

## CHAPTER

# 12

**EXPECTED  
MARKS COVERAGE  
(5 to 10)**

# LEGAL FRAMEWORK GOVERNING COMPANY SECRETARY

## Covering-

- Regulatory Framework
- Associate CS and Fellow CS
- Company Secretary in Employment
  - Company secretary – definition
  - Importance of company secretary
  - Legal position of company secretary under various laws
  - Appointment of company secretary
  - Manner of appointment of company secretary
  - Functions of company secretary
  - Powers of secretary
  - Duties of a secretary
  - Role of secretary in a company
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- Who can practice
- Register of Members
- Disciplinary Mechanism
- Disciplinary Directorate
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- Professional Misconduct and other Misconduct
- Procedure for making enquiry into professional or other misconduct, consequences thereof and appeals
- UDIN & eCSin
- Self Test Questions
  - From ICSI Module

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# LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES



The word '*secretary*' is derived from the word '*secret*' implying that there is something confidential and secretive about his job.

## REGULATORY FRAMEWORK

### Legal framework /Act/Regulations/Guidelines

1. The Company Secretaries Act, 1980
2. The Company Secretaries Regulations, 1982
3. The Company Secretaries (Amendment) Regulations, 2020.
4. ICSI (Guidelines For Advertisement By Company Secretaries), 2020

## ASSOCIATE CS AND FELLOW CS

The members of the Institute shall be divided into two classes designated respectively as Associates and Fellows.

### ASSOCIATE MEMBERS

According to Regulation 4(1) of The **Company Secretaries Regulations, 1982** as amended by The **Company Secretaries (Amendment) Regulations, 2020**.

**No person** shall be entitled to have his name entered in the **Register as an Associate**, unless he,—

(a) has passed examinations conducted by the dissolved company and has completed practical training either as prescribed in the earlier regulations or as prescribed in the Company Secretaries (Amendment) Regulations, 2020 or
(b) has passed the qualifying examinations and completed the practical training as prescribed in these regulations; or
(c) has passed such other examination and completed such other training <u>outside India</u> as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed in these regulations; or
(d) had registered himself as a student with the <u>Institute of Chartered Secretaries and Administrators, London</u> on or before 31st December, 1972 and had passed the <b>Final Examination or Professional Programme Examination of that Institute</b> and had either possessed the required practical experience or undergone the prescribed <b>practical training</b> as stipulated for candidates passing the Final Examination or Professional Programme Examination <b>conducted by the Institute</b> ; or

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- (e) **is an Indian citizen** who is a “**person resident outside India**” as defined in clause (w) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) and **has become a member of the Institute of Chartered Secretaries and Administrators, London**, after passing the qualifying examination conducted by that Institute and had either possessed and **required practical experience in India or abroad**, or undergone the prescribed practical training as stipulated for the candidates passing the Final Examination or Professional Programme Examination conducted by the Institute.

## **FELLOW MEMBERS**

According to Regulation 4(2) of The Company Secretaries Regulations, 1982 as amended by The Company Secretaries (Amendment) Regulations, 2020.

- (i) **No person** shall be entitled to have his name entered in the Register as a Fellow unless he, -

- |   |
|---|
| (a) was a <b>Fellow including Honorary Fellow of the dissolved company</b> immediately before the commencement of the Act; or   |
| (b) was admitted as a <b>Fellow under the earlier regulations</b> ; or  |
| (c) is an <u>Associate and has been in continuous practice</u> in India as a Company Secretary <b>for at least five years</b> ; or  |
| (d) is an <b>Associate for a continuous period of not less than five years and possesses such qualifications or practical experience</b> as may be determined by the Council. |

- (ii) **No Associate member** shall be admitted as a fellow member of the Institute, if, -

- |   |
|---|
| (a) he has been found <b>guilty of any professional or other misconduct</b> and his <b>name has been removed</b> from the Register or <b>he has been imposed fine</b> referred in sub-section (3) of sections 21A or subsection (3) of section 21B at any time during the <b>preceding five years on the date of application</b> ; or |
| (b) <b>he has not completed</b> such minimum numbers of <b>Professional Development Credit Hours</b> as may be determined by the Council:   |

Provided that in the case of any person belonging to any of the classes mentioned in sub regulations (1) and (2), **who is not permanently residing in India**, the Council may, by resolution, determine, **such further qualifications and conditions**, as it may deem necessary or expedient.”

## **COMPANY SECRETARY IN EMPLOYMENT**

### **COMPANY SECRETARY - DEFINITION**

#### **SECTION-2(24)**

According to **Section 2(24)** of the Companies Act, 2013 “*Secretary means a*

*‘company secretary’ within the meaning of section 2(1)(c) of the Company Secretaries Act, 1980*

*who is appointed by a company to perform the functions of a company secretary under Companies Act, 2013.*

**Section 2(1)(c) of the Company Secretaries Act, 1980** defines a company secretary as a person who is a member of the Institute of Company Secretaries of India.

### **IMPORTANCE OF COMPANY SECRETARY**

The importance of secretary is specially felt in the business world **since the business organizations have to abide by certain legal requirement**. The secretary is entrusted with the responsibility for **due compliance with all such legal formalities**. The secretary also acts as a **liaison officer** between the management and the staff as well as the outsiders.

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## LEGAL POSITION OF COMPANY SECRETARY UNDER VARIOUS LAWS

### (a) Position under Companies Act, 2013

Under **Section 2(59)** the position of company secretary is that he is an **Officer** of the company. The term 'Officer' includes, inter-alia, a company secretary.

Under **Section 2(51)**, a company Secretary has been included in the definition of **key managerial personnel** such as managing director, whole-time director and manager.

### (b) Position under other Laws

Various laws recognize a company secretary as an **Officer** of a company. For instance, under Income tax Act, Competition Act, Indian Stamps Act he is regarded as '**Principal Officer**' of a company.

