

**13****ROLE OF COMPANY SECRETARY****INTRODUCTION**

- The ICSI (Institute of Company Secretaries of India) is a premier national professional body established under an Act of Parliament namely the Company Secretaries Act, 1980.
- Functions under the administrative control of Ministry of corporate Affairs, Government of India. It has been set up develop and regulate the<sup>1</sup> profession of company secretaries.
- CS as a professional certifies and verifies the trust worthiness of the affairs of a corporation. The skills and attributes of a good Company Secretary may include humanity, humility, high intelligence and understanding of agendas, negotiation and resilience.
- The professionals are required to demonstrate not only Intelligence Quotient (IQ) but also Emotional Quotient (EQ).

**ROLE COMPANY SECRETARY UNDER COMPANIES ACT, 2013****Key Managerial Personnel:**

Along with the Chief Executive Officer/Managing Director/Whole-time Director and Chief Financial Officer, Company Secretary has also been brought with in the ambit of KMP giving them the long deserved recognition of KMP of the company. .

**Companies mandatorily required to appoint Key Managerial Personnel:**

As per Section 203 of the Companies Act, 2013, read with the companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, the following class of companies namely;

- (a) Every listed company.
- (b) Every other public company having paid up share capital of Rs 10 crores or more.

Further, as per Rule 8A of the Companies Rule 2014, a company other than a company covered under Rule 8 which has a paid up share capital of 5 crore rupees or more shall have a whole-time company secretary.

### **FUNCTIONS OF COMPANY SECRETARY (SECTION 205)**

- To report to the Board about compliance with the provisions of this Act,
- To ensure that the company complies with the applicable secretarial standards; and
- To discharge such other duties as may be prescribed.

### **DUTIES OF COMPANY SECRETARIES**

- Act as a vital link between the company and its Board of Directors, Shareholders and Stakeholders and Regulatory authorities.
  - Plays a key role in ensuring the Board procedures are followed by regularly revised.
  - Provides the board with guidance as to its duties responsibilities and power under various laws, rules and regulations.
  - Act as a compliance officer.
  - Is an important member of the corporate management team and Act as conscience seeker of the company.
- (1) 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;
  - (2) To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
  - (3) To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
  - (4) To represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act;
  - (5) To assist the Board in the conduct of the affairs of the company;
  - (6) To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and

- (7) To discharge such other duties as have been specified under the Act or rules; and
- (8) Such other duties as may be assigned by the Board from time to time.

### **SIGNING OF ANNUAL RETURN (SECTION 92)**

- The annual return is filled by CS and director. In case where no company secretary is appointed by the company, then by CS in practice. (except OPC and small company).
- In case of 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, even if the annual return is signed by Companies Secretary in Employment, it is further required to be certified by CS in Whole-Time Practice.

### **COMPANY SECRETARY IN PRACTICE**

#### **Secretarial Audit:**

- Every listed company and a company belonging to other class of companies are required to give secretarial audit report, by a company secretary in practice.
- As per Companies (Appointment and Remuneration of Managerial Personnel) Rule, 2014, the other class of companies shall be as under:
  - a. Every public company having a paid-up share capital of 50 crore rupees or more.
  - b. Every public company having a turnover of two hundred fifty crore rupees or more.
- The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report.

### **PRECERTIFICATION OF E-FORMS**

Company Secretaries are recognized to pre-certify the e-forms which are required to be filed with the Registrar.

**DUTY TO REPORT FRAUD**

- Section 143 provides that if the Company Secretary in Practice, in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government.
- Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee.
- The companies, whose auditors have reported frauds to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report.
- In case the auditor has sufficient 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 shall report the matter to the Central Government immediately but not later than sixty days of his knowledge.
- In case, Company Secretary in Practice does not comply with the provisions of section 143(12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
- No duty shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.

**ACT AS SCRUTINIZER IN E-VOTING**

- Every company which has listed its equity shares and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
- During the e-voting period, shareholders holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically.
- Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.
- The Board of directors to appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in

practice or an advocate, but not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner.

- The scrutinizer to maintain a register either manually or electronically to record the assent or dissent received and other details.
- Manner in which the Chairman of meeting shall get the poll process scrutinised and report.

