

COMPANY SECRETARY IN PRACTICE

Ready Reckoner



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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PREFACE

In the contemporary phase of governance, when the innings of *Sabal Bharat- Samartha Bharat* are taking shape in efficaciously executing the concerns of Self-Sufficient and Self Reliant India; a culture of Good-Governance and Compliance in India seems to be one of the resilient factors in contributing towards the empowered and inclusive development of the nation.

As William Makepeace Thackeray puts it, *“Next to Excellence is the Appreciation of it”*. The recent recognition by the Hon'ble Prime Minister during the inauguration of Golden Jubilee of the Institute, endorsing Company Secretaries as the leading Governance Professionals in deciding the corporate culture of the nation, is indeed a way forward to toughen up our practice and polish the spirit of our service to the nation by widening the contours of our professional excellence.

Needless to say, the Institute of Company Secretaries of India is dedicated in enhancing the confidence of its team of professionals through subsuming contemporary updates on their role and responsibilities. The brigade of Company Secretaries, too, is stepping into newer arenas of activity, today more than ever while holding tightly to its niche area of corporate laws and compliance. And while the dynamism of Indian corporate world is hard to miss, it is indispensable that the professionals providing companies with their services are aptly armed. For Company Secretaries in practice who are practically outsiders holding on to their independence with respect to the companies, the need just multiplies.

Keeping in sight the above, the Institute had initiated the publication of a Ready reckoner for the Company Secretaries in Practice. This publication titled **Company Secretary in Practice-Ready Reckoner** aims at aiding the practising members of the Institute to effectively shoulder the new responsibilities under the emergence of newer opportunities and to act independently to provide value added services to their clients for which they should keep themselves updated with emerging new regulatory framework, advancements in information technology and developments in the profession.

The publication includes an updated list of areas of practice, recognitions, and clarifications/guidelines issued by the Council having bearing on the practicing side of the profession, etc.

I take this opportunity to express my sincere thanks to CS Vineet K. Chaudhary, Chairman and the members of Practicing Company Secretaries Committee of the Council for their guidance and valuable suggestions.

I sincerely commend the honest efforts of CS Saurabh Jain, Joint Director, Mr. Ritesh Kumar, Deputy Director (Strategies), and CS Naveen Kumar, Executive Assistant (Academics) in revisiting and revising the manuscript

of this publication under the thoughtful guidance of CS Sonia Baijal, Director, Professional Development, Perspective Planning and Studies, ICSI and able leadership of CS Dinesh Chandra Arora, Secretary, ICSI.

I am sure that this work would be an updated guide to the members and budding professionals in practice in order to advance their professional excellence and commitment towards the dedicated service of the nation.

In any publication of this nature, there would always be scope for further improvement. I would personally be grateful to the users and readers for offering their suggestions for further improvement.

CS Makarand Lele
President, The ICSI

Place : New Delhi

Date : May, 2018

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Introduction

At the suggestion of the Department of Company Affairs, the Institute of Company Secretaries of India started issuing Certificate of Practice to its members in 1979. With the coming into force of the Company Secretaries Act, 1980 on 1.1.1981, statutory recognition was given to the concept of practice by members of the Institute. Section 2(2) of the Company Secretaries Act, 1980 indicates the various areas of practice which are open to a Company Secretary holding certificate of practice issued by the Institute. The objective of authorising qualified members to practice is to make available professional services of a Company Secretary to the corporate sector, including small and medium sized companies which are not required by law, to employ compulsorily a whole-time qualified Company Secretary.

The concept of Company Secretary in Practice took firm roots with the recognition of Secretary in Whole-time Practice under Section 2(45A) of the Companies Act, 1956. Besides this statutory recognition, a Company Secretary in Practice was conferred recognition under Section 33(2), 149, 161 and Schedule XIII of the Companies Act, 1956. In addition some state financial institutions also introduced the concept of Secretarial Audit in respect of Companies assisted by them. These corporations have prescribed annual Secretarial Audit of Companies for the assisted companies to be conducted in the manner prescribed by the Institute.

The Department's circular Nos. 14/90 dated 5.9.90 and 5/91 dated 26.2.91 directing Registrars of Companies to take on record all documents filed by companies within a reasonable period of say ten days if the same are certified by a Company Secretary in Practice, with a view to avoid delay in registration of documents, is another significant development for the practising side of the profession. Another significant development is the direction issued by the Securities and Exchange Board of India, advising all Stock Exchanges to amend the listing agreement to provide for insistence by the company that Registrar and Share Transfer Agents (RTA) produce a certificate from the Company Secretary in Practice that all transfers have been completed within the stipulated time.

The enactment of the Companies (Amendment) Act, 2001, especially the insertion of proviso to sub-section (1) of section 383A relating to issue of

compliance certificate by Company Secretaries in Practice for companies not required to employ a whole-time secretary and having a paid-up share capital of Rupees Ten Lakhs or more, which has to be filed with the Registrar and is also to be attached with the Board's Report by the company, has not only strengthened the status of the profession but has also served to provide the necessary impetus and fillip for the growth of the profession especially the practicing side.

The Department of Company Affairs (now the Ministry of Corporate Affairs) increased the limit of paid up share capital for compulsory appointment of Whole-time Secretary from Rs. 50 lakhs to Rs. 2 crore vide Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2002 issued vide F.No. 17/6/2002-CL.V, published in the Gazette of India dated 11.6.2002. The Ministry of Corporate Affairs once again increased the limit of paid up share capital for compulsory appointment of Whole-time Secretary from Rs. 2 crore to Rs. 5 crore by notifying the Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2009 vide its notification no. G.S.R. 11(E) dated 5-1-2009. Accordingly, every company having paid up share capital of rupees ten lakhs or more but less than rupees five crores was required to file with the Registrar of Companies a Compliance Certificate from a Practising Company Secretary. This further increased the opportunities for Practising Company Secretaries as more number of companies are now required to obtain the Compliance Certificate.

The Companies Act, 2013 which came into force on 12 September, 2013 with few changes defines various roles of Company Secretaries, viz.

Secretarial Audit (Section 204): Every listed company and a company belonging to other class of companies as may be prescribed to annex a **Secretarial Audit Report** with its Board's report;

- Such Secretarial Audit report to be given by a Company Secretary in Practice, in such form as may be prescribed.
- As per Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the other class of companies shall be as under –

(a) every public company having a paid-up share capital of Fifty crore rupees or more; or;

(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.
- Powers/duties of auditors apply *mutatis mutandis* to CS in practice conducting secretarial audit.

Pre-certification 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:**

- A very significant duty has been cast on the Company Secretary in Practice under section 143 (12) the Companies Act, 2013.
- It 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 or amounts as may be prescribed (rupees one crore or above in terms of Rule 13 of the Companies (Audit and Auditors) Rules, 2014), is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed.

Provided further that the companies, whose auditors have reported frauds under this sub-section 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 such manner as may be prescribed."

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.

- As per the Companies (Audit and Auditors) Rules, 2014, 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.

- Sub-section (13) of Section 143 provides that no duty shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.
- **Voting through electronic means**
 - Every listed company or a company having not less than one thousand shareholders, provide to its members facility to exercise their right to vote at general meetings 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 as provided under the rules;
 - Manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon is provided under the rules.

- **Report on the AGM (Section 121)**

A Company Secretary is authorised to sign the report on every AGM alongwith two directors one of whom shall be the MD if there is one.

- **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.

- **Adjudication of Penalties (Section 454)**

- Section 454 provides for appointment of adjudicating officers for adjudging penalty under the provisions of Companies Act.
- The adjudicating officer shall have power by an order to impose penalty on the company and the officer who is in default for non-compliance or default after giving a reasonable opportunity of being heard.
- The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- Any person aggrieved by an order will have a right to prefer an appeal to the Regional Director.
- This would greatly enhance role of Company Secretaries both in employment as well as in practice as they would be called upon to represent the companies before the Registrar/Regional Director in such matters.

- **Enhancement of Penalties**

- The Companies Act, 2013 has proposed enhanced penalties with maximum and minimum quantum of penalty for each offence with deterrence for repeated defaults.
- This would result in better compliance of law by companies through more and more reliance on services of professionals like Company Secretaries.

- **Duties and Liabilities of Directors**

The role and responsibility of the directors are specifically laid down. With the duties and responsibilities specifically attached to them, the directors would look forward to the advice and assistance of professionals like Company Secretaries in the discharge of their duties.

- **Enhanced Disclosures**

To promote good governance, detailed disclosures are contemplated under the Act, for compliance of which the companies would look forward to professionals including Company Secretaries.

- **Insolvency, Rehabilitation, Liquidation and Winding Up**

Revised framework for regulation of mergers and amalgamations, insolvency, rehabilitation, liquidation and winding up of companies offers great scope for Companies Secretaries not only to act as liquidator/administrator but also to represent the various stakeholders before the Tribunal.

- **Registered Valuer**

A Company Secretary in Practice with requisite experience and passing the examination can become a registered valuer for conducting valuation required under the Companies Act. A registered valuer may conduct valuation as per Companies (Registered Valuers and Valuation) Rules, 2017 if required under any other law or by any other regulatory authority.

- **Other recognitions for CS**

- Serious Fraud Investigation Office to consist of experts from banking, taxation, corporate affairs, law, capital market. Company Secretaries may opt for this.
- 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 Government/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.

- After Winding up order- To assist promoters/directors ordered to be examined by Tribunal in case of fraud.
- Professionals can also act as receiver of company.

Further there has been a significant change in the last few years in the business environment and the government policies and a new work culture is developing in India to avail the benefits of market economy and liberalised economic policies of the Government. An era of liberalisation and globalisation deregulation and delicensing has been ushered in as a result of which economic and commercial scenario has been undergoing tremendous transformation thereby opening up new vistas and opportunities for Company Secretaries in Practice. Company Secretaries in Practice besides embarking upon traditional areas of practice are increasingly being called upon to advise and guide on legal aspects of business which intimately concern areas such as production, sales, marketing and administration for identifying expansion opportunities, issuing due diligence or comfort certificate, arranging foreign collaborations, amalgamations, mergers, acquisitions, takeovers, setting up of subsidiaries and joint ventures within and outside India etc. The new opportunities offered by the growing capital markets and financial services have also greatly contributed to the development of the practising side of the profession.

Company Secretary in Whole-time Practice

After the constitution of the Institute as a statutory body under the Company Secretaries Act, 1980 with effect from 1st January, 1981, Certificate of Practice is being issued to members in accordance with the provisions contained in the Act and Regulations framed thereunder. Regulation 168 prohibits a Company Secretary in Practice from engaging in any business or occupation other than the profession of Company Secretary unless it is permitted by a general or specific resolution of the Council. In 1982 the Council by a general resolution withdrew the permission earlier granted to members holding certificate of practice, to practice simultaneously as Chartered Accountant or Cost Accountant. However, members practising as Advocates or in employment obtaining 'No Objection' Certificates from employers, were permitted to be issued or to renew their certificate of practice as Company Secretary.

Taking into account the interest of the profession, the various recognitions

obtained for the profession, the representations received, the amendments made to the Companies Act, 1956 in the year 1988 - defining a Company Secretary in whole-time practice, transferring powers to an independent Company Law Board and giving exclusive and non-exclusive recognitions to a Company Secretary - and the implications of the provisions contained in the Company Secretaries Act 1980, particularly Section 7 of the Act read with Clause (7) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Act, the Council passed a general resolution in November 1989 withdrawing the permission granted earlier to practice simultaneously as an advocate, for the regulation and further growth of the profession of Company Secretary. Accordingly, the members practising as advocates were not issued Certificate of Practice and such members holding Certificate of Practice as permitted earlier, were not renewed Certificate of Practice after the completion of the financial year on 31st March, 1990.

In order to give an independent identity and status to the profession and a thrust to the concept of Company Secretary in whole time practice and taking into account the present circumstances of the profession with the introduction of definition of secretary in whole-time practice and provision of exclusive and non-exclusive recognitions accorded to a secretary in whole-time practice in the Companies (Amendment) Act, 1988 it was felt that the profession could be properly regulated, if an independent status is provided to the profession. In accordance with the powers conferred on the Council under the various provisions contained in the Company Secretaries Act, 1980, and the regulations framed thereunder and in particular regulation 168 the Council passed a general resolution in its meeting held on 12th May, 1991 withdrawing the permission earlier granted and prohibiting issue of Certificate of Practice to members in employment effective from 1st June, 1991. Accordingly, no member in employment has been issued with Certificate of Practice on or after 1st June, 1991. Members already holding Certificate of Practice after obtaining 'No Objection Certificate' from their employers, were not renewed the Certificate of Practice after the completion of the financial year 1991-92.

Consequent to the decision not to issue certificate of practice to members who are holding certificate of practice either from the ICAI or ICWAI/Members of Bar Council or members who are in employment, the certificate of practice is now issued to members for practising as Company Secretary on whole-time basis only.

The aim of this publication is to assist the members in practice by elaborating various aspects of 'practice' and listing out the 'recognitions'

achieved by the profession. It also gives information about the provisions relating to practice as contained in the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder.

Areas of Practice

Section 2(2) of the Company Secretaries Act, 1980 (hereinafter called the Act) provides that a member of the Institute shall be deemed to be in practice when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, does any of the following in considerations of remuneration received or to be received:

- (a) engages himself in the practice of the profession of Company Secretaries to or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, formation, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by:
 - (i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
 - (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant,
 - (vi) an advisor to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947*, the Industries (Development and Regulation) Act, 1951, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973**, or under any other law for the time being in force,

* Since repealed.

** Since replaced by the Foreign Exchange Management Act, 1999.

- (vii) issuing certificates on behalf of or for the purposes of, a company;
- (d) holds himself out to the public as a Company Secretary in Practice; or
- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) renders such other services, as in the opinion of the Council are or may be rendered by a Company Secretary in Practice.

The words “to be in practice” with their grammatical variations and cognate expressions, shall be construed accordingly.

Section 2(2) contemplates that a member of the Institute engaging in the above functions, can practice in partnership with members of such other professions as may be prescribed. In as much as a like provision does not exist in the statutes governing other professions, the Council has not framed any regulations prescribing other professions for entering into partnership. It may also be noted that in terms of clause (f) of Section 2(2) of the Act, the Council has power to specify any other service that can be rendered by a member in practice.

The Institute has secured various statutory recognitions which provide good opportunities for practice to the Company Secretary in Practice. In addition to Section 2(2) of the Company Secretaries Act, 1980, regulation 168(2) of the Company Secretaries Regulations, 1982 also specify areas of practice for Company Secretaries.

The educational background, knowledge, training and exposure that a Company Secretary acquires makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organisations, small scale units, firms, etc. on retainerhip or job basis. The plethora of services, which a Company Secretary in Practice can render, are listed below:

Corporate Governance, Legal and Secretarial Services

Corporate Governance Services

Advising on good governance practices and compliance of Corporate Governance norms as prescribed under the Companies Act, Listing Agreement and various other laws, rules and regulations.

Corporate Secretarial Services

- Promotion, formation and incorporation of companies and matters related therewith
- Filing, registering documents including forms, returns and applications by and on behalf of the company as an authorised representative
- Maintenance of secretarial records, statutory books and registers
- Arranging Board/general meetings and preparing minutes thereof
- All work relating to shares and their transfer and transmission

Secretarial Audit and Certifications under the Companies Act

- Secretarial Audit/Compliance Audit
- Signing of Annual Return
- Pre-certification of e-Forms
- Other declarations, attestations and certifications under the Companies Act.

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
- Depositories Act
- Foreign Exchange Management Act
- Environmental and Pollution Control Laws Labour and Industrial Laws Co-operative Societies Act Mergers, Amalgamations and Strategic Alliances
- Foreign Collaborations and Joint Ventures Setting up Joint Ventures / Wholly owned subsidiaries abroad
- Competition Policy and Anti Competitive Practices
- Intellectual Property Rights - Protection, Management, Valuation and Audit
- Drafting of Legal Documents

Representation Services

Representing on behalf of a company / other persons before:

- National Company Law Tribunal
- Competition Commission of India
- Securities Appellate Tribunal
- Registrar of Companies
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities, and
- Other Quasi-judicial bodies and Tribunals Arbitration and Conciliation Services
- Advising on arbitration, negotiation and conciliation in commercial disputes between parties
- Acting as Arbitrator/Conciliator in domestic and international commercial disputes
- Drafting Arbitration / Conciliation Agreement / Clause

Financial Markets Services*Public Issue, Listing and Securities Management*

- Advisor / consultant in issue of shares and other securities
- Drafting of prospectus/offer for sale/letter of offer/ other documents related to issue of securities and obtaining various approvals
- Loan documentation, registration of charges, status and search reports
- Listing/delisting of securities with recognized stock exchange
- Private placement of shares and other securities
- Buy-back of shares
- Raising of funds from international markets ADR/GDR/FCCBs/FCEBs/ECB
- Due diligence

Banking Services

- Diligence Report and Certification in respect of Consortium /

multiple banking arrangement made by Scheduled Commercial Banks/ Urban Co-operative Banks

- Loan Syndication
- Loan documentation
- Registration of Charges
- Status and Search Report

Takeover Code and Insider Trading

- Ensuring compliance of the Takeover Regulations and other applicable laws and rules
- Acting as Compliance Officer and ensuring compliance with Prohibition of Insider Trading Regulations

Certification under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

1. Certificate regarding transfer of securities under Regulation 40 (9)
2. Certificate regarding Compliance of Conditions of Corporate Governance (Schedule V, Clause E)
3. Certificate Regarding Maintenance of 100% asset cover [Regulation 56 (1) (d)]

Other Certifications

1. Certification by PCS in case of Offer/allotment of securities to more than 49 to up to 200 investors (SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016)
2. Compliance Certificate by a PCS for listing on BSE SME Platform

Audit

1. Reconciliation of Share capital audit
2. Internal audit of :
 - Portfolio Manager
 - Stock Brokers/ Clearing Members/Trading Members
 - Credit Rating Agencies
 - Depository Participants

3. Concurrent Audit of Depository Participants
4. Annual Audit of Research Analyst
5. Yearly Audit of Investment Adviser

Financial Valuer

To act as Financial Valuer under:

- SEBI (Real Estate Investment Trusts) Regulations, 2014
- SEBI (Infrastructure Investment Trusts) Regulations, 2014

Finance and Accounting Services

- Book-keeping, Accounting and Compilation of Financial Statements
- Internal Audit
- Secretary to Audit Committee
- Working capital and liquidity management
- Determination of appropriate capital structure
- Analysis of capital investment proposals
- Business valuation prior to mergers and / or acquisitions
- Budgetary controls
- Preparation of Project Reports and Feasibility Studies

Taxation Services

- Advisory services to companies on tax management and tax planning under Income- Tax, Goods and Services Tax Act
- Preparing/reviewing various Returns and Reports required for compliance with the tax laws and regulations
- Representing companies and other persons before the tax authorities and tribunals

International Trade and WTO Services

- Advising on matters related to IPRs under TRIPs Agreement of WTO
- Advising on matters relating to anti-dumping, subsidies and countervailing duties
- International Commercial Arbitration
- Advising on and issuing certificates in respect of Foreign Trade Policy and Procedures

- Advising on Intellectual Property licensing and drafting of Agreements
- Acting as registered Trade Marks Agent

Management Services

General/Strategic Management

- Advising on Legal Structure of the organisation
- Business policy, strategy and planning
- Formulation of organisational structure
- Acting as management representative to obtain ISO Certification
- Advising on Corporate Social Responsibility
- Advising on Sustainability Accounting and Reporting

Corporate Communication and Public Relations

- Communication with various stakeholders, such as shareholders, Government, Regulatory Authorities, etc.
- Advisory services for Brand equity and image building

Human Resource Management

- Manpower planning and development
- Audit of the HR function
- Performance appraisal
- Motivation and remuneration strategies
- Industrial relations
- Office management, work studies and performance standards
- Advising on industrial and labour laws

Information Technology

- Compliance with cyber laws
- Conducting Board Meetings through video-conferencing and teleconferencing
- Advising on software copyright and licensing
- Development of management reports and controls
- Maintenance of statutory records in electronic form

- Sending notices to shareholders in electronic mode
- Filing of forms/documents in electronic mode with Registrar of Companies and other statutory authorities

Designation to be used by Members in Practice

Under Section 7 of the Act, a member in practice shall use the designation of a Company Secretary and shall not use any other designation, whether in addition thereto or in substitution therefor. However, use of the prefix 'practising' before the designation 'Company Secretary' would not offend Section 7. Similarly, use of the suffix 'in whole-time practice' or 'in practice' after the designation 'Company Secretary' would also not offend Section 7. Further, use of any description or letters to indicate membership of any other Institute in India or elsewhere is permissible, if recognised by the Council. Any other qualification possessed by a member in practice is also not prohibited to be used - say M.Com., M.A., M.B.A., A.C.A., A.I.C.W.A., etc. The Council has recognised membership of the Institute of Chartered Accountants of India and Institute of Cost Accountants of India and Bar Councils for purposes of allowing members of the Institute to use the relevant statutory descriptions of such bodies, provided members are not holding certificate of practice of the Institute or using the description of "Company Secretary". Use of designations like "Company Law Consultant, Corporate Law Advisor, Corporate Advisor, Investment Advisor, Management Consultant is prohibited.

Prefix of CS

The Council of the Institute in its 173rd meeting held on June 23-24, 2007 has decided that a member of the Institute may prefix CS to his name in order to distinguish himself from other professionals and to create brand image of the CS profession

CS Logo

The letters 'CS' may be used by the members as a prefix before their names.



Appropriate usage of CS logo

While using the letters 'CS' on their letter heads and visiting cards, the company secretaries need to ensure that the width of the logo when used along with the name of the member should not be more than 125% of the size of the characters used for publishing the name. When the 'CS' logo is

used as a standalone on visiting cards and letter heads then it should not exceed 1cm (0.39 inch) in height. The logo is to be printed in navy blue colour.

Use of Own Logo by PCS

The Council of the Institute has issued the Guidelines for use of individual Logo by Company Secretaries in Practice which came into effect from 1st September, 2015.

The Guidelines deal with the manner in which a Company Secretary in Practice can design and use their individual Logo on letter head, visiting cards, uniform for employees of their firm, websites, advertisement materials, name boards, other stationery, invoices, packing material, stickers, sponsorship material, etc. For a copy of the Guidelines please refer *Appendix I*.

Certificate of Practice

As per Section 6 of the Act, a member of the Institute is entitled to practice whether in India or elsewhere only after he has obtained from the Council of the Institute, a Certificate of Practice pursuant to an application made in the prescribed form and upon remittance of the prescribed fees. (Appendix VII)

Issue of Certificate of Practice (Reg. 10)

A member of the Institute may apply to the Council in Form 'D' (Appendix VI) for issue of certificate of practice enabling him to practice as a Company Secretary anywhere in India. The application is to be accompanied with annual certificate of practice fee which presently is Rs. 2000/- only with applicable GST (50% of the annual certificate of practice fee with applicable GST is payable if the application for issue of certificate of practice is made on or after 1st October till 31st March. Before applying for the certificate of practice, the member needs to ensure that he/she has paid the requisite Annual Membership fees inclusive of applicable GST*.

The member is also required to intimate about his earlier engagements, if any. In case the member was in employment earlier, a copy of the relieving letter from his immediate past employer company, a copy of Form-32/DIR-12 in respect of his cessation of his employment (if employed as whole time Company Secretary) or letter of cancellation of certificate of practice of the concerned professional body if earlier engaged in some other profession. In case the member is not employed, he/she has to furnish a self-declaration duly signed stating that he/she is not employed anywhere as on the application date.

A member who is in employment evidencing a master-servant relationship with the employer or contract of service or is practising as chartered accountant or cost accountant or enrolled as an advocate with any Bar Council, is not entitled for issue of certificate of practice.

On acceptance of the application by the Council for issue of certificate of practice, certificate is issued (Appendix VII) and is valid for the period indicated unless it is cancelled earlier for non fulfillment of the condition stipulated by the Council or for violation of any provisions of the Act, its schedules or the regulations framed under the Act.

A member who ceases to be in practice is required to intimate the fact that he has ceased to be in practice, in writing, within 30 days from the date he ceases to be in practice and surrender forthwith the certificate held by him to the Secretary of the Institute.

Renewal of Certificate of Practice (Reg. 10)

The certificate of practice issued to a member is required to be renewed every year by payment of annual certificate of practice fee which presently is Rs. 2000/-* after paying the necessary annual membership fees*.

The annual certificate of practice fee and the annual membership fee become due and payable on first day of April every year. The last date for the payment of annual membership fee is 30th June and that of the certificate of practice fee is 30th September. In case of renewal of Certificate of Practice, the secretary issues a letter extending the validity period of the certificate of practice for that year if the member continues to fulfill the conditions stipulated by the Council for such renewal or has not violated the provisions of the Act, its schedules and the regulations framed under the Act.

***with applicable GST**

Cancellation of certificate of practice (Reg. 11)

- (1) The certificate of practice shall be cancelled when:
- (a) the name of the holder of the certificate is removed from the Register of Members; or
 - (b) the Council is satisfied that such certificate was issued on the basis of incorrect, misleading or false information provided by the applicant or by mistake or inadvertence on the part of the Council; or
 - (c) the member has ceased to practice; or

- (d) the member has not paid the annual certificate fee on or before 30th day of September of that year.

Provided that before cancelling the certificate under clause (b) reasonable opportunity to explain his case shall be given to the member.

- (2) The cancellation of a certificate shall be effective:
 - (a) in a case falling under clause (a) of sub-regulation (1) from the date on which and during the period for which the name of the holder of the certificate was removed from the Register of Members;
 - (b) in a case falling under clause (d) of sub-regulation (1) from the 15th day following the date of issue of notice by the Secretary on or after the 1st day of October; and
 - (c) in any other case, from such date and for such period as the council may determine.
- (3) When a certificate is cancelled, the date from which and the period for which the certificate shall stand cancelled shall be communicated in writing by registered post to the member concerned at the address entered in the Register and may also be published in Institute's journal 'Chartered Secretary'.
- (4) When a certificate of practice is cancelled, the holder of such certificate shall surrender the certificate to the Secretary within 15 days from the date of receipt of notice of such cancellation or from the date of the notification thereof published in the Journal, whichever is later, under sub-regulation (3).

Restoration of Certificate of Practice

The certificate of practice would be renewed in the same financial year in which it was due for renewal provided the fee for renewal has been received and accepted by the Institute in the same financial year. The application for restoration of certificate of practice shall be made in Form D (Appendix VI). But, where the certificate of practice was required to be cancelled on failure to pay the annual fee for certificate of practice on or before the due date prescribed and an application for restoration of certificate of practice has been received and accepted by the Institute in the same financial year, the certificate of practice would be restored on payment of the requisite annual fee for certificate of practice for the current year and a restoration fee of Rs. 250/-. Where the certificate of practice has not been renewed or accepted for renewal in the same financial year, and as

a result of which it was required to be cancelled, a fresh certificate of practice will be issued with effect from the date of acceptance of application for the issue of fresh certificate. A communication for restoration/re-issue of Certificate of Practice will be sent to the member in writing any may also be published in the Institute's journal 'Chartered Secretary'.

Directory of Company Secretaries in Practice

The Institute publishes a directory of Members in Practice in CD form and supplies it to members upon request, and to such other bodies as the Council may specify from time to time. The information is also hosted on the website of the Institute.

Information to be supplied by Members

For the purposes of publication of directory of Members in Practice, the Council may require members to supply information regarding their present address with telephone/ mobile numbers, fax number and email ID, if any, place of business, partners and such other particulars as may be deemed necessary.

With the issue of the Guidelines for Issuing Compliance Certificate and Signing of Annual Return, Guidelines for Advertisement by Company Secretary in Practice and the Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services rendered by Practicing Company Secretary/Firm of Practicing Company Secretaries and the opening up of other core areas of practice, the Council has decided for practicing members to supply information with regard to number of advertisements, Corporate Governance compliance certificates under Clause 49, reconciliation of Share Capital Audit Report issued under Section 55A of the Securities Exchange Board of India (Depositories and Participants) Regulations, 1996 issued and secretarial audits carried out under section 204 of the Companies Act, 2013 along with a declaration regarding maintenance of a register of attestation / certification services.

Maintenance of Branch Offices

As per Section 37(1) of the Act, where a Company Secretary in Practice or a firm of such Company Secretaries has more than one office in India, each one of such offices must be in the separate charge of a member of the Institute. The Council is, however, empowered to exempt in suitable cases any Company Secretary in Practice or firm of such Company Secretaries from the operation of this sub-section.

Applications for opening of Branch Office without a member in the separate charge at places where there are few or no Company Secretaries in Practice

are decided by the Council on the merits of each case subject to the following general conditions:

1. The branch office shall be an independent office and not in the office of some other professional.
2. One of the partners of the firm shall attend the branch office atleast 100 days in a financial year. However, if a candidate who has passed Executive Program of the Institute and also completed Management/Apprenticeship Training or has passed the Professional Programme of the Institute is posted at the said branch office, one of the partners of the firm shall attend the branch office atleast 60 days in the financial year.
3. The approval shall be valid for a period of two years within which a member must be appointed in the separate charge of the branch office.

Section 37(2) requires every Company Secretary in Practice or firm of such Company Secretaries maintaining more than one office to send to the Council a list of offices and the persons in charge thereof and also to intimate any change therein. Regulation 163 of the Company Secretaries Regulations, 1982, requires the changes to be intimated to the Council within one month of such change(s).

Particulars of Offices and Firms (Reg. 165)

Every Company Secretary in Practice and every firm of Company Secretaries are required to submit to the Council in (Appendix V) particulars of his office or those of the firm within 3 months from the commencement of practice or formation of the firm as the case may be. Any subsequent change(s) in the particulars, are required to be sent so as to reach the Council within 30 days after the change was effected. The particulars furnished by the members and the subsequent changes intimated are entered in the Register of Offices and Firms maintained by the Council.

Place of Business of Practising Member in India (Reg. 167)

Every member in Practice is required to have a place of business in India in his own charge or in charge of another member. Particulars of such place of business must be supplied within 30 days to the Council initially, and whenever there is a change of place of business particulars of such change must be intimated to the Council, within thirty days of the change.

In the case of a member who is not permanently residing in India, the

Council may allow him to specify a place of business in India, whether he has business in India or not and whether it is in his own charge or in charge of another member, and in that event such place shall be taken as the place of business of such member.

In the case of a member who is a salaried employee of a Company Secretary in Practice or a firm of Company Secretaries, the place of business of his employer shall be deemed to be his place of business.

Company Secretaries in Practice not to Engage in any other Business or Occupation (Reg. 168)

A Company Secretary in Practice shall not engage in any business or occupation other than Practising as Company Secretary without the general or specific permission of the Council by a resolution to that effect. However, a Company Secretary in Practice is not barred to act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor, management consultant or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Court of Law, Labour Tribunals, or any other statutory authority without prejudice to the discretion of the Council to prohibit such appointment. The Council has decided w.e.f. 1st June, 1991 not to permit a member in practice to provide these services as an employee of an organisation.

The Members in Practice are allowed to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

Under Section 26 of the Company Secretaries Act, 1980 no company can practise as Company Secretary.

The Council has further allowed members in practice to become non-executive director / promoter / promoter director / subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The term non-executive director, here, means an ordinary director who is required to attend the meetings of the Board or its committees only, not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled

as ordinary director, and devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Practising Company Secretaries can now take up teaching assignment with any organization apart from the coaching organization of the Institute. Further the condition has been relaxed for teaching hours from average three hours to four hours in a day. General permission has been given to Practising Company Secretaries to act as Recovery Consultants in the Banking Sector. With the specific permission of the Council a member in practice can have interest in agricultural and allied activities carried on with the help, if required, of hired labour and editorship of journals other than professional journals.

Permission granted generally

The Council has by a resolution passed under Regulation 168(1) permitted the following:

1. Private tutorship.
2. Authorship of books and articles.
3. Holding the Life Insurance Agency License for the limited purpose of getting renewal commission.
4. Holding of elective offices as a M.P., M.L.A., M.L.C. or any other Public Office.
5. Honorary office bearership of charitable, educational or other non-commercial organisations.
6. Acting as Notary Public, Justice of Peace, Special Executive Magistrate and the like.
7. Part-time tutorship/lecturership under the Coaching Organisation of the Institute and other Institutes such as the Institute of Cost and Works Accountants of India, the Institute of Chartered Accountants of India, Management Institutes, Universities and any college affiliated to a University, and such other organisation as may be recognised by the Council from time to time.
8. Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
9. Editorship of professional journals.

Permission to be granted specifically

Members of the Institute in practice may engage in the following category of

business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council:

“Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.”

For the purposes of the above resolution, a member shall be deemed to have ‘substantial interest’ in a concern:

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits, carrying not less than twenty five per cent of voting power at any time during the previous year), are owned beneficially by such member.
- (ii) in the case of any other concern, if such member is entitled at any time during the previous year, to not less than 25% of the profits of such concern.

Trade or firm name to require Council’s approval (Reg. 169)

No Company Secretary who is not a partner of a firm of Company Secretaries shall practice under any name or style other than his own name except with the prior approval of the Council.

No firm of Company Secretaries in practice shall practise under any name or style except with the previous approval of the Council.

The Council may refuse to approve a particular trade, firm or other name if the same is similar or nearly similar to a name which has been entered in the Register of Offices and Firms maintained by the Institute or if that name is undesirable in the opinion of the Council, or it does not bear the name of its partners whether present or past, except when the firm has been acquired by the payment of goodwill or otherwise. If the same trade or firm name has been inadvertently registered twice or more, the Council may direct the member(s)/firm(s) whose name was registered subsequently to alter the name in such manner as may be directed by the Council and such member(s) or firm(s) shall so alter the name and inform of having effected the alteration to the Council within 3 months of the issue of the direction.

Guidelines of the Council for name of a Proprietorship concern / Firm/ Trade under Regulation 169 of the Company Secretaries Regulations, 1982.

1. A trade or firm or concern name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use.

2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manner:
 - (i) For Sole proprietorship concern:
 - (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix
 - (b) Initials of the first name and/or middle name and/or surname, in whichever order
 - (c) Combination of (a) and (b) above, in any order
 - (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above
 - (ii) For Partnership firm:
 - (a) Full surnames of two or more partners
 - (b) Full first names of two or more partners
 - (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix
 - (d) Combination of initials of first names and/or middle names and/or surnames of the two or more partners
 - (e) Combination of (c) and (d) above, in any order
3. General
 - (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms.
 - (ii) A trade/firm name shall not contravene the provisions of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.
 - (iii) The trade or firm name may be suffixed by the suffixes "& Co.", "& Company" or "& Associates". However, any suffixes that may be considered undesirable by the Council shall not be allowed.
 - (iv) The word "and"/ "&" could be used in between the first

name/middle name/surname including initials thereof, of the partners of the firm.

