
**FAQs
on
The ICSI (Management
and Development of
Company Secretaries
in Practice)
Guidelines, 2023**



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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CHAPTER 5 SERVICE AREAS

1. Can a Company Secretary in Practice be appointed as a non-executive director in a Section 8 Company?

A Company Secretary in Practice may establish, constitute, form, acquire, join, run, operate, manage, individually or jointly with any other person(s) or may contribute or give guarantee or hold shares or accept or hold office bearership of Company(ies) incorporated under section 8 of Companies Act, 2013 or LLP or Society(ies) or Trust(s) or any other legal non-commercial or not for profit organization(s) or entity(ies) by whatever nomenclature it may be known/called, solely for the non-profit or Charitable purpose or Social Cause.

2. Can a Company Secretary in Practice be associated in the family business concern/entity?

In terms of Clause 5.1 (v) of chapter - Services Areas:

(v) (iii), A Company Secretary in Practice may associate in the family business concern/entity, provided that such Company Secretary in Practice shall not be involved in day-to-day management of affairs of such concern or entity and shall not hold more than twenty-five percent (25%) of shares in the capital/interest/profits of such entity or concern.

Provided that where the Company Secretary in Practice receives a family business concern/entity or a portion thereof, through inheritance or partition of family business, such Company Secretary in Practice can hold such inherited shares without any limits in the capital/interest/profits of such entity or concern, provided he is not involved into day-to-day affairs of such entity in any capacity.

3. Whether a Company Secretary in Practice can take up registration as an Investment Advisor while also practicing in other services?

Regulation 3 of the SEBI (Investment Advisers) Regulations, 2013 provides that *no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI.*

According to Regulation 4(f) of the aforesaid Regulations, *Any member of Institute of Chartered Accountants of India,*

Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Board, who provides investment advice to their clients, incidental to his professional service” is exempted from obtaining registration.

Further, Regulation 15(3) provides that *an investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.*

(4) An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.

Further, The Council has granted general permission to the Company Secretaries in Practice to render the following service:

T. to act as an investment advisor, portfolio manager and distributor of Mutual funds, subject to such compliance or permissions or approvals or disclosures of any regulatory authority.

Therefore, a Company Secretary in Practice may become an Investment Adviser in accordance with the SEBI (Investment Advisers) Regulations, 2013 and other applicable laws.

4. Can a Company Secretary in Practice become a Designated Partner in LLP rendering all services which a Company Secretary in Practice is allowed?

Yes, a Company Secretary in Practice may become Designated Partner/Partner of a LLP or Partnership Firm, the Partners of which are all Company Secretaries in Practice, to render all such services which a Company Secretary in Practice is allowed to render in terms of Section 2(2) of the Company Secretaries Act, 1980 read with Regulation 168 of the Company Secretaries Regulations, 1982. Such LLP/Partnership Firm shall be registered with the Institute in the manner as may be prescribed.

5. Can a Company Secretary in Practice form an LLP with non-members of ICSI who are not associated with any professional body in India or abroad, but have experience in Intellectual Property laws and Information Technology laws?

The Council of the Institute has granted general permission to the Company Secretaries in Practice to become Partner of a LLP or Partnership Firm, which is not engaged in rendering any of the

services as allowed under Section 2(2) of the Company Secretaries Act, 1980 and is engaged in any other business or occupation, provided that such Company Secretary in Practice shall not be involved in day to day management of affairs of such LLP or Partnership Firm and shall not hold more than twenty-five percent (25%) of shares in the capital/interest/profits of such LLP or Partnership Firm at any point of time.

6. Can a Company Secretary in whole time employment become Designated Partner in LLP which is into the Practice of Company Secretaries?

No, a Company Secretary in whole time employment becoming Designated Partner in an LLP which is into the Practice of Company Secretaries is not allowed since it shall be treated as “Deemed to be Practice” under section 2(2) of the Company Secretaries Act, 1980 and the same is not permissible.

