

# Secretarial Audit Practical Aspect

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**Practicing Company Secretary**

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# Requirement of Secretarial Audit

- To express an opinion, based on the inspection of a company's record and other documents and information.
- To report to the Members of the Company as to whether, and to what extent, the company has complied with the laws comprising various statutes, rules, regulations, Listing Regulations, Secretarial Standard etc.2

**Audit**

**Due diligence**

**Investigation**

## **Audit**

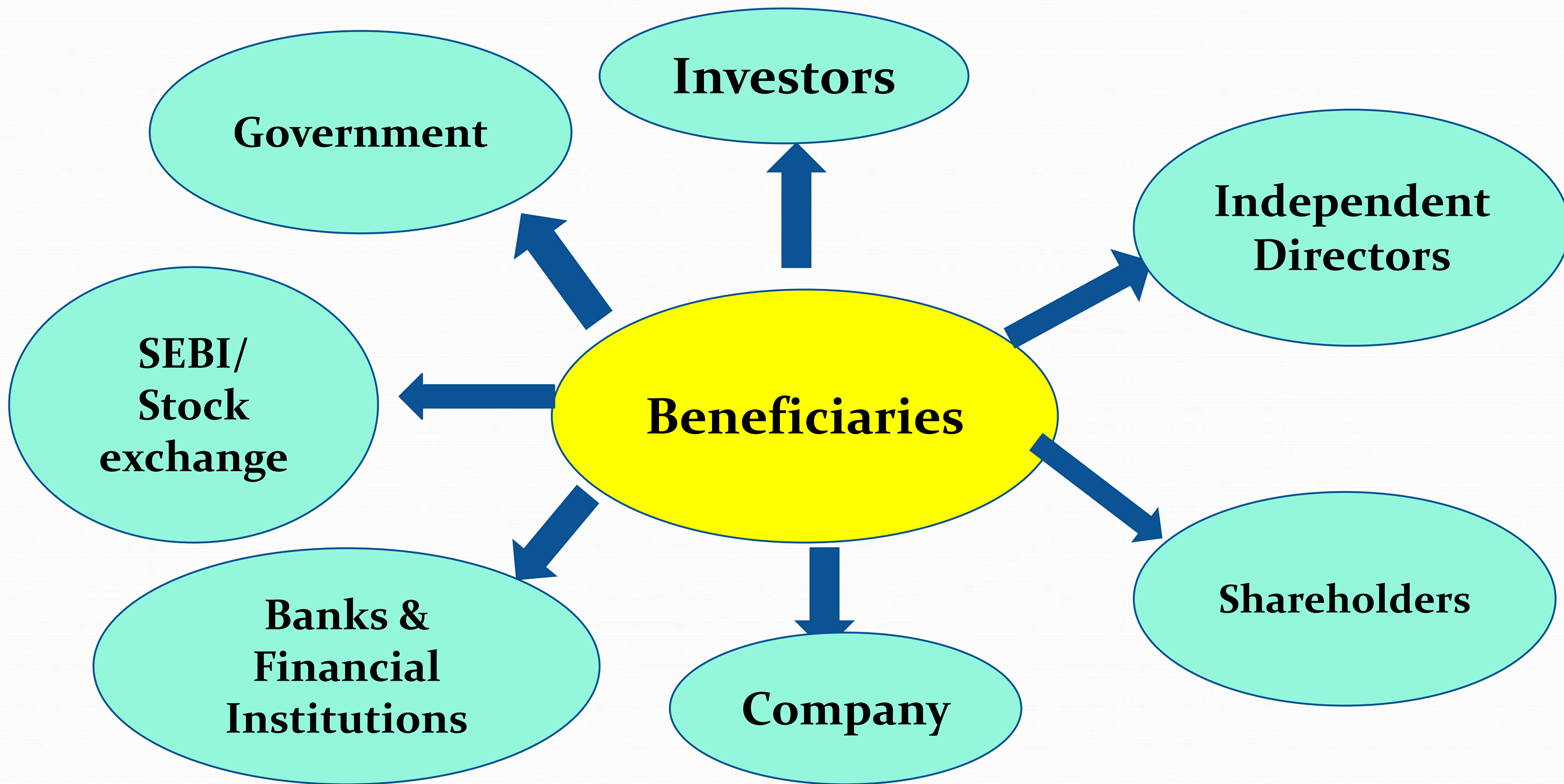
- **Historical data**
- **Mandatory**
- **Uniform reporting**
- **Recurring event**
- **By third party**

## **Due diligence**

- **Cover future Plan**
- **Identification of risk, if any**
- **Required for future decision**
- **Reporting differs**
- **Depends on event/occasion**

