

### **3. Administration of a Company**

**Introduction:** A company is an artificial person created by law and as such, it cannot act by itself. It must act only through some human agency. The shareholders who are the owners of a company, are scattered over a very wide area and joint stock form of organization is characterized by large membership. Hence, it is not possible for the shareholders of a company to take part in the day to day management of the company. In this regard, they entrust the actual management to their elected representatives called directors who act on behalf of the company dealing with third parties and also exercise the effective powers of management.

The institution of a company is composed of two organs, the general body of shareholders and the board of directors. The board is the managerial body to whom is entrusted the whole management of the company, directors are accountable to the members.

#### **Key Managerial Personnel**

**Meaning:** Key Managerial Personnel are the employees of a company who hold key positions in the company and greater responsibility of overall functioning of the company including the duty to protect the interest of the stake holders (Creditors, Directors, Government, Employees, Owners, Suppliers, Unions).

#### **Definition**

Section 2(51) of companies Act, 2013 defines “Key Managerial Personnel” in relation to company means

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- i. The chief executive officer or the managing director or the director
- ii. The company secretary
- iii. The whole-time director
- iv. The Chief Finance Officer and
- v. Such other officer as may be prescribed

#### **Director**

Director is a person who is in charge of an activity, department or organization. The director will be the member of the board of people manages or oversees the affairs of a business. In other words, Director is a person who leads, manages or supervises an organization, program or project.

*Under section 2(34) of Companies Act, 2013 “a director appointed to the board of a company”*

### Appointment of Director

1. **By the promoters of the company:** At the time of formation of company, generally name of the first directors of the company. The promoters select and secure the consent of prominent persons to act as the first directors.
2. **By the subscribers to the memorandum:** Sometimes the articles of the company confer a right on the subscribers to the memorandum, who are the original members of the company, to appoint the directors of the company. If the articles are silent on this subject, the subscribers to the memorandum shall be deemed to be the first directors of the company until the directors are appointed at the next general meeting.
3. **By the company in General meeting:** The first directors are appointed by promoters or by the subscribers to the memorandum. The subsequent directors are elected by the shareholders at the general meeting or nominated as per articles.
4. **By the board of directors:** Board of directors may appoint directors in the following ways,
  - *As additional director:* The Board of directors may appoint within the maximum strength fixed for the board by the articles.
  - *In a casual vacancy:* In the case of a public company or a private company which is a subsidiary of a public company if the office of a director appointed by the general meeting has fallen vacant before his term of office expires, the vacancy may be filled up by Board of directors.
5. **By proportional representation:** Normally directors are appointed on a straight vote of the members of the company

### Duties of Director

- *To determines the amount of minimum subscription*
- *To see that all money received from applications for shares are deposited in scheduled bank account*
- *To prepare the statutory report and file a copy with registrar of company*
- *To call an extraordinary general meeting of the company*
- *To approve profit and loss account and balance sheet before they are submitted to auditor*
- *To declare dividends*
- *To manage the affairs of the company*
- *To purchase and pay for qualification shares*
- *To act in good faith*
- *To discharge all the above duties carefully*

### **Managing Directors**

The companies Act defines a managing director as “a director who by virtue of an agreement with the company or of a resolution passed by the company in the general meeting or by the board of directors, or by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him and includes director occupying the position of a managing director by whatever name called”

### **Appointment of Managing Directors**

A managing Director may be appointed by any of the following way,

- a) By an agreement with the company, or
- b) By a resolution of the company in general meeting, or
- c) By the Board of Directors, or
- d) Under a memorandum, or
- e) Under the articles of the company

In practice, it is usual for the Board of Directors to be given the power by the articles to appoint one of themselves as a managing director. Where the board is given such a power by the articles, the company in a general meeting cannot make the appointment or interfere with the appointment already made by the board.

### **Restrictions on appointment of Managing Director and Re-appointment**

1. A person below the age of 21 and above the age of seventy years cannot be appointed our managing director. However, by passing a special resolution, person completed the age of 70 can be appointed.
2. A person cannot be appointed as managing director for a term exceeding 5 years at a time. A person can, however to re-appointed not earlier than one year before the expiry of his term.
3. A person cannot be appointed as a managing director of more than one public companies at a time.
4. The rule regarding the retirement of directors by rotation is not applicable to the managing director.
5. A managing director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profit of the company or partly in one way and partly in other.
6. The central Government’s sanction is required for any increase directly or indirectly in the remuneration payable to the managing director.
7. A managing director is not entitled to receive any commission or other remuneration from any subsidiary of the managed company.
8. The managing director will work in two capacities, one as director and another as manager of the company.

