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# UNIT 3 COMPANY SECRETARY

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## 3.0 OBJECTIVES

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After studying this Unit, you should be able to:

- define company secretary
- describe the position of a company secretary
- state the qualifications of the company secretary
- explain how a secretary is appointed
- enumerate the statutory and general duties of the company secretary
- state his rights and liabilities
- describe the nature of services which secretaries in practice can offer.

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## 3.1 INTRODUCTION

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With the growing complexities of modern business, supervision of the day to day administration of company affairs has assumed great importance. Moreover, with increasing complications of the Companies Act regulating joint stock companies, it has become quite burdensome for top management to ensure compliance with various provisions of the Act. It is, therefore, necessary that an official who is well versed in Company law as well as administration should be appointed to take care of the legal requirements and day-to-day administration of company affairs. The office of the company secretary is expected to fulfil this need.

In this unit you will study the definition, status, qualifications, appointment, duties, rights and liabilities of a company secretary. It will also explain in detail about practicing company secretaries.

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## 3.2 WHO IS A COMPANY SECRETARY?

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A Company Secretary, as defined under section 2 (45) of the Companies Act 1956 (amended in 1988), means a company secretary within the meaning of Sec. 2(1)(c)

of the Company Secretaries Act 1980, and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties. Under Sec. 2(1)(c) of the Company Secretaries Act 1980, a company secretary is defined as "a person who is a member of the Institute of Company Secretaries of India."

Thus, a Company Secretary may be defined as an individual who possesses qualifications prescribed in law and is appointed to perform the duties of a secretary laid down in the Companies Act and any other ministerial or administrative duties.

Arising out of the above definition, the following points should be noted:

- 1) Only an individual can be appointed as company secretary; Neither a firm nor a body corporate can be so appointed.
- 2) A company secretary should be a whole-time officer of the company.
- 3) A company secretary should perform all duties which are laid down in the Companies Act.
- 4) The company secretary should also perform all other ministerial and administrative duties which may be assigned to him.
- 5) A company secretary must possess the qualifications prescribed by the Central Government from time to time.

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### 3.3 POSITION OF A COMPANY SECRETARY

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The position or status of Secretary in the administrative set up of a company may be discussed broadly under two heads, viz., legal position and actual position.

#### 3.3.1 Legal Position

Although the legal position of the company secretary has not been defined separately in the Indian Companies Act, it is possible to infer what his position is from the observations of legal experts and various provisions of the Companies Act. It is stated in Palmer's Company Law that "secretary is the officer of the company, who is charged with the duty of ensuring that the affairs of the company are conducted in accordance with the provisions of the Act and the company's articles, and generally in accordance with the law." Thus, the status of a company secretary in the eyes of law is not merely that of an employee who is only to carry out the orders of the directors. He is an officer of the company with extensive duties and responsibilities. He makes representations on behalf of the company and also enters into contracts on its behalf which come within the day to day running of the company's business. This is the viewpoint of judicial authorities in England.

A similar position is reflected in the provisions of the Indian Companies Act and the Rules framed thereunder. Under sections 2(30) and 5, secretary is included in the definition of "officer" and "officer in default" and bracketed with managers, managing director and directors of the company. Similarly, as per Rules framed under the Companies Act, the secretary is referred to as a responsible officer for signing and filing various forms and returns and for maintaining statutory books. He is liable to penalties if he defaults in discharging his statutory obligations as a principal officer of the company. Also, in the Rules framed under the Monopolies and Restrictive Trade Practices Act, the secretary's position is bracketed with that of the manager and director as 'principal officer' in relation to an undertaking owned by a body corporate. Further, the secretary is recognised as the principal authority for administrative requirements under the Income Tax Act, Stamp Act, Shops and Establishments Act, Sales Tax Act and Factories Act.

