

Who is a Company Secretary?

A Company Secretary is one of the most senior positions in a public or private organization. Furthermore, a Company Secretary is placed at the topmost level in an entity which means at the Managerial Level. Such official is responsible for the proper functioning of the company and to ensure that the company acts in accordance with all the compliances laid down by the law.

Furthermore, a company secretary is a member of the Institute of Company Secretary of India {ICSI} or holds a relevant qualification as specified.

Which Companies Need to Appoint a Company Secretary?

As per the amendments in the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 now companies having paid-up capital of Rs. 5 crores or more has to appoint a Secretary in the company.

Qualifications of a Company Secretary

According to Section 2 (24) of Companies Act, 2013, a Company Secretary must hold specific requirements laid down by the Indian Government from time to time. Furthermore, the qualifications specified by the Companies (Secretary's Qualifications) Rules 1975 for the appointment of a CS;

1. In case of a company having paid-up capital of Rs. 50 Lakhs the Secretary must be a member of the Institute of Company Secretaries of India.
2. In case of any other type of company, the Secretary needs to hold one or more of the given qualifications;
 1. Is owning a membership of the Institute of Company Secretaries of India (ICSI)
 2. A law degree from any reputed university
 3. A member of the Institute of Cost and Works Accountants of India

4. Postgraduate degree in Commerce granted by any reputed university
5. A Diploma in Company Law from any India Law Institute

How is a Company Secretary Appointed?

A CS is appointed by passing a resolution at the board meeting. Prior to the appointment of such an appointment, the members of the Board formulate the terms and conditions of regarding the appointment. Additionally, the company secretary needs to issue a written consent for the role.

After the selection of the CS, the company has to provide his details (or of other KMPs) in the register of Key Managerial Personnel (KMP) and submit it to the Registrar of Companies (ROC) in Form DIR-12. Also, Form MGT-14 needs to be filed within 30 days of the passing of the Board Resolution with the CTC and Consent Letter.

Furthermore, the appointed CS is entitled to become the director of the company by taking prior consent from the Board. However, a company secretary is not allowed to hold office in more than one company or organization.

Restrictions on CS

The CS is not entitled to perform the following tasks in a company;

1. Cannot sign or agree to a contract on behalf of the company, unless backed by the Board of Directors
2. Borrow or ask for money in the name of the company
3. Call meetings of third parties
4. Acknowledge any debt against the suit filed against the firm
5. Transfer or register shares without taking prior consent of the Board of Companies

Roles and Responsibilities of The CS

A company secretary is an essential link between the entity and its shareholders, Board of Directors, government and other regulatory bodies and all other stakeholders.

Furthermore, the following are the roles and responsibilities of a Secretary or CS as per Section 205 of Companies Act, 2013;

1. To inform the Board about the compliance of the provisions of the Act
2. To ensure that the entity complies with all the applicable secretarial standards
3. And to deliver other duties which are prescribed by the Act

Note: Also, as per Section 205 (2) of the Companies Act, 2013, the provisions contained in the Sections 204 and 205 of this Act does not make any effect on the functions of the Board of Directors, Chairpersons, managing directors or the whole time director of the company.

Penalty For Not Appointing a CS in a Company

In case a company fails to appoint a Company Secretary or any other KMP, it is liable for a fine which is not less than Rs. 1 Lakh but not exceeding Rs. 5 Lakhs. Additionally, a fine of Rs. 1000 would be levied as fine on each director of the company in the defaulting company.

Disqualification of Company Secretary

In case, the Board of Directors is not satisfied with the performance of the CS, and the company officials can remove him by providing written notice in advance. Additionally, a secretary is a general employee of a company, so all the rules of the company, including the resignation of an employee also applies to the CS.

Takeaway

A Company Secretary is an essential part of the company who ensures that a company complies with all the provisions which are laid down by the law. A CS is basically an employee of the company, even though he holds such a high rank which is near to that of a director of a company. Typically, a CS is the only employee of the company who has advisory powers in the firm.

Basically, a CS's advice is taken forward and is used to carry out prominent functions and framing policies of the company. Therefore, he is the only outsider who is allowed to be present in the Board Meeting. A CS must be a member of the Institute of **Company Secretary of India (ICSI)**^[1] or holds any other relevant qualification.