9. If a company has a managing director, it cannot have a manager.

**Powers, Duties and Responsibilities of Managing Director**

1. As a member of Board of Directors, he participates in formulating the objectives and policy making functions of the board.
2. To execute policies laid down by the Board of Directors.
3. To interpret and communicate policies of the company to subordinate employees.
4. To review the operation of the company and present to the board periodically the accounts and statistics showing the progress and present position of the company.
5. To formulate the employee compensation plan in accordance with the accepted policies of the company.
6. To appoint high officials of the company.
7. To plan the development and expansion of the business.
8. To organize meetings with the department heads.
9. To promote high morale among the employees of the company by creating a sense of belongingness.
10. To maintain contact with the government, Chamber of Commerce, Trade unions, and community at large.

**Distinguish between a Director and a Managing Director**

Basis	Director	Managing Director
Responsibility	The directors take responsibility for framing the policy of the company.	The managing director takes responsibility for implementing it.
Management	The directors do not take part in the day to day affairs of management of the company.	The managing director actually takes part in the daily management of the company.
Appointment	The directors are appointed by the shareholders of the company at the general meeting.	The managing director is appointed by the directors at the board meeting.
Directorship	The maximum number of companies for which a person can act as a director at a time is 20.	The maximum number in the case of a managing director is only 2.
Compulsory	For all companies, public and private, the appointment of directors is compulsory.	The appointment of a managing director is not compulsory.
Period	The directors are appointed for a period not exceeding 3 years at a time.	The managing director is appointed for a period not exceeding 5 years at a time.

Retirement	The directors are subject to retirement by rotation.	The managing director is considered as an agent of the board of directors.
Agent	The directors are considered as agents of the shareholders of the company.	The managing director is considered as an agent of the board of directors.
Profit	The directors do not hold any office of profit but only receive honorarium for attending meetings.	The managing directors holds a regular office of profit and receives a regular salary.
Agreement	Directors do not enter into any agreement with the company regarding their powers, duties etc.,	The managing director enter into an agreement with the company which provides for the terms and conditions of service, his powers, duties etc.,

### **Whole-time director**

Section 2(94) says that, “whole-time director includes a director in the whole-time employment of the company”. This means that he is a director of the company appointed as employee for whole-time and receives remuneration. A managing director and whole-time director can be appointed and function parallelly. He is a “Key Managerial Personnel” of the company. Further when a whole-time employee is appointed as a director, he will become a whole-time director.

### **Distinguish between a Whole-time Director and a Managing Director**

Basis	Whole-time Director	Managing Director
Substantial power	A whole-time director is just an employee of the company and does not enjoy any substantial powers of management.	A Managing director is entrusted with substantial powers.
Sanction of consent	The appointment of a whole-time director requires the sanction of shareholders by means of a special resolution.	The appointment of managing director does not require the consent of shareholders.
Appointment	A company can appoint a whole-time director along with a managing or a manager.	A company cannot appoint a managing director and manager simultaneously.
Directorship	A whole-time director cannot act as a whole-time director in more than one company.	A Managing director can be a managing director in two companies.
Period	No restriction on term of office.	He can be appointed as a managing director for a maximum period of 5 years at a time.

**Independent director:** Section 2(47) of ICA, 2013, “Independent Director means an independent director referred to in section 149(5)” of this Act.

Section 149(5) of the Act, says that every company existing on or before the commencement of this Act, within one year from such commencement or from the date of notification of rules in this regard as may be applicable, comply with the provisions of sub section (4).

Sub section (4) says that at least one-third of the total number of directors should be independent directors.

**Resident Director:** Section 149(3) stipulates that every company shall have at least one director as resident director who has stayed in India for a period not less than 182 days in the previous calendar year. His responsibilities are:

- i. He is fully responsible as normal director of the company
- ii. Resident director will not be involved in operational control and he has to fulfill the statutory requirements.
- iii. He will be participating in board meeting, wherever required.

**Chief Financial Officer:** Section 2(19) of Companies Act, 2013, defines Chief Financial Officer as “an officer of a company who has been designated as such by it”. This means Chief Financial Officer will have to discharge functions such as financial planning, managing financial risks, record keeping and financial reporting.

**Manager:** “Manager” as per section 2(53) means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract”.

### **Auditor**

The shareholders who have invested their funds in a company do not take an active part in the business. Due to this reason, they are not in position to know whether any fraud has been committed by their representatives like, directors and officers who are in charge of the management of the company. Therefore, to safeguard the interest of the shareholders, the accounts of the company should be audited by auditor.

Auditor is an official person whose job is to carefully check the accuracy of the business records.

### **Appointment of Auditors**

1. The first auditors of a company are appointed by the board of directors within one month of the registration of the company and such auditors shall hold office until the conclusion of the first annual general meeting of the company.