#### 3.3.2 Actual Position

The actual position of a company secretary may be stated to be simply that of an employee (servant), agent and mouthpiece of directors. If this view is accepted literally, a secretary should carry out the instructions given by the Board of Directors irrespective of the advisability of the same. He is to implement the policies and execute the decisions of the Board, having no authority to exercise any discretion. In

other words, the secretary as an agent or employee would seem to have no discretion of his own as regards the conduct of company affairs. However, in most companies, the actual position and role of the secretary is something more than that of an employee, agent or mouthpiece.

In actual practice, the Board of Directors of most companies depend on the secretary in different ways as outlined below:

- 1) Decisions on routine matters relating to day to day work is left to the discretion and judgement of the secretary, as directors cannot handle each and every matter requiring urgent action on the spot.
- 2) The task of dealing with the staff, shareholders and outsiders is also left to the discretion of the secretary. He acts as a link between the directors and the staff and outsiders, and communicates all policy decisions of the Board to the staff, shareholders and members of the public. For these purposes, authority is delegated to the secretary to act as PRO and liaison officer.
- 3) Directors often seek information and advice from the secretary while framing policies and taking important decisions, although legally speaking the secretary cannot assume any such role. Indeed, through his intimate knowledge of the day to day affairs of the company, and constant touch with the staff and shareholders, the secretary is best able to give advice and provide necessary information to the directors on appropriate policies and decisions to be made.
- 4) The secretary being conversant with legislative changes and responsible for complying with all legal requirements, is looked upon for legal advice by the directors whenever necessary. He is also treated as a trusted confidant by the directors.

Taken together, the actual position of the secretary is often described in the form of an analogy which likens the secretary to the ears, eyes and hands of a company, while the directors are likened to its brain. It is thus said that "while the directors are the brains of a company, the secretary is its ears, eyes and hands."

The directors formulate the general policies of the company and thus act as its brain. But while formulating and executing policies, they depend heavily on the secretary. On the basis of information at his disposal and his judgement, the secretary gives advice and assists the directors in taking decisions, while conducting the day to day affairs of the company. Thus, the secretary may be said to act as the ears and eyes of the company. As one who executes company policies, the secretary is said to act as the hands of the company.

### Check Your Progress A

- 1 Which of the following statements are True and which are False?
  - i) A company secretary is defined in the Companies Act, 1956, as per the definition given in the Company Secretaries Act, 1980.
  - ii) The Company Secretary performs only the duties which are laid down in the Companies Act.
  - iii) The Company Secretary is an advisor of the Board of Directors.
  - iv) Law does not permit the company secretary to enter into contracts on behalf of the company.
  - v) The role of a Company Secretary is something more than that of an employee, agent or mouthpiece.
  - vi) The actual position of a company secretary in relation to the company is similar to that of ears, eyes and hands in relation to the brain.
- 2 Fill in the blanks.
  - i) Day to day matters are left to the ..... and ..... of the company secretary.
  - ii) Directors of a company may be likened to the ..... of a human being.
  - iii) The secretary acts as a link between the ..... and the staff.
  - iv) The secretary is a responsible officer for ..... and ..... various forms and returns of the company.

## 3.4 QUALIFICATIONS

The qualifications required by a person to become a company secretary may be divided into two categories: 1) statutory qualifications as laid down by the Companies Act, and 2) general qualifications. Let us briefly discuss about them.

### 3.4.1 Statutory Qualifications

Section 2(45) of the Companies Act has laid down that a company secretary must possess the qualifications prescribed by the Central Government from time to time. These may be regarded as statutory qualifications. As per the Rules framed in 1988, under the Act, the qualifications prescribed are as follows:

- 1) For companies having a paid-up share capital of Rs. 25 lakh or more there must be a whole-time secretary, and no one can be appointed as such unless he is a member of the Institute of Company Secretaries of India.
- 2) Companies having a paid-up share capital of less than Rs. 25 lakhs may not appoint a whole-time secretary, but in case a secretary is appointed, as is usually done, he must possess one or more of the following qualifications:
  - i) A member of the Institute of Company Secretaries of India;
  - ii) Any person who has passed the Intermediate examination conducted by the Institute of Company Secretaries of India;
  - iii) Post-graduate degree in Commerce or Corporate Secretaryship awarded by any University in India;
  - iv) Law graduate from any University;
  - v) A member of the Institute of Chartered Accountants of India;
  - vi) A person holding post-graduate degree or diploma in Management scie. granted by any University or the Institutes of Management, Ahmedabad, Calcutta, Bangalore or Lucknow;
  - vii) A member of the Institute of Cost and Works Accountants of India;
  - viii) Post-graduate diploma in company secretaryship granted by the Institute of Commercial Practice, Delhi, under Delhi Administration, or diploma in corporate laws and management granted by the Indian Law Institute, New Delhi;
  - ix) Post-graduate diploma in Company Law and Secretarial Practice granted by the University of Udaipur; or
  - x) A member of the Association of Secretaries and Managers, Calcutta.
- 3) Non-profit companies registered under Sec. 25 of the Companies Act are exempted from the above rules regarding the qualification of secretary.

### 3.4.2 General Qualifications

Besides the statutory qualifications discussed above, any person interested in a secretary's job should have certain other qualifications as well. They are as follows:

- i) He should be well versed in the modern office methods and procedures relating to filing, indexing etc.
- ii) He should have acquaintance with office machines, labour saving and time saving devices, and their usefulness in a modern organisation.
- iii) He should be a competent personnel manager conversant with the provisions of the Factories Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Employees' Provident Fund Act, the Payment of Wages Act and other relevant laws.
- iv) He should have a thorough knowledge of banking operations and allied legislations connected with specific requirements of the organisation.
- v) He need not be a Chartered Accountant, but should be well versed in the principles of accountancy as well as in the technical aspects of business operations.
- vi) He should have personal qualities of imagination, initiative, organising ability, tact, intelligence, industriousness, self-discipline and a good personality so as to get on well with others and get full co-operation of his subordinates.

An efficient company secretary is not made in a day or month. He acquires the competence through diligence and hard work, honesty of purpose and integrity of character.

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### 3.5 APPOINTMENT

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Every company having a paid-up share capital of Rs. 25 lakhs or more must appoint a whole-time secretary. This is obligatory under the Companies Act. A director of such a company can also be appointed as secretary provided it has the approval of the company by a special resolution. But where the Board of Directors has only two directors, neither of them can be appointed secretary to that company. Besides, no individual can hold the office of secretary in more than one such company.

In the case of companies having paid-up capital of less than Rs. 25 lakhs, it is not obligatory to appoint a secretary. However, in practice every company usually appoints a secretary for which provision is made in the Articles of Association of the company.

The promoters usually appoint the first secretary who helps them to carry out all the preliminary work relating to the formation of the company. Sometimes his name is stated in the Articles of Association, and he is known as **pro-tem** secretary (i.e. secretary for the time being). As this appointment is made before the registration of the company, the secretary should get his appointment confirmed at the first meeting of the Board of Directors after the incorporation of the company, and enter into a fresh contract of service with the company.

Normally, the secretary is appointed by a resolution passed at the first meeting of the Board of Directors. The Board may also authorise the Managing Director to appoint a secretary. The terms and conditions of his service are laid down in an agreement executed between him and the company. The agreement clearly states the date of agreement, duration of appointment, nature of appointment, salary and grade, prerequisites, leave, period of notice required for resignation or termination of service, etc.

Under section 303 of the Companies Act, it is required that the particulars of appointment of a person as secretary must be recorded in the Register of Directors/Manager/Secretary, and the requisite particulars of appointment must be filed in duplicate in the prescribed form with the Registrar of Companies within 30 days of appointment.

