INTRODUCTION TO COMPANY SECRETARY

BY: ASST. PROF. SANJANA BHARADWAJ
DEPARTMENT OF LAW, SAVITRIBAI PHULE PUNE UNIVERSITY
The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice.

The Companies Act 2013 has introduced a new concept for appointment of the Key Managerial Personnel at `top level of the organizational structure. In the new Act the position of company secretary has been enhanced multifold, from record keeper to key managerial personnel. A present day company secretary is expected to do statutory, administrative, managerial and strategic functions.

Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company’s compliance with the provision of the Act.
ACCORDING TO SECTION 2(51) "KEY MANAGERIAL PERSONNEL", IN RELATION TO A COMPANY, MEANS—

- (i) the chief executive officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the chief financial officer;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed.
Company Secretary or —secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a Company Secretary under this Act; (The Companies Act 2013)

According to Section 2(1)(c) of the Company Secretaries Act, 1980, company secretaries are the people who are the member of the Institute of Company Secretaries of India. Hence, he/she is a member of ICSI and performs various ministerial and administrative functions of the organization.
WHO IS REQUIRED TO HAVE COMPANY SECRETARY/ KMP?

All listed company and all other company having paid-up share capital of Rs. 5 crore or more shall have whole-time Company Secretary.

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<tr>
<th>Company having Paid Up capital <strong>less</strong> than 5 Crore</th>
<th>It is <strong>OPTIONAL</strong> to appoint a Whole Time Company Secretary</th>
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<tbody>
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<td>Company having Paid Up capital <strong>More</strong> than 5 Crore</td>
<td>It is <strong>MANDATORY</strong> to appoint a Whole Time Company Secretary</td>
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The Companies Act 2013 does not provide the period wherein the Company has to designate Company Secretary as (KMP) key managerial personnel.

But it is advisable to appoint a Company Secretary as KMP in the first board meeting which is to be conducted after applicability of such a provision.
Under the Companies Act, the role of a secretary is three-fold, viz., as a statutory officer, as a co-ordinator and as an administrative officer if so authorized. Similarly, the responsibility of company secretaries extends not only to a company, but also to its shareholders, depositors, creditors, employees, consumers, society and government.

The role of a company secretary may conveniently be studied from three different angles:

(a) as a statutory officer,
(b) as a co-ordinator,
(c) as an administrative officer.
If a company contravenes the provisions relating to appointment of whole-time key managerial personnel (which includes company secretary), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall also be punishable with fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
Company Secretaries in practice are those persons who are independently carrying on public practice. Under the old Companies Act, 1956, these company secretaries in practice have a duty to issue compliance certificate to the companies who have paid-up capital of more than 10 lakh Rupees but not more than 5Lakh Rupees.

Whereas the new Companies Act, 2013 has enhanced the role of company secretaries in practice by providing with the opportunities such as promotion, formation and incorporation of companies, secretarial audit and certification services, signing of annual return, appointment of company liquidator, assistance to company liquidator, and many more.
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<td>1. Compliance Certificate</td>
<td>Under the old Companies Act, 1956, company secretaries have to issue a compliance certificate to the companies. Hence, their major function was to issue the compliance certificate.</td>
<td>Under the Companies Act, 2013 the role of CS (Company Secretaries) has increased by providing with the opportunities such as promotion, formation, and incorporation of companies, etc. Hence, their performance area has increased.</td>
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<td>2. Appointment</td>
<td>Every company with paid-up share capital of more than Rs.5 lakhs had to appoint a CS.</td>
<td>Every listed company having paid-up share capital of more than Rs.10 lakhs has to appoint a CS.</td>
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<td>3. Penalty</td>
<td>If a company fails to appoint a CS, the penalty was Rs.500 per day. Hence, there were fewer restrictions.</td>
<td>If a company fails to appoint a CS, the penalty is not less than Rs.1 lakh. Hence, there is more control over the appointment.</td>
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The need and the role of the company secretaries have been increased with the advent of the new Companies Act 2013, and if the company does not comply with the aforesaid provisions there is a penalty for the same.
ALL THE BEST.

IN CASE OF ANY DIFFICULTY, PLEASE FEEL FREE TO EMAIL AT
SANJANA.B80@GMAIL.COM