2. If the board does not appoint the first auditors, the company in a general meeting may appoint the first auditors.
3. Subsequent auditors can be appointed by the company at each general meeting and they hold office from the conclusion of that meeting till the conclusion of the next annual general meeting.
4. The company must, within 7 days of the appointment, give intimation thereof to every auditor so appointed unless is a retiring auditor.
5. A company while making the appointment of auditors must get the certificate in writing from him that he is not the auditor in more than 19 companies.
6. The person who has been appointed as an auditor for a company, must within 30 days of receipt of intimation of his appointment should inform the registrar in writing about his acceptance or non-acceptance of the appointment.
7. The appointment and re-appointment of auditors is made on contract basis and it can be renewed every year. The retiring auditors are eligible for reappointment and the company may re-appoint old auditors for another term of one year or may appoint new auditors in their place
8. If the auditors are appointed or re-appointed by the company at the annual general meeting, the company should give a notice to that effect to the central government within 7 days of the conclusion of the meeting and the central government fill the vacancy and fix the remuneration.
9. Failure to give such a notice will make the company and every officer of the company concerned, liable to a fine which may extend up to 500.
10. Any casual vacancy in the office of an auditor may be filled up by the board of directors, but while any such vacancy continues, the remaining auditors, if any, may act.
11. Any casual vacancy caused by the registration of the auditor can be filled only by the company in a general meeting and not by the board of directors.

### **Ceiling on number of auditors**

Certain ceilings on the number of audits to be undertaken by an auditor have been imposed under sub-section (1B) and (1C) of section 224 of the companies Amendment Act, 1974.

From the financial year next following the commencement of the amendment Act, no auditor shall be appointed or re-appointed, if he is at the date of appointment or re-appointment an auditor an auditor of 20 companies each of which has a paid up capital of less than 25 lakhs, and is in any case 20 companies, out of which not more than 10 shall be companies each of which has a paid up capital of 25 lakhs or more.

### **Auditor of a Government company**

The auditor of a government company is appointed or re-appointed by the central government on the advice of the Comptroller and Auditor – General if India to whom a copy of the audit report must be sent.

### **Qualification of Auditors**

A person appointed as an auditor of a company must be chartered accountant within the meaning of the Chartered Accountants Act 1949. But if a firm is to be appointed as auditor of a company, then all the partners of that firm must be chartered accountants.

### **Disqualifications of Auditors**

The following are disqualified from being appointed as auditors of a company:

- a) A body corporate
- b) An officer or employee of the company
- c) A person who is a partner or who is in the employment of an office or employee of the company.
- d) A person who is indebted to the company for an amount exceeding 1,000 or who has guaranteed the repayment of any debt of more than 1,000 due to the company by a third party.
- e) A person who is disqualified for appointment as auditor of the company's subsidiary or holding company.

### **Powers and rights of Auditors**

1. An auditor of a company has the right of access at all times to the books, accounts and vouchers of the company.
2. He has the right to ask officers of the company for such information and explanations as he may think necessary for the performance of his duties as an auditor.
3. He has the right to receive a notice of and to attend the general meetings on matter which concern him as an auditor.
4. He has the right visit the branch office if he thinks it necessary for the purpose of audit.
5. He has the right to enquire whether the company has maintained the books of accounts in the manner prescribed by the act.
6. He has the right to take legal, expert or technical advice on matters relating to his audit work.
7. He has the right to receive remuneration after completing the audit work of the company.
8. He has the right to be indemnified by the company against liability incurred by him in defending himself against civil and criminal proceedings by the company, provided the court has acquitted him of the charges or the court feels that the auditor acted honestly.
9. He has the right to sign the audit report of the company.

### **Duties and responsibilities of Auditors**

- a) He must make himself acquainted with his duties under the articles and the Act.
- b) He must act honestly and with reasonable skill and care while performing his duties as an auditor.



- c) In his report on annual accounts which he must submit every year he must show the true financial position of the company.
- d) The report which is prepared by auditors should contain following important aspects:
  - Whether he has obtained all information and explanation necessary for the purpose.
  - Whether the balance sheet and profit and loss account are prepared as per the Act.
  - Whether the balance sheet exhibits a true and fair view of the state of affairs of the company.
  - Whether the profit and loss account show a correct and true profit and loss for the financial year.
  - Whether, in his opinion, proper book of accounts as required by law, have been kept by the company.
  - Whether the loans made by the company are advanced against sufficient security, and
  - Whether these loans are on reasonable terms.
- e) The first auditor of the company should submit his report on the financial items stated in the statutory report.
- f) He is not bound to give advice to the directors or members as to what they should do, nor is he concerned with the policy or management.
- g) He is justified in trusting the servants of the company provided he takes reasonable care.
- h) He should use reasonable skill and care in making enquiries and investigations. He is not bound to be detective or to approach his work with suspicion.
- i) If anything, suspicious occurs, he is required to go deeper into the matter and he should not certify anything which he believes to be not true.
- j) He must check the cash and bank balance and should verify the existence of the company's securities and see that they are in safe custody.

### **Removal of Auditors**

- To remove the first auditors
- When appointing a person other than the retiring auditors, or
- When it is to be provided expressly that a retiring auditor shall not be reappointed.

Following are the procedure to be followed for removing the above auditors

- a) For the removal of the retiring auditor and for the appointment of a new auditor in his place, a special notice is required from any member, interested for a resolution at an annual general meeting. The removal of the existing auditor and the appointment of another auditor in his place require only an ordinary resolution.