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### 3.6 REMOVAL/DISMISSAL

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Since the company secretary is appointed by a resolution of the Board of Directors, he can be removed from service by the Board or by the Managing Director, if he is so authorised by the Board. The Articles of Association contain provisions empowering the Board of Directors to dismiss or remove the secretary from the services of the company. He may also be dismissed under general powers of the Board to terminate the services of any employee of the company. Usually there is a clause along with the terms and condition of service in the service agreement which specifies the manner in which the secretary may be removed from service or dismissed. The secretary being an employee of the company, his removal is governed by the common law which applies to the relationship between master and servant. To terminate his services, due notice must be given in accordance with the terms and conditions of his employment. If there is no mention of the period of notice in the service agreement, a reasonable notice should be given. Otherwise, the company may be held liable to pay compensation. Even if the secretary is appointed for a fixed term, he can be removed from service before the expiry of the term by giving him a reasonable notice.

However, the secretary may be dismissed without notice for wilful disobedience, misconduct, negligence, incompetence or permanent disability. Also in case of compulsory winding up of a company by order of the court, the court order is deemed to be the notice of discharge of the secretary along with other employees of the company.

On the termination of the services of secretary by the company, a notification in prescribed form has to be filed with the Registrar of Companies within 30 days from the date of such termination. Necessary change must also be made accordingly in the Register of Directors/Manager/Secretary, etc.

**Check Your Progress B**

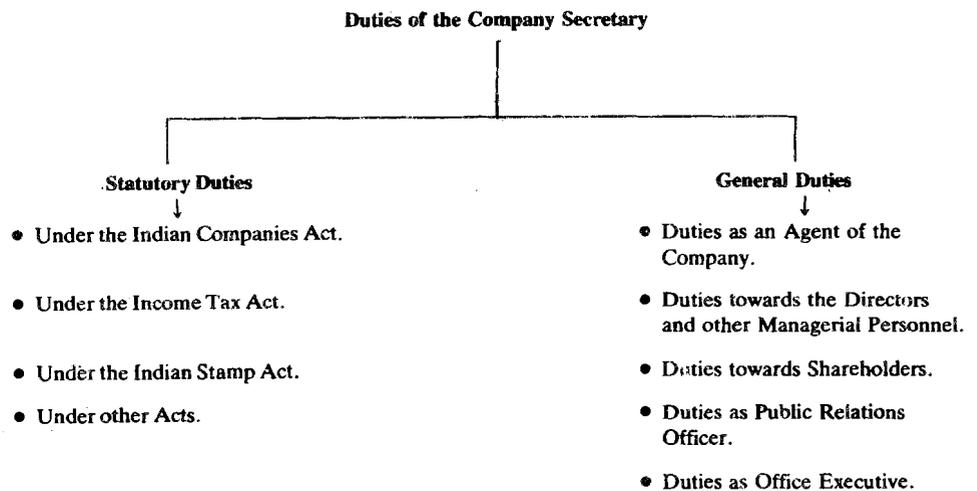
- 1 Fill in the blanks with appropriate word(s) selected from those given within brackets:
  - i) No one can be appointed as secretary of a company having paid-up Share Capital of Rs. 25 lakh or more unless he is a ..... of the Institute of Company Secretaries.  
(fellow/associate/member).
  - ii) A company secretary must have knowledge of ..... operations.  
(machine/banking/computer)
  - iii) The company secretary should be a competent .....  
(accountant/lawyer/personnel manager)
  - iv) A secretary appointed by the promoters before registration of the company is known ..... secretary.  
(acting/pro-tem/officiating)
  - v) Particulars of the appointment of a company secretary must be filled with the Registrar of Companies within 30 days of his .....  
(registration/appointment/resolution)
  - vi) The company secretary can be removed from service by the Board of Directors or ..... if authorised by the Board.  
(chairman/managing director/senior most manager).
  
- 2 Which of the following statements are True and which are False?
  - i) A company secretary can be removed from service without notice if there is no mention of the period of notice in the service agreement.
  - ii) Non-profit companies can appoint any person as secretary on the basis of general qualifications only.
  - iii) Even a part-time secretary of any company having paid-up share capital of less than Rs. 25 lakhs must possess one or more of the qualifications prescribed under Sec. 2 (45) and Rules framed under the Companies Act.
  - iv) A pro-tem secretary automatically becomes the company secretary after the registration of the company.

