

ROLE OF COMPANY SECRETARIES IN BUILDING RESPONSIBLE BUSINESSES

– Dr. S. K. Gupta, FCS*

In the wake of rapid changes and emerging dynamic scenario in the business world in recent years stakeholders of companies are increasingly concerned with the conduct of the affairs of the company with focus on disclosure, transparency, accountability, Stakeholders engagement and Internal Controls.

The most important right we have is the right to be responsible.

- Gerald Amos

Responsible Business practice is about successfully integrating responsible business issues into the core strategy and the day to day operations of the company, including inter-alia aspects relating to Corporate Governance, Corporate Social Responsibility, Risk Management, Code of Conduct and Ethics, Sustainability Reporting, and Annual Business Responsibility Reporting. Responsible business is the responsibility of the enterprises for the impact of their operations on various stakeholders. It aims at maximizing the creation of shared value for all stakeholders. Businesses should actively integrate responsible business practices in their decision making and core business strategy and promote that thinking across the whole of their business and further through to their entire value chain for engaging actively with wider society with focus on Triple Bottom Line i.e People, Profits and Planet, in the pursuit of building a sustainable and responsible business.

In recent years, the role of the Company Secretary has expanded and greater responsibility than ever is being placed on the Secretarial function. The role has become multi-faceted and global, with Company Secretaries adding value through commercial solutions designed to protect boards and maximize shareholder engagement. The growing clamour for effective responsible business has increased focus on the role of the company secretary. Company Secretary is aptly christened as the Corporate Governance Officer (CGO).

The growth of Indian businesses, new regulatory prescriptions, intense antagonism and emergence of multifaceted business models expect the Company

Secretary to rapidly expand their understanding of emerging business and governance scenarios and acquire requisite skills to provide exacting solutions on business issues with efficient service deliverables. Not only the businesses, the Company Secretary - Governance professional as we are popularly known, are also required to meet the progressively growing expectations of the stakeholders.

The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice and has identified Company secretary as a key managerial person in a company. However, defining the profession has become even tougher due to the way in which the challenges of enhanced stakeholders expectations, business structures and intensely dynamic scenarios, have unfolded affording an opportunity and challenge for the Company Secretary to take on and juggle a number of responsibilities that were never a part of their original jobs.

Following are the key tenets and levers for building a responsible business and the Company Secretary is expected to play a pivotal role in bringing about the desired responsible business culture in the corporate world.

Risk management

Risk management has always been regarded as an inherent or integral feature of sound business management. The board of a company is responsible for the management of risk. The board must have a clear understanding of the risks facing the company; it must ensure that the organization has effective risk management and control processes; and it must be provided with assurance that the processes and key risks are being effectively managed. The company secretary has a pivotal role to play in the provision of appropriate guidance/advice to the board regarding its duties and responsibilities pertaining to risk management.

As per Section 134(3)(n) of the Companies Act, 2013 the Directors Report shall include a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any,

*The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI.

which in the opinion of the Board may threaten the existence of the company;

Section 177(4) stipulates:

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include evaluation of internal financial controls and risk management systems

As a top level officer and board confidante, a Company Secretary can play a vital role in ensuring that a sound Enterprise wide Risk Management [ERM] which is effective throughout the company is in place. As a key managerial personnel responsible for coordination and communication of processes and mechanisms for effective corporate functioning and governance, a Company Secretary should ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework will become a model for assessing and evaluating risk management efforts in the organization. Risk and control consciousness should spread throughout the organization. Company Secretary should ensure that this happens so that the risk factors are duly considered at every stage of formulation of business strategy. It will also create awareness about inter-relationships of risks across business units and at every level in the organization. Company Secretary can ensure that Risk identification, assessment, mitigation and control are effectively addressed at the board level.

Company Secretaries, need to interact with all the company's business divisions so they can explain the risks in a unit far away that the board may not be familiar with. 'You need to translate it into why it's important for me as a director. When speaking with managers of individual business units about risks they're confronting, Company Secretaries need to be on alert for any filtering out of negative information. 'Think of yourself as a deputized auditor, People in the departments may not want to tell you about something because they haven't figured out how to handle it yet.' Company Secretaries should take an inventory of all the events over the past year that impacted the company and assess whether or not the management team was prepared for each event. The company secretary has a pivotal role to play in the provision of appropriate guidance and advice to the board regarding its duties and responsibilities pertaining to Risk Management.

Reporting of frauds

If during the course of their professional duties, a practicing professional has reason to believe that an offence involving fraud is being or has been committed by a company, it is his duty to report the fraud.

