



## **Meaning of Company Secretary under Companies Act, 2013**

Firstly, for the meaning of the Company Secretary, the [Companies Act](#) refers to Section 2(1)(c) of the Company Secretaries Act, 1980.

According to Section 2(1)(c) of the Company Secretaries Act, 1980, company secretaries are the people who are the member of the Institute of Company Secretaries of India. Hence, he is a member of ICSI and performs various ministerial and administrative functions of the organization.

## **Insights**

### **The changing role of the company secretary:**

Role of Company Secretary is to make sure to execute and implement the decisions take by the higher authorities like the board of directors of the company, chairman, CEOs, etc. The responsibility of Company Secretary to ensure the effective management and administration of the organization and meeting the regulatory and statutory expectation and requirements. Attending general meetings, managing legal documents, advises the board if required. The role of the company secretary is not secretarial. Company Secretaries works with professionals and leaders in an organization.



## Role of Company Secretary

- Firstly, to assist the Board in the conduct of the affairs of the company.
- Secondly, to provide guidance to the directors about their duties.
- Ensuring and Complying with Corporate Governance.
- Ensuring that the company complies with secretarial standards.
- To take the required permissions from the board and various government bodies. Hence, he also has to follow the provisions regarding the permission acquisition.
- Lastly, to facilitate the convening of meetings.

# **Sections under Companies Act which affected the Role of Companies Secretary**

## **1. Section 118**

The Companies Act, 2013 under Section 118 makes it necessary for the Companies to comply with the secretarial standards. Hence, the main purpose behind it was to integrate, harmonize and standardization of diverse secretarial practices.

## **2. Section 204**

According to Section 204 of the Companies Act 2013, it is the duty of the Company Secretary in practice to perform the secretarial audit of every listed company.

Secretarial Audit means a process to check the company's compliance with the relevant laws. The main purpose behind it was to improve corporate governance and compliance.

## **3. Section 203**

According to Section 203 of the Companies Act, 2013, it is necessary for a certain class of companies to appoint the whole time key managerial personnel. The following Key Managerial Personnel are as follows:

1. Managing Director or CEO
2. Company Secretary
3. Chief Financial Officer

Hence, this makes the appointment of whole-time Company Secretary mandatory for better efficiency.

## 4. Section 92

Annual return is a return that investment provides over a period of time, expressed as a time-weighted annual percentage. Earlier, only the listed companies were required to get its annual returns signed by the company secretary.

Now, according to new companies act, many industries are added to do the same. Hence, it increases the role of the Company Secretary in the organization.

# FOCUS ON GOVERNANCE

**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 in Ireland.**

## Introduction

Most notably, the Companies Act 2014 retained the need for a company secretary in both private and public companies. The responsibilities of the modern day company secretary 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 organisation's corporate governance.

The Board, particularly the chairman, relies on the company secretary to advise them not only on directors' statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and practices and effective board processes. This specialised role of the modern company secretary has emerged to position them as one of the key governance professionals within the organisation.

## Corporate governance

In practice, the role of the company secretary has developed into much more than the basic statutory requirements outlined above. Most notably, the responsibility for developing and implementing processes to promote and sustain good corporate governance has fallen largely within the remit of the company secretary. This is recognised in both the UK Code of Corporate Governance (which has been adopted by the Irish Stock Exchange through the Irish Annex) and the FRC Guidance on Board Effectiveness. Both have served to focus companies on Board effectiveness and in turn how they can be assisted by the company

secretary. Although this guidance applies to listed companies, it is seen as best practice and these standards of corporate governance should be adopted by other companies in so far as they are considered appropriate to the nature and scale of the organisation.

The dynamics of the boardroom are changing and chairman and directors are realising that they need specialist skills and technical knowledge in this area and they are looking to company secretaries to provide this expertise. There are a number of responsibilities, some of which have been explicitly referenced to in the above guidance, where the company secretary can assist and add value to the organisation with their special skill and technical knowledge.

## **Organisational governance**

It is important that robust governance arrangements are in place, are clearly documented and communicated to the organisation. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are clearly documented. This should include ensuring that the formal documentation required under the UK Code of Corporate Governance, such as schedule of matters reserved for the Board, is in place.

### **CORPORATE GOVERNANCE AND SECRETARIAL SERVICES**

#### **Corporate Governance Services**

Advising 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.