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### 3.7 DUTIES

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



### 3.7.1 Statutory Duties

A secretary is the principal officer of the company. In this capacity he is required to comply with all legal formalities in respect of the provisions of various Acts which have a bearing on the activities of the company. Hence, relevant provisions of the Indian Companies Act, the Income Tax Act, the Indian Stamp Act, the Indian Sales Tax Act, etc. should be considered in this regard.

#### Under the Indian Companies Act

- 1) In the case of a public limited company, the secretary has to make the statutory declaration required before commencement of business by the company.
- 2) He should supervise the maintenance of books and registers of the company.
- 3) He is responsible for preparation and authentication of resolutions, returns, and documents, and their filing with the Registrar of Companies.
- 4) He should supervise the issue, allotment, transfer, and forfeiture of shares and debentures.
- 5) He is responsible for the issue of Share Certificates, Debenture Certificates, and any other certified documents on behalf of the company.
- 6) He is responsible for safe custody and proper use of Common Seal of the company.
- 7) In the case of winding up of the company by the Court, he is to verify the statements to be submitted to the Official Receiver or Liquidator.

#### Under the Income Tax Act

- 1) It is the duty of the company secretary to see that the income-tax is deducted at source from the dividends and interests payable and from salaries of employees.
- 2) He is to supervise the timely filing of tax returns with the Income Tax Authorities and issuing of certificates of income tax deducted to every shareholder receiving dividend or debenture holder receiving interest.

#### Under the Indian Stamp Act

- 1) It is the duty of the secretary to ensure that every legal document, Share Certificate, Transfer Forms, Share Warrants, Debenture Certificates, Mortgages and Charges, Hundis, Promissory Notes, etc. are affixed with stamps of requisite amounts.

#### Under Other Acts

- 1) Under the Sales Tax Act, he is to ensure timely submission of tax returns to the Sales Tax Authorities and payment of such taxes.
- 2) Under the Factories Act, Payment of Wages Act, Industrial Disputes Act, the Estate Duty Act, Monopolies and Restrictive Trade Practices Act, etc., he should comply with the relevant requirements.

### 3.7.2 General Duties

Besides the Statutory Duties, a company secretary has to perform many other duties covering different spheres of activities. They are known as general duties such as:

- Duties as an Agent of the Company.
- Duties towards the Directors and other Managerial Personnel.
- Duties towards Shareholders.
- Duties as Public Relations Officer.
- Duties as an Office Executive.

#### Duties as an Agent of the Company

As agent of the company, it is the duty of the secretary to interpret and implement the decisions of the Board of Directors of the company. He should communicate these decisions to the staff, shareholders and outsiders, and finally execute them accordingly.

He should convene meetings of the Board of Directors, issue notices and agenda of such meetings and record their proceedings. The secretary can bind the company by

his actions provided that he acts within the scope of his authority. Although he is the agent of the company, he cannot enter into contracts with third parties unless he is authorised to do so.

#### **Duties towards the Directors and other Managerial Personnel**

Beside execution of the orders, the company secretary should help the Board of Directors to formulate policies. He should collect, arrange, and communicate information regarding the company and its related affairs to advise and guide the Directors. Similarly, on all legal matters, the secretary should suggest the desired action along with suitable opinions. He should extend similar help and guidance to other managerial personnel as and when required.

#### **Duties towards Shareholders**

The shareholders who have subscribed to the share capital of the company are its owners. They have a right to safeguard their interest in the company. The company secretary, being the chief officer of the organisation, is expected to protect this interest. He is the link between the company, its directors and the shareholders.

The secretary should take care of all matters relating to issue of shares, their allotment, call notices, and forfeiture, if any, registering share transfers, supplying copies of documents under the rules, payment of dividends, and calling of shareholders' meetings and recording their proceeding. He should do his utmost to develop smooth relations between the directors and the shareholders and avoid all possible conflict between the two. In the process, he should not divulge any secrets of the company which can adversely affect the interest of the company or any of its shareholders.

