Empowerment of the Company Secretary Profession

Lesson 17

KEY CONCEPTS

■ Company Secretary & Governance Professionals ■ Sustainability ■ CSR ■ Board Governance ■ ESG

Learning Objectives

To understand:

- Past, current and evolving role of Company Secretaries
- Role of Company Secretary in Employment and in Practice
- International legislative aspects on the role of company secretary
- Company Secretary and Board Governance
- Role of Company Secretary in ESG
- Regulatory frameworks governing Company Secretary Profession
  - The Company Secretaries Act, 1980
  - The Company Secretaries (Regulations) 1982
  - Companies Act, 2013

Lesson Outline

- Introduction
- Genesis-CS profession
- Company Secretaries in practice and company secretaries in employment
- Evolving Role of Company Secretary in 21st Century –International Perspective
- Law applicable to Governance professionals in different jurisdictions
- Innovation in Board Governance-Role of Company Secretary
- Company Secretary and ESG
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

INTRODUCTION

Company Secretary (CS) professionals are recognized as Key Managerial Personnel (KMP) under the Companies Act, 2013, wherein they are entrusted with a senior-level position in the management and are an intrinsic part of the Board of corporate entity. Since past five decades, Professionals have witnessed a substantial and spectacular growth and development made by Institute of Company Secretaries of India (ICSI) especially in the areas of recognitions obtained from various Agencies/ Government for the benefit of its members. The ICSI provides top-quality education to the students of Company Secretaryship (CS) Course and has set best quality standards at each level. CS as hardcore professionals have developed core competence in compliances and corporate governance. They are specialized professionals in the matter of compliance enjoined under various statutes and rules, regulations, bye-laws, guidelines made thereunder.

The dynamics of an emerging eco-system, the complexities of modern business, the expectation of the multifarious stakeholders that a Corporate Entity should discharge its societal obligations responsibility, the collapses of large Corporations in jurisdictions on account of governance failures have all contributed to the Company Secretary playing a structural role in the echelons of corporate hierarchy. That the fraternity has acquitted itself well in such an environment bears testimony to its resilience and its constant endeavour towards being a torch - bearer to the corporate governance movement. As the opportunities are getting increased on account of changed economic, commercial, legal and digitalised environment, among various professions, CS is a preferred Professional.

Corporate Secretaries are key managerial personnel occupying pivotal positions in their companies. They have a central role in fostering good governance practices and supporting the development of highly functioning Boards. The Corporate Secretary is a resource and confidante to the Board and senior management, providing advice and counsel on Board responsibilities and duties. They are integral to the company's corporate governance as the glue behind effective decision-making and advancing priorities. The Corporate Secretary is the guardian of the company's reputation, playing a pivotal role in maintaining the company's legal and social license to operate. Aware of the dynamic interaction between all players within the Board room, Corporate Secretaries can play a critical role in increasing the level of attention and ownership of sustainability by the Board. As a member of the management team, the Corporate Secretary shares overall responsibility with the CEO, c-suite, executive management and relevant specialist functions for ensuring the Board is aware of sustainability trends and best practices and that it identifies and takes account of sustainability in its stewardship and oversight of the company. From keeping the Board informed on governance issues, to ensuring corporate policies approved by the Board are followed, to helping safeguard the corporate reputation and helping directors contribute to effective decision-making, the Corporate Secretary is a strong catalyst for implementing good governance in a company's business practices, organizational culture and strategic affairs. As such, they are well-placed to support the Board to address the rising risks and opportunities generated from sustainability.

Excerpts from Discussion Paper titled "The Essential Role of the Corporate Secretary to enhance Board Sustainability Oversight" by United Nations Global Compact

GENESIS-CS PROFESSION

Recognition of Company Secretary Profession – A fascinating journey

In 1887, Lord Justice Esher made the remarks on the duties of the Company Secretary while writing out his judgment in The Court of Appeal in *Barnett Hoares & Co. v South London Tramways Co. (18 QBD 1887)* that, company secretaries could not be assumed to have authority for anything. A Secretary is a mere servant, his position is that he is to do what he is told.

It took 90 years for the Judiciary to take note of the emergence of the Company Secretary in the Corporate World. The remarks made by the celebrated Lord Denning, M.R *in Panorama Developments (Gilford) Ltd v Fidelis Furnishing Fabrics Limited (1971) (3 All ER 16) (CA)* observed as under:

> *"........ times have changed. A Company Secretary is a much more important person nowadays than he was in 1887. He is an Officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Act but also by the role which he plays in the day to day businesses of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day to day running of the company's business. So much so that he may be regarded as held out as having authority to do such things on behalf of the company.........".*

The above acknowledgement in the status of the company secretary coming as it did from no less a person of the stature of His Lordship was most definitely a defining moment announcing his arrival as an important cog in the wheel where a corporation was concerned. The growth in his stature was in keeping with the greater and wider acceptance of the corporate form of business, the emergence of corporate laws, bringing in its wake, the requirements of a host of compliances.

The Corporate Governance movement which was in its embryotic stages of growth around that point in time was also given a major fillip in the UK through the recommendations of the Report of the Committee headed by Sir. Adrain Cadbury. The UK Companies Act also made it necessary for every company to appoint a Company Secretary. This was a shot in the arm for the profession –the grant of its legitimate legal status.

The Companies Act – Growth Saga for Profession

- Section 383A of the Companies Act, 1956 was introduced by the Companies (Amendment) Act, 1974 with effect from 1.2.1975 to provide, inter alia, that companies having the prescribed threshold capital shall appoint a whole time Secretary and in cases where the Board of a company comprised of only two directors, neither of them could be the Secretary. Further sub-section (1A) imposed a penalty on the company and its officers in default in case of failure which was of a continuing nature to comply with the above requirements.
- Another major development which took place after the insert of Section 383A was, the requirement to provide for the issue of a Secretarial Compliance Certificate to be issued by a Company Secretary in Practice in respect of those companies which had a paid-up share capital exceeding rupees ten lacs but not in excess of rupees fifty lacs which did not have a Secretary on its rolls.

> The Constitution of the Institute of Company Secretaries of India as a statutory body under an Act of Parliament was another positive development which provided a further impetus to the growth of the profession. It is more than five decades, when on 4th October, 1968 the profession of Company Secretaries (CS) was born, being the date on which Institute of Company Secretaries of India (ICSI) was incorporated.

- Section 2(45) was introduced by the Companies (Amendment) Act, 1988 effective from 1.12.1988 to define a Secretary as a Company Secretary within the meaning of section 2(1)(c) of The Company Secretaries Act, 1980. The duties of the Secretary, apart from ministerial or administrative duties, were left open-ended to cover such areas as are identified under the Companies Act, 1956.
- The Companies Act, 2013 largely captures the nuances of the changes that were recommended by the Dr. J.J. Irani Expert Committee on Company Law. The new Act recognizes the company Secretary as a Key Managerial Personnel (KMP) under Section 2(51). The Company secretary stands shoulder to shoulder to other senior personnel in the corporate echelons. For the first time in the statute, the functions and responsibilities of the Company Secretary have been identified under Section 205 of the Act.
- The statutory recognition accorded to the Secretarial standards-1 and 2 under the Act helped standardize Board practices in the matter of holding meetings of the Board and general meetings of members, set

up new benchmarks for furthering the cause of corporate governance and made the presence of the company secretary in the Board room incredible.