## APPOINTMENT OF COMPANY SECRETARY

### Rule 8 and 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

#### 1. Rule 8. Appointment of Key Managerial Personnel.-

Every **listed company**

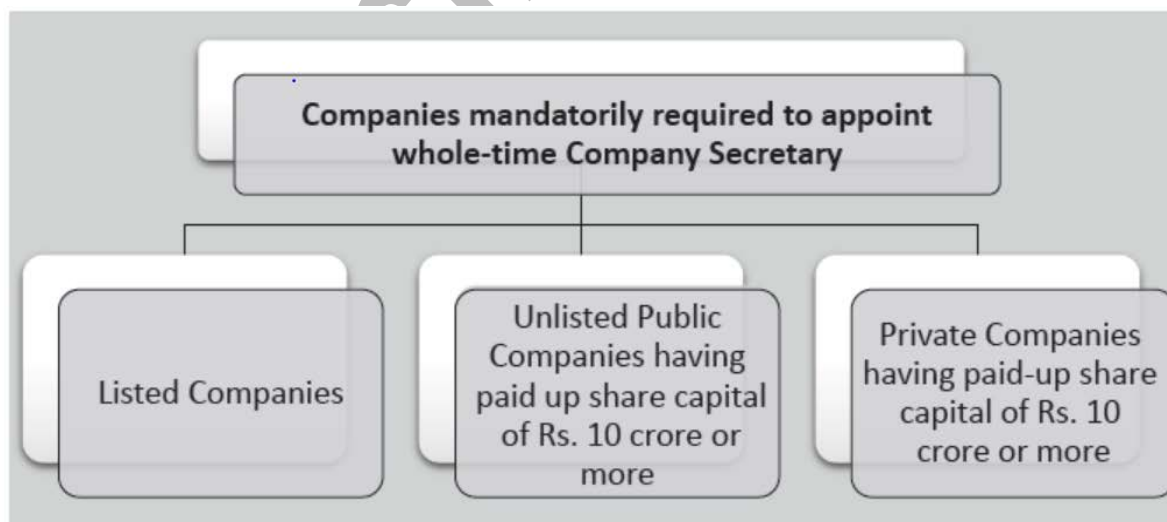
and every other **public company having a paid-up share capital of ten crore rupees or more**

shall have whole-time key managerial personnel. (KMP includes a whole-time Company Secretary).

#### 2. Rule 8A. Appointment of Company Secretaries in companies not covered under rule 8.—

The Companies (Appointment and Remuneration of Managerial Personnel) **Amendment Rules 2020**, dated 03rd January, 2020

**Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary."**



## MANNER OF APPOINTMENT OF COMPANY SECRETARY

**Regulation 77 of Table F** provides that a secretary may be appointed by **Board of directors** for such term, at **such remuneration and upon such conditions as it may think fit**. Normally the Board of directors appoints a company secretary soon after the incorporation. In addition to Board resolution, **service agreement** is also executed between the company and the secretary so appointed.

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A secretary employed by the promoters before incorporation of the company is often termed as a '**protém secretary**' or a secretary for the time being.

Any contract of an appointment of an individual as company secretary, of a company prior to its incorporation, would not empower the person so appointed to work as secretary after the formation of the company. Such an appointment **cannot even be ratified by the company after its incorporation.**

## PROCEDURE FOR APPOINTMENT OF A COMPANY SECRETARY

The following procedural steps should be taken for appointing a whole-time company secretary:

1. **Advertise the post**, collect applications, **hold interview**, short list the individuals for the position and finalise the terms of appointment.
2. **Convene a Board meeting** after giving notice to all the directors of the company as per section 173 of the Act. At the board meeting, place the proposal of appointing Company Secretary with the details of the person finalized and **pass a resolution appointing the company secretary** and approving the terms and conditions of his appointment.
3. File return of appointment of company secretary with the Registrar in **Form DIR.12** within **thirty days** from the date of appointment (date of joining office) and **in case of public company copy of Board Resolution also needs to be filed in Form MGT.14** along with such fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. The **particulars of Company Secretary**, Income-tax PAN, Membership details (will be validated from ICSI records), residential details, date of appointment, e-mail ID of the person for communication purpose are required to be filled in the Form.
4. A Company Secretary **shall not hold office in more than one company except in its subsidiary company at the same time.**
5. Make entries in the Register of directors and key managerial personnel under Section 170 of the Act.
6. Inform the Stock Exchange(s) where the **company is listed**
7. Since **key managerial personnel are included in 'related party'** as defined in section 2(76) of the Act, verify whether the company secretary so appointed involved in any related party transactions within the provisions of **Section 188** of the Act. If yes, then comply with the requirements in this regard.

## FUNCTIONS OF COMPANY SECRETARY

According to **Section 205** the functions of the company secretary shall include,—

(a)	to <b>report to the Board</b> about compliance with the provisions of <b>this Act</b> , the rules made thereunder and <b>other laws</b> applicable to the company;
(b)	to ensure that the <b>company complies with the applicable secretarial standards</b> ;
(c)	to discharge <b>such other duties as may be prescribed</b>

**Explanation—** For the purpose of this section, the expression "**secretarial standards**" means **secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.**

For the purposes of **clause (c)** of sub-section (1) of section 205, the Central Government has prescribed that **the duties of Company Secretary shall also include-**

- (1) to **provide to the directors** of the company, collectively and individually, **such guidance** as they may require, with regard to their duties, responsibilities and powers;
- (2) to **facilitate the** convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;

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(3) <b>to obtain approvals</b> from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
(4) <b>to represent before</b> various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
(5) <b>to assist the Board</b> in the conduct of the affairs of the company;
(6) <b>to assist and advise the Board</b> in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(7) <b>to discharge such other duties</b> as may be assigned by the <b>Board</b> from time to time;
(8) <b>such other duties</b> as have been prescribed under the <b>Act and Rules</b> .

## POWERS OF SECRETARY

The secretary of a company is empowered to perform the following:-

(a) All acts which he is required to <b>perform under enactments</b> like the Companies Act, the Income Tax Act, etc.
(b) All acts which the <b>Board of directors specifically direct</b> him to perform.
(c) All acts which are essential to <u>enable him to discharge his duties smoothly</u> <b>as the administrative head</b> in his Department.

The **powers of the secretary** above are conferred on him

either under the Act or

by the Board or

out of his service agreement with the company.

At times, the general meetings also authorise him to perform an act.

## DUTIES OF A SECRETARY

### ➤ THE CONTRACTUAL

A company secretary if appointed by an **agreement of service**, which defines his duties as well as powers, is under a duty to act within the scope of his authority. **He must abstain from disclosing any confidential or secret information relating to the affairs of the company** which comes to his notice during his employment and also not to make any secret profits by virtue of his position as a secretary of the company.

