

SECRETARIAL AUDIT



Presented By:
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INTRODUCTION

- Secretarial Audit is a process to **check compliance** with –
- The provisions of various laws and Rules/Regulations/Procedures, maintenance of books, records etc, by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes.
- The Board of Directors has to give explanation in the Board's Report to every qualification and observation or other adverse remark made by the Secretarial Auditor

INTRODUCTION

Statutory Definition:

Section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Provides for mandatory Secretarial Audit for the following classes of Companies

- (a) Every listed company
- (b) Every public company # having a **paid-up share capital** of **Fifty Crore** rupees or more; and
- (c) Every public company having a **turnover** *of **Two Hundred Fifty Crore** rupees or more.
- (d) “Listed company” includes: Companies whose debt securities are listed, including private companies whose equity shares are listed on SME listing platform

The term

#Public Company means as defined in Section 2(71) of the Companies Act, 2013

***Turnover** means as defined in Section 2(91) of the Companies Act, 2013

INTRODUCTION

- ◉ **Listed Company :Sec 2 (53)**

It means a company which has any of its securities listed on any recognized stock exchange;

- ◉ **Securities: Sec 2 (81)**

It means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

- ◉ **Specified Securities: 2(h) of SCRA, 1956**

Securities include (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; derivative; units or any other instrument issued by any collective investment scheme to the investors in such schemes;

INTRODUCTION

- ◉ **Paid-up Share Capital: Sec 2(64)**

It means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

- ◉ **Turnover: Sec 2(91)**

It means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

LATEST AMENDMENTS IN SECRETARIAL AUDIT

- ◉ **Regulation 24A:** Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.
- ◉ **Definition of Material Subsidiary:** A subsidiary, whose income or net worth exceeds 10% (ten percent) of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. Before amendment, the limit was of 20% (twenty percent).

SECRETARIAL COMPLIANCE REPORT

- ◉ Secretarial Compliance Report: Listed Entities shall require a check by PCS annually on compliance of all applicable SEBI Regulations and circulars/guidelines issued.
- ◉ The annual secretarial compliance report in the aforesaid format shall be submitted by the listed entity to the stock exchanges **within 60 days** of the end of the financial year.

NEED FOR COMPLIANCES

1

- Responsible towards shareholders

2

- Responsible towards Creditors

3

- Responsible towards Society

4

- Responsible towards Employees

NEED FOR SECRETARIAL AUDIT

Effective mechanism to ensure that the legal and procedural requirements are duly complied with

Provides a level of confidence to the KMP

Strengthen the image and goodwill of a company

Secretarial Audit is an effective compliance risk management tool

It helps the investor in analyzing the compliance level of companies

Secretarial Audit is an effective governance tool.

OTHER TYPES OF AUDIT

Particulars	Statutory Audit	Internal Audit	Cost Audit
Applicability	All Companies	Such class of companies as may be prescribed under Section 138 of CA 2013	Such class of companies engaged in the production of such goods or providing such services as may be prescribed under Section 148 of the CA 2013
Auditor	CA	CA/CWA	CWA (Practice)
Scope of the Audit	Audit of Financial Statements of the Company	Audit of day to day activities	Audit of Cost Records of the Company
Reporting Point	Members	BOD	BOD
Periodicity	Yearly	As prescribed by AC/BOD	Yearly

AMENDMENTS IN GUIDELINES FOR MANDATORY PEER REVIEW FOR RENDERING CERTAIN PROFESSIONAL SERVICES

- The Central council of ICSI at their meeting held on 16th March, 2019 has approved the recommendations of Peer Review Board making Peer Review mandatory for rendering certain Professional Services:
 - Issue of Secretarial Audit Report;
 - Secretarial Compliance Report under SEBI (LODR) Regulations; and
 - Due Diligence Reports for Banks

TIMELINE ISSUED BY COUNCIL FOR VARIOUS ACTIVITIES

- Secretarial Audit/Secretarial Compliance report of Top 100 Companies as per Market Capitalization to be issued only by a Peer Reviewed PCS w.e.f April,1 2020
- Secretarial Audit/Secretarial Compliance report of Top 500 Companies as per Market Capitalization to be issued only by a Peer Reviewed PCS April,1 2021

TIMELINE ISSUED BY COUNCIL FOR VARIOUS ACTIVITIES

- ◉ Secretarial Audit/Secretarial Compliance report of all Listed Companies to be undertaken only by a Peer Reviewed PCS w.e.f April 1, 2022.
- ◉ Secretarial Audit of all Companies to be undertaken by a Peer Reviewed PCS w.e.f April 1, 2023
- ◉ Issue of Due Diligence Report for Banks in case of Consortium Lending/Multiple Banking Arrangements to be undertaken only by a Peer Reviewed PCS w.e.f April 1, 2020.