Positive Game Changer Committees for Profession

SEBI set up under the Chairmanship of the Kumar Mangalam Birla, a Committee to promote and raise the standards of corporate governance. This marked the first and comprehensive endeavor to evolve a Code of Corporate Governance in Indian Companies as also in the growing capital markets. The recommendations of the Committee culminated in the inclusion of Clause 49 in the Listing agreement which listed companies had to enter into, in the year 2000. Clause 49, inter alia, provided for an optimum composition of the Board comprising of both independent and non-independent directors. That apart, the company secretary's role was recognized in the form of his acceptance as the Compliance Officer.

The requirements relating to Corporate Governance were spruced up and elevated further in the wake of recommendations contained in the Naresh Chandra Committee which revisited issues such as auditors' independence, conflicts of interest, and enhanced financial disclosures-all of which were areas in which the company secretary had a key and proactive role to play. The Report embraced substantially the issues addressed in the Sarbanes-Oxley Bill (Popularly referred to as SOX) which was the immediate fallout of Enron bankruptcy and other colossal corporate failures.

The Narayana Murthy Committee submitted its Report in February 2003 and the main thrust in the Report were in the areas of strengthening the areas of responsibility of the Audit Committee, improving the quality of financial disclosures, including disclosures on related party transactions, etc. Each time an endeavor was initiated to up the ante in so far as corporate governance was concerned, the company Secretary's position and role became more and more significant since he had to be the prime mover and carry forward the agenda of change.

SEBI regulations-Recognitions to Profession

SEBI Regulations recognize the company Secretary as the Compliance Officer. He is also now considered as part of the Senior Management and is responsible inter alia, for timely and truthfully disseminating information on material issues concerning the company, apart from being the guide to the Board.

The Secretarial Audit Report as also the Certificate on compliance and on Corporate Governance issued by the Company Secretary in Practice have provided to the Board, the much needed assurance as regards statutory compliances by companies. The Secretary also has to ensure that there is no abusive use of price-sensitive information and has lately been taken to task by the Judiciary for acts of indiscretion.

COMPANY SECRETARIES IN PRACTICE AND COMPANY SECRETARIES IN EMPLOYMENT

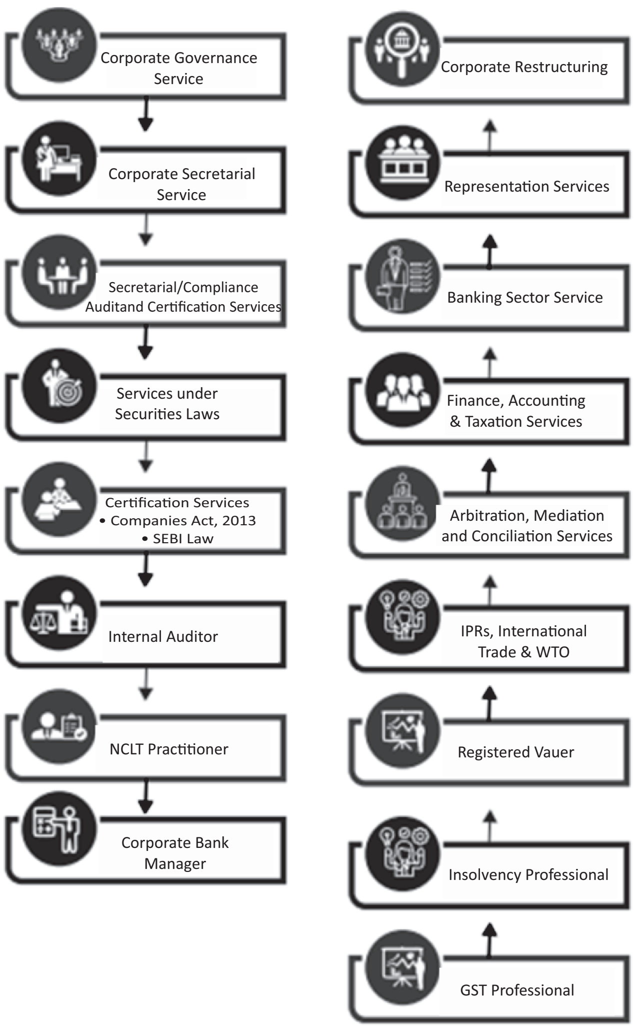
A student who has passed the Professional Programme examination of the Institute and has undergone prescribed training or exempted therefrom on the basis of experience is eligible to apply for Associate membership of the ICSI. After receiving the membership of the ICSI, member is entitled to be engaged either in employment or in practice. A Company Secretary in employment is a robust professional aiding the efficient management of the corporate sector by playing the role of a Key Managerial Personnel (KMP) or Compliance Officer of a company. The Company Secretary has become to be accepted by all as an independent and indispensable professional. The role of Company Secretary in employment has transformed itself into a full-fledged Governance Professional occupying a critical place in the company's organizational hierarchy balancing the interests of the Management, Board, Shareholders and other stakeholders. Alternatively, a Company Secretary may also practice independently as a professional after obtaining a Certificate of Practice (CoP) as provided in the Company Secretaries Act, 1980. Not merely concentrating on Corporate laws, Company Secretary in practice is the preferred professional who is finding depth in the areas of Intellectual Property, Business advisory, International laws, Commercial laws, Economic growth & Development projects, etc.

A birds eye view of the role of CS in employment and CS in practice is as under:

Recognitions to Company Secretary in Employment

- Companies Act, 2013
- SEBI (LODR) Regulations, 2015
- SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
- IFSCA (Issuance and Listing of Securities) Regulations, 2021
- PNGRB (Gas Exchange) Regulations, 2020
- IRDA (Registration of Indian Insurance Companies) Regulations, 2000
- IRDA (Corporate Governance) Guidelines for Insurers in India, 2016
- Life Insurance Corporation General Regulations, 2021

Core areas for Company Secretary in Practice



EVOLVING ROLE OF COMPANY SECRETARY IN 21ST CENTURY –INTERNATIONAL PERSPECTIVE

Changing role of Company Secretary –How different Governance Institutes across globe perceive?

1. Chartered Secretaries Southern Africa

Company Secretary and AI

- AI will abolish the repetitive and administrative tasks, which still form part of the Company Secretary's role.
- AI will reduce the manual workload and will automate lower level functions of the Company Secretary, thereby improving due diligence and providing assistance with compliance procedures.
- AI should be seen as an opportunity rather than a threat, to improve the overall knowledge base and fiduciary controls within the company.
- AI will not eliminate the strategic and advisory functions performed by Company Secretary, however, it will assist the Company Secretary in expediting these functions.

