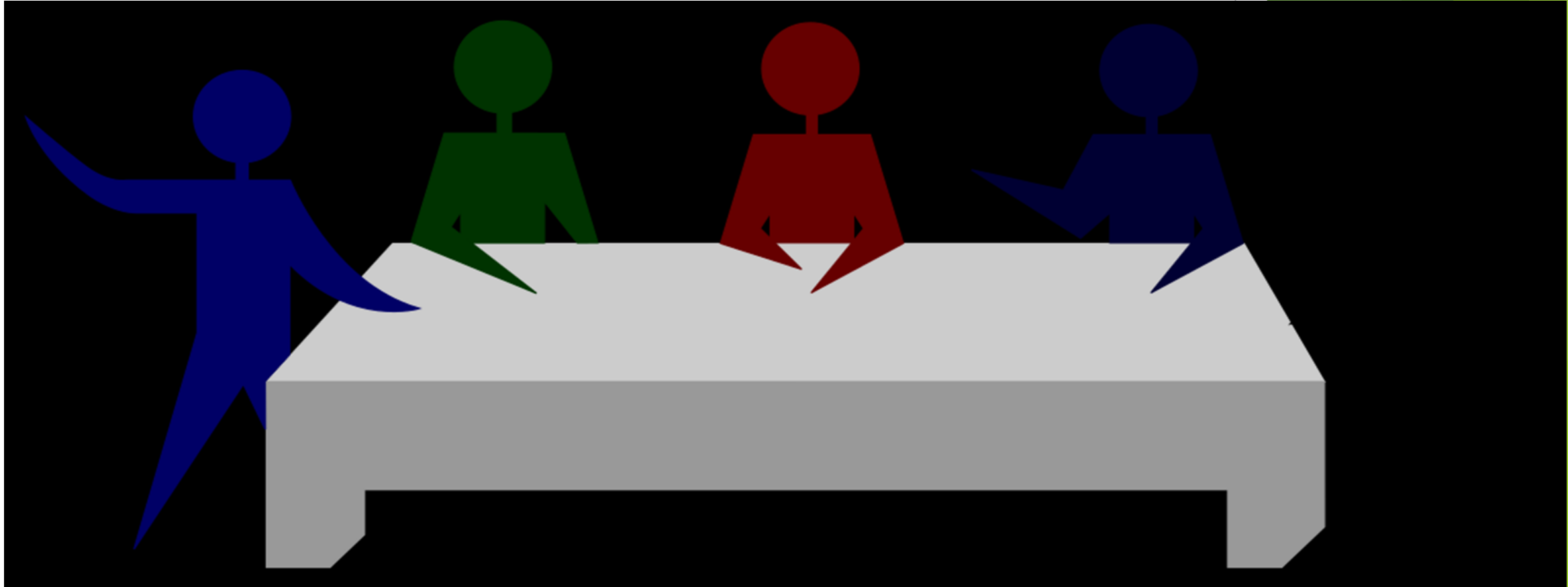


# *Company Management*



**Mrs. Jayalaxmi**

# Company Secretary

Company Secretary is Everywhere



**SECRETARY OF JOINT  
STOCK COMPANY**



# *Company Secretary*

A company secretary is a senior position in a private sector company or public sector organisation.

- ▶ Section 2(45) of the Company Act of 1956 defines a company secretary as “a person who is appointed to perform the duties which may be performed by a secretary under this Act”.
- ▶ Companies (Amendment) Act of 1974, secretary means “any individual, possessing the prescribed qualifications, appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties”.
- ▶ As per the Companies (Amendment) Act, 1988, “Company secretary” means “a person who is a member of the Institute of Company Secretaries of India”.
- ▶ The company secretary is responsible for the efficient administration of a company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented

# Qualification of a Company Secretary

## QUALIFICATIONS OF THE SECRETARY

In the case of companies with a paid-up share capital of less than Rs. 2 crores any individual possessing any of the following qualifications may be appointed as its whole-time secretary to perform the duties of secretary.