JOURNEY OF SECRETARIAL AUDIT

- Securities Related Audit (Clause 47) - Until 2000.
- Corporate Governance (Clause 49) - February 2000.
- Compliance Certificate under Sec. 383 A
- Report for Reconciliation of total Admitted Capital with Depositories and total Listed Capital.

JOURNEY OF SECRETARIAL AUDIT

- ⦿ Annual Return Certification, Due Diligence Certificates, Open Offer, GDR Issue, Bonus Issue etc.
- ⦿ MCA Voluntary Guidelines 2009.
- ⦿ Secretarial Audit and Annual Return Audit (Companies Act, 2013)

ELIGIBILITY TO CONDUCT SECRETARIAL AUDIT

- Practicing Company Secretary holding a valid Certificate of Practice issued by ICSI:
 - as on the date of appointment (Co has to ensure eligibility of PCS)
 - as on the date of signing of the report (PCS has to ensure)

DUTY OF THE COMPANY

- ◉ The Company subject to Secretarial Audit should extend all the assistance and facilities to the Company Secretary in Practice for auditing the Secretarial and related records of the Company.

LIMITS ON NUMBER OF SECRETARIAL AUDITS

- ◉ 10 Secretarial Audit Reports per PCS/Partner.
- ◉ Additional 5 Secretarial Audits per Partner/PCS in case the unit is peer reviewed.

Appointment of Secretarial auditor

- The Secretarial Auditor would be required to be appointed in the board meeting of the Company and the remuneration of the Auditor will also be determined in the aforementioned board meeting [*Section 179(3)*].
- Company is required to file the certified true copy of the resolution passed in the aforementioned board meeting with the Registrar of Companies as an attachment in e-form MGT – 14.
- However, prior to the appointment, the Company would be required to obtain the consent of the Secretarial Auditor.

REMOVAL AND RESIGNATION OF SECRETARIAL AUDITOR

- ◉ Removal of Secretarial Auditor - No Provisions in the Act.
- ◉ Resignation of Secretarial Auditor - Board to take note and file form with RoC. This is not mandatory.
- ◉ Secretarial Auditor also to file form with RoC (not Obligatory)

REPORTING OF FRAUD - SEC 143(12) AND RULE 13 OF THE COMPANIES (AUDIT AND AUDITORS) RULES 2014

- ◉ If the Secretarial Auditor has a reason to believe that a fraud has been committed which involves Rs. 1 Crore or above then the auditor shall report the fraud to the Central Government.
- ◉ In case of a fraud involving an amount of lesser than 1 Crore the auditor shall report the fraud to the Audit Committee.

