

## **COMPANY SECRETARIES ACT, 1980**

**56 of 1980**

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**COMPANY SECRETARIES ACT, 1980**

**56 of 1980**

**[ ]**

An Act to make provision for the regulation and development of the profession of Company Secretaries be it enacted by Parliament in the thirty-first year of the Republic of India as follows:-

**1. Short title, extent and commencement :-**

(1) This Act may be called the Company Secretaries Act, 1980.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions and interpretation :-**

(1) In this Act, unless the context otherwise requires,-

(a) "Associate" means an Associate Member of the Institute;

(b) "Companies Act" means Companies Act, 1956 ;

(c) "Company Secretary" means a person who is a member of the Institute;

(d) "Council" means the Council of the Institute constituted under section 9;

(e) "dissolved company" means the Institute of Company Secretaries of India registered under the Companies Act;

(f) "Fellow" means a Fellow Member of the Institute;

(g) "Institute" means the Institute of Company Secretaries of India constituted under this Act;

(h) "prescribed" means prescribed by regulations made under this Act;

(i) "President" means the President of the Council;

(j) "Register" means the Register of members of the Institute maintained under this Act;

(k) "Vice-President" means the Vice-President of the Council;

(l) "year" means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year;

(m) words and expressions used herein and not defined but defined in the Companies Act shall have the meanings respectively assigned to them in that Act.

(2) Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,-

(a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or

(b) offers to perform or performs services in relation to the promotion, forming incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or

(c) offers to perform or performs such services as may be performed by-

(i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,

(ii) a share transfer agent,

(iii) an issue house,

(iv) a share and stock broker,

(v) a secretarial auditor or consultant,

(vi) an adviser to a company on management, including any legal or procedural matter falling under Capital Issues (Control) Act, 1947, Industries (Development and Regulation) Act, 1951, the Companies Act, Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised stock exchange, Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973, or under any other law for the time being in force,

(vii) issuing certificates on behalf of, or for the purposes of, a company; or

(d) holds himself out to the public as a Company Secretary in practice; or

(e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the

profession of Company Secretaries; or

(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice; and the words "to be in practice" with their grammatical variations and cognate expressions, shall be construed accordingly.

## CHAPTER 2

INSTITUTE OF COMPANY SECRETARIES OF INDIA

### **3. Incorporation of the Institute :-**

(1) All persons whose names are entered in the Register of the dissolved company immediately before the commencement of this Act and all persons who may hereafter have their names entered in the Register to be maintained under this Act, so long as they continue to have their names borne on the Register to be maintained under this Act, are hereby constituted a body corporate by the name of the Institute of Company Secretaries of India and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, movable or immovable and shall by its name sue or be sued.

### **4. Entry of names in the Register :-**

(1) Any of the following persons shall be entitled to have his name entered in the Register, namely:-

(a) any person who immediately before the commencement of this Act was an Associate or a Fellow (including an Honorary Fellow) of the dissolved company;

(b) any person who is a holder of the Diploma in Company Secretaryship awarded by the Government of India;

(c) any person who has passed the examinations conducted by the dissolved company and has completed training either as specified by the dissolved company or as prescribed by the Council, except any such person who is not a permanent resident of India;

(d) any person who has passed such examination and completed such training, as may be prescribed for membership of the Institute;

(e) any person who has passed such other examination and completed such other training without India as is recognised by the

Central Government or the Council as being equivalent to the examination and training prescribed under this Act for membership of the Institute: Provided that in the case of any person belonging to any of the classes mentioned in this sub-section who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem to be necessary or expedient in the public interest.

(2) Every person belonging to the class mentioned in clause (a) or clause (b) of sub-section (1) shall have his name entered in the Register without the payment of any entrance fee.

<sup>4</sup> "(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

(4) The Central Government may take such steps as may be necessary for the purpose of having the names of all persons belonging to the classes mentioned in clauses (a) and ( b) of sub-section (1) entered in the Register at the commencement of this Act.

