

Broadened Vistas for Profession of PCS

Today we live in a globalised world. Globalisation has happened whether we like it or not. Its effects are naturally transnational, knocking down national boundaries. The result is a growing international community demanding common international standards and laws for the corporate world.

With trillions of dollars in capital sailing the globe in search of investment opportunities, the shareholders' crusade for more open, well-run companies is gaining strength across many major and emerging markets. In what some call a worldwide corporate-governance movement, shareholders are pushing for stronger corporate governance laws, with investors from different countries joining hands and negotiating behind the scenes with businesses.

Following international scams world over such as Enron, Tyco, Global Crossing, Worldcom, etc. and Satyam (the largest scam in India), the international investor community has become terribly apprehensive and is desperate for 'corporate transparency'. Corporate transparency serves as a deterrent to illegal and unethical behaviour. The law makers are realising that greater the information the company is required to disclose, the better the position of the investors to make sound decisions. As a result the philosophy of corporate governance has exploded around the globe. Today, there is an expectation from the corporate world to comply not only with the mandatory requirements but to voluntarily make certain other non-mandatory disclosures.

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The prevailing situation has thus thrown open several avenues for persons having a background and exposure in law and business practices. Company Secretaries, due to the nature of their profession, are in a position to add a lot of value to the process of corporate governance, in turn making it a big success. Practising Company Secretaries (PCS) can play a key role in the corporate governance movement by acting as consultants to corporations encouraging them to achieve better governance measures. This could be achieved through voluntary corporate governance audits at regular intervals and submission of these reports to the shareholders and other stakeholders.

In spite of the ongoing scams, it is quite interesting to know that small investors are still enthusiastically coming forward to make investments. Not all of them are aware of the laws and business operations. These small investors could form groups and approach PCS to seek guidance in understanding the legalities involved in running a company. They may seek feedback from the PCS as to whether the concerned company conducts business in an ethical manner and is not working against their interests. Further, these groups may ask PCS to represent them at shareholders' meetings. PCS are in a position to understand the matters that are discussed at such meetings. They can raise queries of these investor groups and seek clarification from the Board of the company. In this manner the PCS can help protect the interests of the small investors.

Another important avenue for Practising Company Secretaries is eligibility for the position of an independent director in corporations. The role of an independent director covers, among other business related inputs, ensuring compliance of corporate governance standards, protection of minority stakeholders, strengthening

internal control systems, risk management and ensuring statutory compliances. Scams like Satyam have no doubt questioned the credibility and contribution made by independent directors. With the outburst of this scam, many more stringent provisions came into existence, wherein greater responsibility and accountability has been put on the shoulders of the independent directors. The Government has already started tightening the legal noose around the Management and the Board of Directors. PCS due to their background have the knowledge and are capable of grasping the issues and suggesting remedial actions to be taken in the areas which fall within the scope of an independent director's responsibility. They are also conversant with the legalities that make them accountable when they accept the position as an independent director.

International trade is gaining pace. With the increase in trade the volume of commercial disputes is also on the rise. International arbitration is a voluntary and a binding dispute resolution system wherein the parties can settle their disputes outside the traditional legal system. In international trade, overseas parties are involved. When there is a dispute, the foreign party will naturally be put to a great disadvantage because it may be unfamiliar with the law of the land, the language of the country, etc. International arbitration can overcome these hurdles of the legal system since it involves an arbitrator, who is a neutral third party that reviews both sides of the matter and then gives a decision that is binding on the parties. International arbitration also provides stricter confidentiality than the legal system, which can be especially important in commercial settings. PCS have an expertise in the field of corporate laws and are capable of understanding commercial transactions. As a result, international arbitration is coming within the scope of PCS.

India has been a reliable haven for outsourcing activities – be it Information Technology or call centres or finance back offices, etc. Outsourcing activities are a big success in India thereby increasing overseas confidence to implement this concept in more and more areas. Today Legal Process Outsourcing (LPO) is also gaining ground in India. The increase in international trade requires global presence to tap the market for attracting new business. Law firms across countries are thus merging to cater to the international business. Corporate Laws Process Outsourcing such as secretarial activities could become a major upcoming opportunity for PCS.

The Companies Bill, 2011 laid before the Lok Sabha in December, 2011 further enhances the scope of PCS. The provisions authorise the National Company Law Tribunal (NCLT) to appoint interim administrator or company administrator from the panel of Company Secretaries, Chartered Accountants, Cost and Works Accountants, etc. maintained by the Central Government. Further, the NCLT also has authority to appoint provisional liquidator from the same panel. If this Bill becomes legislation it will make PCS with fifteen years of experience eligible to be appointed to the post of Technical Member of the NCLT.

Currently many Multinational Companies are setting up their offices in India. These companies have global presence and as such legislations of many countries have an impact on them. Opportunities like secretarial activities in these companies and otherwise, international arbitration, corporate laws process outsourcing, independent directorships in companies, etc are available for PCS today.

Every new activity requires acquiring certain job specific knowledge and polishing of the skill sets. One needs to be conversant with the common procedures in commercial international laws and be equipped with the tools to acquire knowledge of country specific commercial laws on case to case basis. Further, to become eligible for the post of independent directors, apart from knowledge of laws and procedures, PCS must acquire knowledge of finance and develop ability to contribute in business related decision making process. All in all with so many opportunities in the lap and many more still emerging, future of the profession of PCS, definitely looks bright and promising.

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