Preparedness for future

Following are some of the duties of Company secretaries that may be subject to automation subject to the level of complexity associated therewith:

- Lodging documents with regulatory bodies: this is a repetitive task which comprises routine, methodological and fact-based work and may be automated.
- Filing and distributing document such as annual financial statements of the company: As the task requires filing financial statements via XBRL, it is of repetitive nature and be automated efficiently with minimal supervision.
- Distributing minutes of the meeting: distribution of minutes of the meeting to all committee members via email can be easily automated using an algorithm.
- Drafting and distribution of the agenda and notice of the meeting: an agenda and notice will often follow the same format with same members and time so it can be easily automated with further inputs by the Company Secretary.
- Distributing board packs for meeting: Board packs are distributed electronically via digital platforms. Further, tasks like attendance response, scheduling events and conducting survey can be automated leaving Company secretary with quality time to spend on analyzing the issues to be raised and research on relevant topics prior to the meeting.
- Taking minutes of meetings and noting resolutions taken, and recording them in electronic format: Robots present in the meeting alongside company secretary can lead to more productive and informed meetings by providing information on statistics, data etc. This will provide quality time to company secretaries to provide valuable insight into complex and critical issues.
- Drafting and reviewing mandatory and repetitive clauses in contracts and company policies: Reviewing contract can be automated. However, drafting of complex clauses of a contract which require though and precision needs to be drafted by qualified humans with requisite intellect.
- Performing role of trusted advisor to the board and advising on associated risks: The advisory role of company secretary is a complex and challenging role which requires knowledge, opinion, judgment and emotional intelligence which a robot lacks. Thus this duty is unlikely to be automated and firmly lies with the Company Secretary.

- Conducting board evaluation and inducting new directors: Board evaluation questionnaires can be easily automated but conducting interviews with directors require human elements of judgment. Therefore induction would still be a human function.
- Distinction between confidential information and the one which is not: This requires the application of judgment and reason as to what constitutes confidential and what is not confidential. Therefore, as a trusted advisor of the board such tasks performed by a company secretary cannot be automated.

Way Forward

- The automation of repetitive and administrative tasks would enable the Company Secretary to focus more time on more complex tasks.
- AI should be seen as an opportunity for company secretaries which will reduce their time on administrative and repetitive tasks and allow them a greater voice within an oragnisation by having more time to focus on ensuring that the company is good corporate citizen and legally compliant.

2. Governance Institute of Australia: Future of Governance Professional, August 2019

Impact of Technology disruption:

- AI and Machine learning (ML) would change the role of the Company Secretary by making the role more interesting. But there would still be a need for humans to oversee machines and to make qualitative judgments.
- Machines don't have the same emotional intelligence and creativity as humans. Machines also lack the ability of humans to see nuances, read facial expressions or grasp boardroom dynamics.
- As governance issues are often neither black nor white, therefore, machines would not be as good as humans in dealing with that 'grey' zone that requires intuition and 'gut feel'.
- Machine lacks the value of wisdom and experience, which are often undervalued in today's cut-throat commercial world, but still forms a very important part in the success of an organisation.

3. Grant Thornton: Is the role of Company Secretary fit for future?

Impact of technology on the role of Company Secretary:

- Board pack circulation: the vast majority of organisations reported a change to the governance role through the impact of technology. Many of them now use some kind of electronic board pack circulation (this ranged from email to the use of more sophisticated board apps).
- Technology had fundamentally changed the administration part of the role of Company Secretary. Through the use of electronic board apps, board packs can be sent more securely and easily.

4. ICSA- Future Proofing: Technological innovation, the company secretary and implications for Corporate Governance

AI as a potential disruptor but a potential benefit also keeping in view the following points:

- Minute-taking devices, using algorithms and machine learning area potential disruptor to the profession of Company Secretary. These applications use 'speech to text' technology to create meeting minutes.
- Human supervision and oversight will still be essential to ensure accuracy, content and style but it is certain that the deployment of these applications will grow and become an accepted tool.

- This technology is a disruptor but at the same time a potential benefit also to the profession. As this will lead to the necessary evolution of the role of company secretarial and governance profession from focusing on compliance and administration to adding value through our knowledge, technical ability and strategic oversight

5. ICSA-Next Generation Governance

- The focus of company secretaries across all age demographics for safeguarding high quality governance remains on the core elements of procedures and controls, stakeholder engagement and communication.
- Three important social issues could be relevant to governance in the future:
  - demographic change;
  - technological change; and
  - environmental sustainability
- *Demographic changes*: Millennial expect organisations of all types to play a part in dealing with economic, environmental and social challenges – not just the organisations that would typically address these issues as their raison d'être.
- *Technological changes*: the potential for technology to create a more unstable job market could develop into a prominent governance issue.
  - Some tasks may be streamlined by technology, but it would involve a considerable amount of additional work – for example, taking into account ethics and privacy.
  - Ethical considerations are emerging as a consequence of technological change, with little ownership being taken over as to how to address them.
  - The negative side of recent technological developments is becoming more apparent from controversies surrounding social media firms to an increased awareness of the environmental damage caused by technology – for example, a global annual average of 50 million tonnes of e-waste.
  - Learning algorithms based on neural networks –is a more complex form of machine learning that makes it significantly harder to trace the basis on which AI makes its decisions, meaning errors cannot be explained or rectified.
  - the ability of forms of AI to interpret and store emotional insights from 'affective data' (such as facial expressions or voice intonation) could give rise to sophisticated forms of manipulation or imbalance in many stakeholder relationships – for example, as a form of power over employees or consumers.
- *Environmental sustainability*: Environmental sustainability may seem most relevant to the governance of large organisations with significant carbon footprints or sector specific exposure to the impact of extreme climate events.
- Other factors that have impact on the quality of governance:
  - Procedures and controls
  - Social purpose
  - Communication

- Diversity
- Stakeholder engagement
- Equitable pay policies

The challenge for governance professionals going forward will be to ensure that organisations' procedures and controls go far enough – covering how decision making, authority and accountability are exercised within the organisation in relation to issues of social concern that might once have been considered outside the traditional remit of governance for that type of organisation.

Sustainability and social responsibility are more embedded terms, encompassing how a company will be functioning in ten or twenty years' time and what it is doing to ensure that this will be the case.

ROLE OF COMPANY IN BOARD GOVERNANCE

The company secretaries are identified as conscience of the company for quite sometime and is documented in Corporate Secretaries Tool Kit by IFC, World Bank Group. While the expanding role of Company Secretaries include functions beyond compliances including ESG strategies, ESG integration to the business, the functions are closely associated and linked to Board Governance. Board Governance include Board processes, Meeting management, Board Independence and conflict management, reporting of financial and non-financial aspects. The functions of Company secretary starts from the appointment process, induction of directors, training, advisory role on ESG and business strategies, meeting process, agenda management, committee constitution, establishment of Board portal and so on.