APPLICABILITY OF CORE LAWS, REGULATIONS AND PROCEDURES

COMPANIES ACT
SCRA
FEMA
DEPOSITORIES
ACT

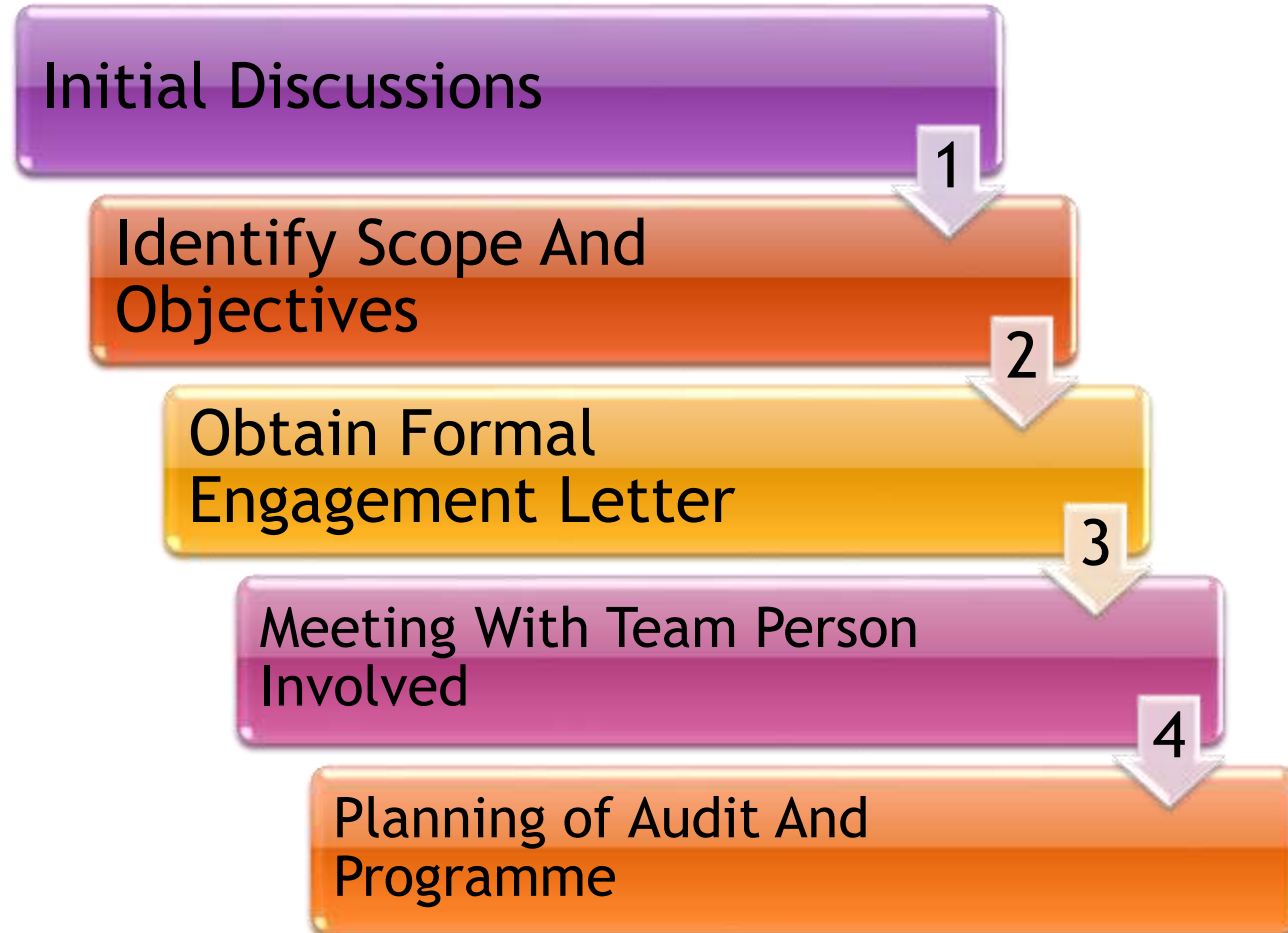
SEBI REGULATION
TAKEOVER CODE
LODR
BUYBACK
DELISTING
ICDR

ESOP 2016
ISSUED DEBT
FUND
SECRETARIAL
STANDARD
OTHER LAWS

PROCESS OF SECRETARIAL AUDIT



MAJOR PROCESS OF AN AUDIT



Informal Discussion And
Understanding Processes

5

Preparation of Working
Paper

6

Observation And Summary
Of Finding

7

Audit Report

8

Follow Up

DOCUMENTS REQUIRED FOR SECRETARIAL AUDIT



INITIAL DOCUMENTS REQUIRED

MOA & AOA

Filings with ROC/
Regulatory
Authorities

Disclosures/
Declarations from
Directors

Statutory Registers

Minutes of the
Meetings and
Attendance
Registers

Financial
Statements along
with Notice of AGM

Copies of Contracts
made between
Company and
Related Parties

Shareholders' List

Certificate from RTA
stating the number
of shareholders as
on the close of the
FY.