(5) Notwithstanding anything contained in this section, the Council may confer on any person Honorary Fellow Membership, if the Council is of the opinion that such person has made a significant contribution to the profession of Company Secretaries and thereupon the Council shall enter the name of such person in the Register but such person shall not have any voting rights in any election or meetings of the Institute and shall not also be required to pay any fee to the Institute.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 4 of the principal Act, sub-section (3), shall be substituted, in place of :- "(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1 ) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of prescribed entrance fee, which shall not exceed four hundred rupees in any case." by the Company

Secretaries Act, 1980.

## **5. Associates and Follows :-**

( 1) The members of the Institute shall be divided into two classes designated respectively as Associates and Follows.

(2) Any person other than a person to whom the provisions of sub-section (4) apply, shall, on his name being entered in the Register, be deemed to have become an Associate and as long as his name remains so entered, shall be entitled to use the letters "A.C.S." after his name to indicate that he is an Associate.

"5 (3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand. Explanation I.-- For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period. Explanation II.- - In computing the continuous period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute."

(4) Any person who was a Fellow of the dissolved company and who is entitled to have his name entered in the Register under clause (a) of sub-section (1) of section 4 , shall be entered in the Register as a Fellow.

(5) Any person whose name is entered in the Register as a Fellow shall, so long as his name remains so entered, be entitled to use the letters "F.C.S." after his name to indicate that he is a Fellow.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 5 of the principal Act, for sub-section (3), shall be substituted, in place of :- "(3) A

person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of the prescribed entrance fee, which shall not exceed four hundred rupees in any case, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow. Explanation 1: For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period. Explanation II: In computing the period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute." by the Company Secretaries Act, 1980.

## **6. Certificate of practice :-**

(1) No member of the Institute shall be entitled to practise, whether in India or elsewhere, unless he has obtained from the Council a certificate of practice.

<sup>6</sup>"(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.";

<sup>7</sup> "(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 6 of the principal Act, sub-section (2), shall be substituted, in place of :-- "(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be prescribed which shall not exceed two hundred rupees in any case, and such fee shall be payable on or before the 1st day of April in each year." by the Company Secretaries Act, 1980.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 6 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-- "(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.". by the Company Secretaries Act, 1980.

### **7. Members to be known as Company Secretaries :-**

Every member of the Institute in practice shall, and any other member may, use the designation of a Company Secretary and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor: Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name if entitled thereto, to indicate membership of such other institute whether in India or elsewhere as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Company Secretaries.

### **8. Disabilities :-**

Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in, or borne on, the Register if he-

(a) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

(b) is of unsound mind and stands so adjudged by a competent court; or

(c) is an undischarged insolvent; or

(d) being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(e) has been convicted by a competent court, whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order-in writing, removed the

disability; or

(f) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct: Provided that a person who has been removed from membership for a specified period shall not be entitled to have his name entered in the Register until the expiry of such period.

### CHAPTER 3

#### COUNCIL OF THE INSTITUTE

### **9. Constitution of the Council of the Institute :-**

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under this Act.

**8**(2) The Council shall be composed of the following persons, namely:--

(a) not more than fifteen persons elected by the members of the Institute, from amongst the Fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a Fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,--

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years, from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.";

**9** (3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of subsection (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor.".

(b) not more than four persons nominated by the Central Government.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 9 of the principal Act, for sub-section (2), shall be substituted, in place of :-- "(2) The Council shall be composed of- (a) not more than twelve persons elected by members of the Institute from amongst the Fellows chosen in such manner and from such regional constituencies as may be notified in this behalf by the Central Government in the Official Gazette; and (b) not more than four persons nominated by the Central Government." by the Company Secretaries Act, 1980.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 9 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:-- "(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of subsection (2). (4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor." by the Company Secretaries Act, 1980.

#### **10. Mode of election to the Council :-**

**10** A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, re-nomination: Provided that no member shall hold the office for more than two consecutive terms: Provided further that a member of the Council, who is or has been elected as President under sub-section (1) of section 12, shall not be eligible for election or nomination as a member of the Council."

