

23

STANDING COMMITTEE ON FINANCE

(2009-10)

FIFTEENTH LOK SABHA

Ministry of Corporate Affairs

**THE COMPANY SECRETARIES (AMENDMENT)
BILL, 2010**

TWENTY-THIRD REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2010/ Bhadra, 1932 (Saka)

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**STANDING COMMITTEE ON FINANCE
(2009-2010)**

(FIFTEENTH LOK SABHA)

Ministry of Corporate Affairs

THE COMPANY SECRETARIES (AMENDMENT) BILL, 2010

*Presented to Lok Sabha on 31 August, 2010
Laid in Rajya Sabha on 31 August, 2010*



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2010/Bhadra, 1932 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2009-2010

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri Sudip Bandyopadhyay
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Gurudas Dasgupta
8. Shri Khagen Das
9. Shri Nishikant Dubey
10. Smt. Jayaprada
11. Shri Bhartruhari Mahtab
12. Shri Mangani Lal Mandal
13. Shri Rayapati Sambasiva Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Y.S. Jagan Mohan Reddy
16. Shri N. Dharam Singh
17. Shri Sarvey Sathyanarayana
18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Shri G.M. Siddeshwara*

RAJYA SABHA

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao
24. Vacant**
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Vacant***
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

SECRETARIAT

- | | | | |
|----|-------------------------|---|----------------------------|
| 1. | Shri A.K. Singh | - | Joint Secretary |
| 2. | Shri T.G. Chandrasekhar | - | Additional Director |
| 3. | Smt. B. Visala | - | Deputy Secretary |
| 4. | Shri T. Mathivanan | - | Senior Executive Assistant |

* Nominated to this Committee w.e.f. 09.03.2010 vice Shri Gopinath Munde, MP

**Shri Vijay Jawaharlal Darda, MP retired on. 4 July, 2010

***Shri S. Anbalagan, MP retired on 29 June, 2010

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Twenty-Third Report on “The Company Secretaries (Amendment) Bill, 2010.”

2. The Company Secretaries (Amendment) Bill, 2010 introduced in Rajya Sabha on 28 April, 2010, was referred to the Committee on 4 May, 2010 for examination and report thereon, by the Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained background note and written information on various provisions contained in the aforesaid Bill from the Ministry of Corporate Affairs.

4. Written views/memorandum was received from the Institute of Company Secretaries of India (ICSI).

5. The Committee heard the views of the representatives of the ICSI on 7 July, 2010. The Committee also took evidence of the representatives of the Ministry of Corporate Affairs on 4 August, 2010.

6. The Committee considered and adopted the Report at their sitting held on 26 August, 2010.

7. The Committee wish to express their thanks to the representatives of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Institute of Company Secretaries of India (ICSI) for furnishing written views/memorandum and appearing before the Committee for placing their views.

9. For facility of reference, the observations/recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi :
26 August, 2010
4 Bhadra, 1932 (Saka)

YASHWANT SINHA
Chairman
Standing Committee on Finance

REPORT

I. **Introductory**

The Institute of Company Secretaries of India (ICSI) is the organisation for the regulation and continuing professional development of company secretaries in India. The Institute of Company Secretaries of India is constituted under a 1980 Act of Parliament, the Company Secretaries Act.

(i) **The Company Secretaries Act, 1980**

2. The Company Secretaries Act, 1980 is an enactment which regulates the profession of the Company Secretaries. The said Act was amended in 2006 by the Company Secretaries (Amendment) Act, 2006, *inter alia*, to enable the members of the Institute of Company Secretaries of India to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

(ii) **The Limited Liability Partnership (LLP) Act, 2008**

3. A new law, the Limited Liability Partnership (LLP) Act was enacted in the year 2008 to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto. The limited liability partnership is an organized form of business which operates on the basis of an agreement and gives the benefits of limited liability of a company and the flexibility of a partnership. The LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the limited liability partnership which may be of tangible or intangible nature or both tangible and intangible in nature. Any two or more persons associating for carrying on a lawful business with a view to profit may set up a LLP.

