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Secretarial Standards : A new Era

The adoption of the Secretarial Standards by the corporate sector will have a considerable impact on the quality of secretarial practices being followed by the companies, making them comparable with other entities and Standards would create uniformity of mottled secretarial practices under the Companies Act. Secretarial Standards are not there to substitute any applicable provisions of the law but as a repository of knowledge .

INTRODUCTION

India Inc would wake to a new benchmark of Secretarial Standards(SSs) to foothold its corporate governance practices in the global arena. The recognition of Secretarial Standards by the legislature brings lots of challenges and provides opportunities for the profession of Company Secretary. At the same time, it demands responsibility and accountability to the profession. Over a period of time, various secretarial practices were adopted by India Inc which not only was based on 'as suits me' attitude; it also questioned whether such kind of practices were intended under the legislature. When India Inc was facing multitude of Corporate Governance practices whereby two activities particularly Board and shareholders decision(s) are crucial, the introduction of SSs pertaining to these areas is timely, apt and need of the hour. Moreover, when India is preparing towards ease in doing business in the country and initiative of 'Make in India' along with to attract foreign capital for building country's infrastructure, Secretarial Standards would support all these endeavors.

For the purpose of Companies Act, the expression "Secretarial Standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

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STATUTORY MANDATES

Sub-section (10) of Section 118 of the Companies Act, 2013 provides statutory recognition to Secretarial Standards with respect to Board and General Meetings, although other standards are not yet notified. Section 121 demands a confirmation with regard to compliance of secretarial standards with respect to calling, convening and conducting the Meeting when preparing report on the Annual General Meeting of the company. The Company Secretary is entrusted under Section 205(1) of the Companies Act, 2013 with the duty for ensuring compliance

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of Secretarial Standards, which is one of the key functions of Company Secretary. Further, Secretarial Audit Report issued by the Company Secretary in Practice requires certification on compliance of Secretarial Standards. Apart from Companies incorporated under the Companies Act, other entities might also adhere to these standards.

SECRETARIAL STANDARDS – THE NEED

Secretarial Standards are the yardstick and in other words codifying a measure in order to avoid divergent approach towards compliance. Varied secretarial practices are followed by corporate entities, which was evolved over a period of time through practical application and as a response to 'need of the game'. Such kind of approach and practice was much needed to be re-looked and reviewed from the perspective of whether it is acceptable at a broader level or not. The introduction of Secretarial Standards would codify the best approach to such divergent secretarial practices in the right perspectives. The adoption of the Secretarial Standards by the corporate sector will have a considerable impact on the quality of secretarial practices being followed by the companies, making them comparable with other entities and standards would create uniformity of mottled secretarial practices under the Companies Act. Secretarial Standards is not there to substitute any applicable provisions of the law and in fact it is a repository of knowledge evolving based on the ever evolving principles.

STAKEHOLDERS OF SECRETARIAL STANDARDS

The stakeholders of Secretarial Standards have to be clearly identified in order to avoid any ambiguity. Definitely, the profession of Company Secretary, Board of Directors, Ministry of Corporate Affairs, shareholders, regulatory authorities, stock exchanges, foreign institutional investors/foreign portfolio investors, statutory auditors, internal auditors are the stakeholders of Secretarial Standards. Creating awareness amongst the stakeholders would pose a challenge and long term endeavor. Gradual and systematic approach would make the task easier and effective.

IMPLEMENTATION OF SSs AND THE COMPANY SECRETARY

Secretarial Standards are a path breaking initiative for the profession of Company Secretary. The significance of Secretarial Standards would depend on how it is implemented by the Company Secretary and adopted by the Board of Directors. The Company Secretary should introduce Secretarial Standards to his/her Board for effective decision making process. Every resolution passed by the Board as well as shareholders, in addition to the applicable section(s) of the Companies Act and Securities Laws, should have reference of Secretarial Standards in order to enrich best practices. Finally, Company Secretary is responsible for its implementation; it is not always the statutory recognition which would enhance the significance and acceptability of Secretarial Standards, but the passion with which it is being practiced.

LOOKING INTO OTHER GLOBAL STANDARDS

IFRS principles are considered as global benchmark and wider acceptance for financial reporting. Its application earn status, recognition and are practiced in many countries. The stated objectives of IFRS is to develop a single set of high quality, understandable, enforceable and globally accepted financial reporting standards based upon clearly articulated principles. IFRS is clearly a principle based standard on financial reporting.

The vision statement of IFRS states that it is to develop, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world's capital markets and other users make economic decisions. [www.ifrs.org]

One of the important stakeholders of IFRS is the participants in the world's capital markets.

THE GLOBAL MANAGEMENT ACCOUNTING PRINCIPLES©

Looking into the CGMA website it becomes clear that the Global Management Accounting Principles were created for this era of business. Management accounting is at the heart of quality decision making, because it brings to the fore the most relevant information and analysis to generate and preserve value. The Principles guide best practices. They were prepared by the Chartered Institute of Management Accountants (CIMA) and American Institute of CPAs (AICPA) – which together represent more than 600,000 members and students in 177 countries. The Principles were developed in conjunction with

CEOs, CFOs, academics, regulators, government bodies and other professionals from 20 countries across five continents. The Principles are intended to be universally applicable to help organizations, large and small, public and private, to extract value from the increasing volume of available information. They are aimed at chief executives, chief finance officers and members of boards of directors who have oversight of their organizations' performance. Investors and other stakeholders will also find them useful. They can be used to support the development, execution and refinement of strategy through the performance management system, as well as to support the core activities of the management accounting function. It covers 14 different practice areas, ranging from financial strategy to risk management.[www.cgma.org]