Discussion paper titled "The Essential Role of the Corporate Secretary to Enhance board sustainability Oversight: A Best Practices Guide" By the United Nations Global Compact, highlighting the role of Corporate Secretary in Board Governance

This discussion paper mapped the role of Corporate Secretary's role with Corporate sustainability which is as under:

Overview of traditional duties and responsibilities of the Corporate Secretary	*Suggested connections to corporate sustainability governance*
Governance processes and Governance Committee • Maintain relevant governance processes and structures through regular reviews and updates to the Board Manual and other Governance Documents • Keep current on evolving practices in corporate governance and advise the Governance Committee and the Board • Serve as chief expert and advisor on all corporate governance matters for Directors and employees • Serve as executive liaison to the Governance Committee • Administer the corporate code of conduct and other Board policies	Monitor the external environment to remain fully informed of corporate sustainability governance trends, emerging issues and best practices – especially those of relevance to the sector or key issues. Inform the Governance Committee on trends and changes in best practice corporate sustainability governance and regulator expectations. Determine and implement amendments to governing documents, processes and structures to incorporate sustainability oversight roles for the Board. Ensure executive and key employees understand the emerging trends in corporate sustainability governance. Along with other executives, ensure the Board regularly reviews, updates, and monitors compliance with corporate sustainability policies.

Overview of traditional duties and responsibilities of the Corporate Secretary	*Suggested connections to corporate sustainability governance*
Board roles and responsibilities ● Advise the Board on its roles and responsibilities (possibly a shared role with legal counsel) ● Draft and maintain roles and responsibilities for the Board and Directors	Include 'sustainability oversight' within the Board and Director roles and responsibilities.
Chairperson and Committee Chairperson liaison ● Support the Chairpersons' effectiveness	Inform the Chairperson or Committee Chairperson of trends and best practices in corporate sustainability governance.
Management liaison ● Support management's relationship with the Board	Inform the CEO of trends and best practices in corporate sustainability governance, as a shared responsibility with the sustainability prime. Support the company's sustainability prime to effectively bring sustainability risks and opportunities to the Board's attention.
Meeting agendas ● Prepare the Board agenda in consultation with the CEO and Chairperson; advise the Chair, CEO and Committee Chairs of items that should be brought to the attention of the Board. ● Prepare and assemble briefing material to permit Directors to properly prepare for meetings	Include sufficient time for sustainability discussions on regular Board agendas, ideally embedded in all relevant discussions. Include reports of the sustainability committee (if there is one) during the main agenda, and not at the end of the meeting when time is short. Ensure meeting packages include sufficient information of sustainability impacts, risks and opportunities, including stakeholder considerations, for the Board to make informed decisions.
Meeting documentation ● Oversee the drafting and maintenance of meeting minutes	Record Board discussions of sustainability and stakeholder considerations in meeting minutes.
Director recruitment and Nominating Committee ● Serve as executive liaison to the Nominating Committee ● Help the Board develop recruitment criteria for new Directors (skills, experience, attributes, diversity)	Support the Board to include diversity as a Board composition factor, increasing the number of women on the Board and greater diversity of skills, ethnicity, cultural background and age. Recommend that sustainability be included in the skills matrix and that at least one Director have skills / experience in corporate sustainability including executives from corporations with a successful track record on sustainability or topic experts. Ensure Director search firms have sustainability networks and insights.

Overview of traditional duties and responsibilities of the Corporate Secretary	*Suggested connections to corporate sustainability governance*
New Director orientation • Facilitate the orientation of new Directors	Include sustainability within the new Director orientation, including 1) an overview of sustainability risks, opportunities, strategy, performance, standards, policies and key stakeholders and their priorities, etc.; and 2) sessions with sustainability leaders in the organization. Include a copy of the company's most recent sustainability report in the orientation manual.
Board and Director training and education • Establish and facilitate ongoing education for the overall Board and individual Directors to improve Director and Board effectiveness	Secure time during Board and Committee meetings for education and in-depth review of sustainability risks, opportunities, impacts, trends and dependencies, including stakeholders and their key issues, to ensure the Board has the proper information and knowledge. Include sustainability education sessions in the Board calendar. Identify sustainability education opportunities for Directors. *All Board members should have generic sustainability skills and knowledge such as basic awareness of sustainability and how it affects the organization; basic understanding of what is corporate sustainability; ability to identify at a high level the most material sustainability impacts of and on the organization, its value chain, industry and operating context; knowledge of key stakeholders and their priorities and issues; understanding of how poor sustainability performance can create reputational and other risks; ability to articulate how sustainability relates to the purpose and strategy of the organization; understanding of sustainability trends generally and as they affect the industry and their impact on the company; knowledge of the company's business case for sustainability, including how sustainability can contribute to long-term value creation such as the ability to attract and retain talent and stimulate innovation.*
Board, Chair, Director and Committee evaluation • Advise and support effective formal performance assessments	Ensure the Board's evaluation processes assess Board and Director sustainability skills, experience and contribution (e.g. do Directors feel informed about sustainability trends and issues as they impact the company, its value chain, industry and operating context; effectiveness of the Board's role in monitoring the company's sustainability performance; whether the Board demonstrates a commitment to sustainability in its decisions and

Overview of traditional duties and responsibilities of the Corporate Secretary	*Suggested connections to corporate sustainability governance*
	actions; whether Director demonstrates knowledge of the sustainability policy and strategy and their application to the business, the degree to which sustainability is considered in Board decisions, etc.); use results to inform training, procedures or recruitment.
Disclosure and reporting ● Draft for Board approval an annual report of the company's governance practices	Include disclosure on corporate sustainability governance practices in annual and sustainability reports following internationally accepted reporting standards (e.g. Global Reporting Initiative Guidelines).
Board communications ● Manage Board communications with shareholders and other external stakeholders ● Coordinate the annual general meeting	Include sustainability in shareholder communications and ensure effective Board- stakeholder relations (for example, through the establishment of an expert sustainability or stakeholder advisory committee to the Board). Disclose sustainability results at annual general meetings (e.g. via a sustainability or annual report).
Board operations ● Coordinate Board meetings, venues, accommodations, meals, travel arrangements, gifts, etc.	Incorporate sustainability practices into meeting arrangements.
Personal performance planning ● Manage personal performance and professional development plans	Incorporate corporate sustainability governance within the Corporate Secretary's job description, performance and professional development plans and performance evaluations.

In addition to these formal roles, the Corporate Secretary has informal roles to bring sustainability into the Boardroom. Informal roles include:

- The Corporate Secretary can leverage the Governance Committee relationship by raising the corporate sustainability governance topic with the committee.
- Through relationships established with the Board and committee chairs, the Corporate Secretary can informally bring up the topic of corporate sustainability governance as an emerging governance trend and best practice.
- Given the proximity to the C-suite, the Corporate Secretary can bring these ideas to management's attention.

The Corporate Secretary can support the sustainability prime in securing a spot on the Board's agenda, preparing the sustainability report to the Board and making Board presentations.