(iii) **Company Secretaries (Amendment) Bill, 2010**

4. The Company Secretaries (Amendment) Bill, 2010, was introduced in the Rajya Sabha on 28 April, 2010 and referred to the Standing Committee on

Finance by the Speaker, Lok Sabha on 4 May, 2010 for examination and report thereon. The Bill proposes to amend the Company Secretaries Act, 1980 to apply certain provisions of the Limited Liability Partnership Act, 2008 to the Company Secretaries Act, 1980 in order to allow the members of the professional institute governed by the Company Secretaries Act, 1980 to form the limited liability partnership and insert new definitions of “firm”, “partner”, “partnership” and “sole proprietorship” for the said purpose.”

5. Apart from taking evidence of the representatives of the Ministry of Corporate Affairs in connection with the examination of the Bill, the Committee also heard the views of the representatives of the Institute of Company Secretaries of India (ICSI) on the provisions of the Bill. The Institute also furnished their written views/suggestions thereon for consideration of the Committee.

6. The background note on the amendment proposals of the Bill furnished to the Committee by the Ministry of Corporate Affairs states inter-alia:

“India has witnessed considerable growth in services sector and the quality of our professionals is acknowledged internationally. It is likely that in the years to come Indian professionals would be providing accountancy, legal and various other professional/technical services to a large number of entities across the globe. Such services would require multidisciplinary combinations that would offer a menu of solutions to international clients. Consultations with the Company Secretaries institute have been held which have revealed that if definition of the firm is added to the CS Act it will enable the members of the CS institutes to form LLPs and take benefits of the provisions of the LLP Act. This will enlarge the spectrum of the services provided by the Members of the CS Institute. It will also ensure the competitiveness of the members of the professions. Apart from the inclusion of the definition of the firm, some allied definitions like partner, partnership and sole proprietorship would also be required in the Act and as such have been included in the proposed Bill.”

7. Questioned whether any shortcomings had come to notice in the LLP Act, 2008 that need to be addressed for enabling enterprises in various fields including Chartered Accountants, Company Secretaries and Cost and Works Accountants to adopt this form of organization, the Ministry, in reply informed:

“The Ministry has not come across any shortcoming in the LLP Act, 2008. Certain professionals have taken the benefit of the LLP Act. However, the professionals of ICAI, ICWAI and ICSI could not take the benefit of the Act as there was no enabling provision in the Acts of these three Professional Institutes.”

II. Amendments to the Company Secretaries Act, 1980

(A) Clause 2: (Amendment of Section 2 of the Act relating to Definitions and Interpretation)

8. Section 2 of the Company Secretaries Act, 1980 as it presently stands, inter-alia provides that a member of the Institute of Company Secretaries of India 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 recognized professions as may be prescribed.

9. Section 2(1) defines various terms in the Act.

10. Clause 2 of the Bill which seeks to insert new definitions of ‘firm’, ‘partner’, ‘partnership’, and ‘sole proprietorship’ in Section 2(1) of the said Act reads as under:

“In the Company Secretaries Act, 1980 (hereinafter referred to as the principal Act), in section 2, in sub-section (1)—

(i) after clause (f), the following clause shall be inserted, namely:—

‘(fa) “firm” shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes,—

(i) the limited liability partnership as defined in clause (n) of subsection (1) of section 2 of the Limited Liability Partnership Act, 2008; or

(ii) the sole proprietorship, registered with the Institute;’;

(ii) after clause (ga), the following clauses shall be inserted, namely:—

‘(gb) “partner” shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 or in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be;

(gc) “partnership” means—

(A) a partnership as defined in section 4 of the Indian Partnership Act, 1932; or

(B) a limited liability partnership which has no company as its partner;';

(iii) after clause (j), the following clause shall be inserted, namely:—

'(jj) "sole proprietorship" means an individual who engages himself in the practice of the profession of the Company secretaries or offers to perform services referred to in clauses (b) to (f) of sub-section (2);';

(B) Clause 3: (Amendment of Section 26 of the Act relating to Companies not to engage in Company Secretaryship)

11. Section 26 (1) of the Act reads as below:

“No company, whether incorporated in India or elsewhere, shall practise as Company Secretaries.”