- b) On receipt of such a notice, the company must immediately send a copy thereof to the retiring auditor.
- c) The retiring auditor may make a representation in writing to the company and ask the company for a copy of representation to be sent to every member of the company.
- d) Copies of representation need not, however be sent out, and the representation need not be read out at the meeting, if the company or any aggrieved person to secure publicity of defamatory order.

### **Remuneration of Auditors**

- The Act provides that in the case of an auditor appointed by board of directors or the Central Government, his remuneration may be fixed by the board or central government
- The remuneration payable to an auditor is determined by company in general meetings at which he is appointed or re-appointed.

### **Liabilities of Auditors**

- The auditor is liable for any breach of contract.
- If auditor fails to comply with the requirements of the Act with respect to balance sheet and profit and loss account, he is liable for fine which may extend up to 1,000.
- If the auditor is negligent in the performance of duties and as result of that if company incurs loss, then he will be liable to indemnify the company.
- He is also liable for falsification of books of accounts or for concealment of any information relating to company in the event of winding up of the company.

### **Audit Committee**

Under section 177 of companies Act, 2013 the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

Every audit committee of an existing company, immediately before the commencement of this Act shall, within one year of such commencement, be constitute in accordance with sub-section (2).

### **Composition of Audit Committee**

The Audit committee shall consist of a minimum of 3 directors with independent directors forming a majority. Provided that majority of members of Audit committee including its chairperson shall be persons with ability to read and understand, the financial statement.

### **Functions of Audit Committee**

- ❖ The recommendation for appointment, remuneration and terms of appointment of auditors of the company.
- ❖ Review and monitor the auditor's independence and performance and effectiveness of audit process.
- ❖ Examination of the financial statement and the auditor's report thereon.
- ❖ Approval or any subsequent modification of transactions of the company with related parties
- ❖ Scrutiny of inter-corporate loans and investments
- ❖ Valuation of undertakings or assets of the company, wherever it is necessary
- ❖ Evaluation of internal financial controls and risk management systems
- ❖ Monitoring the end use of funds raised through public offers and related matters.

### **Solicitor**

A solicitor is a legal expert and acts a legal advisor to the company. He is generally appointed by the board of directors and like any other officer, he is also a servant of a company. His services are essential to the company

### **Corporate Social Responsibility Committee (CSR Committee)**

The board of every company referred in section 135(1) shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made in during the 3 immediately preceding financial years, in pursuance of Corporate Social Responsibility policy.

Under section 135 of Companies Act, 2013 every company having net worth of rupees 500 crores or more, turnover of Rs.1000 crore or more or net profit of Rs. 5 crore or more during the financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of 3 or more directors, out of which at least one director shall be an independent director.

The board's report shall under section 134(3) shall disclose the composition of the Corporate Social Responsibility Committee.

- a) Formulate and recommend to the Board, a corporate social responsibility policy which shall indicate the activities to be undertaken by the company as specified in schedule VII
- b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a)
- c) Monitor the Corporate Social Responsibility policy of the company from time to time.

## **Company Secretary**

**Meaning:** Company secretary is a person who is a member of the Institute of the Company secretaries of India or any other individual possessing the prescribed qualifications, appointed by to perform the duties imposed on him by the companies Act, 2013, the ministerial or administrative duties and managerial functions.

**Definition:** Under section 2(24) of Companies Act, 2013 defines a secretary as “A company secretary within meaning of clause (c) of sub-section (i) of section 2 of the company secretaries Act, 1980 and includes any other individual possessing the prescribed qualifications, and appointed to perform the duties which may be performed by a secretary under this Act and other ministerial or administrative duties”.

**The companies Act, 2013 have inserted 3 new sections to clearly tell the compulsory appointment of the secretary.**

**Section 203:** This section clearly specifies that a secretary should be appointed as key managerial personnel. Every public and listed companies having paid-up capital Rs.5 crores or more should compulsorily appoint whole time secretary.

**Section 204:** This section specifies about secretarial audit for bigger companies. This section tells that every listed company and company belonging to other class of companies as may be prescribed under rule 9 of Companies rules, 2014 should attach a secretarial audit report given by company secretary in practice in the prescribed form.

**Section 205:** This section speaks about the functions of the company secretary, who will be the full-time secretary of the company. This also a new section and seeks the to provide the functions, duties and liabilities of the secretary.

## **Appointment of a company secretary**

**Appointment of first Company secretary:** The promoters of a company generally appoint the first secretary, who assist them in formation of the company by attending all the preliminary work, such as preparation of various documents and statements required for registering the company, arranging the meetings of promoters, preparation of meetings etc.,

The board of directors has the powers to appoint a regular secretary by passing a resolution in the meeting. The first secretary appointed by promoters may or may not be appointed as a regular secretary by the board. There are no restrictions on directors to appoint the same person as a secretary appointed by the promoters. If the board of directors decide to appoint another person as a secretary after incorporation.