#### **APPOINTMENT AS ADMINISTRATOR (SECTION 259)**

Company Secretaries along with other professionals have been recognized for being appointed as Interim/ Company Administrator from the panel to be maintained by the Central Government or any institute or agency authorised by the Central Government in respect of rehabilitation of revival and sick companies.

#### **COMPANY LIQUIDATORS (SECTION 275)**

Company Secretaries have been recognized to be appointed as Provisional Liquidator or the Company Liquidator from a panel to be maintained by the Central Government.

#### **PROFESSIONAL ASSISTANCE TO COMPANY LIQUIDATOR (SECTION 291)**

The Company Liquidator may, with the sanction of the Tribunal, appoint one or more professionals including Company Secretaries to assist him in the performance of his duties and functions under the Act.

#### **QUALIFICATIONS OF TRIBUNAL (SECTION 409)**

A Company Secretary in practice is eligible to become a Technical Member of National Company Law Tribunal, if he is practising for at least fifteen years

#### **OTHER RECOGNITIONS FOR CS/OTHER PROFESSIONALS**

- Central Government to maintain panel of experts (Mediation & Conciliation Panel) consisting of experts having prescribed qualifications for mediation

between the parties during the pendency of proceedings before Central Govt./NCLT/NCLAT.

- Legal representation in proceedings before NCLT/NCLAT.
- If compromise/arrangement is sanctioned then company shall until completion of scheme, file a statement in prescribed form/time with Registrar every year certified by CS in practice indicating whether scheme is being complied with in accordance with orders of Tribunal or not.

### **INSOLVENCY AND BANKRUPTCY CODE, 2016**

Recognition of Company Secretary in Practice to act as Insolvency Practitioner under the Code.

### **SECURITIES LAWS**

#### **Appearance before Securities Appellate Tribunal**

Practising Company Secretary has been authorised to appear as authorised representative before the Securities Appellate Tribunal (SAT) under SEBI Act, 1992 and Depositories Act, 1996.

#### **Reconciliation of Share Capital Audit**

Practising Company Secretary is authorised to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, details of changes in share capital during the quarter and in-principle approval obtained by the issuer from all the stock exchanges where it is listed in respect of such further issued capital under SEBI (Depositories and Participants) Regulations, 1996.

#### **Audit of Capital Market Intermediaries**

Efficient internal control systems and processes are pre-requisite for good governance. The governance being a dynamic concept requires constant evaluation and monitoring of the systems and processes. In the context of Capital Markets, capital markets intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that

their internal controls are so efficient that ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription. It is in this direction that SEBI has authorized Practicing Company Secretaries to undertake internal audit of various capital market intermediaries.

### **Certifications under SEBI listing regulations**

PCS is required to issue Certificate regarding Transfer of Securities, Compliance of conditions of Corporate Governance, Maintenance of 100% Asset Cover, Compliance Certificate for Listing on BSE-SME platform, Certification in case of offer/allotment of securities to more than 49 and up to 200 investors, certificate regarding Insurance of securities to more than 49 and up to 200 investors.

### **LLP ACT**

The annual return of LLP having turnover of more than 5 crore rupees or contribution more than 50 lakh rupees shall be accompanied with a certificate from a Company Secretary in Practice to the effect that he has verified the particulars from the books and records of the LLP and found them to be true and correct.

### **SPECIAL ECONOMIC ZONES ACT & RULES, 2006**

Company Secretary in Practice has been authorized to appear as authorised representative before the Board.

### **TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997**

Company Secretary in Practice has been authorized to appear as authorised representative before the Telecom Disputes Settlement and Appellate Tribunal.

### **COMPETITION ACT, 2002**

Company Secretaries in Practice act as authorised representative before the Competition Commission of India and Competition Appellate Tribunal.

**REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016**

Company Secretary in Practice act as authorized representative before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be under RERA.

**FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

The Reserve Bank of India has advised all the Scheduled Commercial Banks to obtain Diligence Report by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions by the borrowers. Company Secretary in Practice is authorised to issue No Objection/Tax Clearance Certificate regarding transfer of capital contribution/ profit shares of an Limited Liability Partnership from resident to non- resident / non-resident to resident.

**TAX LAWS**

Company Secretaries in Practice act as an authorized representative under States VAT Act and conduct VAT Audit. Secretary of a company has been recognized as a principal officer of the company responsible for its affairs under host of legislations including Customs Act, 1962.