- (v) A firm name may also be allowed without the use of the suffixes “& Co.,” “& Company” or “& Associates” provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word “&”/“and” is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
- (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes “& Co.” / “and Company” / “& Associates”.
- (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
- (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc. shall not be allowed.
- (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/or in any order, shall not be allowed. The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary, Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc., shall not be allowed. However, trade/firm names matching with the group name/theme shall be allowed, if the same is not in contradiction with any other criteria.
- (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
- (xi) In case any change in the status of the firm from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
- (xii) A trade/firm name which was in use by a proprietor or

partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.

- (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
- (xiv) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.
- (xv) Approval accorded by the ICSI for any trade/firm name shall not tantamount to any protection by the ICSI in case of any dispute arises affecting to Intellectual Property Rights between any trade/firm with any other brand, entity, business etc., outside the profession and in relation to the name in dispute. The responsibility and liability in such cases shall solely be of the concerned trade/firm and at its own risk and costs and not of the ICSI. The ICSI shall not be any party to any kind of dispute that may arise in this regard.

Guidelines for Change in Name of Proprietorship Concern/Firm of Company Secretary(ies)

In case an existing proprietary concern/firm of Company Secretary (ies) desires to change its name, the following conditions shall be fulfilled:

- (a) An application for change in name of the firm (preferably mentioning its Unique Code Number) shall be submitted along with the Form for giving particulars of Offices and Firms duly filled- in.

- (b) All the existing partners of the firm must sign the application and the Form duly filled-in.
- (c) In the case of a proprietary firm, an application along with the Form for giving particulars of Offices and Firms (mentioning its Unique Code Number) is to be submitted duly filled-in and signed by the proprietor.
- (d) The application for approval of the firm name along with the Form should be sent to the Directorate of Membership, ICSI.
- (e) The new proposed name will be approved under the provisions contained in Regulations 169 and 170 of the CS Regulations, 1982.
- (f) The letter granting approval of a trade / firm name will be sent at the address mentioned in the Form for giving particulars of Offices and Firms.
- (g) The Proprietorship concern/firm of Company Secretary (ies) which has requested for change in name, upon approval shall mention “formerly known as (old name)” for a period of one year from the date of approval of the changed name.

Approval for Constitution/Reconstitution of Firms (Reg. 170)

No firm of Company Secretaries shall be constituted or reconstituted without the prior approval of the Council. The Council shall not refuse to accord its approval to the constitution or reconstitution of the firm unless it is of the opinion that the terms of the partnership agreement permit directly or indirectly, the doing of anything by the firm or its partners which amounts to professional misconduct or that the terms of conditions of the partnership agreement are not fair and reasonable or that having regard to the circumstances of the case, the proposed constitution or reconstitution of the partnership would not be in the interest of the general public. A member can practice individually as well as, as a partner in one or more firms of Company Secretaries.

Display of Particulars on Website by Practising Company Secretaries

The Institute has allowed the practicing members to display their specified particulars on websites in the prescribed manner and subject to the Guidelines for Advertisement by Company Secretary in Practice. The text of these guidelines has been given in Appendix VI.

Penalty for False Practice

Any member of the Institute who represents that he is in practice or practices as Company Secretary without obtaining a certificate of practice

would be liable to be prosecuted under clause (b) of Section 24 of the Act. As per clause (b) of Section 24 of the Act, any person who being a member of the Institute but not having a certificate of practice, represents that he is in practice or practices as a Company Secretary, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Companies Prohibited from Practising as Company Secretaries

Section 26 of the Act prohibits companies whether incorporated in India or elsewhere from practising as Company Secretaries. Any company contravening this provision shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with fine may extend to five thousand rupees.

Members in practice to carry out non-attestation services through the new business structure of Limited Liability Partnership

The Council at its 227th Meeting held at New Delhi on January 18, 2015 while approving the formation of LLPs by PCS granted general permission to the members in practice to:

- (a) become designated / active partner of a limited liability partnership (LLP) the objects of which include carrying out attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;
- (b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

- (i) “Attestation Services” include Secretarial Audit and Certification of Annual Return in terms of the provisions of the Companies Act, 2013.
- (ii) Non-attestation Services” means services which are not attestation services.
- (iii) A “passive partner” means a partner of LLP who fulfils the following conditions:
 - (a) he must not be a designated partner;
 - (b) subject to the LLP agreement, he may make agreed contribution

to the capital of LLP and receive share in the profits of the LLP;
and

- (c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

- (1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).
- (2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.
- (3) Approving or disapproving an amendment to the partnership agreement.
- (4) Reviewing and approving the accounts of the LLP;
- (5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –
 - (a) the dissolution and winding up of the LLP;
 - (b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;
 - (c) a change in the nature of the activities of the LLP;
 - (d) the admission or removal of a partner of the LLP;
 - (e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;
 - (f) any amendment to the LLP agreement;
- (iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.

Unqualified Persons not to Sign Documents

Section 27 of the Act, prohibits any person other than a member of the Institute to sign any document on behalf of a Company Secretary in Practice or a firm of such Company Secretaries in his or its professional capacity. Any person contravening this provision shall, without prejudice to any other proceedings which may be taken against him, be punishable on first

conviction with fine not less than five thousand rupees but which may extend to one lakh rupees, and on any subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees, or with both.

Peer Review

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, in its 202nd meeting held on 25th and 26th August, 2011 decided to introduce Peer Review for Practising Company Secretaries to periodically review the PCS firms and evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained. Refer *Appendix II* for the text of the Guidelines for Peer Review of Attestation Services by Practising Company Secretaries

Misconduct

Chapter V of the Act deals with misconduct. Section 22 of the Act provides that the expression 'Professional Misconduct' shall be deemed to include any act or omission specified in the Schedules to the Act. It is further provided that nothing in this section shall be construed to limit or abridge in any way the power of the Council to inquire into the conduct of any member of the Institute under any other circumstances.

The acts and omissions on the part of the member which would be deemed to be professional misconduct within the meaning of the Company Secretaries Act, are specified in the First Schedule and the Second Schedule to the Act.

Procedure in inquiries relating to misconduct of Members

Chapter V of the Company Secretaries Act, 1980 and Regulations 15 to 19 of Company Secretaries Regulations, 1982 prescribe the procedure relating to complaints and inquiries relating to Professional or other misconduct of members of the Institute. The same are reproduced in Appendix VIII.

Disciplinary Cases

Members in practice are expected to exhibit a high degree of professional ethics by meticulously following the code of conduct framed in this regard. Professional misconduct is punishable under Chapter V of the Company Secretaries Act, 1980. Members in practice have to bear in mind the provisions of the Company Secretaries Act and particularly the practices set

out in the First Schedule thereof since adopting such practices would amount to professional misconduct. With the growth in the practising side of the profession, instances of professional misconduct have also surfaced with the result a number of complaints regarding professional misconduct are being received by the Institute and the Disciplinary Committee of the Council and the Council have been looking into such complaints. It would be beneficial for the members in practice to know the nature of complaints, findings of Disciplinary Committee and orders of the Council in such cases.

A gist of decisions in disciplinary cases decided by the Council is reproduced in Appendix XVII.

Recognitions to Company Secretaries

Some important Statutes/Rules/Institutions have recognised Company Secretaries in Practice for certain purposes. A list of such recognitions secured and other recognitions secured for the profession is given in Appendix I.

Guidance Notes

The Professional Development Committee of the Institute has, in consultation with various agencies, evolved Guidance Notes for the benefit of members in practice. These Guidance Notes indicate as to how a member in practice should approach certain aspects of certification in order to avoid any wrong statement or misleading information being furnished to the clients. These are merely illustrative and as situations may warrant different treatment based on the facts and circumstances of each case, it is emphasized that Company Secretaries in Practice may have to exercise due diligence and caution in discharging their duties and also in upholding of the traditions of the profession keeping in view the Code of Conduct and provisions contained in the Act, Schedules and Regulations applicable to them.

Preparation for Practice

Starting practice is like starting business. Therefore there must be a clear vision of objectives in several areas of practice, clientele, etc. By setting up practice, one will be on one's own and not under the umbrella or constraints of a large or small employer.

Letter-heads, Visiting Cards, etc.

Generally, it is regarded as a good practice to ensure that letter-heads, visiting cards, etc. are of good quality. The first impression should create a good impression.

Professional Fees

In general, it is not practicable to produce a suggested fee scale due to the wide variety of client work, expertise offered, external competition and local conditions.

Professional fees should be a fair reflection of the work performance for the client, taking into account:

1. the skill and knowledge required for the type of work involved;
2. the level of training and experience of the persons necessarily engaged in the work;
3. the time necessarily occupied by each person engaged in the work; and
4. the degree of responsibility which the work entails.

Professional fees should normally be computed on the basis of appropriate rates per hour or per day for the time of each person engaged in the work.

Some Tips

Setting up practice is not necessarily an easy road to riches, the risks are considerable, as in all business ventures, but they should not be exaggerated. You must therefore¹:

1. Not believe that business will come of its own accord.
2. Not expect that the business world or the public will necessarily know what a Company Secretary is, or that you are comparable to an accountant or solicitor.
3. Not assume that there is a market for “general administrative” skills’. If there is, it is hard to find.
4. Not neglect doing your own basic market research. It is dangerous to rely too heavily on one major client or a major areas of activity. Failure or withdrawal of a major client or a severe reduction in the volume of work of a kind from which the majority of fees emanates can endanger the practice and can prove difficult to replace quickly.
5. Not mortgage your home, take expensive office space on long lease, unless you are certain of sufficiency of work over a long period.
6. Not operate on bank facilities or ‘hard-core’ overdraft, unless again you are certain on the long-term outcome.

1. The Chartered Secretary in Public Practice – The ICSA, London.

7. Not rely on the swift payment of bills irrespective of agreement with clients.

Business acumen is the key to survival in public practice

For Guide to Setting up of Practice please refer Appendix III

Market potential

Practice is selling of professional services. To identify the market, a thorough and careful market study to find out the possible clientele, competition to be faced and how to attract new business has to be made. It is a sound rule not to put too many eggs in one basket. Although, advertising and publicity are now allowed, in selling professional services, these are not very much rewarding. There cannot be a substitute for hard work and best performance.

Status

Before starting the practice, consider the advantages and disadvantages of forming partnership or of acting as a sole proprietor. There may be advantages in taking a partner, the initial working capital per partner is likely to be less; the workload can be shared and each partner can spend time in developing new work.

Challenges Before the Practising Company Secretaries

The increasing importance of trade in service and ongoing negotiations on professional services under WTO-General Agreement on Trade in Services (GATS) provide glimpses of the future shape of professional services. The globalisation which is not just inevitable, but desirable too calls for better management of multi cultural environment, faster responses to change and subscription to globally accepted standards of quality and professional ethics and requires Company Secretaries to jettison the processes of yesterdays. In the overall setting, the Company Secretaries have to reposition themselves as competitive differentiator through value addition all along the value chain. As change is only certain and continuous, they should continuously be accommodative to changes and constantly innovate to stay ahead of others, in terms of competitiveness, excellence and performance. Practising Company Secretaries should exercise professional independence in relation to his work. He should scrupulously observe the criterion of objectivity in his work and should not detract himself from the independent and objective approach. In case pressures built around him are such that the choice lies between deviating from the path of independence or resigning from the position of Practising Company Secretary, he should choose the latter.

It is also duty of a Practising Company Secretary to:

- (1) conduct himself in a manner consistent with the high ideals of the profession of Company Secretaries and the dignity of the Institute.
- (2) uphold the cause of the profession and the Institute in corporate, national and international affairs in which he may have the opportunity to participate.
- (3) help the younger members in the profession and inculcate in them a sense of professional discipline.

Role for Company Secretary in Practice

- Secretarial Audit (Section 204): Every listed company and a company belonging to other class of companies as may be prescribed to annex a **Secretarial Audit Report** with its Board's report;
 - Such Secretarial Audit report to be given by a Company Secretary in Practice, in such form as may be prescribed.
 - As per Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the other class of companies shall be other class of companies shall be as under **(a) every public company having a paid-up share capital of fifty crore rupees or more; or; (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.
 - Powers/duties of auditors apply *mutatis mutandis* to CS in practice conducting secretarial audit.
- **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:**
 - A very significant duty has been cast on the company secretary in practice under section 143 (12) the Companies Act, 2013.
 - It 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 or

amounts as may be prescribed (rupees one crore or above in terms of Rule 13 of the Companies (Audit and Auditors) Rules, 2014), is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed.

Provided further that the companies, whose auditors have reported frauds under this sub-section 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 such manner as may be prescribed."

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.

- As per the Companies (Audit and Auditors) Rules, 2014, 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.
- Sub-section (13) of Section 143 provides that no duty shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.

Voting through electronic means

- Every listed company or a company having not less than one thousand shareholders, provide to its members facility to exercise their right to vote at general meetings 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 as provided under the rules;
 - Manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon is provided under the rules.
- **Report on the AGM (Section 121)**

A Company Secretaries is authorised to sign the report on every AGM alongwith two directors one of whom shall be the MD if there is one.
 - **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.

- **Adjudication of Penalties (Section 454)**

- Section 454 provides for appointment of adjudicating officers for adjudging penalty under the provisions of Companies Act.
- The adjudicating officer shall have power by an order to impose penalty on the company and the officer who is in default for non-compliance or default after giving a reasonable opportunity of being heard.
- The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- Any person aggrieved by an order will have a right to prefer an appeal to the Regional Director.
- This would greatly enhance role of Company Secretaries both in employment as well as in practice as they would be called upon to represent the companies before the Registrar/Regional Director in such matters.

- **Enhancement of Penalties**

- The Companies Act, 2013 has proposed enhanced penalties with maximum and minimum quantum of penalty for each offence with deterrence for repeated defaults.
- This would result in better compliance of law by companies through more and more reliance on services of professionals like Company Secretaries.

- **Duties and Liabilities of Directors**

The role and responsibility of the directors are specifically laid down. With the duties and responsibilities specifically attached to them, the directors would look forward to the advice and assistance of professionals like Company Secretaries in the discharge of their duties.

- **Enhanced Disclosures**

To promote good governance, detailed disclosures are contemplated under the Act, for compliance of which the companies would look forward to professionals including Company Secretaries.

- **Insolvency, Rehabilitation, Liquidation and Winding Up**

Revised framework for regulation of mergers and amalgamations, insolvency, rehabilitation, liquidation and winding up of companies offers great scope for Companies Secretaries not only to act as liquidator/administrator but also to represent the various stakeholders before the Tribunal.

- **Registered Valuer**

A company Secretary in Practice with requisite experience and passing the examination can become a registered valuer for conducting valuation required under the Companies Act. A registered valuer may conduct valuation as per Companies (Registered Valuers and Valuation) Rules, 2017 if required under any other law or by any other regulatory authority.

- **Other recognitions for CS/Other Professionals**

- Serious Fraud Investigation Office to consist of experts from banking, taxation, corporate affairs, law, capital market. Company Secretaries may opt for this.
- Central Govt. 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.
- After Winding up order- To assist promoters/directors ordered to be examined by Tribunal in case of fraud.
- Professionals can also act as receiver of company.

APPENDICES

APPENDIX I

Guidelines for use of Individual Logo by Company Secretaries in Practice

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:

1. Introduction

- 1.1 The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.
- 1.2 The Council of the Institute of Company Secretaries of India at its 230th meeting held on 17th June, 2015 approved the following Guidelines for Use of Individual Logo by Company Secretaries in Practice.
- 1.3 The Guidelines herein, as issued by the Central Council of the Institute on 1st September, 2015 deal with the manner in which a Company Secretary in Practice can design and use their individual logo on letter head, visiting cards, uniform for the employees of their firm, websites, advertisement materials, name boards, other stationery, invoices, packing material, stickers, sponsorship material, etc.
1. Any non compliance or violation of these Guidelines as may be in force from time to time in any manner whatsoever shall be deemed to be an act of professional misconduct and the concerned member shall be liable to disciplinary proceedings under the Act.

2. Key Definitions

For the purposes of these Guidelines,

- 2.1 The “Act” means the Company Secretaries Act, 1980.

- 2.2 “Institute” means the Institute of Company Secretaries of India.
- 2.3 “Advertisement or advertising” means advertisement or advertising in any mode including written, recorded, displayed communication through print or electronic mode or otherwise including in newspapers, journals, internet, online, websites, banners, letters, circulars issued, circulated or published in accordance with these guidelines.
- 2.4 “Brand” is the perceived emotional corporate image as a whole.
- 2.5 “Company Secretary in Practice” means a member of the Institute who is in the practice of the profession of Company Secretaries in terms of Section 2(2) of the Company Secretaries Act, 1980.
- 2.6 “Practice Unit” means a sole practitioner, partnership or any other entity of professional Company Secretaries as may be permitted by law and constituted under The Company Secretaries Act, 1980 and Regulations made thereunder.
- 2.7 “Identify” means the visual aspects that form part of the overall brand.
- 2.6 “Logo” is any visual construct that identifies a business in its simplest form via the use of a mark or icon or any word written in a particular manner or a combination of these. A logo identifies a company or product via the use of a mark, flag, symbol or signature.
- 2.7 “Tag Line” refers to a memorable phrase or sentence that is closely associated with a particular person, product, service, etc. It may be a reiterated phrase identified with an individual, group, product or service.

The terms not defined herein shall have the same meaning as assigned to them in the Company Secretaries Act, 1980, Trade Marks Act, 1999, Designs Act, 2000, Indian Copyright Act, 1957, The Emblems And Names (Prevention of Improper Use) Act, 1950 and the rules and regulations made thereunder.

3. Logo for Members

- 3.1 The members of the Institute have been allowed to use the following logo on their visiting cards and letter head to indicate that an individual company secretary is a member of The Institute of Company Secretaries of India.



- 3.2 The Council of the Institute has laid down that while using the letters 'CS' on their letter heads and visiting cards, the company secretaries need to ensure that the width of the logo when used along with the name of the member should not be more than 125% of the size of the characters used for publishing the name. When the 'CS' logo is used as a standalone on visiting cards and letter heads then it should not exceed 1cm (0.39 inch) in height. The logo is to be printed in navy blue colour only.
- 3.3 The same logo may be used on the website of the firm of Company Secretaries in Practice, visiting cards, name boards and advertisements whether in print or electronic media.
- 3.4 If, for any reason, an individual's membership should lapse or be cancelled, the logo must immediately be removed from any written, printed or electronic materials maintained, displayed or distributed.
- 3.5 The Logo for members cannot be modified, manipulated or changed in any way from its original design, nor can it be used as a feature or design element of any other logo (e.g. a PCS firm logo).
- 3.6 The CS member logo cannot be used to imply an endorsement by ICSI of any PCS firm or any practice group.
- 3.7 The CS Member logo is open only to individual Company Secretaries, not to firms of Company Secretaries in Practice. Therefore, use of the logo cannot imply membership in ICSI by a firm, only by an individual Company Secretary.
 1. ICSI reserves the right to monitor the use of the logo at all times and may direct a member who is in violation of these usage guidelines to remove the logo immediately at the member's cost.
 2. The Individual Logo
- 4.1 A logo is something very specific that one can see. It's a mark, something graphic / visual. It is the face of the business. It's like a small "ad" that can be put at various places for brand building. It can be used on business cards, websites, power point presentations, apparel, letterheads, stickers and more.

- 4.2 While designing the individual LOGO each member shall ensure the following:
- (i) The Logo is not in contravention of the provisions of the Company Secretaries Act, 1980, Trade Marks Act, 1999, Designs Act, 2000, Indian Copyright Act, 1957, The Emblems And Names (Prevention of Improper Use) Act, 1950 and the rules and regulations made thereunder.
 - (ii) The Logo is professional and gives a good impression about the Practice Unit.
 - (iii) The Logo of the Practice Unit is representative of the name of the Practice Unit or the services provided by the Practice Unit.
 - (iv) If any tag line is used along with the Logo then the tag line and the Logo are in cohesion.
 - (v) In case the Logo is used in a website or in a power point presentation or in any digital media then it is either static or if animated the same is sober looking.
 - (vi) In case the logo is used in digital media and some music / jingle is attached to it, then the music should be soothing and should establish a connect with the logo.
 - (vii) The Logo shall be in compliance with the ethical principles enshrined in the Code of Conduct issued by the Institute.
 - (viii) The Logo shall conform to the highest levels of dignity and ethical behaviour.
 - (ix) The Logo is consistent with the core idea that make up the Practice Unit, showing what it stands for, what it believes in and why it exists.
 - (x) In case a particular typography is used in creating a Logo design, then such typography should be simple and legible.
 - (xi) The Logo is legible when used in any media such as newsprint, electronic media and mobile devices.
 - (xii) The Logo is not an imitation of an existing Logo of any organisation or brand.
 - (xiii) The development of the logo must be supported by an

explanation / justification as to meaning, objectives of each word / design of logo, which shall be produced by the firm, on demand by the Institute.

4.3 Undesirable Logo

- (1) The logo shall be considered undesirable, if it includes any word or words which are offensive to any section of the people;
- (2) The logo shall also be considered undesirable, if-
 - (i) the proposed logo is identical with or too nearly resembles the logo of a Practice Unit;
 - (ii) it is not in consonance with the principal objects of the practice unit Provided that every logo need not be necessarily indicative of the objects of the Practice Unit, but when there is some indication of objects in the logo, then it shall be in conformity with the objects of Practice Unit;
 - (iii) it resembles closely the popular or abbreviated description of an existing Practice Unit;
 - (iv) the logo implies association or connection with embassy or consulate or a foreign government;
 - (v) the logo includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;
 - (vi) the logo is identical to the logo of a Practice Unit dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:
 - (vii) the logo include words such as ‘Insurance’, ‘Bank’, ‘Stock Exchange’, ‘Venture Capital’, ‘Asset Management’, ‘Nidhi’, ‘Mutual fund’ etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;
 - (viii) the proposed logo includes the word “State”,
 - (ix) it is intended or likely to produce a misleading impression

regarding the scope or scale of its activities which would be beyond the resources at its disposal:

- (3) The following words and combinations thereof shall not be used as part of a logo in English or any of the languages depicting the same meaning –
- (a) Board;
 - (b) Commission;
 - (c) Authority;
 - (d) Undertaking;
 - (e) National;
 - (f) Union;
 - (g) Central;
 - (h) Federal;
 - (i) Republic;
 - (j) President;
 - (k) Rashtrapati;
 - (l) Small Scale Industries;
 - (m) Khadi and Village Industries Corporation;
 - (n) Financial, Corporation and the like;
 - (o) Municipal;
 - (p) Panchayat;
 - (q) Development Authority;
 - (r) Prime Minister or Chief Minister;
 - (s) Minister;
 - (t) Nation;

- (u) Forest corporation;
- (v) Development Scheme;
- (w) Statute or Statutory;
- (x) Court or Judiciary;
- (y) Governor;
- (z) the use of word Scheme with the name of Government (s), State, India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and
- (za) Bureau

4.4 Use of the individual LOGO The individual logo may be used on

- (i) Stationery (Letterhead, business cards, envelopes, etc.)
- (ii) Branding Collateral (Flyers, brochures, books, website, etc.)
- (iii) Apparel Design (Tangible clothing items that are worn by employees)
- (iv) Signage (Interior & Exterior design)
- (v) Messages & Actions (Messages conveyed via indirect or direct modes of communication)
- (vi) Other Communication (Audio / video, etc.)
- (vii) Anything visual that represents the business.

5. Disclaimer

The contents or design of the logo are the sole and exclusive responsibility of the member. The Institute of Company Secretaries of India shall not own any responsibility whatsoever for such contents or claims by the member.

6. Responsibility for the observance of these Guidelines

- 6.1 The responsibility for the observance of these guidelines lies with members who create, place or publish any Logo or assist in the creation or publishing of any Logo covered under these guidelines.

6.2 Members are expected not to commission, create, place or publish any Logo which is in contravention of these Guidelines. This is a self imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of Logo(s).

7. EFFECTIVE DATE:

7.1 These guidelines become effective from 1st September, 2015.

By order of the Council

APPENDIX II

Guidelines for Peer Review of Attestation Services by Practising Company Secretaries

(As amended by the Council in its 229th Meeting held on March 19-20, 2015)

1. Introduction

The Company Secretaries Act, 1980 (the Act) was enacted to make provision for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

The concept of whole-time practice, which gained its initial recognition in 1988, gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain size of companies. Our members in practice are also being recognised for issuing certificates under various laws. The Companies Act, 2013 has also introduced secretarial audit.

Excellence is the hallmark of success in a competitive environment. The performance can be judged and enhanced to that level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore, in its 202nd meeting held on 25th and 26th August, 2011 decided to introduce Peer Review for Practising Company Secretaries to periodically review the PCS firms and evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

The Council of the Institute of has been constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that “the duties of carrying out the provisions of this Act shall be vested in the Council” and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review and also modify/ amend/ adopt new guidelines in this respect from time to time. These guidelines serve as a mechanism intended to further enhance the quality of professional services rendered by Practising Company Secretaries over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

2. Objectives

- 2.1 The main objective of Peer Review is to ensure that in carrying out their attestation services and professional assignments, the PCS (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform. The Council has specified in these guidelines for Peer Review, the Technical Standards in relation to which peer review is to be carried out. Peer review does not seek to redefine the scope and authority of the Technical Standards specified by the Council but seeks to enforce them within the parameters prescribed by the Technical Standards.
- 2.2 Peer Review is directed towards maintenance as well as enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to various statutory and other regulatory requirements. Essentially, through a review of attestation services engagement records, peer review identifies the areas where a practising member may require guidance in improving the quality of his performance and adherence to various requirements as per applicable Technical Standards.
- 2.3 These guidelines provide a framework of the Peer Review process and the requirements of what is expected of a member during the conduct of a peer review.

3. Key Definitions - For the purpose of these guidelines

- 3.1 Attestation Services - Means services involving the secretarial audit and issuance of various certificates, but does not include:
- Management consulting Engagement;
 - Representing a client before the Authorities;
 - Testifying as expert witness; and
 - Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, on the basis of facts provided by the client;
 - The phrase 'Attestation Services' is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.
 - Scope of Peer Review on attestation services shall be as per Para 7.1.(3).

- 3.2 Engagement Records – means the records relating to the attestation services covered in Para 7.1.3 and also includes the letter of engagement, if any, issued to the Practice Units.
- 3.3 Firm – means a sole practitioner, partnership or any other entity of professional Company Secretaries as may be permitted by law and constituted under The Company Secretaries Act, 1980 & Regulations made thereunder.
- 3.4 Member - Means a member of the Institute of Company Secretaries of India.
- 3.5 Partner – includes any individual with authority to bind the firm with respect to the performance of a professional services assignment.
- 3.6 Practice Unit - Means members in practice, whether practicing individually or a firm of Company Secretaries.
- 3.7 Peer Review - Means an examination and review of the systems, procedures and practices to determine whether they have been put in place by the practice unit for ensuring the quality of attestation services as envisaged and implied/ mandated by the Technical Standards and whether these were effective or not during the period under review
- 3.8 Peer Review Board - Means a Board established by the Council in terms of these Guidelines to conduct peer review. The expression “Peer Review Board” is hereinafter referred to as “Board”.
- 3.9 Regulator – Means Government or any regulatory body constituted by the Parliament or State Legislature who is/are empowered to regulate the Acts which include various attestation services which the Council may, from time to time, prescribe to cover as attestation services for the purpose of peer review.
- 3.10 Reviewer -Means any member engaged to carry out peer review of practice unit from the panel of reviewers.
- 3.11 Technical Standards - Mean and include:
 - Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
 - Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;

- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
 - Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
 - Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.
- 3.12 Qualified Assistant – means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of clause 15.1 of the Guidelines.
- 3.13 Words and expressions used and not defined in these guidelines shall have the meanings assigned to them under the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1982 framed thereunder and as amended from time to time.

4. Authority of the Guidelines on Peer Review

- 4.1 The guidelines on Peer Review shall apply to all or any of the following cases :
- (a) Whenever a peer review is mandated
 - (b) Whenever a peer review is requested
 - (c) Whenever peer review is conducted
- 4.2 The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:
- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
 - to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
 - to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
 - to establish the expected conduct of members during a peer review.

5 Powers of the Council

- To constitute the Board and to fill in the vacancies arising in the Board from time to time.
- To decide upon, from time to time, the Technical Standards, the implementation of which will fall within the purview of the peer review process.
- To refer such matters to the Board as the Council may deem fit.

6 Peer Review Board

6.1 Establishment and Appointment

- (1) The Board shall be established by the Council.
- (2) The Board shall consist of not less than seven members to be appointed by the Council, of whom at least four shall be from amongst the Members of the Council.
- (3) The balance members of the Board shall be drawn from amongst prominent members of high integrity and reputation, including but not limited to, former public officials, regulatory authorities etc.
- (4) The Council shall appoint the Chairperson and the Vice-Chairperson from amongst the Members of the Council.
- (5) At least one-half of Council Members on the Board shall hold Certificate of Practice.
- (6) The tenure of the Peer Review Board shall be co-terminus with the tenure of the Council and the term of a member shall be for such period as may be prescribed by the Council.
- (7) Any vacancy(ies) on the Board shall be filled in by the Council.
- (8) Members of the Disciplinary Committee of the Institute of Company Secretaries of India shall not concurrently serve on the Board.

6.2 Meetings

- (1) No business shall be transacted at a meeting of the Board unless there are present at least three members, including the Chairperson or, in his absence, the Vice-Chairperson.
- (2) If there is no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place fixed by the Chairperson or, in his absence, the Vice-Chairperson.
- (3) The Board shall meet not less than four times in a year, provided that not more than 120 days shall elapse between two consecutive meetings of the Board.

6.3 Reporting

The Board shall submit proceedings of the meeting of the Board within 30 days from the date of its meeting, to the Council.

7. Scope of Peer Review

7.1 The peer review process is directed at the attestation services as per Para 7.1(3) of a practice unit.

- (1) Once a practice unit is selected for review, its engagement records pertaining to the immediately preceding financial year shall be subjected to review.
- (2) The Review shall focus on:
 - (i) Compliance with Technical Standards.
 - (ii) Quality of Reporting.
 - (iii) Office systems and procedures with regard to compliance of attestation services, systems and procedures.
 - (iv) Training Programs for staff (including trainees) concerned with attestation functions, including appropriate infrastructure.
- (3) The following attestation services will be covered:
 - (i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.

- (ii) Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013.
- (iii) Issuance of Compliance Certificate pursuant to proviso to subsection (1) of section 383A of the Companies Act, 1956.
- (iv) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- (v) Issuance of Certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.
- (vi) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002.
- (vii) Conduct of Internal Audit of Operations of the Depository Participants.
- (viii) Certification under Clause 49 of the Listing Agreement.

Since law is a dynamic subject, situations may arise whereby regulatory prescriptions may necessitate certification in other areas also in due course. The Council may include other attestation services under the scope of Peer Review from time to time.

Wherever there is a mention of the Companies Act 2013 it is to be read with its Rules, Notifications, Circulars, Guidelines etc. issued from time to time by the Ministry of Corporate Affairs.

8 Powers of the Board

- 8.1 The duty of carrying out the provisions of these guidelines shall be vested in the Board.
- 8.2 In particular, and without prejudice to the generality, of the foregoing powers, the duties of the Board shall include:
 - (1) To call for information from practice units in such form, as amended from time to time, as it deem fit.
 - (2) To maintain a panel of Reviewers.

- (3) To define the terms of appointment of the reviewers.
- (4) To send a Panel of at least 3(three) reviewers (from the Board's own panel) to the practice unit and allow the practice unit to choose any one reviewer from the panel so forwarded to it.

Provided that in case the practice unit would like to have reviewers from another State/Region (and undertakes to bear the extra costs that would be incurred for TA/DA etc.) and none of the reviewers as identified by the Board for the practice unit are from outside the place of business of the practice unit, then the practice unit may make a special request to the Board to provide names of reviewers from outside the State/Region where the practice unit has his place of business.

- (5) To examine the aspects of basis of selection of records pertaining to the attestation services in terms of the appropriate Technical Standards.
 - (6) To arrange for such training programs for reviewers as may be deemed appropriate;
 - (7) To prescribe the system, practice and procedure to be observed in relation to peer reviews; and
 - (8) On considering the Report of a reviewer, to do any or all of the following:
 - (a) To issue recommendations to the practice unit;
 - (b) To order a further peer review to be carried out;
 - (9) After considering the report of the reviewer and compliance of recommendations by the Practice Unit, wherever deemed appropriate by the Board, to issue Peer Review Certificate.
 - (10) To guide the members on best practices on peer review.
- 8.3 Where deemed appropriate, after the conclusion of a cycle of reviews or at the end of each such period as may be determined, the Board shall have the powers to make a Special Report to the Council on:
- (i) General issues regarding the level of implementation and adherence to Technical Standards amongst practice units.

- (ii) Its own suggestions for further improvement in quality of attestation services.

8.4 The Board may perform any other thing or act as may be incidental to, or, which it considers necessary or expedient for the performance of its functions, or exercise of its powers as delegated to it by the Council, including the formation of sub-committees and regional benches of the Board for specific tasks.

9. Compliance with Peer Review Guidelines

9.1 Practice units are required to comply with the provisions of these guidelines. Practice units failing in this regard will be required to undergo appropriate review of their quality controls by the Board in terms of such specific directions as may be given to it by the Council in these regards from time to time, and as notified to the members.

9.2 Practice Units failing to comply with these Guidelines shall be liable for disciplinary action as provided under the Company Secretaries Act, 1980.

10. Qualifications of the Reviewer

10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-

- a) Be a member;
- b) Possess at least 10 (ten) years experience; and
- c) Be currently in practice as Company Secretary in Practice;

10.2 The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

10.3 Sitting members on the Council / Regional Council and sitting Office Bearers of Managing Committee of the Chapter(s) of the ICSI shall not act as Peer Reviewers till they demit their office.

11. Members/ Firms Subject to Review

11.1 Peer review will be implemented on the basis of random selections

from the practice units or at the request of practice unit or in the situations mentioned in 11.2 and 11.3 given below.

