Argentina, a country one would expect it to understand well. In 2011, it made a major investment in the western province of Mendoza, the mine in Mendoza province, along with a railway and port terminal, would have made Argentina into one of the world's leading suppliers of potash, an essential fertilizer component for the production of food. But when exchange rate controls and exceptionally high inflation radically increased costs at the Rio Colorado mine, it became commercially unviable. Rio Colorado's cost overruns had jumped 86 per cent since the initial estimate to \$11-billion. A part of the problem has been inflation in Argentina, which according to private estimates has surpassed 25 per cent per year and driven up labour and materials costs. In April 2013, after a meeting between the presidents of Brazil and Argentina, an agreement was reached for Vale SA to exit Argentina at a whopping loss of approximately \$6-billion (U.S.) a blow that could have been avoided had it taken a more prudential approach to investing in its neighbour.

Carrefour, Toyota, Honda, KFC, Lotte, One thing these foreign brands have in common is that they have paid the price for their governments poking China.



Lotte Group has become the latest target of Chinese economic retaliation over geopolitical issues, after the Korean conglomerate agreed to let the US and South Korea build an antimissile system on its golf course. The Terminal High-Altitude Area Defense (THAAD) system aims to counter the growing military threat from North Korea, but it is opposed by Beijing, which fears the Defense system could one day be used against it.

Recognizing the Risks in Interconnected and Complex Systems

We are building increasingly complex infrastructures and smart grids for our business communications. These complex systems rely heavily on digital technologies that connect systems and organize the flow of data between and among them. Security and privacy risks are the most common problems that flow from unchecked levels of interoperability. Worse still, the most highly interconnected systems, such as the international financial system, can give rise to catastrophic domino effects. Whether the instrument is complex derivatives gone bad or computer malware, harm can flow across highly interconnected systems and cause knock-on effects far from where the initial harm occurred.

The Punjab National Bank Fraud Case relates to fraudulent letter of undertaking worth Rs. 14,356.84 crore (US\$ 2.1 billion) issued by the Punjab National Bank at its Brady House branch in Fort, Mumbai. In raising funds and moving money out of Punjab National Bank, the two employees of the state-owned lender directly used SWIFT, the global financial messaging service used to move millions of dollars across borders every hour and bypassed the core banking system (CBS) which processes daily banking transactions and posts updates. It was a ploy to avoid immediate detection: the SWIFT messages used to raise overseas credit were not readily available in PNB's FINACLE software system as these were issued without entering into the bank's CBS. The bank initially said that two of its employees at the branch were involved in the scam, as the bank's core banking system was bypassed when the corrupt employees issued LOUs to overseas branches of other Indian banks, including Allahabad Bank, Axis Bank, and Union Bank of India, using the international financial communication system, SWIFT.

Several Indian state-run banks had followed a "decentralized set up for SWIFT", meaning that multiple branches and, as a result, "significantly higher number of users" had access to sending money across the global network. In some cases, the RBI said, that meant more than 1,000 people being able to log on, which "exposed the bank to heightened risk of fraudulent activities".

Unfavourable Feedback from the Media and Other Constituents

Negative feedback exists in all business. The stronger your business becomes, the more subjected it may be to negative feedback. The most important thing is not the negative feedback. It is what you do with the feedback that you receive. If you deal with the negative feedback appropriately and graciously, your customers will respect you for it and will continue to find you trustworthy and credible. You have a choice to either take the feedback or ignore it or to learn from it and to constantly improve what you are offering. Social media makes it very easy for customers to communicate negative feedback. Social media makes it very easy and convenient for people to express their opinions because they don't have to be transparent about whom they are; opinions can be spread quickly and virally.

Coca-Cola had introduced its #MakeItHappy automated social campaign encouraging Twitter users to mark negative tweets with the #MakeItHappy which will be turned into cute art images using ASCII lettering code. Gawker soon noticed a tweet from Coke's Twitter account that had turned the "Fourteen Words" slogan of white nationalism into an ASCII dog.

"Even when the text is shaped like a dog, it is disconcerting to see Coca-Cola, the soda company, urge its social media followers to safeguard the existence and reproduction of white racists," wrote Gawker editor Max Read.



To prove the point, Gawker created a Twitter bot, @MeinCoke, which tweeted lines of Mein Kampf at Coca-Cola to see if the brand would turn lines from Hitler's autobiographical manifesto into art. It did.

Coco cola in its response stated that "The #MakeltHappy message is simple: The Internet is what we make it, and we hoped to inspire people to make it a more positive place. It's unfortunate that Gawker is trying to turn this campaign into something that it isn't. Building a bot that attempts to spread hate through #MakeltHappy is a perfect example of the pervasive online negativity Coca-Cola wanted to address with this campaign."

The debacle illustrates that major brands like Coke can't make campaigns featuring automatic tweets without the expectation that it will likely get high jacked.

Reputational and Brand Risks

When FDA in India deemed Maggi noodles, one of Nestlé's top products unsafe, through social media that included Facebook and multiple Twitter accounts Nestlé reassured customers that its product is safe. The company tried responding to each & every comment on social media directly. When they withdraw all Maggi noodles in India from shelves for complying with the regulators, again through digital channels Nestlé explained the customers as to why this decision was made and answered all their questions. The brand made smart use of digital channels mainly social media to manage the crisis and limited further damage by informing, updating and reassuring the customers to give confidence to them to continue buying the noodles in the future.

Causes and Consequences of a Cyber-Breach

The average data security breach takes less time to pull off than it does to prepare a cup of coffee. In fact, 93% of successful data breaches occur in less than one minute. Yet, 80% of businesses take weeks to realize a breach occurred.

The 13th annual Cost of a Data Breach study, the industry's gold-standard benchmark research, independently conducted by Ponemon Institute reports that the global average cost of a data breach is up 6.4% over the previous year to \$3.86 million. The average cost for each lost or stolen record containing sensitive and confidential information also increased by 4.8% year over year to \$148.

Depending on the type of industries involved, the type of data breach in question includes:

- Sensitive Information
- Proprietary information
- Confidential Information [this involves financial, national security and more]

The loss of critical data relating to clients, employees and payments doesn't just leave organisation with what may be the almost impossible task to replace it, it also means business could be put at even greater risk if such data gets into the wrong hands. Cyber-attacks often result in substantial financial losses, can damage your business' reputation and erode the trust your customers. The effect of reputational damage can even impact on your suppliers, or affect relationships you may have with partners, investors and other third parties vested in your business.

The Facebook–Cambridge Analytica data scandal involves the collection of personally identifiable information of 87 million Facebook users and reportedly a much greater number more that Cambridge Analytica began collecting in 2014. The data was allegedly used to attempt to influence voter opinion on behalf of politicians who hired them. Following the discovery, Facebook apologized amid public outcry and risen stock prices. The way that Cambridge Analytica collected the data was called "inappropriate".



Risks - Innovation Strategies

Innovation can be a company's most powerful tool and a key driver of value. Yet many executives, fearful of the risks inherent in pursuing edgy new ideas that may not succeed, hesitate to unleash its full potential. They prefer, indeed, to renovate rather than to innovate. The big, breakthrough innovations that deliver new benefits to customers and thus create new markets—the sort of innovation exhibited by Dell when it pioneered the direct distribution model for PCs, or by Apple with its iconic iPad—remain elusive indeed.

At one time the world's biggest film company, Kodak could not keep up with the digital revolution, for fear of cannibalizing its strongest product lines. The leader of design, production and marketing of photographic equipment had a number of opportunities to steer the company in the right direction but its hesitation to fully embrace the transition to digital led to its demise. For example, Kodak invested billions of dollars into developing technology for taking pictures using mobile phones and other digital devices. However, it held back from developing digital cameras for the mass market for fear of eradicating its all-important film business. A competitor, such as the Japanese firm Canon, grasped this opportunity and has consequently outlived the giant. Another example is Kodak's acquisition of a photo sharing site called Ofoto in 2001. However, instead of pioneering what might have been a predecessor of Instagram, Kodak used Ofoto to try to get more people to print digital images. Kodak filed for bankruptcy in 2012 and after exiting most of its product streams, re-emerged in 2013 as a much smaller, consolidated company focused on serving commercial customers.

According to Times Magazine "The 20 Most Successful Technology Failures of All Time" the following story tops the list. One of the first Digital Video Recorders, or DVRs, to come to market — and a brand so successful it became a verb — TiVo to this day puts out some of the best set-top boxes on the planet. But the company is on this list because it played nice when it should have dominated. For instance, instead of suing when cable companies rolled out their own DVRs, TiVo waited to see if they could work out a deal, because it was reliant on the TV providers. Then, rather than marketing how much better TiVo boxes were than cable DVRs, the company tamed its revolutionary commercial-skipping features. And finally, when TiVo did sue, it was too late, Cable Company DVRs were everywhere. TiVo won all its patent infringement cases, bringing home \$1.6 billion that has sustained the company to this day. But considering that many consumers think TiVo went out of business, in the end, did it really win?

Risk Management- Corporate Governance Inter-Linkage

The definition of corporate governance most widely used is "the system by which companies are directed and controlled" (Cadbury Committee, 1992). "Corporate governance, According to "Organisation for Economic Co-Operation and Development" (OECD), involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."

Value is maximized when management sets strategy and objectives to strike an optimal balance between growth and return goals and related risks, and efficiently and effectively deploys resources in pursuit of the entity's objectives. The board should discuss with senior management the state of the entity's enterprise risk management and provide oversight as needed. The board should ensure it has been appraised of the most significant risks that Company may face during the course from the Management of the Company, along with actions management is proposing to take or taking and how it is ensuring effective enterprise risk management. The board should consider seeking input from internal auditors, external auditors, and others.

According to the Section 134(3)(n) Companies Act, 2013, the board of directors' report must include a statement indicating development and implementation of a risk management policy for the Company. The



statement must also identify the elements of risk that may threaten the existence of the Company. According to the Section 177(4)(vii) a duty is cast on the Audit Committee in evaluation of internal financial controls and risk management systems.

Further SCHEDULE IV [Section 149(8)] under II. Role and functions states that the independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible.

Hence, the Board has cast with assessing, managing and reducing the risks that are associated with the company and that may affect the Company making the Risk as a part of effective Corporate Governance.

According to "Statistics Canada's Updated Operational Risk Exercise 2014", regarding the definition of a risk, some issues should be taken into consideration, viz.:

- A risk statement should be a clear, meaningful and concise statement that describes the risk.
- The statement should describe the event and the potential impact of that event on the achievement of the organization's objectives. Example: There is a risk that (event)....and the consequences are (impact)...
- A good risk statement should also include the possible causes (drivers). Examples: There is a risk that (event)...because of (cause)...and the consequences would be (impact)...

The challenge for Board of Directors today is two-fold: They must look for variables beyond their immediate control, and they must test the assumptions upon which their strategies are based. To address this, executives must first create the capability to spot, assess, and manage emerging challenges and risks to the business. This will allow Director to develop well-thought-out models to better test prospective risks. An enduring lesson is that scanning, evaluating and, when necessary, adapting to risk should be key parts of an enterprise's business strategy. The Board of Directors and their teams must constantly challenge their own assumptions about what could disrupt their industry. And they must work to think about the broader context, considering adjacent industries and other trends beyond their immediate business environment. Gauging your environment holistically, based on geopolitical, ecological, and social factors, among others, is a key consideration when building a clear and comprehensive risk assessment.

Benjamin Power in his Writing Good Risk Statements illustrates that if the bank's objective is to "keep confidential customer information secure" and the event is customer data leakage, corruption or unavailability caused by defective system changes, the risk statement could be:

"Customer data leakage, corruption or unavailability caused by defective system changes resulting in financial fraud losses of UK £1 million and an Information Commissioner's Office fine of UK £500,000, customer churn of 6.4 percent, and regulatory sanction by the Prudential Regulation Authority."

Corporate Governance – Roles of Behavioural Science

In the wake of the meltdowns of such once great companies as Adelphia, Enron, Tyco, and WorldCom, enormous attention has been focused on the companies' boards. Were the directors asleep at the wheel? In cahoots with corrupt management teams? Simply incompetent? It seems inconceivable that business disasters of such magnitude could happen without gross or even criminal negligence on the part of board members.



And yet a close examination of those boards reveals no broad pattern of incompetence or corruption. In fact, the boards followed most of the accepted standards for board operations: Members showed up for meetings; they had lots of personal money invested in the company; audit committees, compensation committees, and codes of ethics were in place; the boards weren't too small, too big, too old, or too young. Finally, while some companies have had problems with director independence because of the number of insiders on their boards, this was not true of all the failed boards, and board makeup was generally the same for companies with failed boards and those with well-managed ones.

Along with the demand for greater transparency, corporate boards face more complex oversight challenges. Whether the issue is financial resilience, corporate strategy, executive compensation, or regulatory compliance, this board of directors need a deeper understanding of the role and responsibility of the board and how directors can work together more effectively to maximize board's contribution to company success.

There is no "one best way" for boards to operate. Rather, each board must consider and develop practices that recognize the unique needs of its company and management by examining today's corporate governance challenges, the board members must possess an in-depth understanding of how corporate boards work and what it takes to lead with transparency, accountability, and efficiency to positively influence Company's direction and shareholder performance. Think of how many of these factors you have to deal with as a Director while on Board of a Corporate Company

- Stakeholders demand high performance along with high levels of transparency
- Regulations and enforcement are ever-changing and unpredictable
- Exponential growth of third-party relationships and risk is a management challenge
- The costs of addressing risks and requirements are spinning out of control
- The unforgiving (and frightening) impact when threats and opportunities are not identified

In the early phases of their careers, most executives achieve success by continually refining their expertise in one particular field. At some point, however, they face a difficult challenge: transforming themselves into exceptional cross-functional leaders who can integrate all disciplines and align all activities to achieve the organization's long-range strategic goals. This personal growth process involves moving beyond one area of expertise to embrace a multifunctional view of the organization—mastering new leadership skills, adopting a broader business perspective, and crafting a strategy that drives organizational results.

Emotions Influence Judgment

Expectations can influence nearly every aspect in one's life. Expectations can override our senses, partially blinding from the truth.

For quite some time now, science has been studying the different ways in which we reach a decision, and one researcher who examined this matter, was even honoured with the Nobel Prize in Economics: In 2002, the psychologist Daniel Kahnemann was awarded for his research on human behaviour in situations of profit and loss. He was able to prove that human behaviour is often irrational - which is contrary to what economists believed for many years. In an economical context, rational behaviour means profit maximization, whereas irrational behaviour identifies with a lack of profit maximization. Simply put: rational decision-making is analytical, considerate, and thought-out, whereas irrational decisions are intuitive, quick, and based on instincts. In his later research, Kahnemann wanted to find out in which situations we make irrational decisions. His conclusion was that in general, humans follow two types of thinking: one is quicker and more error-prone, the other is slower and more thorough. According to his theory, the faster we think, the more irrational our thinking becomes. Conversely, the more time we spend on our thought process, the more rational our behaviour is.



This way of thinking about how people behave in risky situations, which Kahneman and Tversky called Prospect Theory, has a second major insight that follows on from the risk aversion and risk seeking.

Their classic example involves this fictional situation:

“Imagine your country is preparing for the outbreak of a disease expected to kill 600 people. If program A is adopted, exactly 200 people will be saved. If program B is adopted there is a 1/3 probability that 600 people will be saved and a 2/3 probability that no people will be saved.”

Here, the risk is presented in terms of gains so people tend to choose option A (72%), which is, in fact, worse. Here’s the same problem but this time presented in terms of losses:

“Imagine your country is preparing for the outbreak of a disease expected to kill 600 people. If program A is adopted, exactly 400 people will die. If program B is adopted there is a 1/3 probability that no one will die and a 2/3 probability that 600 people will die.”

Now most people (78%) choose B because the problem is presented in terms of losses. People suddenly prefer to take a risk. In fact, if you look at both the situations you’ll see that, mathematically, they’re identical and yet people’s decision is heavily influenced by the way the problem is framed. This effect has been termed preference reversal.

People let their likes and dislikes determine their beliefs about the world, we can let our emotional preferences cloud our judgment and either under or overestimate risks and benefits.

Kahneman writes extensively about the phenomenon of how people jump to conclusions on the basis of limited information. He has an abbreviation for this phenomenon?—WYSIATI?—“what you see is all there is.” WYSIATI causes us to “focus on existing evidence and ignore absent evidence.” As a result of WYSIATI, System 1, which is the brain’s fast, automatic, intuitive approach, often quickly creates a coherent and believable story based on limited evidence. These impressions and intuitions can then be endorsed by System 2 which the mind’s slower, analytical mode, where reason dominates and turn into deep-rooted values and beliefs. According to Daniel Kahneman, we are constantly suffering from illusions of understanding and validity. The world is random, uncertain and every case is new. For instance in judiciary, executives/judges refer judgments of past cases so that they can confer justice to the present one. They fail to see the newness in the current case. This happens with every incident around us, we tend to go back and try to fit the event’s pieces somewhere within our past learning or experience. We tend to reject the role of chance in events.

Developing the Board-Critical Skills

The Board of Directors of the Company should strive to develop few below listed critical skills to ensure the effective corporate governance in the best interests of the Company.

Reading Between the Lines of Financial Statements

While board members typically bring a variety of talents and expertise to an organization, they do not always have extensive experience with financial and accounting matters. The Board members cannot properly perform their functions if they do not obtain and understand information about the organization’s financial position. Without timely financial information, they can neither make informed decisions about goals and planning nor monitor the organization’s progress toward those goals. They also cannot fulfil their fiduciary responsibilities. Every board member must possess at least a basic understanding of the financial statements to make decisions that satisfy his or her duty of care.

A set of multiple significant RED FLAGS should always suggest the Board Members need to be very sceptical about the quality of company’ reported financial results. Doubtful quality of reported earnings (with red flags



suggesting the overstatement of these reported earnings) is usually followed by significant deterioration of future financial results.

The Satyam episode has brought out the failure of the present corporate governance structure. The present corporate governance structure hinges on the independent directors, who are supposed to bring objectivity to the oversight function of the board and improve its effectiveness. Stakeholders place high expectation on them. But is the expectation misplaced? Perhaps, yes. An individual independent director cannot play an effective role in isolation. Even if a particular independent director is highly committed, she can only 'watch' wrong doing and at best initiate a discussion, but alone He/she cannot stop a decision even if it is detrimental to the interest of shareholders or other stakeholders. Neither can he/she blow the whistle outside the board room (e.g. to regulators) because board proceedings are considered confidential.

Leading Through Risk

Leadership is the centre piece of the Performance of the Board of the Company because every strategic and tactical decision formulated and implemented within the enterprise relies on leaders who recognize opportunity or threat and mitigate strategic and implementation risks.

A board's risk oversight responsibilities derive primarily from fiduciary duties, laws and regulations, stock exchange listing requirements and certain established (and evolving) best practices, both domestic and worldwide. Risk management should be tailored to the specific company, but, in general, an effective risk management system will (1) adequately identify the material risks that the company faces in a timely manner; (2) implement appropriate risk management strategies that are responsive to the company's risk profile, business strategies, specific material risk exposures and risk tolerance thresholds; (3) integrate consideration of risk and risk management into strategy development and business decision-making throughout the company; and (4) adequately transmit necessary information with respect to material risks to senior executives and, as appropriate, to the board or relevant committees.

Making Strategic, Timely Decisions

One of the biggest challenges Boards face is forging the right financial strategies to support innovation to fuel growth. Too little investment and organizations can fall behind the innovation power curve. But too much investment can actually be far worse - undermining growth and profitability.

The Organisation decisions fail because managers who impose solutions, limit the search for alternatives, and use power to implement their plans. Managers who make the need for action clear at the outset, set objectives, carry out an unrestricted search for solutions, and get key people to participate are more apt to be successful. Tactics prone to fail were used in two of every three decisions that were studied.

The Decision makers take short cuts when they feel time pressure. As the pressure appears to mount, reason gives way to such talks as "Why invent the wheel?" The Practices of a respected organisation are then copied, which in turn leads to unanticipated delays and difficulties as fit are a problem. Telling subordinates what's wanted liberates them to look for answers. Finding problems alters subordinates take defensive action. Energy is spent to finding ways to protect their backs rather on innovation.

Disagreements and misunderstandings among key people about the concerns provoking action, what to do to respond and the forecasts can lead to conflict. A tough decision can turn into a debacle when ambiguity and uncertainty go unmanaged or conflict erupts. Decision making involves more than choosing among available courses of action. To avoid the blunders and the traps that can lead to a debacle, decision makers must work their way through a process that stages crucial activities.



Glenn Llopis in his 6 Reasons Leaders Make Bad Decisions, published in Forbes, mentioned the following :

1. *Rely too Much on Past Experience*

Dartmouth's Tuck School of Business professor Sydney Finkelstein says in a 2009 Wall Street Journal article that, "Leaders tend to rely on past experience that seems useful, but is actually sometimes dangerous. We always talk about how important experience is. I think we overstate experience, because it doesn't exactly fit the situation you're in. You're liable to rely on it in a way that's just not going to be that helpful."

2. *Addicted to Corporate Politics*

In an attempt to advance themselves, leaders can get addicted to corporate politics. They become blind by the addiction and lose sight of their primary role and responsibilities as a leader, in many cases unknowingly putting their direct reports and teams into quicksand – making it almost impossible to revive any positive momentum and trust from the employees that depend upon them. Those leaders that have fallen victim to the political trap lose their identity and get sucked into other people's agendas and motives. Most of the time these motives don't align with their beliefs and thus over time they find themselves making poor decisions to keep a bad relationship alive (though at the time the leader believes it is a good decision to enhance a politically-connected relationship).

3. *Lack Clarity of Purpose*

Clarity of purpose allows you to make decisions that are true and consistent with the mission at hand. When purpose becomes disrupted, you lose touch with your instincts and begin to make decisions without the right dependencies and resources you need to make sound decisions.

4. *Mismanage Resources*

The ineffective use and understanding of the resources at your disposal makes it difficult to be a good decision maker. Leaders that jump right into the job, rather than take the time to become familiar with their resources, will find it challenging to be in lock-step with their role and responsibilities. Leading isn't just about motivating people and inspiring teams – it also requires you to know the tools and resources that are available and/or need to be acquired to compete.

Leaders that make good decisions are continuously improving their playbook of resources. They strengthen their ability to gain access to the right information, statistics, trends and insights available from great resources – and know when to engage them in order to make timely decisions that positively impact the greater good.

5. *Don't See the Opportunity*

Leaders that don't see the opportunities before them make bad decisions. They lack what I call circular vision – the ability to see opportunity in everything. Wide-angle, circular vision makes leaders proficient at anticipating crisis and managing change before circumstances force their hand. It broadens their observation and allows them to see around, beneath and beyond the obvious detail before them.

When you can see opportunity in everything, it allows you to more easily connect the dots and anticipate what lies ahead after each decision that you make.

6. *Don't Trust Themselves to Lead*

Leaders that don't trust themselves enough become desperate and make abrupt decisions. They don't think about the consequences when they make their decisions for the wrong reasons. Many



great leaders begin to lose self-trust as they fail – and don't focus on making themselves better. Don't fall into this trap!

Communicating effectively with diverse stakeholders

The term “stakeholder” has been used since at least the 1930's, when a Harvard Law Professor, E. Merrick Dodd, publicly supported the identification of four major groups of business stakeholders: shareowners, employees, customers and the general public. A 1963 internal memo at the Stanford Research Institute used the term to refer to “those groups without whose support the organization would cease to exist.”

Every decision the Board makes should take into account the needs and expectations of all stakeholders of the Company. Companies have always had relationships with their stakeholders, which include shareowners, customers, suppliers, employees, regulators, and local communities. The core values of the OECD corporate governance principles are:

- a. Rights of shareowners and their protection
- b. Equitable treatment of all categories of shareowners
- c. Role of employees and other stakeholders
- d. Timely disclosure and transparency of corporate structures and operations
- e. Responsibilities of the board towards the company, shareowners and other stakeholders

Engaging with stakeholders has governance implications because it goes to the heart of how power and authority are understood and used within the company. Experiences of leading companies have shown that a demonstrated commitment to values and sustainability can help companies to achieve a variety of benefits:

- Gain and retain loyal customers while avoiding boycotts or other undesirable Consumer actions;
- Be perceived as more desirable places to work and have an easier time recruiting and retaining talented staff members;
- Identify ways to increase efficiency and reduce costs in their operations, such as through more sustainable energy use and waste management, or reduced employee absenteeism;
- Forestall legislation or regulation by adopting voluntary programs, allowing them to develop discretionary standards according to their particular circumstances and challenges or to adopt industry agreed codes of practice; and
- Win the support of the communities where they operate and jointly solve problems that affect the company as well as the local population.

In the southern Indian village of Plachimada, persistent droughts have dried up groundwater and local wells, forcing many residents to rely on water supplies trucked in daily by the government. Some villagers linked the groundwater depletion to the arrival of a Coca-Cola bottling plant in the area. In 2004, the High Court in the southern Indian state of Kerala ordered Coca-Cola to stop extracting ground water for its bottling operations. Justice K. Balakrishnan Nair told the company that it owned the 40 acres of land where its plant stood, but the groundwater beneath the land is a national resource belonging to the entire society. The complaint against the company alleged that the water table was being drawn down by Coca Cola, which used deep bore wells.



Following a year-long scientific study, the High Court of Kerala determined that the primary cause of the water shortage in the local area was due to reduced rainfall and that Coca-Cola had the right to withdraw and use water from the local aquifer. Despite the ruling, Coca-Cola decided not to reopen its plant in Kerala. The company formed an Indian stakeholder advisory board in 2003. Chaired by a former cabinet secretary, the board provides guidance on operational, environmental and corporate governance issues in India. In its 2006 Corporate Responsibility Review, the company noted that it had increased engagement with stakeholder groups in India, including critics of its water management practices. The company has taken Indian stakeholder concerns about water seriously, addressing them in two important ways. First, the company provides detailed reporting on its water consumption and actively works to reduce its water usage. Secondly, the company has partnered with government bodies and researchers, sponsoring hydrological studies to increase understanding of how to protect watersheds.

Managing yourself in high-stakes situations

Even the most decisive manager can be thrown into despair when faced with a high-stakes matter. It's unlikely that a single approach will serve you every time. However, there are key factors you should consider to ensure you reach a sound conclusion.

Leading requires the courage to make conscious decisions about what to do, the judgment to separate information from short-term trends, and the fortitude to remain true to oneself and one's mission. When leaders do these things, they also become teachers, leading their teams by example, often without realizing it. The essential aspects of good leadership endure even as the environment and tactics change. Indeed, courage, judgment, and fortitude are not merely tools for survival; they are the means by which we sculpt the future.

Compliance Management

The Formula 1 season features Grand Prix races in different countries in the Americas, Europe, Asia and Australia. That's different sets of local regulations that F1 teams have to comply with, which is a daunting task. Therefore, just as for safety, compliance is another area where F1 teams put rivalries aside in favor of industry-wide collaboration.

To facilitate compliance, the nuances and requirements of each market are communicated centrally. When it comes to compliance, there is only one team because all of F1's performance can be compromised by its weakest member. There is an acknowledgement that in the field of regulatory compliance, F1 as a whole is only as good as its weakest link, hence why teams cooperate. Governments are F1's clients since many events are funded through public spending in order to attract economic value, publicity and prestige that a Grand Prix brings to the host country. In working with the host countries and event promoters, the FIA and F1 teams work to ensure full compliance.

F1 teams are willing to put competition aside to collaborate on safety and compliance, for the greater good of the industry. They have to be close partners because they know they will thrive only if F1 thrives as an industry. Similarly, best-in-class and forward-looking companies share knowledge and best practices with industry Peers to improve safety for all workers in the industry, and facilitate compliance.

In order to cope with the demanding regulatory environment, it is vital that organisations sit up and take notice of the different laws. They need to devise efficient and effective ways to maintain compliance to these laws and minimize their risk. A Compliance Management System forms part of a Company's Risk Management System and is dedicated to those risks resulting from a possible breach of legally prescribed or voluntarily defined obligations called Compliance Risk.

Effective compliance is pivotal to organisational success. Pro-active compliance improves productivity and



competitiveness and fosters sound relations with regulators. The programme covers methods and processes that will enable compliance professionals to design, improve and maintain a fully co-ordinated compliance function in line with global best practices. Revoking of business licences, heavy fines and even imprisonment are only a few of the possible consequences that businesses and/or individuals could face in cases of non-compliance with applicable regulations. The effectiveness of the program supports an effective compliance audit function that identifies new or changing compliance issues. The audit should have the frequency and intensity commensurate with the organization's complexity and size.

Regulatory Compliance Management assist institutions to identify the laws, rules, codes and standards applicable to their operating environment, operationalize compliance obligations into daily processes and procedures, monitor compliance controls, compliance reporting internally and externally and provide the necessary training. In the aftermath of a compliance breakdown, the management of an organisation needs to design and implementation corrective actions and internal controls, and re-establish and optimise extended regulatory relationships.

A compliance management system is how a Company:

- o learns about its compliance responsibilities;
- o ensures that employees understand these responsibilities;
- o ensures that requirements are incorporated into business processes;
- o reviews operations to ensure responsibilities are carried out and requirements are met; and
- o takes corrective action and updates materials as necessary.

Conclusion

The board and management must be committed to maintaining an effective Compliance Management System and encouraging compliance. Some of things the board can do to demonstrate its commitment and encouragements are:

- communicating clear and unequivocal expectations about compliance;
- adopting clear policy statements;
- appointing a compliance officer with authority, independence, and accountability;
- allocating resources to compliance functions commensurate with the level and complexity of the institution's operations;
- conducting periodic compliance audits;
- providing for recurrent reports by the compliance officer to the board; and
- timely taking corrective action to address weaknesses

In developing the organizational structure of the compliance program, a board and senior management must grant a compliance officer sufficient authority and independence to:

- cross departmental lines;
- have access to all areas of the institution's operations; and
- effect corrective action.



The compliance officer should also have general knowledge of the overall operations of the institution and interact with all of the departments and branches to keep abreast of changes (e.g., new products and services or business practices, personnel turnover) that may require action to manage perceived risk.

A compliance audit, an independent review of an institution's compliance with laws and regulations and adherence to internal policies and procedures, helps management ensure on going compliance and identify compliance risk conditions. It complements the institution's internal monitoring system. The board of directors of the institution should determine the scope of an audit, and the frequency with which audits are conducted.

It is to be remembered that compliance is not a one-time event. Organizations need to take a proactive approach and reengineer their compliance programs to make them more efficient and effective so that they can concentrate on their core offerings.



GRC - Global Perspective and Business Ecosystem

*Ranjan Mukherjee**

Introduction - The Scenario prevailing at home

Company Secretaries as Compliance Professionals are now responsible functionally as per section 205 (1) (a to c) of the Companies Act, 2013 [Act] to ensure compliance of the Act, and other laws, besides Secretarial Standards applicable to the company.

An insider's view, shall depict that the Company Secretaries face plethora of challenges for making or examining desired compliance even if they intend to. It is a harsh reality that, the corporate pay little attention to those who have no direct impact on revenue or bottom line, there could be very few exceptions. It is expected that Company Secretary shall make appropriate planning for governance, risk and compliance (GRC) with the support of the Board. The question is – is there any budget made available by the Board? Compliance, Risk identification and mitigation, Planning Good Governance cannot come free. On the other hand is there any support of hand-holding from ICSI for the members? I am not saying there is deficiency of knowledge support from ICSI. I am looking beyond such drives. How a serious task of GRC is to be carried out in reality in India? There are many questions that may come, but to start with, the support has to come from the Board of the Company. If you look at the totality the support should also come from ICSI to match the requirement of 21st century. It should come in the form of providing adequate budget allocation by the companies so that the GRC as a function may get installed with -

- the service and support of professionally qualified people.
- appropriate support of technology and digitalization.
- appropriate world class compliance standard to make bench-marking.

These are pre-requisites for installing a robust GRC management.

ISO 27001 - a starting point for GRC¹

It is important here to know how some companies are handling it through ISO.

ISO came out with ISO 19600:2014 in December 2014, thereafter, now ISO 27001 has been introduced.

1. <https://www.iso.org/isoiec-27001-information-security.html>

* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



Certain salient features are:

- The ISO 27001 provides the requirements to establish, implement, maintain and continually improve an Information Security Management System [ISMS].
- ISMS preserve confidentiality, integrity and availability of information by applying a risk management process and gives confidence to interested parties that risks are adequately managed.
- It is important that ISMS is part of and integrated with the Organization's process and overall management structure and that information security is considered in the design of process, information systems and controls.

How GRC structure could be installed by a CS

Now the question is how the secretarial department can gear up to serve such functions?

Let us have a quick re-cap on legal responsibilities vested on CS. In Directors' Responsibility Statement the director has to provide confirmation as desired in section 134 of the Act. Law expects that any director obviously should look for a robust bankable GRC structure before signing the Board's Report. Does it happen?

It is needless to mention that the Board's Report being an attachment to the Balance Sheet. Directors Responsibility Statement is a part of the Board's Report and hence from the perspective of true and fair view concept, Directors Responsibility Statement has equivalent importance that of a Balance Sheet.

The directors, in case of a listed company, have to specify as per Section 134(5) (e) of the Act, in the Directors Responsibility Statement that they have laid down internal financial controls for the company and such internal financial controls are adequate and were operating effectively.

It means laying down control frame-work to check whether such control gears are working in places.

The question is, are these control gears verified? Checked its effectiveness? If so by whom?

Section 134 (5) (f) of the Act, brings certain key points on legal compliance. The directors in the Directors Responsibility Statement furnish a statement stating that they have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

The support of GRC professionals at this juncture is required to create a structure to ensure:

- (1) Internal financial control system, with detailed activity list, which the company has to follow and check at the grass-root level for all its activities. An assessment in the form of a quarterly report may be delivered so that an inference could be drawn to know the adequacy of such internal financial controls. Inadequacy if any should be explained with mitigation plan.
- (2) The effectiveness of internal financial control has to be studied jointly by the management functions [finance, tax, administration, HR] and the GRC office.
- (3) Devise on-line electronic systems to ensure compliance with the applicable provisions of law for every jurisdiction where the company operates. Assess internal risks that arises from non-adherence to contract and non-compliance of guidelines, polices beside legal provisions. It is no more humanly possible to know whether there is any compliance gap or non-mitigated risks on a continuous basis, one needs technological support.
- (4) Budget allocation - to do (1) and (3) above, the directors need to allocate budget so that appropriate people, process and technology could be deployed.



- (5) An oversight report on GRC with special focus on non-compliances and their severities to be published beside failures and incidents that harmed the organisation. Instances of ethical mis-behavior, internally detected frauds, information from whistle-blower and mitigation process should feature in such oversight report to CEO or Audit Committee by the compliance office. There are companies who establish toll free numbers and dedicated email id for obtaining information about compliance lapse and handle such inputs with due protection to the whistle-blower and his identity.
- (6) Evaluate the operational effectiveness of the systems of GRC with the Audit Committee members and outsiders [non-employees] having exposure on the subject and making forensic investigation.

Robustness of GRC structure, could be seen and felt through the robustness of compliance system, measuring risks and not by any other means. So for providing confirmation in the Directors' Responsibility Statement on the compliance system and its effectiveness, the directors must be backed up with evidence showing strong GRC from professional hands.

Findings from some recent readings:

A EY report – February 2016²

EY Global Governance, Risk and Compliance Survey shares some insight on how India stacks up against the global trends.

How do organisations assess their risk profile globally and by Indian companies – to address this issue the frequency of risk identification, assessment and reporting was scanned.


It is evident from the above Report that -

- 4% of Indian companies do not evaluate risk at the Board level at all, however 68% do on annual basis, whereas the global percentage of these two parameters are 6% and 77% respectively.
- The experience of gathering opportunities and facing challenges were reviewed in the Report also and it has been found that most of the Indian companies think 'Reputation' is a challenge whereas globally the most challenging thing is 'Economic Stability'.
- However, both Indian and global companies think 'Strategic Transactions' are most notable opportunity. In this Report the global perspective about 'Regulatory Compliance' has been shown as second biggest challenge of today, followed by cyber security.

Consequences of non-compliance and non-adherence to best risk management practices and may arise relative costs / losses.

<i>Adverse Impact</i>	<i>Illustration</i>
Business Disruption	Total economic loss due to non-compliance events or incidents such as cancellation of contracts, restrictions imposed by regulators, Orders for shut-down of operations, arising from non-mitigation of internal risks.
Productivity Loss	Workers / employees are unable to work because of break-down of machines or down-time of systems arising from non-compliance.

2. <https://www.ey.com/Publication/vwLUAssets/Ey-global-governance-risk-compliance-survey/%24FILE/Ey-global-governance-risk-compliance-survey.pdf>



Revenue Loss	Loss of revenue occurs due to non-compliance and as a result clients may go away which results in destruction of loyalty level due to loss of trust.
Fines and Penalties	The total fines, penalties and other costs including non-legal expenses collectively create a negative financial impact.

Under the Indian scenario this aspect could be further examined by the compliance professionals, researchers considering real life cases.

- The gap between compliance cost and non-compliance cost provides evidence that organisations which do not spend enough resources on core compliance and risk management activities incur risks and non-compliance impacts more. In other words, if companies spent more on compliance in areas such as audits, enabling technologies, training, expert staffing, they would recoup those expenditures and possibly more through a reduction in non-compliance cost. Collectively, the compliance costs keep the operation alive.
- Organisations with a strong security posture enjoy a lower non-compliance cost.
- Investment in both external and internal compliance activities is beneficial not only to an organisation's security stature, but also to its overall operations.

Another Recent Reading

Cost of cyber-crime study 2017

This study was independently conducted by Ponemon Institute LLC jointly developed by Accenture³

This Report provides some interesting key findings are:

- Organizations need to better balance investments in security technologies.
- Investments must be assessed and potentially reallocated to higher value security technologies.
- Compliance technology is important but don't bet the business on it.
- Spending on governance, risk and compliance (GRC) technologies is not a fast-track to increased security.
- Organizations need to grasp the innovation opportunity.
- Innovations are generating the highest returns on investment, yet investment in them is low.

Some thoughts

It is time for CS to mitigate the challenges and face the truth, being compliance professionals CS community cannot afford to leave any stone unturned to table a truthful, bankable Directors Responsibility Statement to the Board Room.

De-bunking a compliance and risk management myth is necessary here. Compliance and risk mitigation exercise is no box ticking exercise but people think it is so.

3 https://www.accenture.com/t20170926T072837Z__w__/us-en/_acnmedia/PDF-61/Accenture-2017-CostCyberCrimeStudy.pdf



A GRC certificate by nature is a snap-shot of compliance, risk and governance status as on a date and hence there have to be some issues on which improvements are required may be some areas where compliances and adequate risk measures are in work-in-progress or there could be lapses which require measurement of risks arising from such lapses.

These are natural and normal. But require address through professionals.

Here ICSI has a role to play.

So, the logical way is to disclose the non-compliances measure the risks and quality of governance through certification and report with mitigation plan and related risks, costs or losses that may arise from non-compliance is the need of the hour.

Starting Point

At a starting point, the GRC office may start looking at the first step to initiate.

The GRC office may think of obtaining periodic report from the units and functions with the following contents in such report.

An illustrative description of content of such report could be -

Contents of quarterly GRC Report from Unit to GRC Office

- 1 Non-Compliances / risks incidents and lack of governance at Unit Level
 - 1.1 Non-compliance, risk instances and lack of governance at Unit Level
 - 1.2 Adverse impact at Unit Level
 - 1.3 Status of 1.1 if any which was previously reported
- 2 GRC Assessment at Unit Level
 - 2.1 GRC Objective at unit level and how it is linked to corporate objective
 - 2.2 GRC Universe – mapping all activities at Unit Level
 - 2.3 GRC Monitoring and Measures
 - 2.4 Self-verification and findings summary with methodology applied.
 - 2.5 Self-verification closures – status and review methods applied
- 3 GRC Initiatives at Unit Level
 - 3.1 Quality of Compliance, risk identification and monitoring, and governance
 - 3.2 Process applied to address better Quality of GRC
 - 3.3 Awareness on GRC and Training
 - 3.4 Effectiveness of GRC Training, how assessed
 - 3.5 GRC Communication
- 4 GRC Program Status at Unit Level
 - 4.1 Adoption of risk rank-based activities
 - 4.2 Milestones and time-line for each activity

5 Ethical Issues

5.1 How sexual harassment issues, bribery issues are handled.

6 Suggestions for Process Improvement including Internal Financial Control

What suggestions from Unit Level has been highlighted for better internal financial control.