## **Investigation**

- **To prove certain fact**
- **To know modus operandi**
- **To find out involved person/beneficiary**
- **Owner may do**





# Applicability

- **Sec. 204 of the Companies Act, 2013**
- **Rule 9 of the Companies (Appt. & Remun.) Rules, 2014**
- **Regu. 24A of LODR**
- **Every Listed entity and its Indian material unlisted subsidiaries (whose income or net worth exceeds 10% of the consolidated income or net worth respectively, in the immediately preceding accounting year.)**
- **Public Co. if paid up cap. Rs. 50 Cr. or more**
- **Public Co. if turnover of Rs. 250 Cr. or more**
- **Every Co. if outstanding loans from banks/ public FI is Rs. 100 Cr. or more**

# Applicability – Practical Aspect

- **Employee CS has to monitor figures of Turnover, outstanding loans of banks/ public FI, net worth, materiality aspect**
- **Penalty for contravention as per Sec. 204(4) is Rs. 2 Lakh to Company, officer in default and PCS.**
- **Penalty is levied from all Directors (if no KMP) or KMP and Company**

# Appointment

- **Appointment to be made in the Board Meeting for one year. (No circular resolution) Sec. 179(3) read with Rule 8 of Co. (Meetings of Board and its powers) Rules, 2014. Board will fix remuneration.**
- **Prior to appointment as per Secretarial Standard Secretarial Auditor has to give consent in the specified format.**
- **Company has to issue Appt. letter in the specified format.**
- **Certified copy of Board Resolution required to be filed as an attachment to Form MGT-14.**
- **Delayed filing of MGT-14 attract petition for condonation of delay**
- **Listed company to intimate to the Stock Exchange Appt. of Sec. Auditor within 24 hours [Regu. 30 read with Schedule III Part A(7)]**



# Resignation/ removal

- **There is no provision for filing of Form MGT-14 in case of resignation or removal of Secretarial Auditor. However, it is advisable to file MGT-14.**
- **No provision or procedure prescribed in the Act - for removal of Secretarial Auditor. However, removal should also be by the same authority of making appointment i.e. Board Meeting**
- **As per Sec. 143 Duty imposed on Secretarial Auditor is the same as that of Statutory Auditor.**

# Basic Understanding

- **Company's history and background (listed, public, private)**
- **Website of the Company**
- **Stock Exchange where shares are listed**
- **Name of Registrar & Transfer Agent**
- **Names of Promoters & their total shareholding (if pledged % of total)**
- **Name of Product, nature of Industry**
- **Address of factory, branches, divisions, units.**
- **Names of holding, subsidiary & Associate Company, if any.**
- **Ranking as per Market Capitalization – Top 500/1000/2000**

# Management Structure

- **Composition of Board of Directors [Regu. 17]**
- **Composition of different committees**
- **Audit Committee**
- **Nomination & Remuneration committee**
- **Stake holder Relationship committee**
- **Risk Management committee [for Top 1000]**
- **Find out reappointment date of MD/ WTD/ ID**
- **Expiry of tenure of Auditor**

# Capital Structure Loans/ investment

- **Paid up equity capital**
- **Convertible instruments**
- **Debt/ bond**
- **Audit comm. to scrutinize loans and investments**
- **Register of Loans and Investments**
- **Register of charge**



# Audit Methodology

- **Meeting with KMP/ Management**
- **Ascertain specifically applicable laws to the Company**
- **Develop the audit framework, audit plan**
- **Request for details of various corporate actions/ events subject to audit**
- **Prepare check-lists and time schedule**
- **Call for documents/ information**
- **Obtain Management Representation Letter**
- **Discuss and seek clarification**
- **Discuss draft report with the Management**
- **Finalize and submit draft Report**
- **Secretarial Audit Report is addressed to shareholders**



# Practical hint to avoid non compliance

- **Verify thoroughly non routine compliance**
- **Check every compliance of any Corporate action**
- **First time new compliance based on amendments, notification, SEBI circular etc.**
- **In the event of change of CS prior period compliance and compliance after his/ her exit.**
- **Compliance based on borrowings, turnover, net worth**

# Scope of MR-3

- Companies Act
- SCRA
- Depositories Act
- FEMA

- SEBI Regulations
- SAST Take over code
- PIT
- ICDR
- Stock options
- Debt securities
- R&T
- Delisting
- Buyback