### ➤ STATUTORY DUTIES

#### UNDER VARIOUS LAWS:-

#### 1. UNDER THE COMPANIES ACT

The Secretary is required to perform the various duties specified in various sections of Companies Act. for eg:-

(a) To <b>sign any document</b> or proceedings requiring authentication by the company.
(b) To get painted or get affixed the name plate of the Company outside every office or the place of its business, to get it printed on documents of the company and to get it engraved on the seal of the company.
(c) To sign the Annual Return.
(d) To send notices of general meetings to every member of the company.
(e) To file resolutions and agreements requiring registration with the Registrar.

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| (f) To prepare and record minutes of every general meeting and of every meeting of Board of directors or of every committee of the Board within 30 days of the conclusion of every such meeting. |
| (g) To send notices of the Meetings of Directors.  |
| (h) To maintain various statutory books, etc.  |

## 2. UNDER THE INCOME-TAX ACT

A company secretary is a '**Principal Officer**' of the company under **Section 2(35) of the Income-tax Act, 1961**. The Act imposes certain obligations upon him. For eg.-To ensure that **proper income-tax is deducted at source** from the salaries paid to the employees, or interest paid/payable to debentureholders or depositors. To ensure that the **tax so deducted has been deposited in Government treasury**, etc.

## 3. UNDER THE INDIAN STAMP ACT

It is the duty of the secretary to see that documents like letters of allotment, share certificates, share warrants, debenture certificates and transfer forms, etc., are **properly stamped** as per the requirements of the Indian Stamp Act.

## 4. UNDER OTHER ACTS

In addition to the above, the Secretary is also required to **perform the various duties specified under various Economic, Labour, Industrial and Securities laws**.

### NKJ-CLASSROOM PRACTICE



**Q. 1.** Write notes on Statutory duties of a Company Secretary under the Companies Act, 2013. **[June. 2014; 4 Marks]**

## ROLE OF SECRETARY IN A COMPANY

The role of a secretary is threefold, viz., as a Statutory officer, as a Co-ordinator and as an Administrative officer. Similarly, the responsibility of a company secretary extends not only to the company, but also to its shareholders, depositors, creditors, employees, consumers, society and the Government.

### ➤ AS A STATUTORY OFFICER

The Secretary is required to ensure with statutory requirements as prescribed under various laws. For eg:- Company secretary is an **officer u/s 2(59) of Companies Act, 2013** responsible for compliance with numerous legal requirements under the Companies Act, 2013. A company secretary is a 'Principal Officer' of the company under **Section 2(35) of the Income-tax Act, 1961**.

### ➤ AS A COORDINATOR

The role of a company secretary as a co-ordinator has two aspects, namely internal and external:-

**The internal role** of a co-ordinator extends to the Board including the Chairman and Managing Director, various line and staff functions, the trade unions and the auditors of the company.

**External role** extends to the relationship of the company with shareholders, Government and Society.

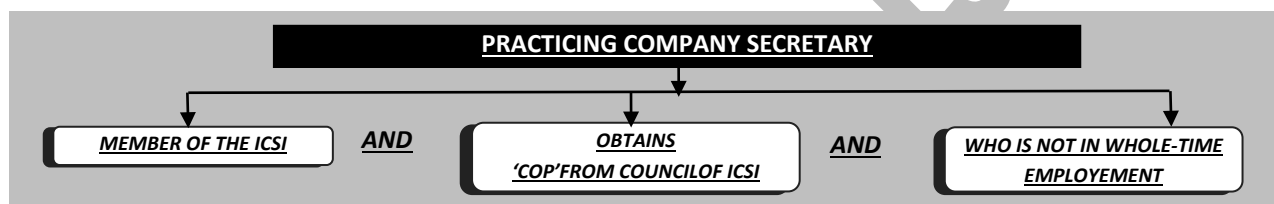
### ➤ AS AN ADMINISTRATIVE OFFICER

The principal duty of a secretary as an administrator is to ensure that the **activities of a company are in conformity with the company's policy**. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed.

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## REMOVAL / DISMISSAL OF A SECRETARY

A company secretary **can be removed or dismissed like any other employees** of the organization. Since ***he is appointed by Board, the Board of directors of a company has absolute discretion*** to remove a company secretary or to terminate his services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

### Procedure for removal/resignation of Company Secretary

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| 1. A Company Secretary can be removed in accordance with the <b>terms of appointment</b> and the <b>Board can record the same</b> .   |
| 2. Convene a <b>Board meeting</b> after giving notice to all the directors of the company as per section 173, place the matter of removal/resignation of the Company Secretary and pass a resolution to the effect.     |
| 3. Obtain <b>Resignation Letter</b> duly dated and signed.  |
| 4. File Form <b>DIR-12</b> in electronic mode within thirty days with the Registrar of Companies together with requisite filing fees. Evidence of Cessation (for example Resignation Letter) is an optional attachment. |
| 5. Inform the <b>stock exchange</b> where the company is listed within 24 hours of Board Meeting.   |
| 6. Make <b>entries in the Register</b> maintained for recording the particulars of Company Secretaries under section 170.   |
| 7. Issue a general public notice, if it is so warranted, according to size and nature of the company.   |
| 8. The resulting vacancy shall be filled up by the Board at a meeting of the Board <b>within a period of <u>six months</u> from the date of such vacancy</b>  |

## LIABILITIES OF COMPANY SECRETARY

Company Secretary has been defined as ‘**Officer in default**’ along with Managing Director, Manager and Whole time Director etc. Thus, he can be **punished in respect of offences** under Companies Act. He may be held liable as **Key Managerial Personnel** also under various provisions of the Act.

### Summons to company in civil matters can be served on a Secretary

As per **rule 2 of order 9 of Code of Civil Procedure**, in case of suit **against a corporation**, summons can be served on –

- |  |
|--|
| (a) <b>Company Secretary</b> , Director or other principal officer of the corporation or |
| (b) By leaving it or by sending by post <b>to registered office of the corporation</b> . |

## COMPANY SECRETARY IN PRACTICE/ PRACTICING COMPANY SECRETARY / PCS

According to **section 2(25)** “Company Secretary in practice” means a secretary who is deemed to be in practice within the meaning of **sub-section (2) of Section 2** of the Company Secretary Act, 1980.

Thus,

- |   |
|---|
| a <b>member of ICSI</b> in practice and |
| <b>not in full time employment</b>      |

becomes a secretary in whole-time practice.