- 11.2 If company/concern requests the Board for the conduct of peer review of its secretarial auditor (practice unit), the Board shall take due cognizance of such request and in that case the cost of the peer review shall be borne by such company/ concern.
- 11.3 If Council / Government or any regulatory body requests the Board for conduct of peer review of any Practice Units, the Board shall take due cognizance of such request and in that case the cost of peer review shall be borne by the referred practice unit.
- 11.4 The Peer Review Board may alter/change/modify the above method of selection with prior approval of the Council.

12. Obligations of the Practice Unit

12.1 Provisions of access to any record or document to a reviewer:

- (1) Any person to whom this clause applies and who is reasonably believed by a reviewer to have in his possession or under his control any record or other document, which contains or is likely to contain information relevant to the peer review shall:
- (i) Produce to the reviewer or afford him access to, any record or document specified by the reviewer or any other record or document which is of a class or description so specified, and which is in his possession or under his control/ being in either case a record or other document which the reviewer reasonably believes is or may be relevant to the peer review, within such time as the reviewer may reasonably require;
 - (ii) If so required by the reviewer, afford and provide to him such explanation or further particulars in respect of anything produced in compliance with a requirement under sub clause (i) above, as the reviewer shall specify; and
 - (iii) Provide to the reviewer all assistance in connection with peer review which he is expected to provide.
- (2) Where any information or matter relevant to a practice unit is recorded otherwise than in a legible form, the practice unit shall provide and present to the reviewer a reproduction of any such information or matter, or of the relevant part or it in a legible form,

with a suitable translation in English if the matter is in any other language, and such translation is requested for by the reviewer.

- (3) The practice unit shall ensure that the reviewer is given access to all documents relevant to his review no matter which office of the practice unit these documents may be available in, in case the practice unit has more than one office.
- (4) A practice unit shall allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy therefrom which may be required by the reviewer.

12.2 For the purpose of this clause a person means a Partner/ Sole Proprietor of the practice unit to which the particular review relates or any person employed by or whose services are engaged by such unit.

13. Periodicity of Peer Review

13.1 The peer review of every practice unit should be mandatorily carried out at least once in a block of five years. However, if the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

14. Cost of Peer Review

14.1 The cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice unit. In case reviewer has to conduct second review, the same rate would apply to the second review also. Each of the branch/ office under review would be considered separately.

15. Training and Development

15.1 To ensure that the objective of peer review is attained in letter and spirit, adequate training facilities shall/be provided, from time to time, to the Reviewer(s) and to the qualified assistants and also to other persons who assist the Board as and when and in the manner considered appropriate by the Board. Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

16. Review Framework

16.1 Essentially, a peer review entails a review of engagement records and related statements to ascertain that the practice unit is adhering to Technical Standards. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made, and possibly followed by a further review, in keeping with the primary thrust of peer review.

16.2 The methodological approach involved in peer review can be defined in terms of three stages viz., planning, execution and reporting, which are summarized below:

(i) *Planning*

Notification - A practice unit will be notified in writing about an impending peer review and will be sent a Questionnaire for completion.

Return of completed Questionnaire - The practice unit shall have to complete and return the Questionnaire to the Secretariat within 30 (thirty) days of receipt. The information will be used for the planning of the review. In addition, practice units will be required to enclose a complete list of their attestation services, and to provide any other information the reviewer considers necessary to facilitate the selection of a sample of attestation services, engagement records which will be representative of the practice unit's client portfolio, for review.

(ii) *Sample of Attestation services Engagements*

(a) From the complete list of attestation services, an initial sample will be selected by the reviewer. Practice units will be notified of the selection in writing about 2 (two) weeks in advance, requesting the relevant records of the selected attestation services, to be made available for review.

(b) At the execution stage, the initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the practice unit's attestation services engagements, he may make further selections.

(iii) *Confirmation of visit*

In consultation with the practice unit, date(s) will be set for the on-site review to be carried out. Flexibility will be permitted to ensure

that members are not inconvenienced at especially busy periods. The on-site review date(s) will be arranged by mutual consent such that the review is concluded within 60 (sixty) days of intimation.

(i) Peer review visits will be conducted at the practice unit's head office or other officially noted/ recorded place of office. The complete on-site review of a practice unit may take at least a full day depending upon the size of the practice unit. This is based on the assumption that the practice unit concerned has made all the necessary information and documentation available to the reviewer for his review. However, in any case this on-site review should not extend beyond 3 (three) working days.

(ii) Initial meeting

An initial meeting may be held between the reviewer and a partner/ sole proprietor of the practice unit designated to deal with the review (designated partner). The primary purpose of this meeting is to confirm the accuracy of the responses given in the Questionnaire. The description of the system in the Questionnaire may not fully explain all the relevant procedures and policies adopted by the practice unit and this initial meeting can provide additional information. The reviewer should gather a full understanding of the system and be able to form a preliminary evaluation of its adequacy at the conclusion of the meeting.

(iii) Compliance Review-General Controls

(a) The reviewer may carry out a compliance review of the General Controls and evaluate the degree of reliance to be placed upon them. The degree of reliance will, ultimately, affect the attestation services engagements to be reviewed. The following 5 (five) key controls will be considered as General Controls:

- Independence
- Maintenance of Professional Skills and standards
- Outside Consultation

- Staff Supervision and Development
- Office Administration including maintenance of registers and records

Practice units are expected to address each of the 5 (five) key control areas.

- (b) In each key control area there shall be supplementary questions and matters to consider. These are intended to ensure that the kind of controls that are expected to be maintained, are installed and operated within practice units.
 - (c) All questions in the questionnaire may not necessarily be relevant to particular types of practice units because of the size and culture etc. However, practice units should still assess their internal control systems to ascertain whether they address the objectives under the five key control areas.
- (iv) Selection of attestation services engagements to be reviewed
- (a) The number of attestation services engagements to be reviewed depends upon:
 - The number of practicing members involved in attestation services engagements in the practice unit;
 - The degree of reliance placed, if any, on general quality controls; and
 - The total number of attestation services engagements undertaken by the practice units for the period under review.
 - (b) The engagements reviewed should be a balanced sample from a variety of different types of companies. Accordingly, if the reviewer considers that the actual sample is not representative of the practice unit's attestation services client portfolio, he may make further selections from the initial sample or from the complete attestation services list.

(v) Review of records

The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of attestation services engagement records.

(a) Compliance approach-Attestation services Engagements

- The compliance approach is to assess whether proper control procedures have been established by the practice unit to ensure that attestation services are being performed in accordance with Technical Standards.
- Practice units should have procedures and documentation sufficient to cover each of the key areas. Members in smaller practices may find some of the documentation too elaborate for most of their clients and so should tailor their attestation services documentation to suit their particular circumstances with justification for doing so provided to the reviewer.

(b) Substantive approach-Attestation services Engagements

A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's specific controls on attestation engagements or is of the opinion that the standard of compliance is not satisfactory. This approach requires a review of the attestation working papers in order to establish whether the attestation work has been carried out as per norms of Technical Standards.

16.3 Reporting

(i) Preliminary Report of Reviewer

- At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had

been found to be deficient or where he has noticed non-compliance with reference to any other matter.

- The reviewer shall not name any individual in his reports.
- The practice unit shall have 21(twenty one) days beginning the day after the day the preliminary report is received, by the practice unit from the reviewer to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

(hh) Interim Report of Reviewer

- (a) If the reviewer is satisfied with the reply received from the practice unit, he shall submit an appropriate Report to the Board.
- (b) In case the reviewer is not satisfied with the reply of the practice unit, the reviewer shall accordingly submit his Interim Report to the Board.
- (c) In pursuance of the provisions contained in the clause or on receipt of a request from the practice unit, the Board may instruct the reviewer to - again carry out the review after 3 (three) months of the date of submission of the interim report, but within 6 (six)months of the same to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- (d) On receiving a report from a reviewer in terms of these, the Board, having regard to the Report and any submissions or representations attached to it, may:
 - make recommendations to the practice unit concerned regarding the application by it of Technical Standards;
 - if it is of the pinion that
 - (1) In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
 - (2) In case the review is related to a

member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;

Then;

(3) Issue instructions to the reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further peer review as regards the practice unit to which the report relates; and

(4) Specify in the instruction, the matters as regards which the review is to be carried out;

(e) The Board will make recommendations to the practice unit where:

Based on the report of the reviewer, it appears that the practice unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/adherence to Technical Standards but where further improvements could be made to internal quality control systems; and

Based on the report of the reviewer, it appears that the practice unit has satisfied the major key control objectives but some weaknesses exist in others. The practice unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

(f) A follow up review will be required where the practice unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the practice unit. In such cases the Board will also make recommendations, which it expects the practice

unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

- (g) In case the reviewer is not satisfied even at, the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

(iii) Final Report of Reviewer

- (a) The reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with the practice unit. The final report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed practice unit. The model forms of such final Reports shall be communicated to the reviewer by the Board.
- (b) The Board shall consider the reviewer's final report and the practice unit's submissions. Thereafter, the Board may issue recommendations, if considered appropriate, to the practice unit and/or instruct the Reviewer to perform any follow-up action. The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.
- (iv) The reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

17 Referral of Disputes and Appeal

17.1 Where a dispute arises over the powers of reviewers or the process or conclusions reached after the review or to any other matter related to the review, the practice unit, the reviewer or both may refer the dispute, in writing, to the Board. Such referral shall have to be made within 2 (two) months of occurrence of the issue in dispute, in such manner as may be prescribed by the Board in this regard.

17.2 Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant practice unit and/or the relevant reviewer, the Board-

- Shall decide the dispute within 6 (six) months of the reference and communicate such decision to each of the parties to the dispute, simultaneously;
- May issue directions relating to the matter in dispute to

such practice unit or the reviewer concerned and require such unit or reviewer to comply with them within 30 (thirty) days and send a report to the Board of the said compliance within 15 (fifteen) days of such compliance;

- Shall convey its decision in these regards to each of the parties within 15 days from the date of the decision.

17.3 Where a practice unit is dissatisfied with the decision of the Board, it may refer the matter to the Council within 2 (two) months in such manner as may be prescribed.

18. Immunity

18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review.

18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

19. Confidentiality

19.1 Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

19.2 Those persons subject to the secrecy provision:

- (1) Shall at all times after his/ their appointment preserve and aid-in preserving secrecy with regard to any matter coming to his/ their knowledge in the performance or in assisting in the performance of any function, directly or indirectly related to the process and conduct of peer review.

- (2) Shall not at any time communicate any such matter to any other person; and
 - (3) Shall not at any time permit any other person to have any access to any record, document or any other material in any form which is in his/their possession or under his/ their control by virtue of his/their being or having been so appointed or his/their having performed or having assisted any other person in the performance of such a function.
- 19.3 Non-compliance with the secrecy provisions in the above clause shall amount to professional misconduct as defined under Section 22 of the Company Secretaries Act, 1980.
- 19.4 A statement of confidentiality (appended as Annexure 'A') shall be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers/ the members of the Board and others who assist them.

20 Procedural Departures

- 20.1 Where the persons who are responsible for the conduct of peer review (reviewers, the members of the Board and others who assist them) have not followed the prescribed procedures, they shall have to justify significant departures and such justification shall have to be mandatorily made known to the Council in the periodic Reports of the Board to the Council.

Annexure 'A'

Statement of Confidentiality

[In accordance with the Guidelines on Peer Reviews this statement of confidentiality is to be filled in by the persons who are responsible for the conduct of peer review i.e., reviewers, members of the Board and others who assist them, individually. The Reviewer shall be responsible for taking this undertaking from all those persons who assist him or are likely to assist him in conducting peer reviews, and shall send the same to the Board. This statement of Confidentiality should be renewed every year.]

To

The Chairman, Peer Review Board,
The Institute of Company Secretaries of India

Sir,

I hereby declare that my attention has been drawn to the need for confidentiality in the conduct of peer reviews. I therefore undertake and assure that in so far as any or all of the following relate to me or are brought to my knowledge/attention, in any manner whatsoever, whensoever, I will ensure that on my part

- Working papers shall always be kept securely so that unauthorised access is not gained by anyone.
- The practice unit's attestation services procedures shall not be disclosed to third parties.
- Any information with regard to any matter coming to my knowledge in the performance or in assisting in the performance of any function during the conduct of peer reviews shall not be disclosed to any person.

Access to any record, document or any other material, in any form which is in my possession, or under my control, by virtue of my being or having been so appointed or my having performed or having assisted any other person in the performance of such a function, shall not at any time be permitted to any other person.

I understand that any breach of the provisions regarding confidential information contained in the Guidelines on Peer Review will be considered as gross negligence and, subject to investigation, will result in appropriate action.

Signature:

Name:

Designation:

Date:

Place:

Taken on record on (date)

By

Signature:

Name:

Designation:

*APPENDIX III***Guide to Setting up of Practice****Introduction**

The Institute of Company Secretaries of India (ICSI) has issued this Practical Guide for starting your practice for Company Secretaries to inform members contemplating to enter into whole time practice of the profession of Company Secretaries of the nuances involved in starting practice and to assist them to prepare a business plan. Intended for members, who have recently obtained membership of ICSI and are relatively new to the intricacies of practice as a Company Secretary intending to operate either as a sole practitioner or in a small firm, the Guide will be helpful in making the decision and carrying it forward.

The starting point for practice in any case is digging out information with respect to practice. If a member has already started the research process, this Guide will help him/her to complete the business plan for the practice. Conversely, if reading this Guide is the starting point, it will inform the member about the major issues to be considered when opening the practice and will direct the member to other material in each area requiring review. Once the review exercise is over, the member may return to the Guide and use it to draw a roadmap to assist in completing the business plan.

Owning a practice means both practising the profession of Company Secretaries and operating a business. At one end it may be exciting and at the other equally challenging. The chances of success in practice are greatly increased if one determines for oneself why opening professional business is attractive and pens down a business plan that creates the practice plan as desired.

Deciding to Start Own Practice

Starting and operating own practice makes one the owner of a business as well as a professional. The challenges faced by a self-employed business owner are different than those of an employee so the decision to start own practice needs to be a well-informed one. Before starting own practice, one should evaluate the skill set and attitudes one possesses and needs to further develop upon.

Golden Rules, which one must consider positively before starting own practice:

Personality and Attitude

1. *Submissive* – You should be polite and possess quality of being empathetic.
2. *Dedicated* - You should be committed towards the assignment given to you by the client and should exercise due diligence so that it could be delivered in time.
3. *Problem Solver* – You should have adequate command over the subject as well as you should possess the quality of interpreting the law in such a manner that the queries can be resolved.
4. *Risk Taker* - You should have the capability to take the risks during initial setup of the Practice.
5. *Planner* - Steps should be taken in order to plan the time to be devoted to each assignment. The staff strength should be commensurate with the size of the practice.
6. *Well Organised* - You should be well organised not only in terms of handling of assignments but as well as with maintenance of your official accounts and documentation.
7. *Well versed with the subject* – You should possess well polished knowledge over the subject.
8. *Enterprising* – You should have entrepreneur quality.
9. *Decision making* - You should have the capability to take decisions appropriately and adequately.
10. *Adaptable* - You should be flexible enough to adapt yourself to changing conditions, financial aspects or otherwise.
11. *Patient* – You should try not to loose your temper on petty issues and should concentrate on other major achievements.
12. *Competent* - Besides being knowledgeable, you should be an adroit so that it is easy for you to stand in a different, unique and influential position in the queue.
13. *Outsourcer* - You should always be open to deployment of your work, which you feel that you are not capable enough to do and which is not your subject of practice or area of expertise, as it would help you to save the cost and provide best available services to the clients and thereby build confidence among them.

Tips for New Entrants

For Individual Professionals

1. When you know better, you do better: It is very important to upgrade your knowledge and skills everyday in order to get thorough with daily modifications and changes in the outside world.
2. Be organized, seek quality over quantity: It is not the magnitude of work which is important, but the way you handle the work and develop faith and good relations with the clients.
3. A dream does not become reality through magic, it takes sweat determination and hard work : It is very important to work with dedication, commitment and devotion in order to flourish in the market.
4. Don't let one bad day stop you from reaching your goal : There will arise many times when you will feel low and decide to quit the work because of certain failures. That day may become the day of your transformation and will help you in reaching the heights.
5. It is very important to invest time in existing clients, they are likely to give you new business which can lead to an enhancement in your growth and development.

Strategies for Development

Practice Development Strategies

Generally, two aspects of professional work create special management challenges to the PCS. First, professional services involve a high degree of customization in their work. PCS must manage customized activities where nothing can be reliably made routine.

Second, most professional services have a strong component of face-to-face interaction with the client. This implies that definitions of quality and service take on special meanings and must be managed carefully, and that very special skills are required of top performers.

Both of these characteristics (customization and client contact) demand that the PCS attract highly skilled individuals.

Some of the important concepts are as under:

To deliver outstanding client service, to provide fulfilling careers and professional satisfaction.

PCS simply requires a delicate balancing act between the demands of the client marketplace, the realities of the people marketplace and the firm's economic ambitions.

Leverage and the Client Marketplace

The required shape of the organization (the relative mix of juniors, managers and seniors) is primarily determined by the skill requirements of client work, the mix of senior-level, middle-level and junior-level tasks involved in the projects that the firm undertakes.

PCS should consider whether the client's problem is at the forefront of professional or technical knowledge, or of extreme complexity. Then the key elements of this type of professional service are creativity, innovation and pioneering of new approaches, concepts or techniques.

This usually involves highly skilled and highly paid professionals. Few procedures are routine in nature. The opportunities for leveraging the top professionals with juniors are relatively limited. Consequently, the ration of junior time to middle-level and senior time tends to be low.

PCS should consider projects may require a highly customized output in meeting the clients' needs involve a lesser degree of innovation and creativity in the actual performance of the work. General nature of the problem to be addressed is not unfamiliar and the activities necessary to complete the project may be similar to those performed on other projects. Clients seek out firms with experience in their particular type of problem. PCS sells his knowledge, experience and judgments.

Office Administration and IT Systems in Office

Service delivery now-a-days is increasingly leveraged upon technology. A practitioner cannot afford to stay aloof from IT and IT enabled devices as means of service delivery in this highly competitive environment where time is money and clients expect service delivery on real time basis. Identifying the IT systems (both hardware and software) for practice is crucial not just because it entails high capital outgo in procurement of hardware but also because such IT hardware is subjected to rapid obsolescence. The host of IT equipment and IT related services available to professionals, makes the choice all the more difficult.

If owning IT devices is not the option for a practitioner, he/she may consider leasing out one or using shared resources (such as software available on the cloud). The final decision would depend upon the bouquet of services offered and the manner and speed in which the services would be delivered. A candid discussion with an information technology (IT) or information systems (IS) consultant would enable one to make a well informed decision.

Focus

- Management of employees;
- Ensure adequate resources needed for continuous productive results;
- Overseeing the day to day operations, etc.

Administration of Service

- Work Area – appropriate infrastructure which shall include:
 - Proper furniture, lighting, ventilation in the work premises;
 - Toilet, dining and refreshment facility.
- Information Technology –
 - Hardware, software, Networking necessary to keep up with the professional expectations;
 - Regular back up of important files, documents and diary/working papers;
 - Maintenance and updation of website of PU;
- Library including e-library – required books and reference materials;
- Compliances – checklists, templates, specimens;
- Communication facility – Written communication, verbal communication,
 - There should be proper system for recording inward/outward mails;

- Maintenance of confidentiality of client and firm information;
- Training employees and apprentice trainees to be well behaved and polite.
- No important communication to be done verbally.
- Research and Training - requires regular and continuous updation and training on amendments and new laws;
- Budgeting - Planning the area of expense, ensure proper utilization and application of resources etc.
- Human resource management; and
- Adequate procedure for recruiting new employees and management trainees;
- Maintaining proper attendance record;
- Having disciplined environment;
- Training in interpersonal skills and communication skills;
- Assignment and rotation of work;
- Monitoring and accountability;
- Research and Training on continued basis.

Office Resource Management

- Proper facility to have back up of data;
- Office should be clean and hygienic, remove trash and avoid wastage;
- Ensure easy retrieval;
- Reduce redundancy.

Engagement Diary

An important tool in the hands of PCS and its whole team.

- Engagement Diary shall provide information on the following:

- Who : who has carried out the engagement?
- Where : where has the engagement been conducted?
- When : when is engagement undertaken?
- What : what is the purpose and scope of engagement?
- Contents of the diary:
 - Basic information of the name of the Client company whose work is being carried out.
 - Information about the PU.
 - Scope and objective of the engagement being carried out.
 - Records and documents to be verified and inspected.
 - Methodology of carrying out.
 - Period of engagement.
 - Documents requested, obtained and relied upon.

Registration of Firm Name*

A trade/ firm name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use.

A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manner:

- (i) For Sole proprietorship concern: (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix (b) Initials of the first name and/or middle name and/or surname, in whichever order (c) Combination of (a) and (b) above, in any order (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above

* As per guidelines issued by the Council of ICSI.

- (ii) For Partnership firm: (a) Full surnames of two or more partners (b) Full first names of two or more partners (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix (d) Combination of initials of first names and/or middle names and/or surnames of the two or more partners (e) Combination of (c) and (d) above, in any order.

General (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms. (ii) A trade/firm name shall not contravene the provisions of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.

- (iii) The trade or firm name may be suffixed by the suffixes “& Co.”, “& Company” or “& Associates”. However, any suffixes that may be considered undesirable by the Council shall not be allowed.
- (iv) (The word “and”/ “&” could be used in between the first name/middle name/surname including initials thereof, of the partners of the firm.
- (v) A firm name may also be allowed without the use of the suffixes “& Co.”, “& Company” or “& Associates” provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word “&”/“and” is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
- (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes “& Co.” / “and Company”/ “& Associates”.
- (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
- (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc. shall not be allowed.
- (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/or in any order, shall not be allowed.

The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary, Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc., shall not be allowed. However, trade/firm names matching with the group name/theme shall be allowed, if the same is not in contradiction with any other criteria.

- (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
- (xi) In case any change in the status of the firm from individual firm to partnership firm or vice versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
- (xii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
- (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
- (xiv) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.

Areas of Practice for New Entrants

Raising of Resources/Financial Services

- Loan documentation, registration of charges, search and status report.
- Advisor/Consultant in issue of shares and other securities.

- 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.
- Listing of securities/delisting of securities with recognised stock exchanges.
- Private placement of shares and securities.
- Buy-back of shares and other securities.
- Liaisoning with financial institutions, banks, other lenders, and stock exchanges, and furnishing periodical returns, reports and information required by them.

Foreign Collaborations and Joint Ventures Abroad

- Advising on Foreign Collaborations.
- Advising on setting up of subsidiaries in India.
- Advising on setting up of joint ventures abroad or setting up of subsidiaries abroad.
- Drafting of Memorandum of Understanding, Promoters' Agreement, Shareholders' Agreement and Commercial Agreements.

Corporate Restructuring

- Planning strategies for amalgamation / merger, acquisition, takeover, spin off, reconstruction, reorganisation, restructuring and winding up of companies.
- Change of name, change of objects and shifting of registered office of the company.
- Drafting schemes of amalgamation or arrangement, public offer for acquisition or takeover, and Promoters Agreement.
- Complying with necessary legal and procedural requirements.
- Advising the management on post restructured scenario.

Corporate Laws Advisory Services Companies Act

- Filing, registering, representing, attesting or verifying any document including forms, returns and applications by or on behalf of the company as an authorised representative.
- Compilation of status/search reports for companies, banks and financial institutions.
- Pre-certification of forms relating to Registration/Modification/Satisfaction of charges and their filing with the Registrar of Companies.
- Pre-certification of other documents and returns required to be filed with the Registrar of Companies.
- Advising on legal and procedural matters under the Act.
- Maintenance of secretarial records, statutory books and registers.
- Acting as Secretarial Auditor, Advisor or Consultant.
- Filing of petitions before the Company Law Board.
- Appearing as authorised representative before the Company Law Board, Central Government, Regional Director and Registrar of Companies.
- Acting as Scrutinizer for postal ballots voting process.

Consumer Protection Act/ Competition Act

- Appearing as authorised representative before the Consumer Forums, Competition Commission.
- Advising company on dealership agreements, trade practices, sales promotion schemes, marketing and sales campaigns.

Foreign Exchange Management Act

- Advising on legal and procedural matters falling under FEMA.
- Advising Non-Resident Indians regarding investment in India and repatriation of such investments and returns thereon.
- Obtaining RBI/FIPB approvals.

Depositories Act

- Appearing as authorised representative before Securities Appellate Tribunal.
- Conduct of Internal Audit of Operations of Depository Participants.

State Laws

- Advising on legal and procedural matters on various laws of different states on Pollution Control, Co-operative Societies, Public Trusts, Non Trading Corporations, Land Ceilings, Sales Tax, Revenue Laws etc.

Appearance before Regulatory Authorities

- Appearing as authorised representative before the National Company Law Tribunal, National Company Law Appellate Tribunal, Central Government, Regional Director, Registrar of Companies, Consumer Forums, Securities Appellate Tribunal Central Excise authorities, Customs Authorities, Income Tax Authorities, Appellate Tribunals, Central Electricity Regulatory Commission, Gujarat Electricity Regulatory Commission, Telecom Disputes Settlement and Appellate Tribunal.

Tax Planning and Management**Income Tax**

- Computation of tax payable, filing of returns of income of the company and its directors and obtaining permanent account numbers.
- Computation and payment of advance tax.
- Computation of deduction of tax at source, filing of forms and issue of TDS certificates.
- Acting as authorised representative before the Income Tax authorities during assessment proceedings, furnishing of records/documents/explanations called for.

Excise

- Acting as authorised representative before Central Excise Authorities.
- Valuation and classification of goods.

Customs

- Acting as authorised representative before Customs Authorities and the Appellate Tribunal.
- Assisting in clearance of import/export classification of goods.

Export-Import and Forex Dealings

- Advising on Export-Import policy and regulations.
- Export-Import documentation.

Intellectual Property Rights and WTO

- Advising on Intellectual Property Licensing and drafting of agreement.
- Acting as registered Trade Mark Agent.
- Advising on passing off/infringement matters.
- Advising on registration of patents, trademarks and copyrights.

Guidelines for Opinion Writing

An Opinion is your written response to instructions to advise in writing. It follows that it must contain advice. You do not advise someone simply by telling them what to do, but supplement it with the basic reasoning behind it. Advising is inextricably bound up with and is part of the mental attitude with which you approach opinion writing, with the thinking process that precedes the actual writing of the opinion, and with the writing process itself.

Need for a Legal Opinion

- Interpretation of statutes or documents
- Advise a transaction structure
- Opinion for guidance of decision makers in commerce, industry or government
- Opinion to Lenders on enforceability of Finance Documents
- Opinion for Investors for compliance by Target Companies

- Opinion on Foreign Direct Investment
- Determining provision for contingent liabilities or determination of contingent assets
- Merits or demerits of legal proceedings
- Provision for contingent liabilities or Identification of contingent assets
- Merits or demerits of legal proceedings
- Drafting a pleading
- Preparation for trial of arbitral or legal proceeding
- Ascertain compliance level for issue of securities and identification of risk factors for investors
- Valuation of business.

Formulation of a Legal Opinion

A request for a legal opinion will usually come in written form. Such a request will usually include any documents in the case. The request for a legal opinion will include at least one and usually a number of questions which the legal advisor is being asked to address.

A legal opinion will often have the overarching question of does the client have a good and viable case. This is clearly the most important question to any client and must be approached with honesty and directness. If the client's case is not viable they must be advised of this in the course of the legal opinion, if there is something which can be done to improve the client's prospects of success, a good legal opinion will spell this out very precisely. Numbered action points are one way of achieving clarity in this regard.

Above all it is vital to remember that in being asked to draft a legal opinion, you are being asked to advise. Sitting on the fence is not an option. Lay out the pros and cons of a particular course of action, but always come down on one side or the other. Giving a percentage chance of success at the beginning of a legal opinion is one way of being clear about what you think the client's prospects are.

Drafting a legal opinion can and should always be split into three processes: The mental attitude, the thinking process and the writing process.

I. The Mental Attitude

The mental attitude required to write a good opinion, or give good advice, is that of a practitioner as opposed to an academician. The approach required is a practical approach as opposed to an academic approach. The practical approach is something to be developed and acquired, and defining it does not necessarily help. But, the four fundamental principles to remember to develop the right mental attitude at all times are:-

- (a) You are dealing with a real situation.
- (b) The facts are more fundamental than the law.
- (c) The law is a means to an end.
- (d) Answer the question.

II The Thinking Process

The next stage in writing an opinion is the thinking process. It involves the following stages:-

- (a) *Read and digest your instructions* :- Find out exactly what your instructions are, what is required of you, what the case is about, what are the basic facts and what your client actually wants to know.
- (b) *Answer the primary question* :- You must have a clear idea of what your client wants to know if you are to address your mind to the right issues and give proper advice. Your objective is after all, to tell your client what he or she wants to know.
- (c) *Digest & organise the facts* :- The first thing to do is to digest and organise the facts. There will be facts in any case which are relevant and pertinent to the case and facts which are not. A legal opinion must focus on the relevant facts, but it may also be necessary to specifically advise that certain things are not relevant. The first stage will be about organising the facts of the case into these categories. It is a matter of personal preference how this is done, but charts and schedules are often useful and a chronology should be a starting point for every fact marshalling exercise.
- (d) *Construct a legal framework* :- Once the facts are at your finger tips, a legal framework needs to be constructed into which these facts can be logically slotted. Different types of cases will involve

different legal frameworks, but whatever the legal issue, the legal opinion must be continuously advising on the strength of the client's position in the case. One question which is implicit in every request for a legal opinion is 'what should be done next?' This should be decided at the planning stage and should inform the legal opinion throughout.

- (e) *Look at the case as a whole* :- What should also be borne in mind throughout the planning stage should be the opposing case. A legal opinion will be useless if it considers the client's case in isolation. Evidential issues must also be considered. A good legal opinion will always address how a particular factual situation can be proved.
- (f) *Consider your advice* :- What your client needs is good practical advice, so you should consider also the practical steps that you advise your client to take.

Before you begin writing a legal opinion, you will know exactly what advice you are going to give, why you are giving it and how you are going to present it.

III. The Writing Process

Simply knowing your opinion, knowing the answer, does not mean the writing process is a mere formality. You have to know how to express yourself in an opinion, how to transfer the thinking process on to paper.

The legal opinion should be written following a structure. It should be entitled OPINION or ADVICE and contain the title of the case in the heading. The first few paragraphs should serve as an introduction to the legal opinion, laying out the salient facts and what you have been asked to advise about.

At this point, many legal opinions will set out the main conclusions and advice and the overall opinion. This is good practice as it will encourage focus throughout the legal opinion and the reader will be able to read the following paragraphs knowing where they are leading. A percentage chance of success can be included in this section if appropriate.

The subsequent paragraphs should set out your reasons for reaching the legal opinion which you do in the opening paragraphs. This is where the legal structure will come in. Each issue should be taken in its logical order. Each section should include your opinion on that issue and the reasons for it.

There are certain rules of structure which ought to be followed for the sake of consistency in legal opinions. One example of these is that liability should be dealt with before quantum in civil claims. If there are two or more defendants take each of the defendant's liability in turn before turning to quantum. The concluding paragraph of a legal opinion ought to be a 'Next Step' paragraph advising what needs to be done to strengthen the client's case.

Using the Law in a Legal Opinion

There is no need to set out basic principles of law with which the reader will be familiar. Otherwise, authorities should be cited to support propositions of laws and when doing so a full citation should be given. It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to your reasoning, the basis on which the case was decided should be set out fully in the legal opinion. It may even be appropriate to quote directly from the judgment although often paraphrasing the effect of the decision will usually suffice. Always refer the case you are citing back to the facts being dealt with in the legal opinion. Always cite the most authoritative case on the point of law being dealt with.

With regard to statute, much of the same advice will apply. If there is a statutory provision which deals directly with the subject of the legal opinion then this should be clearly stated and its effects fully explained. Of course care must be taken to ensure that any statutory provision being cited is in force at the time of writing the legal opinion.

In summary, any legal opinion should be written with the reader in mind. It should be clear, well reasoned and as concise as it is possible to be without sacrificing completeness. A logical structure based on the legal principles being discussed is vital to clarity. Any piece of legal writing should be read before submission to ensure against grammatical or typographical errors which will detract from the communicative value of the work. Above all, the advisory purpose of a legal opinion should be borne in mind at all times.

Structuring a Legal Opinion

- Purpose
- Reader's Logic
- Facts / Issues
- Law – statutes

- Law – Judicial precedents
- Application of law to the facts and issues
- Conclusion
- Signature

Contents of a Good Opinion

1. Give brief background of all the facts originally given and additionally called for in the matter along with the materials/documents submitted and perused. Also mention about the legal status and activities of the querist. If necessary, reference to the name of the executive(s) and department giving explanations and seeking the opinion may be mentioned.
2. Never fail to touch upon the relevant charging section in case of revenue statute and definition(s) in the Statute (Act), if available or the meaning assigned in General Clauses Act or meaning given in Law Lexicon or where advisable simple common parlance meaning depending on case to case.
3. It is equally important, dependent upon the query to analyse the Constitution of India, Relevant Articles, Seventh Schedule of Constitution - State list, Central List or Concurrent list and Relevant Entries.
4. The queries as raised in the case for opinion should be reproduced verbatim in serial order and wherever necessary improve and rephrase the query to bring out better clarity.
5. Answer to the queries should be seriatim and specific. Where necessary, a couple or more related queries may also be clubbed for common opinion if the answer is going to be common. The reader of the opinion should be able to make out the answer is 'yes' or 'no'.
6. If answer to any query does obviate the need to answer other/further query/ies, then you may mention that in view of answer to query no. ___ there is no need to answer query no. ___. Opinions also state "please refer answer to query no. ___"
7. A good opinion is specific and not gol-gol without touching the goal! Poor client on a misleading opinion may reach gaol!