#### **Duties as Public Relations Officer**

As the chief spokesman of the company, the company secretary projects, develops and nourishes the image of the company to the outside world. He informs the investors, creditors, customers, bankers, solicitors, government officials, and other sections of the public about the working and activities of the company through correspondence, circulars, press statements and other media. He should be a forceful advertiser as well as the liaison officer of the company without breaking the rules of secrecy. He should have a broad vision of the company's progress and future growth and communicate the same effectively to develop lasting public loyalty.

#### **Duties as an Office Executive**

The company secretary is the executive head of the office and discharges his duties with the assistance of his subordinates. It is the secretary's duty to organise, supervise and co-ordinate the office work for which he is directly responsible to the Managing Director and the Board. All important records and files are kept in the custody of the secretary. He keeps control over the internal communication system through which he issues orders to various departments and coordinates their activities at the office level.

The secretary should be able to appreciate the problems faced by different sections of office staff and try to handle them without prejudice to any of them. He should try to win the confidence of the staff for successful execution of the policies of the Board of Directors.

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## **3.8 RIGHTS AND LIABILITIES**

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### **3.8.1 Rights**

Primarily, the rights of a company secretary are provided in the contract between him and the company. However, he also enjoys various rights to enable him to be able to perform his statutory duties under the provisions of the Indian Companies Act. Thus the rights of a secretary include the following:

- 1) The secretary has the right to exercise control and supervision of the secretarial department.
- 2) He has the right to sign documents requiring authentication of the company.

- 3) He has the right to receive reasonable notice before his services can be terminated.
- 4) He can claim damages for wrongful dismissal.
- 5) He has the right to receive all his dues as a creditor in case of winding up of the company and 4 months' salary not exceeding Rs. 1,000 as a preferential creditor.

### 3.8.2 Liabilities

The company secretary, as the chief officer of the company, enjoys certain rights and powers. At the same time, he is deemed to be liable for various acts of omission and commission caused due to his negligence. His liabilities may be discussed under two categories:

- 1) Statutory Liabilities; and
- 2) Contractual Liabilities.

#### Statutory Liabilities

Statutory liabilities are those which are imposed under the Indian Companies Act or under any other Act of the land. They are both civil and criminal in nature. Failure to perform any of the statutory duties results in the liability of the secretary. For instance, failure to file returns, making false statements, unauthorised or illegal transfer of shares and all such matters will be covered under statutory liabilities. The secretary, however, is not responsible for fraud committed by his assistants unless his connivance is proved.

#### Contractual Liabilities

By virtue of the contract between the company and the secretary, the latter is held liable for breach of any provision of the agreement. The secretary enjoys a fiduciary relationship towards the company and, therefore, he should not indulge himself in making secret profits due to his special position. Similarly, any loss or damage caused due to his authoritative position, to the company or to any third party, will make him responsible to make it good. He is also liable for any wilful misconduct and negligence in the performance of his duties. Finally, he would be responsible for any disclosure of trade secrets of the company for which he may be restrained by an injunction taken from the court.

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## 3.9 PRACTISING COMPANY SECRETARY

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The term 'Company Secretary' has been defined in the Company Secretaries Act 1980 as "a person who is a member of the Institute of Company Secretaries of India." A company secretary, thus defined, can accept full-time employment as secretary of a company, or may practise independently as a company secretary, either individually or in partnership with one or more practising company secretaries. Thus, a practising company secretary is one who chooses to practice independently as a company secretary either individually or in partnership with one or more others.

According to Sec. 2(2) of the Company Secretaries Act 1980, a member of the Institute of Company Secretaries is deemed to be in practice when, individually or in partnership with one or more members of the Institute in practice or with members of other recognised professions (e.g. Chartered Accountant, Cost & Works Accountant) he engages himself in various activities specified in the Act, in consideration of a remuneration.