Section 143 (12) of the Companies Act, 2013 provides that notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed. As per section 143 (14), the provision of section 143 shall mutatis mutandis apply to a company secretary in practice conducting secretarial audit under section 204. The Company Secretary must be vigilant and if something abnormal comes to his knowledge then he must discharge his duty and comply with the reporting requirements prescribed under the Companies Act, 2013

Corporate Social Responsibility

"The price of greatness is responsibility", Winston Churchill often used to say. There is no reason why it should be any different for companies as well.

A new initiative that has been put in place under Section 135 of the Companies Act, 2013 relates to corporate social responsibility (CSR) of companies. Regulations are supposed to modify behavior of those covered by the provisions and ensure that they behave in a socially desirable way. But whether the regulations will act a nudge or a shove depends upon how the regulated entities respond to.

Company Secretary can play a key and instrumental role in formulation and implementation of CSR strategy. For this first of all a Company Secretary must have a feeling, a desire from the bottom of the heart to do something good for the society, to participate in the welfare of the underprivileged section of the society. Then only one can leverage such attitude and effectively encourage and drive others for CSR actions. A Company Secretary should influence CSR activities within the organization since they have direct nexus to the Board of Directors. Once CSR is initiated and directed from the top level of the pyramid it will be automatically be followed

down the line in the hierarchy across the organization.

Corporate Social Responsibility is a niche area of Corporate Behavior and Governance that needs to get aggressively addressed and implemented strategically in the organizations. The Company Secretary can, right from conceptualization, deciding the legal form, structure of CSR program, identification of CSR projects, budgeting and allocation of funds, monitoring progress of CSR projects, and conducting Post CSR project completion audit can contribute a lot to ensuring effective assimilation of CSR philosophy into the DNA of the Organization.

Business Ethics

Today, the corporate world as a whole is in the process of acquiring a moral conscience. The new and emerging concepts in management like corporate governance, business ethics and corporate sustainability are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express or embody itself in the corporate life.

Business ethics comprises the principles and standards that guide behavior in the conduct of business. Businesses must balance their desire to maximize profits against the needs of the stakeholders. Companies must be run ethically in a manner such that all stakeholders-creditors, distributors, customers, employees, competitors, the society at large and governments-are dealt with in a fair and equitable manner. A code of ethics should reflect top managements' desire for compliance with the values, rules, and policies that support an ethical climate.

Clause 49 of the Listing Agreement requires that-

- (i) The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
- (ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO

A major step in developing an effective ethical culture in the organization is constituting an Ethics

Committee of the Board and implementing an education program and communication system to bring about the desired awareness amongst the employees about the firm's ethical standards and the Company Secretary has a key role to play in this regard.

Corporate sustainability

Corporate sustainability indicates a new business philosophy as an alternative to the traditional growth and profit maximization model under which sustainable development comprising environmental protection, social justice and equity, and economic development are given more significant focus while recognizing simultaneous corporate growth and profitability. It is a business approach that creates long-term shareholder value by embracing opportunities and managing risks emanating from economic, environmental and social developments.

Corporate sustainability describes business practices built around social and environmental considerations. Corporate sustainability encompasses strategies and practices that aim to meet the needs of the stakeholders today while seeking to protect, support and enhance the human and natural resources that will be needed in the future.

Many companies have started preparing and releasing Sustainability Reports which report on economic, environmental, and social impacts of business. Sustainability reporting is a practice to measure, disclose, and be accountable to internal and external stakeholders for organizational, environmental, social and economic performance. Company Secretaries should guide and enlighten the management and encourage them to compile Sustainability Report which has today become a key distinguishing factor in corporate branding.

Business Responsibility Reporting

Realizing that adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance, Securities and Exchange Board of India (SEBI) vide circular CIR/CFD/DIL/8/2012 dated August 13, 2012 inserted a new Clause 55 in the Listing Agreement by mandating inclusion of Business Responsibility Reports ("BR reports") as part of the Annual Report for listed entities. As a starting phase, Business Responsibility Report as part of the Annual Report shall be mandatory for

top 100 listed entities based on market capitalization at BSE and NSE. Other listed entities may voluntarily disclose BR Reports as part of their Annual Report.

A Business Responsibility Report contains a standardized format for companies to report the actions undertaken by them towards adoption of responsible business practices. Business Responsibility Report has been designed to provide basic information about the company, information related to its performance and processes, and information on principles and core elements of the Business Responsibility Reporting.

Further, Business Responsibility Report has been designed as a tool to help companies understand the principles and core elements of responsible business practices and start implementing social and environmental improvement mechanisms in the core processes of the structure which company adopts to undertake its business. Company Secretaries must compile and present the ABRR in true spirit by providing necessary thrust and direction within the organization for compliance and reporting on the mandated social, economic and environmental parameters.

Vigil Mechanism

A very famous quote by Edward Thurlow (1731-1806):

"Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?"