## WHO CAN PRACTICE

According to Section 6 of the Companies Secretaries Act, 1980 **only a member of the Institute whether in India or elsewhere** shall be entitled to provided **he has obtained from the Council a Certificate of Practice**.

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**Any company**, whether incorporated in India or elsewhere, is prohibited from practicing as company secretary.

Further, **any person other than a member of this Institute** is prohibited from signing any document on behalf of a company secretary in practice or a firm of such company secretaries in his or its professional capacities.

### **Deemed “to be in practice”**

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**.

he, ***in consideration 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, forming, 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 adviser to a company on management, including any legal or procedural matters

(vii) issuing certificates on behalf of, or for the purposes of, a company; or

(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;

### **REGISTER OF MEMBERS**

**The Council** shall maintain in the prescribed manner a Register of the members of the Institute. The Register shall include the following particulars about every member of the Institute, namely:—

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

The Council shall **cause to be published in the list of members of the Institute** as on the 1st day of April of each year.

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Every member of the Institute shall, on his name being entered in the Register, **pay annual membership fee** as may be decided by the council from time to time.

### **Removal from the Register of Members**

(1) in the following cases the **Council may remove from the Register** the name of any member of the Institute—

(a) who is <b>dead</b> ; or
(b) from <b>whom a request</b> has been received to that effect; or
(c) who has not paid any <b>prescribed fee</b> required to be paid by him; or
(d) who is found to have been subject <i>at the time when his name was entered</i> in the Register, <b>or</b> who <i>at any time thereafter</i> has become subject, to any of the <b>disabilities mentioned in section 8</b> , <b>or</b> who for any other reason has ceased to be entitled to have his name borne on the Register.

The Council shall remove from the Register the name of any member in respect of whom **an order has been passed under this Act removing him** from membership of the Institute.

## **DISCIPLINARY MECHANISM**

The member of the Institute is subject to the Disciplinary mechanism provided for under **Chapter V of the Company Secretaries Act, 1980 (the Act)**.

## **DISCIPLINARY DIRECTORATE**

Section 21 of the Act provides for the establishment of 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.

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. The Disciplinary Directorate shall follow such procedure as may be specified to make investigations under the Act.

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the **First Schedule**, the matter shall be placed before the **Board of Discipline**.

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**, the matter shall be placed the **Disciplinary Committee**.

## **BOARD OF DISCIPLINE**

The **Board of Discipline** shall be constituted by the Council of the Institute under **section 21A** of the Companies Act, 1980. The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

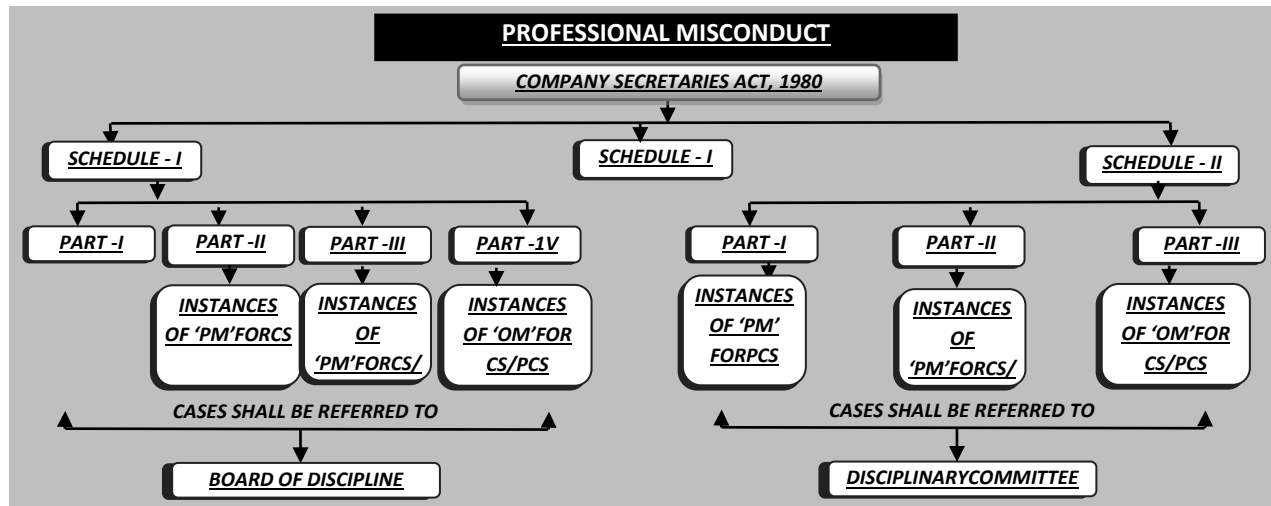
Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the **First Schedule**, it shall afford to the *member an opportunity of being heard* before making any order against him and may thereafter take any one or more of the **following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

(a) reprimand the member;

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(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**.

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.

## DISCIPLINARY COMMITTEE

According to **Section 21B** a Disciplinary Committee shall be constituted by the Council. The Disciplinary Committee shall consist 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:

The Council **may constitute more Disciplinary Committees** as and when it considers necessary. The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

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**.

## AUTHORITY, DISCIPLINARY COMMITTEE, BOARD OF DISCIPLINE AND DIRECTOR (DISCIPLINE) TO HAVE POWERS OF CIVIL COURT

**Section 21C** provides that 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.

## PROFESSIONAL MISCONDUCT AND OTHER MISCONDUCT

According to **Section 22** of the Company Secretaries Act, 1980, the expression “**Professional Misconduct or Other Misconduct**” shall be deemed to include **any act or omission specified in any of the schedules to that Act**.

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Thus, **Section 22** of the Company Secretaries Act, 1980, **read with the schedules** to that Act contains an illustrative definition of Professional Misconduct or Other Misconduct.

Professional Misconduct and Other Misconduct in relation to members if the Institute is broadly structured as under:-

(a) Professional misconduct in relation to members of the Institute in practice. (Part I of the First Schedule, containing 11 clauses)
(b) Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule, containing 2 clauses)
(c) Professional misconduct in relation to members of the Institute generally. (Part III of the Other Schedule, containing 3 clauses)
(d) Other misconduct in relation to the members of the Institute generally. (Part IV of First Schedule, containing 2 clauses)
(e) Professional misconduct in relation to members of the Institute in practice. (Part I of Second Schedule, containing 10 clauses)
(f) Professional misconduct in relation to members of the Institute generally. (Part II of Second Schedule, containing 4 clauses)
(g) Other misconduct in relation to members of the Institute generally. (Part III of Second Schedule containing I clause)

## **APPEAL**

Any member of the Institute aggrieved by any order of the **Board of Discipline or the Disciplinary Committee** may **within ninety days** from the date on which the order is communicated to him, prefer an **appeal to the Appellate Authority**.