7. Whether ‘Associates’ can become Designated Partner in LLP which is into the Practice of Company Secretaries?

Associates as defined in the Guidelines means member(s) who has/ have entered into a contract for service with a Firm or is/are in employment of the Firm, engaged directly/indirectly for fulfilling specifically assigned duties and shall not sign/certify on behalf of the Firm, unless he is a Partner of the Firm. Associates shall not be treated as being in master-servant relationship with the employer or in a contract of service and hence can become Designated Partner in LLP.

8. Can a Company Secretary in Practice become Chairman and Managing Director of any Company alongside practicing the Profession?

A Company Secretary in practice may become:

- (i) non-executive director/independent director/promoter/ investor/subscriber or any combination thereof to the Memorandum and Articles of Association of a Company/to the charter of any body corporate, the main objects of which include areas which fall within the scope of the profession of Company Secretaries.
- (ii) non-executive director/independent director/promoter/ subscriber to the Memorandum and Articles of Association of a Company/body corporate which is engaged in any other

business or occupation, provided that such Company Secretary in Practice shall not be involved in day-to-day management of affairs of the Company or body corporate and shall not hold more than twenty five percent (25%) of shares in the share capital/interest/profits of such company/body corporate at any point of time.

Therefore, a Company Secretary in Practice shall not be allowed to become a Chairman and Managing Director of any Company. However, he can be appointed as Non-executive Chairman or an Independent Director of any company.

9. **CS A, CS B, CS C, all three as subscribers to the MOA are intending to commence a Company with an objective to carry out services which are allowed to be rendered by a Company Secretary in Practice. Where and how to register such a Company?**

According to Section 26 (1) of the Companies Secretaries Act, 1980, no Company, whether incorporated in India or elsewhere, shall practise as Company Secretaries.

10. **Whether a Company Secretary holding the position of Executive Director in any Company with primary object of running management and consultancy services, apply for Certificate of Practice?**

An Executive Director is a director who is in whole time employment of Company, whether or not drawing remuneration from the Company. On the other hand, practicing as a Company Secretary is also a whole-time profession. Accordingly, a member shall not be granted Certificate of Practice while holding the position of Executive Director in any Company.

11. **Whether a Member holding Certificate of Practice can run any kind of classes alongwith Practice?**

The Council of the Institute has granted general permission to the Company Secretaries in Practice to undertake performance/tutorship/coaching or participation in the fairs/exhibitions, with respect to the specific skills attained by the Company Secretary in Practice in areas other than referred to under Section 2(2) of the Company Secretaries Act, 1980 such as any sports, astrology, palmistry, dancing, singing, music, acting, yoga, painting or any other skill, without hampering the practice hours, reputation and dignity of the Institute and such engagement in any or all activities under any circumstance shall not exceed 14 hours per week.

12. Can a Company Secretary in Practice become a partner in a family business which a Partnership Firm having four Partners and each Partner having 25% share?

Yes, a Company Secretary in Practice may associate in the family business concern/entity, provided that such Company Secretary in Practice shall not be involved in day-to-day management of affairs of such concern or entity and shall not hold more than twenty-five percent (25%) of shares in the capital/interest/profits of such entity or concern.

13. Can a Company Secretary in Practice receive a family business concern/entity or a portion thereof, through inheritance or partition of family business?

Yes, a Company Secretary in Practice can receive a family business concern/entity or a portion thereof, through inheritance or partition of family business, and can hold such inherited shares without any limits in the capital/interest/profits of such entity or concern, provided he is not involved into day-to-day affairs of such entity in any capacity.

However, it would be necessary for the member to provide evidence that interest in the family business concern devolved on him as a result of inheritance/succession/partition of the family business. It is also necessary for the member to show that he was not actively engaged in carrying on the said business and that the family business concern in question was not created by him.

14. Can a Company Secretary in Practice become a whole-time director in an Insolvency Professional Company?

Yes, Company Secretary in Practice may hold equity shares, contribute capital and become partner/director/whole time director in Insolvency Professional entity pursuant to Regulation 12 of the IBBI (Insolvency Professionals) Regulations, 2016.

15. Can a Company Secretary in Practice render services as Assurance Provider under Business Responsibility and Sustainability Report (BRSR) Core?

