

Company Secretaries : Gatekeepers of Corporate Governance



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Company Secretary, being a key functionary in the corporate hierarchy, his role, functions and responsibilities have been widened over the years. With increasing emphasis on Good Corporate Governance, his profile has moved from Compliances to Conscience Keeper and Governance Professional, advising the Board on intricate issues of Governance, Risk Management and Sustainability.

Company Secretary - A Catalyst to Good Governance

Good governance relates to systems of supervision, monitoring and sharing of information with the stakeholders to generate confidence and trust among the customers, suppliers, creditors and maximizing stakeholder value. 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 desirable that some system be in place, firstly to ensure due compliance of laws and secondly to bring transparency in disclosure for information to shareholders and other stakeholders about how the business is being governed.

Company Secretary, as an integrated corporate manager, provides this comfort to the Board, as he not only advises the Board on various compliance requirements, co-ordinates and translates the policies of the Board into action, but also communicates the same to stakeholders. Today, Company Secretary is the primary source of advice on the conduct of business from the development of strategy to corporate planning and implementation.

COMPANY SECRETARIES AS GOVERNANCE PROFESSIONALS

It is a well known fact that Corporate Governance has taken a front seat over the economic benefits. The investors prefer better governed companies over less governed, as a measure to protect their investment.

As stated earlier, the role profile of the Company Secretary has undergone major transformation over the years. Today, they are called as Governance Professionals. As back as 1971, Judge Lord Denning commented that the secretary "is an officer of the company with extensive duties and responsibilities ..." over the recent years, responsibility for developing and implementing the processes to promote sustained good corporate governance has come largely within the role profile of Company Secretary. The following paragraphs draw together the role of Company Secretary. However, before setting out specific responsibilities of the Company Secretary, it is important to note that the most effective Company Secretary is one who is regarded by the Board as its trusted advisor and who:

- keeps under review business environment, legislative, regulatory and governance developments that may impact the company and ensures that the board is appropriately apprised on them;
- provides where appropriate, a discreet but challenging voice in relation to board deliberations and decision making, drawing in particular on professional experience and historical knowledge of the company.

Governance Function of Company Secretary

The growing importance placed on corporate governance has enhanced the role of the Company Secretary. They are now seen in many respects as the custodian of a company's governance structure and as an independent advisor to the Board.

The UK Corporate Governance Code explicitly makes this point. The Code sees the secretary as a resource for the whole Board: "All directors should have access to the advice and services of the Company Secretary, who is responsible to the Board for ensuring that Board procedures are complied with," and "under the direction of the Chairman, the Company Secretary's responsibilities include ensuring good information flows within the Board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required."

Not only is the secretary in many ways a chief of staff to the chairman in running an efficient and effective Board, but there is also a relationship with each director who might seek the independent view of the secretary on an area of potential conflict of interest.

Non-executive Directors in particular look to the secretarial team for help and guidance in their role and to understand fully the proposals coming before the Board. If they want to seek independent advice outside the company (as encouraged by the Code), that can often be achieved through the Company Secretary. In

addition Company Secretary has a key role in designing and implementing an induction process that effectively and efficiently gives directors the knowledge and expectation about the role they need to play as a full part in the Boardroom.

Company Secretaries are the professionals providing value through cultivating corporate best practices. They are groomed and nurtured with a positive mind set to appreciate the change and be instrument of change for a sustainable growth of all stakeholders and to ensure fair deal for one and all who are associated with the organisation. They play the role of change agent, conscience keeper and governance professionals, in line with ICSI mission to develop high caliber professionals facilitating good Corporate Governance.

Company Secretary being close to the Board is the right professional to advise the Board from time to time on Compliance of the provisions of Corporate Governance. The core competency and expertise of Company Secretaries in respect of various dimensions of Corporate Governance has been recognised by a number of Committees on Corporate Governance and legislations.