Explanation: For the purposes of this sub-section, the Council shall be deemed to have been constituted in accordance with the provisions of sub-section (2) of section 9 with effect from such date [not being later than thirty days from the date on which the results of the first elections, under clause (a) of the said sub-section (2) are announced] as the Central Government may notify in the Official Gazette.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), section 10 of the principal Act, the following section shall be substituted, in place of :-- "10. Mode of election to the Council.- (1) Elections under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner. (2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government in this behalf and the decision of such

Tribunal shall be final: Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election. (3) The expenses of the Tribunal shall be borne by the Council. (4) Notwithstanding anything contained in this section and in Chapter IX, the Council of the dissolved company shall, on the commencement of this Act, become the Council of the Institute and shall function as such- (i) for a period of two years from such commencement, or (ii) till the Council is constituted in accordance with the provisions of sub-section (2) of section 9, whichever is earlier." by the Company Secretaries Act, 1980.

### **11. Nomination in default of election :-**

If the members of the Institute fail to elect any member under clause (a) of sub-section (2) of section 9 from any of the regional constituencies that may be notified under that clause, the Central Government may nominate any duly qualified person from such constituency to fill up the vacancy, and any person so nominated shall be deemed to be a duly elected member of the Council.

### **12. President and Vice-President :-**

(1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President falls vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be: Provided that the President of the Council of the dissolved company shall continue to hold such office after the commencement of this Act, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the <sup>12</sup>"Head" of the Council.

(3) The President or the Vice-President shall hold office for a period of one year from the date on which he is chosen but so as not to extend beyond his term of office as a member of the Council, and subject to his being a member of the Council at the relevant time, he shall be eligible for re-election <sup>13</sup>"under sub-section (1)".

<sup>14</sup> "(4) On the expiration of the duration of the Council, or of the term of office of the President and the Vice-President thereof, the President and the Vice-President shall continue to hold office until such time as a new President and the Vice-President is elected and takes over charge of their duties."

(5) In the event of the occurrence of any vacancy in the office of

the President, the Vice-] President shall act as President until the date of which a new President elected in accordance with the provisions of this section to fill such vacancy enters upon his office and when the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 12 of the principal Act, in sub-section (2), for the words "Chief Executive Authority", the word "Head" shall be substituted; by the Company Secretaries Act, 1980.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 12 of the principal Act, in sub-section (3), after the words "he shall be eligible for re-election", the words, brackets and figure "under sub-section (1)" shall be inserted; by the Company Secretaries Act, 1980.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 12 of the principal Act, for sub-section (4), shall be substituted, in place of :- "(4) On the expiration of the duration of the Council, or of the term of office of the President thereof, the President shall continue to hold office until such time as a new President is elected and takes over charge of his duties." by the Company Secretaries Act, 1980.

### **13. Resignation of membership and casual vacancies :-**

(1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council "or he has been found guilty of any professional or other misconduct and awarded penalty of fine, **15**" or of any of the Committees which has been constituted by the Council and of which he is a member or if his name is, for any cause, removed from the Register under the provisions of section 20 .

(3) A casual vacancy in the office of a member of the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council: Provided that no election shall

be held to fill a casual vacancy occurring within <sup>16</sup> "one year" prior to the date of the expiration of the term of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 13 of the principal Act, in sub-section (2), after the words "meetings of the Council", the words "or he has been found guilty of any professional or other misconduct and awarded penalty of fine," shall be inserted, by the Company Secretaries Act, 1980.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 13 of the principal Act, in the proviso to sub-section (3), for the words "six months", the words "one year" shall be substituted, by the Company Secretaries Act, 1980.

#### **14. Duration and dissolution of the Council :-**

(1) The duration of any Council constituted under this Act shall be <sup>17</sup> "four years" from the date of its first meeting.

(2) Notwithstanding the expiration of the duration of a Council (thereafter in this sub-section referred to as the former Council), the former Council shall continue to exercise its functions under this Act until a new Council is constituted in accordance with the provisions of this Act and on such constitution the former Council shall stand dissolved.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 14 of the principal Act, in sub-section (1), for the words "three years", the words "four years" shall be substituted; by the Company Secretaries Act, 1980.

