Secretarial Audit

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Need for Secretarial Audit (SA)

Multiplicity and complexity of laws- SA facilitates to ensure compliance and avoid risk associated with non-compliance. It has two-fold objective:
Firstly, to protect the interests of the customers, employees, revenue, environment, and directors and officers of the company.

Secondly, to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well.
Clause 49 of Listing Agreement (LA) requires Board to periodically review compliance reports concerning all laws applicable to the company and steps taken to rectify non-compliances.
MCA’s Corporate Governance Voluntary Guidelines 2009, recommend all companies to introduce Secretarial Audit (SA) to be done by ‘a competent professional’ and the Board to give its comments on the SA report in the directors’ report to the shareholders.
Provisions of New Law

- Legislature adopted Section 204 for bigger companies w.e.f April 01, 2014.
MCA notified the relevant rules for certain class of Companies which includes:

a) Listed Companies
b) Public Companies with paid up capital of Rs. 50 cr or Turnover of Rs. 250 cr.
c) Report in Form MR-3
SA – An Effective Tool for Efficient Corporate Compliance Management

The SA is an effective tool for corporate law compliance management relating to corporate laws. It helps ensure flawless compliance and timely corrective action when non-compliance is discovered.
The benefits of SA are manifold, and its beneficiaries are many, including promoters, directors, investors, lenders, employees, Government and government agencies, and the last but not the least, the public at large.
Purpose of SA

To form an opinion, based on the inspection of an company’s record by an independent PCS, and to report to the Board as to whether, and if so, to what extent, the company has complied with the laws and also to help the company to comply better.
The SA Report aims at confirming compliance by the company with all the applicable provisions of the applicable laws and pointing out non-compliances and recommendations for better compliance.
Thus, SA helps—

- to ensure effective compliance
- to improve quality and speed of compliance.
- to reduce the risk of consequences of non-compliance
Scope of SA

- Form MR-3.

- It is wider in scope than Compliance Certificate u/s 383A and covers all corporate laws including FEMA, Securities laws, Secretarial Standards, Listing Agreement and other laws applicable to a Company which is subjected to SA.
Advise on non-compliances or inadequate compliances for corrective action, eg non-filing and late filing of forms.

Discuss substantive issues, eg whether Board composition was as per cl 49 of LA/CA; whether Takeover Code applied to the particular acquisition of shares, etc.
Board Processes and Compliance Mechanism:

- CA 2013 promises to raise the bar on governance substantially.
- Board to operate within a framework of prudent and effective control.
- Risk identification and management (ERM).

Contd.....
Board to develop and promote collective vision, culture, values, behaviors etc. in conducting its business (collectively referred to as Board Processes).

- Board Structure, management, disclosure, etc.

- Loan and Guarantee

- Particulars of contract and arrangement

Contd....
● Formal annual evaluation

● Constitution of various statutory committees viz nomination/remuneration, Stakeholder Relationship Committee, CSR Committee, etc.

● Appointment of independent directors

● Roles of Chairman and CEO

Contd....
- Succession planning
- Lead independent director
- Board Charter
- Board training and development programs
Final SA Report

- Usually SA Report is placed before Audit Committee and then before the Board.

Board’s Report explain any qualification, observation or other remarks of PCS.

Powers and duties of Secretarial Auditors are at par with Statutory Auditors (Section 143(14)).
Checklists

- Pre-drafted checklists on all applicable laws have a crucial role to play in SA.

- They act as signposts facilitating systemic and perfect approach to effective Secretarial Audit.

- Without checklists it would be an exercise groping around in the dark.
THANK YOU