8. Opinion is interpretation. Follow all good rules of interpretations. Reproduce relevant sections, title to the section and preamble too as may be required to bring out the clarity and to justify what you opine.
9. A good opinion fortifies itself by supportive case laws (both of Supreme Court and High Court) which have not been overruled on the date of the opinion. Relevant Circulars, Clarifications Notifications, Press Notes, given by the administering authority like SEBI, FIPB, Ministries & Courts should be relied upon.
10. A better opinion fortifies itself by quoting both supportive and non-supportive case laws on the issues and distinguishing one from another to conclude why the supportive case laws are relevant / decisive for the opinion.
11. Cite foreign case-laws only when absolutely necessary and persuasive and where the Indian jurisprudence is wanting e.g. Competition Law.
12. Mention clearly that the opinion is based on the facts and materials made available and if there comes any variation, the opinion might need modification, even reversal.
13. Keep in mind the end use of the opinion i.e. for internal consumption, Board, for parent company abroad, auditors requirement, to fight demand notices, to play safe, keep on file etc.
14. Sometimes depending on the query and nature of issue, opinion may traverse beyond the queries raised and travel extra mile.
15. Opinion should allow the querist to seek any further clarifications on the given opinion.
16. Opinion should be signed with date. E-mail opinion is fine and binding for internal purposes.

Drafting of Deeds and Documents

As Company Secretaries, you are quite commonly required to draft legal documents, resolutions, minutes, notices etc. and give opinions on interpretation of various corporate laws. Since Practising Company Secretaries (PCS) are now also allowed to practice before the NCLT, you as PCS, may be required to even draft 'statement of case'. Hence, it is very important for you to develop these skills.

Effective Writing

Both drafting and opinion writing are written word skills. There are certain key ingredients or qualities of effective writing common to both drafting and opinion writing. They are as follows:-

- *Be clear* : The meaning should spring instantly from the words and should not need to be pondered, reread or analysed. An opinion may try to explain a complex situation so that it can be understood. A statement of case tries to define issues and bring them into the open. It follows that there is a great need for clarity in what a drafter writes. If it cannot be understood by those reading it, or if it is open to different interpretations, not only is it poorly written, but it has failed to serve the very purpose for which it was written. Clarity of expression can never be achieved without clarity of thought behind it.
- *Avoid ambiguity* : Ambiguity is a loser. Too much ambiguity has great potential for misunderstandings. When you are writing in a legal context you must be aware of all different view points from your words might be seen and ensure that what you write is genuinely unambiguous. You should reckon that if what you write could reasonably bear another meaning than that which you intend, someone somewhere will probably try to read it in that way. Learn to be aware of and avoid all possible ambiguities.
- *Be precise* : Everything you should ideally say exactly what you want to say, neither more nor less. There are degrees of precision. You will have to write with great degree of precision. This is particularly true of opinions and advices and quite fundamental in drafting. In statements of case there have to be absolute precision. The words you use must be chosen for their precise meaning; the sentences you write must be composed to convey a precise sense. Lack of precision will result in a degree of confusion or at worst it may mean you are in effect telling lies.
- *Be concise* : Write what you have to write in a reasonably brief manner. This does not mean it should be abbreviated, or even short; rather it should be succinct and to the point. Try to avoid repetition and long-windedness. Leave out what is unnecessary or that which obstructs your flow or meaning without adding anything. But beware of trying to be too concise. If what you are writing merely becomes a summary of what you mean to say, it will not do. Note that clarity is more important than brevity.
- *Be complete* : This is a quality which must be balanced with conciseness. When you write, you must express your ideas

completely. If incomplete, it is almost certainly imprecise, ambiguous and unclear. Especially in contracts, if you don't cover something, it's up to the judge. Boiler plate is not really necessary, yet it is usually used for a reason — it is comprehensive in most cases. Just make sure to tailor your writing to the appropriate contract.

- *Have logical structure* : Clarity very much depends on the structure of what is being written. The whole piece of writing needs to be composed in a clear and coherent manner. This means that the structure should be logical. Remember to organize things logically, and make it so that if someone is looking for the integration clause, he or she doesn't have to flip through all pages.
- *Avoid spelling errors* : Spelling errors make you look unprofessional. Take all reasonable steps towards eliminating them. The first step is to accept that spelling matters. In the modern age a great many spelling mistakes occur not because the writer cannot spell, but because he or she is clumsy on the keyboard makes typographical errors, and then fails to correct them. A computerised spell checker can pick up a great many of them, but never all. A spell checker will often suggest a wrong word and certainly is not capable of identifying correct homonyms (e.g., "suite" versus "sweet") or pointing out all typos (e.g., if you typed "then" when you meant to type "the"). It is, therefore, your responsibility, not your computer's, to make sure your spelling is correct. Of particular importance in the professional world is to spell names correctly especially that of your client. Always study the spelling of any name you are given and make sure you reproduce it precisely.
- *Avoid grammatical errors* : The rules of grammar dictate wordforms, word order and sentence structure. If a verb is in a wrong tense, an adverb in the wrong place or a sentence improperly composed, the only possible result is obscurity of meaning. Grammar is particularly important where you are using long sentences. Any grammatical inconsistency is therefore likely to destroy the value of the long sentence. You cannot write clearly if your writing is not grammatical.
- *Use Proper Punctuation* : Punctuation can be crucial to the meaning of a legal document. Take care to use full stops, commas, semicolons and colons properly and in the right places. The sense of a sentence can be destroyed by a wrong punctuation at a wrong place. Take particular care over punctuation when drafting. Drafting can occasionally involve complex grammatical structures,

long sentences and numbered sub clauses. The wrong punctuation can easily destroy the whole relationship between various parts of the sentence or detach a sub clause from the main clause to which it belongs. The choice of punctuation marks is just as much a part of drafting as the choice of words.

- *Avoid passive voice.*
- *Be plain and straight forward* : Legal language remains largely unintelligible to most members of the community. It even causes problems for the members of legal profession. It is very easy to fall into the habit of writing like this, because such language is all around you, in precedents, forms, contracts, statutes etc. This kind of legal writing presents a barrier to effective communication. Being cute or clever when it isn't necessary can be distracting. Plain, clear English is what you need — not too much Latin and five-syllable words or legalese.
- *Be Elegant* : Elegance is something we recognise and appreciate when reading a piece of writing. It is a matter of artistic impression. It is also very much a matter of flow and rhythm. No one can tell you how to write elegantly. It is for you to decide. Elegance should be sacrificed to some degree if it is in conflict with precision, non-ambiguity, completeness or clarity.
- *Be polite* : It may feel good to make those stinging, snide comments about the other company or to the other side...but this won't be your only case or dealing with them. If you need to get a point across, doing so tactfully is better.
- *Appeal visually* : It will help make your proposal attractive. Douse white space and short paragraphs. Tables of contents can be used as well and are greatly appreciated in lengthier drafts. Breaking up long paragraphs into subparagraphs and numbered lists is nice too — it makes it easier to pinpoint cite a particular provision. This also goes for most documents, such as articles of incorporation, etc.
- *Have the reader in mind when you write* : An opinion or a legal document may be addressed to anyone but frequently a lay client will wish to read it and it should be comprehensible to him or her. Always be aware of the characteristics and background of the likely reader of what you write and gear it to that reader.
- *Read over anything you write to correct typographical errors* and to give yourself one final opportunity to improve in any small way you can on what you have written.

Tips to improve writing

1. Have a strong mindset to improve your writing skills and believe that you can do anything and everything.
2. Read writings of others regularly. While reading, underline those words for which you don't know the meaning. Then, refer the dictionary and know the meaning. Try to find meaning for atleast 30 to 50 words a day. Also, try to understand the whole sentence where you find the word. You need to do this for a minimum of 6 months to one year and many professionals and even successful personalities do this throughout their life.
3. You should know basic grammar. Refer basic grammar books and understand the substance. Concentrate on basics first.
4. Before starting to write anything, make sure what you want to say.
5. Practice writing. Write something regularly. Note down your experience, send mails and write an article.
6. If you are uncertain of the spelling of a particular word, use a dictionary.
7. If you cannot think of the word which conveys precisely what you want to convey, use a thesaurus.
8. After doing all the things referred to above for some time, then, communicate with others in English and participate in discussions with friends and intellectuals in English. But get basics first before going to speak in English.
9. While doing all these things, you tend to be good at professional drafting. It's all practice and it makes one perfect.
10. Ultimately, you should constantly read and write and it should be your hobby and in the course, you will be master in communication.

Taking these steps, you should improve your ability to write in a way which is clear and easy to read.

Peer Review of the Practice Unit

Definition

The dictionary meaning of the term “Peer” is, a person of the same legal status or a person who is equal to another in abilities, qualifications, age, background, etc. “Review” means to look back upon (a period of time, sequence of events, etc.) Thus Peer Review is a self-improvement process and is a method of evaluation of a person’s work or performance by a group of people in the same occupation, profession, or industry.

Excellence is the hallmark of success in a competitive environment. Performance can be judged and enhanced to a level of excellence only by evaluation by a competent professional. The Council of the Institute, therefore decided to introduce Peer Review for Practising Companies Secretaries (PCS) to periodically evaluate the quality, sufficiency of systems, procedures and practices, so that excellence in their performance is maintained.

Benefits of Peer Review

There are significant benefits which a Practice Unit (P.U.) will obtain in undergoing a Peer Review. These may be summarized below:

1. A successful Peer Review will provide comfort to the P.U. that he has adhered to various statutory, documentary and other regulatory requirements.
2. If deficiencies are noticed and corrective measures suggested, the P.U. will have an opportunity to correct the deficiencies and thereby enhance his professional competence.
3. If a Peer Review Certificate is issued in favor of the P.U. it enhances his credibility in the eyes of the general public.
4. Since a Chinese Wall exists between the Peer Review Process and the Disciplinary Proceedings, the P.U. will benefit from Peer Review without any apprehension of any disciplinary proceedings being initiated against him for any deficiencies noticed on his part.
5. Clients of the P.U. will benefit from knowing that their P.U. is periodically reviewed by the ICSI.

FAQs on Peer Review

1. *What is Peer Review?*

Ans. Peer Review is a process used for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. *To whom all would Peer Review be applicable?*

Ans. Peer Review is applicable to all Practising Company Secretaries.

3. *How much will it cost me to get Peer Reviewed?*

Ans. You shall pay to the Peer Reviewer the fee of Rs. 10,000/- (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

4. *What is the frequency of Peer Review?*

Ans. Initially, each Practice Unit would be required to be peer reviewed at least once in every five years.

5. *Can I become a Peer Reviewer?*

Ans. Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-

- a. possesses at least 10 years of post membership experience
- b. is currently in practice as a Company Secretary.

6. *After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?*

Ans. No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review. (Refer Cl. 18 of the Guidelines for details)

7. *Will ICSI be issuing any Certificate after Peer review?*

Ans. Yes.

8. *Will ICSI put up the names of the PU which have undergone PR on ICSI website?*

Ans. Yes

9. *Is it true that the significant objective of Peer Review is to identify deficiencies?*

Ans. No, the significant objective of the peer review is not to find out deficiencies but to improve the quality of services rendered by the members. The objective is not to identify isolated cases of engagement failure, but to identify weaknesses that are pervasive and chronic in nature.

9. *What professional opportunities are likely to be provided by the process of peer review?*

Ans. Some of the areas which may provide/enhance professional growth/opportunities both for Reviewer and Practice Unit could be as under:

- I. Training of Reviewer and practice unit would lead to updating the knowledge and consequently expansion of horizon of professional opportunities.
- II. Incentive for implementation of the best professional Practices by a Practice Unit being subject to peer review, since one's internal policies and procedures are subject to an independent review.
- III. Enhancement in the competence of members since such a process greatly increases the awareness about the implementation of Technical Standards both on the part of the Reviewer and the Practice Unit.
- IV. Public sector undertakings (PSUs) prefer Peer Reviewed PUs to conduct Secretarial Audit of their undertakings.
- V. Council of ICSI has issued notification that the Partners of Peer Reviewed unit would be entitle to get 5 additional Secretarial Audits.
- VI. Peer Review would serve as a quality assurance certificate and may invite preference from regulatory and other authorities while assigning Professional work to Companies Secretaries.

10. *What is the focus of Peer Review?*

Ans. The focus of Peer Review is on:

- Compliance with Technical Standards
- Quality of Reporting
- Office Systems and Procedures –pertaining to attestation services only, including appropriate infrastructure.
- Time and Staff Management
- Professional Development of Staff

11. *How will a PU be selected for Review?*

Ans. At each phase of Peer Review, certain PUs, would be selected for peer review on a random selection basis. The Board is empowered to decide the proportion of PUs to be included in the selection during each phase of implementation.

A PU may also suo moto; apply to the Board for conduct of its peer review. Further a client of the PU may request Board for Peer Review of the PU. In such a case, the cost of the peer review would be borne by the Client itself.

12. *How does a Reviewer select attestation service engagements to be reviewed?*

Ans. The Reviewer is required to select on a random basis an initial sample for review from the complete list of attestation service engagement of the PU. He may select the sample on the basis of the information given in the questionnaire and after seeking such other information from the PU as he considers necessary to facilitate the selection. The engagements to be reviewed should be a balanced sample from a variety of different sized clients covering various entities so that they reflect the overall performance of a PU.

The Reviewer may modify the initial samples selected for review, in consultation with the PU at the execution stage.

Bank Accounts, Accounting and other Financial Issues

The practitioner receives remuneration for the professional services by way of bank transfers, cheques, bank drafts as well as in cash in a few cases. It becomes imperative to have a bank account where to received funds and deposit the other bank instruments and cash received. This would not only

enable safekeeping of the funds but also help in building up a corpus to meet future expansion needs. The practitioner as well as the bank in which the account is maintained develop a healthy relationship overtime and are more willing to lend funds to the customers who already maintain deposit accounts with the bank. The type of bank account whether savings or current account or overdraft or cash credit account would depend on the needs of the practice. The need is to plan the available resources well and regularly keep aside some funds in the bank account to meet unforeseen emergencies and future expansion needs.

Building Support Team

During the initial years of practice the work load may be less and the sole practitioners may be able to handle all the tasks requiring the exercise of professional skill and judgement or regular mundane tasks which may be just administrative in nature on his own with great ease. Employing support staff during the initial years of practice may not be a good idea if the same is manageable with some part time staff or just an office boy to run around and do all odd jobs such as paying utility bills for telephone and electricity, receiving phone calls and postal mails in your absence from office maintain the cleanliness in office and other such things. Nevertheless you should plan in advance and employ staff who in the long run will be your greatest asset in the form of a support team which functions on its own without every time being told to do certain tasks.

Soliciting Clients

A professional practice will remain afloat only so long as it has regular clientele. During the initial years of practice the potential clients may not know you and you need to go out all the way and apprise them about the services that you can offer. You may advertise your services but with caution as soliciting clients is subject to the code of conduct as applicable to company secretaries. The Council of the Institute has permitted practising company secretaries to use their own logo on Stationery (Letterhead, business cards, envelopes, etc.); Branding Collateral (Flyers, brochures, books, website, etc.); Apparel Design (Tangible clothing items that are worn by employees); Signage (Interior & Exterior design); Messages & Actions (Messages conveyed via indirect or direct modes of communication); Other Communication (Audio / video, etc.); Anything visual that represents the business, subject to compliance with the "Guidelines for use of Individual Logo by Company Secretaries in Practice".

The Guidelines for Advertisement by Company Secretary in Practice lay down the broad parameters for what is permissible and what is restricted while advertising your services in various modes. Of course you may advertise through the internet by setting up your own website providing

information about the range of services offered by your professional practice.

The design of an effective advertisement for soliciting clients without stepping into the quagmire of the Code of Conduct requires a thorough understanding of the clients' needs in the geographical area which you plan to service. A complete research of the viability of the practice in the field of professional services which you plan to offer. A detailed budget plan to finance the advertisement exercise. The work will start with identifying the target clients, services proposed to be offered, clients' needs and the capacity of the professional practice to tailor its service offerings to the client's needs. The advertisement should be targeted at providing exposure of the professional practice to the target market right from the start of the practice to the evolution period of the practice. The entire exercise would need a close watch on the budgets, financing of the advertisement exercise and outcomes so as to determine timely alternations in the action plan.

Networking

The recent regulatory prescriptions in the Companies Act, 2013 and various other legislations have given a big boost the Practice of Company Secretaries. The Practice Units are quite small in size in form of sole proprietorship firm or in the form of partnership firms.

Such small and medium PCS firms face the following key challenges:

- (a) Limitation of resources including skilled manpower, infrastructure, Information technology.
- (b) Limitation in providing services at multi locations.
- (c) Competition with other professional firms.
- (d) Professional development.
- (e) Limitation of Client base.
- (f) Limitation in getting quality work due to limited resources and specialized team.
- (g) Limitation in scale of operations.
- (h) Limitation in Brand Equity.
- (i) Succession planning.

In view of enhanced scope of practice, mega partnerships comprising of ten or more partners would be required for providing professional services. Such mega partnership firms are possible only through mergers/demergers of existing firms to retain benefits of their past experience/credentials. There is no doubt that with consolidation and formation of large firms the profession shall attain new heights, stature & growth. Networking may also facilitate the growth & consolidation of PCS firms.

Networking provides the following key benefits:

- (a) Growth, better visibility and branding of Company Secretary firms in view of sharing of knowledge, data base, profit, cost, common ownership, control, management, common quality control policies and procedures, common business strategy, the use of a common brand name or resources.
- (b) Standardization of practices and procedures followed by professional firms.
- (c) Provides an opportunity to start up firms to scale up their operations, learn and adopt the standard practices and nuances thereof.
- (d) Attracting the best talent and retention of best and skilled staff and manpower.
- (e) Single window services – one stop shop for clients.
- (f) Facilitates execution of BPO work.
- (g) Advantage of economies of scale.
- (h) Gives more confidence to clients in services.
- (i) Provides an opportunity to compete with fellow professionals as well as global service providers.
- (j) It is a step towards adaptation of Global practices and may open gates for International tie-ups for professional firms
- (k) Encourages Research in more systematic and meaningful manner.
- (l) Encourages practice units to move towards specialist firms, as through Network they can offer complete set of services to their clients without taking liabilities.

- (m) Improves client satisfaction due to standardized service delivery modules in diversified areas and at different locations.
- (n) Enhances the confidence to handle assignments in new areas and provides an opportunity for continuous professional updation/training/knowledge dissemination to members as well as service users.
- (o) Empowerment to small firms and brand building.
- (p) Provides and accelerates multi disciplinary services.
- (q) Satisfies the needs of clients having business units in various geographical locations.
- (r) Overcome Infrastructure constraints.
- (s) Provides a base to firms to understand each other, leading to merger/ formation of mega/bigger firms.

The benefits of Networking pose unique challenges before the professionals as under:

- (a) Networking does not facilitate/permit the claim of pooled resources (including partners/infrastructure, etc.) of all members of Network towards meeting the eligibility criteria of particular Company/organization.
- (b) Perceived conflicts of interest.
- (c) Fear of loss of the client.
- (d) Uncertainty as to achieving the objectives of the networking initiative.

Another dimension to networking is building relationships with others, i.e., persons and organisations not in the practice of the profession. Such networking relationships lead to increased clientele for the practice unit and avoid isolation that may be detrimental to the growth and development of the practice. Such networking provides opportunities for connecting with:

- Mentors, to assist and guide in the practice.
- Mentees, for sharing the rich experience gained in the practice.

- Other practitioners, for exchange of services and referrals.
- Prospective employees, to lend support in the growth and development of the practice.
- Potential Clients, to engage your services.

Mentoring

Mentoring is an essential part of the professional practice. Mentors provide the necessary support, guidance and insight that may not be available with the immediate family members, friends and other staff members during the initial years of practice. In the long run, typically a mentor may offer expert advice on:

- Specific or complex legal procedures
- Strategy or tactics
- Ethics and professional judgement
- Issues in managing the practice
- Professional development
- Expansion of the areas of services offering
- Health and wellness issues

A real mentor assists a practice unit in reducing client complaints and potential hazards of unintentional non-compliance with the law. The benefits of having a mentor may not be immediate but in the long run, the practice unit is sure to gain from the mentoring relationship.

Administrative Requirements

Setting up of the practice requires compliance with certain statutory provisions of the Company Secretaries Act, 1980; Company Secretaries Regulations, 1982 and the Guidelines issued by the Council of the Institute from time to time to regulate and develop the profession of company secretaries. Each practitioner must:

- (i) Pay the annual membership and renewal of CoP fee
- (ii) Intimate to the Institute any change in professional address or address of his branch or any other office

- (iii) Maintain the Register of Certificate / Attestation services in the format prescribed by the Institute
- (iv) Pay the statutory dues such as House Tax, Electricity and telephone charges, etc.

Practice Management

The primary objective of this publication is to guide the start-ups in setting up their practice. However, more daunting than starting a practice is to sustain and run the practice successfully on an ongoing basis. Statistics prove that quite many practice units surrender the Certificate of Practice citing insufficient practice opportunities, inability to find clients or disloyalty from the clientele. While the main reason for shutting the practice unit is the inability of the practitioner to find and retain clients due to absence of systems and procedures for running the practice unit.

Operation of a successful practice unit needs setting up of systems and procedures that effectively manage:

- Client service, relations, expectations and communications.
- Client files, including KYC, checking of conflicts organisation and storage of files.
- Financial obligations, cash flow, book keeping and financial reporting.
- Time, time planning, docketing and reminder systems.
- Use of technology to aid practice.

Contingency Planning

A sound practice demands that clients' interest is paramount in all circumstances. There may be instances when the practitioner may not be in a position to personally attend to the client or to address the client's urgent requirements. At times the practitioner may be away from office on professional assignments or to meet personal commitments, in such situations there need to be some colleague or employee of the practitioner who can at least acknowledge receipt of any communication from the clients.

This calls for development and implementation of a proper contingency plan to help manage the affairs of the practice unit during unforeseen interruptions, planned and unplanned absence from office. The contingency

plan should take care of the client's interests by ensuring continuity in service during the period of interruption or absence of the practitioner. Similarly, there should be a plan for someone to see the sale, transfer or closure of practice in the event the practitioner is permanently disabled from returning to the practice.

The contingency plan should be designed and implemented as soon as possible after start of the practice and should be reviewed at regular intervals to remain relevant.

Ethics and Disciplinary Actions by the Institute

Extracts of The Companies Secretaries Act, 1980

First Schedule Part I

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he–

- (1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.
- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute: Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;
- (4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose

qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

- (5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business: Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;
- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;
- (7) advertises his professional attainments or services, uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council;
- (8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage;
- (11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary; or any other statements relating thereto.

Second Schedule Part I

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;
- (3) permits his name or his name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

APPENDIX IV

Recognitions Secured for Company Secretaries in Practice

<i>Sl. No.</i>	<i>Statute/Authority</i>	<i>Purpose</i>	<i>When Obtained</i>
I. COMPANY LAW			
1.	The Companies Act and	<p>Company Secretary in Practice" means a Company Secretary who is deemed to be in practice under subsection (2) of section 2 of the Company Secretaries Act, 1980. {Section 2(25)}</p> <p>(a) To make declaration that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with. {Section 7(1)(b) & (b) Rule 14 of the Companies (Incorporation) Rules, 2014}</p> <p>(b) To certify the annual return of listed company or a company turnover of fifty crore rupees or more. {Section 92(2) read with Rule 11 of the Companies (Management and Administration) Rules, 2014}</p>	12 September, 2013

		<p>(c) Issue Secretarial Audit Report to every listed company and every public company having a paid-up share capital of fifty crore rupees or more; or every public company having a turnover of two hundred fifty crore rupees or more. {Section 204 & Rule 9 of Companies (Appointment and Remuneration Personnel) Rules, 2014}</p> <p>(d) To certify that whether the merger and amalgamation scheme is being complied with in accordance with the orders of the Tribunal or not. {Section 232 (7)}</p> <p>(e) To certify that the buy back of securities has been made in compliance with the provisions of the Act and rules made thereunder. [Sub rule (14) of rule 17 of Companies (Share Capital and Debenture) Rules, 2014.</p> <p>(f) Authorise to conduct internal audit of companies on 31st</p>	
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		<p>March, 2016 (Section 138).</p> <p>(g) To be appointed as an expert {Section 2(38)}</p> <p>(h) To be appointed as Interim / Company Administrator (Section 259)</p> <p>(i) To be appointed as Judicial Member of NCLT (Section 409).</p>	
2.	Companies (Incorporation) Rules, 2014	To make declaration that the draft memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 of the Companies Act, 2013 and rules made thereunder and that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with. [Section 8 read with Rule 19 of the Companies (Incorporation) Rules, 2014]	
3	Companies (Management and Administration) Rules, 2014	To appoint as a scrutinizer in every listed company or a company having not less than one thousand shareholders to scrutinize the Administration) Rules, e-voting process in a fair and transparent manner [Rule 20 of the 2014]	

4	Nidhi Rules, 2014	To certify half yearly return of Nidhi Company {Rule 21}.	
5	Nidhi Rules, 2014	To Certify return of Statutory compliances with the Registrar filed by Nidhi Company. [Section 406 read with rule 5 of Companies Nidhi Rules, 2014.	
6	Companies (Issue of Global Depository Receipts) Rules, 2014]	To oversee all the compliances relating to issue of depository Global Depository receipts and to provide compliance report to be placed at the Receipts) Rules, 2014 meeting of Board of Directors. [Rule 4 of the Companies (Issue of Global Depository Receipts) Rules, 2014]	
7	Companies (Registration Offices and Fees) Rules, 2014	Precertification of e-form	
8.	Limited Liability Partnership Rules, 2009	LLP forms: Form No.2 Form No.3 Form No.4 Form No.5 Form No. 8 Form No.11 Form No.12 Form No.15	1st April, 2009

		Form No.17 Form No.18 Form No.31 Form No.32	
9	National Company Law Appellate Tribunal Rules, 2016	To act as authorised representative before the NCLAT (Section 432 read with Rule 63 of National Company Law Appellate Tribunal Rules, 2016	21 July, 2016
III SECURITIES LAWS AND CAPITAL MARKETS			
10	The Securities and Exchange Board of India Act, 1992. [Section 15V, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December 1999
11	The Depositories Act, 1996 [Section 23C, Explanation (b)]	To appear as authorised representative before the Securities Appellate Tribunal	December, 1999
12	Regulation 40 (9) of SEBI, (Listing Obligations and Disclosure Requirements) Regulations, 2015	The share transfer agent and/or the in-house share transfer facility as the case may be, produces a certificate from a Practising Company Secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls / allotment services.	02 September, 2015

13	Regulation 56(1)(d) of (Listing obligations and Disclosure Requirements) Regulations, 2015	A half yearly certificate regarding maintenance of hundred percent, asset cover in respect of listed non convertible debt securities by either a Practicing Company Secretary or a Practicing Chartered Accountant along with the half yearly financial results.	02 September, 2015
14	SEBI (Investment Advisers) Regulations, 2013 [Regulation 19(3)]	To issue certificate of compliance to an investment adviser under SEBI (Investment Advisers) Regulations, 2013	
15.	BSE SME Notice No.2012-11 26-17 dated 26 November, 2012	To issue certificate of compliance conditions for listing on SME Platform of BSE Ltd.	
16.	Schedule V, Clause E of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Compliance Certificate regarding compliance of conditions of Corporate Governance to be annexed with the directors report.	September 02, 2015
17.	Regulation 25(3) of SEBI (Research Analysts) Regulations, 2014	To conduct annual audit of Research analyst or research entity in respect of Compliance with these regulations.	01 September, 2014
18.	Regulation 55A of SEBI (Depositories Participants) Regulations, 1996	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	02 September, 2003

		by the issuer from all the stock exchanges where it is listed in respect of such further issued capital.	
19.	SEBI's Circular IMD/PMS/CIR/1/ 21727/03	To conduct Internal Audit of Portfolio Managers	
20.	SEBI's Circular MRD/ DMS/CIR- 29/2008	To conduct internal Audit of Stock Brokers / Trading Members / Clearing Members	21 October, 2008
21.	SEBI's Circular SEBI/ MIRSD/CRA/Cir- 01/2010	To conduct internal Audit for Credit Rating Agencies (CRAs)	06 January, 2010
22.	National Securities Depositories Limited (NSDL)	Conduct of Internal Audit of operations of the Depository Participants, at intervals of not more than three months and furnish a copy of the internal audit report to the depository.	March, 1999
23.	NSDL Circular No. NSDL / POLICY/2006/00 21	Concurrent Audit in case of Demat Account opening, Control and Verification of Delivery Instruction Slips.	June, 2006
24.	Central Depository Services (India) Limited (CDSL)	(i) Conduct of Internal Audit of operations of the Depository Participants at such intervals as may be specified by CDSL from time to time and furnish a copy of the internal audit report to CDSL.	September, 1999

		(ii) For empanelment by CDSL as auditors for conduct of audit of the records of the participants in so far as the records and operations relate to CDSL.	
25.	(A) Securities Contracts (Regulation) Act, 1956; and Securities Contracts (Regulation) Rules, 1957 [Section 22C, Explanation (b)] (Guideline No. F1/8/SE/82 dt. 20.8.1982).	(i) To appear as authorized representative before the Securities Appellate Tribunal	December, 1999 August, 1982
26.	SEBI Circular No.CFD/ DIL3/CIR/P/2 016/53	Certification regarding Issuance of securities to more than 49 and up to 200 investors in case of deemed public issue	May 3, 2016
27.	SEBI Notification No.SEBI / LAD/NRO/ GN2016-17/021	To act as a financial valuer under SEBI (Infrastructure Investment Trusts) Regulations, 2014	November 30, 2016
28.	SEBI Notification No. SEBI /LAD/NRO/ GN2016-17/022	To act as a financial valuer under SEBI (Real Estate Investment Trusts) Regulations, 2014	November 30, 2016
III. Bombay Stock Exchange Ltd.			
29.	Net worth Certificate	Certification for Networth to be submitted by all active members.	

	Listing of IPO	Certification for allotment, and share certificates corresponding to equity securities under lock in with non-transferability condition. [Source: www.bseindia.com]	
	Forfeiture of securities	Certification that the company had duly complied with the provisions contained in the company's Memorandum and Articles of Association and the Companies Act, 2013.[Source:www.bseindia.com]	
	Listing of Non-Convertible Debentures pursuant to Public Issue	Certification for allotment that it has been made as per the basis of allotment approved by the designated stock exchange. [Source: www.bseindia.com]	
	Revocation of suspension in trading of equity shares	Certification for compliance w.r.t. Regulations 17-27 of the SEBI Listing Regulations. [Source : www.bseindia.com]	
	Listing on the BSE Hi- Tech (Institutional Trading Platform)	<p>i) Certification for the statement of material contracts and documents (In case of Without Public Issue)</p> <p>ii) Certification for the statement of material contracts and documents. (In case of with Public Issue)</p> <p>[Source:www.bseindia.com]</p>	

	<p>Listing on the BSE-SME Platform</p>	<p>i) Certification for following matters –</p> <ul style="list-style-type: none"> a. The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR). b. There is no winding up petition against the company, which has been admitted by the court or a liquidator has not been appointed. c. There has been no change in the promoter/s of the Company in the preceding one year from date of filing application. <p>ii) Certification for following matters –</p> <ul style="list-style-type: none"> a. Allotment has been made as per the basis of allotment approved by the Designated Stock Exchange. b. The share certificates corresponding to equity securities under lock-in have been encased with non-transferability condition. 	
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		<p>c. Allotment of shares from the employees' quota has been made to permanent/regular employees of the company and of the promoter companies, as on the date of the opening. [Source:www.bseindia.com]</p>	
	<p>Qualified Institutions Placement (QIPs)</p>	<p>I. Pre allotment Certification for Networth together with related workings of the company based on the audited balance sheet of the previous financial year.</p> <p>II. Post allotment Certification for confirming the floor price has been based on the pricing formula prescribed under Chapter VIII of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and receipt of funds against the placement of securities with QIBs. [Source:www.bseindia.com]</p>	
	<p>In -principle approval</p>	<p>Certification for issuance of securities issued on a preferential basis under Regulation 28(1) of the</p>	

		SEBI Listing Regulations.[Source:www.bseindia.com]	
	Granting listing approvals	Certification for the equity shares issued on a preferential basis- Post issues.[Source:www.bseindia.com]	
	Listing of equity share issued pursuant to exercise of options granted under ESPS/ ESOS/SARS/GEB S/RBS	Certification for receipt of money and quarterly certification that the company has received the application/allotment money from the applicants. [Source:www.bseindia.com]	
	Listing of securities issued pursuant to the Rights issue	Certification for allotment has been done as per basis of allotment approved by the designated stock exchange. [Source: www.bseindia.com]	
	Listing approval for Bonus shares	Certification for compliance with the SEBI (ICDR) Regulations, 2009. [Source: www.bseindia.com]	
III. National Stock Exchange Ltd.			
	NSE Circular No. 541 Ref. NS E/ME M/7835	Certification for :- i) Details of director/proprietor in format C-3 of Annual Return submitted by Trading Member to the Stock Exchange.	