INITIAL DOCUMENTS REQUIRED

Indebtedness
Certificate

Listing and
Trading
Approvals

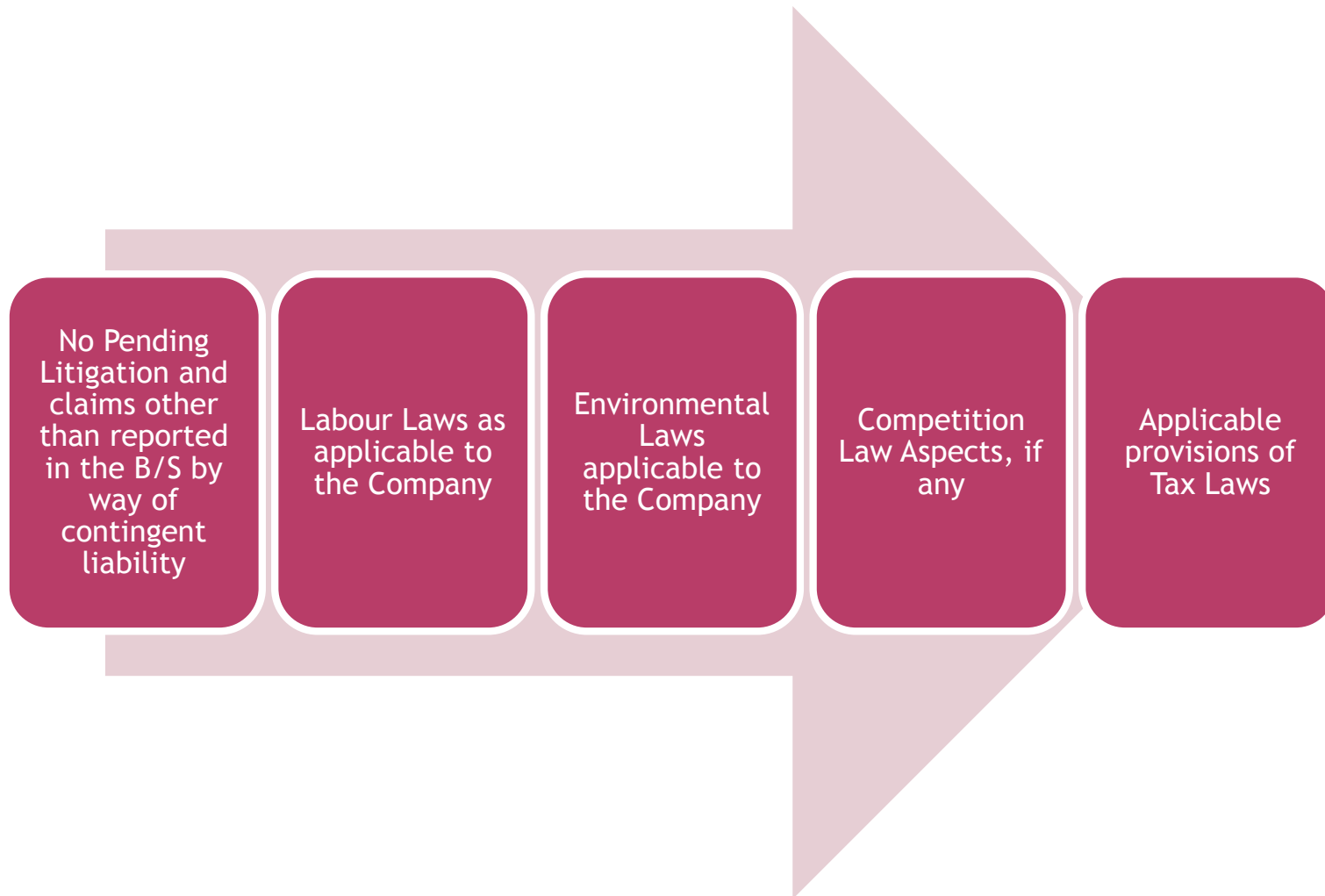
Intimation to
Stock Exchanges

Corporation
Action Forms
filed with the
Depositories

Shareholding
Pattern

Relevant
approvals/
correspondence

MANAGEMENT REPRESENTATION LETTER



MANAGEMENT REPRESENTATION LETTER

Statutory Registers were kept open for public inspection during working hours on all working days

There is no pending litigation and claims other than reported in the balance sheet by way of contingent liability

The venue and time of Board meeting was finalized with the consultation of all board members

The share certificates were properly stamped

Notice of annual general meeting has been duly sent to all the members

MANAGEMENT REPRESENTATION LETTER

All the premises and establishments have been registered with the appropriate authorities

The Company has not employed any child labour/bonded labour in any of its establishments

The Company is ensuring the compliance of PF/ESI and other social security measures to the contract employees. One of the responsible officers of the company carry out the survey regarding the compliance of this.

The share certificates were properly stamped

Notice of annual general meeting has been duly sent to all the members

SOURCE OF INFORMATION FOR AUDIT



MINISTRY OF
CORPORATE AFFAIRS



BOMBAY STOCK
EXCHANGE



NATIONAL STOCK
EXCHANGE



WEBSITE OF THE
COMPANY



BRANCHES,
FRANCHISE, VARIOUS
DEPARTMENTS



RESERVE BANK OF INDIA



PHYSICAL VERIFICATION



DOCUMENT
VERIFICATION

AREAS TO BE VERIFIED IN SECRETARIAL AUDIT

CONTENTS

Company Profile

Secretarial Audit Master (SAM)

- Objective & Scope
- Limitations of Exercise

Board composition, Directors Membership in Board and Committees and Corresponding Changes

Composition of Independent & Women Director

Disclosures & Declarations

Compliance pertaining to KMP's

Compliances pertaining to Auditors

Board Meetings

- Check Minutes, Attendance register, Agenda to check for compliance

Audit Committee Meetings

Stakeholder Relationship Committee Meetings

Nomination and Remuneration Committee Meetings

Risk Management Committee Meetings

Corporate Social Responsibility Committee Meetings

- CSR Projects to be as per Schedule VII, Calculation of N.P U/s. 198 of C.A.