- Sec. Standard
- LODR

- Board Structure
- Notice
- Agenda
- Minutes
- System for applicable laws

- Industry/ product/process/ location specific Laws
- Major events reporting

# Documents Required

**Notice, Agenda, Attendance Register, Minutes including Ack.**

**Disclosures and declarations**

**MCA filings**

**Filings, submission with Stock Exchanges, Qtr, half Yr, Annual**

**Auditors Report, Boards' Report**

# Documents Required ...

**Statutory Registers - Contract, Charges, Loans & Investments**

**Statement of Borrowings and Investments**

**Relevant approvals/ permissions/ Correspondence**

**Shareholding pattern / Shareholders grievance**

**Order of Judicial/ Quasi Judicial authorities**

**Website disclosures made by Company**

# Website disclosure Reg. 46

**Change to be updated in two working days**

- **Basic information about the Company**
- **Details of its business;**
- **Email address for grievance redressal**
- **Contact of the designated officials responsible for handling investor grievances;**
- **Notice of BM for financial results consideration**
- **Financial results**
- **Annual Report**



# Website disclosure ...

- **shareholding pattern;**
- **Notices given to shareholders**
- **Policy for determination of materiality of events Reg. 30(4)(ii)**
- **Name of KMP authorized to disclose material event to stock Exchange Reg. 30(5)**
- **Material events/ information disclosed to stock exchange to remain for 5 years Reg. 30(8)**
- **Archival Policy Reg. 30(8)**

# Scope of secretarial audit

- **Secretarial auditor has to examine and report compliances under the following laws and rules made there under during the period under review**
- **The Companies Act, 2013 and the rules made there under**
- **The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made there-under**
- **The Depositories Act, 1996 and the Regulations and Bye-laws framed there-under**
- **FEMA, 1999 and the rules and regulations made there-under to the extent of Foreign Direct Investment (FDI), Overseas Direct Investment (ODI) and External Commercial Borrowings (ECB)**

- **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**
- **SEBI (Prohibition of Insider Trading) Regulations, 2015**
- **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009**
- **SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999**
- **SEBI (Issue and Listing of Debt Securities) Regulations, 2008**
- **SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;**
- **SEBI (Delisting of Equity Shares) Regulations, 2009**
- **SEBI (Buyback of Securities) Regulations, 1998**

- **Secretarial Standards issued by The Institute of Company Secretaries of India.**
- **The Listing Regulations of LODR, if applicable;**
- **Other laws as may be applicable specifically to the company**



## Applicable Laws

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graph TD; A[Applicable Laws] --> B[General Laws not to consider]; A --> C[Industry specific Laws]
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**General Laws not to consider**

**Industry specific Laws**

**Industry Specific Laws differ from Industry to Industry depending upon the place of work, type of product, process into which an Industry is operating.**



# Policies

- **Policy of Preservation of documents - Reg. 9**
- **Policy for determining Material Subsidiary - Reg. 16(1)(c)**
- **Code of Conduct for Directors and senior management, including duties of ID (Reg. 17(5))**
- **Policy for determination of materiality of events Reg. 30(4)(ii)**
- **Name of KMP authorized to disclose material event to SE Reg. 30(5)**
- **Risk Management Plan (framing, implementing and monitoring) (Reg. 17(9))**
- **Risk Management committee applicable to top 1000 listed Co.**
- **Performance Evaluation of ID (Reg. 17(10))**

# Secretarial Audit Report

- Auditor has to keep observations and findings in his Audit working papers/ checklist
- Auditor to discuss findings & observations with the KMP/ Mgt.
- Auditor to submit draft of Secretarial Audit Report to the Mgt.
- Board of Directors, in its Board's report, shall explain in full any qualification or observation or other remarks made by the PCS in the Secretarial Audit Report [sec. 134(3)(f)]

## Secretarial Audit Report ...

- **If the Secretarial Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and their reasons.**
- **If the scope of work is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books/ papers in the custody of another person who is not available or a Govt. Authority), the Report should indicate such limitations.**
- **If such limitations are so material that Secretarial Auditor is unable to express any opinion, he should state that in absence of necessary information and records, he is unable to report on compliance relating to such areas.**

# Secretarial Audit Report & Sec. Compliance Report

- **Secretarial Audit Report is wider in scope, coverage in respect of laws included in MR-3 and in reporting of events affecting the Company. It covers specific other laws applicable to the Company.**
- **The Secretarial Compliance Report as per Regu. 24 A of the LODR is narrow in its scope and limit its reporting based on SEBI Guidelines and LODR Regulations in tabular form.**



# Duty of Secretarial Auditor

- **Section 143(12) cast duty on Auditor to report in form ADT-4 fraud to the Secretary MCA by speed post followed by email - if fraud is committed or being committed by the Company, its officers or employees and the amount involved is Rs. 1 Cr. or more**
- **If the amount involved is less than Rs. 1 Cr. auditor has to report to the Audit committee or to the Board within 2 days of his coming to know of fraud.**
- **If fail to report penalty of Rs. 5 lakh for listed Co. and Rs. 1 lakh for unlisted Co.**



# Questions



# Welcome