#### **15. Functions of the Council :-**

**18**

(1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include--

(a) to approve academic courses and their contents;

- (b) the prescribing of fees for the examination of candidates for enrolment;
- (c) the prescribing of qualifications for entry in the Register;
- (d) the recognition of foreign qualifications and training for purposes of enrolment;
- (e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;
- (f) the levy of fees from members, examinees and other persons;
- (g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in such matters of interest to Company Secretaries as may be prescribed;
- (i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;
- (j) to enable functioning of the Quality Review Board;
- (k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B and details of action taken thereon in its annual report; and
- (l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), for section 15 of the principal Act, shall be substituted, in place of :-- "15. Functions of the Council (1) The duty of carrying out the provisions of this Act shall be vested in the Council. (2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include- (a) the prescribing of the standards for, and conduct of examinations for enrolment of candidates in the Register and of the fees therefor; (b) the registration and training of students; (c) the prescribing of qualification for entry in the Register; (d) the recognition of foreign qualifications and training for purposes of enrolment; (e) the granting or refusal of certificates of practice under this Act ; (f) the maintenance and publication of a Register of persons qualified to practise as Company Secretaries; (g) the

levy and collection of fees from members, examinees and other persons; (h) the removal of names from the Register and restoration to the Register of names which have been removed; (i) the regulation and maintenance of the status and the standards of professional qualifications of members of the Institute; (j) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner of research in such matters of interest to Company Secretaries as may be prescribed; (k) the maintenance in the prescribed manner of libraries and the publication in the prescribed manner of books and periodicals relating to management of companies and such allied subjects as may be prescribed; (l) the granting of such financial or other assistance to students of the Institute as may be prescribed; (m) the exercise of such disciplinary powers as may be prescribed. by the Company Secretaries Act, 1980."

**16. Staff, remuneration and allowances :-**

**20**

(1) For the efficient performance of its duties, the Council shall--

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also--

(a) appoint such other officers and employees to the Council and the Institute as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee of the Council and the Institute such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees;

(3) The Secretary of the Council shall be entitled to participate in

the meetings of the Council but shall not be entitled to vote thereat.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), For section 16 of the principal Act, the following section shall be substituted, in place of :-- "16 .Staff, remuneration and allowances (1) For the efficient performance of its duties and functions the Council shall appoint a Secretary who shall be a member of the Institute and may- (a) appoint such other persons on the staff of the Institute as it deems necessary; (b) prescribe the terms and conditions of service and the scales of pay of the Secretary and other employees of the Institute, including persons who have become employees of the Institute under section 33; (c) fix the allowances of the President, Vice-President and other members of the Council and its Committees. (2) The Secretary of the Institute shall be entitled to participate in the meetings of the Council and the Committees thereof but shall not be entitled to vote thereat." by the Company Secretaries Act, 1980."

### **17. Committees of the Council :-**

(1) The council shall constitute from amongst its members the following Standing Committees, namely:-

(a) an Executive Committee;

**21**"(b) a Finance Committee; and";

(c) an Examination Committee.

(2) The Council may also constitute a Training and Educational Facilities Committee, Professional Research and Publications Committee and such other Committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act.

**22**"(3) Each of the Standing Committees shall consist of the President and the Vice-President ex officio, and minimum of three and maximum of five members to be elected by the Council from amongst its members.";

(4) The Disciplinary Committee shall consist of the President, ex officio, one member to be nominated by the Central Government from amongst the members nominated to the Council by that Government and one member to be elected by the Council.

(5) The Examination Committee shall consist of the President or the Vice- President, ex officio, as the Council may decide, and two other members of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, any Committee formed under sub-section (2), may, with the sanction of the Council co-opt such other members of the Institute not exceeding <sup>23</sup> "one-third of the total membership of the Committee" as the Committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the Committee.

