



**CS R. Sridharan**  
PRESIDENT

MCA:2014

April 11, 2014

Dear *Mr. M. J. Joseph,*

**Sub.: Secretarial Audit**

This is further to our letter of even number dated April 02, 2014 and April 7, 2014 and the discussion I had with you on April 3, 2014, April 7, 2014 and April 9, 2014 regarding applicability of secretarial audit to companies.

2. I am writing this to assuage the two apprehensions you have regarding secretarial audit. One relates to possible overlap in the scopes of secretarial audit and financial audit. The format of secretarial audit report which is prescribed vide Form No. MR3 and defines scope of secretarial audit is attached. A referencer on secretarial audit published by the Institute, which also indicates scope of secretarial audit, is also attached. As is evident from these, **secretarial audit is an audit of compliances of applicable laws and no way audit of financial transactions which is the scope of financial audit. There is absolutely no overlap.**

3. The second relates to availability of Guidance Note on secretarial audit. As of now, we have a detailed referencer which is being revised to incorporate the rules now notified. After revision, the same would serve as Guidance Note for use by members conducting secretarial audit. We should be ready with Guidance Note in about a month.

4. Let me give a brief genesis of the secretarial audit. **The High Level Committee (under Chairmanship of Naresh Chandra) on Corporate Audit and Governance (2002)** had recommended introduction in the Companies Act a provision to empower Government to order a compliance audit much in the same manner as the special audit under section 233A of the Companies Act, 1956. Accordingly **the Companies (Amendment) Bill, 2003** sought to add a new section 383B to empower Government to direct secretarial compliance audit of a company for specified periods by a company secretary. In the meantime, Government came out with the **Concept Paper for revamping of Company Law on August 8, 2004** containing a model codified company law which incorporated the provisions of section 383B of the 2003 Bill. Since then the Institute has been popularising the secretarial audit, building capacity of its members and bringing out publications. **The Corporate Governance Voluntary Guidelines, 2009 observed that** the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company and therefore the Board processes and compliance mechanisms of the company must be robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional.

**5. The Parliamentary Standing Committee on Finance in its 21st Report on Companies Bill, 2009** (August, 2010) recommended the Ministry to suitably incorporate the new sub-clause 178A in the Companies Bill relating to Secretarial Audit. The draft clause reads as under:

“Secretarial audit for bigger companies

New Clause 178A- (1) Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a **Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed.**



(2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and other records of the company.

(3) The Board of Directors, in their Report made in terms of sub-section (3) of section 120 of the Act, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report under sub-section(1).

(4) Where any default is made in complying with the provisions of this section,—

(a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;

(b) The company secretary in practice who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.”

**6. The extracts of the debates/ discussions on secretarial audit at the standing committee are as under:**

**“Secretarial Audit**

10.51 Suggestions have been received regarding inclusion of secretarial audit as below:

Every company having paid-up share capital exceeding ten lakh rupees or having loan outstanding exceeding twenty five lakh rupees from any bank or financial institution or having turnover as per its last financial statement exceeding one crore rupees, or such higher amounts in any of the aforesaid criteria as may prescribed, shall attach with its each financial statement a report called Secretarial Auditor’s Report addressed to the members of the company.

**10.52 The comments of the Ministry of Corporate Affairs on this issue are as follows:-**

**Secretarial Audit gives a necessary comfort to the investors that the affairs of the company are being conducted in accordance with the legal requirements and also protects the companies from the consequences of non-compliance of the provisions of the Companies Act and other important corporate laws.**

It is, accordingly, felt and suggested that the Bill may provide for requirement of conduct of secretarial audit by at least bigger companies by a company secretary in practice.

10.53 Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid-up share capital.”

7. In view of the above, we once again submit that the secretarial audit must be made applicable to those companies which are at least subject to internal audit under the Rules.

Yours sincerely,

(CS R. Sridharan)

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