

Introductory note:

In the Geeta Saar 38th edition, we covered discussion on 'Promoters'. In the 40th edition, we had a discussion on 'Directors'. The discussion in the 43rd edition was on 'CEO & CFO' and in the 44th edition, we had deliberated on the terms 'Manager' and 'Managing Director'. In this edition, we present a discussion on 'Whole-time Director' u/s 2(94) and 'Company Secretary' u/s 2(24) of the Companies Act, 2013.

Whole-time Director [Sec 2(94)]

1. Meaning of the term 'whole-time director'

"Whole-time Director" has been defined to include a director in the whole-time employment of the company. The definition of 'whole-time director' is an inclusive definition. A whole-time director refers to a director who has been in employment of the company on a fulltime basis and is also entitled to receive remuneration.

Section 269 of the Companies Act, 1956 contained the definition of the term "whole-time director" appended as an explanation to section 269 which corresponds to the definition under this Act.

A whole-time director is a director rendering his services on whole time basis to the company. Further, a whole-time employee, when appointed as a director of the company, will be occupying the position as the whole-time director. This position is clarified by DCA vide letter no. 2/19/63- PR dated 29.06.1964 which provided that a whole-time employee of a company also appointed as a director of the company is in the position of whole-time director. The view is equally applicable in the case of alternate director. Accordingly, the appointment of an employee as an alternate director will be governed by the provisions of Section 314, 269, 309 and 198 of the Companies Act, 1956.

2. Position of a whole-time director

The position of a whole-time director is a position of significance under the Act. A whole-time director is considered and recognised as a 'key managerial personnel' in clause (51) of section 2 of the Act. Further, he is an officer in default (as defined in clause (60) of section 2) for any violation or non-compliance of the provisions of Act.

3. Appointment in other companies

For appointment of whole-time director, the provisions of section 196 read with schedule V are required to be complied with. As the services are rendered whole-time, logically, a director cannot be in whole-time employment in more than one company. However, the Act does not prohibit a person who is already a whole-time director of another company to be appointed as a director of another company. When the whole-time director is a key managerial person under the provisions of section 203, he may be appointed as a whole-time director in a subsidiary company as provided in sub-section (3) of section 203.

4. Remuneration of whole-time director

The remuneration of the whole-time director is required to be paid after complying with the provisions of section 197 and schedule V of the Companies Act, 2013 and rules made thereunder.

Company Secretary or Secretary [Sec 2(24)]

1. Meaning of Company Secretary or Secretary

“Company Secretary” or “Secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;

Company Secretaries Act, 1980

As per provisions of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 “Company Secretary” means a person who is a member of the Institute.

The role and responsibilities of ‘Company secretary’ are broadened in the Act. The position of the company secretaries includes both managerial and administrative functions apart from the secretarial functions.

Rule 8 of Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014 that mandate every listed and other public company having a paid up capital of Rs 10 Crores or more is required to have a Company Secretary.

Rule 8A which was inserted to the Companies (Appointment and Remuneration of Managerial personnel) Amendment Rules, 2014 w.e.f. 09.06.2014 mandates the appointment of whole time company secretary in the companies not covered under rule 8 but having paid up share capital of Rs 5 Crores or more.

Exemption to section 8 (Non-profit Company)

The Central Government in exercise of powers conferred by section 462 has notified that clause (24) relating to the “Company Secretary “or “Secretary” shall not apply to section 8 Company.

It is an exhaustive definition and it includes the words “company secretary” apart from the word ‘secretary’.

2. Secretary of Producer Company

581 X mandates that every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall appoint a whole-time secretary. Such person shall be a member of the Institute of Company Secretaries of India.

3. Position of Company Secretary or Secretary global laws

As per United Kingdom (UK) laws, a Company secretary may be qualified by virtue of examination and membership of the Institute of Chartered Secretaries and Administrators (ICSA), Only a qualified person is entitled to be designated as a 'Chartered Secretary'.

In American and Canadian publicly listed corporations, a company secretary is typically named a corporate secretary or secretary.

4. Position of Company secretary under the Act

A company secretary under the Act is included in the definition of key managerial personnel. Apart from the functions specified under various sections, section 205 contains the function of company secretary, which are as follows:

- a) To report to the Board about the compliance with the provisions of this Act, Rules made hereunder and other laws applicable to the Company
- b) To ensure that the company complies with the applicable secretarial standards
- c) To discharge such other duties as may be prescribed

Compliance Officer

A company secretary ensures that company complies with relevant legislation and regulations, and keeps board members informed of their legal responsibilities. Company secretary represents before the statutory and regulatory authorities on behalf of the company for ensuring compliances required under various laws. It is also his responsibility to act as a mediator between company, director and shareholder. Company secretary is recognised before various forums like NCLT and SAT.

5. Position of Company Secretary under Securities Exchange Board of India Act, 1992

According to sub-section (b) of section 15V of the Act "company secretary" means a company secretary as defined in clause(c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

ICSI-CCGRT

SEBI recognizes the Company Secretary as the Compliance Officer and authorizes Practising Company secretaries to issue various certificates under its Regulations. Further, Practising Company Secretaries are also authorised to certify compliance of conditions of corporate governance of listed companies.

As per the SEBI (LODR) Regulations, 2015, a Company Secretary is to act as compliance officer of the company.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.

Premier on Company Law