Recognition granted to Company Secretary to give certification regarding Compliance of conditions of corporate Governance under Listing Agreement:

- Clause 49 of Listing Agreement authorizes Practicing Company Secretary to issue certificate regarding Compliance of conditions of Corporate Governance as stipulated under the said clause.
- Listing Agreement for Indian Depository Receipts (IDRs) authorizes the Practicing Company Secretary to issue certificate of Compliance of conditions of Corporate Governance under clause 24(vii) (1).
- SEBI has recognised the services of Company Secretaries through various clauses in the Model SME Equity Listing Agreement including Certification with regard to compliance of condition of Corporate Governance under clause 52(ii).

INTERNATIONAL OUTLOOK

The Cadbury Committee report on the Financial Aspects of Corporate Governance, UK recognized the importance of the role of Company Secretary and observed, "The Company Secretary has a key role to play in ensuring that the 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 to and how these responsibilities should be discharged".

OECD Principles of Corporate Governance provides that the Chairman of a company may be supported by the Company Secretary and that the contributions of non-executive Board members to the company can be enhanced by providing access to certain key managers within the company such as, the Company Secretary.

King III Report on Corporate Governance envisages a broad and vital role of a Company Secretary. The Company Secretary assists the Nomination Committee with the appointment, induction and training programmes of directors. He also provides guidance to the Board on the duties of directors and good governance.

The Company Secretary should ensure that the Board and Board committee charters are kept upto date. He should prepare and circulate board papers, elicit responses, input, feedback for Board and Board committee meetings and ensures preparation and circulation of minutes of Board committee meetings. He assists with the evaluation of the Board committees and individual directors and drafting yearly work plans.

INDIAN PERSPECTIVE

Company Secretary has a multi tasking energy in any organisation. Company Secretary is an officer who while acting as a compliance officer is also a trusted advisor to the Board and a link between stakeholders and the company.

Section 2(45) of the Companies Act, 1956 defines the term 'secretary' to mean a Company Secretary within the meaning of Section 2(1)(c) of the Company Secretaries Act, 1980 and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under the Companies Act, 1956 and any other ministerial or administrative duties. Every company in India having a paid-up capital of rupees five crore or more is required to appoint a whole-time Company Secretary.

Under Section 5 of the Companies Act, 1956 the Company Secretary is included in the category of the officer of the company and is considered to be in default in complying with any provisions of the Companies Act, 1956.

CII Code on Corporate Governance emphasized in its recommendation that some key information must be reported and placed before the Board of Directors. This key Information also includes recruitment and remuneration of senior officers just below the Board level, including appointment or removal of the Chief Financial Officer and the Company Secretary.

Kumar Mangalam Birla Committee Report recommended that the Company Secretary should act as the secretary to the Audit Committee. This was a mandatory recommendation under Clause 9.6 of the Report. It also laid down that the information on recruitment and remuneration of Company Secretary to be placed before the Board of Directors. This Report also recognised Company Secretary as a designated person to be appointed by the Board of Directors to conduct the voting process in a fair and transparent manner.

Companies Bill 2011

Companies Bill tabled in the parliament on 14th December 2011 define "Key Managerial Personnel". Clause 2(51)

prescribes that “Key Managerial Personnel”, in relation to a company, means-

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the Company Secretary;
- (iii) the Chief Financial Officer if the Board of Directors appoints him; and
- (iv) such other officer as may be prescribed.

Further, the Bill provides that a key managerial personnel of the company may also be treated as “officer who is in default” under clause 2(60), for the purpose of any provision in the Bill which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise.

In the Companies Bill, 2011, under clause 205, the functions of Company Secretary have been codified to include reporting to the Board, about compliance with the provisions of Companies Act, the rules made thereunder and other laws applicable to the company; to ensure that the company complies with the applicable secretarial standards; and to discharge such other duties as may be prescribed.