(7) Every Committee constituted under this section shall elect its own Chairman: Provided that-

(i) where the President is a member of such Committee, he shall be the Chairman of such Committee, and in his absence, the Vice-President, if he is a member of such Committee, shall be its Chairman; and

(ii) where the President is not a member of such Committee but the Vice- President is a member, he shall be its Chairman.

(8) The Standing Committees and other Committees formed under this section shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 17 of the principal Act, in sub-section (1), for clause (b), the following clause shall be substituted, namely:-- "(b) a Finance Committee; and"; by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 17 of the principal Act, for sub-section (3), shall be substituted, in place of :- "(3) The Executive Committee shall consist of the President and the Vice-President, ex officio. and three other members of the Council elected by the Council." by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 17 of the principal Act, in sub-section (6), for the words "two-thirds of the total membership of the Committee", the words "one-third of the total membership of the Committee" shall be substituted ,by the Company Secretaries Act, 1980."

## **18. Finances of the Council :-**

(1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys (including donations and grants) received by the Council and out of which shall be met all expenses including any donations made and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

**24**(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered Accountant in practice to be appointed annually by the Council: Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this subsection: Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted: Provided also that if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.

**25** (5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.

(6) Subject to such directions as the Central Government may, by order in writing, make in this behalf, the Council may borrow-

(a) any money required for meeting its liabilities on capital account

on the security of the fund or on the security of any other assets for the time being belonging to it; or

(b) for the purpose of meeting current liabilities pending the receipt of income by way of temporary loan or over-draft.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 18 of the principal Act, for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, in place of :-- "3) The Council shall keep proper accounts of the funds distinguishing capital from revenue. (4) The annual accounts of the Council shall be subject to audit by a Chartered Accountant in practice within the meaning of Chartered Accountants Act, 1949, to be appointed annually by the Council: Provided that no member of the Council who is a Chartered Accountant or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section. (5) As soon as may be practicable at the end of each year, but not later than 30th day of September of the year next following, the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the report of the Council for that year and copies of the said accounts and report shall be forwarded to the Central Government and to all the members of the Institute." by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 18 of the principal Act, after sub-section (5), the following sub-sections shall be inserted, namely:-- "(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose. (5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute." by the Company Secretaries Act, 1980."

#### CHAPTER 4

#### REGISTER OF MEMBERS

### **19. Register :-**

(1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

(2) The Register shall include the following particulars about every member of the Institute, namely:-

(a) his full name, date of birth, domicile, residential and

professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members of the Institute as on the 1st day of April of each year, and shall, if requested to do so by any such member, send him a copy of such list <sup>26</sup> on payment of such amount as may be prescribed. "

<sup>27</sup> (4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 19 of the principal Act, in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end ;by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 19 of the principal Act, in sub-section (4), the following sub-section shall be substituted, in place of :-- "(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee differing in amount according as he is an Associate or a Fellow as may be prescribed, which shall not exceed three hundred rupees in any case." by the Company Secretaries Act, 1980."

## **20. Removal from the Register :-**

(1) The Council may remove from the Register the name of any member of the Institute-

(a) who is dead; or

(b) from whom a request has been received to that effect; or

(c) who has not paid any prescribed fee required to be paid by him;  
or

(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8 , or who for any other reason has ceased to be entitled to have his name borne on the Register.

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

**28** (3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-- "(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand." by the Company Secretaries Act, 1980."

#### CHAPTER 5 MISCONDUCT

### **21. Procedure in Inquiries relating to misconduct of members of the Institute :-**

**29** (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie

opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Explanation I: In this section, "High Court" means the highest civil court of appeal, not including the Supreme Court exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry: Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II: For the purposes of this section, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), for section 21 of the principal Act, the following section shall be substituted, namely:-- 21. Procedure in Inquiries relating to misconduct of members of the Institute (1) Where on receipt of information by, or a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall there upon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council. (2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be. (3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections. (4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:- (a) reprimand the member; (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit: Provided that where the Council is of opinion that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon. (5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon. (6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be; (b) reprimand the member; (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit; (d) refer the case to the Council for further inquiry and report. (7) Where it appears to

the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council. by the Company Secretaries Act, 1980."

