



Secretarial Audit



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament



Section 134

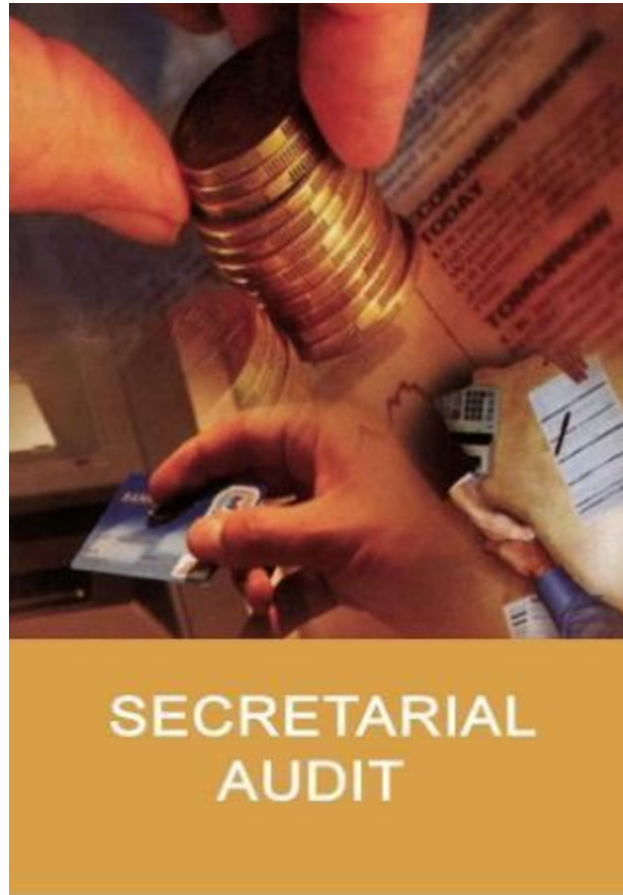
Financial Statements and **Board' s Report**



Section 134(5) - Directors Responsibility Statement

“(f) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”

Section 204





Section 204 (Applicability)

Every listed company

Public Co with 50 cores capital

Turnover of Rs. 250 Crore or more

shall annex with its Board's Report made in terms of section 134, a secretarial audit report, given by a Company Secretary in practice, in Form MR-3.

Section 204 Contd...

- ❑ (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 related records of the company.
- ❑ (3) The Board of Directors, in their report made in terms section 134, shall explain in full any qualification or observation or other remarks made by the Company Secretary in practice in his report.

Penalty for non-compliance

- ❑ (4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, **every officer of the company** or the **company secretary in practice**, who is in default, shall be punishable with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakh..



Section 205

Functions of a Company Secretary



Section 205: Functions of Company Secretary

- ❑ (1) The functions of Company Secretary shall include,—
 - a. **To report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;**
 - b. To ensure that the company complies with the applicable secretarial standards;
 - c. To discharge such other duties as may be prescribed.
- ❑ Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.
- ❑ (2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.



Clause 49 of Listing Agreement:

“The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.”



Form MR-3

Format of Secretarial Audit Report

SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED

[Pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014]

SECRETARIAL AUDIT REPORT

FOR THE FINANCIAL YEAR ENDED

To,
The Members,
..... Limited

I/We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by..... (name of the company).(hereinafter called the company). 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.

Based on my/our verification of the (name of the company's) 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, I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on

_____, _____ complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance-mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/we have examined the books, papers, minute books, forms and returns filed and other records maintained by (“the Company”) for the financial year ended on __, _____ according to the provisions of:

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;



(v) 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;

(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;

(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

(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;

(vi) (Mention the other laws as may be applicable specifically to the company)

I/we have also examined compliance with the applicable clauses of the following:

(i) Secretarial Standards issued by The Institute of Company Secretaries of India.

(ii) The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable;

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above subject to the following observations:

Note: Please report specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the above para wise.

I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. 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.

I/we further report that 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.

Note: Please report specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period.

I/we further report that 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:

- (i) Public/Right/Preferential issue of shares / debentures/sweat equity, etc.
- (ii) Redemption / buy-back of securities
- (iii) Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013
- (iv) Merger / amalgamation / reconstruction, etc.
- (v) Foreign technical collaborations

Place :

Signature:

Date :

Name of Company Secretary in practice / Firm:

ACS/FCS No.

C P No.:

Note: Parawise details of the Audit finding, if necessary, may be placed as annexure to the report.