12. Clause 3 of the Bill which seeks to insert an ‘explanation’ under Section 26 (1) of the Act reads as under:

“In section 26 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the removal of doubts, it is hereby declared that the "company" shall include any limited liability partnership which has company as its partner for the purposes of this section.’

13. While expressing their agreement with the proposed amendments in the Bill, the Institute of Company Secretaries of India(ICSI), in their written memorandum and also in the course of personal hearing before the Committee, inter-alia submitted: “the amendments proposed are in sync with the global trends and practices and the Limited Liability Partnership organization is an ideal form of organization for mega firms wherein while every partner shall continue to be personally liable for his professional or other misconduct, he will be shielded from joint liability attached in a traditional partnership.”

III. Other Issues

14. The Institute of Company Secretaries of India have also placed before the Committee other issues on the Company Secretaries Act, 1980.

(A) Name of the Institute

15. Making a proposal for changing the name of the Institute and the designation of members of the Institute, the ICSI, in their memorandum submitted as follows:

“The name of the Institute i.e. “the Institute of Company Secretaries of India” may be changed as “The Institute of Chartered Secretaries of India” and the designation “Company Secretary” may be changed as “Chartered Secretary.”

16. By way of providing the justification for the said proposal, ICSI further submitted as under:

“Globally, Institutes similar to “The Institute of Company Secretaries of India” are known as Institutes of Chartered Secretaries. Further, their members are known by the designation “Chartered Secretaries”. The Institute has been receiving suggestions from its members for a long time for change in the name of the Institute as well as the designation of members. Keeping in view the globally recognized and known nomenclature, of “Chartered Secretary”, it is suggested that the name of the Institute may be changed as “The Institute of Chartered Secretaries of India” and the designation “Company Secretary” be changed as “Chartered Secretary”, . The designation “Chartered Secretary” will also distinguish a member in practice from a person who is in employment as company secretary.”

17. Asked to furnish their views on the above-mentioned suggestion made by ICSI, the Ministry of Corporate Affairs, in a written reply, stated as under:

“A proposal for change of name of the Institute of Company Secretaries of India to the Chartered Secretaries of India was received in the Ministry in the year 2008. Since Govt. of India does not issue ‘charters’ after it became republic in the year 1950, it was considered not to allow the change of name. CA Act is of 1949 and follows the British Practice then in existence. The proposal of the Institute of Company Secretaries of India was considered by the Govt. and then was rejected. Hence, the same does not have merit and deserves to be rejected.”

(B) Modification of Section 16 (1) (a) of the Act

18. Section 16 of the Company Secretaries Act, 1980 relates to Officers and employees of the Institute, salary, allowances etc. Section 16 (1) (a) of the Act as it presently stands reads as under:

“For the efficient performance of its duties, the Council shall appoint a Secretary of the Council to perform such duties as may be prescribed;”

19. In this regard, the ICSI in their written memorandum inter-alia stated as under :

“Sub-section (1) of section 16 of the Company Secretaries Act, 1980 originally provided that “the Council shall appoint a Secretary who shall be a member of the Institute” However, while the said section 16 was being recast by an amendment in 2006, the words “who shall be a member of the Institute” got omitted. Consequently, even a non member of the Institute can be appointed as Secretary of the Council. The duties of the Secretary prescribed under Regulation 157 of the Company Secretaries Regulations can be better performed by a person who is a member of the Institute. Secretary of the Council plays a very vital role and provides important inputs to the Council in taking policy decisions and finalizing the research publications including Guidance notes and Secretarial Standards etc. Further, it would be in the fitness of things that the secretary of the Council of the ICSI should be a qualified member of the Institute. Therefore it is suggested that the words “who shall be a member of the Institute” may be restored.”