Business Committee Meetings

Annual General Meeting/ Extraordinary General Meeting/ Voting via Postal Ballot & Explanatory Statement &

Schedule- III – Financial Statements

Books & Registers Under Companies Act, 2013

- Register of Members and their Shareholdings, Register of Charges

Board's Report and Annual Report

ROC Filings

- Filing of MGT-14 for Political Contribution.

Dividend

Capital Structure & ESOP

Compliance Under SEBI (LODR) Regulations, 2015

Other Compliances under SEBI (LODR) Regulations, 2015

Stock Market Price Data

SEBI (SAST) Regulations, 2011

SEBI (ICDR) Regulation, 2018

Insider Trading

Website Disclosures

- Various Policies to be placed in website, Financials of subsidiaries etc

Advertisement

Adv. Regarding transfer of shares to IEPF, Adv. Of AGM

RBI Compliance

Debentures & Debt Listing

Annexure- I – List of Documents available at MCA Portal

Annexure – II – Index of Charges Available in MCA 21 Portal

Annexure –III- Company’s Announcements filed with BSE Limited

Annexure-IV-Company’s Announcements with NSE Limited

Audit Observations

AREAS TO FOCUS ON SA

- An Insight into other laws applicable to the Organizations
- Fiscal Laws
- Secretarial Standards
- Factory visits



SECRETARIAL AUDIT (SA) - COVERAGE

- ◉ Covers non-financial aspects .
- ◉ Verifies compliances of applicable laws, regulations, guidelines.
- ◉ Evaluates generally the manner in which the affairs of a company are conducted.
- ◉ Postulates verification on a test basis based on records, books, papers and documents.
- ◉ Scope Varies from Company to Company; Industry to Industry; and depends upon types of Company and relevant laws.
- ◉ It is a process towards Corporate Governance.

KEY CONTENTS OF SECRETARIAL AUDIT REPORT -MR-3

⊙ **Factual information**

✓ Compliance specified in MR-3 and deviations if any.

⊙ **Qualitative comments about composition of board of directors**

✓ Balance of composition

✓ Changes in board position- compliance of laws.

✓ **Quality of information flow for board meetings**

✓ **Quality of minutes**

KEY CONTENTS OF SECRETARIAL AUDIT REPORT -MR-3

- ◉ **Qualitative opinion on Adequacy of compliance systems**
 - ✓ This pertains to all applicable laws
- ◉ **Factual information about major corporate events, and compliances in respect thereof**
- ◉ **Companies Act 2013**
- ◉ **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015**
- ◉ **SEBI (Depositories and Participants) Regulations, 2018**

KEY CONTENTS OF SECRETARIAL AUDIT REPORT -MR-3

- ◉ Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
- ◉ Securities Contracts (Regulation) Act, 1956 (SCRA) and the Rules made under that Act.
- ◉ The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999
- ◉ The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

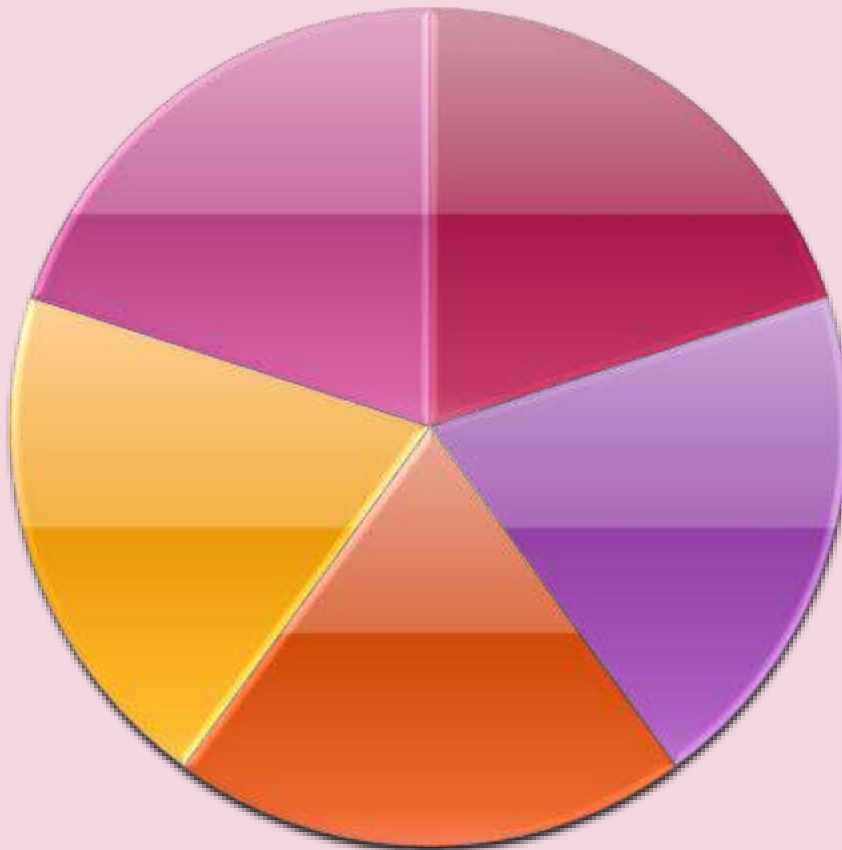
KEY CONTENTS OF SECRETARIAL AUDIT REPORT - MR-3