At the beginning of a prospective long journey, some concrete thoughtful steps are essential from ICSI as a priority item.

The above is an illustrative content, which obviously requires suitable amendment in specific instances.

A thoughtful balance of the GRC expectation vis-à-vis business growth objectives is required. This balancing act is not easy to draw, it requires multi-skill sets which is beyond the formal training in educational institutions.

In the last ten years particularly in India [from 2008 when Satyam case was reported by a whistle-blower] there have been number of instances of gross violation of laws, rules, guidelines, resulting payment de-faults, bank and capital market frauds, large instances of non-compliances, even scams of various volumes, many of these came into public domain through media.

We have witnessed collapse of many business houses, creditors are queueing up before NCLT through IBC 2016, exposure of rouge politicians, so called businessmen, government employees, bureaucrats, persons from various strata are involved in such crimes as accused entities. Establishment of GRC initiative with institutional support shall curb the trend of value destruction and it is in the interest of all stakeholders to be introduced. At present the silver-lining is there are instances of forward looking specialists and their thoughts against the tough challenges, their efforts brought many positive changes as well in the institution and regulatory bodies.

The main point is exercising strict control on resources that the organization utilizes. Business units are under increased pressure to improve top and bottom line, subject to government regulation, and regulatory scrutiny beside changing global scenario. Risk priority setting leads the focus of compliance. Accordingly, GRC infrastructure to be built.

Culture

So long codes, rules, policies remain in paper, they are papers only, no one bothers and obviously compliance, ethics, good governance, appropriate risk mitigation as a whole take a back-seat, everyone issues certificate showing full compliance on everything, people who receive such junk also don't analyze, and relies heavily on the rubber-stamp appearing in such reports.

Ultimately when debacles take place, then concerned persons disown that they were silent and inactive at the appropriate time!

A speak out culture and protection to whistle-blowers both encourage exposure of GRC concerns. There are companies who outsource this activity to a back office who analyses the complaint and provides findings to the management.

But timely response is golden otherwise whistleblowers get a negative impression about the organization. Objective would be to pull up the shocks timely.

The GRC culture should encourage fearless voice raising from the bottom to the top. This bottom-up approach brings GRC ownership across the organization.



GRC Team Building

GRC team should be by nature cross functional and should consist of persons having deep exposure on carrying out due diligence on human resources, administration [procurement, development responsibilities], finance and taxation, law and secretarial, capital market related matters and a group of persons with immense exposure in creating IT infrastructure designing. Collectively the GRC team should be able to find out what specific short-comings, deviations are there and examine the status of GRC and the mitigation path with aging analysis as well.

GRC Work Process Maps

The GRC team should encourage to develop not only a list of compliance to be done, but should also address how compliance is to be done, like wise how risks are to be identified, control lapse to be address, and gaps to be bridged.

A descriptive process map should be encouraged to develop for every GRC task. The process maps and the chart should be examined by the subject matter experts and it should be amended constantly to adopt changes in requirements.

The process maps should be followed by all persons including third parties. All the GRC activities should be appropriately verified by two pair of eyes and a doer-checker method to be applied.

E-Governance

Focus must be given on right technology, because it is not humanly possible today to carry out compliance management, risk identification and mitigation by human efforts because the volume of regulation and complexity of regulation and coping up with frequent changes.

All companies cannot afford to create necessary e-infrastructure, but if ICSI takes initiative it may create an integrated portal where users [companies] can use the portal for compliance, risk-mitigation and management of GRC for which individual access could be given to the companies with separate log in facilities at a fee on access basis. This is a requirement of the day. ICSI can tie-up with globally reputed IT companies to build such portal. Companies may also contribute through their CSR fund. ICSI in the interest of the nation must lead from the front which can help ICSI to churn revenue and reduce dependency on Government fund and more important is it can act truly as a statutory body and not a direct arm of the Government. It would be possible if dependency on government fund is eliminated, a professional institute should not lean on the Government fund to keep its own neutrality.

This will help the entire nation to improve its business and transparency image. If business in India is to be made transparent and Indians need to demonstrate proudly their respect towards compliance regarding implementation of laws, identifying and mitigating risks and practicing good governance, then building an integrated GRC portal is a necessity considering the huge complex volume of laws and regulations and their frequent changes. This will also call for integration of data from various other existing platform of the Government and various regulators. Here we should also keep in mind the absence of specific data privacy law in India, but EU guidelines and laws of Germany could be consulted with.

The issue of keeping always updated on regulatory changes and apply such new knowledge in the workplace is a regular challenge. Members of ICSI need institutional support and that support in future could be provided through application of integrated platform.



GRC a pro-active Measure

GRC initiative should be adopted as a pro-active measure to protect the company from disaster. Timely defusing the non-compliances, risks detected internally or by the industry sector to be addressed for suitable mitigation. Business managers come to know market situation and risks and those to be internally examined for risk aversion.

GRC professionals cannot remain in a reactive mode within a cost center grabbing the risk elements from the environment. Internally located non-compliance and non-addressing the risks should be addressed with the concerned working group for solution.

No company is perfect, rather no company can be perfect, but improvement of GRC is possible for which professionals have to take steps in right direction.

This approach is a value addition to the company by the GRC team, where ICSI and its members may take initiative.



Governance, Risk Management and Compliance (GRC) (Global Perspective)

*Prof. R. Balakrishnan**

GRC – Definition

One needs to understand the concept of Governance, Risk Management and Compliance - in short GRC - and have a clear clarity about this concept. There are varying definitions are available for references for this/ these concept (s). Very recently, there has been a research paper titled as “Frame of Reference for Research of Integrated Governance, Risk & Compliance (GRC)” published by Nicolas Racz, Edgar Weippl and Andreas Seufert which many of us would be aware of. Taking the help of this recent research paper, we could see that the concept GRC has been defined as under:-

“an integrated, holistic approach to organization-wide governance, risk and compliance ensuring that an organization acts ethically correct and in accordance with its risk appetite, internal policies and external regulations through the alignment of strategy, processes, technology and people, thereby improving efficiency and effectiveness”.

Responsibility to ensure GRC (primary owners of GRC)

The next important question arises in our mind is that, who is / are responsible to ensure GRC – rather – who are the primary owners of GRC. The framework of the legislation across the world including our country makes it very clear that the responsibility percolates from top to down. Since the GRC operates as one of the differentiating factor amongst competitors the top management (board of directors / audit committee) would be much interested in achieving excellence in GRC and obviously, the responsibility or the primary ownership starts from the Board, moves to Audit Committee, then to risk and compliance manager or compliance officer and finally to the executives of the organization who are responsible to ensure the GRC across the company in their respective areas. While ensuring GRC, it involves a lot of documentation work (such as policy in place, standard operating procedure is drawn, internal audit tasks are agreed upon, management reporting, frequency, monitoring and taking corrective actions, review etc.) in order to achieve the business objectives, agreed goals / budgets etc. in any organization across the world.

Need for GRC

With increased active participation of shareholders (i.e., shareholders activism), no investors is interested in investing in an organization unless the investor is very sure that the organization is doing the business, ethically, ensuring the required regulatory compliances and they have a system of risk management in place apart from looking into the company’s performance and its profitability. The concept of more returns on

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investment is fading away and the shareholders like to ensure that the return given by the company is done by the company by doing the business ethically and in a way it is required to be done as per regulations applicable to that organization, whichever country the organization is.

Having said this, let us look into the reasons for the need for GRC.

- (a) Every organization in the world would like to achieve a significant improvement in their risk management system, internal audit should be bringing value addition to the organization rather than remaining as a tick marking exercise and finally ensure utmost near total compliance as per the regulations of the various laws which are applicable to the organization. On this point, the following are worth noting:-
- (b) UK Companies Act recognizes the company secretary as the chief administrative officer of the company, and as well the company secretary shares various responsibilities with the directors under the UK Companies Act. In UK, private companies are not mandated to appoint a company secretary. The UK Companies Act also states that that the company secretary is the right person for the job, understands what is involved and gets adequate support in doing the Companies House filings (as in India we have ROC filing), ensure legal compliance as per the regulatory requirements and also have his / her complementary roles.
- (c) Section 205 of the Companies Act, 2013, for the first time spelled out the functions of the Company secretary. Amongst other functions, the Company Secretary has to report to the Board about compliance with the provisions of not only the Companies Act but also other laws applicable to the company.
- (d) For the first time the Companies Act, 2013 brought out the provisions of secretarial audit as a mandatory requirement for certain specified class(s) of companies.
- (e) The adherence of secretarial standards pertaining to meeting of the board of directors and on general meetings. More secretarial standards are expected to be notified in the forthcoming years.

Needless to mention that the regulator and the Institute of Company Secretaries of India are striving to bring out necessary regulations, prescribing secretarial standards etc. which will promote better corporate governance and also ensure higher level of compliance in every organization and the organization would be moving towards excellence in GRC.

One has to also recognize the radical technological changes which has been happening continuously, greatly helps, assists the organizations, to bring about significant improvement in the way they manage the entire GRC which encompasses the various areas such as, managing the risk in the best interest of the organization, set targets and ensure internal audits in such a way that internal audit brings value addition to the organization, achieve utmost compliance not only in respect of Companies Act but also in respect of all other applicable laws to an organization etc. and improve the brand image / brand value of the organization.

Governance

Looking back the history

No one would have forgotten the sad stories of various corporate failures which resulted in total failure of Arthur Anderson (one of the Big-5 vanished and the remaining other firms became Big-4), Enron failure which brought out the reforms on the audit and auditing procedures, greater responsibilities on independent directors. There are many more organizations of failures such as WorldCom, ASEA brown Boveri, Tyco International, Merck, parmalat, Adelphia Communications and many more. Satyam Computers in our own country in the recent past.



Corporate failure and investor's confidence

Due to ethical failures, not following the code of conduct for conducting the business in a way it is to be conducted coupled with no perfect framework GRC system in place in these organizations which had happened in the past and the investors' confidence have shaken and the investors lost faith due to continuous falling of stock marks, dubious accounting practices followed by these organizations, fraud committed, misuse or abuse of corporate power, mismanagement etc. Added to these, there has been excessive executive compensation in much organization. Naturally, the return expected by the investors on their investment showed decline, signs of stress which ultimately had the effect of undermining the confidence of the investors.

Corporate governance (as a mantra)

Last two decades has seen the "corporate governance" as a "mantra" and this concept was very much discussed, debated and became greater interest of public since the corporate governance was recognized across the globe, that excelling in corporate governance brings economic health of the organizations and also the brand /image value of the organization grows better. The stake holders started recognizing the brand value of the organization due to good governance, risk management system in place and above all compliance with applicable laws.

Developments in the recent past

Let us look into the recent developments after the corporate failures and steps taken across the globe, to regain the investors' confidence level.

Definition of corporate governance by OECD

Organization for Economic Cooperation and Development (OECD) defined the corporate governance as "corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions in corporate affairs."

Developments in United Kingdom

In UK, the Cadbury Committee followed by Greenbury Committee and thereafter Hampel recommendations have brought out reforms in corporate governance setting the principles of corporate governance and business code of ethics which finally resulted into the UK Combined Code brought out by the regulators in United Kingdom in their corporate governance framework. Greater accountability aspects were emphasized through these recommendations. Later Professional conduct standards were revised for Chartered Accountants who are expected to demonstrate the highest standards of professional conduct in order to protect the public interest and it was emphasized that the chartered accounts plays a vital role in ensuring public trust while reporting the financial reporting and they are expected to uphold the reputation of the accountancy profession. Thereafter Smith guidelines emanated on various aspects of code of conduct, transparency and disclosure.

Developments in United States

In United States, after the Enron failure, the regulators brought out the Sarbanes-Oxley reforms which specified about the responsibilities of the board of directors and what a good board and it directors need to do.



Other countries across the globe

Following the Financial Global crisis, the ASX Corporate Governance Council (“Council”) brought out changes in its corporate governance principles and made further recommendations to bring about changes in furthering the corporate governance in Australia, taking into consideration of considerable focus across the world on corporate governance practices in light of the events leading up to, and during, the Global Financial Crisis. There after a number of new legislations regulating corporate behavior of organizations, upgrading of corporate governance codes, governance disclosures etc.

In New Zealand, they have also brought reform in NSZ corporate governance code by going by the recommendation made by the Financial Markets Authority Corporate Governance of New Zealand’s principles and Guidance and the ASX Corporate Governance Principles and Recommendations.

Our home country India

We have seen the drastic changes brought about by SEBI by introducing a new clause 49 of Listing Agreement earlier followed by recommendation made by Mohan Kumaramangalam Committee, followed by Narayamurthy Committee etc. Recently the Listing agreement has been replaced by SEBI by Listing Obligations and Disclosure Regulations which brought about radical changes in the area of corporate governance, transparency, disclosure requirements coupled with greater accountability especially more on independent directors.

Moreover, today the Companies Act, 2013 and LODR regulations both are more harmonized in its alignment setting the differences existed earlier.

Where do we stand today on Governance

Today, across the globe, the organizations have put in practice the ethical code of business code with a reporting mechanism by whistleblower policy, implementing safety health and environmental laws, utmost transparency and disclosure in financial reporting and above all working towards community development. Organization have put in place the Corporate Social Responsibility (CSR) Policy in place and contributing towards CSR activities towards the upliftment of the society.

It is seen from the published financial statements of the various organizations that the Boards are now-a-days spending more time and effort in order to ensure the strict adherence with applicable laws to their organizations, calling for certificate of compliances, utilizing the expertise and experience of the board members in their respective fields and independent directors taking higher responsibility and having separate meetings of independent directors etc. In a nutshell, the boards are now concentrating and focusing their attention in ensuring compliance, putting the required policy framework in place and having increased internal control and check and moving towards achieving excellence in corporate governance.

Various companies’ annual reports also disclosed the “Corporate Governance Rating” obtained by the organizations through renowned and recognized agencies.

Risk

Since the organization are relying upon very extensively on Information Technology systems and its infrastructure, voluminous data – that to sensitive data – are being processed through the IT systems across the globe. When we talk about the sensitive information, we could have a look at the same as under:-

- (a) Financial records which are many times confidential to an organization



- (b) Details relating to intellectual properties of an organization
- (c) Customers/ suppliers personal information data
- (d) Employees personal information data

In view of the sensitivity involved in the data, it is very very critical for any organization to ensure complete protection to these data. The organization's success would much depend upon so long as the organization could ensure utmost protection to these data. Naturally the organization should have a property security put in place to ensure the protection of data.

As we are all aware, the data privacy is much talked about and the recent regulation on this is Global Data Protection Regulation (GDPR) which is widely discussed today across the globe.

In United Kingdom, the combined code principles of good governance and code of best practice requires the Board to maintain a sound system of internal control to safeguard shareholders' investment and the Company's assets. The Turnbull report on the Combined Code provides guidance on assessing the effectiveness of the Company's risk and internal control processes which should reflect in the any organ organization's policy.

Here again, from the published annual reports, it is seen, most organizations have put in the framework of Management of Risk Process in place. Needless to mention that the organizations have their framework and techniques of appropriate to suit to their organization with a tailored frameworks that relate to key features of the business processes and are compatible with their existing company culture and management processes on the basis of

- Analyzing /identifying, describing and estimating risks
- Thereafter, Identification of risk owners
- Then setting of acceptable levels of risk
- Evaluating the risks against acceptable levels of risk
- Identification and implementation of controls
- Monitoring of residual risks and the effectiveness of controls
- Periodically reviewing and reporting on the Risk Management process at appropriate intervals, at least annually.

In summary that the risk management techniques should be appropriate to the context and should take into account costs and benefits. The risk management should be developed on a consistent and repeatable basis through the adoption and transfer of best practice in line with business needs of the organization. Finally, the organization should ensure that the risk appetite is to the extent of exposure of the risks that should be maintained at a level acceptable to the Board of Directors, on behalf of the shareholders, that is reviewed and determined at appropriate intervals by the Board of Directors or their nominees. The Board could then decide depending on availability and cost effectiveness, they could transfer the risk or retained as appropriate.

In our home country, India, Security Exchange Board of India (SEBI) vide its Regulation 21 of LODR mandates for setting up Risk Management Committee for the specified classes of companies based on the basis of market capitalization, for listed entities, spelling out the constitution of the committee, functions, responsibilities and roles of the Committee and the regular mechanism of reviewing the risk management and monitoring the risk within the organization. Since, one of the role functions of the audit committee is being evaluate the Internal Controls and Risk Management Systems of the company, invariably, this item is one of the items for discussion and deliberations in each Audit Committee meeting. The Audit Committee of the organizations regularly



reviews the risk management strategy of the Company to ensure the effectiveness of risk management policies and procedures on an ongoing basis.

Corresponding to this LODR provisions, the Companies Act, 2013 mandates the reporting by Board of directors in its Board Report, a statement indicating development and implementation of a risk management policy for the company including identification of elements of risk, if any, which in the opinion of the board may threaten the existence of the company Further the section 177 of the Companies Act provides that the audit committee of the company is required to act in accordance with the terms of reference specified in writing by the board, which shall, inter alia, include evaluation of risk management systems. Finally, the schedule IV of the Companies Act, 2013 specified that the Independent directors should satisfy themselves that systems of risk management are robust and defensible in the organization in which they are holding the position of independent directors.

As regards to disclosures, it is seen that the companies are addressing this in its Board report stating that the Board of directors regularly monitors and reviews the risk management strategy of the Company and ensures the effectiveness of its implementation and taking all necessary steps towards mitigation of any elements of risk, which in the opinion of the directors, can impact the Company's survival. The report also further states that all the identified risks are managed through review of business parameters by the Management, and the Board of Directors are informed of the risks and concerns, based on which, appropriate decision taken by the Board.

Compliance

Compliance has been the topmost priority in each and every organization all along and continues to be so. Every Regulator has been insisting for stricter compliance and also each and every regulation has the penal provisions for non-compliance / non-adherence / violation of law. The Companies Act, 2013, brought out robust compliance provisions and vide sub-section of section 134, the regulator mandated that the Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that the directors:

- Directors have devised proper systems to ensure compliance with the provisions of all applicable laws
- Directors have ensured such systems were adequate and operating effectively and

Additionally:-

- The Company Secretary who is the compliance officer's functions have been spelled out for the first time the Companies Act, 2013 vide section 205.
- The section 205 states that the functions of the company secretary shall include:-
 - a report to the board about compliance with the provisions of this Act, the rules made thereunder and
 - also a report to the board about compliance with the provisions other laws applicable to the company
 - to ensure the adherence of secretarial standards

In addition to the above, section 204 of the Companies Act, 2013, provides for mandatory secretarial audit for specified class(s) of companies.

All organizations have to ensure compliance with reference to applicable provisions of Companies Act, 2013, under the very same act, the companies are incorporated, Security Contract Regulation Act, 1956, Depositories Act, 1996, Foreign Exchange Management Act, 1999, other applicable laws (such as Competition Laws, Labour Laws, Environmental Laws etc.) and industry specific laws.



In case of listed entities, they need to ensure in addition to the above, the laws framed by Security Exchange Board of India such as, Takeover Laws, Insider Trading Laws, Issue of Capital and Disclosure Regulations, SEBI (Share Based Employee Benefits) Regulations, LODR requirements, laws relating to delisting when needed and Buy Back etc.

Organizations have put in place a compliance management programme in order to ensure, monitor compliance, leading to good corporate governance, lesser chances of litigations and penalties both civil and criminal which ultimately results in the better market capitalization, creation of wealth to its stakeholders on sustainable basis, improving the brand image of the organization and above all, organizations create and enjoy customer loyalty and employees loyalty.

In summary, every one, let it be investors, employees, supplier, customer etc., would feel, proud to be associated with an organization which ensures utmost compliance and follows ethical business practices. No doubt, the company secretary would always ensure compliance in any organization he / she is serving with or rendering service and the secretaries would uphold the utmost professionalism in ensuring the compliance, as required by the regulations applicable to an organization.

Role of Company Secretary with reference to GRC

In relation to Governance

Company secretaries across the world have been assigned the responsibility for ensuring good corporate governance practices to be followed by the companies where they work by the institute of company secretaries of India. Similarly under Listing Obligation and Disclosure Regulations – the regulations 15 to 27 there are provisions for good corporate governance prescribed by SEBI.

Cadbury Report spelled out that the company secretary “has a key role to play in ensuring that board procedures are both followed and regularly reviewed”. And it pointed out that the Board of Directors looks upon the company secretary for guidance on what his responsibilities are under the rules and regulations to which they are subjected to and how those responsibilities should be discharged. With respect to ensuring good corporate governance in the organization, we could say that the company secretary ensures the smooth running of the meetings of the board and the board constituted committees and assists the Chairman – right from setting the notice and agenda for the meeting, preparation of board documents / board folder / board pack, and guiding them the required procedures as per the regulations in order to ensure that the board and committees follows them. Further , it may be noted that the company secretary acts as a liaison / contract person between executive directors, senior management and non-executive directors as regards the Company and its activities in order to support the decision making process. The company secretary makes sure that the laid down procedures are followed with reference to the company’s policy, articles of association coupled with the provisions of all legislative, regulatory and corporate governance developments that might affect the Company’s operations, and ensuring that the board members is fully briefed on these and that it has regard to them in the decision making process. Obviously, the above leads to bring a good governance system in place in the organization.

In relation to Risk

As seen earlier while managing risk, an organization has to identify the risk and the carry out assessment and economic control of those risks that endanger the assets and earning capacity of the enterprise business. Either risk can be tolerated if it is not severe and its occurrence is sufficiently remote, risk can be eliminated or reduced by changes in the processes or transferring all or part of the risk. Each company’s risk management system would differ due to their risks are being different, operations and organizations are unique and the corporate culture followed would be unique for that enterprise. As discussed earlier,



the basic activities in any risk management systems are (i) risk identification, (ii) risk assessment and finally (iii) risk control.

Since the company secretary is assisting the board and audit committee, he remains as a main coordinating person between the board / audit committee and the senior management who assist in risk management process. Company secretary being a compliance officer he has got a greater role in ensuring the risk management process is in place and he could assist the senior management, by being a member of the risk implementing process, being a member of cross functional committee, assist the audit committee, in bringing out the status update, regulatory changes, monitoring process etc., and ensure the required follow up. The company secretary could assist in drafting the strategic risk management policy for the company with the help of board members and he can put in place the required framework in ensuring that the risk management is implemented as per need of the business need of the organization and he can put in place the regular updates, monitoring and follow up process.

In relation to Compliance

The Companies Act, 2013 confers a special status to employed company secretary as the Key Managerial Person (KMP) and the company secretary is also recognized as an expert under the Act. Needless to mention, under that the company secretary plays a key role in ensuring that the Board procedures are followed and regularly reviewed and he ensures that all relevant information, details and documents are made available to the Directors and senior management for effective decision making at the meetings. The Company Secretary is primarily responsible to assist and advise the Board in the conduct of affairs of the Company, to ensure compliance with applicable statutory requirements and Secretarial Standards, to provide guidance to directors and to facilitate convening of meetings. He interfaces between the management and regulatory authorities for governance matters

Similarly under SEBI (Listing Obligation and Disclosure) Regulations, 2014, (LODR) the company secretary has to be mandatorily appointed as a compliance officer and he has to ensure the compliance requirement under LODR. Company secretary ensures the ongoing compliance under LODR – quarterly, half yearly and annually and also compliance arising out of event based.

Many organizations have made use of the information technology to ensure the compliance and company secretary could put a better compliance management system in place and monitor and ultimately ensure near total compliance.

It may be worth noting here that in the recent past the “Chartered Secretaries Australia” changed its name to the “Governance Institute of Australia” following a vote of its seven thousand members. It is understood that the change would “more accurately reflect the role of the institution as the only professional association in Australia with a sole focus on the practice of (corporate) governance”. No more company secretaries but corporate professionals

The above very clearly indicates that the profession of company secretaries / chartered secretaries have already started moving away from the conventional “compliance framework” to governance professional. The days are not that similar change would take place all over the world.

The author would like to conclude here saying that role of company secretaries / Governance Professionals in the corporate world is manifold and phenomenal and across the world the company secretaries are moving towards Governance Professional, and days to come, we shall witness the continuous improvement keeping in face with the amendments from time to time and adhering to do the best to “deliver first time right” and moving towards in excelling the areas of governance risk and compliance.



Conclusion

Every organization is striving to achieve excellence in corporate governance, working toward mitigating the risk by putting up a framework of risk management process in place and ensuring the utmost compliance. The success of achieving the excellence governance rests upon greater accountability coupled with transparent disclosures, fairness, following ethical code of business and finally ensuring sustainable wealth creation for all the stakeholders of the organization.

Company Secretary being a compliance officer and also being key managerial personal can play a very vital role to provide value added services and assist the board members for required prompt and timely advice, ensuring compliance involving filing of returns and records, making the timely payment, maintaining necessary registers and records as specified and representing the matters with the various regulatory bodies for speedy disposal / dispensation of justice in all relevant matters etc. Similarly in respect of risk management, the company secretary could get involved right from establishing risk management committee under the guidance of the board members and facilitate a holistic approach in risk management.

In a nutshell, we could summarize that the role of practicing Company Secretaries in the corporate world is going to be manifold and phenomenal with multiple areas of practice which keep emerging on an ongoing basis and let us sharpen our skills with continuous improvement keeping in face with the amendments from time to time and try our best to “deliver first time right” and prove our metal in excelling the areas of governance and compliance by adopting values like creativity by embracing diversity with cooperation coupled with reliability and establish our integrity. By utilizing the technology the company secretary could get the automated system of GRC management process in place so that the automated system would ensure that all the compliance and risk processes would not only help in reducing the cost but one can get accurate, timely and quality information, high degree of compliance would be achieved and organizations would be excelling in their governance processes.

Finally the author would like to conclude saying that the vision of the Company Secretary in employment and as well in practice – both - should be that “he / she (the Company Secretary) to be the highly respected expert professional with whom all stakeholders are proud to be associated” and also to be “the preferred partner to the business community / corporate providing the greatest value”



Effective Risk Management through Corporate Governance Norms

*Usha Ganapathy Subramanian**

Introduction

The over-arching objective behind the principles of corporate governance is protection and balancing of stakeholders' interests. Countries all over the world have incorporated various principles of corporate governance in their corporate laws. These laws are not meant to be a fixed checklist of requirements to be fulfilled by the entities, but are rather meant to be a dynamic set of minimum standards of good governance, which must continually evolve to adapt to the challenges and changes in the business environment – all with the ultimate aim of protection of stakeholders' interests.

However, as we observe from instances of corporate frauds and mismanagement across the world, laws seem to be lagging far behind such instances. The amendments to catch up with the reality is usually a reactive process rather than a proactive one; often ending up offering too little, too late.

The global financial crisis during late-2008 to 2009, the tremors of which can be felt even now, emphasized the importance of risk management and corporate governance, and prompted a series of legislative and regulatory reforms in many jurisdictions. The crisis exhibited the heavy cost of failure of risk management systems and governance failures. The global crises stemmed from the sub-prime mortgage crisis, which led to the governments bailing out the too-big-to-fail entities using the tax payers' hard-earned money. Markets tumbled, businesses and banks failed, jobs were lost and there was chaos everywhere. Wherever there were failures, there were either weak prudential norms or weak enforcement of strong norms; there was an unjustifiable level of trust in the market's ability to sustain itself; there were overoptimistic forecasts, excessive risk appetite and blind bets on the economy. All the while, the people at the helm – the Boards of the companies, managements and the regulators were either caught unawares or were too optimistic to see the trouble ahead. Thus, the need for ensuring accountability and functional risk management systems became clearer than ever. An effective corporate governance framework, which emphasized on risk management and accountability, was seen as the broad solution to avoid such crises in the future.

Although we have Basel Committee's prudential norms and regulatory requirements and many other fora and committees for banks and financial institutions, which the central banks across the world are trying to adapt, much less can be said about risk management norms for all other business entities across the world. A few of the risk management tenets have been incorporated into the legislations governing incorporated entities and listed entities across the world as the first step in this direction. Institutions like the Organisation

* ACS. *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



for Economic Co-operation and Development (OECD) are behind these initiatives spearheading the movement towards better corporate governance standards that provide for risk management also.

In this article, we shall discuss important initiatives across the world regarding corporate governance, risk management and compliance systems including OECD principles of corporate governance, implementation of risk management framework in various jurisdictions and our own SEBI Regulations and Companies Act, 2013 in comparison with international systems.

OECD Principles of Corporate Governance

The Organisation for Economic Co-operation and Development headquartered in France was originally formed as the Organisation for European Economic Co-operation (OEEC) in 1948 to administer American and Canadian aid in the framework of the Marshall Plan for the reconstruction of Europe after World War II. Now it has 36 member states and is a leading organization, inter alia, for identifying good practices and promotion of democracy, market economy and trade.

The Principles of Corporate Governance were developed by the OECD in 1999 and have become a benchmark for developing corporate governance standards for countries across the world. They are aimed at helping the policymakers evaluate and build upon their existing institutional and regulatory framework for promoting good corporate governance processes.

The Principles not only emphasize on protection of the interests of the shareholders but also other stakeholders like employees. They also focus on the board relationships, management of the company and their relationship with the shareholders and other stakeholders.

These Principles are not binding on the member states and they are only broad guidelines based on which the legislations in the member states may be drafted. The broad Principles of Corporate Governance which must be kept in mind while evaluating a corporate governance framework are listed below.

- Promotion of transparent and fair markets, and the efficient allocation of resources.
- Protection of the exercise of shareholders' rights and ensuring equitable treatment of all shareholders, along with opportunity to effectively redress violation of their rights.
- Providing incentives throughout the investment chain and providing for stock markets to function in a way that contributes to good corporate governance.
- Recognizing the rights of stakeholders established by law or through mutual agreements and encouraging active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
- Ensuring that timely and accurate disclosure is made on all material matters of the company.
- Ensuring the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Various sub-principles and modes of achieving them have been given under the above six Principles of Corporate Governance. Many of India's corporate governance norms are drawn up in accordance with OECD's Principles.

Requirements relating to Risk Management

Although risk management has not been mentioned as a major principle of corporate governance in itself,



OECD perceives it as an important tool to achieve the objectives of the principles, as can be observed from the following:

- When delineating the functions of the Board, reviewing and guiding corporate strategy and risk management takes the first place.
- The functions of the Board also include ensuring appropriate systems of risk management, systems to ensure code of conduct and compliance with laws are in place.
- The Board is also vested with the ultimate responsibility for oversight of the risk management system of the companies.
- The Boards are advised to set up committees for audit as well as risk management, besides others.
- When complex risk management models are used, the Board should be well aware of the shortcomings of the models.
- The Boards must ensure integrity of the entity's accounting systems and independent audit functioning.

Requirements relating to Board Accountability

Accountability and effective risk management go hand in hand. When the Boards and the managements feel accountable to the stakeholders, there will be proper functioning of all the business units and departments, and systems to ensure effective risk management and compliance will be set up. OECD recommends the following to improve Board's accountability:

- The Board should function with full information in the best interests of the various stakeholders treating them fairly and in accordance with high ethical standards.
- Aligning key executive and board remuneration with the long-term interests of the company by:
 - Developing a remuneration policy that clearly gives the conditions for payment to the Board members and key executives;
 - Policy relating to holding and trading of company's shares and options to be given to them;
 - Constitution of a special committee composed of independent directors wholly or partly, to fix the terms of management contracts and frame the remuneration policy.
 - Having a malus and claw-back policy for managerial remuneration that enable a company to withhold or recover the remuneration paid to the Board members or key executives in cases of fraud or even in cases of excessive risk-taking. Triggers of the malus and claw-back clauses may include, inter alia, restatement of financial statements due to a material non-compliance.
- Monitoring potential conflicts of interests of management and the Board and exercising a watchful oversight on the related party transactions.
- Ensuring that the Board exercises independent oversight on the entity's affairs, inter alia, by ensuring minimum number of independent directors.
- Having sufficient number of non-executive directors to delegate areas where there may be potential conflicts of interest if executive directors are involved.
- Carrying out annual evaluations of the Board performance.



- Assessing periodically the competency mix of the Board.

Implementation of Risk Management Governance Framework

OECD has published a report in 2014 describing the corporate governance framework and practices relating to corporate risk management in over 27 jurisdictions participating in the OECD Corporate Governance Committee.

The role of Board practices in effective risk management came to the fore during the global financial crisis and shortcomings in accountability were felt as corporate frauds unfolded. Deficiency in understanding of risks was felt as environmental disasters such as oil spills and gas leaks became more common. This has led the governments and think-tanks across the world to set up measures in the corporate governance framework to effectively deal with risk management.

The role of corporate governance in risk management is not to eliminate risk-taking altogether but to ensure that risks are identified well ahead, the company's risk appetite is understood and systems for comprehensive risk management are adequate and effective.

Key findings of the report on existing practices and deficiencies

- Risk management at the grass-root level takes place only in companies which are mandated to follow prudential norms by regulatory authorities and by companies which have suffered adversely due to insufficient risk management in the past.
- The existing corporate governance requirements for risk management lay emphasis mainly on managing financial risk by mandating independent audit and internal control systems, but fail to mandate a comprehensive risk management system where all areas of risk – both strategic and operational, and financial and non-financial – are covered.
- Further, it is not clear whether importance is given by the Boards to extreme events in the normal distribution – the likes of earthquakes, terror attacks, etc.
- It is observed that risk managers are not treated as part of the management in many enterprises, thereby leaving the Board largely ignorant of the myriad types of complex risks facing them. The Chief Risk Officer should directly report to the Board.
- Although risk-taking is the fundamental driving force behind business and entrepreneurship, only risk-taking is being rewarded in many enterprises and conscious actions to avoid unnecessary risks go unrewarded.
- The process of risk management and assessment should be adequately disclosed to the regulators and shareholders. Material risk factors should be identified and given an order of importance, the criteria for which must be properly disclosed.
- Many Boards simply review and approve risk management policies without delving into the details and that the information given to the Boards are too short-term to enable the Board to understand the long-term risks facing the enterprise.

Study of International and Indian Scenario

Now we shall discuss the international scenario on specific issues in risk management and compare them



with our own SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI (LODR) Regulations”) as well as Companies Act, 2013:

Risk Management – The International Scenario

Usually the requirements with respect to risk management are contained in the listing agreement or rules (UK, US and India), stock exchange laws or in company law (Germany, Japan, and now India also) itself. In 2009, the International Organisation for Standardisation issued ISO 31000 to provide general principles and guidelines for risk management. Most countries directly or indirectly cover at least a fraction of the risk management framework in their laws – the minimum most being the risk of mis-statement in financial statements and risk of fraud as revealed during the audit of financial statements.

In many jurisdictions, the requirement for effective risk management systems is not mandated but required on a “comply-or-disclose” basis.

Further, in many countries, risk management is tackled only from the financial side *i.e.*, through mandating effective internal control systems and independent audit of financial statements and internal controls. However, the operational side of it is entirely or partly left outside of the purview of the Board supervision, thereby leaving the Board blind to a large part of the company’s risk factors.

Indian scenario

In India, under the provisions of the erstwhile company law *i.e.*, Companies Act, 1956, risk management did not find a place of importance. Now, Section 134 of the Companies Act, 2013 relating to the Board’s Report requires disclosure on the risk management as follows: “a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.”

SEBI (LODR) Regulations, 2015 contain many provisions for risk management – right from mention in key functions of the Board, constitution of a separate Risk Management Committee that reports directly to the Board, etc. In this regard, the requirements are in alignment with OECD’s Principles of Corporate Governance.

The Directors’ Responsibility Statement requires the Directors to affirm, *inter alia*, on adequacy and effectiveness of internal financial controls. However, this requirement is only for listed entities. Unlisted entities’ directors do not have to comment on this.

Is risk management commensurate with the corporate strategy and risk appetite?

OECD’s recommendations

- Risk management systems established must be in alignment with the risk appetite as well as the overall strategy of the enterprise.
- Boards should take the responsibility of setting measurable identifiers for the enterprises’ risk appetite and also tolerance levels for each type of risk faced and must be aware and vigilant of the interactions among various risks.
- The risk management system must not only cover financial risks but also all other types of risks like market risk, operational risk, legal risk, etc.

International scenario

- In Singapore, “Risk Governance Guidance for Listed Boards” refers to all types of risk – financial as



well as non-financial. Singapore's Code of Corporate Governance as well as Risk Governance Guidance require the Boards to assess levels of risk tolerance; and

- Even in US's Sarbanes-Oxley Act of 2002, or in Norway or even in Switzerland, only non-financial risks, that only risks of material misstatement in financial statements are given importance.
- All jurisdictions seem to address financial statement risks much more than any other risks and do not go into detail on how to assess the risk appetite or how to ensure risk management is adequate and effective.
- Further, risk management policies, even when drafted are very broad, high-level and vague, thereby preventing the policy from being translated to action.

Indian scenario

- Accountability for legal risk: Directors of all companies have to affirm that systems are in place for ensuring compliance with all laws applicable for the company. This covers at least the risk of consequences of non-compliance, if not other aspects of legal risk.
- Operational risk or other types of risks have not been addressed in the Companies Act, 2013.
- In SEBI (LODR) Regulations, 2015, disclosures are required in the Management Discussion and Analysis segment of the Annual Report on threats facing the enterprise, risks and concerns, internal control systems and their adequacy, material developments on the operational front, etc. among others. So the disclosures here are broad-based though SEBI or stock exchanges do not go into the disclosures questioning the strategy or risk management systems of companies.
- Recently, cyber risk has also been added as one of the functions of risk management committee; however, the requirement to have such a committee itself is applicable only for Top- 100 listed companies.
- In India too, even in the case of large corporate houses, risk management policy is worded too broadly, vague and is incapable of translated into action in the absence of specific targets and fixing of responsibility. However, some corporates do take measures to manage risks effectively, though they choose to do so internally while disclosing only the standard broadly-worded risk management policy to the markets.

Organisational structure for dealing with risk management

OECD's Recommendations

- The entity must have a separate Board committee for dealing with risk management. There must be a Chief Risk Officer, the officer and the committee should both have access to the Board.
- The Board must have sufficient competency to appreciate the enterprises' risk appetite and risk management systems.

International Scenario

- Many countries do not mandate appointment of Chief Risk Officer. However, some countries' legislations – especially, in Argentina and Singapore – suggest appointment of such an officer.
- Minimum qualifications for the Board are not prescribed in many jurisdictions but in some, minimum qualifications in case of financial entities and audit committee membership are prescribed.



- Board members are offered induction programmes but the OECD report observes that whether those induction programmes result in understanding the enterprise's risk management system is doubtful.
- Regarding Board Committees, typically audit committee is tasked with risk management functions as well in many countries besides oversight of internal control systems, internal audit, etc. For example, in US, the NYSE listed company rules, mandate audit committees to discuss risk assessment and risk management policies.
- In Italy, having a Control and Risk Committee is required by the Corporate Governance Code and Turkey's Commercial Code requires setting up of a Committee for the Early Identification of Risks. In Sweden, energy companies are found to have specific risk management committees. In Singapore too, having a Board Risk Committee is prescribed.
- The problem observed in many countries is that risk management systems and internal control systems seem to focus exclusively on financial reporting rather than on comprehensive enterprise-wide risks.

Indian Scenario

- Risk Management Committee: The SEBI (LODR) Regulations, 2015 mandate the Top-100 listed entities to have a separate Risk Management Committee to enable the audit committee to focus mainly on internal controls and audit. The Committee shall have majority of its members from the Board. The Board shall lay down the terms of reference of the Committee. However, no minimum qualifications are prescribed.
- Audit Committee: The SEBI (LODR) Regulations, 2015 mandate constitution of an Audit Committee for all listed companies. The Companies Act, 2013 also mandates constitution of Audit Committee for listed companies and certain public limited companies satisfying certain criteria. The SEBI Regulations require that the members of the Committee shall be financially literate and at least one member shall have accounting or financial management expertise. Here too, the focus is on internal financial controls, financial reporting and financial risks and there is no emphasis, whatsoever, on availability of a person who is an expert in operational risks or at least general enterprise-level risk management.
- Chief Risk Officer: Appointment of a Chief Risk Officer is neither mandated nor even prescribed by the Companies Act, 2013. Even the SEBI (LODR) Regulations, 2015 do not require such appointment. However, the Reserve Bank of India has required banks to have a Chief Risk Officer and has released guidelines on risk management systems for banks. However, the focus here is mainly on management of credit and market risk.

