

SECRETARIAL AUDIT METHODOLOGY



C.V.Madhusudhanan
Partner



KSR & CO COMPANY SECRETARIES LLP
PRACTISING COMPANY SECRETARIES & TRADE MARK AGENTS

**SOUTHERN INDIA REGIONAL COUNCIL
INSTITUTE OF COMPANY SECRETARIES OF INDIA**

SAM-OUTLINE

- SECRETARIAL AUDIT-Objective, Scope, Treatment, Liability.
- SECRETARIAL AUDIT MODE- Audit Methodology, Audit Master.
- REPORTING – Nature, Opinion, Evaluation of Regulatory Compliance and Governance in general.

KSR & CO COMPANY SECRETARIES

LLP

SAM-APPLICABILITY

Section 204 – Companies (ARMP) Rules, 2014:

- Listed Company
- Public Company

PC Rs.50 Crore or more

or

Turnover Rs.250 Crore or more

SAM-OBJECTIVE

Assuring Owners, Creditors, Public, other Stakeholders and Regulators that the affairs of the company are carried on in accordance with memorandum and articles of association, applicable laws, regulations, rules regulating the business, affairs and decision making process.

SAM-SCOPE-General

- Varies based on Entity – Listed / Unlisted
- Varies based on Industry – Regulated or not
- Varies based on Transactions – Regulated or not
- Varies based on Scope defined by Law
- Varies based on Scope defined and agreed – Para (vi) of MR-3

SAM-PARADIGM SHIFT

- Not merely format based
- No escape routes
- Not merely transaction based
- Investigation based
- Opinions - Specific, Subjective and Judgmental-Regulatory / Transactions / Conduct
- Forming an opinion on Regulatory compliance
- Regulatory governance
- Efficient Corporate Governance
- Post the financial year, can be concurrent
- Governance Professional (Regulatory)

SAM-TREATMENT IN CA,13

- Prescription by Law – Section 204
- Scope of Audit - Companies (ARMP) Rules, 2014
- Powers & Duties of Auditor– S.143
- Explanation, Comments by BoD in their Report-S.134

SA-POWERS & DUTIES-S.143

- Access to books, documents – including that of subsidiaries
- Require officers to disclose information and explanation for performance of duties
- Duty to enquire officers which can even be directors – independent or otherwise
- Transactions carried out are prejudicial to the interests of the company
- In addition to MR-3-To report proper obtaining of information, explanation to the best of his knowledge and belief that are necessary for the purpose of audit.
- To report whether proper books, registers are maintained as required by law.

SA-POWERS & DUTIES-S.143

- To report whether any director is disqualified from being appointed under S.164(2).
- Such other matters as may be prescribed – MR-3 and in addition thereto
- Reasons for qualifications to be adduced.
- Compliance of Secretarial Standards – upon prescription, Secretarial Auditing Standards – ??
- Duty to report fraud – evaluation of vigil mechanism – S.177(9)

SAM-LIABILITY

- Section 143(15)-Powers and Duties of Auditor-Failure to report Fraud – Fine not less than Rs.1 Lakh upto Rs.25 Lakhs.
- Section 447- Fraud – includes-act, omission, concealment of any fact, abuse of position – solely or in connivance- intent to deceive, gain undue advantage – to injure the interests of company, shareholders, creditors or any other person – whether or not there is any wrongful gain or loss

SAM-LIABILITY – Contd..

- Section 447 – Imprisonment not less than 6 months up to 10 years (Public Interest affected-not less than 3 years), fine equal to the amount of fraud and go up to 3 times
- Section 448 (False Statement) – Same as S.447
- Professional Misconduct (ICSI-DC)- Schedule II (Part –I) – Removal, Fine can go up to Rs.5 Lakhs

SCOPE – Specific Opinion

MR-3 (Secretarial Audit Report (SAR))

- The Companies Act, 2013 (the Act) and the Rules made there under;
- The Securities Contracts (Regulation) Act, 1956 and the Rules made there under;
- The Depositories Act, 1996 and the Regulations and Bye-laws framed there under;
- Foreign Exchange Management Act, 1999 and the rules and regulations made there under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

SCOPE – Specific Opinion

Contd.,

- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (replaced by SEBI (PIT) Regulations, 2015);
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (replaced by SEBI (Share Based Employee Benefits) Regulations, 2014);
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

SCOPE – Specific Opinion

Contd.,

- (f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
- Secretarial Standards issued by The Institute of Company Secretaries of India.
 - The Listing Agreements entered into by the Company with Stock Exchange(s)

SCOPE – Subjective Opinion

- Nature of books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit.
- Para (vi) of MR-3 -
(Mention the other laws as may be applicable specifically to the company) – **Limit to Sector Specific Law incidental to business – 99 SYNDROME ??**
- Compliance of applicable statutory provisions
- Adherence to good corporate practices.
- SA was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my/our opinion thereon.