#### **Corporate secretarial services**

1. Promotion, formation and incorporation of companies and matters related therewith
2. Filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative
3. Maintenance of secretarial records, statutory books and registers
4. Arranging board/general meetings and preparing minutes thereof
5. All work relating to shares and their transfer and transmission

## **Statutory responsibilities**

The Companies Act 2014, commenced on 1 June 2015 and retains the requirement for a company secretary unlike the UK legislation which eliminated this requirement for private companies in 2006. The retention of this requirement demonstrates the importance of the role of the company secretary in the eyes of the legislature and in fact the proposals go a step further by placing the responsibility on the Board of directors to ensure that the secretary has the requisite knowledge and experience to discharge the functions of secretary of the company and to maintain the records as required by the Act. Furthermore, the company secretary will be required to sign a declaration acknowledging the existence of the secretary's duties on appointment.

If one were to examine the role and duties of the company secretary as currently outlined in Irish legislation it would appear to be quite restrictive and mainly administrative in nature. Principally, the company secretary ensures the company complies with company law, maintains certain statutory registers and makes the necessary filings with the Registrar of Companies such as annual returns, financial statements and certain forms with respect to changes to share capital etc.

### **TAXATION SERVICES**

Advisory services to companies on tax management and tax planning under Income Tax, Excise and Customs Laws

Preparing/reviewing various returns and reports required for compliance with a the tax laws and regulations

Representing companies and other persons before the tax authorities and tribunals

## **CORPORATE LAWS ADVISORY AND REPRESENTATION SERVICES**

### **CORPORATE LAWS ADVISORY SERVICES**

Advising companies on Compliance of legal and procedural aspects, particularly under

SEBI Act, SCRA and rules and regulations made thereunder

Foreign Exchange Management Act

Consumer Protection Act

Depositories Act

Environment and Pollution Control Laws

Labour and Industrial Laws

Co-operative Societies Act

Mergers and Amalgamations and Strategic Alliances

Foreign Collaborations and Joint Ventures

Setting up subsidiaries abroad

Competition Policy and Anti Competitive Practices  
IPR Protection, Management, Valuation and Audit  
Drafting of Legal documents.

## **Supporting the chairman**

The company secretary has a duty to advise the Board, through the chairman, on all governance matters. Together they should periodically review whether the Board and the company's other governance processes are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company. The relationship between the company secretary and the chairman is central to creating an efficient Board.

### **The Company Secretary**

Is a vital link between the company and its Board of Directors, shareholders, government and regulatory authorities.

Ensures that Board procedures are both followed and regularly reviewed and provides guidance to Chairman and the Directors on their responsibilities under various laws.

Commands high position in the value chain and acts as conscience seeker of the company.

## **Board and committee processes**

The company secretary plays a leading role in good governance by helping the Board and its committees function effectively and in accordance with their terms of reference and best practice. Providing support goes beyond scheduling meetings to proactively managing the agenda and ensuring the presentation of high quality up-to-date information in advance of meetings. This should enable directors to contribute fully in board discussions and debate and to enhance the capability of the Board for good decision making. Following meetings the company secretary should pursue and manage follow up actions and report on matters arising.

## **Board development**

All directors should have access to the advice and services of the company secretary. The company secretary should build effective working relationships with all board members, offering impartial advice and acting in the best interests of the company. In promoting board development the company secretary should assist the chairman with all development processes including board evaluation, induction and training. This should involve implementing a rigorous annual Board, committee and individual director assessment and ensuring actions arising from the reviews are completed. Further, the company secretary should take the lead in developing tailored induction plans for new directors and devising a training plan for individual directors and the Board. Although these tasks are ultimately the responsibility of the chairman, the company secretary can add value by fulfilling, or procuring the fulfilment of, these best practice governance requirements on behalf of the chairman.

## **Representation Services**

### **Representing on behalf of a company and other persons before-**

Company Law Board  
National Company Law Tribunal  
Competition Commission of India  
Securities Appellate Tribunal  
Registrar of Companies  
Consumer Forums  
Telecom Disputes Settlement and Appellate Tribunal  
Tax Authorities  
Other quasi-judicial bodies and Tribunals

## **Communication with stakeholders**

The company secretary is a unique interface between the Board and management and as such they act as an important link between the Board and the business. Through effective communication they can coach management to understanding the expectations of, and value brought by the Board. The company secretary also has an important role in communicating with external stakeholders, such as investors, and is often the first point of contact for queries. The company secretary should work closely with the chairman and the Board to ensure that effective shareholder relations are maintained.