Review and Audit of Risk Management Systems

International Scenario

- Some jurisdictions require compulsory audit of internal controls systems by external auditors. Most countries do not require any external assessment of risk management systems.
- The responsibility to review the risk management and internal control systems is given to the Audit Committee and the Board.
- Switzerland has abolished the requirement that external auditors should examine risk management



systems in place and now only larger enterprises are required to even disclose information regarding risk management systems.

Indian Scenario

- Section 143 of the Companies Act, 2013 requires auditors to report on the adequacy and effectiveness of internal financial controls with respect to financial statements. Here too, the focus is on financial risk or financial statements only and does not extend to operational risk.
- Internal audit is mandated under Section 138 for prescribed classes of companies (which includes listed entities) to conduct an audit of the “functions and activities” of the company. However, there is no specific requirement to audit the enterprise-wide risk management systems.
- However, practically speaking, large enterprises typically mandate internal auditors to carry out a thorough evaluation of their internal controls and bring to fore any risks that may be faced by the enterprises.
- Statutory auditors in India do have an additional responsibility of reporting any instances of fraud that may be observed by them to the Central Government.

Interlink between directors’ remuneration and accountability

OECD’s Recommendations

- The Directors’ remuneration structure must be such that it aligns with the long-term interests of the company and not just the immediate financial performance. This is in line with the principle to reward risk-taking only to the extent it is in line with the company’s future. Unwarranted risk-taking which results only in short-term gains should not be rewarded.
- Malus and claw-back provisions must be applied to enable enterprises to withhold or recover remuneration paid wherever fraud or other mismanagement is observed.

International Scenario

- UK’s Corporate Governance Code tries to emulate the OECD’s Principles and sets out that executive directors’ remuneration should be designed to promote long-term success of the company. It even warns about the risk of an upward ratchet of remuneration without any corresponding improvement in the corporate performance. Malus and claw-back provisions are also mandated to be provided which get triggered on occurrence of certain events.
- In the US, Sarbanes Oxley Act, 2002 also provides for bonus and profit forfeiture on financial reporting restatement due to material non-compliance as a result of misconduct. Here too, executive pay is required to be linked to performance.
- In Germany too, the German Stock Corporation Act requires that the remuneration of the management board bears a reasonable relationship to their duties and performance and that in listed companies, the remuneration structure shall be aimed at the company’s sustainable development.

Indian Scenario

- The requirements relating to managerial remuneration are quite extensive in Indian laws. The Companies Act, 2013 prescribes maximum limits on executive directors’ remuneration in terms of a



fixed percentage of the net profits, in case of a public limited company, beyond which Central Government approval would be needed.

- Various disclosures are required both under the Companies Act, 2013 and the SEBI (LODR) Regulations, 2015 regarding the correlation between managerial remuneration and the company's performance, performance evaluation criteria and elements of remuneration package.
- Constitution of a nomination and remuneration committee composed of non-executive directors is also mandated for certain classes of companies.
- However, there are no ways to ensure that the pay is related to the long-term interests of the company.
- There are some provisions which enable claw-back of remuneration in the Companies Act, 2013, especially Section 199 which relates to recovery of remuneration when a company is required to restate its financial statements due to fraud or non-compliance under the Act.

Shortcomings in risk management provisions

In a nutshell, the major observations regarding provisions of risk management in the legislations across the world are as follows:

- Many countries do not mandate risk management systems or development of a risk management policy. Even when such a policy is mandated, the task is treated as just another item to check in the compliance checklist and is not given the importance intended by the regulators.
- Audit committees and the boards are required in most countries to oversee risk management or at least internal financial controls; however, such oversight becomes practically limited only to covering risk of material misstatements in the financial statements and financial risks. Operational risk management or environmental risk is not even mentioned in the corporate governance requirements of most jurisdictions.
- Separate risk management committees are rarely mandated. Even if required, they apply only to listed entities. Mandating appointment of chief risk officers are rarer still. Even if mandated, the requirements apply only for banks and financial entities.
- Oversight of credit risk and market risk is also made applicable mainly to banks and financial entities alone. Other types of companies rarely have a well-defined strategy to deal with such risks.
- There are no specialized qualifications for becoming a member of risk management committee nor is the Board required to have an expert in operational risks specific to the company on its Board.
- Executive remuneration is mostly not linked to long-term performance of enterprises. Even in cases where the law requires by principle to link to long-term performance of enterprises, there are no set guidelines on how to do so. This is a major gap here between OECD's principles and reality.

Conclusion

The world is still in a nascent stage when it comes to risk management systems. Many lessons were learnt during the times of the global financial crisis and corporate frauds but many such lessons have not yet been implemented. There is a strong resistance from the corporate sector against imposition of detailed risk management requirements and external assessment on such risk management systems. Hence, the regulators are moving with caution when introducing such requirements in their laws – some choosing to introduce



the requirements in phases like India, some choosing to even go back on certain requirements when faced with resistance as in the case of Switzerland.

The banks and financial institutions across the world are aligning with the Basel Committee's requirements. This ensures that at least the financial entities are stronger and more aware of risks than they were before the global financial crisis. In India too, we are seeing banks strengthening their core capital, taking steps to reduce their NPAs and handling risk management almost at the grass-root level.

However, the same cannot be said for non-financial entities across the world. Operational and environmental risks are scarcely monitored. The accountability towards such risk is not adequately enforced by the laws too.

Embedding risk management requirements in corporate governance requirements is not only natural and common sense but is also the most effective way to ensure that risk management is taken seriously at the Board level. Otherwise, the Boards would tend to focus only on the short-term repercussions of their actions and fail to see the dangers looming ahead, as real as they may seem distant.

The above discussion brings home the fact that the role of regulators is not yet complete when it comes to risk management and corporate governance. Many more discussions, reports and amendments to laws can be expected in the years to come in this regard. Being governance professionals ourselves, it is our duty to apprise the Boards on the significance of risk management and assist in effectively implementing risk management systems, thereby ensuring sustainable development of the entity and its stakeholders.



Governance, Risk Management and Compliances – Global Perspectives

*Divya Saxena**

Introduction

The dynamic business environment requires thinking about governance and risk in new ways. An innovative approach to managing and enhancing the governance, risk and compliance commonly referred to as GRC activities can create opportunities to stay a step ahead of uncertainty and to fulfill the Shareholder's expectations. Governance, Risk and Compliance (GRC) in global perspective continues to be complex business challenge for the entities across the globe. As new laws and regulations are introduced, their adoption and conformance challenge the Board of Directors of the Companies to create greater levels of transparency, objectivity and professionalism. Increased accountability and potential exposure to liability means Board of Directors need to ensure that Corporate Governance standards are adhered to and robust compliance management systems are in place in the Organisation. Initially, GRC was about assurance, controls and compliance. However, in present perspective, GRC intelligence drives the business performance of the Corporate Sector by adopting best means to meet the Corporate Governance, Regulatory and Compliance challenge.

Concept of Governance, Risk Management and Compliance (GRC)

The acronym "GRC" stands for Governance, Risk Management and Compliance. It is a set of processes and practices that runs across departments and functions of the Organisation. The scope of 'GRC' shall not end with just governance, risk and compliance management but also includes assurance and performance management. In practice, the scope of the GRC framework is further getting extended to information security management, quality management, ethics, values management and business continuity management.

It also includes within its domain assurance management to ensure that controls are designed and operating effectively and compliance requirements are met consistently. It is the responsibility of governance to monitor and obtain assurance. Assurance will be primarily through Audits. There are several types of audits. Internal and external audits, certification audits, financial audits, IT audits, compliance audits, process audits and security audits etc.

GRC is essentially having a mechanism which prudently introspects the strategies, goals and objectives and policies/procedures, examines whether the risk management systems identify, measure and monitor the various business and regulatory risks and ensuring that the processes and activities revolving around the

* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



compliance function are efficient. More significantly it has to ensure that there is a perfect synergy with the business performance process.

From a CEO perspective, it is balancing the delicate act of assuring business performance to the various Stakeholders and at the same time ensuring the accountability aspects are completely covered and being transparent to demonstrate that all three aspects of G,R and C are acting in perfect symmetry.

GRC Components

The components of GRC are spread across five Organizational layers viz., Governance Layer, Risk / Compliance Layer, GRC Support Layer, Business Layer & IT Infrastructure Layer.

- *Governance Layer* : Aligns performance with corporate objectives through providing right metrics & in-depth insight to Financial, operational and other data regarding the overall health of the business including Corporate Board's information management. The components are Dashboards, Audit management, CSR management, Board/Entity management etc.
- *Risk/Compliance Layer* : Establishes rules for business operations through collection and analysis of data from business systems, GRC support systems, business and IT control systems. The components are policy & procedure management (IT & business), Risk & control management, Issue & Action management etc.
- *GRC Support Layer* : Collates important information that contributes to broad risk and compliance management and performs specialized functions like financial risk management. The components are legal/case management, Asset management, Environment management, Quality management, whistle blower, Credit/market risk management, Regulatory risk etc.
- *Business Layer* : Translates compliance policies into business level controls. The components are Segregation of Duties, Trade compliance, Anti Money laundering, Fraud prevention, prevent unauthorized actions etc.
- *IT infrastructure Layer* : Assures that information is properly controlled. The components are Data security, content security, access control, application security etc.

The Integrated GRC is an enterprise endeavor, the components of Governance, Risk & Compliances its inter dependencies are spread across five organizational layers.

Enterprise Governance, Risk and Compliance (eGRC)

The rising number of risk factors against business data is expected to increase the adoption of compliance solutions and security across globe, which is expected to accelerate the growth of global enterprise governance, risk and compliance (eGRC) market.

Moreover, owing to rising demand for economic and regulatory climate, various Organisations are transforming operations to enhance the performance. The fluctuating regulatory policies and lack of awareness within the Organization are acting as restraints for enterprise governance, risk and compliance (eGRC) market, and are expected to hinder the growth of the market to some extent.

Software and services are two essential components of enterprise governance, risk and compliance solutions. Audit management, Compliance management, Risk management, Policy management, Incident management, Business continuity management, IT eGRC, financial control management and issue management are the major type of softwares used to manage the compliance and risk in the Organization. The risk management software accounted major share in the global e-GRC market and helps to improve



data mining, risk analysis, better reporting culture by management of the financial process such as monitoring internal and external audits, tax management, accounting, risk and treasury, stronger decision-making ability by creating superior quality counteractive actions in an Enterprise.

With better legal protection, more of the Company's profits would come back to investors as interest or dividends. Good Corporate Governance may reduce the expected return on equity to the extent that it reduces Shareholders' monitoring and auditing costs. An important aspect of Corporate Governance is the fact that it determines the financial health of an Organization and has an important bearing on Investors' perception of risk. Good Corporate Governance means lower risk and poor Corporate Governance means higher risk.

Strong Corporate Governance is thus, indispensable to resilient and vibrant capital markets and is an important instrument of investor protection.

There is a strong business case for Corporate Governance and Regulatory compliance. Sound corporate governance practices can protect directors from potential personal liability and protect the Company from reputational harm. There are financial penalties for non-compliance with certain laws and regulations. Robust regulatory and compliance structures can help to ensure companies are not subject to potential penalties. In recent times, the investment in Compliance will increase as such, Compliance technology transformation is the top spending priority of the Corporates in modern times.

Risk Management - Planning for an Unpredictable Decade

The risk environment has become more complex, so too the opportunities created by technology, globalisation, a sustained period of economic growth and other major trends have become more varied and numerous. Risk management must play a central role in evaluating these opportunities, as well as providing management with a timely assessment of the risks involved.

The trend for risk management to be considered as a strategic activity is expected to continue in the next decade. The following strategies need to be adopted by the Enterprise to move forward on the path of growth:-

- *Scenario planning is a widely used tool to consider the future.*
As Companies look to an uncertain and unpredictable future, scenario planning as a risk management technique may be of great assistance to map out the road ahead. Scenarios enable Companies to take a fresh look at how the World is changing around them. Executives can map their existing strategy and competencies against each scenario to determine how valid they would be in each context.
- *Examining the economic risk environment*
Economic risks includes fluctuations in oil prices, climate change, asset price collapse, threat of global recession and uncertainty around future government responses. For dealing with economic risks, higher levels of preparedness is required for managing the future economic environment.
- *Competitive risks*
Downward pressure on prices, a decline in customer loyalty and increased competition in the home market are among the most common examples of competitive risks.
- *Technology risks*
Preparedness to deal with technology risks viz; disruption to the business from computer / internet



viruses, exposure of confidential data and systems failure. The huge vulnerability of businesses has encouraged a strong focus on risk management for continued vigilance and development of technology infrastructure. Digital transformation acts as a great enabler to foster business performance. Organisations are becoming increasingly dependent on their technology platforms, infrastructure and related applications to carry on their day-to-day operations. Far from a straightforward business necessity, Information Technology presents opportunities to make businesses operate more efficiently. India is also going through a paradigm transformation with respect to the following Transformation Themes:

- Cloud Computing.
- Mobile Governance.
- Digital India.
- Internet.
- Social Media.
- Smart, Safe and Intelligent Cities.
- Financial Inclusion and ICT.
- Big Data.
- IOT based computing.
- Robotic process automation.
- Cyber Security.

Cyber risks are a key concern to all Organizations, with exposures to cyber threats that arise within and outside the Organization. Cyber frauds in the recent past have put the Corporate World at its toes and working overtime in strengthening its IT Infrastructure.

- Human capital risks

Demographic change is also having a profound impact on the availability and location of human resources. The skills gap and the challenges with data may also be hindering a proactive approach to managing important risks.

Risk management thus, appears to be a function in transition. There is inevitably greater focus on the ability of an Organisation to prepare for an uncertain future. Executives are looking for guidance on how major trends, such as climate change, demographic change, economic development of emerging markets and the impact of new technologies, might affect their long-term strategy.

The appointment of Chief Risk Officers / Managers in many Organisations is helping to strengthen the management of risk. A fast-changing and dynamic risk environment, along with the it is need for a fuller understanding of the uncertainties that the Organisation faces, as such, acts as an important factor in managing the uncertainty. While Risk Managers retains its responsibilities as a source of assurance that ensures regulatory compliance and helps the Organisation to avoid losses. Infact, the focus of Risk Managers now needs to shift from one of managing risk to one of navigating uncertainty. A robust process is needed for identifying risk, both on annual and continual basis.



Over the decades, Companies have developed a very good understanding of competitive advantage. However, in present scenario, a much better understanding of the changing context and conditions needs to be implemented together with the capacity to respond quickly and coherently to those changes.

Accordingly, the Companies need to develop a flexible strategy and agile Organisation to enable them to respond quickly to the crisis or opportunities. The ability to manage in real time enabled by information technology and professional boards coupled with strong leadership.

Organizations should pivot towards action, to adapt their functions to the ever-changing compliance risk profile and to their role within the Organization as a critical part of the control framework.

The increased pace of innovation and the evolving regulatory landscape, for which change is required for Compliance operating models, technology and talent. The pressure on Compliance to re-shape the function—with optimal allocation of resources to increase efficiency and effectiveness as both a control function and strategic advisor to the business is greater than ever.

These forces are driving complexity for the Compliance function to evidence their value as both a relevant business advisor and effective control function. Compliance is now facing greater scarcity of resources.

Today's Compliance into a resilient risk management and control function that better detects and anticipates the increasingly complex landscape of risks. Investment in Compliance will rise over the next two years, setting a strategy that is holistic, actionable and anchored to measurable business outcomes.

Financial crimes pose threats demanding greater integration across anti-money laundering, fraud and cyber risk management frameworks. In establishing more integrated teams across the second line of defense, industry leaders can also generate increased operational bandwidth to reinforce product, business and regulatory advisory support for the Organization as it navigates a changing risk profile.

Techniques such as machine learning, natural language processing and natural language generation allow Organizations to face the turbulent landscape. Machine learning, is creating opportunities for Compliance officers to better visualize patterns of behavior in their own Organizations indigenously as well in global perspective.

New Legislative Amendment towards Stringent Corporate Governance in India

Amendment in Listing Regulations based upon the Recommendations of the Kotak Committee.

The Kotak Committee was formed under the Chairmanship of Shri Uday Kotak on 2nd June, 2017 with the aim to improve standards of Corporate Governance in India. The SEBI in its Board Meeting held on 28th March, 2018 accepted majority of the recommendations of Kotak Committee to be included in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 vide its notification No. SEBI/LAD-NRO/GN/2018/10 dated 9th May, 2018 enforcing more stringent Corporate Governance Framework through enhanced compliance mechanism in Indian Listed Entities.

The Committee has infact proposed a set of tougher Corporate Governance norms aimed at increasing transparency, strengthening board independence and board composition and enhancing disclosures.

- Greater demand for qualified Board members in 2018 as all listed Companies shall have at least six directors on the Board.
- Independence is a major concern in India and among minority Shareholders, the Committee had proposed that half the Board be independent, rather than one-third as presently required.



- The separation of the CEO and Board chair roles in Companies.
- The trend of appointing a female relative to the Board (as a way to comply with the Companies Act, 2013 requirement to have at least one woman on the board), the Kotak Committee recommends that at least one of the independent directors be a woman.
- The Committee recommends for a minimum of five board meetings per year (up from four), including one meeting dedicated solely to long-term strategy and any related matters, such as succession planning and board evaluation.
- The Kotak Committee also has recommended that the board annually disclose relevant competencies and director skills.

SEBI had also recently developed more prescriptive guidance about the Board evaluation process and disclosures.

The following amendments to the Listing Regulations have an important bearing on the Corporate Compliance trends in future:

- o Composition and role of the Board.
- o Institution of independent directors.
- o Board committees.
- o Monitoring group entities and related parties.
- o Accounting and audit related matters.
- o Disclosures and transparency.
- o Investor participation.

Role of Company Secretaries as GRC Professionals

Company Secretaries as Compliance Professionals need to weigh enterprise strategy, as well as Organization-wide risk appetite, as Compliance assumes a more prominent position within an Organization framework. In a volatile risk ecosystem, the idea of phasing development across a multi-year roadmap is challenged by the need for continuous improvement in Company's ability to withstand industry shocks that continually test whether the organization function has the right foundational capabilities. As the industry continues its rapid evolution, the ever-decreasing time between major change events demands a new mindset to modernize the Compliance function. In this environment, Compliance Professionals as manager of GRC should be working to develop a new, forward-thinking and stress-tested approach and to continuously monitor the situation, evaluating and improving the ability to remain resilient in a dynamic business environment that is subject to disruption and overnight change. All new and existing Employees including the Senior Management should undertake training on the code of conduct. The Company Secretary as a Governance Professional should provide guidance on recognizing compliance issues and on raising actual or suspected misconduct or irregularities under the reporting procedure.

As a Governance Professionals they are strongly encouraged to innovate to remain conversant with the increasingly complex web of risks. A continued investment in technology to better visualize risk, a re-skilling of resources to exploit technology innovation and to be more data-driven in investigations analysis, can prove critical to the completion of Compliance's responsibilities and to retaining its organizational relevance and reputation. Furthermore, as a Compliance Officer they should also adopt a mindset of continual



education and learning to understand the threats of the digital age and to develop the appropriate risk management and advisory responses.

In fact, the Compliance functions shall be innovation driven capable for an innovation-led strategy for the Organisational functions. As a Compliance officer to act simultaneously as a Controller and a Strategic Advisor to combat the complex business landscape. Governance professionals have in-depth knowledge of corporate governance developments both locally and internationally. They combine the process and system benchmarking knowledge and experience with organizational knowledge.

Role of Audit Committee in Mitigation of Financial Risk

The Constitution of Audit Committee is yet another step or process for mitigation of risk and is a corner stone for effective management of risk in a Corporate Sector around the World. The main purpose of its constitution is to control and manage the financial risk which includes within its domain review of financial reporting process, disclosure of information in Financial Statement, the correctness, sufficiency and credibility of financial statements, review of the adequacy of internal audit function, review of Company's financial risk and management policies *etc.*

Bottlenecks of Risk Management

Some common risk management problems in relation to Corporate Governance in the Organizations across the globe are as follows:-

- Identification of Risks in most cases is not linked to strategy for risk management.
- Organizations are incapable to develop an intelligent responses to risks.
- Board not attending Stakeholders' responses to risks.

Corporate Frauds

In the present age, a series of Corporate frauds have been evident across the World which shows the failure of Corporate Governance. Main Factors contributing to Corporate Frauds in recent years are as follows:-

- Unethical work culture – corporate culture, bribery.
- Corruption and exchange of favors within and outside the Company.
- CEO and CFO putting their self interests ahead of the Organizational interests.
- Improper Internal Controls incapable to detect the fraudulent activities carried on by the Company.
- False books and bogus accounting.
- In most cases the Board is composed of Chairman friendly directors incapable of making an independent judgement and decision making process.
- Questionable role of Audit Committee.

GRC Process and Strategy

- Identification of risk inherent in achieving the Organizational goals and objectives.
- Assessment of Risk.
- Control processes for proper risk management.



- Reporting of risk indicators.
- To manage and challenge all aspects of Company's risk profile and management practices.
- Corporate Governance shall be an integral part of the risk management and should be aimed to increase the Shareholders' wealth, increase in Investors' confidence, reduced cost of capital, better brand equity, greater employee morale and confidence of Creditors.
- To improve the quality of Board and its composition.
- Better Compensation and rewards.
- Proactive approach to environmental, social and political scenario.
- Cyber security.
- Proper investment on Human Capital.

Internal Control System for management of GRC

A Company's system of internal control reflects its control environment and should be capable of responding quickly to evolving risks to the business arising from factors within the Company and to be proactive for change in the business environment. Internal controls are the core of a Company's Corporate Governance practice and the main source of controlling, offsetting and mitigating various types of risk, specially, those associated with reckless and fraudulent financial decisions.

IT Assurance

All Organizations around the World are under increasing pressure due to globalization, to reassure their Clients, Stakeholders to provide assurance on their controls surrounding processes, IT infrastructure and assets.

IT Performance Improvement

Applications, software and surrounding IT infrastructure has become backbone for running Organization's business. With the increasing availability of technology infrastructure to support business, Organizations are working towards strengthening the technology performance.

IT Governance & Risk Management Professionals

It aid the Organization's design and implement effective operating models to manage technology risk. Organizations to better understand the true business impact of risks arising from an Organization's dependence on technology. This in turn leads to better prioritization of risk mitigation activities, focusing efforts on the things that matter most.

Digitize core processes

Simplification, standardization and automation are key to reducing non-financial risk and operating expenses. Effective collaboration is not possible without using the right technology platform. Technology will support the entire collaborative process, but will also allow for the integration of specialized risk and compliance software components.

Experiment with advanced analytics and machine learning

Risk functions should experiment more with analytics and particularly machine learning, to enhance the accuracy of their predictive models.



Enhance risk reporting

Ever-broader regulation and the need to adjust to market developments require rapid, fact-based decision making, which means better risk reporting. While regulatory requirements have already done much to improve the quality of the data used in risk reports and their timeliness, less attention has been given to the format of reports or how they could be put to better use for making decisions.

Collaborate for balance-sheet optimization

Given regulatory constraints, balance-sheet composition is arguably more important than ever in supporting profitability. The risk function can help optimize the asset and liability composition of the balance sheet by working with finance and strategy functions to consider various economic scenarios, regulation and strategic choices.

Build a strong risk-management culture.

The detection, assessment and mitigation of risk must become part of the daily job of all the employees of an enterprise and not only those in risk functions. With automation and more sophisticated analytical and technical capabilities, human intervention is needed to ensure appropriate and ethical application.

GRC Maturity

Attaining GRC maturity can be done by putting together the processes around the GRC components supported by an appropriate technology infrastructure to support the processes. GRC should set up a process and system where the three perspectives *i.e.*, Governance, Risk and Compliance have been provided due consideration at the earliest stages of the planning process. This would ensure that a tight cohesion between operations, policy and strategy from a compliance, risk and audit is enabled. The need to set up cross functional teams/task forces is imperative. Compliance and Regulatory management needs to move beyond a mere rule based, external authority driven function to one which manages the internal code of conduct, ethics, sustainable business practices.

Importance of GRC

Effective GRC implementation helps the organization to reduce risk and improve control effectiveness, security and compliance through an integrated and unified approach.

Preparing for Change by Governance Professionals

The modern trends suggest a vision for a high-performing risk function in future context. It will need to be a core part of Organisation's strategic planning, collaborate closely with businesses and to act as a center of excellence in proper decision making. Its ability to manage multiple risks while complying with existing regulation and preparing for new rules will make it more valuable.

The optimal function would have the following attributes and capabilities:

- full automation of decisions and processes with minimal manual interventions.
- increased reliance on advanced analytical models fast and effective decisions.
- close collaboration with businesses and other functions to provide a better customer experience, de-biased decisions and enhanced regulatory preparedness.
- strong advocacy of corporate values and principles, supported by a robust risk culture that is clearly defined, communicated and reinforced throughout the Organisation.



- a talent pool with superior advanced-analytics capabilities

Increasing Regulatory Fines in Present Times

With the uncertain regulatory landscape, managing compliance is becoming a challenge for most risk managers. Compliance is a reflection on the Company's ability to meet the needs, demands and rights of their consumers. The uncertainty of new regulations coming from multiple angles, necessitates an adoption of GRC platforms with robust change management capabilities.

Role of Risk Professionals

It requires re-framing of the role and duties of Risk Professionals. The risk management functions should be aligned with strategic priorities. Risk Professionals must also understand regulatory requirements. Operational Risk Professionals also need people skills to be able to communicate effectively, influence others and make the opportunities outlined above happen. They have to be skilled, knowledgeable and credible with the growing complexity demanded of the business environment driving a desire for the attainment of formal qualifications. As such, they can serve as a catalyst for risk awareness and constructive debate.

Conclusion

The rapid development of risk management and its shift towards becoming a strategic tool that supports the business is an important aspect of strong GRC Management. The growing complexity of global business and the multiplying risks coupled with onerous compliance that lurk in every corporate activity, mean that there is more need than ever before for a function that can help to identify potential problems and opportunities. Just as corporate strategy relies on planning several years into the future, so too risk management needs to consider what potential problems might lie ahead in future planning process. GRC Techniques facilitates proper and effective management of future course and understand the interdependencies between different categories of risk in a credible way, as such, GRC in global perspective of today's corporate environment can be a valuable tool or mechanism to manage the existence, survival and growth of the Corporate Sector.

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CS as Corporate Saviour Professional

*R.S. Shanmugam**

Introduction

One may wonder to know about the status and position of Company Secretary until the turn of the last century.

In the 1970s, 1980s and 1990s even a qualified Company Secretary was considered as a mere Compliance Officer appointed only by Companies having paid up share capital exceeding the limit (rupees twenty five lakhs) prescribed under Section 383A of the Companies Act, 1956 [Section 383A was inserted by Companies (Amendment) Act, 1974 enforced *w.e.f.* 1st February, 1975]. This provision required companies having the prescribed paid up share capital to appoint a person who is a member of The Institute of Company Secretaries of India, [briefly called ICSI, which was a Section 25 Company under the Companies Act, 1956, at that time, until the Company Secretaries Act, 1980 was enacted by the parliament making ICSI a statutory body under an Act of Parliament] to be in the whole-time employment of the company. Until 1988 there was no penal provision for non-compliance of the provisions of Section 383A by any Company. As such, Companies did not take it seriously the requirement to appoint a whole-time Company Secretary even if the company's paid up share capital exceeded the prescribed limit.

Sub-section 1A was inserted u/s 383A by the Companies (Amendment) Act 1988, enforced *w.e.f.* 1.12.1988, imposing penalty on every officer of the defaulting company a sum of Rs.50 (rupees fifty only) for every day of non-compliance of section 383A. However, Proviso under sub-section (1A) of section 383A diluted the vigor of the penalty by providing that in any proceeding against a defaulting officer of the company, he may take a valid defense that the financial position of the company was such that it was beyond the capacity of the company to employ a whole-time Company Secretary or that he and the company had taken all reasonable efforts to comply with the provisions of Sec.383A (1) of the Act. By this Amendment Act, the paid up share capital limit of a company was also increased from rupees twenty five lakhs to rupees fifty lakhs for compulsory appointment of whole-time Company Secretary.

Company Secretary in Whole-Time Practice

Towards the end of the year 2000, when the Companies (Amendment) Act, 2000 was enacted and enforced *w.e.f.* 13th December, 2000 Proviso under Sub-section (1) of Section 383A of the Companies Act, 1956 was added which stipulated that every Company not required to appoint a whole-time Company Secretary but having paid up share capital of rupees ten lakhs or more shall attach a certificate in the prescribed form from

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a company secretary in whole-time practice stating whether the company has complied with all the provisions of the Companies Act and attach that certificate to the Board's Report u/s 217 of the Companies Act, 1956. Thus began the identity for the profession of Company Secretary in whole-time practice from the beginning of this century.

International Conferences Organised by ICSI

From the beginning of this century the profession of Company Secretaries began to take significant improvement in its status under the dynamic leadership of the council members of ICSI, by organizing International Conferences outside India, facilitating the members to participate in International Conferences every year at various places /countries outside India, thus exposing the members participating in such conferences to interact with fellow professionals in those countries, learn their corporate culture, corporate governance and secretarial practices being followed by various countries around the world.

International Conference in Malaysia in 2014

To quote an example, in one of the conferences organized by ICSI at Kuala Lumpur, Malaysia in June 2014, Secretary General of the Malaysian Institute of Company Secretaries addressed the members of ICSI participating in the conference. During his talk, the Secretary General of the Malaysian Institute of Company Secretaries informed that in Malaysia, the government was contemplating to revise the Company Law in Malaysia increasing the number of sections by adding about 200 new sections, whereas at the same time the new Companies Act, 2013 passed by our Parliament in India replaced the old Act reducing the number of sections from 658 to 470. He also informed that under the Malaysian Company law there was no 'face value' for the shares issued by Companies incorporated under their law and the value of shares of companies are reckoned by its intrinsic worth (Net-worth per share). Such conferences help to catapult the status of Company Secretary from mere Secretarial Officer or Compliance Officer to Key Managerial Person (KMP) in the Company hierarchy.

By recognizing the role played by Company Secretaries in the employment of Companies, Government of India enacted the Companies Act, 2013 replacing the Companies Act, 1956, identifying Company Secretary as a Key Managerial Personnel, positioning the employed Company Secretaries with that of the Managing Director, Chief Executive Officer, Chief Financial Officer and Whole-time Director of the company.

DNA of a Company Secretary in the Employment of a Company

Company Secretary in the employment of a company, as a Key Managerial Personnel (KMP) is required to comply with the provisions of Section 205 of the Companies Act, 2013 which prescribes the following functions that are only inclusive and indicative, but not exhaustive :

1. Report to the board of directors of the Company about compliance with the provisions of the Companies Act, Rules made thereunder and all other laws applicable to the Company;
2. Ensure that the company complies with the applicable Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government;
3. Discharge all such duties as prescribed under the rules framed under the Companies Act and other laws applicable to the Company.

Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes the following as duties of a company secretary in the employment of a company:

1. Provide to the directors of the company, collectively and individually such guidance as they may require, with regard to their duties, responsibilities and powers;



2. Facilitate the convening of meetings and attend Board, Committee and General Meetings, which include making arrangements for Video Conferencing facility at the Board / Committee Meetings whenever required or requested by the directors of the company, arrange for members and proxies to exercise voting on Poll at General Meetings by electronic means (e-vote) or by ballot papers, and coordinating with the Scrutinizer and the Chairman to declare the result of the Poll conducted at the general meetings and maintain the minutes of all these meetings;
3. Obtain approvals from the Board, general meetings, Central or State Government, Reserve Bank of India, SEBI, etc. as may be required under the provisions of various legislations applicable to the company;
4. Represent before various regulators, Tribunal and other authorities under the Act in connection with the discharge of various functions under the Act; Assist the board of directors of the company in the conduct of various affairs of the company;
5. Assist and advise the board of directors of the company in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
6. Discharge all such duties as specified under the Act and the Rules or as may be assigned by the Board of Directors and the management of the company from time to time.

In addition to the aforesaid duties and responsibilities, Company Secretary in the employment of a company is quite competent to function as statutory officer, coordinator, Administrative Officer and Liaison Officer for the general public, government authorities, Banks, Financial Institutions, Investors and all the stakeholders of the company.

Coordination with the Statutory Auditors

Statutory Auditors expect the Company Secretary to furnish to them for their verification, Notice of Interest of Directors and Declaration of Non-disqualification by directors as at the end of the Financial Year for them to prepare their report as per Section 143(3)(g) of the Companies Act, 2013. For this purpose, the company secretary ensures to collect the Notice of Interest of Directors and Declaration of Non-disqualification by all the directors of the company as at the end of the Financial Year duly signed by all the directors of the company and furnishes the same to the Auditors. These declarations are placed before the first board meeting of the company held during the first quarter (April – June) in the following financial year. The Company Secretary also furnishes the Notices, Minutes, attendance of directors at all the board meetings and committee meetings held during the year to the statutory auditors for their scrutiny.

Reports and returns filed by the company with the Registrar of Companies, e-forms uploaded in the MCA portal, RBI portal, stock exchanges at which the company's shares are listed are to be verified by the Statutory Auditors, which are provided by the Company Secretary. Quarterly, half-yearly and annual financial statements reviewed and recommended by the Audit Committee, approved by the board of directors of the company are also furnished to the auditors for their verification in the course of their audit. By furnishing all the records required by the statutory auditors, Secretary of the Company supports the auditors in ensuring smooth conduct and timely completion of Audit.

Formulation of Company's Policies

Management of companies expect the Company Secretary to draft various policies required to be framed under the relevant provisions of the Companies Act, SEBI Regulations and other various laws applicable to the company which usually include the following :

- (1) Nomination and Remuneration Policy;



- (2) Risk Management Policy;
- (3) Policy on Board Diversity;
- (4) Policy on Preservation of Documents;
- (5) Policy for determining Material Subsidiaries;
- (6) Policy on materiality of related party transactions;
- (7) Policy on dealing with Related Party Transactions;
- (8) Whistle Blower Policy;
- (9) Policy for prevention of Harassment to Women;
- (10) Corporate Social Responsibility Policy and so on.

After drafting the policies, the Company Secretary places the policy documents before the respective committees, obtain the preliminary approval of each committee and then forward the documents signed by the Chairman of the respective committee to the Board of Directors of the company for final approval. After obtaining the board's approval, the Policy documents are uploaded in the Company's Website.

Compliance of Requirements under FEMA/RBI Regulations

In the case of a company having non-resident investors including foreign body corporate shareholders and individuals residing outside India, Company Secretary verifies the details of their investment in the share capital of the company, to ascertain whether their investment is under the automatic route or under the approval route in accordance with the RBI Notifications No. FEMA.20(R)/2017-RB dated November 07, 2017 or under its earlier Notification No.FEMA/20/200-RB and FEMA/24/200-RB both dated May 3, 2000. He ensures to get UIN (Unique Identification Number) for each remittance received from the overseas investors on submission of the Foreign Inward Remittance Certificates (FIRC) together with the KYC certificates (of the overseas investor) collected from the remitting bank from abroad through the Authorized Dealer Bank in India and then prepares and submits the applicable FCGPR returns and applicable reports by uploading it in the E-BIZ portal of RBI within the specified period, which is required to be submitted within 30 days from the date of allotment of shares or securities to the foreign investors. Delay in submission of such returns or non-compliance with the provisions of the RBI Regulations will result in heavy penalty being imposed on the Company. By taking prompt and timely follow-up action with the remitting bank from abroad, through the AD Bank in India, Company Secretary acts as 'Corporate Saviour' by avoiding such penalty. Companies accepting investment in foreign currencies are required to submit Annual Return (FLA – Foreign Liabilities and Assets) as at March 31 of the current year and the previous year.

Responsibility of the Company Secretary for ensuring due compliance with the regulations of RBI continues till the acknowledgement from RBI on submission of such returns is obtained from RBI. If any transfer of shares or securities of the company held by persons resident outside India had taken place, Company Secretary verifies and ensures that the applicable provisions of the RBI Regulations under Notification No. FEMA.20(R)/2017-RB dated November 07, 2017 or under its earlier Notification No.FEMA/20/200-RB and FEMA/24/200-RB both dated May 3, 2000 are duly complied with.

Firms Application – Foreign Investment in India

Reserve Bank of India in the first Bi-monthly Monetary Policy Review dated April 5, 2018 announced that with the objective of integrating the extant reporting structures of various types of foreign investments in India, RBI introduced Single Master Form (SMF) subsuming all the existing reports. For implementing this proposal, RBI introduced an online application, called FIRMS (Foreign Investment Reporting and Management System), which would provide for the SMF.



In the first phase of FIRMS, Entity Master Form (EMF) was made available online in the RBI Portal, requiring all companies and LLPs which has accepted investment from bodies corporates and persons residing outside India, to register under the scheme and upload details of all overseas investments received by the Companies and LLPs right from the date of its incorporation. This was required to be uploaded in the EMF between the period from 28th June, 2018 and 12th July, 2018. Since the RBI portal was congested during this period, most of the companies and LLPs could not upload the investment details by 12th July, 2018. Therefore, RBI extended the date till 20th July, 2018. RBI announced that Companies or LLPs which did not upload the foreign investment details from the date of incorporation of the respective company or LLP during the specified period would not be allowed to receive any further remittance from abroad.

Responsibility for uploading the investment details was ably handled by Company Secretaries in the employment as well as those in practice to save the Companies and the LLPs from the serious consequences of non-compliance of the above regulations.

Compliance of SEBI Regulations

In the case of listed companies, Secretary of the company ensures that all the applicable regulations of SEBI, including the SEBI (LODR) Regulations with regard to advance intimation of the date of the board meeting, General Meeting, Book closure dates, and the reports to be furnished to the listed stock exchanges immediately after the meetings are duly furnished within the stipulated time. He also ensures that Quarterly reports on unaudited financial results of the company duly approved by the board and signed by the authorized director or Managing Director or Chairman of the Company, together with the limited review report of the statutory auditors are duly submitted to the stock exchanges immediately after the conclusion of the board meeting. He also ensures to submit quarterly compliance report on corporate governance, half-yearly reports and annual reports in the prescribed format to stock exchanges.

Companies Accepting Deposits from Members/Public

Secretary of the Company after verifying whether the company is eligible to accept deposits from public u/s 76 of the Act or the company can accept deposits only from its members u/s 73 of the Act, ensures to take the approval of the board of directors of the company for including the resolutions required to be passed by members at the general meeting of the company. After getting the requisite resolutions passed by members at the general meeting, Secretary of the company prepares the Circular in Form DPT-1 gets the approval of the board of directors, gets the circular signed by all the directors present at the board meeting, and then files the Circular with the Registrar of Companies (upload it in the MCA Portal) and also arranges to upload the circular in the Company's website before issue of the same to members of the company and/or to the public, as the case may be. Secretary of the company ensures that all the requisite returns are duly filed by the Company, record of all deposits are maintained as per Rule 14 of the applicable rules and Deposit Repayment Reserve Account is maintained by the Company as per Sec.73(2)(c) of the Act.

DNA of Company Secretary in Whole-Time Practice

Companies Act, 2013 for the first time in the history of Indian Corporate Sector has mandated Secretarial Audit of all listed companies and Public Companies having paid up share capital of Rs.50 crore or more and Public Companies having annual turnover of Rs.250 crore or more. This has been enforced with effect from 01-04-2014. Recognizing the significant role played by the Company Secretaries in Practice in the past three years, particularly in ensuring high level of Corporate Governance of the listed companies and other public companies covered under the scope of Secretarial Audit, the SEBI Board at its meeting held on 28th March, 2018 accepted majority of the recommendations of the Kotak Committee on Corporate Governance, which included extending Secretarial Audit to all Unlisted Material Subsidiaries of listed companies under



the SEBI (LODR) Regulations, 2015. This is intended to strengthen group oversight and improve compliance at the group level.

Powers and Responsibilities of CSP

Companies Act, 2013 has armed the Company Secretary in whole-time Practice (hereinafter referred to as CSP) with equal powers as that of a Statutory Auditor of a company while conducting secretarial audit of a company. CSP is also shouldered with equal responsibility for reporting an offence of fraud, if any, committed or has been or is being committed by any of the employees or by the officers of the company. Sec.143 of the Act enumerates the powers and duties of auditors while conducting audit of a company. Clause (b) of Sub-section (14) of Section 143 of the Companies Act, 2013 states that the provisions of Section 143 of the Act applies to the Company Secretary in Practice, conducting Secretarial Audit under section 204 of the Act.