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.

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 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.

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 certain modification.

***Important Note:- students must study all clauses/ contents of Professional misconduct from ICSI MODULE***

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## UDIN & eCSin

### i. UDIN:

The **Unique Document Identification Number** as governed by the UDIN Guidelines **shall verify the authenticity of various documents signed or certified by Company Secretaries in Practice.**

As per the UDIN Guidelines, **a unique number for the identification of documents** attested by Company Secretaries in Practice **shall be generated at the time of signing the Certificate/ Report** which shall mandatorily **be mentioned** in the Certificate / Report along with the CoP number.

The Guidelines have been made **mandatory** by the Council of ICSI **w.e.f. 1st October, 2019.**

### ii. e-CSin:

The **Employee Company Secretary Identification Number** as governed by the eCSin Guidelines shall **enable the Institute to identify the appointments and cessations** of Company Secretaries.

eCSin is a system generated **unique number for identification of the Company Secretaries employed in a particular company** which shall **be generated by the Company Secretary**

<b><u>at the time of employment</u></b> as a Company Secretary (KMP or otherwise), as well as
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at <b><u>the time of demitting office in any manner.</u></b>
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The Guidelines have been made **mandatory** by the Council of ICSI **w.e.f. 1st October, 2019.**

## ICSI (GUIDELINES FOR ADVERTISEMENTS BY COMPANY SECRETARIES), 2020

### Permitted means of advertising

The following activities are permitted for a Company Secretary in Practice as means to advertise:

- (i) Display the scope of work on his/her own website.
- (ii) Creating a visual identity in compliance with the Guidelines for use of Individual Logo issued by the Council of ICSI.
- (iii) Display of Location and décor of the workplace, meeting rooms, etc.
- (iv) Display of Firm name, Logo or any other identity on Uniform, Office/s, office stationary & equipments/ material and providing Training to Staff.
- (v) Professional Updates and Write ups in any mode.
- (vi) Appearing on local radio or television.
- (vii) Giving speeches/lectures at any platform including Seminars, Conferences, training programs, Workshops, Conventions, etc so organized by any forum.
- (viii) Holding professional seminars, conferences and workshops.
- (ix) Sponsoring any event (cultural, professional or otherwise) or helping with community programmes or doing voluntary works as a professional for charitable organizations.
- (x) Use of social media link Facebook, Instagram, Linkedin, Twitter, Youtube, WeChat, Telegram and Whatsapp or and other media of similar nature.

### Restrictions

The advertisement shall

- (i) not be in violation of provisions of Company Secretaries Act, 1980.
- (ii) not be false or misleading;
- (iii) not claim superiority over any or all other Company Secretaries

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- (iv) not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
- (v) not contain fabricated or false testimonials or endorsements concerning the Company Secretary;
- (vi) not refer the Company Secretaries in the terms such as “specialist” or “experts”;

Explanation: The advertisements shall not be self-laudatory and not include the word such as “best”, “better” or “cheapest”;

#### **CONSEQUENCES OF NON COMPLIANCE OR VIOLATION OF THESE GUIDELINES**

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 a professional misconduct** and the concerned member shall be liable to disciplinary action under the Company Secretaries Act, 1980.

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## SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



**Answer the following:**

1. Discuss the role of Company Secretary.
2. Enumerate the duties and liabilities of a Secretary.
3. Discuss the role of company secretary as a statutory officer, as co-ordinator and as an administrative officer.
4. State the areas of practice specified for a company secretary in practice under Section 2(2) of the Company Secretaries Act, 1980.
5. Define Secretary in whole-time practice.

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

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Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL



## CHAPTER

# 13

# SECRETARIAL STANDARDS – AN INTRODUCTION

### Covering-

- Secretarial Standard – Meaning
- Secretarial Standard Board (SSB) and its objectives
- Scope and functions of Secretarial Standard board (SSB)
- Scope of Secretarial Standard
- Needs for Secretarial Standard
- Procedure for issuing Secretarial Standard
- Constitution of the Secretarial Standards Committee and the auditing standards committee
- Compliance of Secretarial Standards for good governance
- Secretarial Standards and the Companies Act, 2013

**EXPECTED  
MARKS COVERAGE**  
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# SECRETARIAL STANDARDS - AN INTRODUCTION



## SECRETARIAL STANDARD – MEANING

Secretarial standards are the **policy documents** relating to various aspects of **secretarial practices** in the corporate sector. These standards lay down a set of principles which companies are expected to adopt and adhere to, in discharging their responsibilities.

The term 'secretarial standard' is defined as an explanation to section 205 of the Companies Act, 2013 to mean *secretarial standards*

*issued by the institute of company secretaries of India constituted under section 3 of the company secretaries act, 1980*

*and approved by the central government.*

## SECRETARIAL STANDARD BOARD (SSB) AND ITS OBJECTIVES

The institute of company secretaries of India, (ICSI), **recognizing the need for integration, harmonization and standardisation of diverse secretarial practices**, has constituted the secretarial standards board (SSB) to formulate secretarial standards. The establishment of secretarial standards board by ICSI took place in **the year 2000.**

The SSB comprises of

**eminent members of the profession** holding responsible positions in well known companies and

as **senior members in practice,**

as well as **representatives of regulatory authorities** such as the ministry of corporate affairs, the securities and exchange board of India and

the **sister professional bodies** viz. the institute of chartered accountants of India and the institute of cost accountants of India.

The secretarial standards board (SSB) formulates secretarial standards taking **into consideration the applicable laws, business environment and the best secretarial practices prevalent.** Secretarial standards are developed:-

(a) In a **transparent manner**

(b) After expensive **deliberations**, analysis, research; and

(c) After taking **views of corporate, regulators and the public at large**

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## SCOPE AND FUNCTIONS OF SECRETARIAL STANDARD BOARD (SSB)

The scope of SSB is to **identify the areas** in which secretarial standards need to be issued by the council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices.