The above quote describes that corporations have neither bodies to be punished nor souls to be condemned, they therefore do as they like. Whistle blowing mechanism plays a critical role in implementing Corporate Governance Practices. The effective implementation of Vigil mechanism not only reduces the fraudulent activities but also sends a signal to both internal and external agencies that organization exercises good corporate governance.

According to Section 177(9) of the Companies Act, 2013, every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the

chairperson of the Audit Committee in appropriate or exceptional cases: Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

The Whistle Blower Policy should include mechanism to encourage employees, vendors, to report evidence of fraudulent activities. It should properly address the processes that the employees should follow in filing their representation alleging suspected impropriety.

A very famous quote by Napoleon:

"The World suffers a lot not because of the violence of bad people but because of the silence of good people."

Company Secretary can be instrumental in implementing whistle blowing as an internal regulator. As he is a part of Board decision making process and recipient of all important information flowing in the organization, he should sense out suspected improper activities/unethical practices adopted by individuals / groups within the organization. He can also support the ombudsman function with the Board by establishing a symbiotic relationship between the governance and compliance.

Company Secretary as a key recipient of vigil sensitive information can face reprisal, sometimes at the hands of the organization or group, which he accused, sometimes under law. There is often a fear of straining their relationship at work or outside work. If this tool of Corporate Governance is used in true letter and spirit, it can be savior for protecting the stakeholders and the larger public interest and Company Secretary has a vital role to play in making Whistle Blowing an effective tool for safeguarding the interests of the organization.

Disclosure and reporting

In recent years there has been increased emphasis on the quality of corporate reporting and calls for increased transparency. The company secretary has the responsibility for drafting the governance section of the company's annual report and must ensure that all the requisite information is communicated through this vital document for building the desired trust with the stakeholders. The disclosure requirements under the Companies Act, 2013 with regard to Board of Director Report, Annual Return, Prospectus, notices of meetings and the requirement

of hosting the specific information on the website of the company must be duly complied with by the Company Secretary. While these additional disclosures will increase accountability of the board, it also will provide more information to shareholders and enable informed decision making.

Communication with stakeholders

The company secretary occupies a position which entails a unique opportunity of interface between the Board, management and stakeholders and as such they act as an important link between the Board and the business. Through effective co-ordination and communication they can provide to the management an opportunity to understand the expectations of the stakeholders. Company Secretary must advise and implement an effective communication system for ensuring appropriate level of engagement with the stakeholders of the company. Regular updation of information on the website of the company, periodic release of newsletter and periodically organizing stakeholders meet could help an organization in establishing an effective interface with the stakeholders.

Corporate Governance

As per The Institute of Company Secretaries of India (ICSI), Corporate Governance is defined as "The application of best management practices, compliances of law in letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders." Driven by Clause 49 of the Listing Agreement, Indian companies have gradually scaled up their corporate governance practices over the years. Provisions of the Companies Act, 2013 have further attempted to mandate and shore up good governance in companies.

It is important that robust governance arrangements are in place, are clearly documented and communicated within the organization. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are duly structured, implemented and explicitly documented. The company secretary plays a leading role in good governance by helping the Board and its committees

function effectively and in accordance with their terms of reference and best practices.

The main objective of Corporate Governance policies and practices should be wealth creation, wealth management and wealth sharing. Adherence to laws and regulations, financial goals and communications with stakeholders are major factors that make up the way in which corporations is governed.

The top five mechanisms, which are vital for implementing an effective Corporate Governance in any organization are : Independence and appropriate composition of the Board, Role of Auditors (Internal and Statutory) and Audit Committee, Whistle Blowing, Shareholder engagement, Transparency, trust, and accountability towards stakeholders . Regulations on corporate governance can only provide the framework or structure to ensure that companies are governed in the best interest of stakeholders at large but its effective assimilation and implementation is to be ensured by the Company Secretaries by active participation in Strategic Planning process, Risk Management process, Internal Control process, MIS, Corporate Communications, Succession Planning, CSR, Board performance evaluation process. This will ensure high level corporate administration in accordance with best governance practices which results would result in well governed and sustainable business for the benefit of its stakeholders at large. The Company Secretaries have an important role to play in helping businesses improve their credibility through responsible business practices.

Company secretaries can add real value to their role and increase their impact by bringing commercial acumen, strategic understanding and softer people skills in addition to their already much sought after legal and governance knowledge. With increasing focus in recent years on responsible business, the role of the Company Secretary has grown in importance. In many ways, the secretary is now seen as the guardian and conscience keeper of the company's reputation, sustainability and credibility. Company Secretaries must provide value added services to the company and play a proactive role in creating structure and processes which facilitate building a responsible business.