



ROLE OF A COMPANY  
SECRETARY UNDER  
THE COMPANIES BILL,  
2011

# Vinod Kothari & Company

## Practising Company Secretaries

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# Disclaimer



- This presentation is meant to be given at the specific request, if any of our associates / employees have given this to you without being solicited, please do inform to [vinod@vinodkothari.com](mailto:vinod@vinodkothari.com)

# I. Position of Company Secretary under the Bill.

- Definition of Company Secretary under Cl. 2 (24) is similar to S 2(45) of the Companies Act.
- The profession of Practising Company Secretaries has been given a distinct position under the Bill under Cl. 2 (25).
- Company Secretary to be:
  - ▣ Key Managerial Person U/Cl. 2 (51)
  - ▣ Expert U/Cl. 2 (38)

# Position of Company Secretary

- ❑ Key Managerial Person CI 203
- ❑ Shall be appointed by means of a resolution of the Board.
- ❑ Whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.
- ❑ If the office is vacated it shall be filled-up within a period of six months.
- ❑ Contravention :
  - ❑ On company Rs. 1 lakh to 5 lakhs
  - ❑ Every Director and KMP who is in default fine which may extend to Rs. 50,000/- and Rs. 1000/- Per day.
  - ❑ Earlier punished only by Rs. 500/- Per day

## II. Appointment



- S 383A of Act and Cl. 203 are similar in nature.
- Art. 77 of the Model AoA in the First Schedule of the Bill also includes the Company Secretary.
  - Non appointment of CS under current situation is common on the ground of poor economic health this may not be possible under this Bill due to severe punishment.

# III. Functions



- Cl. 205 of the Bill

- To report to the Board about compliance with the provisions of this Act & Rules, and other laws applicable;
- To ensure compliance with secretarial standards r/w Cl. 118 (10);
- To discharge such other duties as may be prescribed.



# Functions (Contd.)

- Cl. 204
  - ▣ Board's report to be accompanied with a secretarial audit report, given by a PCS .
  - ▣ Duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.
  - ▣ Secretarial Audit to have a same status as all audits U/Cl.143.
  - ▣ The Board of Directors, in their report shall explain in full any qualification or observation or other remarks made by PCS.
  - ▣ If a company or its officer or the PCS, contravenes the provisions of this section, shall be punished with fine of Rs. 1 lakh to Rs. 5 lakhs.

## IV. Increased Role



- S 159 has been drafted in an enhanced form U/CI. 92 Annual Return to be signed by;
  - ▣ A Director & a CS, and where there is no CS in employment, by a PCS
- In case of a listed company, or having a prescribed Capital or Turnover
  - ▣ Signing by a PCS is mandatory regardless of CS in Employment.

## IV. Increased Role (Contd.)



- Financial Statements.
  - ▣ Cl. 134 (1) Company Secretary to Sign the Financial Statement along with other KMPs.

# V. Other Functions



- Under Cl. 291 a CS may be appointed by an Liquidator for Professional Assistance.
- Clause 323. Merger & Amalgamation sanctioning of a compromise or an arrangement ,
  - ▣ company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not

# VI Status Quo



- The Bill has maintained the recognition granted to CS;
  - ▣ Representation before Tribunal or Appellate Tribunal Cl. 432
  - ▣ Declaration in formation of a Company Cl. 140.



# Speak to Us

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