



**PRESENTATION ON
SECRETARIAL AUDIT -
COMPANIES ACT, 2013**

Evolution of Secretarial audit

- Until 2000 – Securities related Audit (Clause 47C)
- February 2000 – Corporate Governance (Clause 49)
- Companies (Compliance Certificate) Rules, 2001 (Section 383A)
 - Unlisted companies with paid-up capital of Rs 10 lakh or more
 - Required even if company had a Company Secretary in employment (applicable from December 31, 2002)
 - Secretarial Audit Report for reconciliation of total admitted capital with depositories and total issued and listed capital (CA or CS)
- Annual Return Certification
- Due Diligence certificates / reports for IPO, open offer, bonus issue, GDR issue, etc.
- MCA Voluntary Guidelines, 2009
- Secretarial Audit and Annual Return certification (Companies Act 2013)



Beneficiaries of secretarial audit

Assurance of Compliances to:

- Companies
- Directors
- Management
- Shareholders
- Creditors / Trustees
- Credit Rating Agencies
- Regulatory Authorities
- Other Stakeholders



Secretarial audit for bigger companies (sec 204)

- Companies covered:
 - (a) Every Listed Company (includes Companies whose debentures, warrants are listed)
 - (b) Other class of companies:
 - (i) Every Public Company having a paid up share capital of fifty crore rupees or more
 - (ii) Every public company having a turnover of two hundred fifty crore rupees or more
- Secretarial Audit Report shall be annexed to Board's Report
- Board in their Report to explain in full any qualification or observation or other remarks made by PCS in his report
- Format of Secretarial Audit Report shall be in Form MR-3
- For contravention – company, every officer who is in default and PCS punishable with fine – Rs 1 lakh to Rs 5 lakh



Appointment of Secretarial auditor

- Board to appoint at its meeting the Secretarial Auditor (on yearly basis) and fix his remuneration [Section 179(3)]
- Company to file the resolution with RoC [Section 117]
- Period of Office: The Act is silent – suggested to be similar to statutory Auditor appointed under Section 139 (10 years whether Secretarial Auditor is a Proprietor or a firm)
- Obtain consent of the Secretarial Auditor



Eligibility, Qualifications and disqualifications of secretarial auditor

- No legal provisions in the Act
- Suggested similar requirements as are set out in the Act for Statutory Auditors and applicable to Cost Auditors. (Self Code)



Removal & resignation of secretarial auditor

- Removal of Secretarial Auditor – no provisions in the Act
- Resignation of Secretarial Auditor – Board to note and file form with RoC (not obligatory)
- Secretarial Auditor also to file form with RoC (not obligatory)
- Appointment of Secretarial Auditor on casual vacancy



Documents required for audit

- Notice, agenda, notes on agenda minutes of meetings, attendance registers
- Draft Financial Statements, Auditor's Report, Director's Report
- Statements for borrowings and investments
- All Statutory Registers
- Disclosures / consents / declarations
- Filings with RoC / regulatory authorities / RBI
- Filings / submissions to Stock Exchanges
- Relevant approvals / correspondence
- Compliance certificates of functional heads for compliance of applicable laws



Audit methodology

- Determine scope of Audit
- Request for details of various corporate actions / events subject to audit
- Develop the audit framework
- Ascertain applicable laws
- Prepare check-lists and time schedule
- Call for documents / information
- Obtain Management Representation Letter
- Discuss and seek clarification, if required
- Discuss draft report with Management
- Finalize and submit draft addressed to shareholders



Secretarial audit report – form no. MR - 3

- Report is for the financial year ended
- Report is to be addressed to the Members similar to independent Auditors' Report
- Parts of Secretarial Audit Report:
 - (a) Para 1: Preamble
 - (b) Para 2: Report in general (based on verification of the company's books, papers, minute book, forms and returns filed and information provided) that the company has complied with the statutory provisions listed in the report that the company has proper Board processes and Compliance mechanism



Secretarial audit report – form no. MR - 3

- (a) Para 3: Report cites examination of the books, papers, minute books, forms and returns filed and other records maintained by the company according to the Provisions of:
- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
 - (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
 - (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
 - (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;



Secretarial audit report – form no. MR - 3

- (v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
- (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;



Secretarial audit report – form no. MR - 3

- (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
- (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
- (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- (vi) (Mention the other laws as may be applicable specifically to the company)



Secretarial audit report – form no. MR - 3

- (d) Para 4: Report deals with examination of compliance with applicable clauses of the following:
- (i) Secretarial Standards issued by the Institute of Company Secretaries of India
 - (ii) The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable
 - (iii) Report deals with compliance or otherwise with the provisions of the Acts, Rules, Regulations, Guidelines, Standards, etc. mentioned above, subject to following observations, if any
- (e) Para 5: Report deals with:
- (i) Constitution of Board of Directors – Executive / Non-Executive, Independent Director / Women Director, etc.
 - (ii) Adequate Notice to directors for Board Meetings



Secretarial audit report – form no. MR - 3

- (g) Para 6: Report deals with Confirmation of adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines (List of laws circulated)

Note: Qualifications, if any, observed to be cited.