COMPARATIVE ANALYSIS OF LAW APPLICABLE TO GOVERNANCE PROFESSIONALS IN DIFFERENT JURISDICTIONS

Malaysia

The responsibility of the company secretary has evolved from merely advising on administrative matters to advising boards on governance matters. The company secretary through the Chairman, plays an important role in good governance by helping the board and its committees function effectively and in accordance with their terms of reference and best practices.

The roles and responsibilities of a company secretary include, but are not limited to the following:

- Manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings and facilitate board communications;
- Advise the board on its roles and responsibilities;
- Facilitate the orientation of new directors and assist in director training and development;
- Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;
- Manage processes pertaining to the annual shareholder meeting;
- Monitor corporate governance developments and assist the board in applying corporate governance practices to meet the board's needs and stakeholders' expectations; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

A suitably qualified company secretary possesses the knowledge and experience to carry out his functions. These may include knowledge in company and securities law, finance, governance and other areas of compliance such as the listing requirements. The company secretary should undertake continuous professional development.

Vietnam

Corporate Secretary-

Corporate Secretary - a senior management position in a public company. The corporate secretary plays an essential role in a company's governance and administration by providing critical support to enable the Board of Directors and other key governing bodies of the company to perform their duties and responsibilities. This position has a wide range of responsibilities that cover the four main areas: Governance, Advice, Communication and Compliance.

The Board shall appoint a professionally qualified Corporate Secretary who is accountable directly to the Board of Directors on all matters to do with the proper functioning of the Board.

Recommended Practices:

The modern Corporate Secretary is normally a senior management position of the company and is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions.

The Corporate Secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management. The Corporate Secretary would also act as a bridge between the company and its shareholders and stakeholders, however in big companies this is the job of an "investor relations officer".

The roles and responsibilities of a Corporate Secretary include, but are not limited to the following:

(a) Manage all board and committee meeting logistics, attend and record;

(b) Minutes of all board and committee meetings and facilitate board communications;

(c) Advise the board and board committees on its roles and responsibilities;

(d) Facilitate the orientation of new directors and assist in director training and development;

(e) Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;

(f) Manage processes pertaining to the annual shareholder meeting;

(g) Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations; and

(h) Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

To carry out his/her role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the company, its shareholders, and others with a legitimate interest in the company's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the company operates as well as of the laws, rules, and regulations that govern its activities. The Corporate Secretary should undertake continuous professional development and maintain neutrality and objectivity in supporting the Board and relevant bodies in its work.

COMPANY SECRETARY – INTERNATIONAL PERSPECTIVE

The UK Corporate Governance Code 2012, 2014 and 2024

According to UK Corporate Code 2012, the Supporting Principles mentioned that under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non- executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should be responsible for advising the board through the chairman on all governance matters.

As mentioned in the Supporting Principle of the UK Governance Code 2014, the company secretary should be responsible for advising the board through the chairman on all governance matters. Further, the Code Provision B.5.2 of the mentioned code states that all directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

The UK Corporate Governance Code, 2018 & 2024 states that the board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently. Moreover, as per Provision 16, all directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board.

ROLE OF COMPANY SECRETARY IN ESG

The complexities of modern business have given rise to the growth of newer areas of specialization for the fraternity. Apart from the provisions of the Companies Act, 2013, which has substantially increased the scope of practice for a CS and expectations of the regulator from Company Secretaries, both in employment and in practice, considering the impact created by the profession in guiding the corporates in governance and compliances as also shaping the regulatory framework beyond the boundaries of Company Law in areas such as FEMA, Competition Law, Securities Law, Insolvency, Valuation, Taxation Laws, Arbitration etc., it can be said that CS is the preferred professional with multi-disciplinary focus in the field of Corporate Laws.

The demand for CS professionals continues to grow with increasing expectations from the Corporates and the Regulator. The expectations from the Company Secretaries, as they are increasingly being referred to as "governance professionals" now also extend to the areas of Corporate Social Responsibility (CSR), Business Responsibility and Sustainability Reporting (BRSR) and Environment Social Governance (ESG), all of which put together highlights the focus on sustainability, where the CS has infinite opportunities to excel as a preferred professional.

In the Indian context, some of the initiatives where the CS, whether in practice or in employment, is the ideal professional to advise the corporates, investors, social enterprises etc. as also the stakeholders, are in the areas such as:

1. Environment, Social and Governance (ESG) and CS

Environment, Social and Governance (ESG) are important non-financial metrics. Investors nowadays analyse the risks and opportunities giving due weightage to the non-financial metrics as well in addition to the financial metrics before taking investment decisions.

The disclosure requirements in the wake of emerging ESG landscape are rapidly as well as dynamically changing and these are quite challenging for any company. CS being at the centre-stage with respect to reporting to the Board and their committees on various non-financial metrics as part of his / her responsibilities towards governance is in an ideal position to provide internal support to the various sustainability initiatives.

2. Business Responsibility and Sustainability Reporting (BRSR) and CS

Business Responsibility and Sustainability Reporting (BRSR) ushered in a contemporary corporate world replacing the conventional Business Responsibility Reporting (BRR) guidelines by SEBI in 2021 with the aim of augmenting ESG disclosures and reporting, thus leading to enhanced transparency and accountability. Business Responsibility and Sustainability Reporting (BRSR) was adopted by SEBI as a new reporting framework in 2021 replacing Business Responsibility Reporting (BRR). It is mandatory for companies listed in the top 1,000 markets in India on the basis of their market capitalization to report on their BRSR. Climate change, biodiversity, water management, and supply chain sustainability are just some of the ESG issues companies are required to report on under the BRSR framework which seems to be much wider in scope than BRR (SEBI, 2021). Moreover, companies are required to report their commitment to the Paris Climate Agreement and to the Sustainable Development Goals of the UN. A business's environmental, social, and governance (ESG) practices and the impact they have on stakeholders and the environment are disclosed through Business Responsibility and Sustainability Reporting (BRSR).

The scenario promises good prospects in the form of exciting opportunities to a new generation of ESG professionals where a CS (both in employment and in practice) may well find themselves to be "the preferred professionals" considering their exposure to Governance and Compliance Management systems in the corporate world, which will give them a definite edge over other professional.

3. Social Stock Exchange (SSE) and CS

The Concept of Social Stock Exchange (SSE) was floated in the early part of this century with a view to provide a platform for channelising investments focusing on social objectives. In India, the proposal for setting up an electronic fund-raising platform in the form of SSE under the regulatory framework of SEBI was announced in the Union Budget presented in July 2019. The role of SSE as a platform that allows investors to buy shares in a social enterprise. A SSE, could perform the following functions such as serving as a mediator between social enterprises that need funding and investors who are willing to invest their money, providing investors with procedures for simpler investment in social projects and providing investors with procedures for simpler investment in social projects etc.

CS is better equipped on structuring of enterprises, registration procedures with the SSE, listing procedures and compliances and will naturally be the preferred professional, as these new opportunities come up in the emerging scenario. Though areas such as impact analysis and social audit are new areas for the CS, the ability of the profession to network and co-ordinate / lead a multidisciplinary team should motivate the CS.