## **22. Professional misconduct defined :-**

**31** For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), section 22 shall be substituted, in place of :- "22. Professional misconduct defined :- For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances." by the Company Secretaries Act, 1980."

## CHAPTER 6

### REGIONAL COUNCILS

## **23. Constitution and functions of Regional Councils :-**

(1) For the purpose of advising and assisting it on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the regional constituencies that may be notified by the Central Government under clause (a) of sub-section (2) of section 9.

(2) The Regional Councils shall be constituted in such manner and exercise such functions as may be prescribed.

(3) Notwithstanding anything contained in this section, each Regional Council of the dissolved company shall, on the commencement of this Act, become the Regional Council of the Institute for the area for which it was functioning as a Regional Council immediately before such commencement and shall function as such-

- (i) for a period of two years from such commencement, or
- (ii) till a Regional Council is constituted for such area in accordance with the provisions of this section, whichever is earlier.

CHAPTER 7  
PENALTIES

**24. Penalty for falsely claiming to be a member, etc :-**

Subject to the provisions of section 7, any person who,-

(a) not being a member of the Institute,-

(i) represent that he is a member of the Institute; or

(ii) uses the designation "Company Secretary"; or

(iii) uses the letters "A.C.S." or "F.C.S." after his name; or

(b) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a Company Secretary, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**25. Penalty for using name of the Council, or awarding degree of Company Secretary :-**

(1) Save as otherwise provided in this Act, no person shall-

(a) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

( b) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in Company Secretaryship similar to that of a member of the Institute; or

(c) seek to regulate in any manner whatsoever the profession of Company Secretaries.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which, may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3)<sup>33</sup> [ \*\*\* ]

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 25 of the principal Act, sub-section (3) shall be omitted as follows :- "(3) Nothing contained in this section shall apply to any University or other institution established by law or to any body affiliated to the Institute." by the Company Secretaries Act, 1980."

## **26. Companies not to engage in Company Secretaryship :-**

(1) No company, whether incorporated in India or elsewhere, shall practise as Company Secretaries.

(2) Any company contravening the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with fine which may extend to five thousand rupees.

## **27. Unqualified persons not to sign documents :-**

(1) No person other than a member of the Institute shall sign any document on behalf of a Company Secretary in practice or a firm of such Company Secretaries in his or its professional capacity.

<sup>34</sup> (2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 27 of the principal Act, for sub-section (2), shall be substituted, in place of :- "(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both." by the Company Secretaries Act, 1980."

## **28. Offences by companies :-**

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the

time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly: Explanation : For the purposes of this section,- (a) "company" means anybody corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

### **29. Sanction to prosecute :-**

No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

## CHAPTER 8 APPEALS

### **30. Appeal :-**

(1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court: Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may-

- (a) confirm, modify or set aside the order;
  - (b) impose any penalty or set aside, reduce confirm or enhance the penalty imposed by the order;
  - (c) remit case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;
  - (d) pass such other order as the High Court thinks fit: Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.
- Explanation :In this section "High Court" and "member of the Institute" have the same meanings as in section 21.

#### CHAPTER 9

#### DISSOLUTION OF THE INSTITUTE OF COMPANY SECRETARIES OF INDIA REGISTERED UNDER THE COMPANIES ACT

### **31. Dissolution of the Institute of Company Secretaries of India registered under the Companies Act :-**

On the commencement of this Act-

- (a) the company known as the Institute of Company Secretaries of India registered under the Companies Act shall stand dissolved and thereafter no person shall make, assert or take any claims or demands or proceedings against the dissolved company or against any officer thereof in his capacity as such officer except insofar as may be necessary, for enforcing the provisions of this Act; and
- (b) the right of every member to, or in respect of, the dissolved company shall be extinguished, and thereafter no member of that company shall make, assert or take any claims or demands or proceedings in respect of that company except as provided in this Act.