Duties of Company Secretary



Rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel), Rules, 2014

- ❑ **The duties of Company Secretary shall discharge, the following duties, namely:-**
 - ✓ To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
 - ✓ To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
 - ✓ To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
 - ✓ To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;



Duties Contd...

- ✓ To assist the Board in the conduct of the affairs of the company;
- ✓ to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- ✓ to discharge such other duties as have been specified under the Act or rules; and
- ✓ such other duties as may be assigned by the Board from time to time.

**STANDING COMMITTEE ON FINANCE
(2009-2010)**

FIFTEENTH LOK SABHA

(MINISTRY OF CORPORATE AFFAIRS)

THE COMPANIES BILL, 2009

TWENTY- FIRST REPORT



**LOK SABHA SECRETARIAT
New Delhi**

August, 2010/Bhadra, 1932(Saka)

Secretarial Audit

□ **Clause 10.51:**

- Suggestions have been received regarding inclusion of secretarial audit as below :
- Every company having paid-up share capital exceeding Rs. 10 Lakh or having loan outstanding exceeding Rs. 25 Lakh from any bank or financial institution or having turnover as per its last financial statement exceeding Rs. 1 Crore , 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.

□ Clause 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.*

□ Clause 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.



Guidance Note on Secretarial Audit by Institute of Company Secretary of India

Specimen Secretarial Audit Report



To,
The Members
XYZ Limited

Our report of even date is to be read along with this letter

1. Maintenance of Secretarial records is the responsibility of the management of the company. Our responsibility is to express an opinion on these secretarial records based on our audit.
2. We have followed the audit practices and processes as were appropriate to obtain responsible assurance about the correctness of the contents of secretarial records. The verification was done on test basis to ensure that correct facts are reflected in secretarial records. We believe that the processes and practices, we follow provide a responsible basis for our opinion.
3. We have not verified the correctness and appropriateness of financial records and books of accounts of the company.
4. Wherever required, we have obtained the management representation about the compliance of laws, rules and regulations and happening of events etc.



5. The compliance of the provision of corporate and other applicable laws, rules, regulations, standards is the responsibility of management. Our examination was limited to verification of procedures on test basis.
6. The secretarial audit report is neither an assurance as to the future viability of the company nor the efficacy or effectiveness with which the management has conducted the affairs of the company.

Signature

Date:

Place:

(Name)

Practicing Company Secretary

Membership No. _____

Certificate of Practice No. _____

Specimen Management Representation Letter for Secretarial Audit



The following letter is a general guidance. Representation made by management may vary from one entity to another and from one year to another. It should be adopted in the light of individual requirements and circumstances.

[XYZ Limited]

M/s ABC & CO,
Company Secretaries,
ZYZ Road,

Date:

Dear Sir,

This representation letter is provided in connection with your audit of the Secretarial Records maintained under The Companies Act, 2013 (the Act) and the rules made thereunder; (ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder; (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder; (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings; (v) The Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and other applicable laws including labour laws like Factories Act, Payment of Gratuity Act etc for the year ended on 31st March, 2015 for the purpose required in it. We the undersigned acknowledge our responsibility for maintaining the Secretarial records referred above and confirm, to the best of our knowledge and belief, the following representations:



Company Law

1. The Company has maintained books of accounts as required under Section 128 of the companies Act, 2013
2. The Company has complied with all the provisions of Companies Act, 2013 relating to Statutory Audit/Cost Audit/Internal Audit.
3. No request for transfer or transmission of shares have been received by the company during the year other than as recorded
4. Statutory Registers were kept open for public inspection during working hours on all working days
5. Notice of Board meetings were duly sent to all the directors
6. No resolutions were passed by way of circulation during the year under review other than _____
7. Company has not obtained any secured loan from any financial institution/banks other than those mentioned in the register of charges
8. Notice of annual general meeting has been duly sent to all the members
9. No show cause notice has been received by the company under the Acts referred above or any other laws applicable on the company



Minutes of the Board and general meetings were entered in the minute books within thirty days from the day of the meeting

11. The share certificates were properly stamped

12. The entries in the statutory registers were made within the prescribed time

13. The company has not done any alteration to the Articles of Association or Memorandum of Association other than those of which the necessary compliance as to alteration is carried out and the proofs of the filing with ROC are available in Records.

14. We have provided to you all relevant information and have given access to all data and records

15. There is no pending litigation and claims other than reported in the balance sheet by way of contingent liability.

16. No event other than reported to you specifically has occurred during the year which has a major bearing on the company's affairs in pursuance of the laws, rules, regulations, guidelines, standards, etc. referred to above.

