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Company Secretary Profession is still Worthy

Dear CS Aspirants,

Through this brief write up, I would like to discuss current position of Company Secretary Course along with its importance, reputation and necessity after the applicability of Companies Act, 2013. As we all are aware that Company Secretary Course is a professional course known for its compliance related course structure. Through this write up we'll also discuss the uncertainty created few months back regarding this course and how professionals, students and ICSI join hands to handle that tuff time.

Importance of Company Secretaries

The law requires specific duties to be performed by Company Secretaries. For example a CS is to report to the Board of Directors about compliances with all applicable laws, ensure compliance with Secretarial standards and assist the board in ensuring governance. In Companies Act 2013, a Company Secretary has been recognized as a Key Managerial Personnel (KMP).

In the words of ICSI, Company Secretaries are regulated professionals and they render services critical for Companies. A Company needs a Company Secretary as much as it needs as Auditor and every Company is obliged to have an auditor. Further it is a matter of record that companies which have engaged Company Secretaries have shown a marked improvement in compliance and governance.

Rule 10 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, defines Duties of Company Secretary under Companies Act, 2013.

The duties of Company Secretary shall include the following duties, namely:

(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;
(3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
(4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
(5) to assist the Board in the conduct of the affairs of the company

(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
(7) to discharge such other duties as have been specified under the Act or rules;
(8) such other duties as may be assigned by the Board from time to time

Need of a Company Secretary

The need for a Company to have a Company Secretary can be linked to the increased compliances in new Companies Act, 2013. We have moved to a regime where the law endeavors to provides level playing field to all kinds of market participants. The Companies Act, 2013 has withdrawn most of the exemptions/relaxations/ available to Companies and especially to Private Companies under the previous company law i.e. Companies Act 1956. In this scenario it has become indispensable to have a Company Secretary to ensure compliances under various laws.

The term key managerial personnel has been defined in section 2(51) of the Companies Act, 2013. I am glad to mention that Company Secretaries has been recognized as "key managerial personnel" in Companies Act, 2013. In relation to a company "key managerial personnel" means—

(i) the Chief Executive Officer or the managing director or the manager;
(ii) **the company secretary**;
(iii) the whole-time director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed;

Tuff time for Company Secretary Course

Till **9th June 2014**, everybody was worried about the existence of Company Secretary Profession after introduction of KMP appointment rules released by Ministry of Corporate Affairs (MCA). Through these rules MCA has restrict the employment opportunities for Company Secretaries, remove pre-certification from certain e-forms etc. Let me give you a brief back ground of the havoc created by MCA.

A. Non applicability of CS profession on Private Company

Ministry of Corporate Affairs has introduced Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. Rule 8 of the said rules read with section 203 of Companies Act, 2013, regulates the appointment of Company Secretaries. The principal rules were published in the Gazette of India *vide* notification number G.S.R. 249(E), dated the 31st March, 2014. Extract of Rule- 8 is as follows:-

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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."

Above rule 8 restricts the employment of Company Secretaries to every listed company and to every other public company having a paid-up share capital of Ten Crore rupees or more. As per the language of Rule-8 there was no scope of employment of Company Secretaries in Private Companies irrespective of their paid up capital or business size, which was a matter of concern for the CS professionals, CS Students and even for the ICSI. We had also witnessed protest by the CS professionals, CS Students against the KMP rules notified by MCA. Various representations were made by the ICSI with Ministry to amend the KMP appointment rules.

As per the statistics shared by ICSI, Private Companies constitute about 93% of total companies in India. These 93% companies would be not required to employ Company Secretaries due to the language of rule 8. As a consequence, only a few Public companies will be under obligation to employ Company Secretaries.

B. Amendment in KMP Rules by MCA

After regular follow ups by the students, professionals and ICSI, Ministry of Corporate Affairs was gracious enough to consider the request to amend the rule for the appointment of KMP. Ministry of Corporate Affairs has made it compulsory vide notification No. **G.S.R. 390(E)** dated **9th June 2014** for A company other than a company covered under rule 8 which has a paid up share capital of five Crore rupees or more shall have a whole-time company secretary.

Related Notification for introduction for rule 8A is as follows:-

MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, the 9th June, 2014

G.S.R. 390(E).—In exercise of the powers conferred by sub-section (1) of Section 203 of the Companies Act, 2013 (18 of 2013) read with clause (51) of Section 2 and Section 469 of the said Act, the Central Government hereby makes the following rules to amend the **Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014**, namely:—

1. (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

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2. In the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 after rule 8, the following rule shall be inserted, namely:—

"**8A. Appointment of Company Secretaries in companies not covered under rule 8.**—A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary."

[F. No. 1/11/2013-CL-V]
AMARDEEP SINGH BHATIA, Jt. Secy.

Be Positive about Company Secretary Course

But honestly there is not much to worry as far as sustainability of Company Secretary profession is concerned. I believe that Companies Act, 2013, will take the profession of Company Secretary to new heights with the concept of KMP. It is a fact that Companies Act, 2013 has done away with the requirements of compliance certificate for small companies and pre certification of certain E-forms and Secretarial Audit is mandatory only for big Companies. But one should understand that concept like Secretarial Audit is all together is a new opportunity for practicing Company Secretaries. We should not think that we are just dependent on Companies Act and secretarial compliances. There are so many other laws such as FEMA, SEBI, DEPOSITORY, LABOUR LAWS, SERVICE TAX, VAT, INTERNATIONAL LAW etc. where we can make our excel in our career, so there is nothing to worry. It is high time for company secretaries to break the barrier of Company Law and move beyond that towards different horizons.

Further, MCA has recognized the importance of all these Acts with respect to Company Secretary Profession. Actually on Social networking System few people used to create negativity about Company Secretary profession. Those who think Company Secretary Profession is all about ROC Form filing and secretarial work of the Company are actually worried about their career as a Company Secretary. As per my opinion one should study properly and touch various branches/aspects of the profession like Foreign and International Law, Finance and Taxation and most importantly Legal. It is a fact that current job market is full of jobs in legal field. Enhanced compliance provisions under new Companies Act, 2013 will surely help Company Secretaries in one way or other. So there is nothing to worry.

I hope you like this article. You are requested to kindly share your opinion in this regard.

Thanks
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