20. Questioned on the necessity expressed by ICSI, on reinstating the words, ‘the council shall appoint a Secretary who shall be a number of the Institute’ in Section 16(1)(a), the Ministry of Corporate Affairs in a written reply informed as under:

“Similar provisions were made in all the three Acts by the amendment Acts in 2006 by replacing Section 16 completely. Before these amendments, the CA and CWA Act had same provision and the CS Act was amended to align with the two Acts. The ICAI and ICWAI have never objected to the existing provisions ever since. This is for the council to appoint Secretary. The Govt. do not interfere in their decision. By deletion of the words “who shall be a member of the Institute” has widened the choice available with the Council. The Council may appoint a person as Secretary who may be more competent than a member of the same Institute. There is no instance when a non-member has served

as Secretary of ICSI. The Ministry do not accept the proposal to restore the words omitted as the existing provisions are same for all the Acts governing the three professional Institutes”

21. The Company Secretaries (Amendment) Bill, 2010 seeks to amend the Company Secretaries Act, 1980 for enabling the members of the Institute of Company Secretaries (ICSI) to form limited liability partnerships as defined by the Limited Liability Partnership (LLP) Act, 2008. The Committee express agreement with the amendment proposals of the Bill to this end which inter-alia seek to add in the Act, the definitions of ‘firm’, ‘partner’, ‘partnership’ and ‘sole proprietorship’ in line with the LLP Act, and recommend the same for consideration.

22. A proposal has been placed before the Committee by the ICSI for renaming the institute as ‘Institute of Chartered Secretaries’ and rephrasing the designation of the profession of ‘company secretary’ as ‘chartered secretary’ as being in line with international practice, which has not found favour by the Ministry. The matter, having wider ramifications and requiring detailed examination, the Committee do not find it appropriate to pursue it further at this stage.

23. The stance of the Ministry in not agreeing to the proposal of the ICSI for restricting the appointment of the Secretary to the Council from the members of the institute is not convincing to the Committee. As pointed out by the ICSI, it would be in the fitness of things that the Secretary of the Council of the Institute is a qualified member of the institute. The Committee, therefore, recommend that the stipulations of section 16(1)(a) relating to the appointment of the

Secretary of the Council are reviewed for reinstating the position prevailing earlier whereby the Secretary had to necessarily be a member of the institute.

New Delhi :
26 August, 2010
4 Bhadra, 1932 (Saka)

YASHWANT SINHA
Chairman
Standing Committee on Finance

Minutes of the Twenty First sitting of the Standing Committee on Finance

The Committee sat on Wednesday, the 7th July, 2010 from 1100 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Sudip Bandyopadhyay
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Khagen Das
6. Shri Nishikant Dubey
7. Shri Bhatruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri G. M. Siddeshwara
10. Shri Rayapati Sambasiva Rao
11. Shri N. Dharam Singh
12. Shri Manicka Tagore
13. Dr. M. Thambidurai

RAJYA SABHA

14. Shri Raashid Alvi
15. Shri S. S. Ahluwalia
16. Shri Moinul Hassan
17. Shri Mahendra Mohan
18. Shri Y.P. Trivedi

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | - | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |
| 4. Smt. B. Visala | - | Deputy Secretary |

Part I

(1100 to 1230 hrs.)

XX	XX	XX	XX
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Part II
(1415 to 1430 hrs.)

WITNESSES

Institute of Company Secretaries of India (ICSI)

1. Shri Vinayak S. Khanvalkar, President, ICSI
2. Shri N.K. Jain, Secretary and CEO, ICSI

The Committee heard the views of the representatives of the Institute of Company Secretaries of India (ICSI) in connection with examination of the Company Secretaries (Amendment) Bill, 2010. The major issues discussed with the representatives included, change of name of the Institute of Company Secretaries of India to Institute of Chartered Secretaries of India, and subsequent change of designation for the members of the Institute as “Chartered Secretaries”, substitution of the words “professional business” which is in the existing Act with the words “professional services”, incorporation of provisions to make only members of the Institute eligible for appointment to the post of Secretary of the Council etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part III
(1430 to 1500 hrs.)