SSB will also **clarify issues** arising out of such standards and issue guidance notes for the benefit of members of ICSI, corporate and other the **main functions of SSB** are:-

a) <b>Formulating</b> secretarial standards
b) <b>Clarifying issues</b> arising out of the secretarial standards
c) <b>Issuing guidance notes</b> , and
d) <b>Reviewing and updating</b> the secretarial standards/ guidance notes at periodic intervals.

## SCOPE OF SECRETARIAL STANDARD

The secretarial standards **do not seek to substitute** any existing laws or the rules and regulations framed there under but, **in fact, seek to supplement** such laws, rules and regulations.

Secretarial standards that are issued **will be in conformity with the provisions of the applicable laws**. However, *if, due to subsequent changes in the law*, a particular standard or any part thereof becomes inconsistent with such law, the provisions of the said **law shall prevail**.

## NEEDS FOR SECRETARIAL STANDARD

Companies **follow diverse secretarial practices**. These practices have evolved over a period of time through varied usages and as a response to differing business cultures. These divergent practices **need to be harmonized** by laying down the best practices in this regard.

A need was, therefore, felt to integrate, consolidate, harmonise and standardize all the prevalent diverse secretarial practices, so as to ensure that uniform practices are followed by the companies throughout the country. Such **uniformity of practices**, consistently applied, would result in the establishment of sound corporate governance principles.

## PROCEDURE FOR ISSUING SECRETARIAL STANDARD

The following procedure shall be adopted for formulating and issuing secretarial standards:-

- (1) SSB, in consultation with the council, shall **determine the areas** in which secretarial standards need to be formulated and the priority in regard to the selection thereof.
- (2) In the preparation of secretarial standards, SSB may constitute **working groups** to formulate preliminary draft of the proposed standards.
- (3) The **preliminary draft** of the secretarial standard prepared by the working group shall be **circulated amongst the members of SSB** for discussion and shall be modified appropriately, if so required.
- (4) The preliminary draft will then be **circulated to the members of the central council** as well as to **chairman of regional councils/chapters of ICSI**, various **professional bodies**, chambers of commerce, **regulatory authorities** such as the ministry of corporate affairs, the department of economic affairs, the securities and exchange board of India, reserve bank of India, department of public enterprises and to **such other bodies/organizations as may be decided by SSB**, for ascertaining their views, **specifying a time frame** within which such *views, comments and suggestions are to be received*.

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**A meeting of SSB with the representatives** of such bodies/organizations **may then be held**, if considered necessary, to examine and deliberate on their suggestions.

- (5) On the basis of the preliminary draft and the discussion with the bodies/organizations referred to in 4 above an **exposure draft** will be prepared and published in the “**chartered secretary**”, the journal of ICSI, and also put on the **website of ICSI** to elicit comments from members and the public at large.

- (6) The draft of the proposed secretarial standard will generally include the following basic points:-

(a) **Concepts and fundamental principles** relating to the subject of the standard

(b) **Definitions and explanations** of term use in the standard

(c) **Objectives** of issuing the standard

(d) **Disclosure** requirements

(e) **Date from which** the standard will be effective

- (7) After taking into consideration the comments received, the draft of the proposed secretarial standard will be **finalized by SSB and submitted to the council of ICSI**.

- (8) The council will consider the final draft of the proposed secretarial standard and finalize the same in consultation with SSB. The secretarial standard on the relevant subject will then be **issued under the authority of the council**.

## CONSTITUTION OF THE SECRETARIAL STANDARDS COMMITTEE AND THE AUDITING STANDARDS COMMITTEE

MCA Vide Notification No. 710/1 (M)/1, dated **03rd February, 2020** notified the **Company Secretaries (Amendment) Regulations, 2020** in order to further amend the Company Secretaries Regulations, 1982.

Newly inserted Regulation 105A provides **Constitution of the Secretarial Standards Committee and the Auditing Standards Committee**

- (1) The Council may constitute

(a) the **Secretarial Standards Committee** and

(b) the **Auditing Standards Committee** as it may deem necessary for the purposes of carrying out the functions of the Institute.

- (2) A Committee constituted under sub-regulation (1) shall function under the supervision, control and **direction of the Council**.

- (3) A member who has any **pecuniary interest** or perceived to have pecuniary interest, direct or indirect, in any such matter which is brought up for consideration of the Committee, **shall disclose the nature of his interest** in such matter and such disclosure shall be recorded in the proceedings of the Committee.

- (4) The member referred to in sub-regulation (3) **shall not take part in any deliberation** or decision of the Committee on such matter.

*Explanation - For the purposes of this regulation, “pecuniary interest” means a reasonable likelihood or expectation of appreciable **financial gain**.*

- (5) Subject to the provisions of the Act and Regulations, **the Committee shall have power to delegate by resolution passed at meeting**, any of its duties and functions **to the President or Vice-President or Council Member or Secretary or Chief Executive; or any other Officer of the Institute not below the rank of the Director**, as may be deemed necessary.

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(6) Except provided specifically, the provisions in respect of meetings of the Council and its Committees, notice, adjournment, rescheduling, quorum, consideration of resolution and minutes shall be **mutatis mutandis applicable to the meetings of the Committee.**

## COMPLIANCE OF SECRETARIAL STANDARDS FOR GOOD GOVERNANCE

The ultimate **goal of the secretarial standards is to promote good corporate practices** leading to better corporate governance.

The standards are for good secretarial practices and desirable corporate governance with a view to ensuring **shareholders democracy and utmost transparency**, integrity and fair play, going beyond the minimum requirements of law.

The adoption of the secretarial standards by the corporate sector will over the years have a substantial impact on the **improvement of quality of secretarial practices** being followed by companies, making them comparable with the best practices in the world.

By following the secretarial standards in true letter and spirit, companies will be able to ensure **adoption of uniform, consistent and best secretarial practices** in the corporate sector.

Such uniformity of best practices, consistently applied, will result in furthering the shareholders democracy by laying down principles for **better corporate disclosures** thus adding value to the general endeavour to strive for **good governance**.

## SECRETARIAL STANDARDS AND THE COMPANIES ACT, 2013

**Section 118(10) of the Companies Act, 2013** requires **every company** to observe secretarial standards with respect to

General meetings and

Board meetings.