THE FOUR GLOBAL MANAGEMENT ACCOUNTING PRINCIPLES AND OUTCOMES

Principle: Communication provides insight that is influential Outcome: Influence Management accounting begins and ends with conversations. The Principles have been designed to help organisations cut through silos and encourage integrated thinking, leading to better decision-making.	Principle: Impact on value is analysed Outcome: Value Management accounting connects the organisation's strategy to its business model. This Principle helps organisations to simulate different scenarios to understand their impact on generating and preserving value.
Principle: Information is relevant Outcome: Relevance Management accounting makes relevant information available to decision makers when they need it. The Principles provide guidance on identifying past, present and future information, including financial and non-financial data from internal and external sources. This includes social, environmental and economic data.	Principle: Stewardship builds trust Outcome: Trust Accountability and scrutiny make the decision-making process more objective. Balancing short-term commercial interests against long run value for stakeholders enhances credibility and trust

[www.cgma.org]

The purpose of making reference to these standards is to inform the readers about the best practiced global principles based standards.

ACCOUNTING STANDARDS

Quality of financial reporting is of utmost importance. Accounting Standards necessarily having recognition under the Companies Act brings uniformity in the application of accounting principles. Apart from its mandates under the Companies Act, Accounting Standards also require compliance by other regulatory authorities, namely the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority (IRDA).

SUPREME COURT ON ACCOUNTING STANDARDS AND THE "WTRUE AND FAIR" VIEW

Every profit and loss account and balance sheet of a Company shall comply with the accounting standards. Can it be said that just because the Accounting Standards are not complied with, the accounts of a company do not present a true and fair picture of its financial position? Is compliance with the Accounting Standards mandatory, or are certain deviations justified? The Supreme Court's observations in *JK Industries* v. *Union of India*, [2008] 143 Comp Cases 325 (SC), appears to have settled the issue. As to whether AS 22 was *ultra vires* the Companies Act the court stated thus:

...implementation of the Accounting Standards and their compliance are made compulsory and mandatory by the afore stated sections 211 (3A), (3B) and (3C)... Before introduction of Sub-sections (3A), (3B) and (3C) in Section 211 (w.e.f. 31.10.98), these Standards were not mandatory. Therefore, the companies were then free to prepare their annual financial statements, as per the specific requirements of Section 211 read with Schedule VI. However, with the insertion of Sub-sections (3A), (3B) and (3C) in Section 211 the P&L a/c and the balance-sheet have to comply with the Accounting Standards ... non-compliance with these Standards would lead to violation of Section 211 inasmuch as the annual accounts may then not be regarded as showing a "true and fair view"...

However, the subsequent decision of the Bombay High Court indicates that the question is still an arguable one. *In Re Hindalco*, [2009] 94 SCL 1 (Bom): MANU/MH/0927/2009, Justice Khanwilkar observed:

On conjoint reading of Sub-sections (3A) and (3B) of Section 211, it necessarily follows that deviation from the accounting standards is permissible subject, however, to compliance of the requirement of disclosure in the profit and loss account and balance sheet of such deviation and the reasons for such deviation and financial effects thereof; in other words, deviation of accounting standards is not wholly prohibited, but is regulated by the provisions of Section 211 of the Act.

[http://indiacorplaw.blogspot.in/2009/10/compliance-with-accounting-standards.html]

The significance of discussing the Supreme Court view in Accounting Standards is not to understand the judiciary test on Accounting Standards, but to keep in mind the perception on standards.

CONCLUSION

Unlike accounting and auditing standards, secretarial standards are not part of Section 2 of the Companies Act, 2013 which defines various terms under the Act. The intention of legislature for not defining the Secretarial Standards under the main definition section is not clear. However, Secretarial Standards would go a long way in creating confidence in the mind of investors, statutory and regulatory bodies towards adhering to corporate governance practices in India Inc. Apart from recognition under the Companies Act, Secretarial Standards need to be recognized under the SEBI, RBI, FDI and other relevant laws. Secretarial Standards might put to rest long drawn litigation around Board and shareholders decision(s). However, having said that, the Secretarial Standards have to navigate the judiciary test and may be debated in the years to come before having its wider acceptability. It is yet to be seen whether non-adherence of Secretarial Standards would make the decision of Board and Shareholders as null and void thereby marking that decision bad in law. A question, we leave to the readers to ponder upon. CS

ATTENTION MEMBERS!

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI (Prohibition of Insider Trading) Regulation 2015 notified on January 15th, 2015 are effective from May 15, 2015.

Regulation 7(1) (a) mandates every Key Managerial Personnel (KMP), (besides others) of a company whose securities are listed on any recognised stock exchange to disclose his holdings of securities of the company as on the date of these regulations taking into effect (i.e on May 15, 2015) to the company within thirty days of these regulations taking effect.

Regulations 7(1) (b) stipulates that every person on appointment as a KMP (besides others) shall disclose his holding of securities of the company as on the date of appointment, to the company within seven days of such appointment.

Besides, there are continual disclosure requirements for KMPs as employees depending on the thresholds prescribed under Regulation 7(2).

Regulation 9 requires various entities including professional firms dealing with listed companies to formulate code of conduct adopting the minimum standards set out in Schedule B to these regulations. **This will be thus applicable to PCS firms**.

The Regulations also prescribes enhanced role of compliance officer covering aspects such as approval and monitoring of trading plans, reporting of disclosures to stock exchanges, advising the board of directors on matters including pre-clearance/ reporting, etc.