

Emerging Role of Company Secretaries in Corporate Governance

“Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”

-Institute of Company Secretaries of India



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Good Corporate governance relates to systems of supervision, monitoring and sharing of information with the stakeholders to generate confidence and trust with customers, suppliers, creditors and maximizing corporate value for its shareholders. The four key elements of corporate governance are transparency, fairness to all

stakeholders, disclosure of all financial and non-financial information in an easily understandable manner and supervision of the company's activities by professionally competent and independent Board of directors. To build this confidence, it is imperative that sturdy systems are in place to ensure due compliance of laws and to bring transparency in operations and disclosure of information to the stakeholders.

The Company Secretary plays a crucial role in the governance of any organisation. The board and particularly the Chairman of the board relies, or ought to rely, on the Company Secretary to advise them in respect of current best corporate practices, corporate governance norms and practices, directors' duties under the law, board reporting and disclosure obligations, listing requirements and meetings procedure.

The Companies Act, 2013 leapfrogs from the regime of control to that of liberalisation/self-regulation, which enables the corporates to play as per the rules of the game in a dynamic environment. This calls for good amount of self-regulation and corporate governance on their part, which necessitates the services of independent, but competent and responsible governance professionals, like Company Secretary.

Redefining the role of Company Secretary

The role of company secretary in the governance of organisations has become more prominent as a result of ongoing regulatory developments and changing stakeholder expectations. This role of company secretary has been recognised worldwide by major jurisdictions.

Dynamism and globalization requires board of a company

to be competent enough to handle the pressure of compliance under various jurisdictions. Company Secretary is a competent officer to ensure compliances; this is the reason that today appointment of a Company Secretary is being made mandatory in various jurisdictions. India, Pakistan, Bangladesh, Nepal, Singapore, Malaysia, Maldives, Hong Kong, Kenya are some of the countries which have made the appointment of a Company Secretary mandatory for companies.

In U.K. it is mandatory for every public company to have a Company Secretary. Few **key findings** of survey done by Henley Business School and ICSA-(UK) on the role of company secretaries are summarised below:

1. The role of the company secretary is much more than just administrative. At its best, it delivers strategic leadership, acting as a vital bridge between the executive management and the board and facilitating the delivery of organisational objectives.
2. Company secretaries are ideally placed to align the interests of different parties around a boardroom table, facilitate dialogue, gather and assimilate relevant information, and enable effective decision-making. They are often the only people to know first-hand how the decisions made have been reached.
3. The skills and attributes of the best company secretaries are closest to those of the chairman: humanity, humility, high intelligence, understanding of agendas, negotiation and resilience.
4. It is vital that company secretaries have both direct and informal access to board members – executive and non-executive directors (NEDs), CEOs and chairmen.
5. Board members often have a lack of awareness of the ways in which the company secretary supports an organisation in its decision-making. Boards may miss out on making full use of the skills, knowledge and experience at their disposal.
6. Company secretaries are often the longest-serving members present at board meetings, and so are a vital repository of company history and culture, and a guarantor of continuity.
7. Company secretaries are embedded in the process of making boards more effective; they contribute by observing boards in action and advising on any skills gaps that need filling.
8. The breadth of the company secretarial role includes additional responsibilities such as being an officer of the company, chief of staff to the chairman and adviser to the board on governance.

A Company Secretary as governance professional is thus a key person to guide the corporates to achieve its defined objectives within the forwalls of the law.

Company Secretary under the Companies Act, 2013

The Companies Act, 2013 (Act) has catapulted the profession of Company Secretaries to newer heights. The dominant theme of Companies Act is self regulation. The principal responsibility in this regard has been entrusted on the Company secretary, who has been given an alleviated position in the corporate hierarchy. The Act confers a special status on Company Secretary as Key Managerial Personnel and has bracketed him along with Managing Director, Chief Executive Officer, Manager, Whole-time director, Chief Financial Officer. A Company Secretary is now appointed only through the resolution passed in the Board meetings.

The Act provides substantive oversight role for company secretary. For the first time the functions of the company secretary are codified to include reporting on compliance with the provisions of the Companies Act, 2013, the rules made thereunder and other laws applicable to the company. This in itself is a huge responsibility for the company secretary to rise to the expectations of the company and the regulators. Further, the rules provide that it is the duty of the company secretary to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers; to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices and to assist the Board in the conduct of the affairs of the company.

Company Secretary is a key functionary in the corporate pyramid. With increasing emphasis on the principles of good governance and on compliances, responsibilities of company secretary have increased manifolds towards safeguarding the interests of all stakeholders. The substantially enhanced role of company secretary, both in employment and in practice, is summarised below:

COMPANY SECRETARY IN EMPLOYMENT

• Key Managerial Personnel (KMP)

The Companies Act, 2013 confers a special status on Company Secretary as the Key Managerial Personnel (KMP). It provides that every listed company and every other public company having a paid up share capital of ten crore rupees or more has to appoint a whole time KMP.