4. Social Audit and CS as Social Auditor

At this juncture, it is also pertinent to discuss about social audit. The term social audit refers a formal review of a company's endeavours, procedures, and code of conduct regarding the company's social responsibility and the company's impact on society. The objectives of social audit is that of accurate identification of requirements, prioritization of developmental activities as per the requirements, proper utilization of funds coupled with conformity of the developmental activity with the stated goals along with quality of service. The examples of activities covered under the scope of social audit are- Environmental impact resulting from the company's operations, Community development and financial contributions made by the company, Charitable contributions made by the company, Work environment including safety, free of harassment, Equal opportunity etc.

Since ICSI has come out with 'Social Auditing Standards', it has created new opportunities for Company Secretaries as Social Auditor. The social auditing standards of ICSI are as under:

1. Social Audit Standard on eradicating hunger, poverty, malnutrition and inequality (ICSI SAS-01).
2. Social Audit Standard on promoting health care including mental healthcare, sanitation and making available safe drinking water (ICSI SAS-02).
3. Social Audit Standard on promoting education, employability and livelihoods (ICSI SAS-03).
4. Social Audit Standard on promoting gender equality, empowerment of women and LGBTQIA+ communities (ICSI SAS-04).
5. Social Audit Standard on ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation (ICSI SAS-05).
6. Social Audit Standard on protection of national heritage, art and culture (ICSI SAS-06).
7. Social Audit Standard on training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports (ICSI SAS-07).
8. Social Audit Standard on supporting incubators of Social Enterprises (ICSI SAS-08).
9. Social Audit Standard on supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building (ICSI SAS-09).
10. Social Audit Standard on promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector (ICSI SAS-10).
11. Social Audit Standard on slum area development, affordable housing and other interventions to build sustainable and resilient cities (ICSI SAS-11).
12. Social Audit Standard on disaster management, including relief, rehabilitation and reconstruction activities (ICSI SAS-12).

13. Social Audit Standard on promotion of financial inclusion (ICSI SAS-13).
14. Social Audit Standard on facilitating access to land and property assets for disadvantaged communities (ICSI SAS-14).
15. Social Audit Standard on bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection (ICSI SAS-15).
16. Social Audit Standard on promoting welfare of migrants and displaced persons (ICSI SAS-16).

5. Corporate Social Responsibility (CSR) and CS

Though some large corporate houses in India were voluntarily spending a portion of their profits towards social causes, given the gaps in the needs of the social sector, these initiatives were far too insufficient vis-à-vis the needs. Section 135 of the Companies Act, 2013 read with Schedule VII thereto along with the Companies (Corporate Social Responsibility Policy) Rules, 2014 contain the framework for CSR, which becomes applicable to a company (listed as well as unlisted) based on thresholds of Profits, Turnover and Net Worth.

The CS (both in employment and practice) is already actively involved in the compliances related to CSR. CS in employment being a KMP has to ensure that the provisions of Section 135 along with Schedule VII of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 are complied in letter and spirit. He / She plays an active role in the conduct of the proceedings of the CSR committee, in the evolving of the CSR policy, in its implementation and co-ordination of the various aspects of the compliances with different departments of the company. Companies not required to employ a whole time CS invariably look to a CS in practice for advisory and consultancy services relating to CSR compliances.

6. CS as Chief Risk Officer

Section 134(3)(n) of the Companies Act, 2013 mandates every company to include the following in its Board's Report:- a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

A large number of companies are found to be compliant of the aforesaid statutory requirement merely by way of including a small statement in the Board's Report, without actually identifying the risk or simply considering the financial risk as the only risk for which is not an ideal situation. Risk identification and their mitigation is a significant activity and it should not be taken so casually. Even a single adverse event can damage the company and its reputation. Thus, risk management being an indispensable element of business provides immense scope for the Company Secretaries in the capacity of a Chief Risk Officer. As Chief Risk Officer, the Company Secretary may be entrusted with the task of risk identification, risk measurement, risk mitigation, risk related disclosures etc. Moreover, different forms of risks such as compliance risk, legal risk, country risk, operational risk, etc., requires varying risk management approaches and in view of this, Company Secretary can play a pivotal role in efficient risk management of companies.

7. Climate Change and the Corporate Secretary

As investors, regulators and other stakeholders increasingly challenge companies to demonstrate an integrated, strategic approach to addressing climate change risks and opportunities, the role of the Corporate Secretary is critical to ensuring that Boards are equipped with the right tools to make the best possible decisions to appropriately address climate risks and opportunities.

Taking cognizance of the aforesaid facts, it is pertinent to discuss the CSIA and PwC Survey conducted in the third quarter of 2020 to explore as to how organisations are addressing climate change from a governance perspective, and particularly its impact on the role of the Corporate Secretary.

The key objectives of the survey were to gain insights into:

- the measures regulatory authorities have taken to manage and respond to climate change risks.
- the extent to which entities have adopted regulatory guidance/principles on climate change and embedded them into their corporate culture.
- the allocation of responsibilities (including delegations) within the entity with regards to climate change.
- the role of the Corporate Secretary (or other equivalent position) in influencing corporate governance practices that address climate change.
- the current overall awareness of climate change and maturity of the organisation.
- the current knowledge, skills and expertise of both the Corporate Secretary (or other equivalent position) and the Board specifically relating to climate change.
- current training received by both the Corporate Secretary (or other equivalent position) and the Board on the topic of climate change and related matters (i.e. climate change risks and opportunities, emerging trends and issues) as well as identifying training needs.
- the extent to which climate change is reported on, the frequency of internal and external reporting and the extent to which related disclosures on climate change are made.
- the risk management process and the extent to which climate change risks are identified, responded to, mitigated and monitored.

This survey highlighting the role of the Corporate Secretary on climate change and ESG matters, it stated that If a Corporate Secretary is involved in major decision-making with respect to business expansion and investment proposals, they can always contribute to responsible decision making that is informed by detailed analysis of proposals and expansion programmes that align with the culture, vision and mission of the organisation.

As Corporate Secretaries, are aware of the SDG and the MDG goals as adopted by the United Nations, and as responsible professionals, they can advise the Board to match up their business objectives with a greater vision for the world. This not only ensures higher ESG contribution to the country, but makes organisations stand out as role models for others throughout the world.

8. Climate Governance and the Company Secretary

The board has a fiduciary duty and accountability for the company's long-term sustainability and resilience with respect to potential changes in the business model that may result from climate change. Board meeting time is valuable, but climate change has to be on the board's agenda from a compliance standpoint as a result of the disclosure requirements stipulated in the ESG Reporting Guide.

Given the governance role of company secretaries, they are critically positioned to advise boards on the significance of the potential impacts that climate change may have on business operations. They can also ensure discussion among board members of key climate-related issues, and promote a proactive effort by the board to address stakeholders' increasing need for climate-related disclosure information by implementing the TCFD recommendations.