17. The views of all the dissenting Directors (if any) on important matters have been captured and recorded in the minute.

18. The venue and time of Board meeting was finalized with the consultation of all board members.

19. _____



Securities Laws

1. All Price Sensitive Information was informed to the stock exchanges from time to time
2. All investors complains directly received by the company are recorded on the same date of receipt.
3. _____
4. _____

Labour Laws

1. All the premises and establishments have been registered with the appropriate authorities.
2. The Company has not employed any child labour/Bonded labour in any of its establishments.
3. The company is ensuring the compliance of PF/ESI and other social security measures to the contract employees. One of the responsible officers of the company carry out the survey regarding the compliance of this.
4. _____



Environmental Laws

1. The Company is not discharging the contaminated water at the public drains/rivers. The company has efficient water treatment plants at its factory premises (if applicable)
2. The company has been disposing the hazardous waste as per applicable rules

We are attaching herewith the list of various applicable laws other than the laws listed above.

For XYZ Limited]

Date

Director

Director

Place



SCOPE OF SECRETARIAL AUDIT

After deliberating on the views emerged from consultation meets and taking into consideration the views of members of Corporate Laws and Governance Committee, the Council at its 226th meeting held on November 21, 2014 decided as under:

Scope of Secretarial Audit would include:

- Reporting on compliance of Five laws as mentioned in form MR-3
 - Companies Act, 2013,
 - Securities Contracts (Regulation) Act, 1956 ('SCRA'),
 - Depositories Act, 1996,
 - Foreign Exchange Management Act,
 - Securities and Exchange Board of India Act, 1992;



SCOPE OF SECRETARIAL AUDIT

- Reporting on compliance of 'Other laws as may be applicable specifically to the company' which shall include all the laws which are applicable to specific industry for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
- Examining and reporting whether the adequate systems and processes are in place to monitor and ensure compliance with general laws like labour laws, competition law, environmental laws.
- In case of financial laws like tax laws and Customs Act etc., Secretarial Auditor may rely on the Reports given by statutory auditors or other designated professionals.



Secretarial Standard- 1 i.e. Secretarial Standard on Meetings of Board of Directors

- Draft Secretarial Standard- 1 i.e. Secretarial Standard on Meetings of Board of Directors also provides the 'list of laws applicable specifically to the company' as one of the illustrative items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting.

Way Forward

Expectations of Regulator

- Secretarial Audit will be a **major test check for profession of Company Secretaries.**
- Quality Report with thorough due diligence;
- We understand that **MCA would closely watch** the quality of Reports in the initial years.
- Quality Reports are important for getting the scope of Secretarial Audit **extended to private companies also.**

.....contd...

Way Forward

Competency Building

For giving quality report, competency building is the only way out –

- Capacity building Workshops on Secretarial Audit;
- Dedicated e-mail ID;
- ‘Secretarial Audit corner’ in Chartered Secretary;
- ‘FAQs on Secretarial Audit’ uploaded at ICSI website;
- ‘Indicative List of laws applicable to industries (seven)’ uploaded at ICSI website;

Competency Building

- Guidance Note on Secretarial Audit
 - Volume I- Checklists for five laws as specified in MR-3, applicability, purpose, skills required by secretarial auditor, process of audit, professional responsibility and penalty, reporting with qualification etc.;
 - Volume II: Industry - wise list of laws (indicative)

Issues

- Fees
- No. of audits (per year);
- Whether retainer PCS can conduct SA;
- Regulator would accept?
- Concept of materiality
- Changes in T/O or Paid up Capital during the year
- Need to revise syllabus.
- There should be some restriction as to who can conduct secretarial audit. Experience, peer reviewed, etc.
- There are no rules regarding appointment, removal and disqualification of secretarial auditor.
- ICSI should make a repository for secretarial audit reports.

Fees for Secretarial Audit

- Need one Qualified CS and one Assistant
- It can not be done in one week.
- Requires continuous check .
- Quaterly Visit.



Fees for Secretarial Audit

- Qualified CS cost 30000/- (per month)
- Assistant Cost 10000/- (per month)
- Quarterly visit and one visit atleast requires to spend 10 – 15 days.
- So cost will be anything between 20000 to 25000 and four quarters .. It means
- 25000 X 4 quarters = 100000/-
- + seniors time + Partners Times.
- Cost it self is more than 1.50 lacs.