Also, as per **Section 205(1) (b)**, it is the duty of the company secretary to ensure that the company **complies with the applicable secretarial standards.**

Therefore, the companies are required to ensure the observance of all the secretarial standards issued by the institute of company secretaries of India **and** approved by the central government.

So far, the ICSI has issued ten secretarial standards, viz:-

1.	<b>SS-1:-</b> Secretarial standard on meetings of the board of directors
2.	<b>SS-2:-</b> Secretarial standard on general meetings.
3.	<b>SS-3:-</b> Secretarial standard on dividend
4.	<b>SS-4:-</b> Secretarial standard on registers and records
5.	<b>SS-5:-</b> Secretarial standard on minutes
6.	<b>SS-6:-</b> Secretarial standard on transmission of shares and debentures
7.	<b>SS-7:-</b> Secretarial standard on passing of resolutions by circulation
8.	<b>S-8:-</b> Secretarial standard on affixing of common seal
9.	<b>SS-9:-</b> Secretarial standard on forfeiture of shares
10.	<b>SS-10:-</b> Secretarial standard on board's report

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**Right now, SS-1 and SS-2 issued by ICSI and been approved by central government is effective from July, 2015.**

However, the Secretarial Standards have been **revised by the ICSI** and approval of the Central Government, as required, under section 118(10) of the Companies Act, 2013 has been obtained for the revised SS-1 and SS-2. The revised **SS-1 and SS-2** shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. **1<sup>st</sup> October, 2017.**

CS NITESH KR. JAISWAL

**Q. 1.** Secretarial Standard does not empower Company Secretary of a company to call a meeting of board of Directors on its own. **[June, 2018]**

**Ans.** Secretarial Standard does not empower Company Secretary of a company to call a meeting of Board of Directors on its own.

Any Director of a company may at any time, summon a meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorized by the Board in this behalf, on the requisition of a Director, shall convene a meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the whole-time Director, where there is any, unless otherwise provided in the Articles.



Answers to be analysed in Classroom

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Answer to Question No. 1:-

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Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

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## CHAPTER

# 14

# MEGA FIRMS

### Covering-

- Introduction
- Adoption of Mode of Practice
- Comparison Mode
- Benefits of MDF
- Risks
- Process of Constitution of MDF
- Frequently Asked Questions

**EXPECTED  
MARKS COVERAGE  
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# MEGA FIRMS

## INTRODUCTION

In a rapidly changing economy, industrial environment and emergence of the need for corporate governance and ethical business practices of voluntary disclosures, **role of a practicing company secretary has also changed substantially over last three decades**. Company Secretary in Practice has become a crucial player.

The **Companies Act, 2013**, so also **Insolvency and Bankruptcy Code 2016**, has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice.

## ADOPTION OF MODE OF PRACTICE

To **meet the expectation and to survive competition**, moulding, *changing and upgrading oneself is a must*. For stability as well as growth one needs to **join hands with professional fraternity** and have synergy.

## COMPARISON MODE / TWO FORMS OF ENTERPRISE A PRACTICING PROFESSIONAL MAY CHOOSE

Lets now discuss **certain features of the two forms of enterprise** a practicing professional may choose i.e. Partnership Firm (including LLP) & Sole Proprietor:

S. No.	FIRM WITH SEVERAL PARTNERS	PROPRIETOR
1.	Various avenues of practice, <b>un-trodden areas can be explored</b> .	Likely to <b>get restricted to the “Routine”</b> procedural matters.
2.	Knowledge management becomes easier as <b>partners can help each other</b> in their <b>respective areas of expertise</b> .	<b>Knowledge management becomes difficult</b> being the only person. No other person is available to support/guide. <b>Keeping track of latest developments</b> , case law, notifications, circulars becomes a daunting task.
3.	<b>Inherent risks</b> associated with the practice are <b>shared with</b> others.	<b>Risk bearing has to be shouldered by one person</b> . No one available to share the risks.
4.	Several partners can render <b>multi-dimensional services</b> .	<b>Difficult for a single individual to provide multiple services</b> say under GST, Income Taxes, FEMA along with Company Law.
5.	Freedom of <b>decision making gets restricted</b> .	Not required <b>Proprietor is his own master</b> . No need to consult others.

## APPLICABLE RULES, REGULATIONS AND GUIDELINES FOR PCS OR FIRM OF PCS

Whether a Company Secretary in Practice or a Firm of Company Secretaries they are subject to Rules, Regulations and Guidelines enumerated as under:

(i)	Company Secretaries Regulations, 1982
(ii)	Schedule I and III of Company Secretaries Act, 1980 in relation to Professional misconduct
(iii)	Guidelines for requirement of maintenance of a register of attestation certification services rendered by practicing company secretary/firm of practicing company secretaries
(iv)	Guidelines for issuing compliance certificate and signing of annual return

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(v)	Guidelines framed by the council relating to approval of proprietorship concern/firm's name under regulation 169 of the company secretaries Regulations, 1982
(vi)	Guidelines for advertisement by Company Secretary in Practice
(vii)	Guidelines for compulsory attendance of Professional development programmes by the members

## WHAT IS MULTIDISCIPLINARY/MEGA FIRM?

Mega Firm can be described as a **Partnership firm with more than twenty five partners**.

A firm which provides core professional service of a particular profession **along with** the **allied and ancillary service with equal competence under one roof** is a multidisciplinary firm.

For example, company and corporate law is core knowledge for company secretaries, however, they can acquire expertise in any other area like direct indirect taxation, labour laws, economic laws, finance, accounting, insurance, international business and IPRs and they may be in position to provide single window business solutions.

## WHY SUCH FIRMS?

Keeping in view of the present needs of the corporate and multi dimensional growth of CS profession especially in the areas of practicing in the areas of Corporate Laws, Labour laws, RBI/ FEMA, acting as Secretarial Audit, Resolution Professional Insolvency Bankruptcy Code, GST Practitioner there is a need to structure and build the Multidisciplinary(MDF)/mega firms.

There is a **huge demand and scope for a multifunctional firm, where several services are provided under one roof**. Clients always have a comfort level in dealing with such firms.