Therefore, as per Sub-section (12) of Section 143 of the Act, if the secretarial auditor finds that an offence of fraud has been or is being committed by the employees or officers of the company, CSP should report the same in the manner prescribed in Sec. 143(12) and Rule 13 of the Companies (Audit and Auditors) Rules, 2013. If the amount involved in the fraud is less than rupees one crore, CSP should report the matter to the Chairman of the Audit Committee and to the board of directors of the company within two days of his knowledge of the fraud and if the amount exceeded rupees one crore, he should also send a report to the Central Government as per the procedure prescribed under Rule 13 of the aforesaid rules.

In view of the above provisions of law, CSP by his vigilant approach while conducting Secretarial Audit to identify any malpractice or corruption or fraud committed or likely to be committed by any of the employees or officers of the company, identify such red flags, report the same to the authorities concerned in accordance with the provisions of Sub-section (12) of Section 143 read with Rule 13 of the Companies (Audit and Auditors) Rules, 2013. Timely detection of any malpractice would result in prevention of fraud before it is committed. Prevention of fraud is better than taking action of reporting of fraud after its commitment. CSP is in a position to recognize the red flags of fraud identify the fraud indicators and by taking timely action, prevent the possibility of any one committing any fraud.

For instance, if the company has the practice of issuing duplicate share certificates to the promoters or to the promoter group or to some group of shareholders, without observing the prescribed procedure such as, asking the applicant for issue of duplicate share certificate to lodge a complaint with the Police, obtain FIR and furnish copy of the same, publish Notice in News Paper about loss of the share certificates or any security document, take indemnity bond and affidavit of the claimant shareholder(s), possibility of multiple share certificates for the same shares circulating in the market could happen which will lead to defrauding gullible investors and causing loss to them and serious consequences to the company. As such CSP, by his ever vigilant attitude is in a position to prevent any such fraud happening in the Secretarial department. If CSP notices any such fraud having already been committed by anyone in the company he/she should not hesitate to report the same in the prescribed manner.

Sub-section (15) of Section 143 of the Act states that if the company secretary in practice do not comply with the provisions of sub-section (12) of Section 143, with reference to reporting of fraud, the CSP shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty five lakh rupees.

Conclusion

Company Secretary either in the employment of a company or in practice is certainly a corporate saviour. He can certainly ensure high level of Corporate Governance of public companies, listed companies and all types of business enterprises, which will ultimately benefit all stakeholders.

* * *



CS as a Corporate Saviour – Professional DNA

*Alivia Das**

Introduction

Good Governance – a concept that has been very prominent in the recent times which encompasses the reforms that have been brought about in the political and administrative scenario all around the world. Governance can be defined as a set of rules, controls, policies and resolutions put in place to dictate behaviour and thus, good governance entail an elaborate and effective compliance of such rules, controls, etc. But, good governance is not limited to just adhering to the rules but also morally and ethically following the spirit of law.

In the Indian corporate set-up, ensuring governance has become a mandate owing to the introduction of various acts, tax reforms and policies by the Government. Corporate governance involves a 360-degree compliance and balance of the interests of a company's shareholders, management, customers, suppliers, financiers along with the government and the community. It is a framework for every company to achieves its goals and involves every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.

Company Secretaries are the professionals who ensure that the company achieve the yardsticks of corporate governance and maintains the harmony among its stakeholders with respect to compliance. It is their duty to make sure that the purpose of the law is fulfilled along with obeying the literal interpretation of the same.

The Role of a Company Secretary

The Institute of Company Secretaries of India (ICSI) has the following VISION and MISSION:

Vision

"To be global leader in development of professionals specializing in corporate Governance".

Mission

"To continuously develop high caliber professionals ensuring good corporate governance and effective management and to carry out proactive research and development activities for protection of interest of all stake holders, thus contributing to public good".¹

1. <http://www.icsi.edu/Student/ROLEOFCOMPANYSECRETARY.aspx>

* Senior Associate, NovoJuris Legal. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



Company Secretaries, as professionals, act as the link between the Company and its Board of Directors, shareholders, government and regulatory authorities. As per Section 203 of the Companies Act, 2013 Company Secretary has been recognized as Key Managerial Personnel along with the Chief Executive Officer/Managing Director/Manager, Whole-time Director and Chief Financial Officer.

The role of a Company Secretary can be broadly described as² :

- A guide to the Chairman and the Board of Directors on their responsibilities under various laws;
- A conscience Seeker of the company;
- Advisor on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and other Business Laws and Regulations and Guidelines made thereunder;
- A Corporate Law Advisor on the compliance of legal and procedural aspects;
- Representative of the Company before various regulatory authorities of the Government;
- Advisors with respect to financial market services;
- Management Services e.g. General/Strategic Management, Corporate Communications and Public Relations, Human Resources Management and Information Technology.

But, the million dollar question is, whether the role of a Company Secretary is only confined to the aforementioned areas of work? The role of a Company Secretary is not the typical stereotype of a man or woman who assists a board chair or executive director. The role has evolved from just being a support person to being the 'trusted advisors' and the 'go to experts' for answer to the questions of the Board because they understand the law.

Company Secretary – A Corporate Saviour

As per the Oxford Dictionary, 'Saviour' is a person who saves someone or something from danger or difficulty. It would not be entirely incorrect to refer Company Secretaries as saviour; however, their role does not come into picture only when Companies are in danger or difficulty. It is they who ensure that the Company is safeguarded from any non-compliance at every point.

As quoted by Mr. Ajay Tyagi, Chairman of the Securities and Exchange Board of India, "Today they (Company Secretaries) are recognised for their importance on corporate landscape and have become gatekeepers of corporate governance." The Company Secretaries possess the fundamental and distinctive characteristics or qualities of being remarkable professionals that corporates seek. They develop a law abiding culture and a sustainable framework for the Company wherein a constant watch prevails over the company's activities.

Some of the corporate governance practices would include independent oversight of management and accounts of the company, fair and equitable treatment for all the shareholders of the company, fair voting processes conducted by the company, prohibition of insider trading and abusive self-dealing, open and efficient markets, timely and effective disclosure of financial and operating results to the stakeholders of the company, foreseeable risk factors and matters related to corporate governance and regulation and legal recourse if principles of fair dealing are violated.

2. <http://www.icsi.edu/Student/ROLEOFCOMPANYSECRETARY.aspx>



Why are Company Secretaries referred as the Gatekeepers of Corporate Governance?

Apart from being an expert in their own field it is the ethics and the values that make them distinct as a professional. Only expertise does not help in achieving goals for the Company, one should have a wholistic approach to any problem and should be able to provide apt solutions.

Company Secretaries build trust through their competence and character. It is their honesty, integrity, authenticity, accountability fused with skills, knowledge, experience and performance that make them stand out of the crowd. Being diligent in what they do and responsible for their act makes the company achieve its goals. It is their responsibility to ensure that the company and its directors operate within the law. In simple terms, they are the professionals who act as power boosters for the companies to encourage their plans and ensures its smooth accomplishment with complying all applicable laws in the field.

However, governance is a domain where a choice has to be made between right and wrong. One has to be very articulate about the decision to be taken and what impact it would have on implementation. A decision when taken may seem right but may have an effect that would be adverse later. Thus, making the right decisions can prove to be very challenging and requires a high level of commitment from individuals that command the institutions and organisations. The role of a Company Secretary is to ensure that the decisions taken is legally as well as ethically correct.

Why are Ethics important for Governance?

Over the years, the business enterprises and society have come into close contact with each other and the interaction has become more upfront. As a result, action of one has an effect on the other. Owing to this, regulatory compliance requirements have been made stricter to safeguard the interests of both. The number of compliances that a company has to adhere to has increased and thus, the role of Company Secretaries has evolved through the years.

Good governance works to meet the needs of society making the use of resources. Ethics ensures that the decisions undertaken are transparent, the management is responsible and accountable and the society is benefited from those decisions. Thus, Company Secretaries are the professionals, who are responsible for the Company's actions. The onus of educating the Directors about the law, the ethical aspect of abiding the law and finally taking the decisions legally and ethically, is on the Company Secretaries.

Hence, it can be said that apart from being a corporate saviour, Company Secretaries are the watchdogs of a Company who are constantly updated about the changes in legislation and educating the Directors and management of the Company about such changes. Simply put, Company Secretaries should have a proactive approach rather than a reactive one.

How to develop as a Professional

Now the question lies as to how Company Secretaries can develop themselves as an outstanding professional. It is their knowledge that makes them better at their job. But, knowledge is not the only key for being successful. Other aspects that shape a professional can be the following:

1. *Being reliable* : A person should be consistent in his/her job, for the organisation to rely on their advice. Being confident and delivering accurate results every time is a sign of consistency. The professional should be dependable because someone else's work will be impacted by his/her actions
2. *Quality Work* : Delivering quality work every single time is what is expected of a Company Secretary. This includes accuracy and in-depth knowledge about their field of work.



3. *Depth of knowledge* : The profession of a Company Secretary requires them to be constantly updated about the changes in laws. Increasing their knowledge makes them the expert in what they do. It is a constant learning process.
4. *Accountability* : Being a professional it is their duty to be accountable for their work. They are entrusted with responsibilities and thus are expected to take up ownership for their job.
5. *Leadership* : Being accountable is the path to leadership. It is a quality that a professional should possess to excel in their job.
6. *Integrity* : Professionals are known by their integrity. Keeping moral principles intact and being ethical are the key factors of being country's one of the best professionals.
7. *Diligence* : A professional should show diligence in his/her work. One should make utmost effort to execute their responsibilities with care because that is what they are expected of. They should be thorough in their job.
8. *Communication* : Company Secretaries serve as a link between the Company, the Board of Directors and other stakeholders. Hence, communication is important to ensure that the gap is bridged between the Company and its stakeholders.

It is a great deal of responsibility that Company Secretaries carry on their shoulder. Thus, it is imperative that they as professionals grow constantly. As a professional, they form the DNA of the Company. There always exist a burden on these professionals to keep themselves updated and motivated to learn and also nurture their skills as they are among the most valued professionals in terms of importance and impact.

Conclusion

The role of Company Secretaries shall increase multiple folds owing to the compliance requirements getting stricter in the years to come. Hence, as professionals Company Secretaries shall have a diverse role to play than just being a saviour to the Companies. It shall be their responsibility to act as the guide to the Company and make sure they are compliant in every aspect.

It can be a challenging job for the professionals as there shall be a heavy burden on them to keep themselves updated with the latest changes in the acts and rules. However, keeping a proactive approach towards the same shall make the transition less burdensome.



Company Secretary as Insolvency Professional - The Rescue Expert

*Dr. Rajkumar Adukia**

Introduction

As long as there is life, there is hope. Economic progress of any country is dependent on innovation and entrepreneurship. It is an accepted fact that mistakes and failures accompany any business and the same holds true for Indian business organizations. A safe environment for entrepreneurs is imperative for giving them encouragement to thrive and in turn ensure the nation's progress. However, business organizations that failed and became insolvent were heavily penalized and would have to go through long drawn procedures which extended a number of years to pay back creditors, dissolve businesses and start afresh. The laws governing insolvency and bankruptcy in India were scattered, time consuming and complicated.

A good legal framework backed by efficient infrastructural mechanism is most essential to facilitate the extension of credit and enable economic development. The Insolvency and Bankruptcy Code, 2016 (IBC 2016) enacted on 28th May, 2016, emerged like a breath of fresh air as a well designed legal, institutional and regulatory framework that balances debtors and creditors rights in respect to insolvency/bankruptcy proceedings.

Just as the birth of a child automatically increases the responsibilities of the parents of the child, the birth of IBC 2016 too placed additional responsibility on the Company Secretary's shoulders. Being a vital link between the company and its Board of Directors on one hand and the creditors on the other, he/she interacts with the Government and Regulatory Authorities to emerge as "The Rescue Expert" in times of Insolvency. The profile of a Company Secretary has catapulted to a 'corporate savior' in the true sense of the term as he goes about his task of an Insolvency Professional with a high-level of technical skill and multi-disciplinary talent.

As on 31st December 2017, 1324 individuals had registered as Insolvency Professionals, whereby Delhi lead the lot with 309 professionals followed by Mumbai with 233, Kolkata – 102 and Chennai - 80.

Regulatory Mechanism of Insolvency Professional

The Insolvency Professional (IP) is a mainstay of the IBC 2016. He is regulated by the Code itself in Part IV, Chapter IV, sections 206, 207 and 208 whereby no person shall render his services as insolvency professional under this Code without being enrolled as a member of an insolvency professional agency and registered with the Insolvency and Bankruptcy Board of India (IBBI).

IBC 2016 established the Insolvency and Bankruptcy Board of India (IBBI), to oversee the insolvency proceedings in the country and regulate the entities registered under it. The Board shall be a body corporate

* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Code, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. The head office of the Board shall be at such place in the National Capital Region, as the Central Government may, by notification, specify. IBBI was established on October 1, 2016 by Notification S.O. 3110(E) in exercise of provisions under sub-section (1) and (3) of section 188 of IBC, 2016, with its head office at New Delhi.

The IBBI had vide Notification Dated 23.11.16 (applicable from 29.11.16) laid down the IBBI (Insolvency Professionals) Regulations, 2016. These are a set of 14 Regulations governing the procedure for registration as an IP. They also lay down the Code of Conduct for Insolvency Professionals.

The IP's are vested with widespread powers in the insolvency process. Vide Notification No. IBBI/2017-18/GN/REG027, dated 27th March, 2018 (w.e.f. 01-04-2018), to qualify as an IP, the individual must clear the Limited Insolvency Examination in the 12 months prior to the date of his application for enrolment with an IP Agency. The requirement of passing the National Insolvency Examination requirement has been removed. The applicant also has to pass a pre-registration educational course from an IP Agency after his enrolment as a professional member. There is a 10-year experience norm for a company secretary to be eligible for registration as insolvency professional.

Furthermore, Insolvency Professional Agencies (IPAs) act as nodal agencies between IBBI and Insolvency Professionals and registers them to perform functions under the Code.

Insolvency Professional Entities (IPEs) which are registered partnership firm or a company have the sole objective to provide support services to insolvency professionals, who are its partners or directors. The minimum net worth of the IPEs must be Rs. One crore while majority of the partnership capital or share capital in case of company must be contributed by partners or held by directors who are IPs.

Contractual relationship between the insolvency practitioner and the client is laid on paper by the letter of engagement setting down the scope of the assignment. Letter of engagement is mandatory on accepting appointment as IP as it forms the basis of a contractual relationship between the practitioner and the client. When advising, IPs are significantly held to account by the market for their services since there is scrutiny by well-informed, high capacity actors and professional standards. Therefore, it is important that the Letter of engagement of IP is worded well. A properly worded letter of engagement establishes the framework in which the client relationship is managed. It should set out the work that is to be performed and the basis on which the fees will be charged.

Performance of Various Roles by Insolvency Professional

The IP performs various roles under the IBC2016. He may function as Interim Resolution Professional, Resolution professional, Liquidator, Bankruptcy Trustee and Authorised Representative of Creditors/ workmen/ employees in meeting of Committee of Creditors (CoC). Apart from his various roles, he is also authorized to appear as Authorised legal Representative of Corporate Debtor/ Creditors/ workmen/ employees before National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Additionally he may advisor to other Insolvency Professionals and give legal advice to clients on the IBC 2016 and rules, regulations there under.

He performs a number of tasks in the insolvency resolution process like preparation of information memorandum, preparation of resolution plan, interaction with the Committee of Creditors, evaluation of Creditors' claims, realization of the assets of the debtor etc. Broadly his responsibilities include advising and establishing a strategy, looking after the interests of the creditors, acting impartially at all times and fulfilling the statutory obligations placed on him by virtue of his appointment.



To perform his role efficiently, the insolvency professional needs to ensure an excellent standard and extreme thorough knowledge of all acts, rules and regulations, circulars, guidelines, latest amendments etc. Thorough knowledge of all legislations is not enough, the IP must have the ability to interpret and apply the regulations at the correct time. During any insolvency resolution process, compliance with the provisions of all applicable laws is a must. The IBBI has vide its circular No. IP/002/2018 dated 3rd January 2018 directed that “while acting as an Interim Resolution Professional, a Resolution Professional, or a Liquidator for a corporate person under the Code, an insolvency professional shall exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person undergoing any process under the Code complies with the applicable laws.” Furthermore, the insolvency professional will be responsible for the non-compliance of the provisions of the applicable laws if it is on account of his conduct.

Practical experience and technical knowledge and experience in the type of industry and engagement is another important ingredient needed to perform the role of the insolvency professional efficiently. This alone will give him the analytical skills necessary to tackle practical problems and perform leadership role.

He should also have the ability to allocate adequate and appropriate resources to the insolvency engagement including the provision of sufficient trained and experienced staff.

The Fundamental Principles to become an Insolvency Professional

The Insolvency Professional attempts to avoid liquidation and secure rescue keeping in mind the needs of the creditors. He can only succeed in this endeavor and accomplish his task of preserving viable businesses if he keeps in mind the fundamental principles for success as a savior.

The IBC 2016 and lays down code of conduct which needs to be adhered to by insolvency professionals. But despite that, an insolvency professional needs certain inherent aspects of character by which alone he can do justice to his work. The Company Secretary has always been the ‘go to’ man in the company as he juggles assorted roles with élan. These fundamental principles are the traits he lives by as he steers the company through the torrid corporate waters, and thus is apt as the insolvency expert.

Firebrand

The IP needs to be passionate about what he is doing. Since he is the pivotal pillar of the insolvency, he needs to have strategic decision making capabilities and the courage to take unbiased decisions and stand by them. He should be able to implement policies, procedures and systems with confidence, so that the true spirit behind the IBC 2016 remains intact.

Integrity

The insolvency professional should be straightforward and honest throughout the insolvency process.

Non Biased

The insolvency professional should not be biased and indulge in nepotism or discriminate in any way against any party due to his personal reasons.

Independent

The insolvency professional should be independent when conducting the insolvency resolution process. He should not take up an assignment if he personally or through external parties is not independent of the parties to the insolvency resolution process.



Confidentiality

The information acquired by the insolvency professional during the course of the insolvency process is strictly confidential. It is of utmost importance that he does not disclose it or misuse it in any manner whatsoever.

Strong Mindedness

The insolvency professional may have to take immediate and tough decisions during the course of the insolvency process, therefore he should be courageous enough to take these decisions and stand by them.

Professional Competence and Conduct

Professional competence and skill will be tested at every step, hence quick judgment and business acumen is required by the insolvency professional as funds are limited and time is constrained.

The Framework of Conduct of the Insolvency Professional

The insolvency professional holds a pivotal position in the insolvency process and thus is expected to exhibit a high level of integrity and justice in his dealings. Thereby he is under obligation to abide at all times by the IBC 2016, rules, regulations, and guidelines there under and the bye-laws of the insolvency professional agency with which he is enrolled.

Under section 208(2) of the IBC 2016, every insolvency professional shall abide by the following code of conduct:—

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;
- (c) to allow the insolvency professional agency to inspect his records;
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and
- (e) to perform his functions in such manner and subject to such conditions as may be specified.

The First Schedule to the IBBI (Insolvency Professionals) Regulations, 2016, lays down the Code of Conduct for Insolvency Professionals which is divided into the broad areas:

Integrity and Objectivity

Independence and Impartiality

Professional Competence

Representation of correct facts and correcting misapprehensions

Timeliness

Information Management

Confidentiality

Occupation, Employability and Restrictions

Remuneration and costs

Gifts and Hospitality



The 29 stipulations as laid in the code of conduct under the abovementioned broad headings underline the basic fact that the insolvency professional has a fiduciary responsibility towards the creditors and thus he must display the highest levels of integrity, objectivity and impartiality in all aspects of insolvency resolution process.

Important additions to the code of conduct in the First Schedule to the IBBI (Insolvency Professionals) Regulations 2016 7 have been inserted by Notification No. IBBI/2017-18/GN/REG027, dated 27th March, 2018 (w.e.f. 01-04-2018). The IP has to now disclose both to the committee of creditors and to the insolvency professional agency of which he is a professional member, whether he was an employee of or has been in the panel of any financial creditor of the corporate debtor. The insolvency professional agency shall publish such disclosure on its website. The insolvency professional shall also have to disclose to the insolvency professional agency of which he is a professional member details regarding the fee payable to him, to the insolvency professional entity and to the professionals engaged by him. The insolvency professional agency shall publish such disclosure on its website.

The code of conduct lays down the framework within which the IP must conduct himself. One important thing which the IP must keep in mind is that the job he has undertaken is a big commitment and therefore he should be very judicious and cautious when accepting assignments so as to not make more promises than he can keep. Insolvency resolution is a time consuming and strategic decision making assignment which requires a lot of devotion of time and the IBC 2016 has laid down strict time bound completions. The IP should ensure that he does justice to each assignment and takes up only that much work that he can handle.

Challenging Situations and Ways to Surmount them by an Insolvency Professional

While performing his duties as an insolvency professional, there is tremendous amount of authority and responsibility on his shoulders. Therefore, it is but natural that he may feel threatened or fearful in some situations.

Self-interest is one such situation. If the insolvency professional has an indirect financial or other interest in the proceeding, it may inappropriately influence his judgment or behavior. The IBBI (Insolvency Professionals) Regulations, 2016 lay down 'independence and impartiality' aspects to be followed by the insolvency professional in the code of conduct in the First Schedule to the Regulations.

Even though an insolvency professional may not be related but he still may be quite familiar with some clients due to a long or close relationship with him. This association or familiarity may make him too sympathetic to their interests. Advocacy or promoting a client's position and in turn compromising his objectivity, is another situation where the insolvency professional can land himself into trouble. A professional must be ethical and objective in his decisions and only then he can command respect.

An insolvency professional may be intimidated or coerced by a party due to his pivotal position in the insolvency process. Attempts to exercise undue influence over him may deter him from acting objectively due to actual or perceived pressures. Additionally there may be fear of First Investigation Report (FIR) and Gherao against him. He should not buckle under pressure and make decisions under fear.

To safeguard himself from uncomfortable and/or threatening situations, he should take help of the safeguards created by the legislations and regulations. Also, effective, well publicized complaints systems operated by the employing organization, the insolvency profession agency or the Insolvency and Bankruptcy Board of India, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavior go a long way in assisting the insolvency professionals. There should be an explicitly stated duty to report breaches of ethical requirements.



Educational, training and experience requirements for entry into the profession and continuing professional development requirements are the chief reason that the professionals can handle threatening situations which may turn dangerous. Professional standards and regulatory monitoring and disciplinary procedures, external review by a legally empowered third party of the reports, returns, communications or information produced by an insolvency professional is also a step in the right direction.

One important safeguard available to insolvency professionals is to form a kitty, a network or a group of professionals will feel more secure and better equipped to handle their work. They can form associations by which they can assist each other to handle the insolvency process documentation and related work in time bound procedures. A strong bonded group of insolvency professionals act as a shield for each other in times of need.

Conclusion

A Company Secretary is a professional capable of handling multiple roles. From being one of the Key Managerial Personnel of the Company who carries a huge responsibility on his shoulders to inherently technical fields like Corporate Restructuring, Valuation and Insolvency which are prone to constant modification through new legislations, legislative decisions and corporate business dynamics – it is the forte of the Company Secretary to live up to India's Mantra of 'Reform, Perform & Transform'.

Company Secretary may play versatile roles: Compliance Officer, Secretarial Auditor, Insolvency Practitioner, Legal Representative before National Company Law Tribunal, Goods and Services Tax (GST) Practitioner and now even a 'registered valuer' under the Companies (Registered Valuers and Valuation) Rules, 2017 issued by the Corporate Affairs Ministry.

Contemporary legislations and the vibrant business environment has potent opportunities for us in various areas, namely - The Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the GST regime, Real Estate (Regulation and Development) Act, 2016, Trade Mark Rules, 2017, Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and many more.

Internationally too, the members are eligible to make their presence felt in United Kingdom, Singapore, Australia, Canada, Hong Kong, Malaysia, New Zealand and many more countries.

The present time is ripe for innovation, imagination and transformation. The Company Secretary which metamorphosed into Governance Professional must now undergo transition from Governance Professional to the VISIONARY LEADER.

So empower yourself and forge ahead to conquer your Everest!



Transforming Profession to New Opportunities Corporate Secretary (New Avatar)

*Dr. K. Dileep Kumar**

Preamble

It has been a long journey for a person like the author, as he was inducted in the profession of company secretary, as a student during 1943-44 and was awarded during 1945-46 the associate membership of the Institute of Incorporated Company Secretaries, London (now known as ICSA The Governance Institute, London). The basic academic training imparted in those days was simply the 'sound secretarial practice' the semblance of which is found in its rightful place as the modern mandatory 'secretarial standards' for the board and general body meetings and the directors annual report to the shareholders, as are framed by the Institute of Company Secretaries of India, and duly approved by the Ministry of Corporate Affairs, Government of India.

Most of the other Global Institutes teaching the same profession have adapted these standards with selective alterations to match their own country's corporate laws, for the purpose of implementation and practice.

A company, being a legal entity in the eyes of law, it is an artificial person, existing only in contemplation of the law. It has no intrinsic physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through human agency. The persons who are in charge of the management of the activities of a company are individually called directors; and collectively called board of directors.

Company Types

- Indian companies are governed by the Companies Act, 2013 which regulates the activities of companies to provide protection to the investors. The companies are of various types and are based on its membership which is divided into One Person Company (OPC), Private Company (Pvt. Ltd) and Public Company (Ltd).
- There are certain differences between Private Company and Public Company. A "private company" is a company which has a minimum paid-up capital of 1 lakh rupees and which is restricted to have the right to transfer of share". It has "Pvt.Ltd" at the end of its name. A "public company" is a company which is not a private company and has a minimum paid up capital of five lakh rupees and have the right to transfer of shares of a company". It has "Ltd" at the end of its name. There are other criteria which distinguish the company from each other, such as:

* *Company Secretary, Ashwini Infadevelopments Private Limited. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



Comparison

Private company	Public company.
<i>Minimum number of members</i>	
at least 2 members.	at least 7 members.
<i>Maximum number of members</i>	
restricted to 200.	no restriction
<i>Minimum Paid-up Capital</i>	
minimum paid up capital of 1 lakh rupees.	minimum paid up capital of 5 lakh rupees.
<i>Commencement of Business</i>	
immediately after getting the certificate of incorporation.	after receiving a certificate of incorporation and certificate to commencement.
<i>Number of Directors</i>	
at least 2 directors to head and supervise the affairs of the company.	at least 3 directors to manage and lead the affairs of the company.
<i>Issue of Prospectus</i>	
cannot issue a Prospectus as it is not allowed to invite the public for subscription of its shares.	can issue a Prospectus as it is free to invite public for subscription of its shares.
<i>Minimum Subscription</i>	
can allot shares without waiting for the completion of minimum subscription limit	cannot allot shares before the minimum subscription of shares is completed.
<i>Transferability of shares</i>	
its Articles of Association lays down restriction on transfer of the shares from one person to another.	its Articles of Association allows freedom to transfer the shares of its company from one person to another.
<i>Quorum</i>	
at least 2 members personally present to holding a meeting.	at least 5 members personally present to constitute the meeting.



<i>Statutory meeting</i>	
not required.	required to conduct a statutory meeting and file the Statutory Report with the Registrar of Companies.
<i>Managerial remuneration</i>	
no restrictions on payment of remuneration offered to the directors or managers.	restrictions on payment of remuneration offered to the directors or managers and the remuneration should not exceed 11% of the net profits.

Board of Directors

- They are collectively known as Board of Directors or the Board. The directors are the brain of a company. They occupy a pivotal position in the structure and management of the company. Directors take decisions collectively in their meetings known as Board Meetings or at the meetings of their Committees constituted for certain specific purposes.
- Though the directors, individually and collectively, have many responsibilities, the primary responsibility of a corporate board of directors is to protect the shareholders' contribution to the paid-up capital and ensure that they receive a decent return by way of dividend on their investment; the Board is expected to provide security to the employees of the company. The board of directors is the top-most governing authority within the management structure of a corporate body.

Elected Body

- The board is made up of individual men and women who are elected by the shareholders for multiple-year terms, in accordance with the company's Articles of Association. Public companies operate on a rotating system so that only a fraction of the directors are up for election each year mainly because it makes it difficult for a complete board changeover to take place in the event of a hostile takeover.
- In most cases, directors either (1) have a vested interest in the company, or (2) function in the upper management cader of the company as 'managing / executive directors', or (3) as 'independent director' as they are known for their business acumen.

Ownership

- The ownership structure of a corporation has an impact on the effectiveness of the board of directors to govern. In a company where a large, single shareholder exists, that entity or individual investor controls the operations of the corporation. In which case If the director has a problem, he / she can appeal to the controlling shareholder. The controlling shareholder may serve as the CEO and/or Chairman of the Board. In this case, a director is completely at the will of the owner and has no effective way to override his / her decisions.

Governance Mantra

- Corporate governance is the set of rules, regulations, practices and processes by which a company is directed, managed and controlled. It involves balancing of the interests of the company's stakeholders, management personnel, customers, suppliers, financiers, government and the community.



- The core of corporate governance is not only the conduct and behavior of individuals involved but It also involves internalized values that a company and its top-level management follows. The essence of a human being is consciousness and the world around us is the expression of our consciousness. Therefore, the creative and the beautiful as well as the corrupt and the degenerate are the outcome of the collective conscience. By and large, general public expect good ethics and effective corporate governance at the hands of the key managerial personnel of the company.
- In the modern era of globalization, corporate bodies play an important role. It is expected that the managers run their businesses successfully and take care of long term interests of the stakeholders of the company. to improve capital efficiency and provide a roadmap for the future of the entity, by taking mature ethical decisions.
- More than ever before, today's business environment faces multitude of new challenges, accelerated pressure on all the fronts, globalization, shorter product life cycles, cyber security/crime, over capacity, complexity of rules and stringent regulations by the government, currency volatility, and the risk of value erosion.
- These challenges will bring about unprecedented economic reorientation, in terms of its scale and scope, and would require highly innovative and compatible approach to the existing and futuristic technologies. Innovation is also likely to invite resistance from vested interests.
- Corporate management needs freedom to drive the company forward. The board of directors of the company is accountable to shareholders of the company and the management is accountable to the board of directors. The empowerment, combined with responsibility and accountability should provide an impetus to overall corporate performance, efficacy and effectiveness; thereby enhancing shareholder's value leading to excellence and reputation.
- Company secretaries all over the world have been impliedly bestowed with the task and responsibility for providing good corporate governance practices to be followed by the companies where they work or for their clients.

Transformation

- Based on individual acumen (knowledge, experience and expertise) all members of any given profession may not be on the same level of that glorified height or office. Some may still be a clerk and some other may be at the top echelon. This is because individual traits which depend on personal caliber, risk appetite, willingness to accept challenges and opportunities offered / available.
- By and large, the corporate world has begun to transform itself from profit-oriented organizations to growth-oriented corporations, from capitalist entrepreneurs to socially responsible citizens, from self-centered monarchy to well governed transparent organization. This is witnessed as an ongoing global transitory phenomenon.

Key Management Personnel (KMP)

Applicability

- Every listed company and every other public company having a paid up capital of Rupees 10 crore or more shall have whole-time KMPs. Public company includes a subsidiary private company A private company which is a subsidiary of a public company is considered as a public company and will fall within the ambit of the above requirement.
- This is a group of persons who are responsible for managing the operations of a company. The word



'personnel' indicates that it refers to a group of persons rather than one person. They are the decision-makers in a company and are accountable for the errors in the company's operations.

- The Board of Directors of a company are responsible for governing a company, but do not necessarily involve in the day-to-day management. They often meet periodically in Board Meetings to set the management goals. On the other hand, the KMP's are the ones who have the authority and responsibility for planning, directing and controlling the activities of running the company to achieve the set goals:
 - o Chief Executive Officer or the Managing Director or the Manager;
 - o Company Secretary;
 - o Whole-time director;
 - o Chief Financial Officer; and
 - o Other officer as may be prescribed.

Independent Directors

- An independent director is a non-executive director who does not have any pecuniary relationship with the company, its promoters, senior management or affiliate companies, he/she has not been an executive with the company in the three preceding financial years; and should not have been a partner or executive director of the auditors/lawyers/consultants of the company in preceding three years; or should not hold 2% or more of shares of the company.

Woman Director

- At least one woman director shall be appointed in every listed company within one year from the commencement of the Act.
- Every other public company having paid up share capital of rupees 100 crore or more or turnover of rupees 300 crore or more as on the last date of audited financial statements, shall appoint least one woman director within one year from the implementation of the Act.
- Listed public companies would have at least 1/3 of the total number of directors as independent directors (fraction to be rounded off to one).

Board Committees

Every listed entity shall compose the below mentioned committees:

1. Corporate Social Responsibility Committee
2. Audit Committee
3. Nomination and Remuneration Committee
4. Risk Management Committee, and
5. Stakeholders' Grievances Committee.

In addition, the Board may constitute any other Committee to tackle specific issue at hand.



Vigile Mechanism

- Every listed company and the company belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns and grievances-
 - (a) The Companies which accept deposits from the public.
 - (b) The Companies which have borrowed money from banks and public financial institutions in excess of 50 crore rupees.
- The companies which are required to constitute an Audit Committee shall oversee the vigil mechanism through the Audit Committee. The mechanism shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

Company Secretary

His/her role is briefly defined as under:

- To ensure compliance by forming all the above mentioned committees and proper combination of ordinary, executive and independent directors.
- He/she shall act as a secretary of the all the above mentioned committees.
- He/she is responsible for appointment of independent directors in such a way that the directors fulfill the criteria laid down in Companies Act, 2013, the plethora of Rules made there under and the Listing Regulations.
- The Government of India has assigned the responsibility of good corporate governance to the Company Secretaries.

Thus the company secretaries are not only compliance officers and key managerial personnel of the company but they are the corporate professionals governing the company's core area.

Role of a Company Secretary

As a critical element of any board of directors, the company secretary must overcome a number of challenges in order to effectively fulfill their role. Here are some of the challenges that a company secretary may have to face:

Nature of Business

- Thorough knowledge of the nature of business of the company is essential to be an effective company secretary, in order to be able to provide valuable guidance at a moment's notice, from anything relating from corporate governance to finance to operations. Access to and working with the management of the company is necessary to be able to succeed as an officer of the company.

Reporting Obligations

- While all good company secretaries will have a thorough knowledge of the company's reporting obligations under the Companies Act and the Rules made thereunder, as well as all other relevant applicable laws, rules and regulations. They must be aware of the company's specific reporting requirements to other regulatory or industrial bodies that companies must comply with a multitude of reporting requirements. The company secretary must familiarize themselves with all aspects of a company's obligations to mitigate risk and ensure smooth continuity of business.



Duties & Responsibilities

- Fundamentally to abide by the provisions of the Companies Act, 2013 read with the Rules & Regulations made there under (both amended from time to time) and to implement the prescribed Secretarial Standards read with the Guidance Notes issued by the Institute of Company Secretaries of India.
- Some of the main duties of a company secretary is to maintain the minutes of the general body meetings, those of the board of directors and the committee meetings, statutory registers and records, e-file documents, annual returns and to carry out the responsibilities enshrined under the Articles of Association within the framework of the Memorandum of Association. They also need to keep up-to-date and undergo continuous interaction with the relevant Ministry, Registrar, Stock Exchanges, Regulatory Authorities, Share Transfer and other service providing Agencies, as may be applicable.
- A company secretary may also have administrative duties, including communicating with the chairman, the directors, key managerial personnel, departmental heads and stakeholders / members of the company, as and when necessary and provide legal support to the board of directors.

Corporate Governance

- The importance of effective corporate governance continues to be a critical element in today's economic and business environment, as we continue to move forward and learn from the mistakes of the past as highlighted in the most recent global financial crisis. As a result, we are witnessing an increased focus on the role of the company secretary. Their role also involves being the communicator, the facilitator and the legal advisor to the board or to the companies' shareholders. This specialized role of the modern company secretary has emerged, and continues to emerge, as one of the key governance professionals within the organization.

Members of the Board

- The Board of Directors will have a multitude of personalities that sometimes do not get along with each other. Some directors are appointed to the Board as nominees of shareholders or members, and are there in part to protect certain interests. It is important for the secretary to be aware of these in order to identify any potential conflicts.
- Members of the Board are different and they have variegated expectations of the secretary. Some expect the secretary to make strong contributions during board meetings, and others expect a more passive, offline, coordinator role that does not impede Board discussion. Knowing the Board's expectations and considering your own duties as an officer of the company or as practicing company secretary is indeed critical.

Rapport

- This is a crucial element of being an effective company secretary, and has an important part to play in Board strategy, setting the tone for meetings, interactions with management, auditors, shareholders etc. Further, the Chair often needs guidance on how best to manage issues that arise at a Board level, whether conducting CEO performance reviews, Board performance assessments, or more sensitive issues such as directors' resignations. It is important that the Chairman and directors feel that they can call on the company secretary to not only provide sound and practical advice, but also to communicate such advice to the Board as a whole on their behalf.

Bridge the Gap

- The company secretary is expected to build a bridge between executive management and the Board.



Many company secretaries have an additional role in the company, such as Chief Finance Officer (CFO) or Vice President. Wherein one role they are accountable to the CEO, and in another role they are accountable to the Chair of the Board. The company secretary must exercise discretion in their dealings with both the Board and executive management to avoid conflicts of interest and ensure confidentiality where required.

Stakeholders / Shareholders

- A misalignment of goals between any of these stakeholders can present a significant challenge for the company as he/she is often the first point of contact for each of these stakeholder groups, so being a confident and effective communicator is important.

Board Meetings

- Generally follow the Secretarial Standards SS-1 for Board Meetings and SS-2 for General Body Meetings;
- Keeping agenda for board meetings itemized, clear, concise and cohesive through well prepared board information. As the collator and distributor of Board information, the company secretary has a vital role to play in the efficiency and effectiveness of conducting Board meetings. Directing the Board to important information, distributing Board packs giving plenty of time for review and a logical flowing agenda structure are essential. Communicating clear expectations with those providing these documents is also beneficial to avoid delays.

Minutes

- Follow the Secretarial Standards SS-1 & SS-2. Certain Chairman or Members of the Board want brief and concise minutes that cover major decisions, while others want a full account of all discussions during the proceedings of the meeting. Finding that balance early in the engagement can be a challenge for the secretary, while keeping in mind that minutes are effectively prima facie evidence should any matter go before a court.
- Either way, the company secretary also needs to ensure that the minutes accurately reflect the content of the meeting, both in terms of matters that were considered and discussed and decisions that were taken in respect of them by proposing, seconding, voting and passing resolutions in accordance with the Guidelines issued by the Institute.

Electronic Mode

Under the Companies Act, participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of storing the proceedings of such meetings along with date and time.

The complete procedure for conducting such meetings conferencing is prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Secretarial Standard SS-1.

Audio-visual electronic communication facility enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

The chairman / company secretary shall safeguard the integrity of the meeting by ensuring sufficient security and identification procedures, including:

- Ensuring availability of proper video conferencing or other audio visual equipment or facilities for



providing transmission of the communications for effective participation of the directors and other authorized participants at the Board meeting;

- Ensuring that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting;
- Recording proceedings and preparing the minutes of the meeting; storing for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company before the time of completion of audit of that particular financial year; ensuring that no person other than the concerned director attending has access to the proceedings of the meeting through video conferencing.

Conducting Meeting

1. At the commencement of the meeting, a Roll Call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:
 - a. Name;
 - b. The location from where he is participating;
 - c. That he has received the Notice-cum-Agenda and all the relevant material for the meeting; and
 - d. That no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b).
2. After the roll call, the Chairperson shall confirm that the required quorum is complete.
3. A director participating in a meeting through such means shall be counted for the purpose of quorum.
4. The chairman shall ensure that the required quorum is present throughout the meeting.
5. Every participant shall identify him/herself for the record before speaking on any item of business on the agenda.
6. If a statement of a director in the meeting through such visual means is interrupted or garbled, the chairman shall request for a repeat or reiteration by the participating director.
7. At the end of discussion on each agenda item, the chairman shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

Minutes

The minutes shall disclose the following:

- The particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- The location from where and the Agenda items in which he participated.

Proceedings

- The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.



- Every director who attended the meeting, through such conferencing shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- After completion of the meeting, the minutes shall be entered in the minute book.
- The minutes shall be signed by the chairman.
- The attendance register shall be deemed to have been signed by the directors participating through electronic mode, if their attendance is recorded by the chairman / the company secretary in the minutes of the meeting.