**The procedure for appointment of company secretary other than the first secretary,**

- A resolution has to be passed at the board of directors meeting.
- The particulars of appointment must be filed in duplicate with the registrar of the company within 30 days of the appointment.
- If the person appointed as a secretary functions as secretary in any other company, he has to notify the other company within 20 days of the appointment.
- Any director interested in the appointment of secretary must disclose his intent and must not take part in discussion or voting on the resolution.
- If the person appointed as a secretary is the director or relative to the director, a special resolution is passed in the general body meeting.

### **Duties of Company Secretary**

The duties of a company secretary vary from company to company, depending upon the nature of the business, size of company and powers enjoyed by and responsibilities entrusted with the secretary. In some companies, he is appointed to attend to the requirements of the companies Act in which case he functions as the head of the secretarial department. His duties will then consist of filing of documents and returns, maintaining statutory books, calling books, writing minutes, transfer of shares etc. more often however, the secretary may be asked to look after the company's administrative operation and office staff in which case, he will have more duties and broader functions to discharge relating to departments such as shares, correspondence, filing, personnel and statistics. Further, he will have to arrange for proper staffing and coordinate the activities of departments under his control.

#### **1. Statutory Duties:**

The statutory duties of a company secretary are those prescribed by the companies Act or by any other legislation such as Income tax Act, Sales tax Act, Stamp Act, Employee's State Insurance Act, Industrial Disputes Act, Contract Act, Monopolies and Restrictive Trade Practices Act etc.,

The most important part of his statutory duties relates to the various provisions of companies Act. The important statutory duties under this Act are as follows,

- Maintenance of books and registers of the company.
- Filing of the necessary returns with the registrar of companies.
- Supervising the issue, allotment, transfer and forfeiture of shares and debentures.
- Attending to meetings and recording their proceedings.
- Allowing inspection of books and documents when required by the statute.
- Safe custody and proper use of the common seal of the company.
- ❖ The Income Tax Act requires him to take steps for the deduction of income tax from dividends, interest and salary and its payment to the tax authorities.

- ❖ Under stamp Act, he has to see that stamps of the requisite amount are affixed to documents, share etc.
- ❖ Under GST Act, he has to arrange for timely submission of sales returns, purchased returns and payment of tax.

In addition to the above Acts, secretary has to comply with the provisions of any other Act which is applicable to that particular company. Such as Factories Act, Industrial Disputes Act, Minimum wage Act etc.

## **2. Duties in relation to Directors**

- ❖ The secretary has to look after the correspondence with the directors, convene board meetings under the direction of the managing director.
- ❖ Prepare minutes and execute the orders and instructions of the board.
- ❖ He has to advise the directors during the deliberations at the meeting regarding the provisions of various Acts. He acts as a guide to the board of directors.

## **3. Duties in relation to shareholders**

The secretary is also a medium of communication between the company and shareholders. As the shareholders are the owners of the company, the secretary has to safeguard the interest and should attend to their inquiries. Following are the duties of secretary in relation to shareholders,

- ❖ Application and allotment of shares
- ❖ Calls on shares
- ❖ Forfeiture of shares
- ❖ Transfer and transmission of shares
- ❖ Distribution of dividends
- ❖ Notices and circulars to members
- ❖ Meetings of shareholders
- ❖ Inquiries and complaints from shareholders

## **4. Duties towards organization or office**

- ❖ The secretary is generally recognized as the head of the office of the company and has control over departments such as shares, records and filing.
- ❖ He has to ensure that the office works with maximum efficiency
- ❖ He has to supervise various activities of the office and also co-ordinate the activities of the different departments
- ❖ In order to get best out of staff, he has overall duty to select, organize and guide the personnel

### **5. Duties in relation to public**

- ❖ Secretary is the medium of communication between directors and general public consisting of debenture holders, creditors, banker, solicitors, creditors and prospective investors.
- ❖ He has to be in touch with the public and provide information that they need.
- ❖ He should take care that no confidential information is divulged with public.

### **6. Duties before Incorporation**

- ❖ To help the promoter in making detailed investigation of the proposed venture.
- ❖ If necessary, on the advice of the promoters to secure the opinion of the experts in different fields on the proposed venture.
- ❖ To help the promoters in drawing up the financial plan for the proposed venture.
- ❖ To attend to all preliminary meetings of the promoters, keep a record of proceedings of their meetings and to help in the discussion.
- ❖ To secure the approval of the registrar for the proposed name of the venture.
- ❖ To help the promoters in the preparation of preliminary contracts.
- ❖ To help the promoters in drafting and finalizing of documents such as MOA, AOA etc.,
- ❖ To follow the guidelines issued by SEBI.
- ❖ To see that all the requirements of the Act as to incorporation and registration are complied with and that documents such as MOA, AOA etc., with required stamp duty, filing fees and registration fees are duly filed with the registrar.
- ❖ To collect the Certificate of Incorporation from the registrar of the companies
- ❖ To send a notice of the registered address of the company to registrar within 30 days of the date of registration.