Depending on the impact of climate change issues on the company's operations, the level of its commitment and the maturity of its climate change management, company secretaries may assist the implementation by phases as recommended in the TCFD Status Report 2020.

Five key ways that company secretaries can assist in climate governance and help implement the TCFD recommendations are explored below.

1. **The Company Secretary as climate governance professional**

   Company secretaries can assist organisations in building their climate governance infrastructures, including putting in place structures, policies and procedures for managing climate-related risks and opportunities. They can also help by improving the boards' and management's understanding of their roles and responsibilities in creating a good culture for effective climate governance. Some practical ways in which company secretaries can assist with climate governance are:

   - ensure climate-change related oversight roles and responsibilities are incorporated in board and subcommittees' mandates.
   - advise the board to set up a dedicated subcommittee to manage climate change issues if their impacts are financially material to the company.
   - ensure climate-change elements are embedded in the board and corporate culture and values.
   - ensure the board is well informed of the latest climate-related trends through continuous training.
   - help the board understand how management identifies, assesses and manages climate-related risks and opportunities.
   - assist in capacity building by advising the board and the nomination committee to consider including climate-related expertise in their composition, and
   - ensure that management takes up its role in assessing and managing climate-related issues.

2. **The Company Secretary role in strategy**

   The uncertain and dynamic nature of climate change may affect the long-term viability of a company. It is therefore crucial that the board regularly assesses the resilience of the company's strategy and operations with regard to climate change under different scenarios and related mitigating measures. Company secretaries should ensure that there are adequate strategic discussions on climate change issues at board meetings. These meetings should cover, but not be limited to, the following:

   - trends in sustainability or decarbonisation practices in the industry
   - the type of climate-related risks and opportunities that the company is facing
   - the potential financial impact and priority of these material risks and opportunities on business strategy, model, operations, sectors and geography
   - the estimation of when these material climate-related financial impacts may materialise
   - resilience of the company's strategy regarding climate change under different climate scenarios, and
   - regular updates on scenario analysis and related assumptions by management.

   Company secretaries should also ensure that the discussions are in line with the company's long-term strategic goals and objectives, and in the best interests of the company. If the discussion results in significant business decisions being made, such as making changes to the business model or closing or acquiring business units in response to climate change, the company secretary should facilitate the board's engagement with shareholders on the proposed changes. The company secretary should also ensure that the strategic planning and decisions made by the board are well documented for future reference.

3. The Company Secretary's role in risk management

Climate change will give rise to a set of new risk factors, including both physical and transition risks, affecting the company's operations. The board must take a leadership role in the management and oversight of climate-related risks and opportunities. Traditionally, the audit committee has been assigned with the responsibility for oversight of risk management and internal controls. In the context of climate change, the audit committee's role may include:

- initiating the identification of financial risks that arise as a result of physical and transition risks, which will facilitate comprehensive valuation of financial risk
- incorporating a climate change lens across the three lines of defense: business ownership, risk management and oversight of internal audits, and
- validating and incorporating climate-related financial disclosures within the remit of corporate disclosure.

4. The Company Secretary's role in monitoring risks and opportunities

The TCFD recommendations necessitate the disclosure of metrics and targets that will be used by the board to monitor climate-related risks and opportunities, and to measure performance against the targets set. Company secretaries should advise their boards to hold management accountable for climate-related performance by incorporating performance metrics into remuneration to incentivise the C-suite and executives. The role of the company secretary may also include:

- coordinating with management or the ESG function to suggest appropriate metrics and targets on key climate-related risks and opportunities for the board's consideration
- ensuring the board has discussed and approved relevant metrics and targets
- analysing metrics performance information and comparing against targets, and reporting to the board for regular monitoring and formulating measures to close any gaps, and
- ensuring disclosure of accurate metrics and targets information.

5. The Company Secretary's role in disclosure

Company secretaries have the primary responsibility for drafting the governance section of the company's annual and ESG reports. In the context of implementing the TCFD recommendations, as part of the ESG report, company secretaries should:

- coordinate and oversee the ESG/sustainability working group in collecting the relevant information required from different internal stakeholders for disclosure
- ensure the quality and accuracy of climate-related disclosure by obtaining independent assurance of the company's compliance with reporting principles and disclosure requirements
- ensure the disclosure of climate-related issues and that figures are appropriate and comply with TCFD recommendations requirements, and
- ensure that disclosures are reviewed and signed off by management and the board before distribution.

COMPANY SECRETARY: PROTECTING CORPORATE GOVERNANCE PRINCIPLES

There is a huge responsibility casted on the Company Secretary to ensure good governance and protect the interest of all stakeholders. If they fail to perform their duty diligently, they will fall into the category of "officer in default" under the eyes of law.

Sometimes due to, varied reasons it engenders friction between the board and Company Secretary over the due compliance of the applicable laws, and such confrontation puts them in a bind. Under such a scenario, one can rarely imagine the situation where Company Secretary went to the court or quasi-judicial body against the Board or other stakeholders in a bid to perform his duties.

The National Company Law Tribunal (NCLT), Chennai Bench, dealt with a similar matter where Company Secretary approached it as his last resort for ensuring the due compliance. The order was pronounced by the NCLT Chennai Bench on 01st July, 2022 in the matter of *Mayank Agarwal vs. M/s. Technology Frontiers (India) Private Limited*

Brief About the Case:

The matter is pertaining to compliance with the Significant Beneficial Ownership provisions, initially Mr. Sriram Srivatsan (Company Secretary) issued a notice to the company whose holding in their company falls under the threshold of Significant Beneficial Ownership provisions and asked them to disclose their ultimate beneficial owner.

As per the Significant Beneficial Ownership provisions, upon issuance of the notice, the company is required to disclose its ultimate beneficial owner. In the instant case, the Company Secretary went to NCLT as the company was not complying with the regulatory requirements.

The nominee director (Mr. Mayank Agarwal) of the respondent company refuted the stance by filing an Interlocutory Application, by arguing that the Company Secretary does not have a locus stand to file the petition as the board has not authorized him to file the same and the Companies Act, 2013 does not empower him to supersede the Board of Directors.

Historical Instances:

Mr. Mayank Agarwal (Applicant) is a nominee director appointed by M/s Crest Investment Holdings Pvt. Ltd. on the Board of Directors of the M/s. Technology Frontiers (India) Private Limited and Mr. Sriram Srivatsan is a Company Secretary (Respondent) of M/s. Technology Frontiers (India) Private Limited.

Mr. Mayank Agarwal (Applicant), filed an Interlocutory Application before NCLT Chennai Bench and following were the prayers as main relief:

(a) To declare that the Company Petition is not maintainable and dismiss the company petition at the outset;

(b) Direct Mr. Sriram Srivatsan, Company Secretary to solely bear all cost associated with the present petition.

The main petition was filed by Mr. Sriram Srivatsan, Company Secretary for ensuring compliance of mandatory requirements mentioned under the provisions of the Companies Act, 2013.

Section 90 of the Companies Act, 2013 states that:

"(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control (herein referred to as "significant beneficial owner"), shall make a declaration to the company in form BEN-1, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed. Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section."