## MULTIDISCIPLINARY FIRM INVOLVING CS

**Multidisciplinary Firm-** According to regulation 165A of the Company Secretary Regulations, 1982 inserted by the Company Secretaries (Amendment) Regulation 2020 – a member in practice may from may form multi disciplinary form with the member of other professional bodies as prescribed under regulations 168A and 168B of The Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

### Regulation 168 A, Other Professional bodies

- (1) For the purpose of class (2), (3) and 4 of Part I of the First Schedule to the Act a person has to be member of any of the following namely:-
  - (a) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
  - (b) The Institute of Cost and Works Accountant of India established under the Cost and Works Accountant Act, 1959 (No.23 of 1959);
  - (c) Bar Council of India established under the Advocates Act, 1961 (No.25 of 1961);
  - (d) The Indian Institute of Architects established under the Architects Act, 1972 (No.20 of 1972);
  - (e) The Institute of Actuaries of India established under the Actuaries Act, 2006 (No. 35 of 2006);
  - (f) The membership of the professional bodies are institutions whose qualifications relating Company Secretaryship are recognized by the Council under Sub-section (2) of Section 38 of the Act.
- (2) For the purposes of clause (2), (3) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India namely :-
  - (a) Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;
  - (b) Cost Accountant within the naming of the Cost and Works Accountants Act, 1959;

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- (c) Actuary within the meaning of the Actuaries Act, 2006;
- (d) Bachelor in Engineering from a University established by the law or an institution recognized by law;
- (e) Bachelor in Technology from a University established by law or an institution recognised by law;
- (f) Bachelor in Architecture from a university established by law or an institution recognised by law;
- (g) Bachelor of Law from a University established by law or an institution recognized by law;
- (h) Master in Business Administration from Universities established by law and or Technical Institutions recognized by All India Council for Technical Education.

## **PRE REQUISITES**

**MDF is a joint or collaborative** venture amongst independent individuals. Therefore, every one wishing to join hands **should understand that:**

1. All minds should work together and in unison;
2. Say go to ego;
3. Mutual faith and respect lays strong foundation;
4. Unanimity shall be the rule on important policy decisions;
5. Financial discipline is a must;
6. Founder partners shall be given equal status;
7. Income of the firm shall be distributed at short regular intervals;
8. One shall not put undue influence on the others or show that he is king pin of the association

Even the small crack in the above stated pre requisites ruin the things.

## **BENEFITS OF MDF**

(a) <b><u>Working in a team environment:</u></b> The concept of MDF will have an opportunity to work with team members who share interests, expertise, ideas, and work ethically.
(b) <b><u>Exposure to various and different works</u></b>
(c) <b>Cost effective:</b> The overheads and the risks get distributed amongst the partners.
(d) <b><u>Continuous learning:</u></b> The partners of MDF having multi dimensional experience they can impart continuous training by adapting to new trends in the Profession.
(e) <b><u>Big growth opportunities:</u></b> MDF may attract big multinationals. They get comfort about availability of at least one of the partners, if they are dealing with a firm rather than an individual.
(f) <b><u>Revenue sharing:</u></b> By appropriate revenue sharing model a PCS who himself may not have subject expertise can get a share from the assignments of that subject being executed by others.
(g) <b><u>Reputation &amp; risk-adjusted value:</u></b> Many of the bigger client's organizations may prefer that "you never go wrong when hiring one of the MDF", Credibility of the firm and brand gets established in long term.

## **RISKS**

1. <b>More cost on infrastructure</b> and technology.
2. <b>Dominance of senior partners</b> over the younger partners.
3. <b>Defining exit route</b> is difficult.
4. <b>Lack of transparency</b> may lead to disputes.
5. <b>If crack develops</b> in mutual faith & trust, very difficult to cure.
6. <b>Communication gap</b> between partners

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## PROCESS OF CONSTITUTION OF MDF

### 1. Agreement between partners

Partners must enter into a **partnership agreement** defining *inter alia* the process of decision making, allocation of duties, responsibilities, delegation of authorities, revenue sharing and exit route.

### 2. Management of Firms

The mega firm requires **effective management skills** including skills for handling finance, dealing with human resources and day to day administration of the office. **The management of a MDF is in itself a major challenge.**

(a) Operational functions

(b) Administrative functions

(c) Human resources

(d) Client relationship

(e) Public Relationship and Brand building:

### 3. Revenue Sharing Models

In the long term success of the MDF the revenue sharing model has to be designed to suit the given situation

## FREQUENTLY ASKED QUESTIONS

### Q. 1. Can there be a Partnership firm in between CA, CS, CWA, Advocate?

Ans. CA/CWA may become partners of PCS only for non attestation services and CA / CWA cannot become full fledged partners.

That is to say a PCS even if he is allowed to be a partner of a Chartered Accountant firm, **will not be able to sign the Auditors report** on behalf of the multidisciplinary firm.

### Q. 2. How many Partners a PCS Partnership Firm can have ?

Ans. According to section 464(1) of the Companies Act, 2013, no association or partnership consisting of more than **such number of persons** as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, **unless it is registered as a company under this Act or is formed under any other law for the time being in force**: Provided that the number of persons which may be prescribed under this sub-section **shall not exceed one hundred**.

Further, the Companies (Miscellaneous) Rules, 2014, provides that no association or partnership shall be formed, consisting of **more than 50 persons** for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

### Q. 3. Can there be a PCS LLP in between CA, CS, CWA, Advocate?

Ans. Yes, there can be a PCS LLP in between CA, CS, CWA, Advocate.

### Q. 4. How many Partners LLP of Practicing professional can have ?

Ans. The **minimum number** of members of LLP under LLP Act, 2008 is **two**, **there is no restriction** on a maximum number of members.

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**Q.5. Are there any restrictions on sharing fees with members/ non-members of ICSI ?**

**Ans.** A Company Secretary in Practice can partake of his profits with other member of the Institute and with members of any other professional bodies specified in this regard or with such other persons having such qualifications as may be prescribed. A Company Secretary in Practice as recipient can enter into profit sharing arrangement with a member of the Institute and/ or with a member of such other professional body or other person having qualifications.

**Q. 6. Can MEGA firm charge fees to the clients based on the result of the matter/ success of the litigation?**

**Ans.** Fees shall be charged for the **professional work done**.

**Q. 7. Can a Mega Firm have branches within / outside India? What regulations guide operations of such Branch office?**

**Ans.** As per Section 37(1) of the Company Secretaries Act, 1980 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 branch office shall be an independent office and not in the office of some other professional.

**One of the partners of the firm shall attend the branch office atleast 100 days in a financial year.**

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-

CS NITESH KR. JAISWAL