		<ul style="list-style-type: none">ii) Details of share-holding pattern/ sharing pattern of corporates in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange.iii) Details of share-holding pattern/ sharing pattern of firms in format C-6 of Annual Return submitted by Trading Member to the Stock Exchange.iv) Details of Dominant group of Corporates in format C-7 of Annual Return submitted by Trading Member to the Stock Exchange.v) Undertaking from Relative of Persons constituting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange.vi) Undertaking from corporates supporting Dominant Promoter Group in format C-8 of Annual Return submitted by Trading Member to the Stock Exchange. <p>[Source:</p>	
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		www.nseindia.com]	
	Promoter reclassification	Certification for Reclassification of promoters as public shareholders. [Source: www.nseindia.com]	
	Name Change	Certification for name change, and provide the detailed bifurcation of income earned by the Company under various activities as suggested by the new name. [Source: www.nseindia.com]	
	In principle approval for securities issued underlying GDRs/ADRs	Certification for following confirmations: i) The pricing of the issue along with the detailed working of the same ii) The company has received the entire consideration payable prior to the allotment of shares.[Source: www.nseindia.com]	
	Grant of approval under Regulation 37 of the SEBI Listing Regulations,2015	Certification for Networth of the Company pre and post scheme under Sections 101, 391 and 394 of the Companies Act, 1956. [Source: www.nseindia.com]	

	Listing of further issue of securities	Certification for lock-in pursuant to scheme of amalgamation / merger / scheme of arrangement etc details (Mentioning the Lock-in date details). [Source: www.nseindia.com]	
	Listing of further issue of securities issued as Bonus	Certification for compliance with SEBI (ICDR) Regulations, 2009. [Source: www.nseindia.com]	
	Issue of securities under Qualified Institutional Placement (QIP) and	Pre allotment Certification for confirming the Networth calculation in case of pre allotment of shares in case of a QIP and IPP. Post allotment	
	Institutional Placement Programme (IPP)	Certification for confirming the calculation of the floor price in case of QIP and IPP.[Source: www.nseindia.com]	
	In-principle approval for listing of securities issued under Rights/ Public Issues	Certification for confirming securities under lock-in. [Source: www.nseindia.com]	
	Listing of Indian Depository Receipts (IDRs)	Certification for allotment has been made as per the basis of allotment approved by the Designated Stock Exchange. [Source: www.nseindia.com]	

	In-principal Approval on Debt Market Segment	Certification for confirmation stating the issuer is compliant with Regulations 17 to 27 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. [Source: www.nseindia.com]	
	Listing of shares arising out of Conversion of Debentures/ Warrants/ Notes/Bonds into Equity Shares	Certification for receipt of money at the time of allotment of Convertible Debentures/ Warrants/ Notes, etc. [Source: www.nseindia.com]	
	Grant of In-principle approval (Preferential Issue)	Certification confirming: i) The entire pre-preferential holding of the allottee(s) and that the same is in dematerialized form. ii) The Pricing of the issue along with the detailed working of the same. [Source: www.nseindia.com]	
	Pre-preferential holding of the allottee/s	Certification for confirming: i) The entire pre-preferential holding of the allottee/s is locked-in for the period starting from relevant date up to a period immediately prior to the allotment.	

		ii) The total equity shares are allotted pursuant to preferential allotment and the date from and upto a period of 1 Year/ 3Years from the date of Latest Trading Approval under which these shares are under lock-in. [Source: www.nseindia.com]	
	Listing of shares/ securities issued on Preferential/Private Placement basis in case of allotment under Section 62(3) of Companies Act, 2013.	Certification for a confirmation that the said allotment has been made in accordance with the provisions of section 62(3) of the Companies Act, 2013. [Source: www.nseindia.com]	
V. TAXATION			
31	Income-tax Act, 1961 and Income-tax Rules, 1962 [section 288(2) and Rule 50 (2A)]	To act as authorised representative before the Income-Tax authorities	July, 1979
32.	Authority for Advance Ruling, (Customs, Central Excise and Service Tax) Procedures Rules, 2005	To act as authorized representative under Rule 2(d)(i)	January 2005
33.	The Customs, Excise and Service Tax	To act as authorized representative before the Customs, Excise and Service	October, 1982

	Appellate Tribunal under the Customs Act, 1962 [Section 146A(2)(d)] read with Customs (Appeals) Rules, 1982 [Rule 9(c)] and The Central Excise Act, 1944 [Section 35Q(2)(c)] read with Central Excise (Appeals) Rules, 2001 [Rule 12(c)] and Service Tax vide section 83 of Finance Act, 1994	Tax Appellate Tribunal	
34.	West Bengal Value Added Tax Rules, 2005	Authorized to appear before Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner or any person appointed to assist the Commissioner on behalf of a dealer [Rule 2 (1)(a)(iv)].	April, 2005
35.	Bihar Value Added Tax Act, 2005	Authorised to appear before VAT authorities appointed under Section 10 or the Tribunal or an Officer of the Bureau of Investigation constituted under Section 86 of the Act [Section 87(d)].	April, 2005
36.	Daman and Diu Value Added Tax Regulation,	Authorised to appear before any VAT authority in connection with any proceedings under this	

	2005	Regulation. [Regulation 82(1)(b)].	
37.	Goa Value Added Tax Act, 2005	Authorised to appear before any VAT authority including the Tribunal in connection with any proceedings under this Act [Section 82(1)(b)].	
38.	Jharkhand Value Added Tax Act, 2005	As a tax Practitioner under Section 2(i) To appear before VAT authorities under Rule 51(1)(c) To conduct VAT Audit under Section 63(1)	
39.	Karnataka Value Added Tax Act, 2003 read with Karnataka Value Added Tax Rules, 2005	Authorised to appear before any Authority other than the High Court in connection with any proceeding under this Act [Section 86(c) read with Rule 168(2)(c)(iv)(b)]. As a tax practitioner under Rule 34(1) read with Rule 168.	
40.	Kerala Value Added Tax Act, 2003.	Authorized to appear before VAT Authorities in connection with any proceedings under this Act [Section 86 (e).	
41.	Delhi Value Added Tax Act, 2004	Authorize to appear before VAT Authorities under section 82 (1)(b).	
42.	Arunachal Pradesh Goods Tax Act, 2005	To act as authorised representative before VAT authorities [Sec 83(1)(c) read with Rule 78(1)(a) of Arunachal	

		Pradesh Goods Tax Rules, 2005]	
43.	Haryana VAT Act, 2003	To act as authorised representative before VAT authorities [Sec 52(2)(iii) read with Section 288(2)(v) of Income Tax Act, 1961 and Rule 50(2A) of Income Tax Rules, 1962]	
44.	Maharashtra VAT Act, 2002	To act as authorised representative before VAT Authorities [Sec 82(1)(b)]	
45.	Meghalaya VAT Rules, 2005	To act as authorised representative before VAT authorities - Rule 1(f)(iv)	
46.	Rajasthan VAT Rules, 2006	To act as authorised representative before VAT authorities - Rule 62(b) read with Rule 50(2A) of Income Tax Rules, 1962	
47.	Uttar Pradesh VAT Rules, 2005	To act as authorised representative before VAT authorities - Rule 2(e) read with Rule 73	
48.	Gujarat VAT Act, 2005	As a practitioner under Rule 63 (1) and Section 81(1) read with Rules 59(a)	
49.	Draft GST Law	To appear before GST officer or the First Appellate Authority or the Appellate Tribunal as an authorised representative [Sec 86(2)(c)]	

VI. OTHER LEGISLATIONS			
50.	Competition Act, 2002 [Section 35]	To act as authorised representative before the Competition Commission of India and Competition Appellate Tribunal.	31 March, 2003
51.	Central Electricity Regulatory Commission	To act as authorized representative before the Central Electricity Regulatory Commission.	August, 1999
52	The Telecom Regulatory Authority of India Act, 1997 [Section 17 and Explanation (b) thereto]	To act as authorized representative before the Telecom Disputes Settlement and Appellate Tribunal.	March, 2000
53	IRDA (Registration of Indian Insurance Companies) Regulations, 2000 (Regulation 10)	To certify that the company has complied with all the requirements relating to registration fees, share capital, deposits and other requirements of the Insurance Regulatory and Development Authority Act, 1999	July, 2000
54.	Foreign Trade Policy 2015-2020	<p>Illustrative List of certificates which may be issued by a Company Secretary in Practice is given hereunder:</p> <p>Certificate for issue of EPCG authorization (Appendix 26) Certificate for EPCG Redemption (Appendix 26A)</p>	Foreign Trade Policy (2015-2020)

		<p>Certificate showing sales turnover of ammunition (indigenous and imported) during the preceding three licensing years (Annexure ANF 2B)</p> <p>Certification in respect of Application for grant of Status Certificate (ANF 3A)</p> <p>Certification in respect of application for Served from Indian Scheme (Annexure ANF 3B)</p> <p>Certificate for Agriculture Infrastructure incentive scrip under VKGUY (Annexure to ANF 3D)</p>	
55.	Special Economic Zones Rules, 2006 (Rule 61)	To act as authorized representative before the Board of Approval	February, 2006
56.	Foreign Exchange Management Act, 1999 (FEMA)	To issue certificates for exchange control purposes. All certificates, which a Practising Chartered Accountant can issue as documentary evidence in support of certain applications, may also be issued by a Company Secretary in Whole-time Practice.	Original recognition received in 1992 under FERA. RBI clarified vide letter dated April 19, 2001, the recognition is valid under FEMA.
57.	Foreign Exchange Management (Transfer of Issue of Securities by a Person Resident Outside India) Regulations, 2000	To certify under FDI policy on behalf of Indian companies accepting investment	30 May, 2000

58.	The Trade Marks Rules, 2002 (Rule 150)	Qualified to be registered as a trade marks agent.	15 September, 2003
59.	Department of Tele-communications vide No. 18-05/2009-CS-I (Section 17 of Telecom Regulatory Authority of India Act, 1997)	Certify the documents for Other Service Providers (OSP) Registration for the entities which propose to provide the services such as Tele- banking, Tele-medicine, Tele-trading, E-commerce Call Centers, both International and Domestic, Network Operation Centers and Vehicle Tracking Systems etc.	12th January, 2016
60.	Guidelines for Grant of Unified License (Virtual Network Operators) (Point viii & X of Para 1, Annexure I & II) Department of Tele communications	Certification regarding Paid-up capital and net-worth	31st May, 2016
61.	PFRDA (Internal Audit of Custodian of Securities) Guidance Note 2015] [Clause 1]	Authorised to do Internal Audit of Custodian Securities on quarterly basis.	28th August, 2015
62.	Real Estate (Regulation and Development) Act 2016 (Section 56)	To act as authorised representative before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.	26th March, 2016.

63.	Third Party Certification/ Audit Scheme [Clause 2(ii)] Department of Labour, Government of Haryana	Company Secretary to provide third party certification	10th August, 2016
64.	Transparent Inspection Scheme (Clause 2, Part B) Department of Labour, Government of Haryana	Company Secretary to provide third party certification under transparent inspection policy	24th June, 2016
65.	PFRDA (Retirement Adviser) Regulations, 2016 [Regulation 4 (2)]	Authorized to act as retirement advisor.	13th June, 2016
66.	Department of Tele-communications (Access Service Cell) [Notification No. 800-23/2011-VAS (Vol. II)] Policy guidelines for the Empanelment of Private FM Radio Stations and fixation of rates for Government Advertisements by DAVP - 2016 Ministry of Information and Broadcasting, Directorate of	Certification for Registration along with Article of Association, Memorandum of Understanding, Details of Promoters/ Partner/ Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services. Certificate duly signed by the Company Secretary for the prescribed revenue details, latest profit & loss accounts, balance sheet and actual tax payment including service tax for	31 May, 2016 12 Aug, 2016

	Advertising and Visual Publicity vide F. No. 22204/1/2013/EAC/AV (Part File Volume B)	previous financial year and the amount of advertisement revenue generated by the Private FM Radio Stations during the previous financial year preceding the date of application.	
67.	Reserve Bank of India Circular DBOD No. BP.PC. 46/08.12.001/2008-09	Diligence Report for Banks	September 19, 2008

APPENDIX V

**List of Universities which have Recognised Company Secretaryship
Qualification as Equivalent to Post Graduate Degree for
Pursuing Ph.D Course**

Sl. No	Name of University	Reference	Subjects / Discipline
I.	ANDHRA PRADESH		
1.	Kakatiya University Warangal Andhra Pradesh – 506 009	1111/B4/KU/ Recogn.94 dated 5.11.1994	Commerce/ Business Management
2.	National Academy of Legal Studies and Research (NALSAR) University of Law 3-4-761, Barkatpura Hyderabad- 500 027.	MOU dated 10 th April, 2004 and letter dated 5.8.2005	Discipline of Law
3.	Osmania University Hyderabad Andhra Pradesh – 500 007	1/L/2005/Acad. dated 02.01.2006 and 2702/L/2006/Acad . dated 26.10.2006	Commerce/ Business Management
4.	Sri Venkateswara University, Tirupati, Chittoor, Andhra Pradesh – 517 502	8008/C- I(2)/2005 dated 29 th April, 2005	Management and Commerce
II.	ASSAM		
5.	Gauhati University Gopinath Bardoloi Nagar Guwahati – 781 014	GU/AC/Equip/08/8 86-888 dated 17. 06. 2008	Commerce
6	TEZPUR UNIVERSITY* Department of Business Administration School of		Management

	Management Sciences Napaam, Tezpur, Sonitpur, Assam 784028		
III.	BIHAR		
7.	T.M. Bhagalpur University, Bhagalpur, Bihar – 812 007	M/39067 dated 7.11.2003	Commerce and allied subjects
IV.	CHANDIGARH		
8.	Punjab University, Chandigarh-160 014	4416/GM dated 31.3.1983	Business Management/ Commerce
V.	DELHI		
9.	Guru Gobind Singh Indraprastha University, Delhi - 110 006	GGSIU/DAA/2007- 08/117 dated 02.01. 2008	Management and Law
VI.	GUJARAT		
10.	Bhavnagar University, Gruri Shankar Lane Road, Bhavnagar, Gujarat – 364 002	Acad/PG/1994/ 4349/2002 dated 8 th March, 2002	Commerce
11	North Gujarat University P.B. No.21, University Road, Patan, Gujarat- 384 002	Aca/8479/2000 dated 19 th August, 2000	Commerce and allied subjects
12.	Sardar Patel University Vallabh Vidyanagar Gujarat - 388 120	D:A:4/1/8209 dated 26.12.1980	Commerce

13.	South Gujarat University University Campus Udhana-Magdalia Road Surat - 395 007.	A/Eli/Equi/17388 dated 18/23.2.1981	Commerce and allied subjects
VII.	HARYANA		
14.	Maharshi Dayanand University, Rohtak, Haryana - 124 001	AC-III/R81/2375 dated 28.2.1981	Commerce and allied subjects
VIII.	JAMMU & KASHMIR		
15.	University of Jammu Babasaheb Ambedkar Road, Jammu Tawi - 180 006.	No.F.Acd/II/11/391 1-15, dated 11.07.2011	Commerce/ Management/ Law
16.	The University of Kashmir 1 Hazart Bal Srinagar - 190 006.	F (Recog. Acad) / KU / 002, dated 7.5.2002	Commerce & Management 1 (M. Phil Course only)
17.	Shri Mata Vaishno Devi University, College of Management Sub Post Office - 182 320 Jammu & Kashmir	SMVDU/COM/11/3 580 dated 22.11.2011	Management
IX.	JHARKHAND		
18.	Ranchi University Ranchi	GE/1888 dated 19.12.2011	Commerce/ Management/ Law
X.	KARNATAKA		
19.	Bangalore University Jnana Bharathi Campus	Com./17663/85-86 dated 3.4.1986	Commerce

(1 M. Phil Course only)

	Jnana Bharathi Post Bangalore - 560 056		
20.	Karnatak University Dharwad, Karnataka	KU/Aca/PG/CRT/9 5/6993 dated 9.1.1995	Management
21.	Kuvempu University Shankarghatta Shimoga Distt. Karnataka-577 451	KU/AB/Afn- 2/5212/ 94-95 dated 25.10.1994	Commerce/ Law/Managem ent
22.	Mangalore University Mangalagangothri Konage, Dakshina Kannada- 574 199	MU/ACC/Ph.D/22 84-85 (A5) dated 31.7.1985	Commerce and allied subjects
23.	University of Mysore Viswavidyanilaya Karya, Soudha "Crawfort Hall", Mysore - 570 005	R2/917/84-85 dated 12.12.1985	Commerce
24.	National Law School of India University Nagarbhavi, Bangalore - 560 072.	MOU dated 5.11.1997	Business Laws
XI.	KERALA		
25.	Cochin University of Science & Technology Kochi Kerala - 682 022.	Ac.A3/10705/85 dated 25.3.1986	Commerce and allied subjects
26.	University of Kerala Thiruvananthapuram Kerala - 695 034.	Acad.C-3/2034/85 (Recogn.) dated 7.8.1985	Commerce
27.	Mahatma Gandhi University, Kottayam, Kerala - 686 560	ACD/3/3384/2005 dated 6 th October 2008	Commerce

XII.	MADHYA PRADESH		
28.	Devi Ahilya Vishwavidyalaya, R N Tagore Marg, Indore - 452 001 Madhya Pradesh	No. 11/06/630 dated 27.04.2006	Commerce and allied subjects
29.	Jiwaji University Vidya Vihar, Gwalior - 474 011 (M.P.)	F/Academy/Arhata / 2004/2942, dated 6/7/2004	Commerce and Allied Disciplines
30.	Rani Durgawati Vishwavidhyalaya, Jabalpur, Madhya Pradesh - 482001	GS/95/31 dated 27.1.1995	Commerce
XIII.	MAHARASHTRA		
31.	Dr. Babasaheb Ambedkar Marathwada University Aurangabad Maharashtra - 431 004.	Acad./Elqui/Eligi/94-95/59314 dated 7/8.12.1994	Commerce and allied subjects
32.	Nagpur University, Ravindra Nath Tagore Marg, Nagpur, Maharashtra- 440 001	Exam./Recog./5591 dated 21.9.1983	Commerce
33.	North Maharashtra University, Jalgaon, Maharashtra - 425 001	NMU/94/5/33-B/8432 dated 6.12.1994	Commerce/Law /Management
34.	University of Mumbai Mumbai - 400 032.	El/C 121 of 1989 dated 9.1.1989	Commerce
35.	University of Poona Ganeshkhind Pune - 411 007 Maharashtra	Elg/4251 dated 16/19.6.1981 (Revised Rules for the degree of PhD - 2009)	Commerce/ Law/ Management Commerce
36.	Shivaji University	SU/Eligi./JNV/Equi	Commerce

	Vidyanagar, Kolhapur - 416 004.	vi/3644 dated 21.12.1988	
XIV.	MEGHALAYA		
37.	IIM, Shillong, Mayurbhanj Complex, Nonthyammai, Shillong - 793 014 Meghalaya		Business Management
38.	Mahatma Gandhi University, 13 th Mile GS Road, Opp. Forest Training College, PO & OP - Byrnihat, Dist. Ri-Bhoi, Maghalaya	Reg./No.739 Dated 12 th June, 2012	Commerce/ Management/ Law
XV.	ORISSA		
39.	Berhampur University, Bhanja Bihar, Berhampur - 760 007, Orissa.	No.10191/Acad-I dated 30.8.2008	Management
40.	Sambalpur University Jyoti Vihar, Burla, Sambalpur - 768 019., Orissa.	Notification No. 10420/Acd-I dated 10.7.1998	Commerce/ Management and related field
41.	Utkal University, Vani Vihar, Bhubaneswar Orissa - 751 004.	AC/Recog./Gen-40/ (P)20463/94 dated 17.11.1994	Commerce
XVI.	PONDICHERRY		
42.	Pondicherry University R V Nagar, Kala Pet, Pondicherry - 605 014.	Letter dated 21.7.1994	Commerce

XVII.	PUNJAB		
43.	Guru Nanak Dev University Amritsar, Punjab - 143 005	Gen/Recog/8130 dated 23.4.1981	Commerce
44.	Punjabi University Patiala Punjab - 147 002	315/ARB dated 12.3.2003	Commerce/ Law/ Management
XVIII.	RAJASTHAN		
45.	University of Bikaner Dungar College Campus, JNV Colony Bikaner - 334 003 (Raj.)	F.12()/UOB/Rese/2 006/ 18047-18107 dated 1.11.06	Commerce/ Management/ Law
XIX.	TAMIL NADU		
46.	Annamalai University Annamalainagar, Chidambaram Tamilnadu - 608 002.	B6/6430/2003 dated 5.11.2004	Open recognition
47.	Algappa University Algappa Nagar Karaikudi - 623 003., Tamilnadu.	Letter dated 19.9.1991	Commerce/ Corporate/ Secretary- Ship/Bank Management
48.	Bharathiar University Coimbatore - 641 046 Tamilnadu	18732-I/S4/2003 dated 02.01.2004	Commerce
49.	Madurai Kamaraj University Palkalai Nagar, Madurai - 625 021	R3/Ph.D – 2007 dated 13.05.2007	Commerce and Management Studies
50.	University of Madras University Building Chepauk, Chennai - 600 005	D.2/PH.D./ADMN/ 2004/572 dated 28th June 2004	Commerce

51.	Manonmaniam Sundaranar University Tirunelveli - 627 009., Tamilnadu.	MSU/CE/RECOGN/ 92-93 dated 12.4.1993	Commerce and allied disciplines
XX.	UTTAR PRADESH		
52.	Aligarh Muslim University Aligarh - 202 002 (Uttar Pradesh)	Dated : 26/11/2011	Commerce
53.	Banaras Hindu University Varanasi - 221 005. Uttar Pradesh	Ref No. RAC/Misc/ Equivalence/2004- 05/ 232 dated 08.06.2004	Commerce
54.	Chaudhary Charan Singh University Meerut Uttar Pradesh - 250 005.	Proceeding of the Meeting of Equivalence Committee held on dated 8.12.1983	Commerce
55.	Dayalbagh Educational Institute (Deemed University) Dayalbagh, Agra -282 005 (U.P.)	DE1/GN/ACD-9/ 1839 dated 2.1.2003	Commerce/ Management
XXI.	WEST BENGAL		
56.	University of Kalyani Kalyani West Bengal – 741 235	DR/PhD/2010/15 (2) dated 20.07.2010	Commerce and Allied Disciplines

APPENDIX VI

FORM - D	
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION OF CERTIFICATE OF PRACTICE	
(For the Financial Year 2017-18)	
See Reg. 10 & 14	
To The Secretary, The Institute of Company Secretaries of India 'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi -110 003	
Sir,	
I furnish below my particulars :	
(i) Membership Number	FCS : ACS:
(ii) Name in full	Mr./Ms./Dr.
(in block letters) Name	Surname Middle Name
(iii) Date of Birth:	
(iv) Professional Address: Please attach office address proof	
(v) Phone Nos. (Resi.)	(Off.)
(vi) Mobile No	Email id
(vii) Website of the member, if any.	
(viii) Details of Professional Qualifications	
1. Submitted for (tick whichever is applicable):	
(a) Issue _____ (b) Renewal _____ (c) Restoration _____	

2. (a) Particulars of Certificate of Practice issued / surrendered/Cancelled earlier			
Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP
(b) Unique Code Number (i) Individual (ii) Proprietorship concern (iii) Partnership firm (iv) LLP			

3. Area of Practice

Sl. No.	Area of Practice	Please tick (If Applicable)
1	Corporate Law	
2	Financial Service and Consultancy	
3	Securities/Commodities Exchange Market	
4	Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)	
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)	
6	Excise/Customs/ Service Tax (Filling of returns, Handling assessment, appearing before the appellate authority)	
7	Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	

8	Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	
9	Company Law Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)	
11	Foreign Collaborations & Joint Ventures	
12	Intellectual Property Rights (Specify the areas being handled)	
13	Depositories	
14	Monopolies/Restrictive Trade Practices/Competition Law	
15	Consumer Protection Laws	
16	Arbitration and Conciliation	
17	Import and Export Policy & Procedure	
18	Environment Laws (Specify the areas)	
19	Labour and Industrial Laws (Specify the areas)	
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)	
21	Financial Consultancy	
22	Other Economic Laws	
23	SEBI / Securities Appellate Tribunal	
24	Banking and Insurance	
25	Areas of practice as prescribed under Regulation 168(2) may be added	
26	Any Other Service (Please specify)	

4. Verification:

(i)	I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including Institute of Chartered Accountants of India and the Institute of Cost Accountants of India.*
(ii)	I hereby undertake that, I shall follow all the provisions of the Company Secretaries Act, 1980, regulations made thereunder as amended from time to time as well as the applicable guidelines, issued by the Institute from time to time.
(iii)	I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
(iv)	I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the Guidelines for Issuing Secretarial Audit Report, Signing and Certification of Annual Return respectively issued by the Institute from time to time.
(v)	I hereby declare that I have complied with KYC/KYM norms issued by the Council of the ICSI.
(vi)	I undertake to subject myself to peer review as and when directed by the Peer Review Board.

<p>(vii) (a) I state that I have been / have not been peer reviewed for the year and a certificate no. dated has been issued to me by the Peer Review Board.**</p> <p>(b) I state that I have a sole proprietorship firm in the name and _____ style of _____ w.e.f. _____, which has been / has not been peer reviewed for the year and a certificate no. dated has been issued to the firm by the Peer Review Board.**</p> <p>(c) I state that I have a partnership in the name and style of _____ w.e.f. _____ having the following other partners:</p> <ol style="list-style-type: none"> 1. Name _____ ACS/FCS _____ CPNo. _____ 2. Name _____ ACS/FCS _____ CP No. _____ 3. Name _____ ACS/FCS _____ CP No. _____, which has been / has not been peer reviewed for the year and a certificate no. dated has been issued to the firm by the Peer Review Board.** <p>(d) I state that I have a LLP in the name and style of _____ w.e.f. _____ having the following _____ other _____ partners:</p> <ol style="list-style-type: none"> 1. Name _____ ACS/FCS _____ CP No. _____ 2. Name _____ ACS/FCS _____ CPNo. _____ 3. Name _____ ACS/FCS _____ CP No. _____, which has been / has not been peer reviewed for the year and a certificate no. dated has been issued to the firm by the Peer Review Board.**
<p>(viii) I state that I have issued ____ nos. advertisements during the year 2016-17 in accordance with the Guidelines for Advertisement by Company Secretary in Practice issued by the Institute.** Write N/A if not applicable.</p>
<p>(ix) I state that I have issued ____ nos. Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 2016-17.** Write N/A if not applicable.</p>
<p>(x) I state that I have issued ____ nos. Reconciliation of Share</p>

<p>Capital Audit Report on a quarterly basis of ___nos. Companies under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 2016-17.**</p> <p>Write N/A if not applicable.</p>																
<p>(xi) I state that I have undertaken _____nos. Secretarial Audits under Section 204 of the Companies Act, 2013 as per list attached in the format as under during the year 2016-17**:</p> <table border="1"> <thead> <tr> <th>Sl.No.</th> <th>Name of the Company</th> <th>CIN No. of Company</th> <th>Date of Signing</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p>Write N/A if not applicable.</p>	Sl.No.	Name of the Company	CIN No. of Company	Date of Signing	1.				2.				3.			
Sl.No.	Name of the Company	CIN No. of Company	Date of Signing													
1.																
2.																
3.																
<p>(xii) I state that I have issued_____nos. certificates of Annual Return during the year 2016-17 in accordance with the Guidelines for Issuing Secretarial Audit Report, Signing and Certification of Annual Return issued by the Institute from time to time.**</p> <p>Write N/A if not applicable.</p>																
<p>(xiii) I declare that I have been maintaining a register of attestation/certification services rendered by me/my firm in accordance with the Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/Firm of Practising Company Secretaries issued by the Institute. **</p>																

5. I send herewith Bank draft drawn on _____Bank _____Branch bearing No._____ dated _____/ online payment vide acknowledgement No._____ dated _____/ Cash payment at ROs / Chapters vide Acknowledgement No. _____ dated _____ for Rs._____*** towards annual certificate of practice fee for the year ending 31st March 2018.
6. I hereby attach the extracts from ICSI portal pertaining to my Credit

Hours with a self certification affirming that I have attended the professional development programmes mentioned therein held during the financial year 2016-17.

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Date :

Encl.

- 1.
- 2.
- 3.
4. **Any relevant/additional document**

* In case of issue of Certificate of Practice, following documents are required:

- Copy of the relieving letter in case earlier in employment.
- Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.
- Copy of letter of cancellation of Certificate of Practice of other professional bodies (if applicable).
- Self declaration duly signed by applicant that not in employment as on application date.

** Applicable in case of renewal or restoration of Certificate of Practice

*** Rs. 2000/- Annual Certificate of Practice Fee (Rs. 1000/- if applied during October-March]

Encl.

Date:

APPENDIX VII

SAMPLE

No. _____ CP No. _____



 **THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CERTIFICATE OF PRACTICE

This is to certify that

of

bearing _____ is entitled to

Practice as Company Secretary

**This certificate is issued subject to the provisions of the
Company Secretaries Act,1980 and the regulations framed thereunder,
as amended from time to time and shall be effective from**

and is renewable on year to year basis.

**Given under the common seal of
The Institute of Company Secretaries of India,**



Secretary _____ President _____

(This certificate is the property of the Institute)

APPENDIX VIII

FORM F

Renewal of Certification of Practice

[See Reg. 10(3)]

No. CP _____

Date _____

Dear Sir/Madam,

I hereby acknowledge receipt of annual certificate fee of Rs. _____ sent by you for renewal of certificate of Practice for the year _____

The existing certificate of practice granted to you has accordingly been renewed for the year _____ in pursuance of Regulation 10(3) of the Company Secretaries Regulations, 1982.

Issued by the authority of the Council.

Yours faithfully,

Secretary

APPENDIX IX

FORM I

Forms for Giving Particulars of Office and Firms

(See Regulation 165)

1. Name of the company secretary or firm of company secretary in practice

2. Name(s) of the proprietor/partners of the firm with membership No.(s)

3. Date of Commencement of Firm _____
4. Address of the head office of the company secretary/firm

Pin Code: _____
5. Address of branch offices of the company secretary/firm, if any*

Pin Code: _____
6. Date(s) of opening of branch offices

7. Name of the member in charge of each of the offices i.e. Head Office & Branch Office, with membership no.

8. Whether any of the members mentioned in column 7 above are in

charge of any other office of company secretary of a firm of such company secretaries and whether any of them is engaged in full time or part time occupation elsewhere. If so, full particulars should be given.

9. Name(s) of the Member(s) of the Institute with membership No.(s) who is/are working as paid assistant(s) in the firm/under the company secretary in practice and the date of joining of each member.

Place:

Signature
of the company
secretary/partners

Date:

of the firm with Membership No.

N.B. This form must be signed by all partners. Until this is done the existence of particulars of Change relating there to will not be recognized. An attested copy of the partnership deed should be sent with this form duly authenticated by partner(s) of the firm.

* Strike off whichever is not applicable.

APPENDIX X

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
(Constituted under the Company Secretaries Act, 1980)

ICSI Guideline No. 4 of December, 2007

***[Pursuant to Clause (1) of Part II of the Second Schedule to the
Company Secretaries Act, 1980 as amended]***

New Delhi, the 29th December, 2007

Guidelines for Advertisement by Company Secretary in Practice

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-

1. Introduction

- 1.1 The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.
- 1.2 The areas in which the Company Secretaries in Practice can and do render their services and the names, addresses and other particulars of Company Secretaries in Practice are displayed on the website of the Institute.
- 1.3 Members of the Institute are required under the Act to maintain high standards of professional conduct.
- 1.4 Part I of the First schedule of the Company Secretaries Act, 1980, enumerates professional misconduct in relation to a member in practice and inter-alia includes if such a member:

“(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means :

Provided that nothing herein contained shall be construed as preventing or prohibiting –

- (i) any company secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in Practice; or
- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council :

Provided that a member in practice may advertise through a write up setting out

- **the services provided by him or his firm and**
- **particulars of his firm subject to such guidelines as may be issued by the Council.”**

- 1.5 The Council of the Institute of Company Secretaries of India at its 178th meeting held on 29th December, 2007 approved the following Guidelines for Advertisement by Company Secretary in Practice.
- 1.6 The Guidelines herein, as issued by the Central Council of the Institute on 29th December, 2007 deal with the manner in which a Company Secretary in Practice can advertise the services provided by him or his firm and the particulars of his firm through a write-up.
- 1.7 Any non compliance or violation of these Guidelines as may be in force from time to time in any manner whatsoever shall be deemed to be an act of professional misconduct and the concerned member shall be liable to disciplinary proceedings under the Act.

2. Key Definitions

For the purposes of these Guidelines,

- 2.1 The “Act” means the Company Secretaries Act, 1980.
- 2.2 “Institute” means the Institute of Company Secretaries of India.
- 2.3 “Advertisement or advertising” means advertisement or advertising in any mode including written, recorded, displayed communication through print or electronic mode or otherwise including in newspapers, journals, internet, online, websites, banners, letters, circulars issued, circulated or published in accordance with these guidelines.
- 2.4 “Company Secretary in Practice” means a member of the Institute who holds a Certificate of Practice issued to him by the Institute.
- 2.5 “Firm of Company Secretaries” means sole proprietorship concern, the sole proprietor of which is a Company Secretary in Practice or a firm, wherein all partners are Company Secretaries and such firm is approved by the Council.
- 2.6 “write up” includes any writing or display setting out services rendered by a Company Secretary in Practice or firm of company secretaries and any writing or display of the particulars of the Company Secretary in Practice or of firm of company secretaries issued, circulated or published in accordance with these guidelines.

The terms not defined herein have the same meaning as assigned to them in the Company Secretaries Act, 1980 and the rules and regulations made thereunder.

3. Prohibition to Advertise

- 3.1 No Company Secretary or a firm of Company Secretaries is permitted to advertise the services as specified in the Act, rules, regulations framed thereunder except through a write-up as defined in Clause 2.6.

4. The Write-up shall be made in compliance with the following:

4.1 *Applicability*

These guidelines shall apply to advertisements issued

by a Company Secretary in Practice not only in India but would also apply to those circulated, communicated, published, issued or allowed to be issued abroad.

4.2 Permitted list of information

- 4.2.1 **Name of Company Secretary, Membership number, Certificate of Practice Number and date of issue (for each partner in case of firm)**
- 4.2.2 **Address and website** (if any), telephone, mobile, e-mail, fax number of the member
- 4.2.3 **Name of the firm** in which the member is a partner
- 4.2.4 **Year of Establishment**
- 4.2.5 **Date and place of Issue of Advertisement**
- 4.2.6 **Age**
- 4.2.7 **Gender**
- 4.2.8 **Additional recognized qualifications**
- 4.2.9 **Languages spoken by the partner(s)**
- 4.2.10 **Honours or awards in the field of teaching, research, authorship etc. conferred by nationally accredited institutions**
- 4.2.11 **Current teaching or research appointments** at a university or college of advanced education or professional Institute
- 4.2.12 **Name of firm** in case of partnership
- 4.2.13 **Details of networking through own office or through formal association in other places within & outside India**
- 4.2.14 **Number, name of employees of the firm and their qualifications** and other particulars
- 4.2.15 **Business address, telephone numbers** (including email, fax and other details) of the firm
- 4.2.16 **Office hours** and after office hours availability
- 4.2.17 Advertisement about **setting up of certified filing centers**
- 4.2.18 **Frequently Asked Questions (FAQs)** in conformity to these guidelines

4.2.19 **Declaration indicating**

- (a) **willingness to accept work**, either generally or in particular areas of practice;
- (b) **unwillingness to accept work** in particular areas;
- (c) **willingness or unwillingness to accept work directly from clients**, either generally or in particular areas of practice.

4.2.20 The write-up may display the **passport size photograph of the member** or partners of the firm of Company Secretaries

4.2.21 **Fees:**

- (a) Willingness to give written estimates of fees;
- (b) Methods for determining fees;
- (c) Mode of Acceptance of Fees.

4.2.22 **Speed of Service**

- (a) willingness to give written estimates concerning completion of particular work;
- (b) maximum time within which specific services will be completed.

