CimplyFive™

JULY 2016

# First Survey on Corporate Secretarial Practices in India



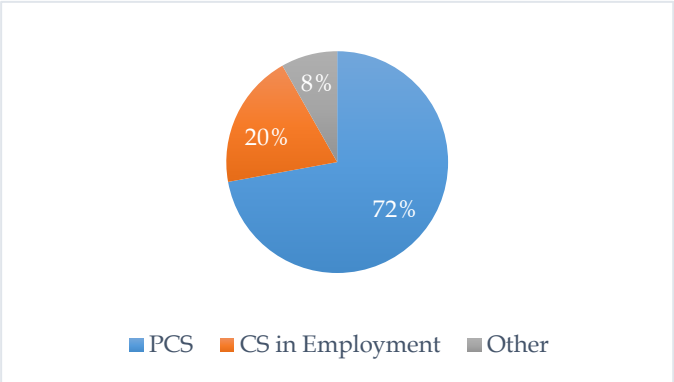
## CimplyFive's First Survey on Corporate Secretarial Practices

Dear Reader,

We are very thankful to all the 222 respondents who participated in this Survey. A profile of the respondents reveal their rich experience that backs the findings of the survey:

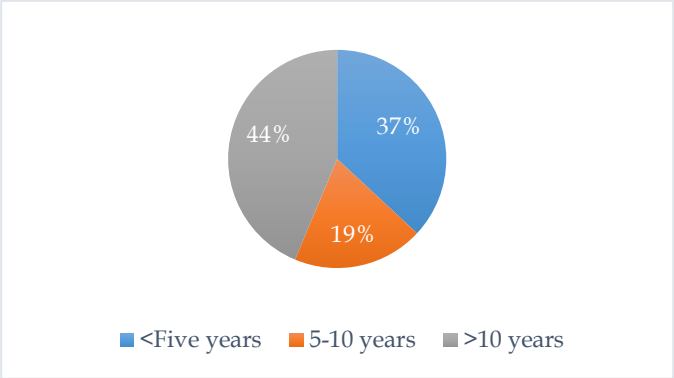
### Profession of Respondents

- 72% (158) of the respondents are PCS
- 20% (43) are Company Secretaries in employment and
- The balance 8% (18) are from other fields namely Chartered Accountants, Legal Counsels and Company Directors.




### Experience Profile

- 44% (97) of the respondents have more than 10-year experience
- 19% (43) have between 5 and 10 year experience and
- The balance 37% (82) have less than 5 year experience.




What is more endearing is the fact that for all the six questions the qualitative comments that accompanied the response was in the range of 66-96, with an average of 82, indicating deep reflection and thought that back these responses.

We have presented the findings of the survey under the following five heads

1. The Question
2. Rationale for the Question
3. Quantitative summary of response
4. Qualitative summary of responses
5. CimplyFive's Learning

We are happy to present our learnings from this survey and look forward to your feedback on the results of this survey. Please share it with us at contact@cimplyfive.com. Please feel free to share it with all those who may be interest in this survey results.

Yours Sincerely,

Shankar Jaganathan
Founder & Chief Executive

**Q1 Do you add serial number to the Circular Resolution that are passed in addition to the date of Circular Resolution being proposed?**

**Rationale for this question?**

Based on our interactions with a hundred plus PCS firms, we noticed two different practices in vogue, of some firms serially numbering the Circular Resolution and the others not adopting it. Looking into the mandatory secretarial standard SS1-on Board Meetings, it does not explicitly require Circular Resolutions to be serially numbered, yet in the FAQs published by ICSI the mode of serially numbering the Circular Resolution is mentioned. Could this by inference mandate serial numbering of Circular Resolutions.