Yes, Company Secretary has been granted general permission to render services as an Assurance Provider under Business Responsibility and Sustainability (BRSR) Core.

16. Can a Company Secretary in Practice become a trustee of a Social Impact Assessment Entity?

Yes, Company Secretary in Practice may become a Partner/Director/Trustee of a Social Impact Assessment Entities pursuant to Bye-Laws for registration of Social Impact Assessment Entities issued by Self-Regulatory Organization, in terms of Regulation 292A(f) of the SEBI (ICDR) Regulations, 2018.

17. Is a Company Secretary in Practice required to take any approval from the Institute or any intimation is required for practicing as portfolio manager in accordance with these Guidelines?

No, the Council of the Institute has accorded general permission to Company Secretaries in Practice to render certain services under these Guidelines. It provides that a Company Secretary in Practice can act as an investment advisor, portfolio manager and distributor of mutual funds, subject to such compliance or disclosure of any regulatory authority. Accordingly, no permission of the Institute is required in this case.

18. Whether a Company Secretary in Practice can accept a position as Secretarial Auditor previously held by another Company Secretary in Practice without first intimating him in writing?

No, a Company Secretary in Practice cannot accept a position as Secretarial Auditor previously held by another Company Secretary in Practice without first communicating with him in writing. It will be in violation of Clause 8 of Part I of First Schedule to the Company Secretaries Act, 1980, in accordance with the Guidelines.

19. What is the intention behind intimating with the Previous Incumbent?

Clause 8 of Part I of the First Schedule to the Act provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he/she “accepts the position of a Company Secretary in Practice which was previously held by another Company Secretary in Practice without first communicating with him/her in writing.”

The Clause does not prevent a client from changing over to another Company Secretary in Practice. It is desirable for the new Incumbent to obtain a letter from the company letting him know the name of the earlier Incumbent or that no other Company Secretary in Practice has been appointed for the same assignment.

20. What are the exclusively reserved service areas for Company Secretaries in Practice that require intimation to the Previous Incumbent in terms of Clause 8 of Part I of the First Schedule to the Company Secretaries Act, 1980?

Every Company Secretary in Practice is required to intimate the Previous Incumbent before accepting any of the assignment in areas which are exclusively reserved to the Company Secretaries in Practice such as:-

- a) Signing of Annual Return in Form MGT-7 under Section 92(1) of the Companies Act, 2013 and rule 11(1) of the Companies (Management and Administration) Rules, 2014.
- b) Certification of Annual Return in Form MGT-8 under Section 92(2) of the Companies Act, 2013 and rule 11(2) of the Companies (Management and Administration) Rules, 2014.
- c) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013.
- d) Issue of Secretarial Audit Report to material unlisted subsidiaries of listed entities under Regulation 24A(1) of the SEBI (LODR) Regulations, 2015.
- e) Issue of Annual Secretarial Compliance Report to Listed entities under Regulation 24A(2) of the SEBI (LODR) Regulations, 2015.
- f) Certification under Regulation 40(9) of the SEBI (LODR) Regulations, 2015 certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
- g) Acting as Compliance auditor under Third Party certification/ Audit Scheme (Amendment), 2018 in the State of Haryana and similar recognitions in other states.
- h) Certification under Regulation 34(3) read with Clause 10(i) of Part C of Schedule V of the SEBI (LODR) Regulations, 2015, that none of the directors on the Board of the Company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority.

21. Whether a Company Secretary in Practice is required to enquire about the pending dues of the Previous Incumbent before accepting any assignment?

Every Company Secretary in Practice is duty bound to enquire about the pending dues of the Previous Incumbent before accepting any assignment.

22. Whether a Company Secretary in Practice can accept any assignment from a company where fee of the Previous Incumbent remains pending/unpaid?

Yes. However, every Company Secretary in Practice is required to obtain NOC in writing from the Previous Incumbent before accepting any assignment where the professional fees of the Previous Incumbent is pending/unpaid.

23. What is Peer Review?

Peer Review is a process used for examining the systems and approach of Company Secretaries in Practice by another member of the Institute with the objective of identifying the areas, where the member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards. Thus, it is a self-improvement process and is a method of evaluation of a person's work or performance, by a person or group of people, in the same occupation, profession, or industry.