Preservation

- The recording of attendance of Meetings through electronic mode shall be preserved for a period of at least eight financial years and may be destroyed thereafter with the approval of the Board.
- Minutes of all Board Meetings shall be preserved permanently.
- Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

Other Conditions

- The scheduled venue of the meeting as stated in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
- The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- From the commencement of the meeting and until the conclusion of such meeting, no person other than the chairman, directors, company secretary and any other person(s) whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

Constraints

Matters which cannot be transacted through Electronic Mode are the approval of:

- the Annual Financial Statements;
- the Board's Annual Report;
- the Prospectus;
- the matter relating to Amalgamation, merger, demerger, acquisition and takeover.

Management Information

- Forthcoming information from management in a timely manner is essential for company secretaries to succeed in their role. The secretary must foster strong relationships with management and proactively obtain information to ensure expectations are met.



Code of Conduct

- The listing regulations specify that the board of directors shall draw up a “code of conduct” for all the members of the board and the senior management personnel of the listed entity.
- The regulations further stipulate that the code shall incorporate the duties of the independent directors as laid down in the Companies Act, 2013; and that the members of the board shall confirm compliance to the code in the first meeting of the board held in every financial year.
- The annual report of the company shall also contain a confirmation to this effect by the directors duly certified by the chief executive officer. Here the role of a company secretary is to ensure that he/she develops the code of conduct for the board of directors in consultation with the top management of the company.

Related Party

- A related-party transaction is a business deal or arrangement between two parties who are joined by a preexisting special relationship. The objective of IAS 24 is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties.
- Receivables to be collected from (obligations owed to) related parties, net amounts as at the balance sheet date where one party can exercise control or significant influence over another party; including affiliates, owners or officers and their immediate families, trusts, etc.
- The concept of an “arm's length transaction” assures that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party. It also assures third parties that there is no collusion between the buyer and seller.

The Future

- The company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the Company Secretary for guidance on what their responsibilities are under the rules and regulations to which they are subject and on how these responsibilities should be discharged. All directors should have access to the advice and services of the company secretary and should recognize that the chairman is entitled to strong support from him/her in ensuring the effective functioning of the board.
- Failure to understand and acknowledge the corporate law and regulations can end up in detrimental consequences, which could result in financial penalties and imprisonment punishment along-side with a negative impact on the company's reputation.
- Video call facilities may enable easier co-ordination within international companies, while reducing the time needed for business travel. Similarly, shared virtual workspaces and webex-type technology make remote collaboration easier. This will allow corporate secretaries to work more efficiently and flexibly, maximising the use of their working days.

Risk Management

- If risks are not calculated and are not managed properly, there will arise harmful consequences operational, financial and reputational, The technological knowledge and expertise of board members can vary from greatly experienced to limited knowledge. A corporate secretary can assist the board



by considering whether technology should be a regular item for board / committee discussions. Board members may require training to understand the risks associated with new technologies, such as data protection and cyber security.

- Personal data containing sensitive and confidential information will regularly be dealt with and recorded by the corporate secretary. Therefore it is essential to have a system in place to define the type of information and what extra measures, if any, should be taken in terms of security protection.

Harnessing Technology

- The corporate secretary has a role in assessing and determining whether the company's internal controls are adequate to protect such information. In the event of a data breach, it must be known which immediate action should be taken to best protect the privacy of the information and limit the amount of damage caused. The immediate steps taken in the event of a breach are often the most important and the corporate secretary is likely to have a key role in any breach management plan, including decisions as to whether any notification of the regulator or the individuals concerned is advisable.
- In a period of increasing ability of technology to understand unstructured data and take on more complex tasks, it is expected that corporate secretaries will keep abreast and utilise new technologies effectively. However there are physical barriers that corporate secretaries face when trying to harness technology. These include problems with securing budget, difficulties in integrating with existing systems, lack of digital skills within the organisation and difficulty in knowing what to invest in

Directors Identification Number (DIN)

- As per announcement by the Ministry of Corporate Affairs it would be conducting Annual Know Your Customer (KYC) details of all Directors of all companies, to update its registry, through a new e-Form DIR-3 KYC, which is to be notified/ deployed. Accordingly, every Director who has been allotted DIN upto 31 March, 2018 and whose DIN is in 'Approved' status has to mandatorily file the new form by 31 August 2018.
- While filing the form, the Unique Personal Mobile Number and Personal Email ID would have to be mandatorily indicated. The form should be filed by every Director using his own digital signature and should be duly certified by a practicing company secretary or a practicing chartered accountant or cost & management accountant.

Challenges

Given below are few examples of the challenges which corporate secretaries may face when incorporating new technologies into their organizations and roles.

New Systems

- The technological advancements (automated systems and online records) are expected to bring tangible results and measurable benefits to an organization by investing in specific technologies including that in the underlying training and cultural changes needed to make the most of these technologies. Corporate secretaries can have an important role in the field of promotion of the adaptation of new technologies and finding ways to optimise their use within their own organisations.

Budgetary Considerations

- Securing budget to invest in technology can be a challenge in any organisation, but can be a particular



issue for corporate secretaries as a support function rather than the customer facing side of an organisation. The expense is not limited to the purchase of new technology. Employees must be trained in using such technology and often existing systems will have to be integrated. All of which is costly affair and may be seen as unnecessary in uncertain economic climates. In order to push for budget to invest in such new technologies, in many cases a clear business case must be set demonstrating real savings in the long term through efficiencies.

Quality and Controls

- Emails require a more immediate response than letters used to do and the use of instant messaging applications has raised expectations of an even more immediate response. Companies are increasingly using instant messaging platforms and the group chat functionality to collaborate on projects. Decisions are made quickly, changes are implemented and those who do not keep up with the pace of the discussion can be left behind. This also creates a number of risks. In particular, corporate secretaries still need to ensure that proper governance and risk elimination occurs and that, while decisions are made quickly, time is still taken to consider appropriate angles and consequences.

Data Privacy

- There can be a perceived increased risk to the security of data that is stored electronically or on the cloud. Cyber security threats continue to increase and companies are having to evolve, consider and apply more technical solutions to reduce and contain the risks of any loss of personal data or commercially sensitive information.
- The role of the corporate secretary has to evolve with the increasing occurrence of data breaches and must take into consideration the adequacy of a company's internal controls and regulations when managing risk. Before adopting any new technologies or engaging external service providers who will host sensitive corporate information externally, corporate secretaries should take care to carry out due diligence on the proposed controls and ensure appropriate contractual arrangements are in place to require the data to be retained securely and safely.

Impact on Work-life

- There are mixed views on whether the impact of digital technology has improved work-life balance or has further encroached upon it. Corporate secretaries, like many other professionals, are able to work from almost anywhere with relative ease, regardless of where colleagues and/or clients are based provided that their organisations have adopted the necessary technologies to allow them to do this.

Synopsis

The potentiality of a qualified company secretary, whether in whole-time employment or in independent practice or in partnership with a person in the same profession or another profession like that of a chartered accountant or a cost accountant or management accountant or a lawyer cannot be under estimated.

Employment

- All companies seeking listing on Stock Exchange are required to appoint a whole-time Company Secretary;
- Eligibility for appointment to superior posts and services under Central Government;
- Organization whose affairs are conducted by boards, councils or other association, federation,



authority, commission or the like, finds it useful to appoint a person who holds the qualification of Company Secretaries in key administrative position.

Independent Practice

- Practicing company secretaries have been authorized to carry out secretarial audit; issue Certificate regarding compliance of conditions of Corporate Governance.
- Recognized to appear before various Tribunals such as Company Law Board, Securities Appellate Tribunal, Competition Commission, Telecom Dispute Settlement and Appellate Tribunal, Consumer Forums, Tax Tribunals etc.
- The Reserve Bank of India has recognized the Practicing Company Secretaries to undertake Diligence Report for Banks.
- Company Secretaries in Practice also render services in the following areas (in alphabetical order):
 - o Arbitration and Conciliation
 - o Capital Market and Investor Relations
 - o Corporate Advisory Services
 - o Corporate Restructuring
 - o Due Diligence Report
 - o Financial Management
 - o Foreign Collaborations and Joint Ventures
 - o Legal, Secretarial and Corporate Governance
 - o Project Planning.

Secretarial Audit

It is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as regards compliance by the company of applicable laws and the existence of proper and adequate systems and processes in the company. It postulates verification on a test basis of registers, records, books, papers and documents to check compliance with the provisions of various statutes, laws and rules & regulations by a Company Secretary in Practice to ensure compliance of legal and procedural requirements and processes.

Applicability

The Act, read with relevant Rules provides that:

1. Every listed company; or
2. Every public company having a paid-up share capital of fifty crore rupees or more; or
3. Every public company having a turnover of two hundred fifty crore rupees or more

shall annex with its Board's Report a secretarial audit report, given by a Company Secretary in practice, in such form as may be prescribed. Secretarial Audit is not applicable to private company unless it is a subsidiary of a public company.



Appointment

- Only a member of the Institute of Company Secretaries of India holding certificate of practice can conduct Secretarial Audit and furnish the Secretarial Audit Report to the company.
- The Secretarial Auditor is required to be appointed by the Board Resolution passed by the Board of Director of the Company in their Board Meeting.

Scope

Secretarial Auditor needs to examine and report the compliance of the following six specific laws:

- I. The Companies Act, 2013 (the Act) and the rules made there under;
- II. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made there under;
- III. The Depositories Act, 1996 and the Regulations and Bye-laws framed there under;
- IV. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings; and
- V. The eight items specified in Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act');
- VI. 'Other laws as may be applicable specifically to the company.

Opportunities

- The current statutory requirements in the corporate world has enhanced the demand for corporate secretary. There is a fabulous opportunity for professionals serving with corporate transparency and responsibility in managing their internal affairs. Since higher or top management of the organization is occupied in managing the general working of the organization, new and forthcoming challenges can only be tackled by qualified and competent professional; and Company Secretary is one of the leaders of the professionals best suited.
- With the increasing number of companies floated in India and their branches abroad, the scope of Company Secretary has increased enormously. Looking to the future of Company Secretary Profession, one can expect it to be one of the most reputed and prestigious profession in country with wide recognition and acceptability, the reason being compliance requirements; and this will be stricter and time-bound day by day demanding much more corporate governance and transparency for which this profession has been established.

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Professional Opportunities under New India Reforms

*Meenu Gupta **

“Transformation of India cannot happen without a transformation of Governance. Transformation of governance cannot happen without a transformation in mindset. Transformation of mindset cannot happen without transformative ideas.”
-Hon’ble Prime Minister, Shri Narendra Modi

Introduction

Hon’ble Prime Minister dreams of “New India” by the year 2022, i.e., the 75th year of independence, to make India the 5th largest economy by the end of 2018 and 3rd largest by 2032. Since independence India has recorded its presence as the most vibrant economy and is now 4th fastest growing economy in the world. “New India-New Vision 2022” means India will be fully transformed from the present environment to the new environment having cooperative federalism, good governance, corruption, and black money free economy, Make in India, Skill Development and Digital India (Digital Renovation) Programs, etc., along with seamless collaboration and coordination between the Centre and States towards ensuring national welfare and advancement which will drive Indian economy to become the third largest economy by 2032.

The recent times have seen the implementation of GST, demonetization, abolition of various ineffective laws, amendments to labour laws, implementation of Insolvency and Bankruptcy Code as the major economic changes witnessed in Indian Economy. These steps had helped India to improve its position in Ease of Doing Business to the 100th position (from the erstwhile 130th) in the World Bank Group Ranking. In the current year’s budget speech, Finance Minister sets a mission of improvement in the Ease of living of Indian people. The Government has focused on various reforms, including stability in goods and services tax, addressing issues related to Twin Balance Sheet, cleaning the balance sheet and reducing the stress of recovery of corporate and banks, supporting the banking sector by recapitalizing package, liberalization of FDI policy, improve export and agriculture, introducing National Healthcare Protection Scheme (NHPS), double the income of agriculturist, etc. All these measures will help India to transform to become a developed State from a developing State.

The vision of New India 2022 is to create Swatch Swastha, Shikshit, Sampann, Saksham, Surakshit Bharat by the year 2022. It aims to provide for a house for every family, health improvement, education for all, uninterrupted power supplies, raise standard of living and ease of living, a hassle free economic system, doubling of farmers’ income and India free from poverty, dirt, corruption, terrorism, casteism, communalism.

Apart from a primary focus on ease and standard of living, it also gives importance to improvement in the

* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



economic growth of the country. The Government has actively taken various measures and reforms, but owing to the worldwide slowdown, India has witnessed a Southern trend in the economic growth rate. With initiatives like Digital India, Make in India, Skill Development and other programs, are going to be the key reforms to make new India of our dream by 2022. To improve the growth rate of Indian economy, various initiatives have been taken by the government including a fillip to manufacturing, concrete measures for transport and power sectors as well as other urban and rural infrastructure, comprehensive reforms in Foreign Direct Investment policy and special package for textile industry, etc.

In the segment of poverty free India various initiatives like inclusive growth, rapid economic development, doubling farmer's income, etc. has been envisaged by policy makers. Swatch Bharat, Namami Gange, clean energy program has already witnessed significant progress to make clean India. Focus on minimum government and maximum governance through e-Governance, Direct transfer of subsidy benefits, enactment of Benami Act and GST Act, Demonetisation are few weapons which have been employed to make India a corruption free country. The policy makers alone cannot make New India our dreams. It requires substantial efforts from each and every citizen of the country to contribute in every possible way to make New India of our dreams.

Adopting the "New India" vision in the ICSI way, ICSI has thought of drawing 'Vision 2022' so that it becomes a global leader in corporate governance thereby paving the way for National Governance through its stakeholders.

Within the Indian corporate setup, ofcourse, corporate governance lies in the hands of Company Secretaries. Often regarded as the 'Corporate Governance Professionals', Company Secretaries have the glorious chance to encourage a positive culture of compliance so that corporate India can accelerate the New India growth story. They can be a catalyst in the making of a New India that is developed, prosperous, compliant and well governed.

Currently, as per available statistics, corporate sector is the biggest sector in any economy that drives the overall GDP and GVA for a country. Good corporate governance therefore plays a significant role in governance at the national level and weeding out corrupt practices. By virtue of burgeoning number of corporates, it will include a large number of people in its ambit. And at the core of its implementation should be the Company Secretaries. Bolstered by the new laws and the Companies Act, Company Secretary Profession has got a renewed impetus making them a Key Managerial Personnel playing a very strategic role in the management of the company.

Providing professional services to corporates has added a new dimension of professionalism to the field. Buoyed by the possibility of international competition, the services sector is also rising to the occasion to represent the needs and characteristics of an emergent India. These corporate services firms can bolster transparency in the regulatory system by virtue of their independence from their corporate client.

With the plethora of new emerging areas like Insolvency and Bankruptcy, National Company Law Tribunal, Goods and Services Tax (GST) the practicing professionals can take advantage and must establish themselves whether by way of small firms, mega firms and multi-disciplinary partnership firms to deliver world class services. Company Secretaries also need to take advantage of the new avenues that are being offered in the growing economy.

A New India promises to be a global superpower and our governments through the years have been cognizant of that change and adapting the domestic corporate structure to keep abreast with global change. But while the government can define, it cannot always enforce it effectively without the whole hearted support of professionals like Company Secretaries.



Implementation and adherence are more in the hands of professionals and ordinary citizens and as the key point of contact with all stakeholders, the onus also lies with Company Secretaries. New India can only be a global leader when its professionals take the lead in making it one and settling new standards of governance to drive the country forward.

Valuation: A New Dimension & Scope for Company Secretary

“Not everything that can be counted counts and not everything that counts can be counted”, as said by William Bruce Cameron. This statement is well suited in present complex and dynamic world as the value of a business can be very different than perhaps what gets revealed from its balance sheet. The book value of a business can be significantly different from its economic value.

Business Valuation is the process to determine economic value of a business entity or company and such a need generally arises when a business entity or company considers to sell all or a portion of its operations or to merge with or acquire another entity or company. The vast field of business valuation encompasses a wide array of variables that jointly and severally impact the value.

The fair value of a business needs to be determined for strategic, regulatory, financial reporting or tax purposes. Further, regulatory compliance also require companies to evaluate fair value of tangible and intangible assets on a regular basis.

India is in the process of transformation to Ind AS, which is in convergence with IFRS. Ind AS mandates use of fair value principles which are significantly different from financial information presented currently. Under Ind AS 38 for Valuation of intangible assets, assets are to be valued at cost initially and later recognized at revalued amounts. Valuation of assets is one of the foundation pillars of Corporate Insolvency Resolution Process under IBC. Basis of valuation under IBC is on ‘liquidation value’ which means notional value, which shall be arrived at considering a hypothetical scenario of liquidation of corporate debtor on the date of insolvency commencement. Transfer pricing valuation under Section 92C of the Income Tax Act, 1961 also has started to gain momentum with Transfer Pricing audit and detailed assessment of transfer pricing cases.

Valuation of business under IBC, Companies Act, 2013, Ind AS, Income Tax, etc. has given a completely new perspective to the way business valuation would be dealt in days to come, opening up numerous professional opportunities.

Increased investor scrutiny has led to a demand for greater transparency and enhanced governance over the valuation and reporting of illiquid investments. While investors are insisting today on a valuation framework that is free of conflicts of interests, investors and regulators demand accurate and reliable valuations of their investments. Company Secretaries with requisite experience and training can conduct a robust valuation and indirectly express an opinion as to financial fairness of the transactions.

Further, Section 247 of Companies Act, 2013 mandates that only a Registered Valuer can undertake valuation and issue valuation reports for complying with fair valuation requirements under the said Act. Certain other laws such as, Foreign Exchange Laws, Tax Laws also require the management to obtain independent fair valuation reports. As business valuation is a complex financial analysis, it should be undertaken by a qualified valuation professional with the appropriate credentials. In case the business owners undertake valuation themselves, there are chances of biased view. Apart from this, the important benefits received from a comprehensive third party independent valuation analysis, such as helping business owners to negotiate a strategic sale of their business, minimise the risk in a litigation matter as well as to provide defence in a scrutiny situation may not be available.



The professionals need certain skill sets to carry out independent valuation exercise which are:

- *Knowledge of accounts* : Accounting knowledge will help valuer in understanding the financial statements as well as impact of related party transactions and one-off transactions on company's performance.
- *Analytical Thinking* : Analytical thinking includes data analysis and financial analysis, as well as wider applications, such as generalised problem-solving.
- *Technological Expertise* : Technological expertise is required to use various different databases to extract industry and business related information required for valuations.
- *Written and Verbal Communication* : Communication skills are required for drafting valuation reports and communicating the results. They are also helpful to extract necessary information especially from a resisting source.
- *Professional Skepticism* : It means the valuer should make a critical assessment, with a questioning mind, of the information obtained.
- *Professional Judgement* : The valuer needs to consider materiality, risk, quantity and quality of information when planning and performing the valuation assignment.

Role of Company Secretary in Ethical Leadership

In the wake of globalization and increasing role of corporates in driving the economies, it has become imperative for professionals like Company Secretaries to acquire cutting-edge knowledge and skills that are not only in tune with the best practices, but also facilitate and promote good corporate governance. Herein, strong foundation in ethical values should be the basis for exemplary corporate governance. It is the duty of leader driving the organization to ensure use of proper and ethical means in his conduct. It is equally essential that the leader walks the talk and sets an example of good governance and ethical leadership.

Company Secretary is not only the conscience keeper of an enterprise but also has a larger social responsibility. No doubt, Company Secretaries are Key Managerial Personnel, but they also represent internal and external stakeholders and as such, play a pivotal role in ensuring compliances and implementing principles of good corporate governance.

An organization which is managed ethically will have higher standards of governance as ethical behavior automatically leads to good governance within the organization. Keeping in view, the number of frauds coming to the fore, governance has been at the eye of the storm.

Infact, business ethics and corporate governance of an organization go hand in hand. An organization that follows ethical practices in all its activities will, in all probability, follow best corporate governance practices as well.

If we take the case of PNB, how Nirav Modi's employees colluded with bank officials to create fake Letter of Undertaking (LoU) effecting the bank with Rs. 11,300 crore that benefitted fashion jeweler Nirav Modi and Gitanjali Gems.

Regulators penalizing corporates for concealing business information or providing misleading information to the stakeholders is a reactive approach to a situation and can only mitigate the damage done to shareholders. However, to avoid these scams, it is necessary to realize that a company having good corporate governance has a much higher level of confidence amongst the shareholders associated with that company. Active and independent directors contribute towards a positive outlook of the company in the financial market, positively influencing share prices.



Company Secretary acts as a pivotal contact for board members, offers appropriate knowledge and possesses highly valued judgement. Doing this effectively requires an ability to command dignity and respect from other team members negotiate individual discretion and align the team. Company Secretaries are ideally placed to align the interests of different parties around a boardroom table, facilitate dialogue, gather and disseminate relevant information and enable effective decision-making. They are often the only people to know first-hand how the decisions made have been reached.

Ethical leadership is all about exhibiting morals and values in a management position. An ethical leader demonstrates character, morals and integrity in work, focusing on the needs and rights of their employees.

Certain duties and responsibilities of Company Secretaries under the Companies Act, 2013 to ensure ethics and good governance are enumerated here:

1. Section 92 of Companies Act, 2013 read with Rule 11 of the Companies (Management and Administration) Rules, 2014 requires that every listed company and companies having paid-up share capital of Rs.10 crore or more and companies having a turnover of Rs.50 crore or more to get their annual returns certified by a Company Secretary in Practice (PCS).
2. As per Section 177 and Section 178 of the Companies Act, 2013 read with Rule 6 of the Companies (Meeting of Board and its Powers) Rules, 2014, every listed company and every company having paid-up share capital of Rs.10 crore or turnover of Rs.100 crore or more or where the outstanding loans, debentures, deposits exceed Rs.50 crore, are required to mandatorily constitute an Audit Committee and Nomination and Remuneration Committee.
3. Every listed company and every company which accepts deposits from public or whose borrowings from banks and financial institutions exceed Rs.50 crore, is required to establish a vigil mechanism for Directors and employees to report their genuine concerns about unethical behavior/misconduct/actual or suspected frauds/violation of code of conduct, as per Section 177 of the Companies Act, 2013 read with Rule 7 of the Companies (Meeting of Board and its Powers) Rules 2014.
4. A Whole time Company Secretary has to be appointed by a company having paid-up share capital of Rs.5 crore or more and a whole time key managerial personnel by every listed company and public companies with paid-up share capital of Rs.10 crore or more, as per Section 203 of the Companies Act, 2013 read with Rules 8 and 8A of the Companies (Appointment and Remuneration) Rules, 2014.
5. Section 204 of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 mandates secretarial audit of all listed companies and public companies with a paid-up share capital of Rs.50 crores or more or with turnover of Rs.250 crores or more, and all Unlisted Material Subsidiaries of listed companies, by a qualified Company Secretary in Practice (PCS) and such secretarial audit report is to be annexed with the Board of Directors' Report to the shareholders and it has to comply with the format prescribed in Form MR-3, ensuring compliances with the provisions of the Companies Act, the Securities Contracts (Regulation) Act, the Depositories Act, the Foreign Exchange Management Act, the SEBI Act, the Secretarial Standards and the listing regulations and also to report compliances of "other laws" as may be applicable to the company concerned.

Secretarial Audit ensures objective evaluation by an independent qualified professional and helps in accomplishing the objectives of the company concerned by evaluating and improving the risk management, control and governance processes, keeping in view the compliances mandated for the companies.

He is, however, expected to have certain skills including laws relating to the operations and objectives of



the company; keep proper records of documents and checklists filed through the course of audit; the audit process to be completely timely so as to gain the confidence of client and raise the expertise level of team; he/she should provide an independent and fair view of the company audited while also certifying whether the objectives of the company are carried out in accordance with applicable laws.

The Companies Act, 2013 has also empowered secretarial auditor and has given him all rights and powers as given to statutory auditor. As per section 204 of Companies Act, 2013, the secretarial auditor company shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.

Section 448 of the Companies Act, 2013 provides that if any return, report, certificate, financial statement, prospectus, statement or other document required by or for the purposes of any of the provisions of the Act or the Rules made thereunder, any person who makes a statement which is false in material particulars, knowing it to be false; or which omits any material fact, knowing it to be material, such person shall be liable for punishment under section 447 which deals with “Punishment for Fraud”.

Challenging Role of CS in Insolvency and Bankruptcy Code (IBC)

The objective of Insolvency and Bankruptcy Code is to promote ease of doing business and amending the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and is applicable to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rupees One (1) Lakh. However, the Central Government may specify minimum amount of default of higher value which shall not be more than Rupees One Crore by notification.

The bankruptcy of corporate debtors may be due to genuine business losses suffered by it, arising out of adverse economic condition beyond their control. It may also be due to the misappropriation or fraud played by the corporate, siphoning the public or bank’s money. In case of siphoning of the funds, the act of corporate debtors to exploit the Insolvency process and getting the write-off of the liabilities or bidding for the stressed assets will mean getting advantage out of its own misdeed. The Adjudicating Authority may require conducting of forensic audit of the corporate debtor to rule out the possibility of any fraud committed by promoters in corporate debtor particularly when corporate debtor approaches for insolvency proceedings or bid for the stressed assets in liquidation proceedings. In situation of fraud/siphoning, the promoters may be charged and misappropriated funds be recovered from them.

The code casts a duty on Insolvency Professional (IP) to report the preferential, undervalued, overvalued, defrauding and extortionate transactions executed by the promoters to unjustly benefit themselves, their relatives or other persons and such transactions are to be reported to the Adjudicating Authority. The Adjudicating Authority has the power to reverse the transactions or direct the beneficiary to refund undue benefit obtained by him. However, identifying such transactions and collecting the admissible evidence is a tedious & complicated task which not only requires specialized knowledge but also technical skill. Hence the IPs have to depend on forensic auditors. Given the limited time of 180 days under IBC, IP has to be alert and should be able to identify such transactions. He can then apply to the Adjudicating Authority, if he feels that a forensic audit of corporate debtor is required.

A Practicing Company Secretary is eligible to act as an insolvency professional under the Code.

Role of Interim Resolution Professional

The Adjudicating Authority appoints an Interim Resolution Professional (IRP) as proposed by a financial creditor or the corporate applicant, within 14 days from the insolvency commencement date. If no IRP is



proposed in the application by an operational creditor the Adjudicating Authority makes a reference to the Board and the Board recommends an IRP within 10 days of receipt of such reference from Adjudicating Authority. The IRP holds office upto 30 days from the date of his appointment.

The functions of IRP include:


- Immediately on the appointment of IRP, the management of affairs of corporate debtor vest in him;
- The powers of board of directors of the corporate debtor are suspended and exercised by IRP;
- IRP manages the operations of corporate debtor as a going concern;
- He takes control of assets of the corporate debtor;
- Within 3 days of his appointment, he makes a public announcement, inviting all the potential creditors to file claims against the debtors for their dues;
- Within seven days of his appointment, the IRP appoints two registered valuers to determine liquidation value of corporate debtor;
- IRP constitutes the Committee of Creditors on the basis of claims received against corporate debtor;
- IRP files a report on the constitution of Committee of Creditors with the Adjudicating Authority on or before the expiry of thirty days from the date of his appointment and convenes the first meeting of Committee of Creditors within seven days of such filing.

Functions of Resolution Professional

The Committee of Creditors in its first meeting either to appoint IRP as Resolution Professional or to replace IRP by another insolvency professional as Resolution Professional.

His functions are as follows:

- Resolution Professional conducts the entire resolution process and manages the operations of corporate debtor during the Corporate insolvency resolution process;
- He convenes the meeting of Committee of Creditors. He presides over the meetings and the Committee of Creditors decides the matters by a vote of 75% of voting shares;
- He prepares an Information Memorandum and submits to each member of the Committee and potential resolution applicants;
- He may, based on the complexity and scale of operations of corporate debtor, specify the eligibility criteria for potential resolution applicant with the approval of Committee;
- He invites resolution plans from prospective eligible resolution applicants;
- He examines each plan to confirm that it provides for and/or meets the following requirements-
 - a. It has identified sources of funds to pay the insolvency resolution process costs. This payment will be paid in priority to any other creditor;
 - b. It provides for at least liquidation value due to the operational creditors in priority to any financial creditor. This payment is to be made before the expiry of 30 days from the date of approval of resolution plan by the Adjudicating Authority;

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- c. It provides for at least the liquidation value due to dissenting financial creditors. This payment is to be made before any recoveries are made by financial creditors who voted in favor of resolution plan;
 - d. It provides for-
 - i. the term of the plan and its implementation schedule;
 - ii. the management and control of the business of corporate debtor during the implementation period; and
 - iii. adequate means for supervision of the plan;
 - It does not contravene any of the provisions of law for the time being in force;
 - It includes a statement as to show it has dealt with the interests of all stakeholders including financial and operational creditors of the corporate debtor.
 - He presents the resolution plans that conform to the criteria specified in the Code and prescribed by Committee of Creditors;
 - He submits the resolution plan as approved by Committee of Creditors to the Adjudicating Authority for its approval.

Challenges to Insolvency Professional

- On admission of the petition, an IRP is appointed and is required to step in to take complete control over the management of corporate debtor and take control and custody of its assets, receive, collate verify the creditor claims, constitute the Committee of Creditors and comply with such other tasks.
- Though the process defined aims for a smooth functioning, there are many challenges that IRP faces while working towards the resolution process. In most of the cases, IRP works alongside a company which has been through several ordeals of revival procedures under different laws, and has exhausted its resources hence the formulation of a resolution plan might in certain cases take more time than expected.
- The IRPs and RPs are also beleaguered as they require working capital in order to run the business of such debtor as a going concern. They have to struggle to raise resources to tackle the day to day requirements of corporate debtor.
- As a matter of stark reality, there have also been instances where IRPs failed to muster up the resources even for a basic thing as convening the first meeting of Committee of Creditors. Once the Committee of Creditors is formed, any major decision of IRP or IP regarding the finances of corporate debtor is subject to the discretion of Committee of Creditors.
- In some of the cases, there were issues where illegible or ill-advised persons submitted applications as Resolution Applicants (RA). Thus, the Code was further amended to address this issue and armed the IP or IRP to do a background verification of RA and that the Ordinance was another step in this direction. The recent Ordinance has further enhanced the eligibility requirements as to who can act as RA.
- RPs, who may not be well versed with running a business, are also required to understand the specific business of corporate debtors, its reasons for financial troubles and accordingly the need to



arrive at a settlement with the creditors qua their debts. The ordinance read with recent amendments to the Code, requires IP or RP to verify the credibility of resolution applicant, thereby adding another item to its already bulging compliance list.

- The fees and expenses of the insolvency professional work is to ultimately be paid out of the insolvent debtor's estate. The costs of an insolvency professional get priority in the liquidation process. Any corporate resolution plan that is agreed between creditors and debtor must necessarily make provision for the payment of insolvency professional. The costs of a resolution professional need to be approved by the creditors' committee.

These provisions are similar to those in other parts of the world, including the UK and US, where the costs of insolvency process are paid out in priority to most other costs, and rightly ensure that insolvency professionals do not face the risk of non-payment for a service they are providing. However, the Code does not specify how the costs of insolvency professional are to be borne in early stages of a proceeding. The regulations on corporate insolvency resolution process state that the costs of resolution professional will be decided and initially borne by the creditor or debtor who initiates corporate insolvency resolution process. If these costs are later ratified by creditors' committee, the creditor or debtor who filed the application will be reimbursed.

While market practice around the fees of insolvency professionals is yet to develop, most insolvency professionals tend to charge a significant chunk of their fees upfront, first when they consent to act as a resolution professional, and second when the application is admitted. This means that any creditor who files an application under the Code faces the prospect of having to fund the costs of a resolution professional upfront with the risk that the creditors' committee may or may not ratify these costs as a later stage. The time period between filing an insolvency application and the first meeting of creditors' committee could, even with the stringent timelines under the Code, be a few months. While this may not be a daunting prospect for financial creditors with deep pockets, it would be for an employee or a small trade creditor. Such creditors also have the added disadvantage that they would not be part of committee of creditors that decides whether or not to ratify the insolvency professional's fees.

- The insolvency professionals are concerned about two likely risks. First, they may not complete the job within the stipulated 180/270 days. Second, disgruntled bidders and ousted promoters in insolvent companies would drag them to court even after a resolution is reached.

Therefore to protect the interests of insolvency professionals insurance is highly required. "Insurance for insolvency professionals and their teams is a rather new concept in India. Based on recent developments of corporate insolvency resolution process timelines extending beyond 270 days, insurance policies also need to provide cover during this longer tenure.

Conclusion

With the advent of Insolvency and Bankruptcy regime, the rollout of Goods and Services Tax (GST), Make in India and ease of doing business initiatives, Company Secretaries appear as the apt professionals to ensure the qualified and proficient application of each and every provision of the reform. They will now have more opportunities to demonstrate their skills and are expected to be multi-taskers in such an era of economic reforms. With new laws in place, a Company Secretary is expected to rise up the challenge and expand his horizon 'beyond the boardroom'. His role is now being perceived as an accelerator to the growth of the company.



CS Transforming Profession to New Opportunities

*G. Anand Babu**

Introduction

It would be interesting to start the topic with a quote, which has impressed me in gaining the perception developed for a Secretarial professional across professional spheres

"If you only do what you do, you will be no more than what you are now"

The above somehow seems to fit the reality that a Company Secretary is predominantly perceived as a 'Compliance Officer' by Companies, whose primary responsibility lies in ensuring compliance with Companies Act, SEBI Regulations and the rules and regulations made thereunder. Perhaps with the spate of amendments being introduced across legislations, it is not incorrect to think on the above lines either.

But is that it? Is this all about being a Company Secretary? I am still puzzled by the fact that in majority of the Companies', Company Secretaries still continue to report to the Chief Financial Officer (CFO) despite being a Key Managerial Personnel himself / herself.

But there is a definitive rationale behind it. A CFO brings to the table a more practical aspect of business and that is expressed in quantifiable terms. Whereas a Company Secretary brings to the table aspects which are regulatory and does not have a monetary benefit but only highlights pitfalls.

In this context, it is important for us to understand that business revolves around money and if something cannot be expressed in monetary terms the same is considered second in priority. Does that mean compliance is not mandatory? Here again the perception is very critical. None of the companies do indicate that compliance is not mandatory. Furthermore, it is always expressed that cost of non-compliance is more than the cost of compliance. But do we have a platform to express the above in monetary terms? In my personal opinion, it is difficult to impress on the promoters of majority of the companies'.

In my experience, companies have always believed that so far companies are in compliance with regulatory requirements there is no concern for the cost associated with non-compliance. Hence, a Company Secretary is always perceived as a cost to the Company. Similar is the aspect pertaining to a Finance Department or CFO, however, they outscore the CS profession since they address to the management their inner most need of making profits.

* ACS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



So, where does this stand a Company Secretary? This is where I would like to reproduce the quote stated before:

“If you only do what you do, you will be no more than what you are now”

Hence, this lays the platform for the article given below as with twelve years of experience across Secretarial, Finance, Treasury, Legal and RBI compliances under FEMA I have come to learn that there is lot more a Company Secretary as a professional can contribute than a mere regulatory watchdog.

Where does it start?

I would start with the general perception of company secretaries. The main purpose of company secretaries is to ensure that the company complies with all legal codes, performing duties often attributed to legal advisors. The job entails a wide variety of duties that may vary depending on who a company secretary ends up working for.

Most Company secretaries work for individual corporations. Their main purpose is to specialize in that particular company's departments and make sure they are working in accordance with the laws of the land.

Their work generally involves organizing large amounts of data collected from various departments of the company. They must take responsibility for overseeing various aspects of the daily operations of a company, including safety of employees, corporate social responsibility programs, accounting and tax related matters and much more.

The job is rather holistic in nature, and so most company secretaries are not limited to a particular department. Rather, they look at each aspect of the company they are working with or working for, depending on their contract.

It would be impractical to consider that a fresh Company Secretary can get hold of various disciplines right from day one. Hence, the first step is always to emanate from within. I would like to cite a quote here by Mahatma Gandhi:

“Be the change that you wish to see in the world”

There is a specific reason to have brought the above quote in the context prescribed.

It is important for a person pursuing Company Secretary course to have a broader perspective of the shoes he or she can fit in. Let us start believing that it is possible to ensure compliance vis-a-vis assisting in managing business. It is highly pertinent to learn the nuances of business within the regulatory framework as the laws have evolved only out of customary practices. Thus, compliances in letter and spirit are within the norms of principles of prudence.

As a result of the above, it is important for students pursuing Secretarial profession to first understand the domains in which they can contribute. To highlight the significance, a pure Secretarial qualified person can be in employment as well as can practice. Whether with CS qualification or in combination with a Finance profile, a Secretarial person can scale up the ladder in a bigger organisation and be responsible for compliance as well as finance domain.

This has various portfolios in its command viz.:

- (1) Secretarial and financial accounts
- (2) Secretarial and cost accounts



- (3) Secretarial and Treasury management
- (4) Secretarial and Taxation
- (5) Secretarial and all the above finance functions – typically the role of a CFO

In this article, attempt is not being made for the domains which are comparatively well known for people pursuing the career as CS but on areas where presence of CS as CS is not being predominantly felt.

(1) Secretarial and Financial Accounts

In this article, I am not going to delve too much into secretarial since we all know what a Secretarially qualified person is capable of doing. However, I am going to attempt to tie the relationship between two profiles which can be handled together.

The activities expected from a finance department cover a wide range from basic bookkeeping to providing information to assisting managers in making strategic decisions. What to expect from your finance department will depend largely on factors such as how much involvement the owner/manager has in the organization.

At the base level, bookkeeper will be responsible for all the day-to-day transactional accounting for the business. This will include the tracking of all transactions and the management of any government reporting.

The finance department should be called upon to provide information to assist managers in making key strategic decisions, such as which markets or projects to pursue or the payback periods for large capital purchases. The finance department can often contribute an objective perspective based on special financial assessment techniques.

As a financial accounts person, the incumbent would be essentially responsible for finalisation of the accounts together with the auditors. The most interesting aspect of handling this profile would be the entire business information would be within the purview of the Company Secretary. Although, this may not involve too much of commercial decision making but this gives an insight on how to handle business.

A combination of the above always helps in building up and maintaining a system of compliances, which would hold the Companies in good stead.

(2) Secretarial and Cost Accounts

Now, understanding the cost aspect is critical as it would allow one to appreciate the value of every money spent. Cost accounts, although more useful in a manufacturing set up, helps an incumbent to understand the processes involved in running a business. This gives a broader perspective of 'how to run a business' amidst various complex regulatory regime.

(3) Secretarial and Treasury Management

Incidentally, I have found this to be one of the wonderful combinations. Perhaps, it is because of the experiences I have garnered as this has provided an interface between Secretarial, Finance, Treasury and RBI compliances together with overseas subsidiaries.

On a layman perspective, the word treasury always rings the bells with forex management. But



reality has lots more to offer as it involves managing working capital of the Company as well. Further, the interface with the accounts always gives a perspective as to how the numbers reflect. And finally, the circle is complete with Secretarial and RBI compliances wherein a specialised Company Secretary would be in great demand.

It is with this, now I will try to provide a glimpse of the role a Company Secretary can perform as treasurers.

Treasurers serve as financial risk managers that seek to protect a company's value from the financial risks it faces from its business activities. Because these risks can arise from many sources, the role requires an understanding of many areas of business and the ability to communicate with a variety of financial professionals.

Once an offshoot of the accounting department, corporate treasury management has evolved into its own company department and professional body.

Managing Risk

Treasurers manage several key risks related to changes in interest rates, credit, currency, commodities and operations. Companies face some or all of these risks to varying degrees.

The most common include:

Liquidity Risk

Perhaps the most important risk a treasurer must manage is liquidity risk: the company running out of cash either from insufficient revenue, excessive expenditure, or the inability to access funds from banks and other external sources. The inability to meet payment obligations as they are due can mark the end of a company if its creditors sell off its assets to pay corporate debts.

The CS may be able to mitigate the above risks by ensuring that sufficient credit lines are available for the company to manage its working capital keeping in mind the overall borrowing powers of the Company. The CS may if so required also ensure that necessary approvals from shareholders and other stakeholders are in place so that should the company need any immediate funding arrangement the same could be organised for without much delay.

Credit Risk

Surplus cash can be invested to earn interest, and the treasurer must be sure that those issuing or insuring securities are financially sound and credit-worthy. One way to do this is by checking an issuer's credit rating, which provides an independent assessment of the likelihood that a third -party will pay on time and in full as expected. The treasurer must also be confident that counterparties to financial instruments used to manage risks (such as interest rate swaps) will perform as expected.