The appointment of whole time KMP has to be made by a Board resolution, which is a testimony of the significance of the role of Company secretary as KMP. Registrar of Companies must be notified of the appointment together with any change of details or the termination of the appointment. Whole time company secretary is also required to be appointed in other companies which have a paid up share capital of five crore rupees or more.

- **Report on Annual General Meeting:** Every listed public company is required to prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Companies Act, 2013 and rules made thereunder. The report is also required to be signed by company secretary of the company.
- **Functions and Duties:** For the first time, the functions of a company secretary have been stipulated in the Companies Act, 2013. The Act casts an overwhelming responsibility on Company Secretary in employment in the discharge of their duties and they are expected to play a proactive role in meeting the expectations of various stakeholders. Other than the traditional role, the Companies Act, 2013 codifies the functions and duties of Company Secretary, as under:
 - Reporting to the Board about compliance with the provisions of the Act, the rules made thereunder and other laws applicable to the company;
 - Ensuring that the company complies with the applicable secretarial standards issued by Institute of Company Secretaries of India, as approved by Central Government. The Institute has issued two Secretarial Standards under section 118(10) of the Companies Act, 2013, namely, Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings(SS-2). These Standards have come into effect from 1st July, 2015;
 - Providing to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
 - Facilitating the convening of meetings and attending Board, committee and general meetings and maintaining the minutes of these meetings;
 - Obtaining approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
 - Representing before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
 - Assisting the Board in the conduct of the affairs of the company;
 - Assisting and advising the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
 - Discharging such other duties as have been specified under the Act or rules.
- **Secretariat Standards:** The Companies Act, 2013 recognizes the secretarial standards specified by ICSI. It is the beginning of a new era in corporate governance, where not only financial standards but also non-financial standards have been prioritized and given statutory recognition. Section 118(10) makes it mandatory for every company to observe the

secretarial standards with respect to Board Meetings and General Meetings specified by the ICSI.

Secretarial Standard on Meetings of the Board of Directors (SS-1) and Secretarial Standard on General Meetings (SS-2) issued by the Institute of Company Secretaries of India (ICSI) are applicable to all companies (except One Person Company) w.e.f. 1st July, 2015. The Secretarial Standards being a reality now, the company secretaries in employment as well as company secretaries in practice have been entrusted with the duty to ensure adherence of secretarial standards.

Benefits of Secretarial Standards

- a) A credible tool for vigilant Boards:** Robust Board Processes are a pre-requisite for the true effectiveness of the Board. Adoption of the Secretarial Standards will facilitate effective deliberations and timely decision making.
- b) Booster of Corporate Transparency:** The stakeholders including the investors are better informed for effective decision making. Secretarial Standards would lend greater credibility to the practices and procedures on important matters relating to the meetings.
- c) Furthering Shareholders' democracy-** Investors are continually raising the bar for governance Standards. Secretarial Standards preserving the respect to shareholder rights and help to create confidence in the mind of investors, more specifically the fund managers and the overseas investors, towards adherence of corporate governance practices in India.
- d) Ease of Doing Business -** A comforted investor is a key to corporate development, the Secretarial Standards would help in ease of doing business, improved governance, confidence building in minds of investors, improved compliance level, ultimately leading to flow of capital in India and achieving the government's objective of make in India.
- e) Better interpretation of laws-** Companies follow diverse secretarial practices. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. Secretarial Standards provide for facilitating provisions that aim to systematize the differing practices. The Standards are a comprehensive practice module strengthening the provisions of Companies Act, 2013.
- f) Accentuates Corporate Governance-** The Secretarial Standards enhance the concept of Corporate Governance that primarily hinges on complete transparency, integrity and accountability of the management with a greater focus on investor protection and public interest. It is assumed that even the minutest of compliance and good governance would be ensured if the companies follow the standards effectively.

Additional Responsibilities: The Company Secretary is invariably required to take on a variety of additional administrative duties, typically, these may include:

- Risk Management
- Communication with various stakeholders, such as shareholders, Government, regulatory Authorities, etc.
- Advising on Company Management
- Advising on business policy, strategy and planning
- Advising on corporate social responsibility
- Advising on sustainability reporting
- Advising on brand equity and image building
- Managing Intellectual property rights of the company

COMPANY SECRETARY IN PRACTICE

Companies Act, 2013, provides wide opportunities to Company Secretaries in practice such as:

- Promotion, formation and incorporation of companies and related matters.
- Secretarial Audit and Certification Services.
- Signing of Annual Return.
- Representing on behalf of a company and other persons before National Company Law Tribunal.
- Corporate Restructuring and takeover.
- Appointment as a scrutinizer, to scrutinize the e-voting process in a fair and transparent manner.
- Administrator in respect of rehabilitation or revival of sick companies.
- Appointment as Company Liquidator/ Provisional Liquidator.
- Professional assistance to Company Liquidator.
- Technical Member of National Company Law Tribunal.
- A Company Secretary may become a registered valuer under various provisions of the Act.
- Pre-certification and e-filing of various e-forms.
- Developing a corporate compliance management system and social sustainability framework for a company.
- A company secretary can also become part of a Mediation & Conciliation Panel consisting of experts having prescribed qualifications for mediation between the parties during the pendency of proceedings before Central Govt./NCLT/NCLAT.
- **Company Secretary as Secretarial Auditors:** Secretarial Audit is certainly a complete expression of faith of the legislature and government on the company secretaries to instil corporate discipline and ensure compliance with laws. Under Companies Act, 2013 every listed company and
 - (a) every public company having a paid-up share capital of fifty crore rupees or more; or
 - (b) every public company having a turnover of two hundred fifty crore rupees ;or more.is required to annex with its Board's report a Secretarial Audit Report, given by a company secretary in practice, in form MR.3.