### **7. Duties after Incorporation**

- ❖ To make himself thoroughly conversant with contents of the MOA and AOA.
- ❖ To prepare the draft of prospectus or statement in lieu.
- ❖ To call the first board meeting and get the draft prospectus, preliminary contracts etc., approved by the board.
- ❖ To see that his own appointment is made and confirmed at the first meeting.
- ❖ To get the necessary resolution passed for the appointment of bankers, legal advisors and other responsible officers of the company.
- ❖ To arrange for listing of securities of the company.
- ❖ To arrange for the opening of a bank as per the directions of the board.

- ❖ To secure the necessary forms and stationery and to arrange for the preparation of the common seal of the company.
- ❖ To see to that the prospectus or statement in lieu of prospectus is filed with the registrar and arrange for the issue of the prospectus to the public.
- ❖ To arrange bankers to receive the application money from the intending investors.
- ❖ To arrange a board meeting as soon as the minimum subscription is reached.
- ❖ To see that a declaration is filed with the registrar of company by one of the directors or secretaries himself, stating that the conditions required to be fulfilled for getting the certificate of commencement of business have been complied with.
- ❖ To collect the certificate of commencement from the registrar.

### **Rights and Powers of Company secretary**

The companies Act does not confer any special powers for secretary. Therefore, the secretary has to act in accordance with the orders of the board of directors and cannot do anything without express or implied authority from the board. However, as an employee, and as an officer of the company he derives certain powers by implication. They are,

1. He has the right to control and manage the departments under his control.
2. As a principal officer within the meaning of the Companies Act, he has a right to sign documents which require authentication.
3. As an employee of the company, he has the right in the case of winding up of the company to claim his salary as a preferential creditor.
4. He can be special right to allot shares to the applicants if directors desire to do so, but the directors should have the power to delegate this right in the articles of the company.
5. He has also certain powers by implications,  
Example: secretary can serve notice under section 53.

### **Restrictions on powers / limitations on secretarial duties**

1. To convene the general meeting
2. To allot shares
3. To transfer shares
4. To remove name from register of members
5. To make any representation on behalf of company
6. To enter into any contract on behalf of the company
7. To borrow money on behalf of company
8. To take policy decisions



## **Liabilities of a Company secretary**

The liabilities of company secretary can be divided into 2 categories, they are

### **1. Statutory Liabilities**

- a) **As per Companies Act, 2013**, if he fails to comply with legal requirements. He may be held liable for the following:
- If he fails to hold a statutory meeting
  - If he does not circulate statutory report
  - If he fails to hold the Annual General Meeting
  - If he fails to submit to registrar of companies copies of annual accounts and other statements
  - If he fails to give notice of a board meeting
  - If he fails to record the minutes of board meeting
  - If he does not maintain a minute books of board and general meeting
  - If he refuses to allow inspection of minutes by members
  - If he refuses to furnish copies of minutes to members
  - If he fails in making ready share certificates and debentures certificates within the stipulated time.
  - If he fails to maintain a register of director, shareholders, debenture holders
  - If he fails to comply with the proact regarding the provisions of the Act regarding the appointment of auditors and auditor's report
  - If he fails to have the name of the company engraved on the seals
- b) **As per Income Tax Act, 1961** the company secretary is responsible for:
- Collection (i.e. deduction at source of income tax from salaries of the staff and from dividend paid to shareholders)
  - Payment of income tax so collected
  - Payment of corporation tax
- c) **As per Indian Stamp Act**, the company secretary is responsible for:
- Verifying documents needing stamps
  - Verifying their correctness
- d) **As per shops and Establishments and Sales Act**: The company secretary is recognized as the principal officer of the company and as such he is liable for fulfilling the various provisions of these acts. In regard to administrative requirements of the provisions, he is the sole responsible officer and he will be held for not fulfilling the requirements.

**2) Contractual liabilities:** Apart from the statutory liabilities, the company secretary has certain contractual liabilities to the company arising out of his contract of service with the company. These liabilities are known as contractual liabilities. They are as follows,

- a) He must carry out the orders given to him by the directors.
- b) He must carry out the obligations of his service agreement with the company.
- c) He should not disclose any confidential information of the company.
- d) He should not do anything beyond his authority if he acts beyond his authority, he will be held personally liable for any damage or loss suffered by the company or any third party as a result of his action.
- e) He is liable for damages caused to the company by his willful misconduct and neglect of duties.
- f) He is liable for any fraud on the part of any of his assistants if it is proved that he is a party to such fraud.

### **Legal position**

The Companies Act has recognized the secretary as the principal officer of the company and he is responsible for the secretarial and other purely ministerial and administrative work of the company. He has to file various returns and statements with the registrar of company as per requirements of the companies Act.

In the eyes of law, the secretary is a mere servant of the company. He has to act in accordance with the order or directions of the board of directors. Without authority, he cannot enter into contract with third parties and cannot make any representation on behalf of the company. He is appointed by directors and derives his authority from the board. He is under the control of the board of directors and he has to carry out the orders of the board and cannot exercise independent discretion in the work for which he is responsible. Thus, the secretary is a mere servant and subordinate officer of the company without any managerial function.