Currency Risks

In addition to credit risk, exporting companies face currency transaction risk when they translate proceeds from foreign sales into their home currencies. Multinational companies also face translation risk in financial reporting when the values of their foreign subsidiaries' assets and liabilities fluctuate upon conversion to a single home currency. Investors and analysts may view currency moves that cause a drop in the value of consolidated foreign assets and in profits as a problem, potentially causing the company share price to fall.



Another type of currency risk, which treasurers may find more difficult to manage, occurs when a competing company from another country experiences a more favorable currency translation. For example, the sales of two exporters from different countries, both selling goods to a Japanese importer, will depend in part on how their respective currencies move against the Japanese yen. Tactical moves to remain competitive, such as relocation of manufacturing plants to match the competitor's currency cost base, can have major ramifications. Senior management, with input from the treasurer, would only implement such a move after extensive discussion.

A CS would be able to advise on the various ways of mitigating currency risks like booking of forward contracts, option contracts and such other derivatives as the company may be eligible in terms of the regulatory framework in place.

This could be further supported by advising the management on the kind of loan products and other products that could be utilised to mitigate the risks associated with the currency. A possible strategy would be to advise the company to maintain a natural hedge whereby its export earnings could be higher than its imports in addition to using combination of the above products.

Interest Rate Risk

Most companies need to borrow to finance operations, such as buying raw materials, machinery or premises. Borrowing at variable interest rates allows companies to pay less if market interest rates fall, but raises their costs if rates go up. If a company does not pay interest because of insufficient cash, it may run into a liquidity crisis that could undermine its ability to borrow in future, or to raise it only at higher interest rates that reflect its heightened credit risk to lenders.

A CS would be able to understand the movement in macroeconomic fundamentals given the close study of various sectors and suggest suitable measures. For instance, in the event of falling interest rates in US, companies may go for foreign currency borrowings priced in relation to US\$ LIBOR as against INR. Besides, a fully hedged FCY loan may outweigh the loan in INR given its price competitiveness.

Similarly, wherein a company is engaged in exports business, the CS would be equipped to recommend to go for an export packing credit with interest equalisation benefit which would not only help the company in reducing interest rate risks but also reduced the risks associated with exchange rate fluctuations.

Operational Risk

The financial risks discussed above are external risks. Operational risk is an internal treasury risk that reflects inadequate operational controls that could lead to a loss of company value. An example of inadequate controls might be if a treasury dealer borrows money under a company loan agreement, apparently for a business purpose, but transfers the proceeds to his or her own bank account because the treasurer is able to undertake both dealing and funds transfer activities. In a well-controlled treasury, such functions would be segregated and attempts to undertake both by the same individual would be immediately detected.

Risk Policies

A treasurer will formulate a set of board-approved policies that define the methods allowed to manage the above risks and the discretionary powers of the treasurer and other authorized personnel. These policies will vary from company to company. Not all companies, for example, allow treasurers to use derivatives or to leave risks unprotected, or they may only allow such practices within defined limits and terms.



The treasury department's actions and its compliance with treasury policies must be assessed independently and regularly by the internal audit department and by a treasury committee comprised of senior management, including the treasurer. This committee, or an asset and liability committee (ALCO), will also regularly review and discuss financial risks across the company's assets and liabilities, and agree on appropriate actions to manage or transfer them. ALCOs will usually delegate the task of executing agreed-upon actions to the treasurer and his or her team.

When there is no single obvious solution to managing a financial risk, a treasurer must be able to weigh the pros and cons of a course of action. Decisions may involve consulting relevant internal and external specialists and undertaking data analysis and possibly scenario analysis in order to recommend a course of action.

Compliance Aspect

The knowledge of a Company Secretary here comes to play an important role and the reason why a CS is equipped to handle the work more effectively. A CS besides his / her knowledge on the laws affecting the companies' directly also understands the nuances of FEMA regulations. CS can do a harmonised interpretation of various statutes and ensure a wholesome compliance mechanism that can take care of compliances of the Companies. With the growth of new systems like Export Data Processing Management System (EDPMS), Import Data Processing Management System (IDPMS) vis-à-vis the digitization initiatives by RBI like reporting of foreign investments through Single Master Form (SMF), role of CS is all the more relevant.

Incidentally, this also helps the CS in meeting the requirements of Secretarial Audit Report since the CS is able to appreciate the linkage between the FEMA Regulations, Companies Act requirements and the Secretarial Audit Report. The essence of the same being that it helps the companies create an environment involving processes where compliances are not seen as another activity but are built into the system with evolving processes.

This is considered important given that Compliances forms the very premise of the CS's role. It is against these backgrounds, it is important for a CS to appreciate the big picture wherein although the basic foundation is laid on the compliances but a CS should be able to connect the dots to deliver better and keep the companies in good stead.

In the backdrop of connecting the dots, it reminds me of the story of Steve Jobs as narrated by him in his speech delivered to students.

"You can't connect the dots looking forward; you can only connect them looking backwards. So you have to trust that the dots will somehow connect in your future. You have to trust in something — your gut, destiny, life, karma, whatever. This approach has never let me down, and it has made all the difference in my life."

I dropped out of Reed College after the first 6 months... Because I had dropped out and didn't have to take the normal classes, I decided to take a calligraphy class... Ten years later, when we were designing the first Macintosh computer, it all came back to me. And we designed it all into the Mac. And since Windows just copied the Mac... If I had never dropped out, I would have never dropped in on this calligraphy class, and personal computers might not have the wonderful typography that they do... You can't connect the dots looking forward; you can only connect them looking backwards. So you have to trust that the dots will somehow connect in your future. You have to trust in something — your gut, destiny, life, karma, whatever.

My second story is about love and loss. I got fired [from Apple]. During the next five years, I started a company



named NeXT, another company named Pixar, and fell in love with an amazing woman who would become my wife. Pixar went on to create the world's first computer-animated feature film, Toy Story, and is now the most successful animation studio in the world. Apple bought NeXT, I returned to Apple, and the technology we developed at NeXT is at the heart of Apple's current renaissance. And Laurene and I have a wonderful family together. I'm pretty sure none of this would have happened if I hadn't been fired from Apple. It was awful tasting medicine, but I guess the patient needed it. You've got to find what you love. So keep looking until you find it. Don't settle.

My third story is about death. I was diagnosed with cancer. The doctors told me this was almost certainly a type that is incurable. [Later] I had surgery and I'm fine now. No one wants to die. And yet death is the destination we all share. It is Life's change agent. It clears out the old to make way for the new. Right now the new is you, but someday you will gradually become the old and be cleared away. Your time is limited, so don't waste it living someone else's life. When I was young, there was an amazing publication called The Whole Earth Catalog. On the back cover of their final issue were the words: "Stay Hungry. Stay Foolish". And I have always wished that for myself. And now, as you graduate to begin anew, I wish that for you. Stay Hungry. Stay Foolish."

The essence that is being attempted to drive here is that albeit one may consider handling different profiles but since everything falls within the realms of compliance, the role of a qualified company secretary typically fits in the scheme of things. One may be able to appreciate if that person can begin to relate things learnt out of the experiences. End of the life, it is all about connecting various dots a person experiences in the life.

Secretarial and Taxation

Just like Secretarial and Treasury go hand-in-hand, Secretarial and taxation also has a wonderful connection. Taxation just like secretarial is all about interpretation. Although both the functions do not earn companies' the revenues but they form the greatest part in ensuring that companies activities are counted in a manner that not only does it fulfill its corporate responsibility but at the same time the stakeholders are remunerated for the risks taken by them in associating with the Company.

An efficient tax management system not only enables a company to manage its cash flows but plays a critical part in highlighting the domains in which companies can focus taking into account its core business thereby benefitting from the provisions available in the statute.

In addition to the above, a good taxation regime is an indication of the Government's perception towards a particular industry. Hence, this may not only promote the domestic industry but also paves way indirectly for attracting foreign investments into the Country. As a result, the Nation, Industry and the Companies become a force to reckon with in the global economy.

Secretarial and all the above finance functions – typically the role of a CFO

The goal of every secretarial qualified person in employment should be to achieve this level in a good sized company. The reason is not demeaning that whether a CS cannot hold the top portfolio as such. But the rationale is in a commercial world, the combination of finance and secretarial portfolio gives a perfect blend to the Promoters for seeking reliable advice. This is because as a finance person, the incumbent would be able to relate the financial aspects of a decision and as a secretarial person, the incumbent would be able to ensure compliances with various regulatory frameworks in place.

With this, I would bring to an end the combination of secretarial and finance function. I would take from here the combination of secretarial and legal professional.



Secretarial and Legal

As a secretarial and legal person, a CS has amazing opportunities not only in India but also abroad. One of the common industries that could be attractive in this regard is the FMCG industry.

Legal profession is a fast growing profession. In these days of globalization and liberalization, it is likely to get further momentum as more legal professionals would be required to handle cases arising out of international trade and as a result of growing importance of WTO. Lawyers are held in high esteem in a civil society as they render valuable service to all segments of the society by getting their constitutional and legal rights enforced through courts-civil or criminal, at all levels of judiciary, that is, Trial Court, High Court, Supreme Court or Quasi- Judicial Institutions.

However, companies have started recognizing the need to have persons with legal qualifications. Since, it generally does not tend to be cost effective for companies to have two persons with CS and legal qualifications, companies have started sourcing for incumbents having both qualifications.

By pursuing the above, companies not only meet the compliance requirements of the Companies Act but also broadens the perspective with various aspects of legal interpretation. A legal professional not only helps companies in filing and appearing for companies in Court related cases but also helps formulate suitable policies within the requirements of regulatory regime and the spate of amendments.

In addition, the impact of a legal person reviewing the agreements involving the companies viz., agreements with banks, distributor agreements etc. has a larger image than the respective functional person reviewing the same.

As a result, a CS with the combination of a legal qualification ends up providing a wholesome services for which otherwise a company may have to incur heavy expenditure.

Secretarial and Insolvency practice

Insolvency is possibly the most demanding career option a professional can undertake. It is certainly one of the most challenging, involving and rewarding.

Just like a person requires treatment to treat his disease, a sick company also requires some form of treatment to overcome its problem of debts. This treatment may be in the form of restructuring of a company. Restructuring is the corporate management term for the act of reorganizing the legal, ownership, operational, or other structures of a company for the purpose of making it more profitable, or better organized for its present needs. Alternate reasons for restructuring include a change of ownership or ownership structure, de-merger, or a response to a crisis or major change in the business such as bankruptcy, re positioning, or buyout. Restructuring may also be described as corporate restructuring, debt restructuring and financial restructuring. There are a broad range of opportunities that arise from corporate insolvency and financial restructurings.

1. Spotting and evaluating distressed companies for restructuring and rescue planning.
2. Reviewing the various risks involved in restructuring.
3. Developing risk mitigation strategies.
4. Working out a detailed bankable financial structure of the business.
5. Working out a detailed plan for restructuring the business from all angles.



6. Assessment of distressed assets, cash position, due diligence and turnaround feasibility.
7. Advice on optimum utilization of resources.
8. Drafting insolvency petitions.
9. Representation and registration of sick companies with BIFR.
10. Representation before the Debt Recovery Tribunals.
11. Representation before the NCLT or NCLAT.
12. Negotiating settlements.
13. Advisory in relation to a merger or acquisition or takeover.
14. Advisory services to management on an ongoing basis.

From the foregoing, it can be clearly understood that as a CS, the opportunities to expand the profession is humungous and it is only in our hands as professionals to explore it to the fullest.

So what does it require to achieve any or all of the above ?

Passion is one of the greatest powers a human has which enables him / her to achieve the heights never imagined earlier.

An absolute example for the above is the all-time great batsmen in the world, Sachin Tendulkar. Sachin Tendulkar was born on April 24, 1973 at Mumbai in Maharashtra. Since his childhood Sachin possessed an immense passion for cricket.

Sachin Ramesh Tendulkar made his Test debut against arch rivals Pakistan at Karachi in the 1989-90 series under the leadership of K. Srikanth. Since then he played 200 Tests and scored 15,921 runs, including 51 centuries.

A complete batsman, Tendulkar made his One-Day International debut against Pakistan in the 1989-90 series. Now, after playing 463 matches, he has scored more than 18,000 runs which include 49 centuries.

He was also the highest run getter in two World Cup matches of 1996 and 2003, respectively. In World Cup 2003, he received Man of the Tournament award from Sir Garfield Sobers and was elated after winning the World Cup in 2011. Despite being a drop out from school, today many records are owned by Sachin Ramesh Tendulkar.

The reason for bringing the reference above is to drive the thought that if one is constrained by his / her thoughts, despite dreaming of heights the person may only see it to be out of reach. Had Sachin Tendulkar been worried about dropping out of the school, he may never have attained the stardom associated with his achievements on the cricket field.

Thus, if the passion is nurtured well, the person may still be able to reach the desired goal despite the hardships encountered on the way. It is important here to note that success and failures are only part of the journey. They do not determine the end of the journey.

For instance, we all start our lives with schooling. Perhaps some of us may have dreamt of becoming a topper in academics and may have achieved the same too when we completed schooling. Come to



graduation, the dream still remains but by then it has become part and parcel of life and the passion no longer remains the same. Moving further to higher education like post-graduation, CS, CA and Cost Accountancy, the desire tends to clear in the first attempt and if possible, focus on attaining rank.

The essence being with the passage of time, the desires change and the aspects which drive the motivation also changes. The needs of persons changes and as the person matures into the higher levels in life, the aspects which were considered once essential becomes history in memory.

Yes, while recalling the past does bring the smiles but they no longer remain relevant to the present day context since in the bigger picture they are the steps in the ladder for going up in life.

Vision ICSI 2022

The members in employment are expected to be equipped with knowledge and skills necessary to act as “Corporate Managers” and the members in practice are expected to be equipped to act as “Corporate Advisors”.

The members aspire enhancement in the professional opportunities through branding of the profession by focusing on core areas, regular coordination with trade and industry, statutory recognitions and developing skills thorough specialised training programmes. Visibility and branding of the profession can be enhanced through sustained interaction with trade and industry associations / chambers, active placement services, Career awareness programs, dissemination of success stories, media publicity etc.

The members are equipped to improve the quality of services through academic support, updation of knowledge, training in soft skills, court procedures and art of advocacy, strengthening of Peer Review System, strict enforcement of Code of Conduct etc.

The Vision Statement of the ICSI

“*To be a global leader in promoting Good Corporate Governance*” reflects the collective aspirations of the stakeholders and provides a defined goal for the ICSI.

The Mission Statement of the ICSI

“*To develop the high calibre professionals facilitating good Corporate Governance*”, brings perspective to the ICSI by way of defining explicitly and clearly the direction of all its activities.

The Motto of the ICSI,

“*Satyam Vada, Dharam Chara*” adopted from Taittiriya Upnishad means ‘Speak the Truth, Abide by the Law’, speaks the very spirit of the profession of Company Secretaries.

(Source: *Vision_New_ICSI_2022*)

All the above is possible, if members are able to elevate themselves to levels where they are able to themselves influence the process without the need to seek approval from anybody above them in the hierarchy.

Secretarial and Teaching

As a Company Secretary, one need not restrict one’s thoughts only with reference to employment and practice. Opportunity also lies in the teaching profession. Teaching was once considered to be a noble profession but is losing its limelight in the present day commercial world.



However, only a good role model can inspire the potential incumbents to grow well in the profession. This also provides the scope for not only maximizing on one's wealth of experience and knowledge but also lays down the platform to pass on the wisdom to the generations to come.

Further, it is a well-known fact that wisdom to use the knowledge increases once the same is being taught to the disciple. We all are aware that learning is a never ending process. I have always been inspired with respect to learning, the following quote that I received during school days:

Even in death bed a person learns how to die

It is in this context of learning, I am reminded of the following verse from Bhagvad Gita, whose essence was well established in one of the philosophical books by way of a conversation:

*'Tadviddhi Pranipatena Pariprashnena Sevaya,
Upadekshyanti Te JDisciplem Jnaninastattwadarshinah'*

Teacher - Disciple, do you understand it?

Disciple - Yes.

Teacher - If you do, then tell me.

Disciple - It means this - "Making Sashtanga Namaskar, i.e., prostration, questioning the guru, serving him, learn what this knowledge is. Then, those Jnanis that have attained the real knowledge of the Sad-Vastu (Brahma) will give you upadesha (instruction) of Jnana."

Teacher - Disciple, I do not want this sort of collected purport of the whole stanza. Give me each word, its grammatical force and meaning.

Then *Disciple* explained it word by word.

Teacher - Disciple, is it enough to make prostration merely?

Disciple - I do not know any other meaning for the word 'pranipata' than 'making prostration'.

Teacher - What is 'pariprashna'?

Disciple - Asking questions.

Teacher - What does 'Prashna' mean?

Disciple - The same (questioning).

Teacher - If 'pariprashna' means the same as prashna (question), why did Vyasa add the prefix 'pari'? Was Vyasa off his head?

Disciple - I do not know of any other meaning for the word 'pariprashna'.

Teacher - 'Seva', what sort of 'seva' is meant?

Disciple - Just what we are doing always

Teacher - Is it enough to render such service?

Disciple - I do not know what more is signified by the word 'seva'.

Teacher - In the next line "upadekshyanti te jnanam", can you so read it as to read any other word in lieu of Jnanam?

Disciple - Yes.

Teacher - What word?

Disciple - Ajnanam.



Teacher - Taking that word (instead of Jnana) is any meaning made out of the verse?

Disciple - No, the author gives no such construction.

Teacher - Never mind if it does not. Is there any objection to using the word "Ajnana" if it gives a better sense?

Disciple - I do not understand how to construe by placing "Ajnana" in it.

Teacher - Why does Krishna refer Arjuna to Jnanis or Tattwadarshis to do his prostration, interrogation and service? Was not Krishna a Tattwadarshi, in fact Jnana himself.

Disciple - Yes He was. But I do not make out why he referred Arjuna to Jnanis?

Teacher - Have you not understood this?

Disciple was humiliated. His pride was knocked on the head. Then Teacher began to explain -

- (1) It is not enough merely to prostrate before the Jnanis. We must make Sarvaswa Sharangati (complete surrender) to the Sad-guru.
- (2) Mere questioning is not enough. The question must not be made with any improper motive or attitude or to trap the Teacher and catch at mistakes in the answer, or out of idle curiosity. It must be serious and with a view to achieve moksha or spiritual progress.
- (3) Seva is not rendering service, retaining still the feeling that one is free to offer or refuse service. One must feel that he is not the master of the body, that the body is Guru's and exists merely to render service to him.

If this is done, the Sad-guru will show you what the Janna referred to in the previous stanza is.

Disciple did not understand what is meant by saying that a guru teaches ajnana.

Teacher - How is Jnana Upadesha, i.e., imparting of realization to be effected? Destroying ignorance is Jnana. (cf. Verse-Ovi-1396 of Jnaneshwari commenting on Gita 18-66 says - "removal of ignorance is like this, Oh Arjuna, If dream and sleep disappear, you are yourself. It is like that." Also Ovi 83 on Gita V-16 says - "Is there anything different or independent in Jnana besides the destruction of ignorance?")* Expelling darkness means light. Destroying duality (dwaita) means non-duality (adwaita). Whenever we speak of destroying Dwaita, we speak of Adwaita. Whenever we talk of destroying darkness, we talk of light. If we have to realise the Adwaita state, the feeling of Dwaita in ourselves has to be removed. That is the realization of the Adwaita state. Who can speak of Adwaita while remaining in Dwaita? If one did, unless one gets into that state, how can one know it and realise it?

Again, the disciple like the Sad-guru is really embodiment of Jnana. The difference between the two lies in the attitude, high realization, marvellous super-human Sattva (beingness) and unrivalled capacity and Aishwarya Yoga (divine powers). The Sad-guru is Nirguna, Sat-Chit-Ananda. He has indeed taken human form to elevate mankind and raise the world. But his real Nirguna nature is not destroyed thereby, even a bit. His beingness (or reality), divine power and wisdom remain undiminished. The disciple also is in fact of the same swarupa. But, it is overlaid by the effect of the samaskaras of innumerable births in the shape of ignorance, which hides from his view that he is Shuddha Chaitanya (see B.G. Ch. V-15). As stated therein, he gets the impressions - "I am Jiva, a creature, humble and poor." The Guru has to root out these offshoots of ignorance and has to give upadesha or instruction. To the disciple, held



spell-bound for endless generations by the ideas of his being a creature, humble and poor, the Guru imparts in hundreds of births the teaching - "You are God, you are mighty and opulent." Then, he realizes a bit that he is God really. The perpetual delusion under which the disciple is labouring, that he is the body, that he is a creature (jiva) or ego, that God (Paramatma) and the world are different from him, is an error inherited from innumerable past births. From actions based on it, he has derived his joy, sorrows and mixtures of both. To remove this delusion, this error, this root ignorance, he must start the inquiry. How did the ignorance arise? Where is it? And to show him this is called the Guru's upadesha. The following are the instances of Ajnana :-

- 1 - I am a Jiva (creature)
- 2 - Body is the soul (I am the body).
- 3 - God, world and Jiva are different.
- 4 - I am not God.
- 5 - Not knowing, that body is not the soul.
- 6 - Not knowing that God, world and Jiva are one.

Unless these errors are exposed to his view, the disciple cannot learn what is God, jiva, world, body; how they are inter-related and whether they are different from each other, or are one and the same. To teach him these and destroy his ignorance is this instruction in Jnana or Ajnana. Why should Jnana be imparted to the jiva, (who is) a Jnanamurti? Upadesha is merely to show him his error and destroy his ignorance.

Teacher added :- (1) Pranipata implies surrender. (2) Surrender must be of body, mind and wealth; Re: (3) Why should Krishna refer Arjuna to other Jnanis? "Sadbhakta takes everything to be Vasudev (B.G.VII-19 i.e., any Guru will be Krishna to the devotee) and Guru takes disciple to be Vasudev and Krishna treats both as his Prana and Atma. As Shri Krishna knows that there are such Bhaktas and Gurus, He refers Arjuna to them so that their greatness may increase and be known.

Conclusion

A person can be successful if there is always an inquisitiveness to learn newer things in life. The contentment a person should derive in life should be only for material things but when it comes to knowledge, the more the better. One of the main reasons a person feels insecure is because of lack of knowledge. Hence, it is very important for the person to first have the thirst of learning more and more and thus remove ignorance.

It is here intended that as Company Secretaries, we should first see ourselves beyond the horizon of compliances alone. It is further reiterated that compliance is mandatory. It is just that the entire set of activities at the end of the day falls within the realms of legal compliances and hence, it is important for us to elevate ourselves beyond the existing realms and look for the world beyond the horizon. A CS is an all-rounder and it is high time that we as professionals emphasize this to the World.

Even in one of the speech delivered by Shri Narendra Modi, Prime Minister of India in the Parliament, he has highlighted the reliance Government of India places on the profession.

I would like to conclude the note with the following quote of Aristotle

The ultimate value of life depends upon awareness and the power of contemplation rather than upon mere survival



Transforming Profession to New Opportunities

*Rakesh Chandar Sharma**

Introduction

A profession arises when any trade or occupation transforms itself through "the development of formal qualifications based upon education, apprenticeship, and examinations, the emergence of regulatory bodies with powers to admit and discipline members, and some degree of monopoly rights. The world is looking at young rejuvenated India very closely and rightly so. Corporate India is no more the forte of the elderly and the grey haired entrepreneurs, the representation of young and the adventurous is increasing in board rooms of corporate houses. The dynamic business environment and global aspirations and many other external factors allowed Indian corporates to adopt new internal structures and ways to conduct the business.

The concept of professionally managed corporate now emerged in the current scenario across the globe, which provide comfort to the promoters and entrepreneurs for development of their business. Besides managing the business, the professionals have greater credentials for smooth functioning of all corporate dealings likewise representation before the statutory authorities, merger, amalgamation, legal cases, tax related matters etc.

The family owned businesses of India and other corporate houses are now much more open and professional than before, and welcome fresh ideas and talent. The management of businesses is now being handed over to generation next, who are filled with energy and new ideas and equipped with modern management tools and practices. There is also another category – a breed of young graduate entrepreneurs making their own way through innovative business models, products and processes.

With this dynamic changing business environment, professionals not expected to guide the managements in the board rooms and other top management echelons, but also are expected to revisit their knowledge and skill sets so as to remain not only relevant but to assume a leadership role.

Profession of Company Secretaries

The speed and the tenor, with which the changes are happening in corporate world, make it imperative for professionals to keep pace with these changes in all their dimensions to surge ahead.

We are moving to a new age of economic revolution where capital, communications, economic and trade policy, human resources, marketing, advertising and brands, all have global dimensions. This globally

* *Manager - Company Secretary Deptt., BSES Yamuna Power Limited. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



changing business dynamics presents an entirely new paradigm demanding continuous learning, strategies, confronting challenge, adjusting values, changing perspectives and attitudes. In the recent past more and more companies are facing adaptive challenges. Changes in society, markets, technology and consumer preferences are compelling them to clarify their values, devise innovative strategies and new ways of operating. The continuous learning, unlearning and relearning process is now an inescapable consequence of new economic realities for some, while it is a lesson in survival for others. The changes in legislations like the Companies Act, 2013, SEBI Regulations and Insolvency and Bankruptcy Code are the greatest example of learning, unlearning and relearning. The natural winners in tough times are those who are the quickest in adapting to change. So the imperative for surging ahead is clearly to be quickest in adapting to change.

The young talents have to be ignited to change their thinking processes towards solving issues and problems and the need to show exemplary leadership. Further, they are to be sensitized about the need and importance of timely and effective communication with both their clients and the regulators. Accordingly the profession of company secretaries is imperative for surging ahead.

In the current scenario, digitalization across the globe is changing the professional approach and leadership which leads optimum utilization of all resources. All professionals are changing their approach for achieving their objectives due to technological advancements. Although the digitalization created new challenges like cyber crime but new methods are also emerging to tackle with new challenges. The professionals like Chartered Accountants, Company Secretaries, Lawyers, MBAs etc. are necessary and are dominating the prospect of the corporate and enterprises for a long run. These professionals are occupying the senior positions in the corporate, enterprises and various government establishments. This article emphasizes, in particular, the potential opportunities available for the profession.

Earlier the professionals were duty bound and have limited access for the ways for resolving the various issues, but now the following things have significantly migrated professionals from traditional practices :

1. Up-gradation of academic patterns in educational institutes
2. Digitalisation of Infrastructure across the globe
3. Changes, amendments, evolutions in various legislations
4. Various reforms in various rules governing the code of conduct for the professionals
5. Economical and industrial developments opened new practice fields
6. Aggressive demand of professional support for innovation and entrepreneurship
7. Lobby of professional has been institutionalized and established their guideline for betterment of profession

The Government of India has undertaken several initiatives and instituted policy measures to foster a culture of innovation and entrepreneurship in the country. Job creation is a foremost challenge facing India. With a significant and unique demographic advantage, India, however, has immense potential to innovate, raise entrepreneurs and create jobs for the benefit of the nation and the world. In this context, it is necessary for professionals to play their crucial role while offering their services to the nation. Accordingly a professional should gear up for obtaining the rewards which may arise from various risks associated with their profession.

The future holds bright for the profession of company secretaries, days are not very far when Company Secretaries would be assuming leadership role in guiding the corporates to achieve vision and aspirations. The corporate boards would seek active involvement of the Company Secretaries in devising strategies.



The Company Secretaries have come a long way from being conscience keeper to compliance officer and now governance professionals. Having earned the trust and confidence of the Government, the regulators and the corporate sector as watchdog for governance architecture, the time has arrived when the Company Secretaries look beyond to step in a leadership role in guiding the corporates as change agent. They have to graduate to assume the leadership position by assuming new role, values and approach. It is now imperative for Company Secretaries to produce change, set the direction of that change, and Surge Ahead.

The Company Secretaries as a professional always be ready to face challenges and follow the mantra of our Prime Minister Narendra Modi – i.e., “Our mantra is reform, perform and transform. We want to do better and better”

Recommendations for transforming profession to new opportunity – Setting-up of Professional Evaluation Systems (‘PES’)

The recommendations call for a concerted effort to align the conceptualization of evaluations held by all stakeholders; the representation of these conceptualizations in government policies and guidelines; and the enactment of corresponding behaviors by the professional bodies and professionals. Certain recommendations for professional evaluation systems (‘PES’) are as follows:

Recommendation 1 : That professional body ensures there is a clear alignment between their vision/policy statements concerning the auditing and developmental purposes of upcoming professional’s evaluation/appraisal systems and their processes of implementation.

Recommendation 2 : That professional’s body should implement a professional development strategy that includes explicit support for the education of existing and upcoming professionals about the purpose of professional evaluation of their curriculum, area, services. Further, the institutional intents and purposes of professional evaluation/appraisal system should be achieved.

Recommendation 3 : That those who administer professional evaluation systems (‘PES’) recognize and acknowledge the variety of professionals perceptions about this evaluation/appraisal and provide communication, support and resources that address professionals expectations and needs, without compromising institutional intents and purposes.

Recommendation 4 : That professional body ensures expectations about upcoming professionals and existing professional’s roles and responsibilities in evaluation are unambiguous, and connections among performance, evaluation and reward are clearly understood.

Recommendation 5: That professional along with professional body and their Councils/Committees/ Chapters etc. and institutions embed within evaluation policies and practices the notion that a ‘well-rounded’ representation of transforming the profession to new opportunities and courses is more likely to be achieved by drawing on multiple forms of evaluation data.

Recommendation 6 : That professional development, course enhancement and updation in curriculum are firmly ensconced as the foundation and foci of professional evaluation processes and practices. Professional body should devise a system that clearly defines the developmental and auditing purposes of professional evaluation. The system should include processes and practices that target each purpose, but that also recognize that the purposes are complementary in nature and that a level of integration is needed to provide cohesion.

Professional as a consultant preserves the business

An ever-demanding consumer and business world is continuing to force consultants to react to market



forces faster and with deeper insight than ever before. The underpinning of individual knowledge roles by enabling technology is changing the consulting industry into ever newer forms. Professionals as a consultant will have to be even more aware of their own, as well as their firms' role within such a business environment. The article provides a perspective on the role of consultants and consulting in a dynamic and ever-changing business world, where the consulting remit is being increasingly dictated by the convergence of mergers and acquisition activity, technology, globalization, and the opportunities presented by automated business process solutions for professional services.

TRANSFORMATION PROCESS OF PROFESSION INTO NEW OPPORTUNITIES	
Future	What Can Be Automated, Will Be Automated and Project Based Work Complete Transparency Individual Responsibilities Lack of frauds and reduce scams
Current	Up gradation of academic patterns in educational institutes Digitalization of infrastructure across the globe Aggressive Demand of professional support for innovation Economical and Industrial development opens new practice fields
Earlier	Limited access to the existing global practices Limited scope of work and area of operations Rigidly defined roles in the organization

Modern firms are expected that the expertise they bring to the table meets the present and future needs of the business that they serve. They need to be closely attuned to changes in the clients' businesses, moves made by their clients' competitors, and possess fairly good knowledge of the trends and be able to forecast the markets in which their clients operate. Thus management education for professionals is of paramount importance along with their basic and advance studies.

Gone are the days when the professionals entered the scenario after the problem/dispute arose. Now they are expected to give professional advice right from the inception of business and during negotiations with clients. Almost all documents, be it a reply to a customer or a product flyer, has to be vetted by the legal and compliance department before it can be released. The contents of the document have to be within the parameters either set by the company or by the regulator; any deviation may lead to heavy penalties. Due to the involvement and interaction of the legal, commercial and compliance departments in daily affairs, knowledge of the working of the different departments/functions of the company is important. Thus professionals have become an integral part of the strategic management team as their advice is becoming increasingly important in complex business decisions.

Modern day professional has to wear many hats that of a mentor, teacher, leader, counsellor, legal



professional, negotiator/arbitrator, trustee, environmentalist, investigator, social activist, entrepreneur; and many others. For professional to render correct advice to their clients, they must learn project financing, intellectual property protection, corporate taxation, business and investment law, communication skills, negotiation skills, ethics and corporate governance and all kinds of management skills.

Trends every professional should understand

1. *Desired entrepreneurial mindset*

- Ability to solve problems
- Creative, innovative mindset
- Communicate their ideas effectively through writing and speaking
- Consultative nature and good listening skills
- Seeks honest feedback
- Constantly learning and look for new opportunities to grow
- Looks outside of her job description for opportunities
- Has a sales oriented mindset
- Can represent the company in any situation
- Knows how to position and market what we do
- Have an intuitive understanding of organizational goals

2. *Learning and growth are a lifelong activity*

Knowledge can be acquired and skill-sets developed anywhere – learning is unavoidable and happens all the time. However, lifelong learning is about creating and maintaining a positive attitude to learning both for personal and professional development.

Lifelong learners are motivated to learn and develop because they want to it is a deliberate and voluntary act.

Lifelong learning can enhance our understanding of the world around us, provide us with more and better opportunities and improve our quality of life.

There are two main reasons for learning throughout life: for personal development and for professional development. These reasons may not necessarily be distinct as personal development can improve your employment opportunities and professional development can enable personal growth.

3. *Communication Skills are more important than ever before*

If you could be armed with only two skills going into your first or next job, which two skills would you choose?

Based on 100s of conversations I've had with employers, the top two skills you could possibly have (across industries, sectors, and job descriptions) are the ability to communicate effectively and to build meaningful relationships. That's it. If you knew nothing else, these two skills would get you into



a job and allow you to add enough value to learn whatever else you might need to learn to be effective.

If you want to have access to the best jobs in the future, you must have the ability to communicate effectively and to build meaningful relationships. If you have these two, then the hard skills and organization-specific methods for getting work done can be learned on the job or on nights and weekends once you're there.

Searching, finding, interpreting, and curating information is the secret sauce of the future

Access to information, for the vast majority of people reading this article, is no longer a barrier to entry. In fact, I might make quite the opposite argument. Access to information is now debilitating. It distracts us from our most important work, makes us constantly feel as if we're missing out on something, and draws us back in with push notifications as often as possible.

Umpteen hours of Youtube videos, a gazillion blog posts, 3 gazillion tweets... a day. That's what we, as people, produce everyday (you can Google the actual stats). Access to information is no longer the problem. No, the real talent lies in what happens after the access.

Major trends impacting the profession may include :

- The use of analytics
- Workforce composition
- Expanding service offerings
- Client relationships

This column will be a space to watch, digest, and analyze the transformations occurring in these and many other areas within the legal profession. Such changes give rise to new opportunities, challenges, and patterns. Some professionals view the significant transformation that the profession is going through, as well as transformative factors such as the introduction of tools built on artificial intelligence, as unsettling and disruptive. If we see the profession transforming, we should be optimistic about the future and the numerous opportunities associated with globalization, technology, and analytics.

Howling winds can be scary, but they also make the journey that much more exciting. If we are in the right boat, professionals can steer in the right direction.

The professionals can change the direction of the wind for a better tomorrow and securing the new opportunities by adhering some of the following important principle of good governance:

Veracity : The corporate believes that its promise is its most vital product - 'our word is our bond'. The relationships that are critical to the corporate success depend entirely on maintaining the highest ethical and moral standards around the world. As a vital measure of integrity, the company will ensure the health and safety of its communities, protect the environment in all it does and will ensure correct presentation of financial statements and follow the correct legal processes including payment of legitimate taxes.

Value of People : The corporate believes in the inherent worth of people and will honor its relationships with those who let it be part of their world. The corporate's stake-holders are the engines of value creation; their imagination, determination and dedication are essential to growth. The corporate will work to celebrate and reward the unique backgrounds, view-points, skills, and talents of everyone. Respect for people is measured by how the corporate treats them, by the contributions that flow from the corporate diversity, by



the productivity of the corporate's relationships, and by a job well done, no matter what the job is. The corporate communities are the neighbours; their acceptance of the corporate is vital to its ability to operate. The customers are the corporate's partners in creating value; their loyalty is its greatest reward. Hence, they be also treated with great respect and care.

The profession of Company Secretaries can explore the following areas :

- They can act as an Insolvency Professional under the Insolvency and Bankruptcy Code after getting himself/herself registered with the Insolvency Professional Agency.
- Can act as a Company Liquidator under winding up of a Company once Registered as Insolvency Professional.
- Can act as a Registered Valuer after obtaining registration with the Registered valuers organization
- Can act as GST Practitioner under the CGST, SGST/UTGST Act.
- Can appear before various Quasi Judicial Bodies which include National Company Law Tribunal & National Company Law Appellate Tribunal Under the Companies Act, 2013, Competition Commission of India & Competition Appellate Tribunal Under Competition Act, 2002, Securities Appellate Tribunal under SEBI Act, 1992, Income Tax Appellate Tribunal under Income Tax Act, 1961, appellate Tribunal or Regulatory Authority under The Real Estate (Regulation and Development) Act, 2016.
- Can offer Advisory Services under RERA which include Penal Provisions under the act Funding Options for Real Estate Project, Taxation aspects for Real Estate Project, Legal & Regulatory Compliances.
- Can perform the duties as Internal Auditor to conduct internal audit of the functions and activities of the company.
- Can provide services in the field of Risk Management and fraud detection.
- Can be the Consultant in the area of Export and Import.
- Can provide services in the field of Capital Markets right from the conceptual stage of the issue and fulfilling the continuous listing requirement.
- Services in respect of NGO, Societies and trust which include incorporation, documentation, day to day operation, legal compliance, compliance pertaining to Foreign Contribution Regulation Act, Prevention of Money Laundering Act.

Conclusion

With the understating of above it can be summarized that this is the transition face where the family owned businesses of India now professionally managed and developed to some extent. In such case the professionals has fullest control over the entire management in ethical manner and serve the nation in the best interest by abiding the land of laws. The recommendation for up-gradation of existing and future professionals is intact and always remains, besides challenges and competitions among themselves. For the Company Secretary professionals, it is required to follow the ICSI motto "*Satyam Vada, Dharmam Chara*" which means "Speak the truth, abide by the law". Entrepreneur is one who has a vision to create not just his future, but future of the country. Company Secretary is such kind of profession which has knowledge, wisdom and vision and who can become an Entrepreneur on his own. Today India needs entrepreneurs' and ICSI develop such Professional Entrepreneurs.



Even Central Government is totally focused on that and our Prime Minister Shri Narendra Modi is equally determined to bring all round change in policies, procedures, systems, facilities, welfare, infrastructure, and mind set of the countrymen. The wind of change has already started blowing which can be seen in the current policy framework and announcements of the Central Government. The time has come that we professionals understand the changed direction of wind and pursue the cause of welfare of all.

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Transforming CS Profession- Exploring new Opportunities

*Pradeep Kumar Ray**

Transformation literally means going beyond your form..... Wayne Dyer

You have to maintain a culture of transformation and stay true to your values..... Jeff Weiner

India is now the sixth biggest economy in the world ranking followed by UK. It is the fastest growing economy in the world, passing through a very robust, splendid and reformative transformation phase with a view to promote growth and development and improve its world ranking in 'Ease of doing Business' and make its dreams of 'Make in India', 'Start up India' and 'Incredible India' into a grand reality.

At a time when plethora of reforms including Companies Act, 2013, IBC and GST have ushered a vista of opportunities in and around the corporate sector, a new kind of challenges imbued with trustworthiness, transparency, credibility and responsibility have bestowed upon the professionals, whether in employment or practice. A huge and gigantic task of better corporate governance enshrined with corporate ethics and code of conduct has dribbled to reach the goal of growth and shunned the unethical standard and behavior. The rapidly changing business environment due to liberalization of economic, corporate and taxation policies, globalization, digitalization, mergers, acquisitions and takeovers has passed the baton to the competent and efficient professionals for adequate compliance and stricter adherence of requisite provisions, rules and regulations.

Ultimately the burden shoulders upon a person who plays a very significant, pivotal and cardinal role in propelling the chariot of corporate world in the path of progress and prosperity. It vehemently demands better corporate governance by ensuring credibility, efficiency and transparency by the organizations. Here is the golden chance for a Company Secretary to accept the challenge and prove his mettle and caliber in order to fructify the high expectations of the government, management, stakeholders and the society as well.