- ✓ FEMA and Regulations there under
 - ⊙ □ FDI
 - ⊙ □ ODI
 - ⊙ □ ECB
- ✓ Industry Specific laws
- ✓ SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- ✓ Secretarial Standards

GENERAL DIFFICULTIES IN AUDIT

- ✓ *Lack of Free flow of information*
- ✓ *Lack of Man power to produce documents*
- ✓ *Non-availability of information*
- ✓ *Disguising Secretarial Auditor*

BENEFICIARIES of SA



- Promoters/ Owners
- Non-executive/ Independent Directors
- Regulators
- Prospective Investors
- Others Stakeholders

EXPECTATIONS OF PROMOTERS/OWNERS

- ✓ To avoid unintended Risk
- ✓ As a surety to Owners stake



EXPECTATIONS OF BOD'S



- To reduce cost of non compliance
- To receive an Un-qualified report
- To be an effective compliance risk management tool
- To ensure efficient discharge of duty
- To confidently affirm Directors' Responsibility Statement

EXPECTATIONS OF REGULATORS

- ◉ To ensure transparency
- ◉ To lead to better governance
- ◉ To establish stringent disclosures
- ◉ To Increase accountability



EXPECTATIONS OF PROSPECTIVE INVESTORS



- ◉ To help to take informed decision
- ◉ To understand compliance status of the company
- ◉ To reduce ambiguity in decision making
- ◉ To get insight to forecast growth of the company

EXPECTATIONS OF OTHER STAKEHOLDERS



- ◉ Due diligence exercise
- ◉ Nature of Law abided by the company
- ◉ Credit worthiness