"………….(4) Every company shall file a return of significant beneficial owners of the company in Form BEN-2 and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(4A) every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe–

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.

(7) The company shall, —

(a) Where that person fails to give the company the information required by the notice within the time specified therein; or

(b) Where the information given is not satisfactory,

apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed."

In this case, Company Secretary Mr. Sriram Srivatsan had sent the notice to the Applicant's company on 03rd May, 2021 along with the form to disclose their Ultimate Beneficial Ownership of the shares held.

The applicant filed this application to adjudicate the maintainability of the main petition filed by the Company Secretary.

Applicant (Mr. Mayank Agarwal) Contentions in this Case:

– The Company {M/s. Technology Frontiers (India) Private Limited} alone is empowered to apply to NCLT under section 90(7) of the Companies Act, 2013 and the company acts through its board of directors and Company Secretary has not taken any approval from the board of directors to file the present petition and there is no Board Resolution nor has any delegated authority to present the present petition.

– That any suit or any other legal proceedings can be instituted by a director or officer of the company such as Company Secretary only on the strength of valid Board Resolution duly passed authorizing them to do so and in absence of such board resolution if any suit or legal proceedings is instituted then there has to be a board resolution ratifying the defect, failing which the suit or legal proceedings cannot be maintained.

- That the Company Secretary has no locus standi to file a petition under section 90 and is not empowered by section 205 or any other provisions of the Companies Act, 2013 to bypass or supersede the Board of Directors of a company and substitute the authority and powers of the Board of Directors in Company Secretary's own wisdom.
- Certain aspects on professional misconduct on part of Company Secretary was also alleged by the applicant.
- Written Submissions by the Respondent Company Secretary (Mr. Sriram Srivatsan) in this case:
- It was submitted that he has the locus standi on account of board resolution duly passed by the board of directors at the time of his appointment which states that he is appointed as the Compliance Officer of the company and he is required to perform the duties as required under the Companies Act, 2013 and any duties assigned by the board of directors from time to time.
- The respondent also quoted Order 29, Rule 1 of the Civil Procedure Code, 1908 which states that in suits by or against a corporation, any pledging may be signed and verified on behalf of the Corporation by the security of by any director or other principal officer of the corporation who is able to dispose to the facts of the case.
- That the Company Secretary being an officer as per the above quoted rule have the authority to enter into pleadings on behalf of the Company in absence of a formal authorization from the Board of the company more significantly to ensure compliance by or on behalf of the Company in which he has been appointed in that capacity.
- The respondent also refer the provisions of the Companies Act and the rule wherein he submits that by virtue of Section 205 of the Companies Act, 2013 he is authorized to represent and it is his duty to do so. Section 205 states the Functions of Company Secretary which include that it is his duty to report the board about compliance with the provisions of this Act, rules made there under and other laws applicable to the company and to ensure that the company complies with the applicable secretarial standards.
- The respondent also states that Rule 10 (4) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that Company Secretary can represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act.

NCLT Observations:

The Bench observed that the Company Secretary is the secretary of the Company and not the Secretary of the shareholders. He is appointed under the Companies Act, 2013 pursuant to a board resolution in respect of which appointment is given effect by filing the prescribed form with the Registrar of Companies so as to ensure statutory compliances failing which he is the only Officer who receives the Show Cause notice from the Registrar of Companies so also the Company. He would be required to face the penal consequences in the event of failure of compliances. He is answerable to the violations of the compliance requirement.

Company Secretary are the watchdog of protecting corporate governance principles and ensuring the interest of all stakeholders and not a bloodhound. He has to ensure that the company complies with all regulations, and in case of any failure on the part of the board, he should approach the competent authority.

The bench further stated that the era in which the Company Secretary occupied the position of a glorified clerk in Companies has expired consequent upon evolution of corporate governance and the various compliance requirement in a complex regime so as to protect the interest of the company as well as its various stakeholders.

The bench also noted that the Company Secretary acted diligently by approaching the appropriate authority.

Pronouncement:

The Bench dismissed the Interlocutory Application and held that being Company Secretary falls under the definition of the Key Managerial Personnel (KMP) under Section 2(51) of the Act, and officer in default under Section 2 (60) of the Act and power enshrined to them under Section 205 (1)(c) of the Act, read with Rule 10 clause 4 of the Companies (Appointment and Remuneration of the Managerial Personnel) Rules, 2014, he has the power to represent the company before various regulators and other authorities in the discharge of the various duties under the Act and has locus standi in present case to file such application. NCLT being a quasi-judicial authority the Company Secretary can very well represent before the same.

Conclusion:

This judgment and case throws the light on evolved duties of the Company Secretaries and expectations of the regulators from the Company Secretary. From the order, it is inferred that for the regulators, the diligent act is not by putting the compliance requirement over a mail, this will not absolve them from the officer in default. The regulators expect a leap beyond it by approaching the respective regulatory authority.

LESSON ROUND-UP

- AI and Machine learning (ML) would change the role of the Company Secretary by making the role more interesting.
- The company secretaries are identified as conscience of the company .
- While the expanding role of Company Secretaries include functions beyond compliances including ESG strategies, ESG integration to the business, the functions are closely associated and linked to Board Governance.
- Environmental sustainability may seem most relevant to the governance of large organizations with significant carbon footprints or sector specific exposure to the impact of extreme climate events.
- Sustainability and social responsibility are more embedded terms, encompassing how a company will be functioning in ten or twenty years' time and what it is doing to ensure that this will be the case.

GLOSSARY

- **Governance**: The system by which entities are directed and controlled. It is concerned with structure and processes for decision making, accountability, control and behavior at the top of an entity.
- **Technological changes:** The potential for technology to create a more unstable job market could develop into a prominent governance issue.
- **Stakeholder engagement**: Stakeholder engagement is the process by which companies communicate and get to know their stakeholders. By getting to know them, companies are able to better understand what they want, when they want it, how engaged they are and how the companies' plans and actions will affect their goals.
- **Algorithm**: A procedure or formula used to solve a problem, or a series of instructions which tell a computer how to transform a data set into useful information. Algorithms are used widely throughout all areas of information technology.
- **Artificial Intelligence (AI):** The ability of machines and systems to acquire and apply knowledge, and to carry out intelligent behavior.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)

1. How Artificial Intelligence and other technological developments are going to change the role of Company Secretary in future?
2. How the dynamics of emerging eco-system is going to change the role of governance professionals?
3. What are the three social issues that could be relevant to governance in the future?

LIST OF FURTHER READINGS

- Corporate Governance: Principles, Policies and Practices, Third Edition by A.C. Fernando
- Corporate Governance: Principles and Practices by Sandeep Goel
- Company Secretarys Handbook 3rd/edition by Helen Ashton, Kogan Page India Pvt. Limited
- KSK Publishers Be An Outstanding Company Secretary A Practical Guide For Success In Exams & Life by Ritesh Kalra Edition 2018

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PART II

RISK MANAGEMENT