## **FINANCIAL MARKETS SERVICES**

### **Public Issue, Listing and Securities Management**

Advisor/consultant in issue of shares and other securities  
Preparation of Projects Reports and Feasibility Studies  
Syndication of Loans from banks & financial institutions  
Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers  
Loan Documentation, registration of charges, status and search reports  
Listing of securities/delisting of securities with recognized stock exchange  
Private placement of shares and other securities  
Buy-back of shares and other securities  
Raising of funds from international markets ADR/GDR/ECB

## **Disclosure and reporting**

In recent years there has been increased emphasis in the quality of corporate governance reporting and calls for increased transparency. The company secretary usually has responsibility for drafting the governance section of the company's annual report and ensuring that all reports are made available to shareholders according to the relevant regulatory or listing requirements.

### **Takeover Code and Insider Trading**

Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard

Acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of insider Trading) Regulations, 1992 including maintenance of various documents.

### **Securities Compliance and Certification Services**

#### **Compliance with rules and regulations in the securities market particularly**

Internal Audit of Depository Participants

Certification under SEBI (DIP) Guidelines

Audit in relation to Reconciliation of shares

Certificate in respect of compliance of Private Limited and Unlisted Public Company (Buy Back Securities) Rules

## **Increased burden of regulation**

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".

While the monitoring of compliance in the financial services sector has traditionally been outsourced with the introduction of these new standards 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.

## **FINANCE AND ACCOUNTING SERVICES**

1. Internal Audit
2. Secretary to Audit Committee
3. Working capital and liquidity management
4. Determination of an appropriate capital structure
5. Analysis of capital investment proposals
6. Business valuations prior to mergers and/or acquisitions
7. Loan syndication
8. Budgetary controls
9. Accounting and compilation of financial statements

## **INTERNATIONAL TRADE AND WTO SERVICES**

1. Advising on all matters related to IPRs and TRIPs Agreement of WTO
2. Advising on matters relating to antidumping, subsidies and countervailing duties
3. International Commercial Arbitration
4. Advising on and issuing certificates on Exim Policy and Procedures
5. Advising on Intellectual Property licensing and drafting of Agreement
6. Acting as registered Trade Mark Agent

## **Major Rights of Company Secretary**

1. Firstly, he can supervise, control and he can direct subordinate officers and employee.
2. Secondly, he can sign and authenticate the proceeding of meetings.
3. He has a right to blow the whistle whenever he finds necessary.
4. He can attend the meetings of the shareholders and the Board of Directors.
5. He can sign any contract/agreement on behalf of the company.
6. Lastly, at the time of liquidation, he can claim his dues like a creditor.

## **Restrictions on Company Secretary**

1. Firstly, he cannot acknowledge a debt against a suit against the company.
2. Secondly, he cannot register, transfer shares without the authority of the Board of Directors.
3. Thirdly, he cannot enter into a contract on behalf of the company (unless specifically authorized by the BOD).
4. Lastly, he cannot borrow money in the name of the company.

## Difference between the Old and New Companies Act regarding the roles of Company Secretary

Basis of Difference	Companies Act, 1956	Companies Act, 2013
1. Compliance Certificate	Under the old Companies Act, 1956, company secretaries have to issue a compliance certificate to the companies. Hence, their major function was to issue the compliance certificate.	Under the Companies Act, 2013 the role of CS (Company Secretaries) has increased by providing with the opportunities such as promotion, formation, and incorporation of companies, etc. Hence, their performance area has increased.
2. Appointment	Every company with paid-up share capital of more than Rs.5 lakhs had to appoint a CS.	Every listed company having paid-up share capital of more than Rs.10 lakhs has to appoint a CS.
3. Penalty	If a company fails to appoint a CS, the penalty was Rs.500 per day. Hence, there were fewer restrictions.	If a company fails to appoint a CS, the penalty is not less than Rs.1 lakh. Hence, there is more control over the appointment.

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**Thank You!!**