**Quantitative summary of Responses:**

| Response | Yes | No | Skipped | Commented |
|---|---|---|---|---|
| 222 | 184 | 38 | 0 | 96 |
| 100% | 83% | 13% | 0% | 43% |

**Qualitative summary of Responses:**

An analysis of the 96 respondents who provided qualitative comments reveals:

- 36% highlighted the benefits of easy reference,
- 20% stated it was a requirement of Secretarial Standards,
- 14% said it improved tracking of Circular resolution, and
- 4% attributed it as an element of Good Governance.

**CimplyFive's learning**

**Serial number for Circular Resolutions is desirable as it provides easy reference at a later date for tracking. Further circular resolution is an exception to the normal method of a Company taking decisions and is used quite sparingly. Hence adding serial numbers will not to significantly add to the workload.**

**Q2 While drafting resolutions for Sub-Committee/ Board /Shareholder meetings for the initial words, "Resolved that" and "Further resolved that" do you use the following:**

**Rationale for this question?**

The first two or the first three words in a resolution are traditionally distinguished from the other letters in the resolution by use of a different font-either capital letters or bold font or both. Further the resolution is enclosed within inverted commas as illustrated below

i. RESOLVED THAT
**ii. Resolved that**
**iii. RESOLVED THAT**
iv. **'Resolved that……..'**

Since multiple practices exist, this question is intended to find the rationale for these practices and promote adoption of the most logical practice.

**Quantitative summary of Responses:**

| Answer Options | Response Percent | Response Count# |
|---|---|---|
| In bold capital letters within inverted commas | 41% | 90 |
| In Capital letters | 31% | 68 |
| In bold capital letter | 30% | 66 |
| In bold letters | 15% | 32 |
| In inverted commas | 9% | 20 |
| Skipped | 1% | 1 |
| Response | 100% | 222 |
| Commented | 42% | 94 |

# The response count is more than the number of respondents as more than one choice has been made by some respondents

**Qualitative summary of Responses:**

Analysis of the 94 respondents who provided qualitative comments is given below:

- 39% of respondents said they follow this as a precedent handed down to them
- 21% said that they follow it as it highlights or draws attention
- 10% said ease of reading and better presentation was the criteria

**CimplyFive's learning**

Use of capital letters is seen as equivalent to raising the voice while speaking. Traditionally, use of capital letters at the start of a resolution was an indication to the Company Secretary to raise their voice as they read out the resolution to gain audience's attention. With the advent of bold fonts, the choice of using either bold font or capital letters emerged, with some using both as a double emphasis.

The advent of placing the resolution within inverted commas evolved as a means to indicate the beginning and end of a resolution.

Given this rationale, CimplyFive recommends the use of placing resolutions within inverted commas and starting the first two or three words in bold font of each para of the resolution to highlight that it is a part of a decision taken by the Company.

**Q3 Where a Board Meeting is called at shorter notice, do you take consent letter from the Directors?**

**Rationale for this question?**

The Companies Act, 2013 does not require the Directors consent to be obtained for conducting a Board Meeting at shorter notice, i.e. less than the 7 day notice prescribed in Secretarial Standards. However in practice we saw a sizeable number of PCS following the practice of obtaining Director's consent. Since there exists a variance in practice, this question was to ascertain how wide spread is this voluntary practice and what could be the rationale for it.

**Quantitative summary of Responses:**

| Response | Yes | No | Skipped | Commented |
|---|---|---|---|---|
| 222 | 180 | 40 | 2 | 93 |
| 100% | 81% | 18% | 1% | 42% |

**Qualitative summary of Responses:**

Analysis of the 93 respondents who gave their qualitative comments is given below:

- 20% of the respondents said evidence or proof required for shorter notice was the reason for taking consent
- 16% of respondents said that it is required by the Companies Act
- 13% of the respondents said it was a matter of good governance
- 10% of respondents said it is a requirement of Secretarial standards

**CimplyFive's learning**

We believe that taking consent from Directors for holding Board Meetings at shorter notice is not an advisable practice from the Corporate Governance viewpoint as it amounts to giving every individual director a veto right in conducting Board Meeting. While giving veto rights may not be the intent while taking consent from Directors, in practical terms it amounts to that. This may be the reason why the Companies Act, 2013 does not prescribe it.