The introduction of 'Secretarial Audit' as a new class of audit, in addition to the existing statutory audit, internal audit and cost audit, is a welcome move towards improving the corporate governance in the country. The objective of the secretarial audit is to improve the compliance culture in the corporate sector in letter and spirit, and ensure transparency and timely communication of compliance/non-compliance status to the management of the company, regulators and external stakeholders. This will ultimately protect the interest of customers, employees, directors, stakeholders and avoid any unwarranted action from the law enforcing /other agencies.

The Board of Directors in their report to shareholders are required to explain any qualification/remark made by the company secretary in practice in the secretarial audit report.

- **Reporting of fraud** - In the course of the performance of his duties as secretarial auditor, if company secretary in practice has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he has been placed under obligation to immediately report the matter to the Central Government.
- **Annual Return Certification:** In respect of all the companies (except one person companies and small companies), the annual return has to be signed by either a company secretary in employment and director or where no company secretary is appointed by the company, then by the company secretary in practice. Further, the company secretary in practice is required to certify the annual return, filed by a listed company or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more.
- **Pre-Certification Services:** A company secretary in Practice is authorised for Pre-certification of various e-forms/LLP Forms/DIN certification. This also entails huge responsibility on the professional to ensure compliance of laws.
- **Company Secretary as Registered Valuer:** Registered Valuer is one of the new concepts introduced by the Companies Act, 2013 to provide a proper mechanism for valuation of the various assets and liabilities related to a company and to standardize the procedure thereof. A company secretary in Practice is eligible to be a valuer.
- **Company Secretary as an Insolvency Practitioner:** Company secretary has been recognised in the Companies Act as Provisional/ Company Liquidator. He may also be appointed as company administrator for the purpose of revival and rehabilitation of companies.

In addition to Companies Act, 2013, a Company Secretary renders services in the area of various corporate and

economic laws, Taxation Laws, Foreign Exchange Management Act, Consumer Protection Act, Depositories Act, Environment and Pollution Control Laws, Labour and Industrial Laws, Co-operative Societies Act, etc.

Role of Company Secretary in Whistle Blower Mechanism

Company Secretary being a secretary to the Audit Committee is actively involved in ensuring the proper functioning of whistle blowing mechanism in the organization. The company secretary is primarily responsible for the efficient administration of company in accordance with the applicable laws and for ensuring that board level decisions are implemented properly and are reported regularly. In addition, the company secretary should also oversee the impact of any such decision on stakeholders and if there is any concern, it must be reported to the management.

The effectiveness of system mainly depends upon how the reported wrong doings have been acted upon while providing sufficient protection to whistle blowers. The professionals like company secretaries being a bridge between the stakeholders, company's management and the Board hold enormous responsibility in ensuring the effective implementation of Whistle blower mechanism in the company and to develop the confidence of employees in that mechanism so that they can freely report any unethical practices, fraud or concern noticed in the company.

Corporate Social Responsibility (CSR) and Sustainability

Section 135 of the Companies Act, 2013 makes it mandatory for certain class of companies to constitute a Corporate Social Responsibility (CSR) Committee of the Board with at least one independent director. While the Committee has been entrusted to formulate and recommend Corporate Social Responsibility Policy of the company in line with schedule VII of the Act, the Board of directors are required to ensure that company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years in pursuance of its CSR policy. Where the company fails to spend such amount, the Board is required to specify in its report the reasons for not spending the amount. The approach is to 'comply or explain'.

The evolution of the relationship between companies and society has been one of slow transformation from a philanthropic coexistence to one where the mutual interest of all the stakeholders is gaining paramount importance. The company secretary can play instrumental role in the development of CSR values and policy for an organisation and also in implementation of various other laws/guidelines important from society perspective like competition laws, environment laws and Business Responsibility Guidelines etc.

Conclusion

Transition in a profession is a silent, invisible movement towards attaining intangible perpetual gains. The profession of company secretary in India has undergone many stages of transformation from Record keeper to Compliance officer, from Compliance officer to Business manager, from Business manager to Board Room Advisor and now transformation beckons for Governance Professional.

The profession of company secretaries needs to evolve to meet the challenges of a more dynamic business and

regulatory environment. The Companies Act, 2013, depict significant improvements in the corporate sector operations and casts huge responsibility on company secretaries. The Institute of Company Secretaries of India (ICSI) in its continued endeavours to bring about a more vibrant, ethical and responsible corporate India has embarked upon a nationwide capacity building exercise for its members to meet the expectations and requirements of the enhanced position of Company Secretaries under the Companies Act, 2013.

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