### **32. Transfer of assets and liabilities of the dissolved company to the Institute :-**

- (1) On the commencement of this Act, there shall be transferred to and vested in the Institute all the assets and liabilities of the dissolved company.
- (2) The assets of the dissolved company shall be deemed to include all rights and powers, and all property, whether movable or immovable, of that company, including in particular, cash balances,

reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the dissolved company and all books of accounts, papers or documents of the dissolved company and the liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing of that company.

(3) All contracts, debts, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party, subsisting or having effect immediately before the commencement of this Act, shall be of as full force and effect against or in favour of the Institute, as the case may be, and may be enforced as fully and effectively as if instead of the dissolved company, the Institute had been a party thereto.

(4) If, on the commencement of this Act, any suit, appeal or other legal proceeding of whatever nature by or against the dissolved company is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Institute of the assets and liabilities of the dissolved company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Institute, in the same manner and to the same extent as it would or may be continued, prosecuted and enforced by or against the dissolved company if this Act had not been passed.

### **33. Provisions respecting employees of the dissolved company :-**

(1) Every person employed in the dissolved company and continuing in its employment immediately before the commencement of this Act shall, as from such commencement, become an employee of the Institute, shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the dissolved company if this Act had not been passed, and shall continue to do so unless and until his employment in the Institute is terminated or until his remuneration, terms and conditions of employment are duly altered by the Institute.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 ( 14 of 1947), or in any other law for the time being in force, the transfer of the services of any employee of the dissolved

company to the Institute shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court. Tribunal or other authority.

#### CHAPTER 10

#### MISCELLANEOUS

### **34. Alteration in the Register and cancellation of certificate**

:-

(1) Where an order is made under this Act reprimanding a member, record of the punishment shall be entered against his name in the Register. (2) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

### **35. Directions of the Central Government :-**

(1) The Central Government may, from time to time, issue such directions to the Council as in the opinion of the Central Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

(2) Directions issued under sub-section (1) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(3) If, in the opinion of the Central Government, the Council has persistently committed default in giving effect to the directions issued under this section, the Central Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be specified by the Central Government.

(4) Where the Central Government passes an order under sub-section (3) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Central Government.

### **36. Protection of action taken in good faith :-**

**37** No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the

Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), For section 36 shall be substituted, in place of :- "36. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulations or orders made thereunder." by the Company Secretaries Act, 1980."

### **37. Maintenance of branch offices :-**

(1) Where a Company Secretary in practice or a firm of such Company Secretaries has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute: Provided that the Council may in suitable cases exempt any Company Secretary in practice or firm of such Company Secretaries from the operation of this sub-section.

(1) Every Company Secretary in practice or firm of such Company Secretaries maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

### **38. Reciprocity :-**

(1) Where any country, notified by the Central Government in this behalf in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute established under this Act or from practising the profession of Company Secretaryship or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of Company Secretaries in India.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to Company Secretaryship shall be recognised for the purposes of entry in the Register.

### **39. Power to make regulations :-**

(1) The Council may, by notification in the Gazette of India make regulations for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the professions that may be recognised under sub-section (2) of section (2) and <sup>40</sup>"item (2)" and (4) of Part I of the First Schedule;

(b) the examinations and training for the purposes of clauses (c), (d) and (e) of sub-section (1) of section 4 ;

(c) the manner of making an application and granting thereof under sub- section (3) of section 4 or sub-section (3) of section 5;

(d) the fees payable under sub-section (3) of section 4 , sub-section (3) of section 5 , sub-section (2) of section 6 , <sup>41</sup>[\*\*\*] of sub-section (3) of section 15 , sub-section (4) of section 19 and clause (c) of sub-section (1) of section 20 ;

(e) the qualifications and practical experience for the purposes of sub-section (3) of section 5 ;

(f) the form in which an application may be made under sub-section (2) of section 6 ;

(g) [ \*\*\* ]<sup>42</sup>

(h) the transaction of business by the Council for the discharge of its functions under section 15 and other provisions of this Act, the place at which and the interval at which the Council shall hold its meetings for the transaction of such business, the procedure to be followed at such meetings and all other matters connected therewith;