- (h) Para 7: Report deals with specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above. For example:

- (i) Public / Right / Preferential Issue of shares / Debentures / sweat equity, etc.
- (ii) Redemption / buy-back of securities
- (iii) Major decisions taken by the members in pursuance to Section 180 of the Companies Act, 2013
- (iv) Merger / Amalgamation / reconstruction, etc.
- (v) Foreign technical collaboration



Duties of Secretarial auditor – Fraud Reporting [Sec 143(12)(14)]

- If Company Secretary in Practice, during conduct of Secretarial Audit, has sufficient reason to believe that an offence involving fraud is being committed or has been committed against the company by officers or employees of the company, he shall report the same to the Central Government immediately but not later than 60 days of his knowledge with a copy to the Board / Audit Committee seeking their reply within 45 days
- Board / Audit Committee to reply in writing the steps taken to address the fraud
- The Auditor to forward his report and reply of the Board / Audit Committee with his Comments to the Central Government within 15 days of reply by Board / Audit Committee
- The Report shall be in Form ADT - 4



Secretarial Audit
vs
Certification of annual return

- Certification of Annual Return by PCS
 - Annual Return filed by listed company
 - Annual Return filed by a company having:
 - (a) Paid-up share capital of Rs 10 crore or more; or
 - (b) Turnover of Rs 50 crore or more
- Certificate shall be in Form MGT - 8



Form MGT -8

Form No. MGT-8

[Pursuant to section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]

CERTIFICATE BY A COMPANY SECRETARY IN PRACTICE

I/ We have examined the registers, records and books and papers of ---
----- Limited/Private Limited (the Company) as required to be
maintained under the Companies Act, 2013 (the Act) and the rules
made thereunder for the financial year ended on ----- , 20----.
In my/ our opinion and to the best of my information and according to
the examinations carried out by me/ us and explanations furnished to
me/ us by the company, its officers and agents, I/ we certify that:

A stylized logo consisting of a large, flowing 'S' followed by a silhouette of a building or industrial structure.

Form MGT -8

- A. the Annual Return states the facts as at the close of the aforesaid financial year correctly and adequately.
- B. during the aforesaid financial year the Company has complied with provisions of the Act & Rules made there under in respect of:
1. its status under the Act;
 2. maintenance of registers/records & making entries therein within the time prescribed therefor;
 3. filing of forms and returns as stated in the annual return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within/beyond the prescribed time;
 4. calling/ convening/ holding meetings of Board of Directors or its committees, if any, and the meetings of the members of the company on due dates as stated in the annual return in respect of which meetings, proper notices were given and the proceedings including the circular resolutions and resolutions passed by postal ballot, if any, have been properly recorded in the Minute Book/registers maintained for the purpose and the same have been signed;



Form MGT -8

5. closure of Register of Members / Security holders, as the case may be.
6. advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
7. contracts/arrangements with related parties as specified in section 188 of the Act;
8. issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
9. keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act
10. declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/other amounts as applicable to the Investor Education and Protection Fund in accordance with section 125 of the Act;



Form MGT -8

5. closure of Register of Members / Security holders, as the case may be.
6. advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
7. contracts/arrangements with related parties as specified in section 188 of the Act;
8. issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
9. keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act
10. declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/other amounts as applicable to the Investor Education and Protection Fund in accordance with section 125 of the Act;



Form MGT -8

11. signing of audited financial statement as per the provisions of section 134 of the Act and report of directors is as per sub - sections (3), (4) and (5) thereof;
12. constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;
13. appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;
14. approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act;
15. acceptance/ renewal/ repayment of deposits;



Form MGT -8

16. borrowings from its directors, members, public financial institutions, banks and others and creation/ modification/ satisfaction of charges in that respect, wherever applicable;
17. loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act ;
18. alteration of the provisions of the Memorandum and/ or Articles of Association of the Company;

Place: Signature:

Date: Name of Company Secretary in practice:

C.P. No. :

Note: The qualification, reservation or adverse remarks; if any, may be stated at the relevant place(s).



SECRETARIAL AUDIT VS CERTIFICATION OF ANNUAL RETURN

Comments:

- (1) PCS to certify compliance with provisions of the Act and Rules in respect of the eighteen items set out in the Form MGT – 8.
- (2) The certification by PCS in the Annual Return is with respect to correctness and adequacy of the facts as at the close of the financial year set out in the return.
- (3) It does not extend to certification to the effect that the Company has complied with all the provisions of the Act as stated under Section 92(2) of the Act



Punishment for fraud (Sec 447)

- Section 447 states that without prejudice to any liability including for repayment of any debt under the Act or any other law for the time being in force, any person who is found guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud but which may extend to three times the amount involved in fraud
- The Section further states that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Fraud in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss



Punishment for false statement (Sec 448)

Section 448 states that, save as otherwise provided in the Act, if in any return, certificate, financial statement, prospectus, statement or other document required by the Act or Rules made thereunder, any person makes a statement:

- (a) Which is false in any material particulars, knowing it to be false;
or
- (b) Which omits any material fact, knowing it to be material,

He shall be liable under Section 447



Punishment in case of repeated default (Sec 451)

Section 451 provides that if an offence punishable either with fine or imprisonment is repeated within a period of three years, the company and the officer shall be punishable with imprisonment as provided and twice the amount of fine for such default, for the second and subsequent occasions.



THANK YOU