### **Actual position or status of the company secretary**

- ✓ The actual position of company secretary is not merely not a servant or an agent, but something more than that. In actual practice, a company secretary occupies a position of importance in the administrative set-up of the company.
- ✓ The company secretary is in close touch with the work of the board and has access to the confidential affairs of the company.
- ✓ He is often consulted by the chairman and the board before taking any decision on the policy matters or any other important matters since, he has an intimate knowledge of the company.

- ✓ He is not the mere tool in the hands of the board of directors or the mouth-piece of the directors carrying out the orders of directors.
- ✓ In the company set-up both directors and secretary play a complementary role to each other. The board of directors is responsible for the overall management of the company's business. They plan, decides and formulates the policies of the company. But the responsibility of the actual execution of the policies lies with the company secretary.

That is why, it has been rightly remarked that while the directors are the brain of the company, the secretary is its eyes, ears and hands of the company.

### **Removal or Dismissal of a Company secretary**

- The secretary may be removed from office by the board of directors, under the power expressly given in the articles or under their general powers which articles generally give them.
- A secretary being a servant of the company, his suspension and dismissal are governed by the normal law applicable to employer and employee. The service of a secretary may be terminated by giving him a notice as per the terms of the service agreement.
- The services of the secretary may be terminated without notice if he makes profits secretly. He may be dismissed for willful disobedience, misconduct, moral turpitude, negligence, incompetence or permanent, disability.

### **Types of Company secretary**

There are two types of Company Secretary. They are:

1. **Routine Secretary:** A secretary is called a routine secretary because his position can be compared to the position of the head of the clerical department doing only such work as he is directed to do by the board. The duties of routine secretary relate to:
  - Supervision of all issues of capital and debentures.
  - Registration of transfer and transmission of shares.
  - Attending to work relating to board meetings and general meetings.
  - Preparing dividend warrants and maintaining the statutory and other books of the company.
  - Filing the necessary returns of the company with the registrar of companies.
2. **Executive Secretary:** In addition to routine duties, the secretary also to function as an executive office of the company and look after the work relating to
  - Organization, control and responsibility of the company's clerical work.
  - Correspondence relating to various departments.
  - Costing and company accounts.
  - Negotiating contracts.

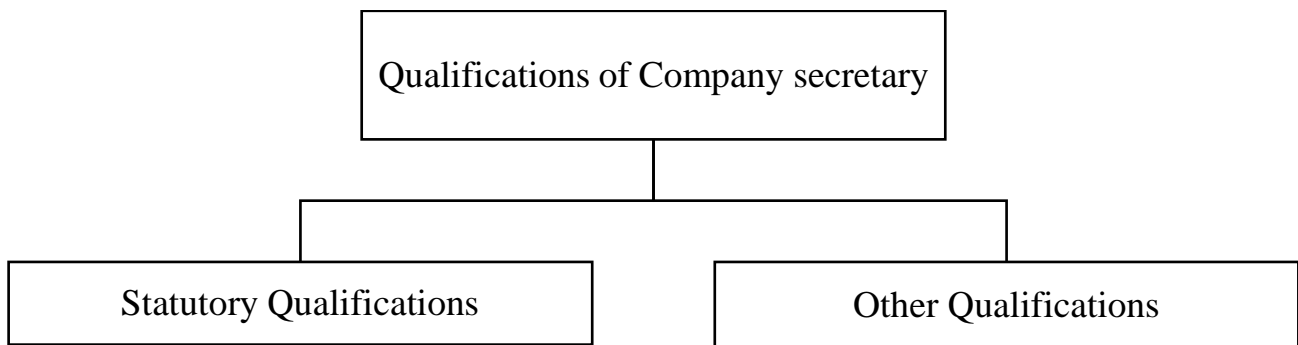
- Acting as an advisor and guide to the board.

### **Secretary's three-Fold capacity**

1. **Acts as an agent of director:** Carries out all the orders and instructions of the board of directors
2. **Acts as a registrar of company:** By looking after the secretarial functions such as filing of various return with the registrar of companies attending to work relating to transfer of shares, correspondence etc.
3. **Chief Executive:** The board of directors may delegate to the full responsibilities for organizing and controlling of the company in which case he has to function as a chief executive.

### **Qualifications of Company Secretary**

The qualification of Company secretary can be classified as follows,



#### **1. Statutory Qualifications**

Companies Act, 2013 has introduced a new section 203 to make provisions for appointment of Key Managerial Personnel. Section 203(1) (ii) recognizes the secretary has one of the Key Managerial Personnel.

Following are the statutory qualifications to be considered to appoint company secretary:

- a) Every company with a paid-up share capital of not less than Rs.5 Crores shall have a whole-time secretary. Therefore, it is not mandatory to have a whole-time secretary, if a company has paid-up capital below 5 crores.
- b) No person shall be appointed as a secretary unless he is a member if the Institute of Company Secretaries of India (ICSI). This applies to both whole-time or other secretaries.
- c) In case of companies with paid-up share capital of less than Rs. 5 Crores any individual possessing any of the following qualifications may be appointed as its whole-time secretary to perform duties of secretary,
  - Membership of the Institute of Company Secretaries of India (ICSI).