Paradigm shift from Secretarial work to Compliance Officer to Advisor

Employment Opportunities

The plethora of services which a Practising Company Secretary can render, are listed below:

Current Opportunity for CS in Employment under the Companies Act, 2013 and other Laws

- Annual Return [Sec.92]

* FCS. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



- Board's Report [Sec.134]
- CSR [Sec.135]
- Key Managerial Personnel [Sec. 203]
- Functions and Duties of CS [Sec. 205]
- Corporate Governance
- SFIO [Sec.211 & 212]
- NCLT [Sec 408]
- Independent advisory capacity and support for procedures of licenses, registrations, loans, taxes, partnership deeds etc.
- Administrators in business firms
- Government grades 1-1V in the Accounts Branch of the Central Company Law Service of the Department of Company Affairs
- Firms listed on the stock market
- Financial Advisor
- Specialists in banks in the fields of Finance, Accounts, Law and Merchant Banking
- Organization whose affairs are conducted by boards, councils and other corporate structures e.g. companies, cooperative societies, trusts, associations, federations, commissions , board etc.
- As experts to the developing countries of Asia, Africa and Latin America
- Research work

Opportunity for CS in Practice

A. The Companies Act, 2013 and Rules made thereunder

1. Scrutinizer [Rule 20 of the Companies (Management and Administration) Rules, 2014]
2. Secretarial Auditor [Section 204 & Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]
3. Compliance Officer [Rule 4 of the Companies (Issue of Global Depository Receipts) Rules, 2014]
4. Expert [Section 2(38) under Companies Act, 2013]
5. Key Managerial Personnel Key Managerial Personnel Sec. 2 (51)
6. Internal Auditor Sec. 138 of Companies Act, 2013
7. Provisional/ Company Liquidator [Section 275(2) of the Companies Act, 2013]
8. Technical Member in Tribunal [Section 409 of the Companies Act, 2013]
9. Authority to represent before a National Company Law Tribunal (NCLT)



10. Declaration
 - Incorporation of Company [Section 7(1) (b) read with rule 14 of the Companies (Incorporation) Rules, 2014
 - Formation of companies with charitable objects, etc. [Section 8 read with rule 19 of the Companies (Incorporation) Rules, 2014
11. Compliance Certificate in respect of
 - buyback of securities in Form No. SH-15
 - Certification of Annual Return
 - Merger and amalgamation of companies
12. Pre certification
 - The Companies (Incorporation) Rules, 2014
 - The Companies (Prospectus and Allotment of Securities) Rules, 2014
 - The Companies (Registration of Charges) Rules 2014
 - The Companies (Management and Administration) Rules, 2014
 - The Companies (Accounts) Rules, 2014
 - The Companies (Appointment and Qualification of Directors) Rules, 2014
 - The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
 - The Companies (Registration offices and Fees) Rules, 2014
 - Nidhi Rules, 2014
 - The Companies Act, 2013 read with rule 3 of the Companies (Miscellaneous) Rules, 2014
 - The Investor Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016
 - Miscellaneous E-Forms
13. Other opportunities
 - (a) CS as Independent Directors section 149(4) of Companies Act, 2013
 - (b) Woman Director Sec. 149(1) of Companies Act, 2013
 - (c) Registered Valuers Sec. 247 of Companies Act, 2013
 - (d) Appointment of Administrator Sec. 259 of Companies Act, 2013
 - (e) Company Liquidator Sec. 2(23) and Sec.275 of Companies Act, 2013
 - (f) Professional Assistance to Company Liquidator Sec 291 of Companies Act, 2013
 - (g) Legal Representation before NCLT Sec 432 NCLT Sec. 432 of Companies Act, 2013



It substantially increases the scope of CS who have a right to legal representation before NCLT & Appellate Tribunal on all matters including matters including scheme of compromise or scheme of compromise or arrangement, scheme of merger and amalgamation winding up amalgamation, winding up of a company etc company etc. a CS may be appointed as technical member of NCLT if he is or has been in practice as a of NCLT if he is, or has been in practice as a company secretary for at least 15 years.

- (h) SFIO Sec.211 of the Companies Act, 2013 - The SFIO shall be headed by a Director and be headed by a Director and consist of experts in the fields of corporate affairs capital market law affairs, capital market, law, banking banking, taxation taxation, forensic audit, IT etc. The CSs have an opportunity of occupying have an opportunity of occupying prestigious positions as an expert in SFIO and play vital role and play vital role in investigations
- (i) Mediation & Conciliation Panel Sec. 442 of the Companies Act, 2013- The Central Government shall maintain a panel of experts to be called as “Mediation and Conciliation Panel” for mediation between for mediation between parties during the pendency of any proceedings before the Central Government or the proceedings before the Central Govt. or the Tribunal or the Appellate Tribunal under the new law. CS have an opportunity to be empaneled on this Panel.
- (j) E-Governance
 - (a) Service of documents through of documents through electronic transmission;
 - (b) Maintenance and inspection of documents in electronic form;
 - (c) Books of accounts in electronic form;
 - (d) Notice of meetings through electronic mode;
 - (e) Board meetings through video conferencing ;
 - (f) Voting through electronic means
- (k) Business Structures
- (l) Corporate Restructuring & Insolvency
- (m) Due-Diligence Reports
- (n) Legal Opinion Letters
- (o) Search & Status Reports
- (p) Designing Compliance Program / Compliance Management Manuals
- (q) Project Viability & Strategic Plan
- (r) Internal Audit & Risk Assessment

B. Securities Laws

- Appearance before Securities Appellate Tribunal [Section 15 V of SEBI Act, 1992; Section 23C of Depositories Act, 1996]
- Reconciliation of Share Capital Audit. [Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996]



- Audit of Capital Market Intermediaries
 - (a) Internal Audit of Portfolio Managers
 - (b) Internal Audit of Stock Brokers/Clearing Members/Trading Members
 - (c) Internal Audit of Credit Rating Agencies
 - (d) Internal Audit of Depository Participants
 - (e) Yearly Audit of Investment Adviser
 - (f) Annual Audit of Research Analyst
 - (g) Concurrent Audit of Depository Participants
- Certifications under SEBI Listing Regulations
 - (a) Certificate regarding Transfer of Securities [Regulation 40(9)]
 - (b) Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations SEBI listing regulations [Schedule V, clause E]
 - (c) Certificate Regarding Maintenance of 100% Asset Cover [Regulation 56(1)] (d)]
 - (d) Compliance Certificate [BSE circular dated 26th November, 2012]
 - (e) Certification [SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016]
- Financial Valuer under SEBI Regulations
 - (a) SEBI (Real Estate Investment Trusts) Regulations, 2014
 - (b) SEBI (Infrastructure Investment Trusts) Regulations, 2014
- Certification
 - (1) Under Bombay Stock Exchange Ltd.
 - (a) Net worth Certificate
 - (b) Listing of IPO
 - (c) Forfeiture of securities
 - (d) Listing of Non-Convertible Debentures pursuant to Public Issue
 - (e) Revocation of suspension in trading of equity shares
 - (f) Listing on the BSE Hi-Tech (Institutional Trading Platform)
 - (g) Listing on the BSE-SME Platform
 - (h) Granting approvals under regulation 28 (l) of the SEBI listing Regulations in case of Qualified Institutions Placement (QIPs)
 - (i) "In-principle approval" for issue of securities issued on a preferential basis under Regulation 28(1) of the SEBI Listing Regulations



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

C. *Taxation Laws*

- (a) Income-tax Act, 1961 and Income-tax Rules, 1962



- (b) Value Added Tax (VAT)
- (c) VAT Audit
- (d) Authority to represent before VAT authorities
- (e) Goods and Services Tax (GST)

Company Secretary to act as GST Practitioner

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

Authority to represent before the Appellate Authority

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

D. *Limited Liability Partnership Rules, 2009*

- (a) Annual Return [Rule 25(2) of Limited Liability Partnership Rules, 2009]
- (b) Pre-certification of e-form

E. *Reserve Bank of India*

Right to Issuance of Objection/Tax Clearance Certificate

F. *Pension Fund Regulatory and Development Authority of India*

Internal Audit of Custodian of Securities

F. *Department of Telecommunications*

Authorised to Certify Documents for Other Service Providers (OSP)

G. *Central Electricity Regulatory Commission Regulations, 1999*

Authority to represent before the Commission

H. *Special Economic Zone Rules, 2006*

I. *Trade Marks Rules, 2017*

J. *Third Party Certification/Audit Scheme of the Labour Department, Government of Haryana*

K. *Various Other Acts*

- (a) Insurance Regulatory and Development Authority Act, 1999 Issue certificate under IRDA (Registration of Indian Insurance Companies) Regulations, 2016 (Regulation 10)
- (b) Telecom Regulatory Authority of India Act, 1997 -Appear as authorised representative before the Telecom Disputes Settlement and Appellate Tribunal under Section 17 of the Telecom Regulatory Authority of India Act, 1997]
- (c) Competition Act, 2002- act as authorised representative before the Competition Commission of India and Competition Appellate Tribunal. Under Section 35 under Competition Act, 2002]



- (d) Foreign Trade and Development Act, 1992 -certify various returns pertaining to import and export by individuals and partnership firms as well as companies. Under Para 1.18 of Foreign Trade Policy 2015-2020]
- (e) Real Estate (Regulation and Development) Act, 2016 - act as authorised representative before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be under Real Estate (Regulation and Development) Act, 2016. [Section 56 of Real Estate (Regulation and Development) Act, 2016]

L. *Corporate Governance Compliance*

- Corporate Structure
- Board Composition
- Board Committees
- Directors
- Management
- Board Evaluation/Directors' development
- Secretarial Audit
- Secretarial Standards
- Statutory Audit / Rotation of Auditor
- Internal Audit
- Whistle Blower
- Disclosure & Transparency
- Corporate Social Responsibility Corporate Social Responsibility
- Related Party Transactions
- Minority Share holders Protection for Minority Share holders
- Investor Protection
- E-Governance
- Legal, Secretarial and Corporate Governance

M. *Other Various Activities*

- Corporate Restructuring
- Foreign Collaborations and Joint Ventures
- Arbitration and Conciliation
- Financial Management
- Project Planning



- Capital Market and Investor Relations
- Due Diligence
- Corporate Advisory Services
- Tutorial/ Faculty in coaching centre/ Institutions
- Soft skill Trainer
- Corporate Trainer/ motivator
- NGO consultancy

Gone are those traditional days, where the role of a company secretary was limited only to prepare notices, agenda, minutes etc., provide support to the Board of Directors and manage secretarial affairs of an organisation. The days also gone when Company Secretaries were given some accounts and petty legal works besides regular secretarial works.

One of most important aspect of the growth of CS profession in India, is that a CS not only focuses on Company Law matters but he/she is also capable of handling compliance matters under Securities Laws, such as Listing Agreements, Takeover Code etc., FEMA Regulations, Labour Law matters, Banking Laws, including Due-Diligence, Competition Law and Indirect Taxation.

The Boom in Practicing Company Secretaries Segment

The emergence of practicing firms of CS, a level playing role in the consulting and practicing segment. Most of the companies are now regularly consulting a PCS firm for their compliance requirements. Further, relatively medium and large companies shall require the service of a PCS for obtaining certifications / reports which are mandatory under Companies Act and related corporate laws.

The services which are now offered by PCS are as follows:

- *Assistance to the Board of Directors* : Company secretaries not only provide secretarial assistance to the board but also provide them with expert advice in many respects.
- *Legal Advisor* : As a legal advisor, they have to provide assistance to the company in case of any legal matter. They also ensure that the company complies with the statutory and bureaucratic directives of company, security and corporate laws.
- *Corporate Policymaker* : Company secretaries play an important role in putting together both short term and long term corporate policies of the company. They also advise the company board when existing corporate policies are brought up for review from time-to-time.
- *Chief Administrative Officer* : In the capacity of the chief administrative officer, they have to monitor the general administrative activities of the company. They are responsible for the safekeeping of all legal and other confidential documents of the company.
- *Principal Secretary* : They have to manage all aspects of corporate meetings be it board meetings, annual general meetings, interaction with important clients and vendors, meetings with government and private delegations. They may also have to take up the responsibility to manage corporate events and manage clients.
- *Corporate Planner* : As additional responsibility, company secretaries also have to keep a discerning eye on the expansion opportunities of the company. Further, they have to take care of collaborations, joint-ventures, mergers, takeovers within the country and outside.



- *Liasoning Officer* : Company secretaries act as a vital link between the board of directors and external entities such as shareholders, regulatory authorities and government bodies. They have to prepare detailed reports regarding company policies and disseminate them amongst internal as well as external stakeholders. On the other hand, they have to present the views of shareholders, regulatory bodies and government agencies to the board.
- *Tax Management* : Another important role requires company secretaries to manage the company's tax management. The assessment of tax, filing of tax has to be supervised by a company secretary. In some organizations, they have to take care of loans taken by the company, deal with corporate banks and actively participate in important investment decisions.
- *NGO formation and funding* : Company Secretary plays a prominent role from formation of NGOs, obtaining Exemption certificates, funding of NGO, preparation of Project Proposals from various sources

Time is Ripe to Grab Opportunities

Opportunities are like sunrises. If you wait too long, you miss them.

..... William Arthur Ward

Life opens up opportunities to you, and you either take them or you stay afraid of taking them.

.....Jim Carrey

The scenario has changed for the past several years. The real boom now, to a great extent was due to the advent of Companies Act, 2013. The legislative aspect of the profession has also become stronger with the introduction of provisions in Companies Act, 2013 with respect to Appointment of Key Managerial Personnel (Sec.203), Secretarial Audit (Sec.204), and Functions of CS (Sec.205).

Companies have started employing a Company Secretary, in order to be a Advisor to the board, thus, the board of the company can act well within the law, ensuring compliance and best practices. There is evidence that the role of CS is shifting from Secretarial work to Compliance Officer, and now to an "Advisor".

Now the horizon of their roles and responsibilities has expanded exponentially. Apart from their traditional tasks as a compliance officer, Company Secretaries now have reached at the peak of corporate and management hierarchy.

There is a greater demand for displaying both dynamism and enthusiasm in their respective assignments. There is also a need to retain the confidence of various stakeholders. Since, the top management is too busy managing the general working of an organization this new challenge can only be shouldered by some highly qualified and competent professionals like Company Secretary

New opportunities are:

1. Goods and Services Tax (GST)
2. Insolvency and Bankruptcy Code (IBC)
3. Registered Valuer

1. *Goods and Services Tax (GST)*

Core areas for CS in GST

- Supporting Government in Policy formulation



- Supporting Government in Policy implementation
- Employment opportunities across Manufacturing/ Service Sector
- CS Practice in “GST Matters”

Company Secretaries can not perform Audit in matters related to GST. But our profession can be utilised in many other ways:

1. Issue Certificate certifying the fact of non-passing of the GST burden (Report for GST on refund process)
2. Act as Authorised Representative in the matter of registration under Goods and Services Tax Act (Report on GST Registration)
3. Act as an Authorised Representative for acting as an agent for the taxpayer (Report on GST Payment Process)
4. Registration as GST Practitioner
5. Advise in all GST matters
6. provide billing and book keeping service

In short all the service relating to GST a CS can do other than audit.

Company Secretaries can play an important role in being an advisor and facilitator for due compliances under GST and be an asset to the general business community and corporate world. The Company Secretary can perform the following types of services to clients:-

(i) *Advisory services or strategic advisor*

A Company Secretary can comprehensively interpret the law of GST and provide complete guidance and advisory to the business entities. Company Secretaries are more suited for their services because of their knowledge of laws and good communication skills.

(ii) *Tax Planning*

Company Secretaries are competent to understand the impact of laws and its various alternatives and can be helpful in proper tax planning under GST.

(iii) *Procedural Compliances*

Procedural Compliance includes registration, filing of returns, payments of taxes, assessment etc. Since a Company Secretary is already playing the role of a Compliance Officer under various other laws, he can assist in the same under GST law also.

(iv) *Book/Record Keeping*

Like any other tax laws, introduction of GST would also require proper record keeping and maintaining systematic records of credit of input/input service and its proper utilisation etc. Company Secretaries must hone their skills to perform these tasks.

(v) *Representation*

A Company Secretary can provide the service of representation with confidence because of practical exposure due to appearing before various competent authorities.



(vi) Appellate work

Because of their legal bent of mind, a Company Secretary can provide better services in the field of appellate work.

For better administration of new tax regime in the country, it is pertinent to have more and more competent and equipped professionals to facilitate regulators to ensure compliance of various statutes and thus help in achieving this ambitious task. The Company Secretaries, who practice in almost all the branches of law and have a strong accounting background, are competent professionals to handle the regulatory compliance under the proposed GST laws. They are skilled professionals who understand legal, financial and compliance dimensions of business entity comprehensively. We look forward to the GST as “Good and Simplified Tax” regime further fuelling the growth of India Inc.

2. *Opportunities in Insolvency & Bankruptcy Code (IBC)*

The Insolvency and Bankruptcy Code, 2016 (IBC), in my opinion is the second biggest reform in our Country after the proposed GST regime

As India’s banks try and resolve the bad loans that have long burdened the industry and pose a significant macroeconomic risk, insolvency professionals stand to get a big career boost. If the bankruptcy process unfolds as it’s meant to, thousands of insolvency professionals will be needed to oversee the process and run distressed assets as part of asset-sale programmes, Insolvency professionals are thus in high demand.

Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

Company Secretary also act as a Insolvency Professionals (IPs)

- Company Secretaries in practice having at least ten years' experience are eligible for appointment as an Insolvency Professionals (IPs). [Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 (Regulation 5)]

Requirement

- Professional competence, responsibility towards stakeholders and demonstration of the highest ethical standards are required to make the exercise a success and meet the objectives of the legislation.
- Insolvency has brought in a bunch of opportunities to these people, who can now obtain their deserved professional credits.

Insolvency Code Offers Opportunities for Professionals of all ages- Both Experienced & Freshers

- For registered Insolvency Professionals (IP), they have an additional qualification of acting as an IP but quite they would need assistance of people who have knowledge of the Code;
- All professionals including young and freshly qualified professionals are eligible to engage in advisory opportunities to their clients for which there is a huge requirement as default in payment of debt of Rs. 1 lac (in case of defaulting corporate) and Rs. 1,000/- (in case of defaulting Individual/Partnership firm) is quite common;
- All professionals including young and freshly qualified professionals are eligible to appear for the limited insolvency examination;



- IBC offers opportunities of professional practice to all professionals whether experienced or freshers;
- Only experienced professionals as specified in the Code are eligible to get themselves registered as an IP after passing the limited insolvency examination;
- For engaging in any advisory role pertaining to IBC, passing the limited insolvency examination is not mandatory but recommendatory as it would make one aware about the provisions of the Code; and
- Practicing Professionals of all ages can also practice in NCLT and DRT which are the adjudicating authorities for Corporate and Individual Insolvency and this too has opened doors for more opportunities for professionals.

Along with the ambitious intention of restructuring India Inc., the Code brings with itself a host of professional and business opportunities for Management Professionals, Chartered Accountants, Company Secretaries, Cost Accountants and Advocates. These opportunities carry with themselves a tremendous growth potential. These professions are going to see tremendous growth in the years to come in the light of their expanded role under the regime of the Code.

3. *Company Secretaries Recognised as 'Registered Valuer'*

A Company Secretary is now recognised as a 'registered valuer' under the new valuation rules issued by the Corporate Affairs Ministry.

The notification of these rules -- Companies (Registered Valuers and Valuation) Rules, 2017 -- is expected to bring clarity regarding various aspects of valuation and registered valuers and have major impact on industry, professionals, stakeholders and the Government as well.

Introduction of valuation standards will ensure that the valuation reports disclose a true, fair and complete view and result in greater objectivity in valuation procedures.

The increased transparency and fairness in the valuation system would also boost stakeholders confidence alongside improving government revenues by way of plugging of loopholes in valuation.

The requirement of registered values will definitely enhance professional opportunities for both the Company Secretaries and other professionals as well, In India, the concept of valuation has always been debated as to whether it is a science or an art, he noted. Due to the involvement of element of subjectivity, substantial number of litigations in mergers and acquisition are about valuation.

A Company Secretary being recognised as a valuer presents enormous opportunity to practising members of ICSI to exhibit their expertise and knowledge acquired over time.

All valuations under the Act to be done by a Registered Valuer. A company secretary who is in whole-time practice (having at least 5 years continuous experience after acquiring membership of the respective institution).

Companies Act 2013: Sections for valuations

- Section 62(1)(c) – For Valuing further Issue of Shares
- Section 192(2) – For Valuing Assets involved in Arrangement of Non Cash transactions involving Directors



- Section 230(2)(c)(v) – For Valuing Shares, Property and Assets of the company under a Scheme of Corporate Debt Restructuring
- Section 230(3) – Under a Scheme of Compromise/Arrangement, along with the notice of creditors/shareholders meeting, a copy of Valuation Report, if any shall be accompanied
- Section 232(2)(d) - The report of the expert with regard to valuation, if any would be circulated for meeting of creditors/members
- Section 232(3)(h) - Where under a Scheme of Compromise/Arrangement the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal
- Section 236(2) – For Valuing Equity Shares held by Minority Shareholders
- Section 260(2)(c) – For preparing Valuation report in respect of Shares and Assets to arrive at the Reserve Price for Company Administrator
- Section 281(1) –For Valuing Assets for submission of report by Liquidator
- Section 305(2)(d) – For report on the Assets of the company for preparation of declaration of solvency under voluntary winding up
- Section 319(3)(b) –For Valuing the interest of any dissenting member of the transferor company who did not vote in favour of the special resolution, as may be required by the Company Liquidator

Issues that need review

The Valuer is required to exercise due diligence. In reality, most valuation reports carry caveats that valuers have not done any due diligence as the general practice is to rely on facts and numbers placed before them though the valuer should check the data for consistency and reasonableness and apply professional due care and suitable adjustments, due diligence is a broad term and such exercise does not come within the scope of the valuer.

Conclusion

The demand for trained company secretaries is enormous. The primary factor in this regard is the growth of our country's financial might. The policy of liberalisation has created favourable atmosphere within the country for setting up of new businesses. Further, numerous foreign companies have set up their installations in the country. All this has translated into India becoming one of the fastest growing economies of the world. Also, there is a spurt in the corporate activities such as expansions, mergers, collaborations and joint ventures. All this means a never ending demand for highly trained company secretaries. Company secretaries have immense knowledge of a wide variety of subjects. In this context, they can steal the thunder by positioning themselves in the right seat.



Transforming Profession to New Opportunities

*Raveena Agrawal**

Introduction

The information and communication technology in the 21st century have transformed all professions worldwide including the secretarial practice. We live in a competitive environment where things are changing fast for the better technologically and due to the growing complexity of modern day management, the corporate environment is also changing. The developments in technology and the intense business life have made professional work as an indispensable component of business administration and management. The concept of transformative learning has proven to be a very rich vein of scholarship in the field of adult learning, creating opportunities for wide ranging discussion and debate about the nature of adult learning and of its relationship to personal, professional and social change- Dirx, 2006.

In the words of America's former President, Bill Clinton- "The price of doing the same old thing is far higher than the price of change." The professionals need to think about their work's role in understanding and responding to the global, ecological crisis, and to assess the ways in which the profession might build on existing theoretical and practice foundations to make a contribution to facilitating the social, economic and political transformations that will be required to move the planet towards a sustainable future.

For points of congruence between the concerns of the profession and features of transformative learning theory, we can see that transformation in its many variations and professional work education are primarily focused on the interactions of the individual in the social world and might prove a valuable approach in supporting for the key challenges facing the profession.

"We cannot teach transformation. We often cannot even identify how or why it happens. But we can teach as though the possibility always exists that a student will have a transformative experience"- Cranton, 2002.

History

The most successful professional work in all history was surely that Egyptian who, 4,500 years or more ago, first conceived the pyramid, without any precedent, designed it, and built it, and did so in an astonishingly short time. That first pyramid still stands. With the rise of technology and occupational specialization in the 19th century, other bodies began to claim professional status: mechanical engineering, pharmacy, veterinary medicine, psychology, nursing, teaching, librarianship, optometry and social work, each of which could claim, using these milestones, to have become professions by 1900.

* ACS. *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



The study of transformational learning emerged with the work of Jack Mezirow (1997). Mezirow describes transformative learning as “learning that transforms problematic frames of reference to make them more inclusive, discriminating, reflective, open, and emotionally able to change.” The theory has two basic kinds of learning: instrumental and communicative learning. Instrumental learning focuses on learning through task-oriented problem solving and determination of cause and effect relationships. Transformative learning theory says that the process of "perspective transformation" has three dimensions: psychological (changes in understanding of the self), convictional (revision of belief systems), and behavioral (changes in lifestyle). Literature on the history of the secretarial profession shows that nobody knows when secretaries originated, but that the Romans were first to employ men as scribes who took down dictation. Men dominated secretarial jobs until the late 1880s. However, in the 1930s, women started to dominate the profession.

Ancient Indian education aimed at helping the individuals to grow in the power and force of certain universal qualities for building a higher type of manhood from the teachings of Upanishad and the 'Purusartha' of life to develop a character and multidimensional personality with respect for all norms of life (Bhatta, 2009). It is rightly said in Bhagavad-Gita-"**Yatho Dharma, Tatho Jayas**", meaning success goes hand in hand with the righteousness (Janaki, 2012).

Meaning

Transformation

Transformative learning is the expansion of consciousness through the transformation of basic worldview and specific capacities of the self; transformative learning is facilitated through consciously directed processes such as appreciatively accessing and receiving the symbolic contents of the unconscious and critically analyzing underlying premises. For Boyd, transformation is a "fundamental change in one's personality involving [together] the resolution of a personal dilemma and the expansion of consciousness resulting in greater personality integration.

Transformation = Excellence+Communication+Relentless & Relevant Action+Learning+Teaming skills+Influence

- *Excellence(E)* : It's exercised daily with the commitment to delivering accurately and consistently in the present, keeping an eye on the future and maintaining a quest for new/innovative ways of working.
- *Communication (CM)* : Don't skip the chance to meet face to face with people or the chance to present your ideas and thoughts in person. Prepare as well as possible because these opportunities are becoming increasingly rare.
- *Relentless & Relevant Action (RA)* : What relentless relevant action can look like: requesting to go to conferences, signing up for training, attending lectures, writing whitepapers, searching for speaking opportunities, participating in local industry chapters, reading industry journals, learning about customers, requesting a mentor, learning about industry leaders, and asking questions about the company strategy and how it relates to your projects and assignments.
- *Learn and live the code of ethics for your profession* : Measure the results you are able to create while being in action. Results always trump intentions and provide greater learning value.
- *Teaming skills act as an amplifier* : Teaming is about more than doing your work in a group setting. It includes negotiating capabilities, and the ability to support both the strengths and weaknesses of members.



- *Influence* : Understanding that, as a professional, success is not only about what you personally “do” or personally “produce,” but it is also about the manner in which you influence and inspire others. Being recognized as someone with a positive “can do” or “let’s explore that” attitude goes a long way in your ability to influence others.

The etymology and historical meaning of the term professional is from Middle English, from *profes*, adjective, having professed one's vows. Thus, as people became more and more specialized in their trade, they began to 'profess' their skill to others, and 'vow' to perform their trade to the highest known standard. With a reputation to uphold, trusted workers of a society who have a specific trade are considered professionals. Ironically, the usage of the word 'profess' declined from the late 1800s to the 1950s, just as the term 'professional' was gaining popularity from 1900–2010. The word 'secretary' derives from the Latin *secretum*, meaning keeper of the secrets (Cox, 1998); “in medieval times a secretary was the person who dealt with the correspondence of the king, or other high-ranking person, and consequently with confidential and secret matters” (Vinnicombe, 1980). Traditionally, secretaries were 'note takers'. The most important change in the secretarial profession is that it is a dynamic profession that requires a range of skills and expertise, as well as a high degree of adaptability.

A professional is a member of a profession or any person who earns their living from a specified professional activity. The term also describes the standards of education and training that prepare members of the profession with the particular knowledge and skills necessary to perform their specific role within that profession. In addition, most professionals are subject to strict codes of conduct, enshrining rigorous ethical and moral obligations. Professional standards of practice and ethics for a particular field are typically agreed upon and maintained through widely recognized professional associations, such as the ICSI, ICAI, ICAI-Cost, etc. Some definitions of "professional" limit this term to those professions that serve some important aspect of public interest and the general good of society.

Opportunities mean a time or set of circumstances that makes it possible to do something, a favorable juncture of circumstances (Business Dictionary). It is an exploitable set of circumstances with uncertain outcome, requiring commitment of resources and involving exposure to risk.

Concept of Professionalism

Being a professional, firstly, can be factual and thus associated with holding certain qualifications and or membership of a professional body and secondly be descriptive measuring the characteristics expected of a professional and thus includes ongoing professional development and ever-increasing levels of excellence in services giving by a professional. The first is regulatory in form, and the second is a self-improvement and an ambition-led approach on what is expected of a professional. According to Encarta Dictionaries, professionalism is conforming to professional standard which includes the skills, competence, or character expected of a member of a high trained profession.

Professionalism is competence: knowledge, skills, abilities and personal characteristic in doing or performing a job.

According to Lisa McQuerry (2013), the principles of professionalism are a standard of personal conduct by a professional in his business dealings. Guiding principle for acceptable and expected behaviour vary from industry to industry, that notwithstanding, the following are the general principles of professionalism:

- *Appearance* : One of the critical entreaties to be a professional is building a reputation for professionalism and to meet the basic dress, groom and hygiene standards of your industry.
- *Accountability* : Being responsible is a common concept of professionalism. They understand their



roles and responsibilities and they are accountable for them. They admit their mistakes, learn from them and move on to the next level.

- *Competence* : Professionalism has to do with acquiring skills and work attitude. The core of being a professional is acquiring or showing or possessing the basic foundation of competence in your job.
- *Respectful communication* : Being a professional generally connotes that colleagues and co-workers view you and perceive you as someone who is very respectful in both formal and informal conversation.
- *Integrity* : Demonstrating honesty, transparency in the way you conduct yourselves in your job are a foundation of professionalism.
- *Ethics* :The ethics of a profession are moral principles relating to the job such as Confidentiality: Loyalty: Honesty: Reliable: Responsibility: Work unsupervised: Be Cooperative: Flexibility: No Bribery

People notice because professionals perform what often ordinary job are in an extra-ordinary way. Professionals add a little extra to everything.

Is Transformation essential?

In a world of unprecedented disruption and market turbulence, transformation today revolves around the need to generate new value—to unlock new opportunities, to drive new growth, to deliver new efficiencies.

All transformations require you to rethink how your enterprise creates value today and in the future. In other words, all transformations require you to think big. Why? Because incremental improvement is not enough to win in today's exponentially disrupted business environment. It's not enough to win today. You have to be able to continue to evolve in the future. An effective business transformation means your organization can survive and thrive as you pursue new innovation-driven opportunities that emerge, as you respond to shifting market demands, and as you navigate evolving regulatory complexities. You'll want to proceed with caution, however. Transformation today takes place at dizzying speeds, requiring a level of integration and alignment that many enterprises are not prepared to handle.

Transformation is essential in today's business environment, but in no industry is it as pronounced as within the professional services sector where knowledge and skill are the core commodities, competition is fierce, technology evolves at an almost unfathomable pace, and profit levels are always top of mind. This means that firms spend a lot of time reevaluating business strategy to ensure they are heading in the right direction. The problem is that when a company is required to be as flexible, agile and cutting edge as services firms are, it becomes very difficult to build concrete blueprints for success.

Objectives of Transformation

- a. To create a world in which individuals honor themselves, trust their choices, and fulfill their visions, dreams, and goals, to make the seemingly impossible happen.
- b. To support leaders, executives, and managers in humanizing the workplace so that employees can grow, align with others in creating extraordinary results that exceed quotas, and make the world a better place
- c. To be a catalyst, allowing our clients to discover the answers to the challenges they face. Transformation creates the optimum climate for them to feel safe, to discover their desires, and to have permission to envision, articulate, and realize extraordinary innovative solutions.



- d. Whether you want to start with a company project like creating a training culture, you want to experience a experiential transformational workshop like Inner Negotiation, transformation will support you in choosing what is right for you and your organization.
- e. To support you in a creative and solution-oriented manner in fulfilling your potential, both personal and professional.
- f. To assist you to achieve win-win outcomes by working with all facets: mind, feelings, being, intellect, intuition, and interpersonal aspects.
- g. To inspire and guide people to discover their authentic selves, to connect with and respect others, to work and live in a productive, focused, harmonious, and respectful manner.
- h. It facilitates you in discovering what you want, formulating your strategy, and manifesting your visions, dreams, and goals.

Business Transformation

Business transformation involves making fundamental changes to business to achieve organizational goals and business need to improve processes, technologies, and productivity. There are various reasons for initiating the transformational projects and they could be due to changes in product or services, operations, technology enhancement, new requirements, new regulations or new business needs implemented through cohesive efforts. Business Transformation typically imply technology implementation, mergers & acquisitions, business process re-engineering, *etc.* and impacts the business, people, and technologies partially or completely, depending on the nature of the change. The need for business transformation emanates due to for various reasons, internal or external changes. Internal changes could be changes in policies, operations, introducing new products or services, updating legacy systems or merger and acquisitions *etc.* whereas external changes could be changes in the market such as maintaining competitive edge, new operating model, adopting new regulations *etc.* This could be in the form of “a specific project or business initiative, a revenue growth objective, required costs savings or meeting competitive benchmarks.”

Transformation in Profession

The characteristic of profession has always required a special kind of person--one who's unafraid of change, attuned to context and relationships, and eager to know and do more. As the information system and consumer expectations continue to evolve, it's crucial that professionals apply those qualities in adapting to changes that seem to be coming faster and faster. For the individual, Professional Transformation in keeping pace with these changes—from new rules to new opportunities—can be a challenge on its own.

With that in mind, we need to explore what it means to be a professional, enterprising, knowledgeable, and inspirational professional in the current global landscape.

There are transformations happening within the profession, important professional themes and resources you might have been too busy to notice. Being a professional is more than having a degree and a license. Professional Transformation is all about staying connected on multiple fronts; it's what you know—and what you do. Professionals are constantly challenged to apply their skills in new ways to meet new demands. Transformation focuses on the ways the profession is engaging with a changing environment—new models of care, new approaches to diversifying practice, new technology applications, and more. Professionals must stay knowledgeable—to keep update beyond the walls of the organization. Transformation looks at how professional and individual transformation inspires not just their clients, but peers, other professionals, and the general public. Transformation provides a glance at the good things that professionals do every day, and the ways their commitment to the profession fuels positive change that can resonate well beyond



individual practice. You need to transform the way your organization markets itself. Without transformation, you can risk becoming irrelevant in today's fast changing landscape. Irrespective of the industry you are in, your organization needs to transform to survive in the evolving business environment.

Every Learning professional strives to facilitate change. It may be on a large scale, such as helping their online learners achieve a life goal, or something as small as improving task proficiency. Also, keep in mind that transformations can often occur gradually, especially those that involve a change in perspective.

Responsibilities of Professionals

What we fear doing most is usually what we most need to do. – Ralph Waldo Emerson

The future for professionals is exciting, provided you don't bury your head in the sand and ignore the changes occurring around you, but rather understand them, adapt, and gain the skills that will prepare you to become a successful lawyer of the future. Digital technology has influenced, and will continue to influence, the landscapes of business in almost all industry segments - including professional services.

Responsibilities may include:

- advising the board on effective decision-making, legal and regulatory matters and risk management;
- developing and managing strategies to ensure compliance with legal and statutory requirements;
- identifying areas for improved corporate governance;
- implementing changes in relevant legislation;
- managing board, shareholder and trustee communications, reports and meetings;
- liaising with auditors, lawyers and tax advisers;
- leading on issues essential to business performance such as negotiation of contracts, finance, accounting,
- insurance and property;
- interpreting and advising on financial reporting.

Company Secretary as Professional

Become a Chartered/Company Secretary Professional - No Board can make a move without one. The modern corporate secretary is no longer a "mere servant," as often implied in earlier job descriptions and early legal text, but is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions.

The company secretary is a strategic position of considerable influence at the heart of governance operations within an organisation. You'll stand out from the competition with an enhanced professional identity – those with professional qualifications instantly stand out to prospective employers. The qualification is recognised around the globe and professional members in good standing are welcome anywhere in the world should they decide to emigrate. Working in such close proximity to the board of directors inevitably means being privy to some of the made to be in a profession where your work is directly exposed to the board", says Adaeze Okike.

One of the most desirable traits of a smart leader is the ability to view problems as opportunities. Challenges, mistakes, lack of progress or failure can spur professionals to make adjustments and move in a different



direction. Setbacks are opportune reasons to disrupt thinking and pivot to new ways or better ideas. It is the Company Secretary who aligns the interests of different parties around a boardroom, facilitate dialogue, gather and assimilate relevant information and enable effective decision making. You will stand out from the competition with an enhanced professional identity- those with professional qualifications instantly stand out to prospective employers. The third millennium secretary is a professional. As such, he should be properly trained and should imbibe the principles of professionalism, and personal and business attributes of a secretary.

Challenges for a Professional

"In The Middle Of Difficulty Lies Opportunity." – Albert Einstein

Depending upon knowledge, experience and expertise, all members of same profession may not be on same glorified height. Some may still be a clerk and some other may be on top of ladder. This all may depend upon our risk appetite of individual and his willingness to accept challenges. This will also depend upon the challenges offered to the professional. As a critical element of any board of directors, the company secretary must overcome a number of challenges in order to effort come up with a list of what we believe are the challenges for a company secretary.

1. Understanding the business
2. Understanding company specific reporting obligations
3. Knowing and understanding board member
4. Knowing your place on the board
5. Know and develop a strong rapport with your Chair
6. Blurred reporting lines between executive management and the board
7. Maintaining simultaneous relationships between the board, management and shareholders
8. Keeping Communication, expectations clear
9. Brief of all discussions.
10. Timely and accurate reporting from Management.

The recent upheavals in the corporate world have shaken the confidence of shareholders. There is a greater demand for displaying corporate credibility and transparency by organisations in managing their internal affairs. There is also a need to retain the confidence of various stakeholders. Since, the top management is too busy managing the general working of an organization this new challenge can only be shouldered by some highly qualified and competent profession.

Professional Membership

Members of a profession have also been defined as "workers whose qualities of detachment, autonomy, and group allegiance are more extensive than those found among other groups, their attributes include a high degree of systematic knowledge; strong community orientation and loyalty; self-regulation; and a system of rewards defined and administered by the community of workers."

Membership of the professional institutes such as ICAI, ICSI, etc. evidences not only academic qualifications but also practical experience, character, integrity and responsibility. Membership also ensures remaining at the forefront of global developments and best practice in governance. It involves a career-long relationship



with the Institute – from a professional qualification and beyond via Continuing Professional Development ("CPD") and ongoing technical support packages and tools.

The mission of ICSI is "To develop high calibre professionals facilitating good Corporate Governance" and motto is– Speak the Truth, Abide by the Law".

We have decided this time the convention will be based on the theme 'Change, Challenge and Opportunities for CS professionals' - ICSI President CS R. Sridharan (2014). Change now is inevitable in the present days context as the Companies Act has been substituted after 56 years. That is the change now. The challenge is inbuilt in the Companies Act, 2013.

Last but not the least, a professional should have one or two of knowledgeable colleagues who could really guide in risky areas and help the co-professionals. The professional should attend seminars conducted by the respective institute he belongs not merely to gain credit hours but to gain knowledge. The Professional Institutes also have the responsibility to help the professionals in conducting good and vibrant seminars very frequently in this regard and not aiming at how much to make money out of seminars. This knowledge sharing helps a professional in the long run. Time has come for the professional to keep inventing new ideas, pick up useful tips from his colleagues, share his ideas with others so that each one of us could continue with our secretarial work with lot of passion and fun without fear in the new era of Companies Act, 2013. Strategies for transformative professional development include action plans, reflective activities, case studies, curriculum development, and critical-theory discussions.

Mentoring is another strategy for transformative professional, personal and organizational development. Through this experience mentoring becomes a transformative relationship in which individuals reconstruct possible selves.

The first was the risk of non-response. Ten organisations were identified and invited to participate in the survey. One month after the letters of invitation had been sent, only two organisations had confirmed their participation, seven organisations had either not acknowledged the invitation, or had undertaken to consider the invitation but had not responded to it. The second challenge related to the need to obtain an appropriate balance between the various parts of the profession and people who no longer are in practice.

The third challenge was to ensure representation across the profession, based on gender, race, age, stage of career, and sector of the profession. This challenge proved to be surmountable with a wide diversity represented in the field research.

Millennials work differently and must be motivated differently, so firms need to revise a number of policies and procedures to get the best results from them. Likewise, it is crucial to understand that today's young lawyers from this new generation don't want a boss; they prefer to have a leader that they not only will learn from but who will also be their mentor and friend. They want to have clear assignments and understand what is expected of them.