4.2.23 Write-up may include the **names of clients and services rendered**

4.2.24 **Particulars of Services**

- (i) The write-up to be circulated, distributed, published, issued by or on behalf of Company Secretary in Practice shall set out the professional services rendered or to be rendered by the advertiser.
- (ii) The write-up may explain the nature and usefulness of the professional services rendered by the Company Secretary in Practice.

- (iii) The write-up may include the names of clients and services rendered provided that the Company Secretary in Practice shall maintain record of his having provided such professional services.

4.2.25 In case of advertisement through website :

- (a) A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice.
- (b) While designing and/or hosting the particulars on the website, certain keywords should be provided so as to enable the search engine/s to locate the website and these keywords will not be visible or displayed on the website. Any one of the following key words may be used for this purpose. Company Secretary/Company Secretary in Whole-time Practice/Company Secretary in Practice/ Practising Company Secretary/ Indian Chartered Secretary/Indian Certified Corporate Secretary/Indian CS/Indian Company Secretary/Corporate Advisor/ Company Law Consultant/ Secretarial Auditor/ Secretarial Consultant/ Indian Certified Public Secretary/ CS/ ACS/FCS/PCS/CSP.

However, the keywords shall not be materially different from the designations used for a Company Secretary.

- (c) The website may provide a hyperlink to the website of ICSI, its Regional Councils and Chapters and other regulatory bodies of the Government, after obtaining necessary permission from the concerned body.
- (d) A Company Secretary in Practice may provide online advice to their clients or other members/ firms of Company Secretaries who specifically request for the same.

- (e) A Company Secretary or a firm of Company Secretaries may disclose the fact that he/she or their firm has been Peer Reviewed. Any such disclosure shall clearly state the period for which the Peer Review has been conducted and in case the member has more than one office or place of practice, then it shall be mentioned that the Peer Review has been done for which branch office.

4.2.26 **Changes** in any of the above particulars.

4.3 Restrictions

The write-up shall :

- (i) not be false or misleading ;
- (ii) not claim superiority over any or all other Company Secretaries in Practice;
- (iii) not be indecent, sensational or otherwise of such nature as to be likely to bring the profession into disrepute;
- (iv) not contain testimonials or endorsements concerning the Company Secretary in Practice.
- (v) not refer the Company Secretaries in practice in terms such as “specialists” or “experts”.
- (vi) In case of advertisement through website :
 - (a) A Company Secretary in Practice or a firm of Company Secretaries shall ensure that no information contained in the website is circulated to other websites/e-mail accounts etc. through e-mail or otherwise without the same having been specifically requested for.
 - (b) A Company Secretary in Practice or a firm of Company Secretaries shall not use logo(s) unless otherwise permitted by the Institute.

4.4 Declaration

The Advertiser shall declare that the contents of the advertisement are true to the best of his knowledge and belief and are in conformity with these Guidelines.

4.5 Disclaimer

The Advertiser shall also include the following Statement of Responsibility and Disclaimer in the Advertisement :

Disclaimer: The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

5. Responsibility for the observance of these Guidelines

5.1 The responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

6. EFFECTIVE DATE

6.1 These guidelines become effective from 1st January, 2008 and consequently the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

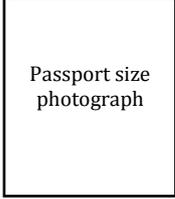
By order of the Council

N K JAIN, SECRETARY & CEO

ANNEXURE

Model Advertisement

- (i) Name of Company Secretary
- (ii) Membership number
- (iii) Certificate of Practice number and date of issue
- (iv) Website (if any)
- (v) Name of the sole proprietary concern under which the member is practicing/Name of the partnership in which the member is a partner
- (vi) Age
- (vii) Gender
- (viii) Languages spoken
- (ix) Number, name of employees and their qualifications and other particulars
- (x) Business address telephone numbers (including email, fax and other details)
- (xi) Office hours and after office hours availability
- (xii) Additional recognized qualifications
- (xiii) Current teaching or research appointments at a university or college of advanced education or professional Institute
- (xiv) Honours or awards conferred
- (xv) Frequently Asked Questions (FAQs)
- (xvi) Declaration indicating:
- willingness to accept work, either generally or in particular areas of practice;
 - unwillingness to accept work in particular areas;
 - willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
- (xvii) Fees :
- Mode of Acceptance of Fees



Passport size
photograph

- Methods for determining fees
- Willingness to give written estimates of fees

(xviii) Speed of Service :

- willingness to give written estimates concerning completion of particular work;
- maximum time within which specific services will be completed.

(xix) Particulars of Services:

(xx) **Declaration:** I declare that the contents of the advertisement are true to the best of my knowledge and belief and are in conformity with these Guidelines.

(xxi) **Disclaimer:** The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

(xxii) Date and Place of Issue of Advertisement :

APPENDIX XI

FAQs on Guidelines for Advertisement by Company Secretary in Practice**1. Are the Advertisement Guidelines complementary to the Website Guidelines issued by the Council earlier?**

No, the Guidelines for Advertisement by Company Secretary in Practice are a separate set of guidelines. Clause 6.1 of these guidelines clearly states that with the coming into effect of these guidelines the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

2. In case of contradiction between the Advertisement Guidelines and the Website Guidelines which one would prevail?

Since the Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed w.e.f. 1st January, 2008 there arises no question of their applicability. The Guidelines for Advertisement by Company Secretary in Practice shall have an overriding effect on the issues related to websites.

3. Do I need to get my advertisements approved from ICSI before issue?

No. Clause 5.1 of these Guidelines provides that the responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

Hence, there is no need to get any advertisements approved from ICSI before issue.

4. I am in the process of designing a website. Is there any

mechanism in ICSI to check the website before it is hosted in the server to ensure compliance with the Guidelines for Advertisement?

Under the Guidelines for Advertisement by Company Secretary in Practice there is no need to check the website before it is hosted on the server by a PCS.

5. What is the status on the use of logo and whether it could be used in the website?

In terms of Clause 4.3(vi)(b) of the guidelines a Company Secretary in Practice or a firm of Company Secretaries shall not use his/its logo(s).

6. Do I need to get the domain name for my website approved from ICSI before registering the same?

No. The Guidelines do not provide for prior approval of domain name for website by the ICSI.

7. Are there any specific guidelines for domain names?

No. There are no specific guidelines for domain names. You may choose any domain name as long as it is not undesirable or unethical or immoral or opposed to public policy.

8. Is there any list of undesirable domain names?

No there is no list of undesirable domain names.

9. In which media can I issue advertisements?

Advertisements may be issued in the print as well as the electronic media.

10. Do I need to follow the pattern of the model advertisement only?

No. The model advertisement has been provided for guidance only.

11. Is all the information provided by the guidelines compulsory to be included in the advertisement?

No. The guidelines provide only for the permitted list of

information that may be included in the advertisement. You may omit any of the information from the advertisement which you feel not relevant from your point of view.

12. If my PCS firm publishes some newsletter does it constitute surrogate advertising under these guidelines?

Printing and publication of newsletter by a firm of Practicing Company Secretaries does not amount to issue of an advertisement under these Guidelines.

13. Who is the relevant authority for reporting cases of violation of these guidelines?

Matters relating to violation of these guidelines may be construed as acts of misconduct and shall be dealt by the disciplinary committee.

14. How will the cases of violation of these guidelines be dealt with?

In terms of Clause 1 of Part II of Schedule II of the Company Secretaries Act, 1980 a member shall be deemed to be guilty of professional misconduct, if he contravened any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council and any such act or omission shall be dealt in accordance with the provisions of Chapter V of the Company Secretaries Act, 1980 which deals with Misconduct.

15. Is there any limit on the number of advertisements that can be issued by a PCS in a specified period?

No. There is no limit on the number of advertisements that can be issued by a PCS in any relevant period.

16. What is the maximum frequency at which advertisements can be issued?

The Guidelines do not provide for any frequency at which advertisements can be issued.

17. Do I need to intimate the ICSI of any updation or changes in my website?

No. The Guidelines do not provide for any intimation to the ICSI in regard to any updation or changes in your website.

18. Do I need to intimate the ICSI in case of any corrigendum in any advertisement issued by me?

No. The Guidelines do not provide for any intimation to the ICSI in regard to any corrigendum in any advertisement issued by you.

19. Can I revoke an advertisement issued by me? If yes, what is the process in this regard?

Yes you may revoke any advertisement issued by you. There is no specific procedure to be followed in this regard but you may issue another advertisement in the same media in which the previous advertisement was published intimating revocation of the earlier advertisement in part or in full.

20. Is there any specific guidance note issued by the ICSI in regard to these guidelines?

No. The ICSI has not issued any specific guidance note in regard to these guidelines.

21. In case of persons having multiple professional qualifications can a single advertisement be issued in regard to services offered under each qualification?

No. A PCS can only practice the profession of Company Secretaries and not as a member of any other professional body. There is no question of advertising services which cannot be rendered by a PCS.

22. Can I advertise about services which are not specifically rendered by PCS?

No. The outer boundary in respect of advertisement is limited to advertising through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council. Hence, services which can be provided as a PCS can only be advertised under these Guidelines.

23. Can I issue advertisements to overseas clients also?

Yes. You may issue advertisements to your clients anywhere in the world.

APPENDIX XII

**Procedure Relating to Misconduct of Members
Schedules to The Company Secretaries Act, 1980**

The First Schedule

- Part I Professional misconduct in relation to Company Secretaries in Practice.
- Part II Professional misconduct in relation to members of the Institute in service.
- Part III Professional misconduct in relation to members of the Institute generally.
- Part IV Other misconduct in relation to members of the Institute generally.

The Second Schedule

- Part I Professional misconduct in relation to Company Secretaries in Practice.
- Part II Professional misconduct in relation to members of the Institute generally.
- Part III Other misconduct in relation to members of the Institute generally.

The Schedules are reproduced below:

[THE FIRST SCHEDULE]

[See Sections 21(3), 21A(3) and 22]

PART I

**Professional misconduct in relation to Company
Secretaries in Practice**

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he–

- (1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal

representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed for the purpose of rendering such professional services from time to time in or outside India.

Explanation. – In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

- (4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

- (5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting–

- (i) any company secretary from applying or requesting for or inviting or securing professional work from another company secretary in practice; or

- (ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;
- (7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognized by the Central Government or may be recognized by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

- (8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or result of such employment, except as permitted under any regulation made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

- (11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

*PART II***Professional misconduct in relation to members of the Institute in service**

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person–

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

*PART III***Professional misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) not being a Fellow of the Institute, acts as a Fellow of the Institute;
- (2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;
- (3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

*PART IV***Other misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if –

- (1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

- (2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.]

*****[THE SECOND SCHEDULE*****

[See Sections 21(3), 21(B)(3) and 22]

PART I

Professional misconduct in relation to Company Secretaries in Practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.]

Prior to its substitution, section 21 read as under:

21. Procedure in inquiries relating to misconduct of members of the Institute

- (1) Where on receipt of information by, or a complaint made to it,

the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

- (2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.
- (3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.
- (4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:—
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where the Council is of opinion that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

- (5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon.
- (6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the

Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:—

- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;
 - (b) reprimand the member;
 - (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;
 - (d) refer the case to the Council for further inquiry and report.
- (7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I.—In this section, “High Court” means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.—For the purposes of this section, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

- (8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavits.

*** Omitted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its omission, section 30 read as under:

CHAPTER VIII

APPEALS

30. Appeal

- (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

- (2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;
- (c) remit case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;
- (d) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be

passed unless the person concerned has been given an opportunity of being heard.

Explanation.—In this section “High Court” and “member of the Institute” have the same meanings as in section 21.

****Substituted for “The First Schedule” vide the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, “The First Schedule” read as under:

THE FIRST SCHEDULE

[See section 21(4) and 22]

*PART I***Professional misconduct in relation to members
of the Institute in practice**

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognized profession as may be prescribed in this behalf, and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation.—In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

- (3) accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognized professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;
- (4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognized profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;

- (5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;
- (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;
- (7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognized by the Central Government or may be recognized by the Council;
- (8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act;
- (11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;
- (12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto.

PART II

**Professional misconduct in relation to members
of the Institute in service**

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;
- (3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

**Professional misconduct in relation to members
of the Institute generally**

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (2) not being a Fellow styles himself as a Fellow;
- (3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;
- (4) defalcates or embezzles moneys received in his professional capacity.

***** Substituted for “The Second Schedule” vide the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Prior to its substitution, “The Second Schedule” read as under:

THE SECOND SCHEDULE

[See section 21(5) and 22]

*PART I***Professional misconduct in relation to members of the Institute
in practice requiring action by a High Court**

- A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—
- (1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;
 - (2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;
 - (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
 - (4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;
 - (5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;
 - (6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;
 - (7) is grossly negligent in the conduct of his professional duties;
 - (8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

- (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;
- (10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

- (1) contravenes any of the provisions of this Act or the regulations made thereunder;
- (2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.

Procedure in inquires relating to misconduct of members

Chapter V of the Company Secretaries Act, 1980 which deals with procedure in inquires relating to misconduct of members of the Institute is reproduced as under:

CHAPTER V

MISCONDUCT

****[21. Disciplinary Directorate]****

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.]

¹[21A. Board of Discipline

(1) The Council shall constitute a Board of Discipline consisting of—

- (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;
- (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section (16);
- (c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

1. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.]

²[21B. Disciplinary Committee

(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) Reprimand the member;
- (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified].

2. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

³[21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation – For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.]

⁴[21D. Transitional provisions

All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006.]

⁵[22. Professional or other misconduct defined

For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.]

3. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

4. Inserted, *ibid*.

5. Substituted, *ibid*.

Prior to its substitution, section 22 read as under:

22. Professional misconduct defined

For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

⁶[22A. Constitution of Appellate Authority

The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:—

- (b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;]

⁷[22B. Term of office of members of Authority

A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier.

⁸[22C. Procedure, etc. of Authority

The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.]

⁹[22D. Officers and other staff of Authority

(1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.]

¹⁰[22E. Appeal to Authority

(1) Any member of the Institute aggrieved by any order of the

6. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

7. Inserted, *ibid*.

8. Inserted, *ibid*.

9. Inserted, *ibid*.

10. Inserted by the Company Secretaries (Amendment) Act, 2006, w.e.f. 17.11.2006.

Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may —

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.]

Regulation 15 to 19 Company Secretaries Regulations, 1982 dealing with procedure in regards to complaints and enquiries relating to professional or other misconduct of members are reproduced hereunder:

(i) Complaints and enquiries relating to professional or other misconduct of members (Regulation 15)

- (1) Subject to the provisions of this regulation, any complaint received against a member of the Institute under Section 21 shall be investigated, and any enquiry relating to misconduct of such member shall be held, by the Disciplinary Committee:

Provided that if the subject matter of a complaint is, in the opinion of the President, substantially the same as or has been

covered in any previous information or complaint received, the Secretary may file the complaint without any further action or inform the complainant, accordingly, as the case may be.

- (2) A complaint under Section 21 shall be made to the council in the appropriate form, duly verified as required therein. (See Form G in the end of this Appendix)
- (3) Every complaint shall contain the following particulars, namely—
 - (a) the acts or omissions which, if proved, would render the member complained against guilty of any professional or other misconduct;
 - (b) the oral and/or documentary evidence relied upon in support of the allegations made in the complaint.
- (4) Every complaint, other than a complaint made by or on behalf of the Central or any State Government, shall be accompanied by a deposit of rupees fifty which shall be forfeited, if the Council, after considering the complaint, comes to the conclusion that no *prima facie* case is made out and, moreover, that the complaint is either frivolous or has been made with *mala fide* intention.
- (5) The Secretary shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars or which is not accompanied by the deposit of rupees fifty to the complainant for resubmission after compliance with such requirements and within such time as the Secretary may specify.
- (6) Ordinarily, within sixty days of the receipt of a complaint under Section 21 the Secretary shall,—
 - (a) if it is against an individual member send particulars of the acts or omissions alleged or a copy of the complaint, as the case may be, to such member at his address as entered in the Register;
 - (b) if it is against a firm, send particulars of the acts or omissions or a copy of the complaint, as the case may be, to the firm concerned at the address of the head office of the firm as entered in the Register of Offices and Firms

with a notice calling upon the firm to disclose the name(s) of the member(s) concerned and to send particulars of acts or omissions or a copy of the complaint, as the case may be to such member(s).

Explanation—A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm.

- (7) A member who has been intimated of the complaint made against him under sub-regulation (6) (hereinafter referred to as the respondent) shall, within fourteen days of issue of such intimation or within such further time as the Secretary may allow, forward to the Secretary a written statement in his defence verified in the same manner as the complaint.
- (8) On a perusal of the complaint and written statement, if any, the Secretary may call for such additional particulars or documents connected therewith either from the complainant or the respondent, as he may consider necessary or as may be directed by the President, for perusal of the Council.
- (9) Where on a perusal of the complaint, the written statement, if any, of the respondent and other relevant documents and papers, the Council is *prima facie* of opinion that any member has been guilty of professional or other misconduct, the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee and where the Council is *prima facie* of opinion that there is no case against the respondent, the case shall be dismissed and the complainant, if any, and the respondent shall be informed accordingly:

Provided that the Council may, if deemed necessary, call for any additional particulars or documents connected therewith from the complainant, if any, or the respondent.

- (10) (i) Every notice issued by the Secretary or by the Disciplinary Committee under this Regulation shall be sent to the member or the firm concerned by registered post with acknowledgement due.
- (ii) If the notice is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice it shall be deemed to have been served.
- (iii) If the notice is returned with an endorsement indicating that the addressee cannot be found at the address given,

the Secretary shall ask the complainant to supply to him the correct address of the member or firm concerned and send a fresh notice to the member or firm at the address so supplied.

- (11) The provision relating to a notice shall apply *mutatis mutandis* to a letter.

(ii) Information relating to misconduct of members (Regulation 16)

The procedure laid down in regulation 15 shall, so far as may be apply to any information received under Section 21.

(iii) Time limit of entertaining complaint or information (Regulation 17)

Save in cases of misconduct involving moral turpitude or in cases instituted by the Central Government or any State Government, the Council may refuse to entertain any complaint or information in respect of misconduct made more than ten years after the same was alleged to have committed, where the Council is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct or that the member against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult.

(iv) Procedure in enquiry before the Disciplinary Committee (Regulation 18)

(1) It shall be the duty of the Secretary to place before the Disciplinary Committee all facts brought to his knowledge which are relevant for the purpose of any enquiry by the Disciplinary Committee.

(2) The Disciplinary Committee shall have the power to regulate its procedure in such manner as it considers necessary and during the course of enquiry, may examine witnesses on oath and receive evidences on affidavits and any other oral or documentary evidence, exercising its powers as provided in sub-section (8) of Section 21.

- (3) The Disciplinary Committee shall give the complainant and respondent a notice of the meeting at which the case shall be considered by the Committee.
- (4) Such complainant and respondent may be allowed to defend themselves before the Disciplinary Committee either in person or through a legal practitioner or any other member of the Institute.
- (5) Where, in the course of a disciplinary enquiry, a change occurs in the composition of the Disciplinary Committee, unless any of the parties to such enquiry makes a demand within fifteen days of receipt of a notice of a meeting of such Disciplinary Committee, that the enquiry be made *de novo*, no report of the Disciplinary Committee shall be called in question on the ground that any member of the Disciplinary Committee did not possess sufficient knowledge of the facts relating to such inquiry.

(v) Procedure in a hearing before the Council (Regulation (19))

- (1) The Council shall consider the report of the Disciplinary Committee and if in its opinion, a further enquiry is necessary, may cause such further enquiry to be made and a further report submitted by the Disciplinary Committee.
- (2) After considering such report, or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent is not guilty of any professional or other misconduct, it shall record its findings accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.
- (3) After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent has been guilty of a professional or other misconduct, it shall record its findings accordingly and shall proceed in the manner as laid down in the succeeding sub-regulations.
- (4) Where the finding is that the member of the Institute has been guilty of a professional or other misconduct, the Council shall afford to the member an opportunity

of being heard before orders are passed against him in the case. The Council, after hearing the respondent if he appears in person or after considering the representations, if any, made by him, pass such orders as it may think fit, as provided under sub-section (4) or Section 21.

- (5) The orders passed by the Council shall be communicated to the complainant and the respondent.

For a detailed discussion on professional misconduct, the members may refer to the 'Guidance Note on Code of Conduct for Company Secretaries' published by the Institute.

FORM-G

COMPLAINT AGAINST PROFESSIONAL OR OTHER MISCONDUCT OF A MEMBER

[See Regulation 15(2)]

(Before the Council of the Institute of Company Secretaries of India)

- | | |
|--|------------|
| 1. Between | Petitioner |
| And | Respondent |
| 2. Petitioner's address | |
| 3. Respondent's address | |
| 4. Particulars of complaint in paragraphs consecutively numbered | |
| 5. Particulars of evidence oral and documentary, if any, to substantiate the complaint | |
| 6. Particulars of deposit of Rs. 2500 | |

Signature

VERIFICATION

I _____ the petitioner do hereby declare that what is stated above is true to the best of my information and belief.

Verified to the _____ day of 20__ at _____

Signature

APPENDIX XIII

Guidelines for Ceiling on Number of Secretarial Audit and Annual Return

The Council of the Institute has recently reviewed the existing limits in respect of issuance of the issue of Secretarial Audit Reports and has decided as below:

- 10 Secretarial Audits per partner/ PCS, and
- an additional limit of 5 secretarial audits per partner/PCS in case the unit is peer reviewed.

These limits will be applicable for the Secretarial Audit Reports to be issued for the financial year 2016-17 onwards.

In this regard, the FAQs have been uploaded at the website of the Institute at :

www.icsi.edu/docs/webmodules/FAQs%20on%20limits%20of%20Secretarial%20Audit%20final.pdf and are also placed below. It is recommended that this communication be read along with the FAQs given below.

FAQs on limits of Secretarial Audit**1. What is the limit for the issue of Secretarial Audit Reports for financial year 2016-17?**

The Council of the Institute at its 235th meeting held on February 11, 2016 reviewed the existing limits for the issue of Secretarial Audit Reports and decided as below:

- **10 Secretarial Audits per partner/ PCS, and**
- **an additional limit of 5 secretarial audits per partner/PCS in case the unit is peer reviewed.**

These limits will be applicable for the Secretarial Audit Reports to be issued for the financial year 2016-17 onwards.

2. To whom is the peer reviewed certificate is granted - Individual or Practicing Unit?

The peer review certificate is issued to the Peer Reviewed

Practice Unit. Practice unit means, “members in practice, whether practicing individually or as a firm of Company Secretaries.” Accordingly, peer review certificate may be granted to an individual or to a firm, as the case may be.

3. What is the date on which Peer Reviewed Unit (PRU) can say, I am Peer Reviewed?

A Practice Unit (PU) is said to have been peer reviewed from the date of issue of peer review certificate by the Peer Review Board of the Institute. Accordingly, PRU can take up additional 5 Secretarial Audits on the basis of being peer reviewed, only from date of issue of the certificate.

1. What is the period for which Practice Unit is certified as PRU?

In terms of para 13 of the Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries (Peer Review Guidelines), the peer review of every practice unit should be mandatorily carried out atleast once in a block of five years.

Accordingly, for the purposes of taking up additional five secretarial audits, the validity of peer review certificate should be five years from the date of issue of certificate.

5. How can it be identified whether a practicing unit is peer reviewed?

The list of peer reviewed practice units is available on the ICSI website at the link:

www.icsi.edu/prb/ListofPeerReviewedUnits.aspx

6. To whom is the issue of 5 additional secretarial audit reports allowed: individual partners or the practice unit as a whole (on the basis of certification of peer reviewed firm)?

The limit of 5 additional secretarial audits of Peer Reviewed Unit is to be considered as 5 secretarial audits for each individual partner, subject to overall limit of 15 secretarial audits per individual.

7A. If a person is a partner in two firms out of which one is not peer reviewed and another is peer reviewed, what should be the limit?

The limit per individual is 10 secretarial audits in each year. He may carry out 5 additional secretarial audits in respect of the firm which is peer reviewed.

7B. If the partner of peer reviewed firm is also practicing in individual capacity/ partner of another firm then whether eligibility of 5 additional Secretarial Audits can be used as a partner of peer reviewed firm or in individual capacity/partner of firm?

The additional limit of 5 secretarial audits can be used in the capacity of partner of peer reviewed firm only.

7C. Whether the answer to the above will be different if the individual is partner of another firm which is also peer reviewed?

Since, the overall limit for each individual/ partner is 15 Secretarial Audits (10 +5). The individual can utilise the additional 5 audits in the capacity of partner of any of the peer reviewed firm.

8. Can this additional limit of 5 secretarial audits be transferred from one peer reviewed firm to another firm on the basis of common partners?

No.

9. If new partner joins a peer reviewed firm, then whether such partner be allowed for such 5 additional audits?

Yes.

10. In case the firm/ individual has applied for peer review, then whether he will be eligible for additional 5 Secretarial Audits.

No, the benefit of additional 5 secretarial audits will accrue to a firm/individual only after issue of peer review certificate by the Peer Review Board.

APPENDIX XIV

Guidelines for Compulsory Attendance of Professional Development Programmes¹

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. Introduction

The Company Secretaries Act, 1980 was enacted to make provisions for the regulation and development of the profession of Company Secretaries. The Institute of Company Secretaries of India set up under the said Act has been conducting examinations and prescribing standards for adherence by its members.

Members of the Institute in employment occupy important positions in industry. The concept of whole-time practice, which gained its initial recognition in 1988, has gained momentum after the enactment of the Companies (Amendment) Act, 2000 which required Compliance Certificate to be issued by Practising Company Secretary for certain category of companies. Our members in practice are also being recognized for issuing various certificates by various regulatory authorities.

In the present day scenario, a profession cannot maintain its cutting edge competencies unless its members regularly update their knowledge. Attendance and participation in Professional Development Programs, Participative Certificate Programs organized by the Headquarters and Centre for Corporate Governance Research and Training (CCGRT), and Seminars, Conferences, Study Circle Meetings organised by the Council, Regional Councils, Chapters and other recognised bodies enable members to –

1. Constantly upgrade professional competence and skills.
2. Sensitize them to new and emerging opportunities for service.

¹ As amended by the Council in its 223rd Meeting held at New Delhi on March 14, 2014.

3. Assure users of professional services that they possess adequate skills commensurate with their professional responsibilities.
4. Improve their level of confidence to meet ever-changing demands on the profession. The Perspective Planning Group constituted by the Council had recommended compulsory attendance by members at Professional Development Programmes as a means of ensuring constant updation of knowledge and skills of members. The ICSI, drawing strength from these recommendations, has now decided that the following guidelines are required to be followed for giving and recording credit as well as eligible programmes and the number of Program Credit Hours to be given for each program.

2. Key Definitions

- 2.1 “Approved Learning Program” means any Professional Development Program, Continuing Education Program, Participative Certificate Program of the ICSI, Programmes organised through electronic / distance mode or any other program, Seminar or study circle meeting organised by the Council, Regional Council, Chapter or Satellite Chapter of the Institute, and programmes organised [jointly with professional bodies or Chambers of Commerce].
- 2.2 “Year” for the purposes of these guidelines shall mean the period commencing from 1st day of April and ending on 31st day of March following.
- 2.3 “Learning Program Centre” (LPC) means any wing of the ICSI which conducts programs and includes the Council, any Committee of the Council, Regional Councils, Chapters and shall include any other centre, wing or any other entity as may be recognized by the Council from time to time for this purpose.

3. Authorisation and Method of Regulation

- 3.1 Under Section 9 of the Company Secretaries Act, 1980, the responsibility for management of the affairs of the Institute and for discharging the functions assigned under the said Act vests with the Council.
- 3.2 The Council considers that in the context of the liberalised

economy and the competitive environment, proper regulation and maintenance of the status and standards of the Members is necessary for ensuring competency of the members.

- 3.3 Pursuant to the above-mentioned authorizations, these guidelines are therefore being issued for implementation.
- 3.4 Compliance with these guidelines is mandatory for the members in practice and recommendatory for other members.
- 3.5 For the removal of doubts, it is clarified that all issues relating to the implementation and interpretation of terms used in these guidelines shall be the responsibility of the Professional Development Committee constituted by the Council. The Committee may discharge its duties in this regard (including issue of supplementary guidelines from time to time) for implementation within the limits of its authority as specified or prescribed by the Council.

4. Power to Modify Guidelines

To ensure that these guidelines are dynamic, the requirements, conditions or terms specified in these guidelines may be modified from time to time at the discretion of the Council on the recommendations of the Professional Development Committee of the Council.

5. Applicability of the Guidelines

- 5.1 It is mandatory for all members in practice of the Institute, except those specified in para5.2 to secure 15 Program Credit Hours (PCH) in a year or 50 Program Credit Hours in a block of 3 years by attendance of approved learning program. However, no carry forward for excess Program Credit Hours from block of three years to another block of three years will be allowed.

- 5.1.1 It would be sufficient if a member obtains atleast fifteen credit hours in a year or 50 credit hours in a block of three years. If a member takes a Certificate of Practice during the block, the requirement for obtaining Credit Hours shall be as under :

<i>Certificate of Practice taken during</i>	<i>The requirement of Credit Hours</i>
--	---

1st April of the first year of the block to 31 st March following.	No requirement of Credit Hours in the First Year of the block
---	---

	Fifteen Credit Hours each in the second and third year of the block or 30 Credit hours in the block of three years
1st April of the second year of the block to 31st March following	No requirement of Credit Hours in the second year of the block Fifteen Credit Hours in the third year of the block
1st April of the third year to 31st March following	No requirement of Credit Hours in that block

No credit hours will be given to a participant who attends the programme partially.

Members whose reply to prize queries is published in the Chartered Secretary will be entitled to four Programme Credit Hours].

Members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years w.e.f. April 01, 2011.

5.1.2 Members in employment i.e. members in whose name Form 32 (in terms of the provisions of the Companies Act, 1956) / DIR -12 (in terms of the provisions of the Companies Act, 2013) has been filed by the Companies shall be required to obtain 10 Programme Credit Hours in each year or 35 Programme Credit Hours in a block of three years.

5.2 The requirement specified above shall not apply to :

- (a) A member who attains the age of 65 years during a particular calendar year.
- (b) A member, for the year during which he gets his Certificate of Practice for the first time. (c) A member or class of members to whom the Council may in its absolute discretion grant full/partial exemption either specific/general, on account of facts and circumstances in case of :
 - (i) Maternity / Paternity Leave
 - (ii) Accident/Medical Emergencies

- (iii) Unemployment
- (iv) Any other case, as may be deemed appropriate by the Council on a case to case basis.

6. Functions of The Learning Program Centres

- 6.1 To conduct programs on current topics for the benefit of the members.
- 6.2 To maintain attendance record of the member attending the program in a manner which will be prescribed.
- 6.3 To furnish periodic Activity and Attendance Report to the Headquarters of the ICSI for updation in the master database.

7. Obligations of the Member

- 7.1 A personal record of compliance with the requirements of Program Credit Hours is required to be maintained by each member on an annual basis. This record shall be open to verification by the Institute.
- 7.2 At the time of payment of annual membership fees, every member is required to confirm that they have secured the minimum annual Program Credit Hours (PCH) and that the record can be produced to the Institute for verification on request.

8. Manner of Calculation of Program Credit Hours (PCH)

- 8.1 No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.
- 8.2 The basis of calculation of Program Credit Hours will be as under:

<i>No. of hours of Learning Program attended by the member</i>	<i>Program Credit Hours (PCH)</i>
Beyond 1 hour and upto 2 hours	1
Beyond 2 hours and upto 4 hours in a single day	2
Beyond 4 hours in a single day	4
Program spanning 1 ½ days	6

Program spanning 2 days 8

Program spanning 2 ½ days and above/National Convention 10

8.2.1 Members attending programmes in non-core areas such as Service Tax, Indirect Taxes, Accounting Standards, Labour Laws, Intellectual Property Rights, Competition Law and NCLT etc. shall be entitled for grant of 50% extra PCH than eligible for other programmes of the same duration.

8.3 A member whose article is published in the “Chartered Secretary” will be entitled to 4

Program Credit Hours.

In respect of joint authorship of the article, the two credit hours be awarded to each author. However, the joint authorship should be limited to two authors only.

The article published in the Souvenir of National Convention be treated at par with the article published in the Chartered Secretary for the purposes of grant of credit hours.

8.4 If the Course Coordinator attends the full program, full credit of the Program Credit Hours allotted for the program will be given.

8.5 No Program Credit Hours shall be given to a member for acting as a faculty in Oral Tuition Classes.

8.6 There may be cases of members contributing articles in newspapers, working on research projects, preparation of or vetting of background or technical material, participating in interactive media programs, etc. All such cases will be decided by the Committee on case to case basis until fresh guidelines covering such instances are drawn up.

8.7 A member who acts as a Chairman or Speaker in any technical session at a Workshop, Seminar or Conference organised by the Program Learning Centre will be entitled to equivalent number of Program Credit Hours as is available for the said technical session.

8.8 For Members who reside in places beyond 100 km

from the nearest Regional Council/Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled. However this will not apply to attendance at the National Convention/National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. Such members have also the option to prepare a research paper on a topic recommended by the Secretariat.

Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.

The Research paper includes :

- (i) A concept paper on emerging areas of practice for Company Secretaries
- (ii) A Referencer / backgrounder on contemporary topics relevant to Company Secretaries
- (iii) A booklet on any topic relating to the areas of practice for Company Secretaries
- (iv) A monograph on any contemporary topic relevant to the Practising Company Secretaries
- (v) An empirical study of practical relevance to the Practising Company Secretaries

Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter will be entitled for Eight Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

8A. Programme Credit Hours for Unstructured Learning Activities

The members shall be granted Programme Credit Hours (PCH) under these Guidelines for undertaking any of the following

unstructured learning activities subject to a maximum of ten PCH in each year of the block:

	Learning Activity	PCH
1.	Web based learning including e learning, subject to the production of Certificate, per year.	4
2.	Publication of article in a journal of repute other than the Chartered Secretary Journal.	4
3.	Publication of book(s).	8
4.	Revision of Published Book	4
5.	Acting as Guide / Supervisor for M.Phil. / LL.M. / Ph.D.	6
6.	Suggestions on Questionnaires / Consultative Papers / Exposure Draft, etc. sought by the Institute	2
7.	Reviewing of Articles / Guideline Answers / Study Material and other publications of the Institute.	4
8.	Publication of Research findings / Studies on the areas relevant to Corporate Sector, Capital Markets and Professional interest.	4
9.	Publication of articles of professional interest in national dailies.	4
10.	Visit to foreign countries as part of government delegation.	4
11.	Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National importance.	4

9. Monitoring Requirements

- 9.1 The Professional Development Committee will monitor and review the programs conducted by the various Program Learning Centres from time to time and appraise the Council of

the progress.