- Pass in the intermediate examination conducted by the Institute of Company Secretaries of India (ICSI).
- Post-graduate degree in commerce or corporate secretary ship awarded by any university in India.
- Degree in law awarded by any university.
- Membership of the Institute of Cost and Works Accountants of India (ICWA).
- Membership of the Institute of Chartered Accountants of India (ICAI).
- Post-graduate in Company Law and Secretarial Practice granted by any university in India.
- Membership of the Association of Secretaries and Manager, Kolkata.
- Diploma in Corporate Laws and Management granted by Indian Law Institute, New Delhi.
- Post-graduate degree or diploma in Management Sciences granted by any university.
- Post-graduate degree or diploma granted by Indian Institute of Management (IIM), Bangalore, Calcutta, Lucknow, Ahmedabad or Calicut.

## 2. Other qualifications

In addition to the statutory or professional qualifications, a company secretary should possess certain other qualifications if he is to discharge his all duties efficiently. The other qualifications are as follows,

- a) **Sound General Education:** A sound general education helps the secretary in grasping the subject without taking much of his time and effort.
- b) **Command over language:** As a large part of the secretary's work consists of correspondence and preparation of reports, it is necessary that he should have a command over language. Further, he should also be conversant with certain specialized business terms and expressions suited to his work. If his company has foreign connections, it is better for him to have a knowledge of one or two foreign language.
- c) **Knowledge of the Industry:** He should have a thorough knowledge of the business of his company and knowledge of the industry in which his company is engaged. This would help him to give proper guidance to the chairman and the board on various matters of business.
- d) **General knowledge:** General knowledge helps the secretary in guiding the chairman and board of directors, and in performing his duties confidently. Hence, apart from knowledge of the industry, the secretary should have general knowledge.
- e) **Knowledge of various Acts relating to staff:** For the efficient handling to staff, the secretary should have a thorough knowledge of various Acts of legislation which are applicable to the staff like, Factories Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Employee's Provident Fund Act, Income Tax Act etc.

- f) **Knowledge of Company Law:** A thorough knowledge of the various provisions of the Companies Act is essential for the secretary. Companies have to function within the legal framework of the companies Act, hence thorough knowledge of Company Law is important.
- g) **Knowledge of Mercantile Law:** Apart from the knowledge of the company law, a working knowledge of laws relating to contracts, negotiable instruments, sale of goods, insurance etc., may be of immense help to the secretary in discharging duties.
- h) **Knowledge of Accounting and Taxation:** As company secretary is an executive officer of the company, he must also have a basic knowledge of the principles of accounting and taxation.
- i) **Knowledge of office organization:** For the efficient organization of the office, the secretary should know the best system of filing and indexing and should have a knowledge of labor-saving devices, recruitment of office staff, methods of remuneration, delegation of work etc.,
- j) **Impressive personality:** The various qualifications mentioned above are essential, but not sufficient. Besides these, for a company secretary to be a successful executive, he must have a good personality which is a comprehensive term consisting of so many personal virtues and talents such a charming manner, organizing abilities, leadership, teamwork, initiative, common sense, intelligence, patience, responsibility etc.,

### **Company Secretary in Practice**

The company secretary means a company secretary who is deemed to be in practice under section 2(2) of the company secretary Act, 1980 and who is not in full-time employment.

#### **Functions of Company secretaries in practice**

- Engages himself in the practice of the profession of company secretary to, or in relation to any company. OR
- Offers to perform or performs, receives in relation to the promotion, formation, incorporation, amalgamation, reconstruction, reorganization or winding up of companies. OR
- Holds himself out to the public as a company secretary in practice. OR
- Renders professional service or assistance with respect to matters of principle. OR
- Performs the services of share transfer certificate, an issue, a share and stock broker, an advisor to a company on management.

### **Assignment 3**

#### **Section A**

1. Define Key Managerial Personnel
2. Who is a Director?
3. Who is Resident Director?
4. Define Independent director.
5. Define Managing Director.
6. What is Audit Committee?
7. Give the meaning of whole-time directors?
8. State the methods of appointing Managing Director.

#### **Section B**

1. Who is a company secretary? Explain briefly the rights of company secretary.
2. State the qualifications of Secretary.
3. Explain the appointment of Directors. (2016 question paper)
4. Distinguish between Director and Managing Director.
5. Explain the Powers and rights of an Auditor.

#### **Section C**

1. Who is a Managing Director? Explain the powers, Duties and responsibility of Managing Director.
2. “A Secretary is not only the servant of the company but also the servant of law” Discuss.
3. Explain the duties and responsibilities of a Company Secretary.
4. Explain the qualifications, duties and removal of an Auditor.
5. Explain the appointment and removal of a company secretary.