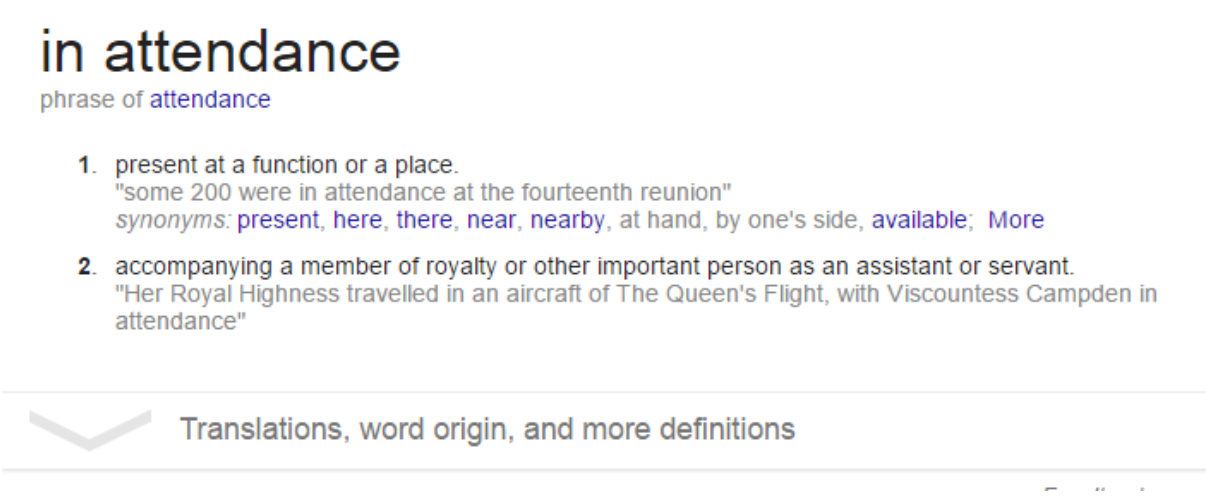
In contrast, for the shareholders meeting, consent is required from a minimum of 95% of the members primarily due to the fact that these meetings deal with basic structural issues and are held less frequently. Further, in the case of Board Meetings, business matters which are time bound are dealt with and delay in the Board taking a decision could be financially disastrous, if not costly for the company.

**Q4 How do you record the attendance of your Company Secretary in the minutes of Board Meetings?**

**Rationale for this question?**

Traditionally, the presence of a Company Secretary was recorded in the minutes by mentioning them as a Permanent Invitee or an Invitee. However Secretarial Standard SS-1 requires the presence of a Company Secretary to be mentioned as 'In attendance'. Given that the meaning of 'In attendance' which is 'accompanying a member of royalty or other important person as an assistant or servant', could the use of these words could reduce the dignity and importance of the role of a Company Secretary?

**RESULT OF A GOOGLE SEARCH FOR THE WORDS 'in attendance'**




**Quantitative summary of Responses:**

| Answer Options | Response Percent | Response Count |
|---|---|---|
| In attendance | 75% | 166 |
| Invitee | 14% | 32 |
| Permanent Invitee | 9% | 20 |
| Skipped | 2% | 4 |
| Response | 100% | 222 |
| Commented | 33% | 74 |

**Qualitative summary of Responses:**

Of the 74 respondents who gave qualitative comments:

- 20% of the respondents said the CS are required to be present
- 14% of respondents said it is required as per Secretarial Standards
- 11% of respondent said that this is followed as a practice
- 5% of respondents said CS are not part of the Board

**CimplyFive's learning**

We recommend that the practice followed be defined by the nature of the Company Secretary present in the Board Meeting. Where a Practicing Company Secretary facilitates the Board meeting, they should be recorded as an invitee representing their firm, in the role of Company Secretary. But, where a Company Secretary is attending the meeting as an employee of the company, Permanent invitee is a better option for recording their presence, as 'in attendance' may lower the dignity and prestige of the profession of Company Secretary. However, until the Secretarial Standards are amended, to be compliant, presence of Company Secretaries in employment could be recorded as 'In attendance'.