- (I) Membership of the Institute of Company Secretaries of India (ICSI).
- (II) Pass in the intermediate examination conducted by the Institute of Company Secretaries in India (ICSI).
- (III) Post-Graduate degree in commerce or corporate secretaryship awarded by any university in India.
- (IV) Degree in Law awarded by any university.
- (V) Membership of the Institute of Cost and Works Accountants of India.
- (VI) Membership of the Institute of Chartered Accountants of India.
- (VII) Post-graduate in Company Law and Secretarial Practice granted by the University of Udaipur.
- (VIII) Membership of the Association of Secretaries and Managers, Calcutta.
  
- (IX) Diploma in Corporate Laws and Management granted by the India Law Institute, New Delhi.
- (X) Post-graduate degree or diploma in Management Sciences granted by any University.
- (XI) Post-graduate degree or diploma granted by Indian Institutes of Management, Bangalore, Calcutta, Lucknow, Ahmedabad or Calicut.



## QUALITIES OF THE COMPANY SECRETARY:

In addition to the statutory qualifications, a company secretary should possess certain other qualities if he is to discharge his multifarious duties efficiently. The qualities are:

- **Sound General Education:** A sound general education helps the secretary in grasping the subject without taking much of his time and effort.
- **Command over Languages:** As a large part of the secretary's work consists of correspondence and preparation of report and précis, 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 languages.
- **Knowledge of Office Administration:** For the efficient organisation of the office, the secretary should know the best system of filing and indexing and should have a knowledge of labour saving devices, recruitment of office staff, methods of remuneration, delegation of work etc.,
- **Knowledge of Accounting and Taxation:** As company secretary is an executive office of the company, he must also have a basic knowledge of the principles of accounting and taxation, consisting of income tax and sales tax.
- **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 a thorough knowledge of .the various provisions of Companies Act is essential for a secretary.
- **Knowledge of various acts Relating to Staff:** For the efficient handling of staff, the secretary should have thorough knowledge of various acts of legislation which are applicable to the staff, viz., the Factories Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Employees' Provident Fund Act, the Payment of Wages Act, Income Tax Act, etc.
- **Knowledge of Mercantile Law:** Apart from the knowledge of the law relating to staff, a working knowledge of the laws relating to contracts, negotiable instruments, sale of goods, insurance etc, may be of immense help to the secretary in discharging his duties.
- **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 chairmen and the board on various intricacies of business.
- **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 likes current happenings, economic conditions, political and social condition, market conditions, etc.

**Impressive personality:** The various qualifications and qualities mentioned above are essential, but not sufficient. Besides these, for a company secretary to be successful executive, he must have a good personality which is a comprehensive term consisting of so many personal virtues and talents such as charming manners, organizing ability, imagination, initiative, strong common

# *Duties of a Company Secretary*

## DUTIES AND FUNCTIONS OF COMPANY SECRETARY

The duties of a secretary vary from company to company, depending upon the nature of the business, size of the company and the powers enjoyed by and responsibilities entrusted with the secretary.

The duties of a company secretary may be classified under the following broad heads:

1. Statutory duties
2. General Duties
  - a. Duties in relation to directors
  - b. Duties in relation to shareholders
  - c. Duties towards organisation and office
  - d. Duties in relation to the public

# 1. Statutory Duties

The most important part of his statutory duties relates to the various provisions of the Companies Act are:

1. Maintenance of books and registers of the company
2. Filing of the necessary returns with the Registrar of Companies
3. Supervising the issue, allotment, transfer and forfeiture of share and debentures.
4. Attending to meetings and recording their proceedings.
5. 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 the Stamp Act, he has to see that stamps of the requisite amount are affixed to documents, shares etc.,
  - Under the Sales-tax Act, he has to arrange for timely submission of returns and payment of tax. In addition, he has to comply with the provisions of any other Act, which is applicable to that particular company. For instance, a manufacturing company has to comply with the provisions of the Factories Act, the Industrial Disputes Act, Minimum Wages Act and other industrial laws. The secretary has to see that these provisions are complied with.
  - A company secretary is not only a servant of the company but also a servant of the law.