SCOPE – Subjective Opinion

- The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.
- Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.
- Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

SCOPE – Judgemental Opinion

- Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon
- The Company has proper Board processes and compliance mechanism in place to the extent, in the manner and subject to the reporting made by the Secretarial Auditor
- The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors.

SCOPE – Judgemental Opinion

- There are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.
- During the audit period the company has
(Give details of specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above).
For example:
 - Public/Right/Preferential issue of shares / debentures/sweat equity, etc.
 - Redemption / buy-back of securities

SCOPE – Judgemental Opinion

- Major decisions taken by the members in pursuance to section 180 of the CA,13
- Merger / amalgamation / reconstruction, etc.
- Foreign technical collaborations
- Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon
- *Para-wise details of the Audit finding, if necessary, may be placed as annexure to the report.*

SECRETARIAL AUDIT METHODOLOGY - PHASES

Introductory – Study, analysis, scope identification and definition, issue of scope and quote, receive appointment, input collection and initial basic analysis; understanding of applicable law; study of level of compliance; preparing check lists;

Operational – Applying check lists and test tools; raising issues and seeking clarifications; studying relevant articles, opinions, case law and formation of opinions;

Delivery – Discussion with KMPs and Preparing, signing and delivering the Secretarial Audit Report

SAM- SECRETARIAL AUDIT MASTER - INTRODUCTORY

- ▶ **Understanding the Auditee – Business, Regulatory Environment, Track Record, Regulatory Compliance Set-up**
- ▶ **Study the nature of Business of the Company and Understand the Segments and Understand applicability of Special Act, Regulations - study.**
- **Understand its size and level and geographical boundaries**
- **Study its associates, joint ventures, subsidiaries – different types of subsidiaries.**
- **Eliminate inapplicable provisions of the Act from the mind – this will require study of events, occurrences and developments**

SAM- SECRETARIAL AUDIT MASTER - INTRODUCTORY

- **Eliminate Inapplicable Laws and Regulations & Regulators – this will require studying the business aspects**
- **Eliminate Inapplicable Departments in the company– this will require studying those matters which are certified / scrutinized by responsible professionals / regulators.**
- **Study the Annual Reports, MCA documents**
- **Discuss with Compliance Team – Where possible**

SAM- SECRETARIAL AUDIT MASTER - INTRODUCTORY

- **Determine the Scope of Audit**
- **Period of Audit**
- **Issue of detailed Audit Scope & Professional fee quote**
- **Receive a certified copy of Board Resolution evidencing appointment**
- **Ensure filing of the resolution with MCA**

SAM- SECRETARIAL AUDIT MASTER - OPERATIONAL

- ▶ **Data Collection – About the Company and Applicable Law.**
- ▶ **Preparing a Preliminary List of Documents required**
- ▶ **Conduct inspection of records, documents**
- ▶ **Compilation of Chronological Order of Events**
- ▶ **Understanding Facts and Circumstances**
- ▶ **Analysis of Events, Applicable Provisions and Understanding the Level of Compliance**
- ▶ **Preparing Checklists / Questionnaires – General and Specific**
- ▶ **Information in the Public, Audit Observations, Rejections by Regulators such as ROC / RBI / SEBI / STOCK EXCHANGES / CCI**
- ▶ **Administering Checklists / Questionnaires – General and Specific**
- ▶ **Study Litigations, show cause notices, legal actions etc**
- ▶ **Collecting Responses from KMPs, interview directors, compliance staff**
- ▶ **Recording of Findings and Conclusion**

SAM- SECRETARIAL AUDIT MASTER - DELIVERY

- ▶ **Identifying Grey Areas**
- ▶ **Ironing out Differences of Opinion**
- ▶ **Management Representations, study of Opinions, Judicial Pronouncements and Articles relied upon, evaluation of regulatory compliance, forming Opinions.**
- ▶ **Preparation and Submission of draft SAR**
- ▶ **Discussion, fine tuning and delivery of certified SAR**

SAM-DEVISE AUDIT SCHEDULE

TYPE OF ACTIVITY	WHO CAN UNDERTAKE THE ACTIVITY
Input / Information Collection	Trainees / Semi-qualified Assistants
Analysis of Information; Preparing Output Charts and Raising Queries	Qualified Assistants / Managers / Associates
Findings / Opinions / Observations/ Discussion with Key Management Personnel, Directors and Submission of SAR	Associates / Partners

ACKNOWLEDGEMENTS

THANK YOU

madhu@ksrandco.in