How to transform Profession to opportunities ?

"The difference between what we do and what we are capable of doing would suffice to solve most of the world's problems" - Mahatma Gandhi

Transformation is the halt which provides an opportunity for rest and refreshment a good chance for advancement or progress or professional development. The ways to transform includes:

1. *Points to bear in mind*

You may have made the decision that your business needs to undergo a transformation, but you



need to figure out what needs to change. Before you embark on a business strategy, take a look at the organization's business model and take into account the needs of your customers. Ascertain whether your organization is meeting their needs.

2. *Begin by asking yourself relevant questions*

Begin by identifying your area of focus and make an estimation of the right marketing mix beforehand. Answering a series of questions will simplify the process for you.

3. *Choose the right team*

The team that you choose will decide how successful you are in your business transformation efforts. The right team will define an achievable roadmap and will then execute the plan.

4. *Concentrate on the core team*

Concentrate on the core team who should not only be equipped with the knowledge of internal processes but should be aware of the relationship dynamics as well.

5. *Timelines and tools*

Ascertain in what order or timeline you will require the tools. Make sure that your expectations are realistic and achievable.

6. *Personal Transformation:*

For nearly 100's of years professional passion and experience guidelines has been to provide people with a simple path to personal transformation. These principles are the steps that could lead to your transformation:

1. *Appreciate your success.*

This first principle is a challenge. By staying in touch with your accomplishments, you build true, authentic confidence to move on to make new things happen.

2. *Learn your lessons.*

Review your past year to discover what worked and what didn't work in order to find the lessons you need to learn.

3. *Shift your limiting beliefs.*

Find what you think is true about you and can't be changed no matter what you do. That's the limiting belief to shift.

4. *Live your values.*

What makes sense is examining our own lives in light of what we believe, our values.

5. *Set and track your top goals.*

Write no more than 10 goals that would make the next year your best year yet, in both your personal and professional life. Now set, track and score monthly goals that are the steps toward your yearlong goals.

Tips to help professionals move faster towards positive change.

- Be ready and open to thinking differently. Einstein said, "The definition of insanity is doing the same thing over and over and expecting a different result".
- Manage your limiting self-talk and perfectionist tendencies.



- Do things in a different way.
- Change the people you listen to.
- Be willing to make changes to your team.
- Celebrate victories, no matter how big or small.

If you want change and you want it to happen sooner rather than later, begin by looking in the mirror because the starting point is you. Be careful to not get caught up in your fears, in selfdoubt, or in deflecting blame because those detractors will slow you down. Pivoting for change and innovation will be accelerated by your attitude to change.

6. *Not to Underestimate*

A career in transformation not everyone has the DNA to make a good transformation expert. It's a role which needs clear strategic vision and the ability to demonstrate leadership and direction while executing a plan to turn that vision into a practical reality. Engaging people within the business is critical and this is where HR will be able to influence the transformational agenda. Never underestimate the transformation task.

7. *Small steps, big benefits*

There's no simple shortcut to being a transformation expert. As one leading HR and transformation professional said recently, you can't go home on a Friday night as an HR director and return on a Monday morning as a transformation guru. What you can do though, is help future-proof your transformation career by seeking opportunities to become involved in small projects now, ready for that big step in the future.

8. *Renew Yourself*

The fact that business life is intense with a complicated structure increased the need for secretaries and the ones already working in this profession had to renew themselves due to the theoretical knowledge and administrative skills needed. As a result of the increase in the employer demand for qualified staff and qualified presentations from secretaries, the profession is renewing its image in society in a positive way every day.

Particularly, the requirement that rapid developments in computer technology should be followed up enriches the meaning of being successful in the philosophy of "continuous professional education".

Each step of the business transformation process should be carried out with open communication, flexibility, and transparency. There is no one-size-fits-all map for success. Do not hesitate to resort to outside help but at the same time your internal team should be empowered and equipped supervise the process as it evolves. If you find yourself in charge of a highly visible, strategically critical change program, it is appealing to think of a list like this as a checklist – "if I do these things, we will succeed." There is an instinctive drive among all humans to make meaning of their daily lives. Because there are no enduring truths, and change is continuous, we cannot always be assured of what we know or believe.

Survey Results

In a study conducted on how long it takes marketers to integrate transformation of new technologies in their marketing efforts, it was discovered that 12% of respondents said one month, 26% admitted that it took them 2-3 months, 29% said that they needed close to 4-6 months whereas 21% of the respondents said it



took them 7-12 months. Only 7% said that it took them 1-2 years to integrate new technologies in their marketing efforts and just 1% of the marketers said that it took them more than three years. Statistics show that 80% of people will resist change, 10% will do anything to avoid it and the other 10% will be pro-change. If change is happening within your organisation, make sure you are one of the 10% to embrace it – it's your opportunity to get the experience you need. It doesn't have to be a big project – organisations are changing all the time.

In 2014, International Data Corporation (IDC) figures identified almost 24 per cent of firms as cloud adopters and this will only have increased in the last year as 74 per cent indicated a desire to transfer even more infrastructure to the cloud. Additionally, Gartner has stated that at least 30 per cent of service-centric companies will move the majority of their enterprise resource planning (ERP) applications to the cloud by 2018.

In 2013, India ranked 134 out of 189 economies in the World Bank's Ease of Doing Business index. Progress on these and other fronts could improve India's rank in this index by more than 50 in just a few years. A recent McKinsey report reckons that within a few years, up to half of the 3.9 million Indians currently working in the IT sector will become irrelevant. Change is hard, but it's worth it. Part of change and transformation, especially in education, is focusing on our best professional development.

How to ensure Transformation ?

"Transformation isn't sweet and bright. It's a dark and murky, painful pushing. An unraveling of the untruths you've carried in your body. A practice in facing your own created demons. A complete uprooting, before becoming." - "Victoria Erickson"

How do we ensure that the transformation goals and objectives support our business strategy?

1. Begin with a strategy-informed ambition
2. Lead with capabilities
3. Drive to value
4. Build in sustainability
5. Be agile and flexible
6. Invest in program talent

Opportunities in India

India will be a global player in the digital economy, and it will be competitive with any country in the world.- Sunder Pichai, Google

India today can best be described as a restless nation, with calls for change coming from almost every corner of society. India is the world's seventh-largest economy, sitting between France and Italy. Its GDP growth recently dipped to 5.7%; still, India is growing faster than any other large economy except for China. By 2050, India's economy is projected to be the world's second-largest, behind only China.

When J.P. Morgan's limited number of branches in India restricted access for our business clients, we launched a virtual banking online portal to expand our presence nationwide which offers a user-friendly interface while complying with rigorous infrastructure and application architecture standards to ensure security and reliability.



India has distinct advantages in a population profile concentrated in the younger age group, where many new opportunities can be fully optimised. With its large population of educated youth, India can provide a host of services to such countries. These services fall into two broad categories:

1. Professional services to the world provided remotely from India – IT services, IT enabled services, telemedicine, e-learning, etc.
2. Customers serviced in India (import of customers) – special service tourism (health care, education services), leisure tourism, etc.

The resultant employment generation (direct and indirect) can be in the range of 20-72 million by 2020.

The second opportunity, importing customers into India, has the potential of generating \$6-50 billion of revenues and creating between 10 and 48 million jobs (direct and indirect) by 2020. In US banks, insurers and capital markets firms are continuing to strengthen the structures needed for regulatory compliance — particularly their digital and technological capabilities — while keeping one eye on the horizon for signals of policy change.

Women

Women are under-represented in India's economy. McKinsey Global estimates that, at 17%, India's women have the lowest share of contribution to gross domestic product (GDP) in the world, lower than women in China (41%), Sub-Saharan Africa (39%), and Latin America (33%). Women in India make up just 24% of the workforce, compared with 40% globally, the report said. India needs to get more women working. India has made modest progress in closing its gender gap over the last decade, rising from 98th to 87th in the World Economic Forum's Gender Gap Report, which aggregates a range of indicators from health and education to economic and political participation. However, it ranks a lowly 135th out of 144 on women's labour force participation, just behind Yemen. India's economy would have much to gain from getting more women into the workforce.

Youth

It is possible to think of the well-being of a person as being a matter of his or her ability to do this or be that - what has been called the person's "capabilities". About 600 million people, more than half of India's population, are under 25 years old; no country has more young people. As a recent Bloomberg News analysis discovered, India is likely to have the world's largest workforce by 2027, with a billion people aged between 15 and 64. By 2020, India is set to become the world's youngest country with 64 per cent of its population in the working age group.

It is important how we view the youth of our nation. To simply consider them as new age voters will be a big mistake. They are the new age power. India is a youthful country. A country with such a major percentage of youth has the capability to change not only its own, but the fate of the entire world. - Narendra Modi

List of Professional Opportunities as Company Secretary

1. Accounting Services
2. Statutory Audit Services
3. Specialty Audit Services
4. Corporate Law Services
5. Management Accounting Services



6. Strategic Financial Management Services
7. Internal Audit and Internal Assurance Work Services
8. Financial Planning and Wealth Management Services
9. Financial Market Services
10. Direct Tax Law Services
11. Indirect Tax Law Services
12. Rehabilitation, Insolvency, Liquidation Services
13. Corporate Governance
14. Valuation Services
15. Business / Commercial Laws Services
16. Laws Related to Formation of various Forms of Business Entity
17. Drafting of Documents and Conveyancing Services
18. Laws Related to Financial Institutions
19. Sector / Industry Specific Laws
20. Laws Relating to Foreign Exchange
21. Laws Relating to International Trade
22. Social Security Laws and Employee Ownership
23. Takeover Laws
24. Opportunities with State Legislations and Regulations
25. Information Technology and Information System Audit
26. Arbitration
27. Climate change and Carbon Credit Mechanism
28. International Professional Opportunities
29. Education, Training and Publication
30. Export/Import Consultancy
31. Business Process Outsourcing
32. NRI Service
33. STPI and SEZ
34. Business Startup Service
35. NGOs, Societies and Trusts



36. Consultancy to Government Projects
37. Pension Services
38. Performance Measurement
39. Insurance
40. Local Bodies
41. Knowledge Management
42. Opportunities with ICSI

Suggestions

The following recommendations are therefore made to foster professionalism in the profession:

1. There is urgent need for a viable professional body to oversee the activities of all professionals. This will go a long way to bring about professionalism in profession; help regulate and serve as check and balances. With a viable professional body, all the lapses identified in this study can be resolved.
2. There should be awareness campaign by the National body of Professionals to educate or enlighten the public most especially employers of Labour of the need to identify with the professional body by liaising with the body in terms of employing of professionals.
3. To enlighten and draw membership from trained professional bodies, the need to associate with the national body in order to benefit from the activities and the promotion of advancement in knowledge and use of modern information technologies.
4. There should be collaboration between the international body and the national body of professionals/ Administrators in order to secure support and aids in the acquisition of modern technologies and the delivery of lectures by professionals outside this country.
5. Knowing the sensitive nature of the profession and considering the ethics of the profession, it becomes imperative that graduates from the Universities and Polytechnics who studied Technology and Management be made to take oath of office just as it is done in various other fields of study like Medical profession, Priesthood *etc.*

On a philosophical level, this will require a paradigmatic shift in the way social work as a profession understands its role and purpose as well as its conceptualisation of the relationship between people and the non-human world.

One answer is to simply 'add-on' the natural environment as one of the core issues with which the profession and professional education is concerned. Consideration of this dimension alone, i.e., the links between ecology, public policy and democracy, should alert the profession to the need for an expansion of existing ecological approaches, and a deeper concern and engagement with issues of the natural environment. Besthorn describes such a professional consciousness as converging along three dimensions: environmental awareness, spiritual sensitivity and political activism.

Ongoing & Upcoming Scenario

The explosion in electronic commerce, the blending of internet technologies and traditional business concerns impacting all industries is just one example of the many ways information technology is influencing



how people do business and how they account for business financial and economic events (Moscove, *et al.*, 2003). However the audit objective of professional which is to render an opinion on the “true and fair view” of a client’s financial statement still holds.

A steady pace of implementation of policy reforms can lay foundation of India's real GDP at an average of 6.75%, and the economy would pass the \$5 trillion mark over the next 10 years, says Morgan Stanley. Moreover, bureaucratic hurdles and corruption-related investigations have exacerbated the challenges of weak demand and low corporate confidence. This has held back the much needed capex cycle and has been a drag on economic growth, it added. If our projections were to come to fruition, India’s economy would pass the \$5 trillion dollar mark, a feat that has been achieved by only the US and China thus far and would make India the fifth-largest economy from 10th currently in the world.

According to the research note, India will remain a portfolio manager's delight because of its intense stockpicking characteristics and, ultimately, how all this translates into stock market returns, which will likely make India one of the biggest equity markets in the world.

In today’s system, many districts often buy all the stuff, put the tools in carts and in hallways, expect teachers to use it, and then hope for an increase in student achievement. With such practice, incredible 21st century tools are often underutilized and stuck in 20th century learning environments. The concept of selling a bundle of goods and services creates a whole new framework for taxation “Technology — from 3D printing to robotics and artificial intelligence — will keep changing the way businesses operate, and where and how value is created. This requires new interpretations and applications of tax rules,” Edvard explains.

Public tax authorities increasingly also have access to the assets they need to transform how they collect tax — meaning that those reporting them are forced to move at their speed, abilities to deal with big data says Houston-based Carolyn Bailey, EY Americas Digital Tax Administration Leader. “The tax professional of the future will need technological awareness and skills, and the ability to interact with businesses,” Being a professional’ is not limited to a narrow career path that stifles creativity, fails to utilize other skillsets, and discourages pluck. This is the golden age of the legal entrepreneur, a time when, to quote T.S. Eliot, clients are ‘no longer at ease in the old dispensation. Companies like LegalZoom and Rocket Lawyer make legal services more accessible and affordable to those that cannot pay current high legal rates. A simple Will, uncontested divorce form, nondisclosure agreement, or employment agreement are a few clicks and a few bucks away. Clients have become more assertive in their fee discussions and law firms are being forced to “do more with less”.

As Fauscette points out, analytics and AI are only getting "more intelligent," with some systems so finely tuned that they can boil a pile of resumes down to one applicant who will be the best fit. As for artificial intelligence, the wisdom is not to compete against it, but rather with it. It is not intended to replace lawyers or launch robot lawyers to compete with humans. No matter how much a recruiter or HR rep tries to be unbiased and balanced, there often is some level of selection bias present. The AI-based systems, assuming there are no biases in the algorithm of course, doesn't suffer from the same tendencies," says Fauscette.

Mills says allowing employees the freedom to work however they work best - whether from home, in an office or from a coffee shop - creates a shift where employees start working from a position of "desired duty" instead of "required duty." This flexibility creates an 'pride of ownership' exists for a reason," he says.

Change is going to happen whether you pursue it or not—you only need to look at how the role of cloud computing in 2016 has evolved to understand. Modern enterprises succeed when they adapt to industry and marketplace shifts and incorporate new technology into company culture and regular operations. The international airport at Kochi, Kerala, became the world’s first fully solar energy powered airport by the year



2020, India may finally transform itself and shed its old sluggish image. According to the Central Electricity Authority, there will be a surplus of 3.1% for peak hours and 1.1% for non-peak hours during FY 2016-17. From shortage to surplus: For the first time in history, India will not have power deficit situation this year -2016

job creators', rather than only 'job seekers' : The second, related, opportunity is the growth in platform players which is driving the growth and viability of new start-ups, individual entrepreneurs, micro entrepreneurs employing a few workers, self-contracted workers etc. (collectively referred to as 'micro entrepreneurs' in this report) they support an entire ecosystem of self-employment; of 'job creators', rather than only 'job seekers'. In the past two years, we have seen the startup culture finally being encouraged in India in a big way. By 2020, expect a lot more Indian start-ups to become billion-dollar companies. Initiatives like Startup India and Make in India promise to go a long way in making India an economic powerhouse. It can also be seen in the rise of asset-sharing models like Uber, which are beginning to disrupt traditional industries, such as automotives, which are growing by service provision rather than product sales. This growing servitization is already being reflected in the changing consumption patterns of countries like India and China, and in global trade. In India, the services sector has shown immense promise with a Compound Annual Growth Rate (CAGR) of 8.6 percent (2010-2014), outperforming others such as China (8.4 percent) and the US (1.8 percent).

Trade statistics show that the global growth in services trade is outpacing merchandise trade, with digital-enabled services growing the fastest. Pre crisis, the services export CAGR of India was the fastest amongst the top service producer countries, at 30.1 percent. Post crisis, with the slowdown in trade, India remains amongst the top three countries, registering a growth of 7.5 percent.

Servitization : In essence servitization is a transformation journey - it involves firms (often manufacturing firms) developing the capabilities they need to provide services and solutions that supplement their traditional product offerings. Servitization is defined as "the innovation of organisation's capabilities and processes to better create mutual value through a shift from selling product to selling Product-Service Systems. Many social- sector organizations will become partners with government--as is the case in a great many "privatizations," where, for instance, a city pays for street cleaning and an outside contractor does the work.

Every country, every industry, and every business will be in an increasingly competitive environment. There is no domestic knowledge and no international knowledge. There is only knowledge. And with knowledge becoming the key resource, there is only a world economy, even though the individual organization in its daily activities operates within a national, regional, or even local setting. A new global economic paradigm is emerging, driven by the rapid growth in digital technologies The difference is not in the technology, but in knowing how to use it

Conclusion

Today we are one of the fastest growing economies, but also one of the most corrupt nations, we are the hub of MNC's but our farmers and committing suicide, we are skilled. We will have to go back to past to develop our future as rightly pointed out that, "Those interested in furthering their understanding of good leadership are advised to look back to the past for answers to the future" (Rarick & Nickerson, 2009). The fundamental conclusion drawn by much of the emerging evidence is that there is a crisis and we are the cause.

Professional Skills development is the shared responsibility of the key stakeholders viz., Government, the entire spectrum of corporate sector, community based organizations, those outstanding, highly qualified and dedicated individuals who have been working in the skilling and entrepreneurship space for many



years, industry and trade organisations and other stakeholders. The skill strategy is complemented by specific efforts to promote entrepreneurship in order to create ample opportunities for the skilled workforce.

“Transformation is very far off.” Some participants observed that as long as the upper echelons of the profession remains occupied by persons who do not recognise the problem, it will be very difficult for transformation to be taken seriously and to advance. Comments made included: “We still have a long way to go”; “We need to move away from lip service transformation.

Report indicates that across the profession in Gauteng, professionals are experiencing a range of hostility and exclusionary conduct based particularly on the intersection of race and gender. This hostility is also causing the stultification of excellence and the effective repression of talent in the profession. In the same way as centuries of gender- and race-based discrimination has led to the loss of scientists, mathematicians and artists because the identity and race of a person mattered more than their skill, so too we risk the loss of excellence in the legal profession today.

The question is, can we see ourselves as applying professionalism in carrying out our jobs as professionals? If not, what are you waiting for? All hands must be on deck to lift up ourselves to an enviable height. We can contribute our quarter to National development by applying our skills and potentials by virtue of the training we have acquired to boost the processing of information by the various organizations we work for. The role of a professional is very sensitive to the smooth running of the business organization. Let the transformation begin! Do the math. Show your work. Become a professional.

“Any man's life will be filled with constant and unexpected encouragement if he makes up his mind to do his level best each day.” - Booker T. Washington

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Competition Assessment of Combinations

*Surendra U Kanstiaya**

To promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.

- Vision Statement

Introduction

The Competition Act, 2002 (the Act) empowers the Competition Commission of India (the Commission) to regulate the combination of enterprises with large assets or turnover. With effect from 1st June 2011, every combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is declared void pursuant to applicable provisions. The Commission has framed the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (the Regulations). These Regulations deal with the form of notice, filing fee and the allied issues. The Regulations have been amended by the Commission from time to time (in the years 2012, 2013, 2014, 2015 and 2016). The Central Government has also issued notifications from time to time to address issues like exemptions, thresholds etc.

Combination

Section 5 of the Act provides that 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 if it exceeds the prescribed financial thresholds. Sub-sections (a), (b) and (c) of section 5 cover the transactions relating to the acquisition of control, shares, voting rights or assets; acquiring of control over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service; and merger or amalgamation. Hon'ble Supreme Court in *Competition Commission of India v. Thomas Cook (India) Ltd. & Anr.* [2018] 144 CLA 1 (SC) explained these transactions in the following words:

Under section 5(a) of the Act, a combination is formed if the acquisition by one person or enterprise of control, shares, voting rights or assets of another person or enterprise subject to certain threshold requirement that is minimum asset valuation or turn over within or outside India.

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Under Section 5(b) of the Act the combination is formed if the acquisition of control by a person over enterprise when such person has already acquired direct or indirect control over another enterprise engaged in the production, distribution or payment of a similar or identical or substitutable good provided that the exigencies provided in section 5(b) in terms of asset or turnover are met.

Under section 5(c) of the Act, merger and amalgamation are also within the ambit of combination. The enterprise remaining after merger or amalgamation subject to a minimum threshold requirement in terms of assets or turnover is covered within the purview of section 5(c).

Financial Thresholds

Section 5 of the Act, also prescribes the financial thresholds in terms of assets and turnover, which are given in the following table. In any combination where any of these thresholds are exceeded, the same would require prior approval of the Commission.

	APPLICABLE TO	ASSETS		TURNOVER	
In India	Individual Parties	Rs.2,000 crores		Rs.6,000 crores	
	Group	Rs.8,000 crores		Rs.24,000 crores	
In India and outside		ASSETS		TURNOVER	
		Total	Minimum	Total	Minimum
			Indian		Indian
			Component out of Total		Component out of Total
	Individual parties	US\$ 1 bn.	Rs.1000 crores	US\$ 3 bn.	Rs.3000 crores
	Group	US\$ 4 bn.	Rs.1000 crores	US\$12 bn.	Rs.3000 crores

Filing of Notice

For seeking approval to the proposed combination, parties are required to file notice with the Commission. The notice needs to be given by filing Form I or Form II with the prescribed fee. Regulation 5(3) prescribe the instances where Form I is required to be filed. Accordingly, in all cases which are not covered by regulation 5(3), the parties to the combination are required to file Form I. Following are the instances requiring parties to file Form I:

- (a) where the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than 15% in the relevant market;
- (b) where the parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in

goods or provision of services, and their individual or combined market share is more than 25% in the relevant market.

Exempt Combinations

In a number of cases, the provisions relating to combination regulation are not applicable and therefore there is no need to file the notice and seek the approval of the Commission. Following are such classes of transactions where exemptions are available.

- a. *Target exemption* : A combination where the value of assets being acquired, taken control of, merged or amalgamated is not more than Rs.350 crores in India or turnover of not more than Rs.1000 crores in India is exempt from approval norms. - S.O. 988(E) dated 27th March, 2017 issued by MCA [2017] 137 CLA (St.) 121.
- b. *Part acquisition or merger* : Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under section 5. - S.O. 988(E) dated 27th March, 2017 issued by MCA [2017] 137 CLA (St.) 121.
- c. *Regional Rural Banks* : Regional Rural Banks in respect of which the Central Government has issued a notification under section 23A(1) of the Regional Rural Banks Act, 1976 are exempt from complying with the provisions of sections 5 and 6 of the Competition Act, 2002. - SO 2561(E) dated 10th August 2017 issued by MCA [2017] 139 CLA (St.) 96.
- d. *Nationalised Banks* : All cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalised banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 are exempt from complying with the provisions of sections 5 and 6 of the Competition Act, 2002. - SO 2828(E) dated 30th August 2017, issued by MCA [2017] 140 CLA (St.) 63.
- e. *CPSEs operating in the Oil and Gas Sectors* : All cases of combinations under section 5 of the Act involving the central public sector enterprises ('CPSEs') operating in the Oil and Gas Sectors under the Petroleum Act, 1934 and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, are exempt from complying with the provisions of sections 5 and 6 of the Act. - SO 3714(E) dated 22nd November 2017, issued by MCA [2017] 141 CLA (St.) 139.

Combinations in Respect of which Notice need not Normally be Filed

According to Regulation 4 certain categories of combinations mentioned in Schedule I of the Regulations are ordinarily not likely to cause an appreciable adverse effect on competition in India and therefore notice need not normally be filed. Hence in the following cases, the parties can claim exemption, if they otherwise satisfy the given conditions.

- (1) An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty five per cent (25%) or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly or in accordance with the




execution of any document including a share holders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired.

Explanation:- The acquisition of less than ten per cent of the total shares or voting rights of an enterprise shall be treated as solely as an investment:

Provided that in relation to the said acquisition,-

- (A) the Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and
 - (B) the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.
- (1A) An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, where the acquirer or its group, prior to acquisition, already holds twenty five per cent (25%) or more shares or voting rights of the enterprise, but does not hold fifty per cent (50%) or more of the shares or voting rights of the enterprise, either prior to or after such acquisition:
- Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group.
- (2) An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, where the acquirer, prior to acquisition, has 50% or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control.
 - (3) An acquisition of assets, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not.
 - (4) An amended or renewed tender offer where a notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer:
Provided that the compliance with regulation 16 relating to intimation of any change is duly made.
 - (5) An acquisition of stock-in-trade, raw materials, stores and spares, trade receivables and other similar current assets in the ordinary course of business.
 - (6) An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control.
 - (7) Any acquisition of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be.

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- (8) An acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group.
- (9) A merger or amalgamation of two enterprises where one of the enterprises has more than 50% shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than 50% shares or voting rights in each of such enterprises are held by enterprise(s) within the same group:
- Provided that the transaction does not result in transfer from joint control to sole control.
- (10) Acquisition of shares, control, voting rights or assets by a purchaser approved by the Commission pursuant to and in accordance with its order under section 31 of the Act.

Time for Filing Notice

Section 6 of the Act provides the procedure for regulation of combinations and declares void a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. Section 6(2) provides that the notice relating to a proposed combination needs to be filed within 30 days. Section 6(2A) further provides that a combination shall come into effect until 210 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. However, vide Notification no. S.O. 2039(E) dated 29th June, 2017 [2017] 139 CLA (St.) 24, the Commission has relaxed the 30-day norm. The said notification does away with the deadline of filing the notice within 30 days and provides parties the flexibility to file combinations when they are ready to file a notice with Commission. Hence the parties need to ensure that the notice is filed with the Commission, the approval is obtained and thereafter only the proposed combination is acted upon. Hon'ble Supreme Court in *SCM Solifert Limited & Anr. v. Competition Commission of India* [2018] 144 CLA 15 (SC) observed as under:

It is apparent from section 6(2) of the Act that the proposal to enter into combination is required to be notified to the Commission. The legislative mandate is apparent that the notification has to be made before entering into the combination. The Preamble of the Act contains that the Commission has been established to prevent practices having an adverse effect on the competition. The combination cannot be entered into and shall come into effect before order is passed by Commission or lapse of certain time from date of notice is also apparent from the terminology used in section 6(2A) which provides that no combination shall come into effect until 210 days have passed from the date of notice or passing of orders under section 31 by the Commission, whichever is earlier. The provisions made in Regulation 5(8) also buttresses the aforesaid conclusion. Notice of Section 6(2) is to be given prior to consummation of the acquisition. *Ex post facto* notice is not contemplated under the provisions of section 6(2). Same would be in violation of the provisions of the Act.

The expression “proposes to enter into a combination” in section 6(2) and further details to be disclosed in the notice to the Commission are of the ‘proposed combination’ and the specific provisions contained in section 6(2A) of the Act provides that no combination shall come into effect until 210 days have passed from the date on which notice has been given or passing of orders under section 31 by the Commission, whichever is earlier. The intent of the Act is that the Commission has to permit combination to be formed, and has an opportunity to assess whether the proposed combination would cause an appreciable adverse effect on competition. In case combination is to be notified *ex post facto* for approval, it would defeat the very intendment of the provisions of the Act.



Competition Assessment and Approval

On receipt of the notice, the Commission shall make competition assessment. The Commission shall have due regard to all or any of the following factors for the purposes of determining whether the combination causes or is likely to cause an appreciable adverse effect on competition in the relevant market:

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry into the market;
- (c) level of combination in the market;
- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or likely to be available in the market;
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competition or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;
- (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

After assessing the information furnished by the parties, the Commission would approve or disapprove the combination. Of course, till date, the Commission has never disapproved any notice, yet there have been various cases where the Commission directed the parties to modify the terms of combinations. In a few cases, public comments have also been invited so as to ensure that the interest of stakeholders are adequately taken care of, while assessing a combination.

The Companies Act, 2013

Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 mandates the company to send notice to the Commission if the provisions of the Competition Act are applicable to the proposed Scheme. Such notice is required to be filed in Form No. CAA.3 along with a copy of the scheme of compromise or arrangement, explanatory statement and other disclosures. Hence in addition to filing of Form I or Form II, the submission of Form CAA.3 is also mandatory in applicable cases. In such case, the Commission is given 30 days time to make its representation, if any, to the National Company Law Tribunal. Notwithstanding this provisions, in such cases, the proposed Scheme cannot be implemented unless Commission has approved in accordance with the provisions of the Competition Act.



Conclusion

No combination notice has ever been rejected by the Commission. Even in case of belated filing, the Commission has always imposed a nominal penalty. The parties are allowed to have an informal and verbal consultation with the staff of the Commission prior to filing of the notice to a proposed combination and seek necessary clarifications. Even after filing the notice, the parties are entitled to meet the officers of the Combination Division after sending the written request in the prescribed manner. All these facts are reflection of the Commission's resolve and wisdom in enforcement of the combination regulations in a liberal and professional manner.



The Cost of Non-compliance

*Dr. Joffy George**

Compliance executives universally agree that they have an obligation to make sure their companies comply with the various laws and regulations that govern their industry and the jurisdictions in which they operate, but they are often at odds when it comes to determining the true value of an effective Corporate Compliance System. Cost of misconduct provides a framework for measuring the value of corporate compliance. The resources companies dedicate to their compliance programs remain limited in spite of the added risk caused by costly regulations. Companies are symptomatically under-investing in compliance systems. Compliance executives need to consider whether the amount most companies allocate for compliance programs is sufficient, given that fines and penalties for violations typically run into millions and crores, besides the potential cost of lawsuits and incidences of frauds. Putting an effective Corporate Compliance System in place to prevent these incidents before they happen will be well worth the price.

The overall takeaway for the Board and top management is that the cost of this type of wrongdoing is much more substantial than they probably think. Board have to be proactive and engage in risk mitigation by taking steps to create a 'culture of integrity' which is supported by the proper financial investment in internal controls and a well-planned compliance and ethics system. The costs of misconduct will differ for each firm, but one thing is certain – the greater the effort companies make to prevent misconduct before it occurs, the larger the payoff on whatever they spend on compliance system. It is unlikely to fully eliminate misconduct, but even if you don't, if you can point to the efforts you've made and show you are addressing the issue in a very systematic manner, you are likely to receive more leniency from the authorities.

When a company begin mapping out its overall compliance strategy, 'think about where you want to allocate your resources against your highest-risk areas,'. 'Make sure your compliance efforts are aligned with the highest-risk areas and the risks that put in jeopardy the corporate objectives you're trying to achieve. As you invest in your corporate compliance program, think about these risks and prioritize them according to what these costs show, but also prioritize building a culture of integrity that is going to mitigate – if not eliminate – some of the indirect costs that can otherwise emerge if your employee base doesn't feel like these issues are being taken seriously. One important step in mitigating the risk of experiencing an incident of misconduct involves creating a culture of integrity throughout the company. A culture of integrity is a foundational part of an effective Compliance & Ethics System. Once the company has put strong compliance systems in place, developed appropriate policies on compliance and ethics, established approved training programs and implemented controls that can reliably monitor the program, the company must prove it is willing to reward the type of integrity that employees must demonstrate in order to make the

* *Company Secretary & Jt. General Manager, TELK, Ernakulam. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



compliance and ethics program work. Company has to engage employees and win their trust. It is important to make sure employees feel comfortable coming forward to bring misconduct issues to the attention of their managers and to corporate compliance system. That actually helps to resolve the issues faster. When issues of misconduct occur, the company must quickly and effectively resolve them in a public way. Business managers must also openly show the employee base how they're working to prevent misconduct from happening in the future. Corporate leaders must give employees some broad sense the company is taking clear steps to make sure all situations involving misconduct will be resolved fairly.

Building a culture of integrity can also have long-lasting financial benefits for companies. The more you build the right culture and the more you have the compliance processes in place, the more likely it is that you will prevent and mitigate these types of incidents and the more defensible a position you will have created for yourself with the authorities. People are understandably very concerned with the growing expense of internal compliance, but when you compare it to the cost of non-compliance, you can see it is often an investment that can pay for itself. Indirect costs of not having in place an effective Corporate Compliance System might exceed direct costs while direct costs are typically top of mind for compliance and business executives, depending on the type of misconduct, indirect costs associated with the violation may exceed the direct costs of the violation. Compliance executives should include the indirect costs of misconduct in their tracking of overall misconduct costs.

Those companies that are better at communicating compliance measures effectively to their employees will likely spend less on compliance because the employees will more faithfully execute the compliance measures. And that is a compliance measure worth more than any company could ever spend.

Compliance Systems must be effective but also achieve business goals. Managing operational risk and compliance in the current era of enforcement, shareholder suits and explosive class-action activity poses huge risks if you fail. But it also presents some game-changing opportunities if you choose to embrace them. Over the past few years, organizations have focused a lot of their time, energy and resources on designing, implementing and improving governance, risk and compliance programs to address these risks.

Generally speaking, there are two types of evaluations to undertake: 'effectiveness evaluation' and 'performance evaluation'. The former helps an organization to meet minimum requirements and receive credit for putting in place a system that is logically designed by using sound practices. The latter helps a company to understand whether the program is truly delivering business benefits and also identifies where investments can be optimized. In the world of compliance and internal control, 'effectiveness' is a term of art that has specific meaning. Although legal compliance represents a subset of the issues typically included in operational risk, it is important that companies use this common denominator when evaluating a system, for it is the 'effectiveness' that will be used by enforcement entities when things go afoul. Performance brings into view the totality of the system and determines if it is delivering real business value. This concept certainly includes 'effectiveness', as a solid system must meet the minimum legal requirements.

At the highest level, all organizations are in business to achieve objectives while staying within a set of specific conduct boundaries. The governance, risk and compliance approach fits into this picture by providing a capability to identify boundaries and obstacles and establish a system to let management and the board know when it is crossing the boundary. As issues are encountered and addressed, management can improve the system to reduce the likelihood that prior issues resurface, or new issues arise unexpectedly. 'Effectiveness' looks at whether the program is logically designed to address all mandated and voluntary requirements (design effectiveness), and whether the program is actually operating as designed (operating effectiveness). In this sense, the evaluation helps to determine if the program is delivering required legal and regulatory outcomes and appropriately reflecting the organization's voluntary promises regarding its approach to governance, risk and compliance. At a practical level, neither design nor operating effectiveness



will help management and the board judge performance or optimally allocate scarce capital. Beyond design and operating effectiveness, there is a need and demand for ‘Total System Performance.’

Corporations face growing demands not only to comply with all the laws and regulations that apply to their business but also to organize their compliance efforts in a way that stands up to scrutiny. That scrutiny can come from both internal sources, such as the company’s board, and external ones, such as a government enforcement agency investigating possible wrongdoing. To measure up to that scrutiny, prudent companies implement effective compliance & ethics systems.

In light of the current environment, when auditors are using much higher standards, many companies found themselves with insufficient record keeping. Company Secretaries who are responsible for maintaining compliance filings now realize that in order to satisfy the higher levels of scrutiny and comply with the requirements, they can no longer rely on error-prone, manual spreadsheets. Instead, they are looking to implement automated solutions capable of simplifying the process while providing critical information faster with greater accuracy and accountability. More specifically, Company Secretaries now require systems that enable all participants to rely on the same set of consolidated records and be capable of combining various sub-systems of corporate governance management.

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YOGA for Professionals

*Dr. Pramod Jogdeo**

Introduction

Motto for the Company Secretary is “speak the truth, abide by the law”. Speaking truth requires lot of courage and determination. Abide by law puts many restrictions on self aspirations and expectations which may at times be counter to person’s own interest. These self aspirations and expectations as a person and as a professional can be controlled well by practice of Yoga. Yoga is the invaluable gift of old Indian tradition. Realizing this the Honorable Prime Minister Mr. Narendra Modi and the Aayush Mantralaya brought Yoga practice to the world forum. In effect 21st June was declared World Yoga Day. Yoga enables a person to maintain complete coordination between body, mind, thoughts and actions. Yoga is not only an exercise, but a process of integration to connect self with the nature and the outside world.

‘Having your staff or employees to spend moments of silence during their work day could be the key to turning your business or performance around in many more ways than us getting a little peace and quiet’. And ‘With powers bestowed upon you from Him (the divine) you no longer avoid uncomfortable thoughts, feelings, or situations by zoning out, not showing up, addictions, anger, or procrastinating. In this noisy, restless and bewildering age, there is a great need for silence of the mind, thus opines Om Shanti Retreat Centre for yoga & Pranayam. As a professional a Company Secretary has to face following professional hazards.:

- Pressure
- Uncertainty
- Disturbed or confused mind
- Dilemma as to do or not to do a thing
- Ethical dilemma

Practicing yoga will immensely help the professional to keep him physically, mentally and spiritually fit and overcome these hazards. An effort is made here to high light some of the benefits.

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Benefits of Yoga

Evidence based effects of Yoga (Hatha Yoga) practices have proved to improve:

- (a) Different systems of body
- (b) On Joints & Bones
- (c) On muscles
- (d) Cardiovascular system
- (e) Brain
- (f) Mental health and well being

For the benefit of Company Secretaries, some of the benefits of yoga which will prove complimentary to their professional skill are stated here:

Evidence based benefits of yoga practices on brain

- (1) Bhastrika pranayama reduces reaction time of the practitioners.
- (2) Both Kapalbahati and breath awareness can improve fine motor skills and visual discrimination, with a greater magnitude of change after kapalbhati.
- (3) Alternate Nostril Breathing has a balancing effect on the functional activity of the left and right hemisphere.
- (4) Bhramari pranayam enhances response inhibition and cognitive control.
- (5) Meditation leads to activation in brain areas involved in processing self-relevant information, self-regulation focused problem-solving, adaptive behavior, and interception.
- (6) Body-mind relaxation meditation induction helps patients construct reappraisal strategies that can modulate the brain activity in multiple emotion-processing systems.
- (7) In older person, yoga improves memory performance, sleep.
- (8) Yoga improves primary working memory.
- (9) Yoga induces positive mental state.
- (10) Yoga improves GABA level which decrease anxiety and depression level.
- (11) Yoga practice was found positively correlated with grey matter volume which is associated with the promotion of neuroplastic changes in executive brain systems.

Evidence based benefits of yoga for mental health and well-being

- (1) Comprehensive yoga (including postures, breathing techniques, meditation and relaxation) improves mental health and promotes well-being.
- (2) Yoga helps in improvements in children's perceived well-being.
- (3) Kraal yoga benefits in psychosocial well-being in students.
- (4) Total, general and parental self-esteem improved after yoga in pre-adolescents school children.



- (5) Kapalabhati pranayama improves attention.
- (6) Anuloma-viloma pranayama increases spatial memory.
- (7) Right and alternate nostril yoga breathing improves focused and selective attention and increases visual scanning ability.
- (8) With bhasrika pranayama reaction time decreases.
- (9) Breathing through the left nostril increases performance in a spatial cognitive task.
- (10) Bhasrika pranayama reduces impulsivity and inhibits unnecessary responses.
- (11) Yoga practice reduces physiological signs of mental stress (e.g., a reduced skin resistance value, reduced heart and breath rates with rhythmic breathing) in children.
- (12) Yoga is effective in reducing anxiety.
- (13) The integrated yoga is an efficacious means of improving the quality of life of pregnant women and enhancing certain aspects of their interpersonal relationships.
- (14) Yoga is valuable in helping to achieve relaxation and diminish stress, and increases the quality of life in cancer patients.
- (15) Yoga improves work performance by relieving tension and job stress at the workplace.
- (16) Yoga can be considered as a complementary therapy in the treatment of anxiety disorders in women.
- (17) Short term yoga based life-style intervention leads to remarkable reduction in the anxiety.

Innumerable benefits stated above will show that yoga is beneficial to all- young and old, men-women-children, to students-professionals. As a professional it helps to develop your career on right path.

Conclusion

Take some time out of your busy schedule. Do yoga and stay fit.

Ref.Courtesy: Basic principles of Yoga, Patanjali Yoga Samiti, Pune West.