PENALTY U/S 204 OF CA 2013

Company

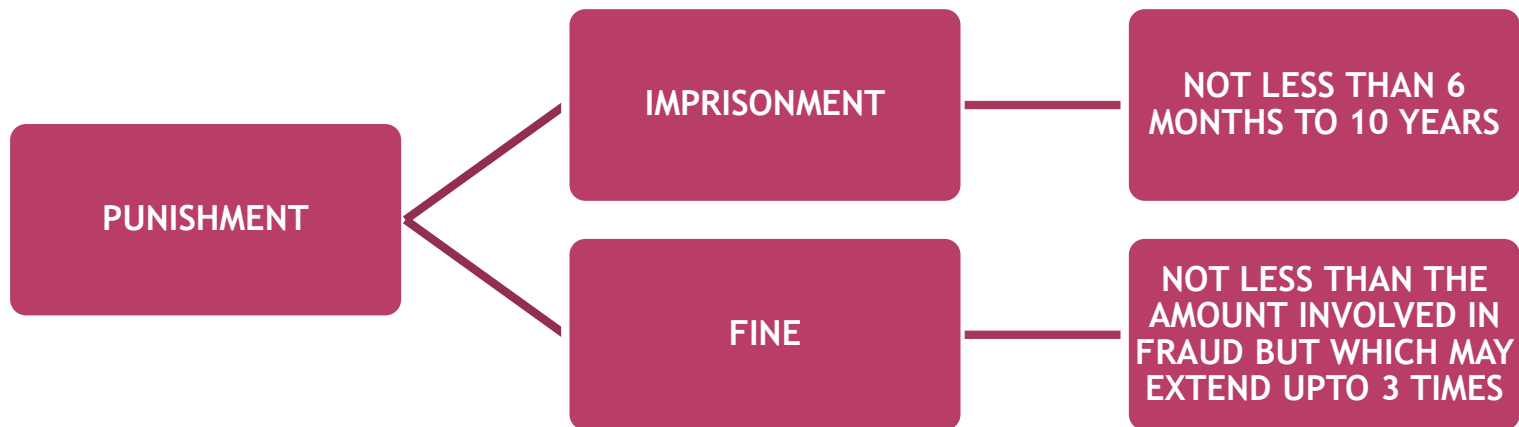
Any Officer
Of the
company

Company
Secretary in
Practice



SHALL BE PUNISHABLE WITH FINE NOT LESS THAN
1 LAKH BUT WHICH MAY EXCEED TO **5 LAKHS**

PUNISHMENT FOR FRAUD – SEC 447



PROFESSIONAL PENALTY FOR INCORRECT AUDIT REPORT

- ◉ Sec 448: If in any return, report, certificate, financial statement, prospectus, statement or other document or other document required by or for the purposes of any provision of this Act or rules made there under, 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 **Sec 447**

DO'S AND DON'TS



◎ Do's

- ✓ to evolve audit schedule with specific coverage for each day of activity .
- ✓ to discuss with the personnel/trainees/auditors who are associated with the audit the scope and coverage of the audit before commencing the audit.
- ✓ to ensure that the trainee[s] or personnel or auditor associated with the audit .
- ✓ to maintain a audit dairy to record the observations or points.
- ✓ to review/discuss the audit process/observations with the trainees/persons involved in the audit on weekly basis
- ✓ to ensure that the trainees/persons/auditor are aware of the latest developments/changes in the laws/regulations which have bearing on the Audit.

CONT....

- ✓ to ensure privacy of the client.
- ✓ to handle the documents received from the clients with utmost care and confidentiality.
- ✓ to be in good attire .
- ✓ to obtain adequate time frame for completing the audit from the client to cover spectrum of activities and process as prescribed by law and regulations.
- ✓ to be battle ready to begin the audit well in advance .
- ✓ to be always pro-active to begin the audit process.
- ✓ to exhibit always professional ethos and etiquette .
- ✓ to acquire first hand knowledge of the entire audit process and its status and also to have adequate preparation when presenting the observations to the board or appropriate committee/authority.
- ✓ to ensure that the fee charged for the services to be in commensurate with the size, business, capital deployed and the time.

DON'TS



- Avoid sharing the observations with anyone other than principal [auditor].
- Avoid loose talks or interpretations .
- Avoid making unnecessary comments or observations about the audit points.
- Avoid copying of documents, unless it is warranted under the Act or regulations, if so, only with the permission of appropriate authority of the company.
- Avoid verbal argument or exhibiting your knowledge with the client.
- Avoid drawing the conclusions/opinions before completion of audit process.

COMMON OBSERVATIONS IN SECRETARIAL AUDIT



COMPANIES ACT, 2013

1.

- Woman Director not appointed- 149(1)

2.

- Independent Director not appointed -149(4)

3.

- Internal Auditor not appointed -138.

4.

- Statutory Auditors rendering consultancy services- 144

5.

- KMP not appointed - 203.

6.

- Amount spent towards CSR is lesser than the amount prescribed for a Financial Year .

7.

- Related Party Transactions - Approval of the shareholders sought after entering into the agreement.

8.

- Delay in filing of Form IEPF-4.

9.

- Suspension in trading of Equity Shares of the Company

10.

- Submission of financial results beyond the due date to the Stock Exchanges

11.

- Approving the Audited Financial Statements through Video Conferencing without quorum by physical presence.

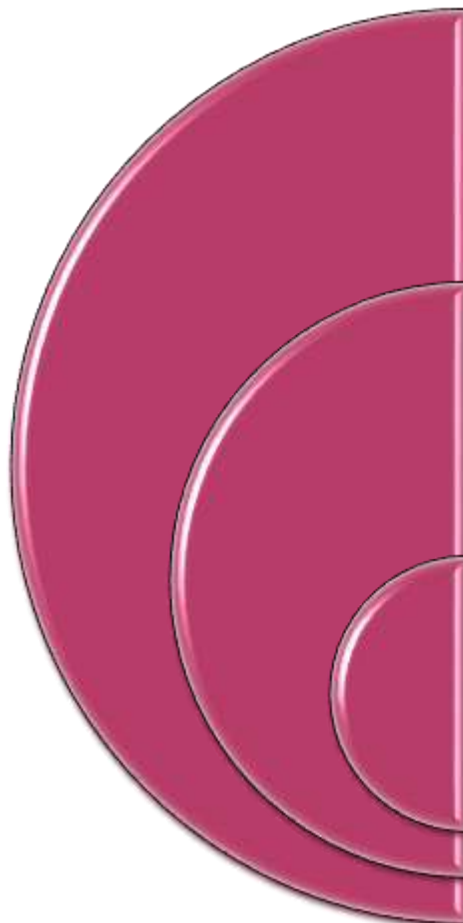
12.