**Q5 In the Board Meetings, how are the Sub-committee meetings recorded?**

**Rationale for this question?**

In many companies the meetings of the sub-committee and the Board takes place on the same day. Often the interval between a Committee meeting and the Board Meeting is less than 30 minutes. Further it should be noted that FAQ 7/5 on SS-1 requires the Board to take note of the Sub-committee minutes only after the sub-committee meeting minutes are finalized, which is after the draft minutes are circulated for comments from members before finalization.

Given this ground reality where there is inadequate time to prepare minutes before a Board meeting is conducted, this question captures the practical aspects of how Minutes are recorded.

**Quantitative summary of Responses:**

| Answer Options | Response Percent | Response Count |
|---|---|---|
| **The Board took note of the Minutes of the Sub-committee** | **69%** | **153** |
| **The Sub-committee Chairperson briefed the board about the key decisions and the gist of discussions in the sub-committee meeting** | **28%** | **63** |
| **Skipped** | **3%** | **6** |
| **Response** | **100%** | **222** |
| **Commented** | **32%** | **72** |

**Qualitative summary of Responses:**

Of the 72 respondents who gave qualitative comments

- 22% said Board needs to be aware
- 8% said the reason was for Good corporate governance
- 7% said it is a matter of practice
- 4% said it is required as per Secretarial Standards

**CimplyFive's Learning**

We believe the minutes need to capture the actual events at the meeting. Where minutes are prepared and circulated or were laid at the table in the board meeting, this would happen where there is adequate time between the sub-committee meeting and the Board meeting, it should be recorded as 'The Board took note of the minutes.'

In instances where the minutes were not circulated or tabled at the meeting, due to paucity of time, and the Sub-committee Chairman briefed the Board, it should be recorded as 'The Sub-committee Chairman briefed the Board on key decisions and shared the gist of discussion at the sub-committee meeting'.

**Q6 While obtaining declaration from Independent Directors on their independence, does your draft require the Director to assert/certify that they are persons of "Integrity and in possession of relevant expertise"?**

**Rationale for this question?**

Section 149 (6) requires an independent director to meet 12 conditions defined in this sub section under four distinct heads. The first condition is a requirement for the Board to have a positive opinion on the integrity, expertise and experience of the individual. Given this requirement two different practices are followed, one where the nominee is required to assert their fitness on all the 12 conditions and in the second practice the first condition on integrity, expertise and experience is dropped.

**Quantitative summary of Responses:**

| Response | Yes | No | Skipped | Commented |
|---|---|---|---|---|
| 222 | 142 | 60 | 20 | 66 |
| 100% | 64% | 27% | 9% | 30% |

**Qualitative summary of Responses:**

Of the 68 respondents who gave qualitative comments:

- 19% of the respondents said it is required under the Companies Act
- 16% of the respondents said it is not required or not applicable under the Act
- 10% said it is implied or self-certified
- 9% of the respondent said it is for good governance or practice

**CimplyFive's Learning**

Integrity and expertise of an individual is a matter of opinion which is required to be considered by the Board before appointing an individual as an Independent Director. Section 149 (6) (a) specifically requires the Board to have an opinion on the integrity, expertise and experience of the individual. Hence this assertion by the individual itself would not meet the need or be equal to the requirement for Board as a valid assertion for the purpose of this Act.

CimplyFive recommends that the certification taken from the individual being appointed as an independent director should exclude the criteria of that individual asserting their own integrity and expertise.