Other issue

- Limit on signing per PCS
- Retainer Client
- Enforcement Director Notice

PHARMACEUTICAL INDUSTRY



- Drugs and Cosmetics Act, 1940
- Drugs and Cosmetics Rules, 1945
- Pharmacy Act, 1948
- Homoeopathy Central Council Act, 1973
- Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- Narcotic Drugs and Psychotropic Substances Act, 1985
- Medicinal and Toilet Preparations (Excise Duties) Act, 1956
- Drugs (Prices Control) Order 1995 (under the Essential Commodities Act)



TELECOM SECTOR

- Telecom Regulatory Authority of India Act, 1997
- Indian Telegraph Act, 1885
- Indian Wireless Telegraphy Act, 1933
- Telegraph Wires (Unlawful Possession) Act , 1950
- Information Technology Act, 2000



COMPUTER PROGRAMMING, CONSULTANCY AND RELATED SERVICES

- Information Technology Act, 2000
- Copyright Act, 1957
- Patents Act, 1970



AUTOMOBILE

- Motor Vehicles Act, 1988
- Small Gas Cylinders Act, 1981

INSURANCE SECTOR

- Insurance Act, 1938
- Insurance Regulatory and Development Authority Act, 1999
- General Insurance Business (Nationalisation) Act, 1972
- General Insurance Business (Nationalisation) Amendment Act, 1985
- Industrial Disputes (Banking and Insurance Companies) Act, 1949
- Marine Insurance Act, 1963

TEXTILE & APPAREL SECTOR



- Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- Textiles Committee Act, 1963
- Textiles (Development and Regulation) Order, 2001
- Textiles (Consumer Protection) Regulations, 1988
- Handlooms (Reservation of Articles for Production) Act, 1985
- Jute Manufactures Cess Act, 1983
- Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987
- Jute Manufacturing Development Corporation Procedural Rules 1984
- Jute Packaging Materials Rules 1987
- Indian Boilers Act 1923

OIL & GAS INDUSTRY



- The Territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976
- The Oil Industry(Development) Act 1974
- The Oilfield (Regulation & Development) Act , 1948
- The Petroleum & Natural Gas Rules 1959
- The Petroleum Tax Guide, 1999
- Indian Boilers Act, 1923
- Oil Drilling and Gas Extraction Industry Standards, 1996
- Merchant Shipping Act, 1983
- Mines and Minerals (Regulations and Development) Act, 1957
- Oils Mines Regulations, 1984
- Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act,
- Offshore Areas Minerals (Development and Regulation) Act, 2002
- Explosives Act, 1884 & Explosives Rules, 1983



PULP & PAPER INDUSTRY

- Forest (Conservation) Act, 1980
- Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996
- Indian Boilers Act, 1923

RUBBER & PLASTIC PRODUCTS



- The Rubber Act, 1947
- Rubber Rules, 1955
- The Forest (Conservation) Act, 1980
- The Recycled Plastics Manufacture and Usage Rules, 1999, as amended
- Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008
- Indian Boilers Act, 1923

TOBACCO INDUSTRY



- Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COPTA)
- Tobacco Board Act, 1975
- Tobacco Board, Rules, 1976
- Tobacco Cess Act, 1975
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966 as amended in 1993
- Beedi Workers Welfare Cess Act, 1976
- Beedi Workers Welfare Fund Act, 1976

AVIATION SECTOR



- Aircraft Act, 1934 and the Aircraft Rules, 1937
- Civil Aviation Requirements
- Airports Authority of India Act, 1994 and Rules
- Carriage by Air Act, 1972
- Tokyo Convention Act, 1975
- Anti-Hijacking Act, 1982
- Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982
- Airports Economic Regulatory Authority of India Act, 2008

SUGAR



- Food Safety And Standards Act, 2006
- Prevention of Food Adulteration Act , 1956
- Essential Commodities (Amendment) Act- 2003
- Sugar Development Fund Act, 1982
- Sugar Cess Act, 1982
- Food Safety and Standard (Packaging and labeling) Regulations, 2011
- Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations, 2011
- Export (Quality Control and Inspection) Amendment Act, 1984

BEVERAGES (NON- ALCOHOLIC)



- Food Safety and Standards Act, 2006
- The Insecticide Act, 1968
- Export (Quality Control and Inspection) Amendment Act, 1984
- Cable Television Networks Rules, 1994 (Programme and Advertisement Code)
- Prevention of Food Adulteration Act , 1956
- Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and amendment thereof 2002
- Inflammable Substances Act,1952



Thanks ...