## ***2. General Duties***

- ▶ I Duties towards Directors
- ▶ II Duties towards Office Staff
- ▶ III Duties towards Shareholders
- ▶ IV Duties towards Public
- ▶ V Miscellaneous Duties

### **I Duties towards Directors**

- ✓ To send notices of board meeting.
- ✓ To prepare agenda of the meeting
- ✓ To convene the board meeting
- ✓ To record the minutes of meeting
- ✓ To implement the decisions taken by the directors.
- ✓ To carryout the instructions of directors



## .....2. *General Duties*

### **II Duties towards Office Staff:**

- ▶ To plan, organize, coordinate and supervise the work of the office staff.
- ▶ To act as a guide.
- ▶ To provide furniture and equipment's,
- ▶ To recruit, train, promote and dismiss the staff.
- ▶ To attend the grievances,
- ▶ To communicate the decision by directors.

### **III. Duties towards the shareholders**

- To issue copies of M/A, A/A, Trading and P/L A/c, Balance Sheet, Directors Report and Auditors Report.
- To issue allotment letters, call letters, share certificates, share warrants.
- To issue notices of shareholders meeting - record the minutes of meeting
- To distribute the dividend
- To Register transfer and transmission of shares, rectify the ROM
- To issue right shares and bonus shares

## ..... 2. *General Duties*

### **IV. Duties towards Public**

- ▶ To bring the matters of debenture holders and creditors to the notice of directors
- ▶ To make arrangements for the payment of interest to debenture holders and creditors.
- ▶ To bring the changes made company -to the notice of the public
- ▶ To give assurance -about company objectives and policies
- ▶ To advice the directors on behalf of public

### **V Miscellaneous Duties**

- ▶ To act with the authorities and perform all his duties honestly.
- ▶ To exercise reasonable care and skill-duties,
- ▶ To maintain secrecy of the business.
- ▶ To take precautions at the time of emergency
- ▶ To attend social functions as representative of the company

# Company Directors

## Meaning and Definition:

Sec 2(13) defines a director as “ any person occupying the position of director by whatever name called”. Thus it is **not the name** by which he is called important **but the position he occupies is important**. The functions and duties which he discharges, that determine whether in fact he is a director or not.



## Appointment of directors:

The directors of a company are appointed as follows.

- 1) **Appointment of first directors (Sec. 254):** The first directors are usually appointed by the promoters of the joint stock company. The first directors can hold office till the first annual general meeting (AGM) and they are eligible for reappointment by the shareholders.
- 2) **Appointment of directors at annual general meetings (Sec. 255):** According to section 255 the directors must be appointed by the company in general meeting. In case of a public company or a private company, which is a subsidiary of a public company, all the directors are appointed and reappointed by the shareholders in annual general meeting.

**Sec-256** states that directors are subject to retirement by rotation.  $1/3$  shall retire at an annual general meeting. In the first place those directors who have been longest in the office since their last appointment, shall retire.

### 3) **Appointment by board of directors:**

The board of director may appoint a director

- a) as an additional director or
  - b) to fill up casual vacancy on the resignation or death of a director
  - c) as an alternative director.
- a) **Additional directors:** Sec. 250 of the Act states that the board of directors is empowered to appoint additional directors.