The following areas of practice have been specified in the Act for practising company secretaries:

- 1) to engage in the practice of the profession of company secretaries to, or in relation to, any company; or
- 2) to offer to perform or perform service in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganisation or winding-up of companies; or
- 3) to offer to perform or perform 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 any law or any of the rules and bye-laws made by any recognised stock exchange; (vii) issuing of certificates on behalf of, or for the purpose of, a company; or

- 4) to hold himself out to the public as a company secretary in practice; or
- 5) to render professional services or assistance with respect to matters of principle or details relating to the practice of the profession of company secretaries; or
- 6) to render such other services as, in the opinion of the Council of the Institute of Company Secretaries, are or may be rendered by a company secretary in practice.

The Companies (Amendment) Act, 1988 has also specified certain areas wherein certifications by Secretary in whole-time practice have been recognised, viz.,

- 1) Under Sec. 33(2) of the Act, a statutory declaration for compliance of legal formalities for incorporation of the company can now be given in the prescribed form by a company secretary in whole-time practice.
- 2) Under Sec. 149 of the Act, a company having a share capital which has issued a prospectus inviting public to subscribe for its shares, the company cannot commence business unless a duly verified declaration by a secretary in whole-time practice has been filed with the Registrar that all the required formalities have been complied with.
- 3) Under Sec. 161, annual return of a company whose shares are listed on a recognised stock exchange, in addition to being signed by a director and the manager or secretary is also required to be signed by a secretary in whole-time practice.
- 4) Under Sec. 269 read with Schedule XIII to the Companies Act, the statutory certificates of compliance with the requirements for appointment of managing director or whole-time director or manager can be given by secretary in whole-time practice.

### Check Your Progress C

- 1 Which of the following statements are True and which are False?
  - i) A company secretary is responsible for the issue of all certified documents on behalf of the company.
  - ii) It is the duty of the secretary to ensure that the tax returns of the company are accurate.
  - iii) A secretary can convene meetings of the Board of Directors whenever he feels it is desirable.
  - iv) The secretary should advice only the Board of Directors on legal matter, not the managers.
  - v) In the event of the winding up of a company, the secretary has right to claim all arrear salaries due to him as preferential credit.
  - vi) The secretary is not liable under law for frauds committed by his subordinates.
  - vii) A company secretary can be held liable if there is illegal transfer of shares between two parties.
  - viii) The rights of a company secretary are those which correspond to his duties prescribed in the Companies Act as well as those provided in the Service Contract.
  - ix) Under the Stamp Act, the secretary may render service as an adviser to a company and also as stock broker of the company.
  - x) A company secretary in practice cannot offer to perform as a secretary to a company jointly with any other practising secretary.

### 3.10 LET US SUM UP

A company secretary means an individual who is a member of the Institute of Company Secretaries of India, possesses the qualifications prescribed in law, and is appointed to perform the duties laid down in the Companies Act and any other ministerial or administrative duties.

The legal position of a company secretary is not just that of an employee (or servant) of the company. He is an executive officer of the company and is bracketed with managers, managing director and directors under the provisions of the Companies Act and other laws. His actual position is like that of the ears, eyes and hands of the company while the directors are its brains.

Statutory qualifications of a company secretary are laid down in the Companies Act separately in respect of secretaries appointed by companies having a paid up share capital of Rs. 25 lakhs or more, and for those appointed by companies having paid up share capital of less than Rs. 25 lakhs. In addition, a company secretary should also possess certain general qualifications e.g. knowledge of trade, industry, banking and finance, accountancy, taxation, company law, and a good personality.

A secretary is generally appointed by the Board of Directors or by the Managing Director if so authorised by the Board. The terms and conditions of service are governed by the service contract. The secretary can be dismissed by the Board or the Managing Director after proper notice is given. However, no notice is required if there is wilful misconduct, negligence or permanent disability.