- 9.2 The said Committee shall set up an appropriate monitoring mechanism and provide clarifications (as it considers necessary) to all concerned for effective implementation of these guidelines as per Annexure.
- 10. These Guidelines are effective from 1st January, 2008.**

**Mechanism for Maintenance of Attendance Records of Members at
Professional Development Programmes and Issuance of
Certificates for Programme Credit Hours (PCH)**

The Council has considered and approved the following mechanism for maintenance of attendance records of members at professional development programmes and issuance of certificates for Program Credit Hours under the Guidelines for Compulsory Attendance of Professional Development Programmes by Members:

1. The Program Centre shall ensure the quality of the programmes organized by it by inviting faculty having adequate knowledge, expertise and experience in the given subject/topic for discussion.

The brochure for every professional development programme should indicate the programme Credit Hours to be awarded to the participants.

2. The Program Centre will record the attendance of the participants and maintain the same for future reference and issue the certificates for Program Credit Hours in the prescribed format.
3. The Directorate of Information Technology in the Headquarters will develop software for recording and maintaining the attendance of members at the Professional Development Programmes and send to all Regional Councils/Chapters.
4. The headquarters will initially provide to Regional Councils printed blank formats of certificates, which will be serially numbered.
5. Regional Councils/Chapters will maintain the list of names and membership numbers of the participants as well as faculty/Chairman/Speaker and Program Credit Hours given to each of them together with their signatures duly authenticated by competent authority for this purpose.

Explanation : Competent authority means (i) in the case of Regional Council Chairman or Secretary of the Regional Council or Executive Officer (ii) in the case of Chapter/Satellite Chapter, Chairman or Secretary or Executive Officer, if any, of the Chapter/Satellite Chapter.

A Register be prepared for recording names of participants and obtaining their signatures both at the beginning as well as at the end of the programme.

- 6. At the time of renewal of membership every year, the members will send a declaration stating the name of the programmes attended, program learning centre, place, date, duration and number of Program Credit Hours secured during the calendar year to the Directorate of Training and Membership of the ICSI.

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Northern/Eastern/Western/Southern India Regional Council

Certificate for Program Credit Hours

Name of the Program Learning Centre:

This is to certify that Ms./Mr.
attended (Name of the Programme) held
on at for
days/hours as a
participant/faculty/speaker/ course coordinator/chairman in a
technical session.

According to the Institute’s Guidelines for Compulsory Attendance of
Professional Development Programmes by Members, she/he is
hereby awarded Program Credit Hours.

Competent Authority

Date

Place

Certificate for Program Credit Hours

This is to certify that Ms./Mr.
has contributed an article in Chartered Secretary/Convention
Souvenir, which was published in the Month of

According to the Institute's Guidelines for Compulsory Attendance of
Professional Development Programmes by Members, she/he is
hereby awarded Program Credit Hours.

Competent Authority

Date

Place

Certificate for Program Credit Hours

This is to certify that Ms./Mr.
has contributed an article in a
Newspaper/worked on research project/prepared or vetted
backgrounder or technical material/participated in interactive media
programs

According to the Institute's Guidelines for Compulsory Attendance
of Professional Development Programmes by Members and as
per the decision of the Professional Development Committee at its
meeting held on she/he is hereby awarded
..... Program Credit Hours.

Date

Place

APPENDIX XV

Services that can be Rendered as per The Resolution Passed by the Council under Clause (F) of Sub-Section 2 of Section 2 of The Company Secretaries Act, 1980

The Council in its 232nd (Adjourned) meeting held on 29th December, 2015 at New Delhi while considering the recommendations of the Practising Company Secretaries Committee passed the following resolution:

“RESOLVED THAT in supersession of the earlier resolution of the Council passed at its meeting held on March 24-25, 2006 pursuant to the powers granted under clause (f) of subsection (2) of section 2 of the Company Secretaries Act, 1980, the Council of the Institute hereby specifies the following categories of Management, Advisory and Other Services, which may be rendered by a Company Secretary in Practice. Any of such services may be rendered by practising members to corporations, bodies corporate, societies, trusts, associations, enterprises, undertakings, clubs, non-trading corporations, industrial co-operatives, co-operative societies, non-government organizations, local self government bodies, estates, firms, small, medium and large industrial undertakings, entrepreneurs, investors, and other persons in carrying out their activities and operations :

- Providing all services in MCA-21 Systems including those relating to Front Office, Facilitation Centre, Filing Centre, Local Registration Authority of Digital Signature Certificate Providers.
- Conceptualisation, identification, crystallization of business enterprise, industrial-project or business activity.
- Carrying out feasibility studies, preparation of project reports, proposals for business operations including setting up a new unit or enterprise, as well as expansion, or diversification and also representations, follow-up with financial institutions, Government and other authorities for procurement of the requisite approval, clearance or permission in respect of such proposals.
- Guidance and support in relation to collaborations, joint ventures, business agreements, arrangements, restructuring, contracts, tie-ups in India and abroad.
- Business planning, policy and management in all fields including manpower, recruitment, employment, industrial

relations, human resource development, management information systems, marketing, publicity and public relations.

- Planning, supervision and carrying out of internal audit, systems audit, labour audit, management audit, operational audit, quality audit, social audit, environment audit and energy audit.
- Risk management of properties, profits, resources, knowhow and operations.
- Management, planning, representation and protection of trade marks, patents and intellectual property service.
- Procurement and management of materials and inventories.
- Assessment, procurement and management of financial requirements and resources including project finance, working capital finance, forex management, loan syndication, portfolio management.
- Evaluation and management of deployment of funds in investments, assets and securities, loans, collaborations, tie-ups, joint - ventures.
- Formulating and implementing all activities relating to capital structure including creation, issue, offer, allotment, placement, procurement, listing of shares, debentures, bonds, deposits, coupons, ADR, GDR, IDR and all types of financial instruments.
- Recovery-consultant in banking and financial sector.
- Insurance advisor and other related activities including sale and distribution of insurance products.
- Acting as an arbitrator, mediator or conciliator for settlement of disputes or being on the panel of arbitrators or representing in arbitration, mediation or conciliation matters.
- Acting as advisor to investors, depositors, mutual fund unit holders and stakeholders.
- Acting as advisor in relation to intermediary in securities and commodities markets.
- Due diligence and legal services.
- Corporate governance services.
- Competition law and practice.

- Business process outsourcing, knowledge process outsourcing and legal outsourcing.
- Valuer, surveyor and loss assessor.
- Investigator, private liquidator, insolvency practitioner; operating agency.
- Sale purchase of real estate, real estate advisor and other related activities.
- Mutual funds advisor and other related activities including sale and distribution of mutual funds.
- Undertaking aggregative services.
- Providing travel consultancy and other related activities.
- Engaging in agricultural and other related activities”

*APPENDIX XVI***Resolution Passed by The Council Under Regulation 168 of The Company Secretaries Regulations, 1982**

The Council of the Institute at its 156th Meeting held on March 19-20, 2005, in exercise of its powers under regulation 168 of the Company Secretaries Regulations, 1982 has accorded general permission to its members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

It must be clarified that under section 26 of the Company Secretaries Act, 1980 no company can practise as Company Secretary.

The Council has further allowed members in practice to become non-executive director/promoter/promoter director/subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

The Council in its resolution adopted at the said meeting defined the term non-executive director as to mean an ordinary director who is required to attend the meetings of the Board or its committees only, not paid any remuneration except the sitting fees for attending the Board/Committee meetings and any remuneration to which he is entitled as ordinary director, and devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.

Practising Company Secretaries can now take up teaching assignment with any organization apart from the coaching organization of the Institute. Further the condition has been relaxed for teaching hours from average three hours to four hours in a day. General permission has been given to Practising Company Secretaries to act as Recovery Consultants in the Banking Sector. With the specific permission of the Council a member in practice can have interest in agricultural and allied activities carried on with the help, if required, of hired labour and editorship of journals other than professional journals.

Text of the Resolution Passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982

“Resolved that in supercession of all earlier resolutions passed by the Council under Regulation 168 of the Company Secretaries Regulations, 1982 allowing members in practice to engage in any other business or occupation, the Council hereby permits the members in practice to engage in the following other business or occupation under Regulation 168 of the Company Secretaries Regulations, 1982:

Permission granted generally

- (i) Private tutorship.
- (ii) Authorship of books and articles.
- (iii) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
- (iv) Holding of public elective offices such as M.P., M.L.A., M.L.C.
- (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
- (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.
- (vii) Teaching assignment under the Coaching Organisation of the Institute or any other organisation, so long as the hours during which a member in practice is so engaged in teaching do not exceed average four hours in a day irrespective of the manner in which such assignment is described or the remuneration is receivable (whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- (viii) Valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Editorship of professional journals.
- (x) Acting as ISO lead auditor.
- (xi) Providing Risk Management Services for non-life insurance policies except marketing or procuring of policies.
- (xii) Acting as Recovery Consultant in the Banking Sector.
- (xiii) Becoming non-executive director/promoter/promoter director / subscriber to the Memorandum and Articles of Association of

a company the objects of which include areas, which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that company.

- (xiv) Becoming non-executive director/promoter/promoter director/ subscriber to the Memorandum and Articles of Association of a company which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in the company.

Permission to be granted specifically

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

- (i) Interest or association in family business concerns provided that the member does not hold substantial interest in such concerns.
- (ii) Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
- (iii) Editorship of journals other than professional journals.

For the purpose of the above resolution:

- (i) A non-executive director means an ordinary director who fulfils the following conditions:
 - (a) he is required to attend the meetings of the Board or its committees only.
 - (b) he is not paid any remuneration except the sitting fees for attending the Board / Committee meetings and any remuneration to which he is entitled as ordinary director.
 - (c) he is devoting his time for the company only to attend meetings of the Board or Committees thereof and not for any other purpose.
- (ii) a member shall be deemed to have a “substantial interest” in a concern :
 - (a) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether

with or without a further right to participate in profits) carrying not less than twenty-five per cent of voting power at any time during the previous year, are owned beneficially by such member.

- (b) in the case of any other concern, if such member is entitled at any time during the previous year, to not less than 25% of the profits of such concern.

Further Resolved that in cases of permission to be granted specifically the Council will, however, be always entitled to refuse permission in individual cases.”

APPENDIX XVII

Dress Code for Company Secretaries**Dress Code for a CS appearing before Judicial/Quasi - Judicial bodies and Tribunals like NCLT - NCLAT, etc.**

The Council has approved the following Guidelines for Professional Dress Code for Company Secretaries to appear before judicial / quasi-judicial bodies and tribunals like NCLT- NCLAT, SAT, etc.:

S. No.	Guidelines
1	<p>For Male Members:</p> <ul style="list-style-type: none"> a. Navy Blue Suit (Coat & Trouser), with CS logo, Insignia OR Navy Blue Blazer over a sober colored Trouser b. Neck Tie (ICSI) c. White full sleeve Shirt d. Formal Black Leather Shoes (Shined)
2.	<p>For Female Members:</p> <ul style="list-style-type: none"> a. Navy Blue corporate suit [Coat & Trouser], could be with a neck tie/ Insignia <p>OR</p> <ul style="list-style-type: none"> b. Saree / any other dress of sober colour with Navy Blue Blazer with CS logo c. A sober footwear like Shoes/Bellies/Wedges, etc. (shined)
3.	Members in Employment - As prescribed in 1 or 2 above

Members are advised to strictly adhere to the Dress Code prescribed by the Council.

APPENDIX XVIII

Guidelines for Availability of Firm Names

The Guidelines of the Council for name of a Proprietorship concern/ Firm / Trade under Regulation 169 of the Company Secretaries Regulations, 1982.

1. A trade or firm or concern name shall be restricted to the name(s) of the proprietor/partners or a name which is already in use
2. A trade/firm name may include the name(s) of the member(s) as it/they appear in the Register of Members in the following manner:
 - (i) For Sole proprietorship concern:
 - (a) Name comprising first name and/or middle name and/or surname of the member, in any order, with or without commonly used suffix or prefix
 - (b) Initials of the first name and/or middle name and/or surname, in whichever order
 - (c) Combination of (a) and (b) above, in any order
 - (d) Parts of or prevalent abbreviations of or acronyms of commonly used names alongwith any combination referred to in (c) above
 - (ii) For Partnership firm:
 - (a) Full surnames of two or more partners
 - (b) Full first names of two or more partners
 - (c) Combination of first names and / or middle names and/or surnames of two or more partners with or without commonly used suffix or prefix
 - (d) Combination of initials of first names and/or middle names and/or surnames of the two or more partners
 - (e) Combination of (c) and (d) above, in any order
3. General
 - (i) A trade or firm name shall not be approved if the same or similar or nearly similar name is already used by a

Company Secretary in practice or which resembles the name of Company Secretary in practice or firm of such Company Secretaries and has been entered in the Register of office of firms.

- (ii) A trade/firm name shall not contravene the provisions of The Names and Emblems (Prevention of Improper Use) Act, 1950 or any modification/re-enactment thereof.
- (iii) The trade or firm name may be suffixed by the suffixes “& Co.”, “& Company” or “& Associates”. However, any suffixes that may be considered undesirable by the Council shall not be allowed.
- (iv) The word “and”/ “&” could be used in between the first name/middle name/surname including initials thereof, of the partners of the firm.
- (v) A firm name may also be allowed without the use of the suffixes “& Co.”, “& Company” or “& Associates” provided full first names and/or full middle names and/or full surnames of the partners are used. Also, in such cases, the word “&”/“and” is compulsorily to be used either in between the full first names and/or full middle names and/or full surnames of the partners or before the last full first name/full middle name/full surname of the partners.
- (vi) The name of a sole proprietorship concern shall not be allowed without the use of suffixes “& Co.” / “and Company” / “& Associates”.
- (vii) A trade/firm name, which has no relationship with the name of member(s) as above, shall not be allowed.
- (viii) Descriptive trade/firm names viz. Fire, Smash, Leader, Champion, Mastermind, Super, Supreme etc. shall not be allowed.
- (ix) Trade/firm names denoting publicity shall not be allowed. Any trade/firm name, regardless of reason or logic, using the initials, acronyms or full forms of any profession whether used individually and/or collectively and/or in any order, shall not be allowed. The use, therefore, of CA, CS, CMA, MBA, CACMA, CACS, CSCA, CSCMA, CMACS, CMACA, Secretary, Accountant, Management, Chartered Accountant, Cost Accountant, Chartered Secretary etc.,

shall not be allowed. However, trade/firm names matching with the group name/theme shall be allowed, if the same is not in contradiction with any other criteria.

- (x) The name, middle name and surname of the member shall conform to the name, middle name and surname as they appear in the register of members.
- (xi) In case any change in the status of the firm from individual firm to partnership firm or vice-versa, the firm name already been in use by any of the partner or individual could be approved provided there is no objection by any of the partners or individual.
- (xii) A trade/firm name which was in use by a proprietor or partners shall not be allowed to any other member or members for a period of three years of the closure of firm. The name may be re-allotted to the same member or members' upto a period of three years of the closer of the firm. In the event of removal of name of a practising member, after the expiry of the period of three years, the said trade/firm may be allowed to any member or members who are eligible for allotment of such name under the guidelines.
- (xiii) After various permutations and combinations under guidelines 2(i) and (ii) have been exhausted and the member is not able to get approval of firm/trade name in accordance with the same, he may be permitted to adopt or coin a firm/trade name out of the names of his/her family members provided that such name was not already registered by some other members. The terms "family" for this purpose means husband, wife, father, mother, son and daughter. An affidavit or other evidence to the satisfaction of the Secretary is to be produced in such cases.
- (xiv) Any reconstitution of the firm with the same firm name shall not have effect except with the prior approval of the Council pursuant to Regulation 170.
- (xv) Approval accorded by the ICSI for any trade/firm name shall not tantamount to any protection by the ICSI in case of any dispute arises affecting to Intellectual Property Rights between any trade/firm with any other brand, entity, business etc., outside the profession and in relation to the name in dispute. The responsibility and liability in

such cases shall solely be of the concerned trade/firm and at its own risk and costs and not of the ICSI. The ICSI shall not be any party to any kind of dispute that may arise in this regard.

APPENDIX XIX

**The Institute of Company Secretaries of India Proforma for Know
Your Member**

1	NAME [in BLOCK LETTERS ONLY]	Mr./Ms./Dr.		
2	MEMBERSHIP NO.	ACS :	FCS :	CP :
3	NAME OF THE ORGANISATION			
4	DESIGNATION			
5	COMPANY INDEX NO.			
6	BLOOD GROUP			
7	PROFESSIONAL ADDRESS	RESIDENTIAL ADDRESS		
	_____	_____		
	_____	_____		
	_____	_____		
	Pin: Mobile No E-mail ID:	Pin: Mobile No E-mail ID:		
8	Domicile		State	
9	You are in	If in Employment Please specify:	Business Please specify:	
10	If in Practice [Please tick]	Proprietor: Yes / No	Partner : Yes / No	
11	You are working with [Please tick]	1. Central Govt. 2. Regulatory Authority 3. State Govt. 4. Public Sector 5. Private Sector		
12	If in Practice [Please tick]	1. CS 2. CA 3. ICWA 4. Management Consultant 5. Advocate 6. Any other		
13	Post Qualification Experience	Whether in Employment / In Practice [Please mention no of years]	Worked with the following organizations during the last one year. 1. 2. 3.	
14	Areas of your specialization			
15	Please indicate subject/topic of the research projects carried out/being presently carried out by you including dissertation for M.Phil/Ph.D.			
16	Are you a member of any of the committees constituted by any Govt. regulatory Authority /University/Colleges [Please specify]			

17	Whether you are a Central Council Member, an Office Bearer, MC Member of the Regional Council /Chapter of any professional bodies. [Please Tick]	1. ICAI 2. ICSI 3. ICWA
18	Whether you are member of ICSI Benevolent Fund, if yes the Life Membership (LM) No.	
19	Whether your Company/Firm is registered with the ICSI for imparting training	
20	Please indicate the activities of the ICSI for which you are willing to act as a Resource Person [Please tick]	1. Guest Speaker/Faculty 2. Paper setter/examiner 3. MSOP Faculty /Writing Articles/Books 4. Any other please specify.
21	Your personal Contacts with any of the following [Please specify]	1. Central Ministers 2. Chief Minister 3. State Ministers 4. MP/MLA 5. Vice Chancellor 6. Regulators 7. Any other please specify.
22	Would you like to act as a ICSI Counsellor to guide the prospective students about the CS course in your City [Please visit www.icsi.edu for guidelines and honorarium etc]	

I _____ do hereby declare that the particulars given above are true and correct and this form has been personally signed by me. I also hereby attach _____ as my proof of identity and _____ as my proof of address.

Thanking you,

Yours sincerely,

Date: _____

Signature: _____

Disclaimer by the Institute of Company Secretaries of India:

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content of this database form may be changed at any time at the discretion of Institute. If any provisions (or part thereof) within this disclaimer shall be deemed unlawful void or for any other reason unenforceable then that provision (or part) shall be severable from the remainder of the disclaimer and shall not affect the enforceability of the remaining provisions.

Declaration: I certify that data/information contained in this form is true and correct to the best of my knowledge and belief. I understand that by signing this form I agree to be bound by the terms and conditions as have been or may be laid down by the Institute of Company Secretaries in regard to preparation and maintenance of database of Company Secretaries in practice.

Date : *Signature.....*

Place *Name.....*

CP No.

APPENDIX XX

Guidelines for Requirement of Maintenance of A Register of Attestation/Certification¹ Services Rendered By Practising Company Secretary/Firm of Practising Company Secretaries²

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines :-

1. For the purpose of maintaining quality of attestation [/certification]¹ services provided by Company Secretaries in Practice, every Practising Company Secretary (PCS)/Firm of PCS shall maintain a register regarding attestation [/certification]¹ services provided by him/her/it, which shall be open for inspection by such person as may be authorised.
2. The Format of the register to be maintained by a Practising Company Secretary/Firm of Practising Company Secretaries regarding attestation [/certification]¹ services is as under:

<i>Sl. No.</i>	<i>Name and Registration No. of the company to which attestation [/Certification]¹ services* provided</i>	<i>Services rendered Certificate / Return/ Audit Report</i>	<i>Date of signing of authorised for verification</i>	<i>Signature of the PCS</i>	<i>Signature of the person for verification</i>
1	2	3	4	5	6

* The various attestation [/certification]¹ services mean :

* THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, (Constituted under the Company Secretaries Act, 1980) ICSI Guideline No.2 of November, 2007 [Pursuant to Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended] New Delhi, the 27th November, 2007

1. Inserted by the Council in its 178th Meeting held on 29th December, 2007.
2. Published in the January 2008 issue of Chartered Secretary at pg. 139.

- (i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.
 - (ii) Issue of Compliance Certificate pursuant to proviso to sub-section (1) of section 383A of the Companies Act, 1956.
 - (iii) Issue of certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.
 - (iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D&CC/FITTC/Cir-16/2002 dated December 31, 2002.
 - (v) Conduct of Internal Audit of Operations of the Depository Participants.
 - (vi) [Certification under Clause 49 of the Listing Agreement]¹.
3. These Guidelines are effective from 1st January, 2008.

By order of the Council

N K JAIN, SECRETARY & CEO

APPENDIX XXI

**Gist of Disciplinary Proceedings against
Practising Members****(I) Clause (6) of Part I of the First Schedule**

A member was charged with contravention of clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980, vide complaint dated 18.4.1989, for sending circular letters indirectly soliciting professional assignment from certain companies. The respondent in his written statement submitted that neither he nor his partner were in whole-time practice entitled to sign annual returns and that the letter under reference was issued by him with the only intention of informing the listed companies of a newly introduced provision of Companies (Amendment) Act, 1988, with regard to certification of annual return. There was no intention to solicit professional work either directly or indirectly, he stated.

The Disciplinary Committee pointed out that although the respondent was not qualified to sign the annual returns and he had submitted that he had no intention to solicit business but only to educate the various companies about the new provision of law, the issuing of circulars to companies listed at the Stock Exchange with whom the respondent had no business relationship, can be calculated to indirectly secure publicity and solicit clients as the recipients of the circular may be lured to contact the respondent for the assignment or further details. Such a circular is not proper and attracts clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980.

It is, however, not denied that the concept of Company Secretaries in practice is in nascent stage and members at large may not have been fully aware of the implications of soliciting business, after the provisions relating to certification of annual returns came into force.

In issuing the circular to persons who were not in professional relationship with the respondent, the respondent violated, may be unwittingly, clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980. He was therefore, guilty of professional misconduct in terms of the said clause.

However, as the respondent has admitted that he had absolutely no intention to advertise himself or solicit business from any quarter and that it had been out of sheer over enthusiasm and in view of the fact

that he has tendered unqualified regrets and that he is not qualified to undertake the certification work being not in whole-time practice, the Committee recommended that the Council may take a lenient view of the case.

The Council concurred with the findings of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of Company Secretaries Act, 1980.

(II) Clause (8) of Part I of the First Schedule

A complaint was filed against a member for violation of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) signing of the Annual Return of a listed company for the financial year ended on 31.3.1989, without first communicating in writing with the complainant who had certified the annual return of the said company earlier; and
- (b) accepting the position as company secretary in practice in the aforesaid company which was previously held by the Complainant, in such conditions which clearly amounted to under cutting as the respondent raised a bill of Rs. 1,000 only for the certification of annual return for which in the ordinary course, the bill should not have been less than Rs. 5,000.

The respondent (complainee) in his written statement stated with regard to allegation (a) that he had not snatched any assignment made in favour of the complainant but admitted that the said mistake of non-communication occurred through oversight and not intentionally.

Regarding allegation (b) he stated that the object of undercutting was to compete and get professional work but he only relied upon the information given by the Company and the fee was accordingly charged.

The Disciplinary Committee after enquiry found that the respondent was guilty of professional misconduct under clause (8) of Part I of the First Schedule of the Company Secretaries Act, 1980, in having accepted and commenced the certification of 1989 annual return for the said company without first communicating with the complainant in writing. The Disciplinary Committee observed that a perusal of clause (8) of Part I of the First Schedule clearly established that it was a mandatory provision and not recommendatory as evident from the word 'shall' used therein. The Guidance Note on Signing of Annual

Return did not say that the communication with the earlier incumbent in case of signing of annual return was recommendatory but it only stated that it was recommendatory to make the communication by way of registered post. So far as the communication was concerned that mandatory requirement existed and the respondent admittedly did not communicate by any available means as required by the Act [*J.S. Bhati v. Council of ICAI* (S.B. Civil Misc. Appeal No. 136 of 1973) - referred to].

As regards the allegation regarding undercutting of fee the Committee pointed out that the fee charged for any work is dependent *inter alia* upon the work load, time involved, standing, seniority and reputation of the person concerned. A lower fee charged by a new incumbent may not *ipso facto* amount to undercutting. For want of evidence the Committee came to the conclusion that the charge could not be substantiated and that the respondent was not guilty of undercutting.

The Council concurred with the findings of the Disciplinary Committee and held the respondent guilty of professional misconduct in not ensuring advance communication and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

(III) Clause (8) of Part I of the First Schedule

In yet another case a similar complaint was made against a member for signing of the annual return of a listed company for the financial year ended on 31.3.1989, without first communicating in writing with the petitioner who had certified the annual return of the company while for 1989 the respondent had signed return of the said company earlier. The respondent in his written statement admitted that for the year 1988, the complainant had signed the annual return of the said company. He stated that he had duly intimated to the complainant at his official address by a letter under certificate of posting dated 20.9.1989 and had waited for more than a month and then certified the annual return on 29.11.1989. He also forwarded with his written statement a photocopy of the intimation letter and certificate of posting.

The Disciplinary Committee found that the facts of the case were similar to those of *J.S. Bhati v. Council of ICAI*. (S.B. Civil Misc. Appeal No. 136 of 1973) where the Rajasthan High Court while interpreting a similar provision relating to Chartered Accountants Act pointed out that the expression "communicate with him in writing", could not be interpreted to mean that the provision simply casts a duty in the incoming auditor to accept his new assignment. He has to do something

more to discharge his obligation. The expression 'communicate with him' requires more than mere intimating his intention by despatching a letter under certificate of posting. The Disciplinary Committee pointed out that mere posting of a letter should not be sufficient compliance but acknowledgement by the addressee of the same was also essential. On the basis of materials available it could not be proved that the complainant received that letter of intention. Hence, it was held that the respondent was guilty of violating clause (8).

The Council concurred with the finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed the order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of Company Secretaries Act, 1980.

(IV) Clause (10) of Part I and Clause (3) of Part III of the First Schedule

In another case a complaint was made against a member for violation of clause (10) of Part I and clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) holding the Certificate of Practice of both the Institutes i.e. the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India which has not been permitted by the Council of the former and practising both the professions on whole-time basis; and
- (b) the information that he was holding the Certificate of Practice of the Institute of Chartered Accountants of India was not disclosed by him to the Council of ICSI which was required to be given at the time of renewal of Certificate of Practice.

The respondent in his written statement had admitted his mistake of holding certificates of practice of both the Institutes simultaneously but he stated that his intention was not *mala fide* and that he had not enjoyed any extra benefit of such dual holding of certificate of practice. Regarding allegation (b), it was stated that he had informed the ICSI in reply to its letter dated 18.11.1989 that he had already surrendered certificate of practice of ICAI but so far he had not received any communication from ICAI about the cancellation of his certificate of practice.

The Disciplinary Committee after enquiry found that the information regarding holding of certificate of practice of ICAI was given by the respondent to the ICSI only when the ICSI vide its letter dated 25.9.1989, specially asked the respondent to confirm whether he was holding certificate of practice from the ICAI/ICWAI.

When the respondent had given a declaration that he had surrendered the certificate of practice from ICAI, it was obligatory on him to make sure that his certificate of practice of ICAI had been cancelled in their records. But the respondent did not care to confirm from ICAI whether his certificate of practice had been cancelled in their records as requested by him made to it on 1.9.1989. Therefore, on the basis of material made available on record, it was clear that the respondent had violated the provisions of clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980.

So far as allegation at (b) is concerned the contention of the respondent that he never used the certificate of practice of ICSI cannot be accepted as it was used by him for admission as Fellow Member of ICSI.

The Council concurred with the above finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order to the effect that 'the name of the respondent be removed from the Register for a period of one year' as provided in sub-clause (b) of sub-section (4) of section 21 of the Act.

(V) Clause (10) of Part I and Clause (3) of Part III of the First Schedule

In another case a complaint was made for violation of clause (10) of Part I of the First Schedule and clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) holding the Certificate of Practice of both the Institutes i.e. Institute of Chartered Accountants of India and Institute of Company Secretaries of India without the permission of the Council of the latter and also practising both the professions on whole-time basis simultaneously;
- (b) signing of annual return in excess of the limit fixed by the Institute, during the year 1989-90;
- (c) holding of post of Company Secretary under section 383A of the Companies Act, 1956; and
- (d) filing of Form 32 in respect of his appointment under section 383A of Companies Act, 1956.

The respondent in his written statement stated with regard to allegation (a) that he was holding only a part-time certificate of practice from the Institute of Chartered Accountants of India which was later

surrendered in October 1990. Regarding allegation (b) he submitted that he did not sign annual return of any company during the year due to his continuous ill-health. Regarding allegations (c) and (d), the respondent denied that he held any post of company secretary under section 383A of the Companies Act, 1956, or filed any Form No. 32 with any Registrar of Companies in India showing his appointment as such.

The Disciplinary Committee after enquiry found that admittedly, the respondent's case was that he was holding the Certificate of Practice of Institute of Chartered Accountants of India from 1987 but in his application dated 11.5.1988, for issue of certificate of practice made to the Institute of Company Secretaries of India, he did not disclose that he was holding part-time certificate of practice of ICAI. In his application for issue of certificate of practice, he had given a declaration that he was engaged in the profession of company secretaries and not in any other profession, business or occupation. Further, on 21.6.1988, he gave an undertaking/declaration to the Institute that as long as he was holding certificate of practice of the ICSI, he would not hold the certificate of practice from any other professional body or institution. In his statement given before the Disciplinary Committee the respondent had categorically admitted that he had a certificate of practice of ICAI since February 1987, and he also held Certificate of Practice on whole-time basis till May 1988. With regard to his declaration dated 11.5.1988, he stated that while giving the said declaration he meant that he was not in whole-time practice as Chartered Accountant but was in part-time practice as Chartered Accountant on the date of declaration but in the first part of his Statement he clearly admitted that he was practising as a Chartered Accountant on whole-time basis till May 1988. Therefore, the Committee found that the respondent was guilty of violation of the provisions contained in Clause (10) of Part I of the First Schedule and Clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980. As allegations (ii) to (iv) were not referred to the Committee by the Council, it did not look into them.

The Council concurred with the above finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order that 'the name of the respondent be removed from the Register for a period of one year' as provided in sub-clause (b) of sub-section (4) of section 21 of the Act.

(VI) Clauses (6) and (7) of Part I of the First Schedule

In another case a complaint was filed against a member for violation of clauses (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) printing and circulating visiting cards in a manner which is prohibited by the Code of Conduct; and
- (b) misusing the Institutes letterhead, brochures, circulars etc. mentioning his name with designation, description and the practising field other than as prescribed and thus misleading the reader by not mentioning his whole-time employment.

The complainee (respondent) in his written statement denied all the allegations and stated the same were untrue. Regarding visiting cards the respondent had stated that the cards in question were not printed by him or used by him and the souvenir and the brochures were published by Regional Council Office and not by him and he also stated that there was nothing to indicate personal canvassing and misleading of the readers by him in the souvenir, brochure or visiting cards, as alleged.

The Disciplinary Committee after enquiry found that the respondent was guilty of professional misconduct under clause 7 of Part I of the First Schedule to the Company Secretaries Act, 1980, and observed that the respondents plea that he had not printed or circulated or used the visiting cards cannot be accepted on the basis of the facts and circumstances of the case. Since the respondent had held a certain office in the Regional Council at the relevant point of time, his plea that what was printed in the souvenir, brochures and other materials was done by the Regional Council Office without his knowledge and consent cannot be accepted, particularly as he said that he had nothing more to add, when the Committee had asked him what steps he took to prevent circulation of such material.

The Council concurred with the finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of Company Secretaries Act, 1980.

(VII) Clauses (6), (7) and (8) of Part I of the First Schedule

In yet another case a complaint was filed for violation of clauses (6), (7) and (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) accepting a certification work from a company without first communicating with the earlier incumbent;
- (b) misrepresenting by issuing his association with the complainant;

- (c) circulating visiting cards against the Code of Conduct; and
- (d) addressing a letter to a company indirectly soliciting professional assignment.

The respondent in his written statement stated with regard to allegation (a) that he had not snatched any assignment made in favour of the complainant but admitted that there was delay in communicating the acceptance of assignment from the named company for certification of annual return for 1989 and the delay was not intentional but was due to inadvertence. Regarding allegation (b), it was submitted that at no time he had any association the complainant and hence had not misrepresented. Regarding allegation (c) about visiting cards, he submitted that the visiting cards under question were printed in a very small quantity and the same were used by him only for limited purpose, in connection with the business of a company in whose service he was and that too only for a short period. Regarding allegation (d), he had denied having solicited any professional assignments through any unfair means.

The Disciplinary Committee held as under:

- (a) the respondent is guilty of violation of the provisions contained in Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on his own admission that he had not communicated with the complainant prior to accepting the 1989 Annual Return Certification work for the company but the respondent is absolved of the charge of snatching assignment from the complainant as the complainant had not been assigned the Certification of Annual Return of the company for the year 1989.
- (b) In the absence of deposition of witnesses or written evidence in this regard, the complaint regarding misrepresentation against the respondent was not held proved.
- (c) On the admission of the respondent it was clear that the visiting cards were circulated in violation of rules of the Code of Conduct laid by the Institute albeit for a short duration. However, the fact that the respondent had taken corrective steps in this regard, may be kept in mind while taking further action.
- (d) In the absence of deposition of witnesses or furnishing of suitable evidence, the letter on record dated 8.12.1989, from the respondent to the company secretary of a company speaks

for itself that the respondent in having issued this letter has violated the provisions of Clause (6) and/or (7) of Part I of the First Schedule to the Act.