24. What is the meaning of Practice Unit?

As defined under the Guidelines for Peer Review of Attestation and Audit Services by Company Secretaries in Practice, 'Practice Unit' means members in practice practicing individually in own name, or as a sole proprietorship, partnership, Limited Liability Partnership (LLP) or any other entity of professional Company Secretaries registered with the Institute and bearing a Unique Identification Number.

25. What are the assignments that can only be undertaken by a Peer Reviewed Practice Unit?

To ensure the quality of services rendered by members of the Institute to their clients and to the society as a whole, the Council has decided that only Peer Reviewed Practice Units shall be permitted to undertake the following assignments:

1. Certification of Annual Return in Form MGT-8 under Section

92(2) of the Companies Act, 2013 and Rule 11(2) of the Companies (Management and Administration) Rules, 2014.

2. Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014/Issue of Secretarial Audit Report to material unlisted subsidiaries of listed entities under Regulation 24A (1) of SEBI (LODR) Regulations, 2015.
3. Certification under Regulation 40(9) of SEBI (LODR) Regulations, 2015 certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
4. Issuance of Annual Secretarial Compliance Report to Listed entities under Regulations 24A(2) of SEBI (LODR) Regulations, 2015.
5. Internal Audit of Depository Participants registered with NSDL and CDSL.
6. Quarterly Reconciliation of Share Capital Audit Report under Regulation 76 of SEBI (Depositories and Participants) Regulations, 2018.
7. Diligence Report for Banks.
8. Corporate Governance Compliance Certificate issued under Schedule V of SEBI (LODR) Regulations, 2015.
9. Due Diligence Report under Regulation 10(3) of SEBI (Delisting of Equity Shares) Regulations, 2021.
10. Certificate relating to shares held by inactive shareholders under Regulation 21(a)(iii) of SEBI (Delisting of Equity Shares) Regulations, 2021.

Thus, Peer Review shall be mandatory for the above-mentioned Certifications and Audit Services.

- 26. Why has the Council prescribed a limit/ceiling on the number of the Reports/Certificates which a Company Secretary in Practice may attest/certify specifically in relation to the exclusive areas available for Company Secretary in Practice?**

The limits/ceilings on exclusive service areas reserved for Company

Secretaries in Practice has been prescribed by the Council in order to enhance the quality of service delivery and provide ample of opportunities to all the Company Secretaries in Practice.

27. What are the limits/ceilings prescribed by the Council of the ICSI for exclusively reserved service areas rendered by a Company Secretary in Practice?

The limits applicable on exclusive area of services rendered by the Company Secretaries in Practice are as under:-

- A. **Secretarial Audit Report** - A Peer Reviewed Company Secretary in Practice is entitled to issue **15 Secretarial Audit Report(s)** pursuant to Section 204 of the Companies Act, 2013 and Regulations 24(A)(1) of the SEBI (LODR) Regulations, 2015 for each of the financial year under consideration.
- B. **Annual Return** - A Peer Reviewed Company Secretary in Practice is entitled to certify Annual Return pursuant to Section 92(2) of the Companies Act, 2013 for **not more than 80 companies** for each of the financial year under consideration.
- C. **Annual Secretarial Compliance Report** - A Peer Reviewed Company Secretary in Practice is entitled to issue **10 Annual Secretarial Compliance Report(s)** pursuant to Regulation 24A(2) of the SEBI (LODR) Regulations, 2015 for each of the financial year under consideration.
- D. **Annual Return (E-form MGT-7)** - The prescribed ceiling is placed as under:
 - A Company Secretary in Practice is entitled to sign Annual Return pursuant to Section 92(1) of the Companies Act, 2013, for **not more than 75 companies** for each of the financial year under consideration;
 - A Peer Reviewed Company Secretary in Practice is entitled to sign Annual Return pursuant to Section 92(1) of the Companies Act, 2013, for **not more than 125 companies** for each of the financial year under consideration.

The ceiling on E-form MGT-7 shall be applicable from the financial year commencing 1st April, 2025.