The company secretary has statutory duties under the Companies Act, Income Tax Act, Stamp Act and several other laws. His general duties include those as an agent of the company, duties towards the directors and managers, towards the shareholders, as public relations officer and as office executive. The rights of a company secretary are provided in his service contract. He also enjoys various rights corresponding to the statutory duties he has to perform. Being an officer of the company, the secretary is liable if he fails to comply with the provisions of the Companies Act and other laws. He may also be held liable for breach of any provision of the service agreement.

A practising company secretary is one who chooses to practice independently as a company secretary either individually or in partnership with one or more secretaries in practice, or with members of other recognised professions. The areas of practice of such a secretary are specified in the Company Secretaries Act 1980 as well the Companies (Amendment) Act 1988.

### 3.11 KEY WORDS

**Company Secretary** : A person who is a member of the Institute of Company Secretaries of India, and is appointed to perform the duties of a company secretary and any other ministerial or administrative duties.

**Practising Company Secretary (Company Secretary in Practice)** : A member of the Institute of Company Secretaries of India who chooses to practice independently as a company secretary.

**Pro-tem Secretary** : Secretary appointed by promoters before the registration of a company.

**Statutory Liabilities** : Liabilities imposed under the Companies Act or under any other Act.

**Statutory Rights** : Rights corresponding to the duties prescribed under the provisions of the Companies Act.

### 3.12 ANSWERS TO CHECK YOUR PROGRESS

- A 1 i) True ii) False iii) True iv) False v) True vi) True  
 2 i) discretion, judgement ii) brain iii) directors iv) signing, filing

- B 1 i) member ii) banking iii) personnel manager iv) pro-tem  
v) appointment vi) managing director
- 2 i) False ii) True iii) True iv) False
- C i) True ii) False iii) False iv) False v) False vi) False  
vii) True viii) True ix) True x) False xi) True xii) False

### 3.13 TERMINAL QUESTIONS

- 1) Define 'Company Secretary'. Explain the position of a company secretary in the eyes of law and his actual position.
- 2) What are the statutory qualifications of a company secretary prescribed under the Companies Act? Describe the general qualifications which a company secretary should possess.
- 3) (a) Who can be appointed a Company Secretary? How can a Company Secretary be removed from service? Is it essential to serve a notice before dismissing a secretary? (b) State the circumstances in which a company secretary may be dismissed without notice.
- 4) Discuss briefly the statutory duties of a company secretary. What are his liabilities?
- 5) "While the directors are the brains of a company, the secretary is its ears, eyes and hands." Elucidate the statement.
- 6) State the qualifications which a company secretary should possess. Are all company secretaries required to possess the same qualifications?
- 7) Is it compulsory for a public company to appoint a secretary? State the legal provisions in this connection.
- 8) What are the rights and liabilities of a company secretary?
- 9) Who can be deemed to be a company secretary in practice? What can be the areas of his practice?
- 10) Discuss the nature of duties of a company secretary as (a) agent of the company, (b) public relations officer, and (c) office executive.
- 11) What are the duties of a company secretary prescribed under the Indian Companies Act, Income Tax Act and Stamp Act?
- 12) Enumerate the duties of a company secretary towards (i) the directors and managers, and (ii) shareholders.
- 13) State the contractual and statutory liabilities of the company secretary.

**Note:** These questions will help you to understand this unit better. Try to write answers for them. But do not submit your answers to the University for assessment. These are for your practice only.

### SOME USEFUL BOOKS

- Acharya and Govekar, 1993. Company Secretarial Practice, Himalaya Publishing House, New Delhi
- Kuchhal, M.C., 1992. Secretarial Practice, Vikas Publishing House, New Delhi
- Prasad Kumar Ghosh and Prasanta Kumar Ghosh, 1989. Hand Book of Secretarial Practice and Office Procedure, Vidyalaya Library Pvt. Ltd., Calcutta.
- Rajendra Pal and J.S. Korlahalli, Essentials of Business Communication, Sultanchand & Sons, New Delhi.