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Part IV
(1500 to 1530 hrs.)

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The Committee then adjourned.

Minutes of the Twenty Third sitting of the Standing Committee on Finance

The Committee sat on Wednesday, the 4th August, 2010 from 1600 hrs. to 1900 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Khagen Das
5. Shri Nishikant Dubey
6. Shri G. M. Siddeshwara
7. Shri Rayapati Sambasiva Rao
8. Shri Magunta Sreenivasulu Reddy
9. Shri N. Dharam Singh
10. Shri Sarvey Sathyanarayana
11. Dr. M. Thamibidurai
12. Shri Anjankumar M. Yadav

RAJYA SABHA

13. Shri Raashid Alvi
14. Shri S. S. Ahluwalia
15. Shri Moinul Hassan
16. Shri Mahendra Mohan
17. Dr. Mahendra Prasad
18. Shri Y.P. Trivedi
19. Shri Rajeev Chandrasekhar

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | - | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |
| 4. Smt. B. Visala | - | Deputy Secretary |

Part I

(1600 to 1640 hrs.)

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay – Secretary
2. Shri P. D. Sudhakar – Special Secretary
3. Smt. Renuka Kumar – Joint Secretary

2. The Committee heard the views of the representatives of the Ministry of Corporate Affairs on the Chartered Accountants (Amendment) Bill, 2010, the Company Secretaries (Amendment) Bill, 2010 and the Cost and Works Accountants (Amendment) Bill, 2010.

3. The major issues discussed with the representatives included, necessity of the proposed amendment Bills, change proposed in the name of the Institute of Cost and Works Accountants of India to the Institute of Cost and Management Accountants of India, and consequent change of name of members of the Institute to 'Cost and Management Accountants', distinction in the roles of a Cost and Works Accountant and a Cost and Management Accountant, nomenclature of 'Cost and Works Accountants' in other Countries etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members within a week.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II
(1645 to 1900 hrs.)
WITNESSES

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The Committee then adjourned.

Minutes of the Twenty fifth sitting of the Standing Committee on Finance

The Committee sat on Thursday, the 26th August, 2010 from 1500 hrs. to 1600 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Khagen Das
5. Shri Bhartruhari Mahtab
6. Shri G. M. Siddeshwara
7. Shri Rayapati Sambasiva Rao
8. Shri Magunta Sreenivasulu Reddy
9. Shri Y.S. Jagan Mohan Reddy
10. Shri N. Dharam Singh

RAJYA SABHA

11. Shri Moinul Hassan
12. Shri S. S. Ahluwalia

SECRETARIAT

- | | | |
|-----------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T.G. Chandrasekhar | - | Additional Director |
| 3. Shri R.K. Suryanarayanan | - | Deputy Secretary |
| 4. Smt. B. Visala | - | Deputy Secretary |

2. The Committee took up the following draft Reports for consideration and adoption:-

- (i) Draft Report on the Companies Bill, 2009;
- (ii) Draft Report on the Coinage Bill, 2009;
- (iii) Draft Report on the Company Secretaries (Amendment) Bill, 2010;
- (iv) Draft Report on the Chartered Accountants (Amendment) Bill, 2010; and
- (iv) Draft Report on the Cost and Works Accountants (Amendment) Bill, 2010.

3. The Committee adopted the draft reports at (i) with the modifications/amendments as shown in Annexure and (ii) and (iv) above with minor modifications. The Committee adopted the remaining draft reports without any change.

4. The Committee authorized the Chairman to finalise the Reports in the light of the modifications suggested and present all the reports to Parliament in the current session.

The Committee adjourned at 1600 hours.