28. What are the provisions for Maintenance of Records and Registers by a Company Secretary in Practice?

A Company Secretary in Practice shall establish policies and

procedures in order to maintain records in consonance with CSAS-2 Auditing Standard on Audit Process and Documentation and the Guidelines for Peer Review of Attestation and Audit Services by Company Secretaries in Practice, 2022.

29. What are Audit Documents in terms of CSAS-2 Auditing Standard on Audit Process and Documentation?

Audit Documents means the working papers prepared or records obtained by the Auditor in connection with the audit. The audit documents may be in physical and/or electronic mode.

30. What are Working Papers in terms of CSAS-2 Auditing Standard on Audit Process and Documentation?

Working papers include the audit plan, letters of representation and/or confirmation, abstracts of Auditee's documents, records kept by the Auditor of the procedures applied, the tests performed, the information obtained, analysis and the conclusions reached in the process of audit.

31. What is the timeline for Record Keeping and Retention in terms of CSAS-2?

The Company Secretary in Practice shall establish policies and procedures for retention of Audit Documents. The Audit Documents shall be collated for records within a period of 45 days from the date of signing of Auditor's Report. The Audit Documents shall be maintained in physical or electronic form and retained for a period of 8 years from the date of signing of Auditor's Report.

32. What is the timeline for Record Keeping and Retention in terms of the Guidelines for Peer Review of Attestation and Audit Services by Company Secretaries in Practice, 2022?

The firm shall retain records for a period of time sufficient to meet the needs of his Practice and satisfy any pertinent legal or professional requirements of record retention. The Guidelines prescribe that the Concurrent records, Engagement records and Permanent records shall be maintained and retained in physical or electronic form for a period of 8 years. However, all documents pertaining to matters relating to Disciplinary cases shall be maintained for period beyond 8 years in accordance with the requirement of Law.

33. What is Privileged Communication?

Privileged communication is an interaction between two parties in

which the law recognizes a private, protected relationship. Clause 1 of Part I of the Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force.

34. Can a Company Secretary in Practice disclose information received by him in the course of his Professional engagement with a client?

Any communication acquired by a Company Secretary in Practice in the course of his Professional engagement on behalf of his client, any communication or any advice given by him to his client in the course and for the purpose of his engagement is Privileged Communication and shall not be disclosed by him without the express consent of his client.

35. Can a Company Secretary in Practice disclose vital information received by him in the course of his Professional engagement after written consent from the client?

Yes, information can be disclosed only after obtaining express consent of the client to disclose the same. Consent shall be obtained from:

- Sole Proprietor, in case of Sole Proprietor client.
- All Partners or as per the terms of Partnership deed, in case the client is a Partnership firm. In case the deed is silent, any Partner can give the consent on behalf of the firm in view of his implied authority.
- Board in case of Board-managed companies, unless the Board has specifically resolved to delegate the power to any Executive. Where the Company has a Managing Director, he may give consent.

36. What are the consequences if a Company Secretary in Practice discloses information received by him in the course of his engagement with the client?

It will be in violation of Clause 1 of Part I of Second Schedule to the Company Secretaries Act, 1980 and the member would be held guilty of professional misconduct.

37. What are the circumstances where the requirements of maintaining Privileged Communication shall not apply?

The requirement of Privileged Communication shall not apply in the following circumstances:

- a) Any regulation issued by any Regulator specifying disclosure of client information e.g. the SEBI (Credit Rating Agencies) Regulations, 2019 which mandates professionals to disclose the information related to their client Companies.
- b) Directives issued by the various Tribunals from time to time.
- c) Any disclosure during the process of Certifications by Company Secretary in Practice which requires cross verification of facts.
- d) Any disclosure during the process of Inspection and Investigations by various authorities (eg. SFIO, Enforcement Directorate, CBI, MCA, Income Tax, GST, etc.) seeking information relating to client entities.
- e) Disciplinary Committees of the Institute.
- f) Generation of UDIN.
- g) Participation in the Best Secretarial Audit Report or Best PCS Firm award instituted by the Institute.
- h) For any information/documents available in public domain.