

"Secretarial Audit - Practical aspects"



SUNIL K. JAIN & ASSOCIATES
COMPANY SECRETARIES

SECRETARIAL AUDIT

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect non-compliance and to take corrective measures.

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.



Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a company secretary in practice with its Board's report.

The Central Government through rules has prescribed such other class of companies as under-

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

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.

The Board of Directors, in their report, shall explain in full any qualification or observation or other remarks made in the Secretarial Audit Report.

Secretarial Audit is an independent, objective assurance intended to add value and improve an organisation's operations. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.



MAIN POINTS FOR CHECKING UNDER CAPITAL MARKET RELATED LAW FOR SECRETARIAL AUDIT



MAIN POINTS FOR CHECKING UNDER SECURITIES CONTRACTS (REGULATION) ACT, 1956 AND RULES MADE THEREUNDER-

- ✓ **Check whether the Company has issued securities to public.**
- ✓ **Check whether issued securities is listed in the Stock Exchange.**
- ✓ **Check whether the Company has complied with the Listing Agreement.**

✓ Check the Company has complied with –

(i) Rule 19 (1) of SCRR with respect to filling of documents.

(ii) Rule (2) (b) of SCRR with respect to minimum public shareholding.



MAIN POINTS FOR CHECKING UNDER DEPOSITORIES ACT, 1996

- ✓ Check whether the agreement entered into by the Company with depository for dematerialisation of its Securities.
- ✓ Check that the Company has complied with the clause 55A of SEBI (Depositories and Participants) Regulations, 1996 in respect to Share Capital Audit Report.



MAIN POINTS FOR CHECKING UNDER SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

✓ Check whether the Company has Complied under this regulation include event based /continual disclosures, open offer requirements including public announcement, escrow account, obligations of acquirer/target company/ merchant banker, undertaking/ authorization, offer price.



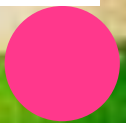
MAIN POINTS FOR CHECKING UNDER SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992.

- ✓ **Check whether the company has formulated a Code of Conduct for Insider Trading as provided in the Regulations.**
- ✓ **Check whether the Company has disclosed the information received from its promoters, Directors, Officer and concerned persons, to the Stock Exchange in the prescribed format.**

✓ Check whether the Company follows the Chinese Wall Policy under these Regulations.



LETTER TO S
Dear Shareholders,
The financial year under review
history. Net income after
Return on assets



A very significant duty has been cast on the Company Secretary in practice under section 143(12) read with sub-section 14 of the Companies Act, 2013.

It provides that if the Company Secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees, he/she shall immediately report the matter to the Central Government.

REPORTING OF FRAUDS BY AUDITOR- Section 143(12) to 143 (15) & Rule 13 –

Section 143 (12) and Rule 13 provides that if the auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than 60 days of his knowledge and after following the procedure indicated herein below:

- (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days;

- (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee alongwith his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations;

(iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.



The report shall be in the form of a statement as specified in Form ADT-4 on the letter-head of the auditor containing postal address, e-mail address, contact number, Membership Number and be signed & sealed by the auditor and same shall be sent through Registered Post with AD/speed post followed by an e-mail in confirmation to the Secretary, MCA of the same .



The provision of section 143 applies mutatis-mutandis to Cost Accountants in practice conducting Cost Audit under section 148 or the Company Secretary in practice conducting secretarial audit under section 204.

If any auditor, cost accountant or company secretary in practice fails to comply with the provisions of section 143 (12) for reporting of an offence involving fraud, they will be punished with a fine of minimum Rs. 1 lakh and upto Rs. 25 lakhs but they will not be punished if Auditor done such reporting in good faith.

Thank You



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