Accordingly, the Committee concluded that the respondent was guilty of professional misconduct under Clauses (6), (7) and (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 - (a) in having accepted and commenced the 1989 Annual Return Certification work without first communicating with the complainant; (b) circulating visiting cards against the Code of Conduct though for a short duration only, (c) in addressing a letter dated 8.12.1989 to the company secretary of a company indirectly soliciting professional assignment and (d) in addressing a letter to the company, in violation of the relevant provisions contained in the First Schedule to the Company Secretaries Act, 1980.

The Council concurred with the above findings of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' to the respondent in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

(VIII) Clauses (6) and (7) of Part I of the First Schedule

A complaint was filed against a member alleging mis-conduct as envisaged under Clauses (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980. The allegations were that the Member:

- (a) had personally met officers of the ABC Limited on various occasions for soliciting business;
- (b) had used the influence of a Management Consultant to solicit business;
- (c) had written a nasty letter to the Senior President of ABC Limited which was against the Code of Conduct;
- (d) had described himself in visiting cards and letterheads as Advocate, High Court which was also against the Code of Conduct;
- (e) had sent undated circulars to companies to solicit professional work by unfair means.

In his written statement the respondent denied the allegations. His contention was that the complaint was based on documents produced in another complaint where the respondent was himself the

complainant and that till such time the other complaint was disposed of, the documents could not be used in the present complaint. He denied meeting the senior executives of the ABC Limited since he was never appointed to carry out the work of certification of annual returns for the year 1989. Allegations (b) and (c) were based on the evidence produced by the Member himself in the earlier complaint filed by him. Accordance to him, describing himself as Advocate in his Visiting Card while being a practising Company Secretary did not amount to mis-conduct. Regarding allegation (e), the respondent stated that there was no circular as alleged but what was produced by the complainant as evidence was only a copy of the acknowledgement receipt from the company.

The Disciplinary Committee found that the respondent did resort to unfair means in soliciting professional work and that the letter written by respondent to ABC Limited were violative of professional standards of behaviour. In spite of the clarification from the Institute that no one, using the designation 'Company Secretary', was to use any other designation to describe himself, the respondent had used both the designations 'Company Secretary' and 'Advocate', High Court and this was clearly against the Code of Conduct. The Committee categorically held that there was nothing wrong in relying upon evidence or documents which may have formed the basis of any other complaint. In matters of professional conduct it is necessary for the Institute to uphold high values so that the image of the Institute is not impaired and technical points ought not to influence the findings in such matters. The Committee held the respondent guilty of professional misconduct under Clauses (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980.

The Council after considering all the documents and the representations of the parties both written and oral confirmed the findings of the Disciplinary Committee. Thereafter hearing was afforded to the respondent member as envisaged under section 21(4) of the Company Secretaries Act, 1980, and the Council passed an order directing the removal of the name of the respondent member from the Register for a period of one year.

The respondent member preferred an appeal in the Court under section 30 of the Act. The Court, without expressing any opinion on merits of the matter, accepted the respondent Members apology tendered in the Court, and in view of the apology and considering all factors, the Court set aside the order passed by the Council. Thereafter, the respondent members name was reinstated in the Register of Members as Associate Member from the date of removal.

(IX) Clause (10) of Part I of the First Schedule

A complaint was filed against a member of the Institute (hereinafter referred to as 'Respondent') for professional misconduct alleging the following—

- (a) that he has been employed as a company secretary on remuneration while holding a certificate of practice of the Institute;
- (b) he had disclosed information confidential and other acquired by him in the course of his professional engagement;
- (c) he was grossly negligent in the performance of his professional duties and failed to fulfil the requirements of the Companies Act, 1956 and other Acts;
- (d) he was carrying several other business other than full-time employment while holding certificate of practice.

The Respondent in his written statement submitted with regard to allegation (a) that his association with the company was an interim measure and he was appointed to the post of Company Secretary on certain remuneration even without discussion/obtaining any prior consent from the Respondent. Regarding allegation at (b) the Respondent submitted that the same is absolutely vague, false and motivated. Regarding allegation at (c) he stated that he performed his duties completely in accordance with the Articles of Association of the Company and the applicable provisions of the Companies Act. Regarding allegation (d) the Respondent stated that he has not indulged in any business/occupation.

The Disciplinary Committee after enquiry found the Respondent guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Company Secretaries Act, 1980, for engaging himself in employment while having a certificate of practice from the Institute. The explanation/justification of the Respondent that at the time he had resigned from the services of the Company and in anticipation of his being relieved from employment, he had applied for renewal of certificate of practice for the year 1992-93. The Disciplinary Committee observed that the said explanation/justification of the Respondent is not acceptable and it is for the member having certificate of practice of the Institute to ensure the prior approval of the Council before engaging in any business, occupation, employment or other profession and found the Respondent guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Act.

As regards the other allegations, the Committee held that the same have not been proved as were neither proved by the Complainant by evidence nor the documents on record substantiate the said allegations.

The Council after considering the report of the Disciplinary Committee, all the relevant documents, circumstances and representation/s of both the parties, endorsed the findings of the Disciplinary Committee that the Respondent was guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Act and passed an order of '*Reprimand*' against the Respondent.

(X) Clause (1) of Part II of the Second Schedule

A *suo moto* enquiry was initiated by the Institute against the member (hereinafter referred to as 'Respondent') on receipt of information that he had certified the annual returns of one company without having a certificate of practice issued by the Institute and the same was signed by him fraudulently stating himself as a Company Secretary. The act on the part of the member amounted to professional misconduct under clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980.

The Respondent in his written statement stated that - (a) the Institutes letter regarding cancellation of his certificate of practice could not come to his notice due to misplacement by his family member. The said annual returns had been signed by him under the belief that he had been holding the certificate of practice during that period; (b) after realising the mistake, he rectified the same by getting the said annual returns re-certified by some other company secretary at his own expenses. The Council after forming the *prima facie* opinion referred the matter to the Disciplinary Committee for an enquiry. The Disciplinary Committee after enquiry from the documents and information on record observed that it was clear that the Respondent had certified the annual returns without holding a certificate of practice from the Institute. The Respondent had also admitted his said mistake. The contention of the Respondent that he had signed the annual returns under the belief that he had been holding the certificate of practice during that time had not been substantiated by any document or other evidence on record. The Respondents another contention that he had not received the Institutes letter regarding cancellation of certificate of practice at his request was not tenable as, it was obligatory on the Respondent to be sure that his Certificate of Practice had been cancelled in the records of the Institute and also the date of cancellation while holding Certificate of Practice on whole-time basis from ICAI. The Disciplinary Committee found the Respondent guilty of professional misconduct under clause (1) Part II of the Second Schedule to the

Company Secretaries Act, 1980 for contravention of section 6 of the Company Secretaries Act, 1980.

The Council after considering the report of the Disciplinary Committee and the representation of the Respondent found that the Respondent was guilty of professional misconduct for signing the annual returns of a company without holding a certificate of practice under clause (1) of Part II of the Second Schedule to the Act though the said act might have been committed by him *bona fide* and forwarded the case to the High Court under sub-section (5) of section 21 of the Act, alongwith its recommendations that in view of the respondent having admitted his guilt and also apologised for the same he be reprimanded.

The Honble High Court of Rajasthan vide its order dated 10th March, 1997 accepted the reference of the Institute wherein he was recommended to be 'Reprimanded'. Accordingly, the punishment of 'Reprimand' was recorded in the Register of Members against his name.

(XI) Clause (6) of Part I of the First Schedule

A *suo moto* enquiry was initiated by the Institute on receipt of information against the member (hereinafter referred to as 'Respondent') that he had solicited professional work of signing the Annual Returns of a company through a letter, which amounted to professional misconduct under clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980. The Respondent in his written statement admitted that he had been negligent in drafting and sending few letters to the company and also requested for condonation of lapse of any violation. However, the Respondent submitted that the letter under reference was issued by him in connection with some assignment entrusted to him by one bank for the preparation of search report, verification of charges and detailed inventory audit, including the company to which he had sent the letter under reference.

The Disciplinary Committee after enquiry observed that though the Respondent tried to explain and justify his act of omission, yet there was no substance in his explanation/justification and being a senior member of the Institute his statement that the omission was committed by him accidentally and without any intention on his part was not acceptable. The Committee found that the Respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act for issuing a letter to the Managing Director of the company for soliciting professional work.

The Council after considering the report of the Disciplinary Committee, representation of the Respondent and all the relevant

documents and circumstances endorsed the findings of the Disciplinary Committee and held that the Respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act and after affording an opportunity of hearing to the Respondent passed an order of 'Reprimand' against him.

(XII) Clause (6) of Part I of the First Schedule

It was brought to the notice of the Institute that a Member had issued a circular letter offering secretarial services and soliciting professional work which amounted to professional misconduct under clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980 (hereinafter referred to as the 'Act').

On receipt of the information, the Institute initiated *suo moto* enquiry against the Member. The Member in his written statement admitted to have issued a circular letter and stated that the same was issued inadvertently due to absence of knowledge of such prohibition.

The Disciplinary Committee after enquiry found the member guilty of professional misconduct under clause (6) of the Part I of the First Schedule to the Act for issuing the circular letter for soliciting professional work.

The Council considered the report of the Disciplinary Committee, representation of the member and all other relevant documents available on record and attendant facts and circumstances recorded its findings that the respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act and passed the order of 'Reprimand' against him.

(XIII) Section 6 read with Section 24(b)

A criminal complaint was filed by the Institute against a member (hereinafter referred to as the 'Accused') under section 29 read with section 24(b) of the Company Secretaries Act, 1980 (hereinafter referred to as the 'Act'); on receipt of information that the accused appeared, represented and argued before the Company Law Board on behalf of a company in a company petition as a Company Secretary without holding a certificate of practice as required under section 6 of the Act.

The accused made an application pleading guilty before the court. The court accepted the plea of the accused of being guilty and convicted him for the offence under section 6 read with section 24(b) of the Act and sentenced him to pay a fine of Rs. 1,000 (Rupees One Thousand Only). The accused paid the fine in the court.

(XIV) Clause (8) of Part I of the First Schedule

A complaint was filed against a member for violation of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 on the ground that the respondent has accepted the assignment of certification of Annual Returns of a Company for the year 1994-95 without first communicating his acceptance of his position to the complainant in writing. The respondent in his written statement stated that he had accepted the position with prior intimation to the complainant through a letter at Complainants official address and also stated that due date for filing the annual returns for the period ended on 30.9.1995 was 30.11.1995 and there was no time left with him not to sign them on or before 30.11.1995. Otherwise the company has to face the default notice under the provisions of the Companies Act, 1956. The Disciplinary Committee after enquiry found the member guilty of professional misconduct under clause (8) of part I of the First Schedule to the Company Secretaries Act, 1980 in having accepted the certification of Annual Return of the company for the year 1994-95 without first communicating with the complainant in writing.

The Disciplinary Committee observed that mere posing of the letter is not sufficient to comply with the requirements of clause (8) of Part I of First Schedule to the Act, but acknowledgement by the addressee of the same is also essential.

The Council considered the report of the disciplinary committee, representation of the member and other relevant documents available on record and attendant facts and circumstances recorded its findings that the respondent was guilty of professional misconduct under clause (8) of Part I of the First Schedule to the Act and passed the order of 'Reprimand' against him in accordance with sub-section (4) of Section 21 of the Act.

(XV) Professional or other misconduct under Section 21 read with Section 22 of the Company Secretaries Act, 1980

A complaint was filed against a member for professional or other misconduct under Section 21 read with Section 22 of the Company Secretaries Act, 1980 on the ground that the respondent had misappropriated the funds of the Institute, by placing on a printing press an order for printing of brochures and souvenirs for the regional Members' conference and passing the bill of the printer at a rate which was abnormally high and for a quantity more than the actual supply inspite of strong objections from the concerned Regional Council members.

The Disciplinary Committee, after enquiring into the complaint held that the respondent was guilty of professional or other misconduct under Section 21(1) read with Section 22 of the Company Secretaries Act, 1980, in committing an act of gross negligence in awarding the printing contract and passing the bills for payment without following the prescribed procedure and especially to as he was an office bearer of a Regional Council of the Institute.

The Council concurred with the findings of the Disciplinary Committee and after taking into consideration the facts on record, held the respondent guilty of professional or other misconduct and passed an order of removal of respondent's name from register of members of the Institute for one month in accordance with Sub-section (4) of Section 21 of the Company Secretaries Act, 1980.

(XVI) Clause (1) of Part III of the First Schedule

In a *suo moto* inquiry case it was revealed that a company secretary had been making declarations every year that he will practice only as a company secretary on whole time basis and while in practice shall not engage in any business or occupation including vocation and employment) other than carrying a profession of company secretary but it came to the notice that he had filed Annual Return, Annual Report & Accounts of Company under his signature and also signed Notice of AGM on behalf of the Company.

The member was employed as Company Secretary and simultaneously holding the Certificate of Practice. Hence he had been filing wrong declarations for renewal of Certificate of Practice knowing them to be wrong.

The member was held guilty of professional misconduct under clause (1) of Part III of First Schedule to the Company Secretaries Act for filing wrong declaration for renewal of certificate of practice knowing them to be wrong.

(XVII) Clause (1) of Part III of the First Schedule

In another case it came to the notice of the Institute that the Company Secretary had signed the Compliance Certificates during a calendar year in excess of the limit prescribed in ICSI Notification No.1 dated 27th February, 2003 wherein it was notified that a member of the Institute in practice who is entitled to issue Compliance Certificates pursuant to proviso to sub-section (1) of Section 383 A of the Companies Act, 1956 shall be deemed to be guilty of professional misconduct if he issues Compliance Certificates to more than 50 companies in a year.

The member was held guilty of professional misconduct under clause (1) of Part III of First Schedule to the Company Secretaries Act for providing false information knowing the same to be false and Clause (2) of Part II of the Second Schedule for signing the Compliance Certificate in excess of the limit prescribed in Notification ICSI No. 1 of 27th February, 2003.

(XVIII) Clause (1) of Part II of the Second Schedule and Clause (1) of Part III of the First Schedule

In a case the Company Secretary was staying abroad for more than four years however he did not inform the change in address to the Institute and permitted a non-qualified employee to sign the documents on his behalf.

It was decided that the member had made a false statement of having signed the certificates and was, therefore, guilty of offence under Section 628 of the Companies Act, 1956 and also Clause (5), (6) and (7) of Part-I of the Second Schedule to the Company Secretaries Act, 1980. The member also did not apply for special permission as required by regulation 168 of the C.S. Regulation, 1982 Hence he is guilty under Clause (1) of Part II of the Second Schedule to The Company Secretaries Act, 1980 and was also held guilty of professional mis-conduct under Clause (1) of Part-III of the First Schedule of the Company Secretaries Act, 1980.

APPENDIX XXII

Resolution Under Regulation 168 of The Company Secretaries Regulations, 1982 Allowing Members in Practice to Carry out Non-Attestation Services through the New Business Structure of Limited Liability Partnership

The Council at its 227th Meeting held at New Delhi on January 18, 2015 while approving the formation of LLPs by PCS granted general permission to the members in practice to:

- (a) become designated / active partner of a limited liability partnership (LLP) the objects of which include carrying out attestation services which fall within the scope of the profession of Company Secretaries irrespective of whether or not the practising member holds substantial interest in that LLP;
- (b) become passive partner of LLP which is engaged in any other business or occupation provided that the practising member does not hold substantial interest in that LLP.

For the purposes of the above resolution:

- (i) “Attestation Services” include Secretarial Audit and Certification of Annual Return in terms of the provisions of the Companies Act, 2013.
- (ii) Non-attestation Services” means services which are not attestation services.
- (iii) A “passive partner” means a partner of LLP who fulfils the following conditions:
 - (a) he must not be a designated partner;
 - (b) subject to the LLP agreement, he may make agreed contribution to the capital of LLP and receive share in the profits of the LLP; and
 - (c) he must not take part in the management of the LLP nor act as an agent of the LLP or of any partner of the LLP;

However, none of the following activities shall constitute taking part in the management of the LLP:

- (1) Enforcing his rights under the LLP agreement (unless those rights are carrying out management function).
 - (2) Calling, requesting, attending or participating in a meeting of the partners of the LLP.
 - (3) Approving or disapproving an amendment to the partnership agreement.
 - (4) Reviewing and approving the accounts of the LLP;
 - (5) Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the LLP including –
 - (a) the dissolution and winding up of the LLP;
 - (b) the purchase, sale, exchange, lease, pledge, mortgage, hypothecation, creation of a security interest, or other dealing in any asset by or of the LLP;
 - (c) a change in the nature of the activities of the LLP;
 - (d) the admission or removal of a partner of the LLP;
 - (e) transactions in which one or more partners have an actual or potential conflict of interest with one or more partners or the LLP;
 - (f) any amendment to the LLP agreement;
- (iv) a member shall be deemed to have a “substantial interest” in an LLP if he is entitled at any time to not less than 25% of the profits of such LLP.

Appendix XXIII

FAQs on Professional Development**Q.1. What is PCH?**

Ans. The term PCH refers to Programme Credit Hours. Credit Hours represent attendance by a member at approved learning programmes.

Q.2. How many PCH are to be obtained by a member?

Ans. The minimum number of credit hours to be obtained by each member of the Institute upto March 31, 2017 would be as under:

Member's age	Below 60 years		Above 60 years but below 65 years	
	Employment	Practice	Employment	Practice
PCH in each year	10	15	5	8
PCH in block of 3 years	35	50	18	25
CoP / Employment taken during	Employment	Practice	Employment	Practice
1 April 2017 - 31 March 2018	20	30	10	15
1 April 2018 - 31 March 2019	10	15	5	8
1 April 2019 - 31 March 2020	0	0	0	0

Q.3. How do I get PCH?

Ans. A member of the Institute is granted PCH for attending approved learning programmes or for carrying out unstructured learning activities.

Q.4. What is approved learning program?

Ans. Approved Learning Program means any Professional Development Program, Continuing Education Program, Participative Certificate Program of the ICSI, Programmes organised through electronic / distance mode or any other program, Seminar or study circle meeting organised by the Council, Regional Council, Chapter or Satellite Chapter of the Institute, and programmes organised jointly with professional bodies or Chambers of Commerce.

Q.5. What is the manner of calculation of Programme Credit Hours?

Ans. No Program Credit Hours will be awarded for any learning program whose duration is less than 1 hour.

The basis of calculation of Program Credit Hours will be as under:

<i>No. of hours of Learning Program attended by the member</i>	<i>Program Credit Hours (PCH)</i>
Beyond 1 hour and upto 2 hours	1
Beyond 2 hours and upto 4 hours in a single day	2
Beyond 4 hours in a single day	4
Program spanning 1 ½ days	6
Program spanning 2 days	8
Program spanning 2 ½ days and above/National Convention	10

Q.6. How many Programme Credit Hours be granted for unstructured learning activities?

Ans. The members shall be granted Programme Credit Hours (PCH) under these Guidelines for undertaking any of the following unstructured learning activities subject to a maximum of ten PCH in each year of the block:

Sl. no.	Learning Activity	PCH
1	Web based learning including elearning, subject to the production of Certificate, per year.	4
2	Publication of article in a journal of repute other than the Chartered Secretary Journal.	4
3	Publication of book(s).	8
4	Revision of Published Book	4
5	Acting as Guide / Supervisor for M.Phil. / LL.M. / Ph.D.	6
6	Suggestions on Questionnaires / Consultative Papers / Exposure Draft, etc. sought by the Institute.	2

7	Reviewing of Articles / Guideline Answers / Study Material and other publications of the Institute.	4
8	Publication of Research findings / Studies on the areas relevant to Corporate Sector, Capital Markets and Professional interest.	4
9	Publication of articles of professional interest in national dailies.	4
10	Visit to foreign countries as part of government delegation.	4
11	Acting as visiting faculty or guest faculty at the various Universities / Management Institutions / Institutions of National importance.	4

Q.7. Where do I find the details of programmes being organised by the ICSI for its members?

Ans. The details of programmes organised by the ICSI are available on the ICSI website, CS Updates and the Chartered Secretary Journal. For programmes organised by the Regional Councils and Chapters of the Institute, members may contact the respective Regional Council / Chapter offices or refer to their newsletters.

Q.8. What is the current block?

Ans. The current block of three years is from April 01, 2017 to March 31, 2020.

Q.9. What are the consequences if I do not obtain the mandatory Programme Credit Hours within the stipulated time?

Ans. A member who fails to obtain the mandatory Programme Credit Hours during the stipulated period would be liable to disciplinary action for non-compliance with the Guidelines issued by the Council under the provisions of the Company Secretaries Act, 1980 and the CS Regulations as amended.

Q.10. What is the fee for attending the Professional Development Programmes?

Ans. The Fee for each programme organised by the Institute or its Regional Councils and Chapters is disclosed in the programme announcement.

Q.11. Where can I find the information of the Programme Credit Hours obtained by me till date?

Ans. The Institute does not issue physical certificate for Programme Credit Hours, a members may check the status of Programme Credit Hours obtained by him/her by logging in to the ICSI portal for members available at www.icsi.edu

Q.12. Where can I find the PCH Guidelines?

Ans. The Guidelines for Compulsory Attendance of Professional Development Programmes by the Members may be downloaded from the ICSI website at the link: <http://www.icsi.edu/WebModules/CP/PDPGuidelines3.pdf>

Q.13. Who is required to obtain compulsory Programme Credit Hours?

Ans. Every member of the Institute holding a Certificate of Practice or in employment i.e. in whose name eform 32 (in terms of the provisions of the Companies Act, 1956) / DIR -12 (in terms of the provisions of the Companies Act, 2013) has been filed with the RoC is required to obtain the mandatory number of PCH each year.

Q.14. I am a senior citizen (i.e. of more than 60 years of age) do I required to obtain the Programme Credit Hours as prescribed in the Guidelines?

Ans. Members above the age of 60 years shall be required to obtain 50% of the PCH required to be obtained by the members below 60 years.

Q.15. To whom the requirement of Compulsory Programme Credit Hours is not applicable?

Ans. The requirement of compulsory PCH shall not apply to :

- (a) A member who attains the age of 65 years during a particular calendar year.
- (b) A member, for the year during which he gets his Certificate of Practice for the first time.
- (c) A member or class of members to whom the Council may in its absolute discretion grant full/partial exemption either specific/general, on account of facts and circumstances in case of :

- Maternity / Paternity Leave
- Accident/Medical Emergencies
- Unemployment
- Any other case, as may be deemed appropriate by the Council on a case to case basis.

Q.16. I am residing in a remote area where there is no chapter of the Institute. To attend a programme I have to travel 100 kms, can I claim exemption from Programme Credit Hours?

Ans. For Members who reside in places beyond 100 km from the nearest Regional Council/Chapter and attend a program at any Program Learning Centre, they shall be awarded double the Program Credit Hours for which the concerned Program is entitled. However this will not apply to attendance at the National Convention/National Conference of Practising Company Secretaries/Regional Conferences organised by the Regional Councils. Such members have also the option to prepare a research paper on a topic recommended by the Secretariat.

Where the members in practice residing in remote places are not able to attend the professional development programmes, they may write to the Institute for approving a topic on which they can prepare research paper to get the exemption from securing programme credit hours.

The Research paper includes :

- A concept paper on emerging areas of practice for Company Secretaries
- A Referencer/backgrounder on contemporary topics relevant to Company Secretaries
- A booklet on any topic relating to the areas of practice for Company Secretaries
- A monograph on any contemporary topic relevant to the Practising Company Secretaries
- An empirical study of practical relevance to the Practising Company Secretaries

Members whose research paper is approved by the Professional Development Committee of the Council, will be exempted from the requirement of securing programme credit hours for a block of three years.

Members who reside in places beyond 100 Kms. from the nearest Regional Council/Chapter will be entitled for Eight

Programme Credit Hours if their article/reply to prize query is published in the Chartered Secretary.

Q.17. My earnings from practice just enable me to run my family, can I be exempted from payment of fees for attending Professional Development Programmes?

Ans. Such members may acquire PCH through unstructured learning activities.

Q.18. If I am in employment for partial period during a year and unemployed for some time and then I take up practice, then how will the requirement of PCH apply to me?

Ans. Please refer the answer to Question no. 2.

Q.19. I wish to be faculty at the Professional Development Programmes organised by ICSI, whom do I contact?

Ans. You may send your bio data and areas of interest to the Directorate of Professional Development, The Institute of Company Secretaries of India, ICSI HOUSE, 22, Institutional Area, Lodi Road, New Delhi – 110 003.

ANNEXURE XXIV

1. What is Peer Review?

Ans. Peer Review is a process used for examining the work performed by one's equals (peers) and to understand the systems, practices and procedures followed by the Practice Unit and to give suggestions, if any, for further improvement.

2. To whom all would Peer Review be applicable?

Ans. Peer Review is applicable to all Practicing Company Secretaries.

3. What is the meaning of Practice Unit?

Ans. Practice Unit means members in practice, whether practicing individually or a firm of Company Secretaries.

4. What are the practice areas covered under the scope of Peer Review?

Ans. The Review would only be in respect of the following services::

- a. Signing of Annual Return pursuant to Section 161(1) of the Companies Act, 1956
- b. Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013
- c. Issue of Compliance Certificate pursuant to Section 383A(1) of the Companies Act, 1956
- d. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- e. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges
- f. Certificate of reconciliation of Capital as per SEBI Circular dated Dec. 31, 2002
- g. Conduct of Internal Audit of Operations of Depository Participants
- h. Certification under Clause 49 of Listing Agreement

5. Whether the concept of Peer Review exists for CWA's and CA's?

Ans. The Institute of Chartered Accountants of India has a mechanism of Peer Review of their Members in Practice.

6. What are the advantages of the Peer Review to the Practice Unit (PU)?

Ans. It is expected to

- A) enhance the quality of attestation services.
- B) enhance credibility and provide competitive advantage.
- C) provide a forum for Guidance and knowledge sharing.

7. How much will it cost me to get Peer Reviewed?

Ans. You shall pay to the Peer Reviewer the fee of Rs. 10,000/- to the Peer Reviewer (inclusive of TA/DA and any out of pocket expenses) as may be prescribed by the Peer Review Board from time to time.

8. What is the frequency of Peer Review?

Ans. Initially, each Practice Unit would be required to be peer reviewed at least once in every five years.

9. How will I be selected for Peer Review?

Ans. You may apply to be peer reviewed or it may be done through random selection by the Peer Review Board.

10. If I have been Peer Reviewed can I disclose this on my website?

Ans. Only the fact of being Peer Reviewed can be stated. However, neither the Certificate nor the Peer Review Report may be given on the website.

11. Can I become a Peer Reviewer?

Ans. Any member of the Institute who fulfills the following criterion may apply to be empanelled as a Peer Reviewer-

- (a) possesses at least 10 years of post membership experience
- (b) is currently in practice as a Company Secretary.

12. Will the information disclosed by me be kept confidential by the reviewer?

Ans. The Peer Reviewer is bound by a Confidentiality Agreement with the Peer Review Board. If the Reviewer misuses the information disclosed by you he may be subject to disciplinary action by the Institute.

13. If I am Peer Reviewed and it is found that I have not maintained adequate records, will I be liable for any disciplinary action?

Ans. No.

14. Is the Peer Reviewer exposed to any liability?

Ans. The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.

15. After the Peer review of my records do I get any protection from disciplinary proceedings under the Code of Conduct?

Ans. No. Peer Review is only a broad examination of the systems and procedures followed by the Practice Unit. The fact that you have been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review. (Refer Cl. 18 of the Guidelines for details)

16. What do I do if I am not satisfied with the Report of the Peer Reviewer?

Ans. You may refer your case to the Peer Review Board.

17. If I am selected for Peer Review is it mandatory for me to offer myself for Peer Review?

Ans. Yes

18. Do I need to disclose the records of my clients to the reviewers?

Ans. No

19. (A) Can any of my clients ask the Institute to get me peer reviewed?

Ans. Yes

(B) Who will pay the cost of such Peer Review?

Ans. The client shall pay the cost of such Peer Review.

20. Will ICSI be issuing any Certificate after Peer review?

Ans. Yes.

21. Will ICSI put up the names of the PU which have undergone PR on ICSI website?

Ans. Yes

23. What are my obligations as a Practice Unit?

Ans. Refer Cl. 12 of the Guidelines

24. Can I volunteer to get Peer Reviewed?

Ans. Yes

25. I have been Peer Reviewed once, will I be Peer Reviewed again?

Ans. Yes, if the Peer Review Board so decides.

26. Can I choose my Peer Reviewer?

Ans. The Peer Review Board would send you a panel of at least three reviewers and you may choose any one name out of the panel sent to you.

27. Can I reject all the reviewers mentioned in the panel and ask for another reviewer from the same State or region?

Ans. Yes.

28. If I want a Peer Reviewer from out side my State or region what should I do?

Ans. You may make a special request to the Peer Review Board to provide names of such Peer Reviewers. However, in such a case you would have to bear the extra cost that would be incurred for TA / DA etc.

29. If I am not satisfied with the order of the Peer Review Board can I appeal to the Council?

Ans. Yes. You may appeal against the Order of the Peer Review Board to the Central Council of the Institute. (Refer cl. 17.3 of the Guidelines)

30. Can I refuse to get myself Peer Reviewed?

Ans. No. Any refusal to get Peer Reviewed shall be a misconduct under the Code of Conduct

ANNEXURE XXV

Annual Membership and Certificate of Practice Fees for 2018-19

The Annual Membership and Certificate of Practice fee for the year 2018-19 became due for payment w.e.f. 1st April, 2018 and last date for payment of the same will be 30th June, 2018. Members are requested to pay the fee along with applicable GST before the last date. The fee payable is as follows:--

Particulars	Associate (admitted till 31.03.2015)	Associate** (admitted on or after 01.04.2015)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee*	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295
Certificate of Practice fee*	Rs. 2360	Rs. 1770	Rs. 2360

* Fee inclusive of applicable GST@18%.

** Annual Membership Fee of Rs.1770/- and Certificate of Practice fee of Rs. 1770/- w.e.f. 01-04-2017 for associate members who were admitted on or after 01-04-2015 are valid for initial two years only including the admission year (irrespective of date of obtaining the Certificate of Practice in the year of admission) and the following year. The Annual membership and Certificate of Practice fee will be automatically revised to full thereafter.

• **Click Here To Pay Fees Online**

(*) The Certificate of Practice fee must be accompanied by an application for renewal of Certificate of Practice in the revised form-D (available on the web-site) duly completed in all respects and signed for renewal of Certificate of practice for the year 2018-19.

For queries, if any, the members may please contact Mr. Jitendra Kumar, Executive Assistant for Annual Membership Fee and Mrs. Vidhya Ganesh, Executive Admin for COP Fee on telephone nos. 0120-4082174/2133 or through e-mail at jitendra.kumar@icsi.edu or vidhya.ganesh@icsi.edu

"Method of remittance"

The fee can be remitted by:-

1. Cheque at par drawn in favour of 'The Institute of Company Secretaries of India' (Indicating on the reverse the Name & Membership No.) at the counter of the Institute's Head Quarter at Delhi /Noida or Regional/Chapter offices located at Mumbai, Kolkata, New Delhi, Chennai and Ahmedabad, Bangalore, Chandigarh, Hyderabad, Jaipur, Pune respectively. Out station cheques will not be accepted.
2. Demand draft/pay order drawn in favour of 'The Institute of Company Secretaries of India' payable at New Delhi. (Indicating on the reverse the Name & Membership no.)
3. At ICSI HQ at Delhi or Noida in person by cash/cheque at par/DD at the reception counter from 9:00 AM to 4:00 PM.
4. Online Payment through Institute website i.e www.icsi.in

Acceptance of Annual Membership Fee in Advance

The members if they so desire, can pay advance membership fee for three years. The scheme for accepting the Annual Membership fee in advance from members within and outside India for a period of period of three years is as under:-

1. Advance fee would be accepted for a period of three years only. Members desirous of availing this facility are, therefore, advised to calculate the advance fees, based on the fee/ rates for the time being in force.
2. The advance amount received by the Institute would not be adjustable for any other fees due, such as amount payable at the time of enrolment as fellow, grant of Certificate of Practice afresh/ renewal after a gap etc. The members would be required to pay such fee separately while submitting the prescribed application form(s) etc. for the purpose.
3. Payment of advance fees is only a facility to members and that it would in no manner mean that because of the advance payment of fees their membership is secured upto the relevant year(s). In spite of the advance payment of fees, continuance or otherwise of their membership would be subject to the provisions of the Company Secretaries Act, 1980 and the Rules and Regulations framed thereunder.

4. In case the advance lying to credit of the member's account falls short of subsequent year's fee requirement, it would be the responsibility of the member to send the requisite amount as advance or balance of membership fee for the subsequent year.
5. Refund of advance fee received would not be allowed under any circumstances except in case of removal of the name of a member from the Register of Members under the provisions of the Company Secretaries Act, 1980, the Company Secretaries Regulations, 1982 and the Rules.
6. In the case of death, the fee for the year in which deletion of the name takes place would be deducted and the balance of the advance fee paid, if any, would be refunded to nominee(s)/ legal heir(s) of the member concerned. In all other cases, the balance of advance fee, after such a deduction as aforesaid, if any, would be kept to the credit of the member concerned for adjustment towards annual membership fee payable at the time of restoration.
7. Interest on the advance fee would not be payable at all.
8. In case of members residing abroad payment of advance fee should be made in Indian currency i.e. the draft/ cheque drawn on the designated Indian branch for credit to the account of the Institute. However, where the fee has been sent in foreign currency, conversion of foreign currency would be at the rate applicable on the date when the Institute bankers give credit.

Concession in Payment of Annual Membership Fee

Pursuant to Company Secretaries (Amendment) Regulations, 2010, came into force w.e.f 26th July, 2010 published in the Gazette of India Extraordinary Part-III Section 4, a member who is of the age or sixty years of above and is not in any gainful employment or practice can claim 50% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in the specified format.

Further a member who is of the age of seventy years or above and is not in any gainful employment or practice can claim 75% concession in the payment of Associate /Fellow Annual membership fee subject to the furnishing of declaration in the specified format.