- Submission of SHP beyond time limit to Stock Exchanges

13.

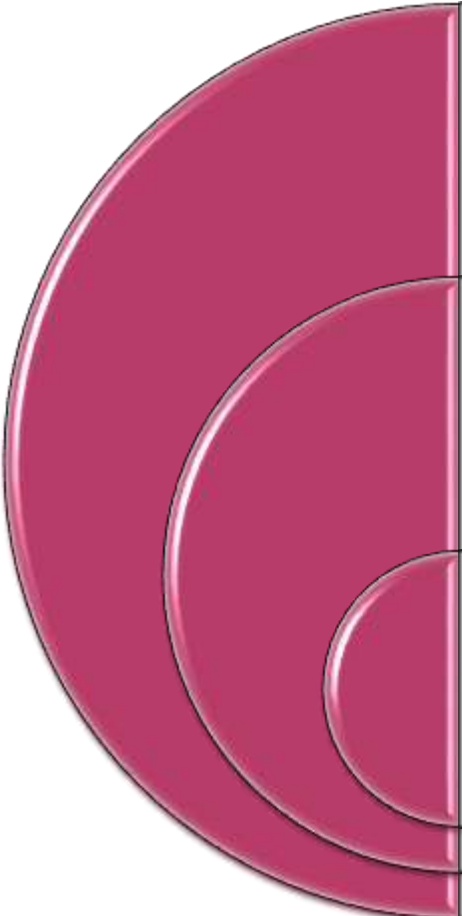
- The Company has not constituted CSR Committee and CSR Policy.

SEBI (LODR)



Non Executive Director	<ul style="list-style-type: none">• Regulation 17(1)• Requisite number Not Appointed
Annual Audited Financial Results	<ul style="list-style-type: none">• Regulation 33• Not Submitted to the Stock Exchange• Within 60 days
Un-audited Financial Results	<ul style="list-style-type: none">• Not Submitted to the Stock Exchange• Within 45 days

SEBI (LODR)



Outcome of the Board Meeting	<ul style="list-style-type: none">• Regulation 30• Not intimated to the Stock Exchange
Shareholding Pattern	<ul style="list-style-type: none">• Regulation 31• Not Submitted to the Stock Exchange• Within 21 days
Statement of Investor Complaints	<ul style="list-style-type: none">• Regulation 13• Not Submitted to the Stock Exchange• Within 21 days

SECRETARIAL STANDARDS

Signed Board Minutes

- not circulated to all directors
- within 15 days

Blank space of the minutes

- not scrolled out
- not initialled by the Chairman

AGM Minutes

- The Date of Signing
- beyond 30 days.

SECRETARIAL STANDARDS

Pages of the minutes

- Not Numbered

Attendance Register

- Not Mentioned the Designation of the invitees

Time of Start of the meeting

- Not Same In Attendance Register and Minutes

OTHERS

1.

- “Code of Conduct and Fair Disclosure of UPSI” has not been framed within time limit.

2.

- The Forms filed with ROC were not approved in the status of “Invalid and Not been taken on record”

OTHERS

3.

- Form **MGT 14** has not been filed by the company for the **Appointment of Secretarial Auditor**

4.

- The Appointment as Director in the AGM was not recommended by the NRC.

5.

- The Company has not filed charge created on its property.

SIGNIFICANT EVENTS

Issue and Redemption of Secured Redeemable Non-Convertible Debentures

Obtaining order from the NCLT sanctioning a Scheme of Arrangement

Amending the Capital Clause of MOA for increasing the Authorised capital.



SIGNIFICANT ITEMS

Adoption of New set of Articles of Association

Setting up of a Wholly owned Subsidiary.

For investment and issue of Corporate Guarantee



SIGNIFICANT ITEMS

Transfer of business by way of Slump Sale and Divestment of Entire Shareholding

Availing enhanced working capital facilities

Issue of Counter Guarantee in connection with availment of Bank Guarantee.



If you Feel Compliance is Costly,
Try Non Compliance!!

THANK YOU