



MCA: 2013

October 28, 2013

Shri Naved Masood, IAS  
Secretary to Government of India  
Ministry of Corporate Affairs  
Shastri Bhawan  
New Delhi

Dear Sir,

**Sub: Draft rule 13.7(1) under section 204(1) of Companies Act, 2013 regarding secretarial audit**

Section 204 (1) of the Companies Act, 2013 provides that every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. In pursuance to this, Government have proposed in draft rules that a public company having a paid-up share capital of one hundred crore rupees or more will annex such an audit report.

2. You would appreciate that:

- a. The secretarial audit report is an important tool in the hands of Government for monitoring and ensuring the legal compliances and good corporate governance practices in India.
- b. If the secretarial audit requirement is applicable in respect of companies with a paid up capital of Rs.100 crore or more, as proposed in the draft rules, hardly 2,000 companies of the 13 lakh companies would submit such a secretarial report. This would leave out substantial portion of the corporate sector which is probably not the intention of Parliament.
- c. Paid-up capital is not the only parameter which reflects the size of public interest involved. The size of net worth, the size of turnover, the size of borrowing, the number of stakeholders, etc. reflect the extent of public interest. A company with a paid-up capital of Rs.10 crore may have a borrowing of Rs.200 crore. Such a company can't be overlooked.
- d. The Companies Act, 2013 has cast a duty on a practicing company secretary, who is conducting secretarial audit, to report fraud to the Central Government. By exempting 99+% companies from the purview of secretarial audit, we are closing the window of knowing fraud in such companies.
- e. One needs to balance the cost of such secretarial audit to a company vis-a-vis the benefits that would accrue to the economy, the society and the country from improved compliance and governance. While the cost is marginal and nominal, the benefits are huge. The country should not forego the benefits just because a nominal amount is to be paid for secretarial audit.

In view of the above we submit that the secretarial audit may be made applicable to all companies which are not small companies. At the least, it may be applicable to a company having (a) a paid-up share capital of Rs.10 crore or more, or (b) an annual turnover of Rs.25 crore or more as per its last audited financial statement or (c) an outstanding loan or borrowing from Bank or Financial Institution or public deposits exceeding Rs.25 crore or more at any point of time in last financial year.

3. We request you to consider the above submission keeping in view the need for compliance and governance vis-à-vis the associated costs. We would be pleased to provide any further information or clarification in the matter, you may so desire.

Thanking You,

Yours faithfully,

*M. S. Sahoo*

(CS M. S. Sahoo)  
Secretary

✓ Copy to: Ms. Renuka Kumar, Joint Secretary, MCA

Headquarters ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003  
tel 011 - 4150 4444, 4534 1000 fax +91-11 2462 6727 email info@icsi.edu website www.icsi.edu

**Submitted to MCA on October 28, 2013**