DUTIES AND RESPONSIBILITIES OF COMPANY SECRETARY

The role profile of Company Secretaries include following areas of activities:

Board Meetings

- Organising Board/Committee meetings, and facilitating the smooth operation of the company’s formal decision making.
- Preparation of meeting agendas with the chairman and/or the chief executive.
- Attending meetings.
- Preparation of minutes for the meeting.
- Maintenance of minute books.

Shareholders’ Meetings

- Ensuring that the Companies Act, 1956 and Articles of Association is followed while conducting the general meetings.
- Preparation and issue of notices of meetings.
- Preparing Directors for any shareholder questions and facilitating them create briefing materials.
- Ensuring that proxy forms are correctly processed and the voting is carried out accurately.
- Documentation for circulation to shareholders.

Memorandum of Association and Articles of Association

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

Maintenance of following Statutory Registers:

- Register of Members.
- Company charges.
- Directors and secretary.
- Directors’ interests in shares and debentures.
- Interests in voting shares.
- Debenture holders.

Compliance of Legal and Regulatory Requirements

- Monitoring and ensuring compliance with relevant legal and regulatory requirements particularly under the Companies Act, 1956.

Stock Exchange Requirements

- Ensuring compliance with the listing requirements.
- Uploading information on website of Stock Exchange.
- Making applications for listing of additional issues of securities.

Statutory Filing

- Annual returns.
- Reports and Accounts.
- Amended Memorandum and Articles of Association.
- Return of allotments.
- Notice of appointment, removal and registration of Directors and the Secretary.
- Notice of removal or resignation of the auditors.
- Change of registered office.

Report and Accounts

- The Company Secretary co-ordinates the publication and distribution of the company’s annual report and accounts and interim statement in consultation with the company’s other advisors and, in particular, preparing the Directors’ report.

Share Registration

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

Shareholder Communications

- Communicating with the shareholders, (i.e., through circulars).
- Payment of dividends and interest.
- Issuing documentation regarding rights issues and capitalisation issues.
- General shareholder relations.
- Relations with institutional shareholders and their investment committees.

Share and Capital Issues and Restructuring

- Implementing changes in the structure of the company’s share and loan capital and devising, implementing and administering Directors’ and employees’ share participation schemes.

ROLE OF ICSI IN PROMOTING GOOD CORPORATE GOVERNANCE

ICSI is a pioneer Institute in developing Governance Professionals who are well equipped and competent to ensure compliance with complex legal, regulatory and governance matters. It clearly reflects in its vision and mission which is mentioned below:

Vision: “To be a global leader in promoting Good Corporate Governance”

Mission: “To develop high calibre professionals facilitating Good Corporate Governance”

In line with its Vision and Mission and recognising the fact that Corporate Governance is the key to the development of corporate sector, the Institute has taken

a number of initiatives in the area of Corporate Governance. Each Year the Institute confers the **ICSI National Award for Excellence in Corporate Governance** upon two best governed companies and **ICSI Life Time Achievement Award** for *Translating Excellence in Corporate Governance into Reality* on an eminent personality. In addition ICSI submitted its Recommendations to Strengthen Corporate Governance Framework to MCA and SEBI. ICSI has issued Secretarial Standard to integrate, harmonize and standardize the diverse secretarial practices. The Institute has also set up Centre for Corporate Governance, Research and Training to foster and nurture research

initiatives in the areas of Corporate Governance. ICSI offers Post Membership Qualification in Corporate Governance and also partners with Various Regulatory Authorities, Stock Exchanges and Chamber of Commerce in organizing various programmes, seminars, capacity building programme and investor awareness programme through out India. ICSI is one of the founder trustees of National Foundation for Corporate **Governance. The Institute organizes ICSI Corporate Governance Week** as an Annual event on Corporate Governance, Sustainability, Ethics and Integrity, Risk Management, Non-Financial Disclosures, Carbon Foot Prints, and Good Corporate Citizenship.

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