- strengthening of association.
- b) **Casual vacancy (Sec. 262 a):** The board of directors may fill up a casual vacancy, if it is empowered in the articles of association. However a person so appointed to fill the casual vacancy shall hold the office only up to the date of next annual general meeting.
  - c) **Alternative directors (Sec. 330):** The board of directors of a company may appoint an alternative director in the place of a director to act as a director during his absence for a period of not less than 3 months from the date on which meetings of the board are originally held. The appointment of alternative director has to be approved by all other directors and by the shareholders in the annual general meeting.
  - 4) **Appointment of the directors by third party:** The articles of association may empower the third party to appoint a director. A banking company or financial institution which has advanced huge amount of loans to the company may appoint their nominees on the board.
  - (5) **Appointment of the directors by Central Government (Sec. 408):** The central government has been empowered to appoint directors on the request of the Company Law Board. The Company Law Board may order the central government to appoint directors either on a reference by the central government or on the application by the members, who hold not less than 1/10<sup>th</sup> of total voting right. Such directors may be appointed for any term not exceeding 3 years. The central government may remove any such director from his office at any time and appoint another person to hold office in his place.

**Minimum and maximum numbers of directors:** Sec. 252 provides that every public company must have at least 3 directors



# *Qualification & Disqualification of Directors*

## ► **Qualification:**

The Companies Act is silent about the qualification of directors. It only says that a person has to subscribe qualification shares prescribed in the A/A. However the articles of Association may fix or prescribe certain qualifications for the directors.

## ► **Disqualifications:**

- ❖ A Person found by the court to be of unsound mind
- ❖ An undischarged insolvent
- ❖ A person who has been convicted by court of an offence.
- ❖ A person who has applied to be adjudicated as insolvent.
- ❖ A person who has not paid call money on his qualification shares
- ❖ A person who has been disqualified by a court for fraudulent activities in the management.

# Removal of a Company Auditor

## ► Removal by shareholders.

By passing Resolution - send notice to the central government.

Cannot remove if directors appointed by the central govt. Directors of a private company appointed for lifetime, Elected under the proportional representation

## ► Removal by Central Government:

Fraud, negligence, guilty of default in carrying out of obligations, duties

Failed to follow the sound principles of the business, causes damage to the trade or industry, defrauding the creditors.

## ► Removal by Company Law Board.

► Due to oppression and mismanagement- passing the resolution- director cannot claim any compensation.

# Duties of Directors

## I Statutory Duties

## II General Duties

### I Statutory Duties

- ▶ To deposit application money in a scheduled bank
- ▶ To refund application money
- ▶ To convene general meetings
- ▶ To appoint first auditors and to assist auditors
- ▶ To maintain books of accounts
- ▶ To pay dividend
- ▶ To maintain statutory books
- ▶ To purchase qualification shares
- ▶ To keep ready share certificates.
- ▶ To sign the prospectus, File copies of special resolution, return on allotment
- ▶ To fix the amount of minimum subscription
- ▶ To make declaration of insolvency and submit statement of affairs

▶ **II General Duties:**

- ▶ **To act within power.**
- ▶ **To act in good faith**
- ▶ **To exercise reasonable care, skill and diligence**
- ▶ **Not to involve in conflict of interest**
- ▶ **Not to make secret profit**
- ▶ **Not to delegate the duty to others**
- ▶ **Not to use the company assets for personal benefits**

# Liabilities of Directors

## ▶ I Civil Liabilities

## II Criminal Liabilities

### ▶ I Civil Liabilities

#### A) Liabilities against the Company

- ▶ Ultra Vires Act
- ▶ Negligence
- ▶ Dishonest Act
- ▶ Act with co-directors

#### B) Liabilities against the third parties:

- ▶ Misstatements in Prospectus
- ▶ Failure to repay application money
- ▶ Acting in their own name
- ▶ Acting beyond powers
- ▶ Making their liability unlimited



# .....(continued).....**Duties of Directors**

## **II Criminal Liabilities**

- **Misstatements in prospectus of raising funds**
- **Default in filing of Return of allotment to Registrar of Companies**
- **Default in giving notice of conversion of shares in to stock**
- **Default in issuing share certificates**
- **Default in maintaining the Register of members and debenture holders**
- **Failure to provide annual accounts to the Shareholders in AGM**
- **Acting as the director in more than 20 companies(Pvt Co) & 10 (Govt Co)**
- **Taking loan from the company**
- **Default in filing with the ROC the particulars of charge created on the assets of the Company.**