(i) the regulation and maintenance of the status and standards of professional qualifications of members of the Institute, as required by <sup>43</sup>"clause (g)" of sub-section (2) of section 15 ;

(j) the carrying out of research in matters of interest to Company Secretaries as required by <sup>44</sup>"clause (h)" of sub-section (2) of section 15 ;

(k) the maintenance of libraries and publication of books and periodicals relating to management of companies and allied subjects, as required by <sup>45</sup>"clause (f) of section 15A" ;

(l)[ \*\*\* ]<sup>46</sup>

(m) the transaction of business by the Standing Committees and other Committees referred to in section 17 , the places at which and the intervals at which such committees shall hold their meetings for the transaction of such business, the procedure to be followed at such meeting and all other matters connected therewith;

(n) the manner in which the Register may be maintained under sub-section (1) of section 19 ;

(o) the other particulars to be included in the Register, as required by clause (e) of sub-section (2) of section 19 ;

(p) the manner in which the annual list of members of the Institute may be published under sub-section (3) of section 19 ;

(q) [ \*\*\* ]<sup>47</sup>;

(r) the manner in which Regional Council may be constituted under sub- section (2) of section 23 and the functions thereof;

(s) the conditions subject to which foreign qualifications may be recognised under sub-section (3) of section 38 ;

(t) any other matter which is required to be, or may be, prescribed under Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4)[ \*\*\* ]<sup>48</sup> ;

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act),In section 39 of the principal Act,in sub-section (2),in clause (a), for the word, brackets and figures "items (1), (3)", the word, brackets and figure "item (2)" shall be substituted; by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act),In section 39 of the principal Act,in sub-section (2),in clause (d), the words, brackets and letter "clause (a) of shall be omitted, by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (g), shall be omitted as follows :- "(g) the manner in which an election to the Council may be conducted under section 10 ;" by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (i), for the word, brackets and letter "clause (i)", the word, brackets and letter "clause (g)" shall be substituted, by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (j), for the word, brackets and letter "clause (j)", the word, brackets and letter "clause (h)" shall be substituted , by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (k), for the words, brackets, letter and figures "clause (k) of sub-section (2) of section 15", the words, brackets, letters and figures "clause (f) of section 15A" shall be substituted, by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (l), shall be omitted as follows :- "(l) the exercise of disciplinary powers as required by clause (m) of sub-section (2) of section 15;" by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (2), in clause (q), shall be omitted as follows :- "(q) the inquiries to be held under sub-section (1) of section 21;" by the Company Secretaries Act, 1980."

In the Company Secretaries Act, 1980(56 of 1980) (hereinafter referred to as the principal Act), In section 39 of the principal Act, in sub-section (4) shall be omitted as follows :- "(4) Every regulation shall, as soon as may be after it is made by the Council, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation." by the Company Secretaries Act, 1980."

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE IN SERVICE

[See sections 21(4) and 22] PART 1 PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE IN PRACTICE A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he- (1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognised profession as may be prescribed in this behalf, and is in partnership with or employed by him; (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner. Explanation : In this item, "partner" includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part; (3) accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognised professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature; (4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognised profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India; (5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work; (6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means; (7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council; (8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing; (9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act; (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage: Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act; (11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute undercutting; (12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto. PART 2 A

member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person- (1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member; (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification; (3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer. PART 3 PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false; (2) not being a Fellow styles himself as a Fellow; (3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees; (4) defalcates or embezzles moneys received in his professional capacity.

## SCHEDULE 2

### PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY REQUIRING ACTION BY A HIGH COURT

[See sections 21(5) and 22] PART 1 A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he- (1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force; (2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice; (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast; (4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report; (5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading; (6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity; (7) is grossly negligent in the conduct of his professional duties; (8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion; (9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice; (10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended. PART 2 A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he- (1) contravenes any of the provisions of this Act or the regulations made thereunder; (2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.

