



SECRETARIAL AUDIT AND SECRETARIAL COMPLIANCE REPORT

Pradeep Ramakrishnan, GM, SEBI

CA, 2013 REQUIREMENT

- Currently, Section 204 of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit by Practicing Company Secretaries (PCS) for listed companies and certain unlisted companies above a certain threshold in Form No. MR-3.



SECRETARIAL AUDIT

- Companies covered:
 - (a) Every Listed Company (includes Companies whose debentures, warrants are listed)
 - (b) Other class of companies:
 - (i) Every Public Company having a **paid up share capital of fifty crore rupees or more**
 - (ii) Every public company having **a turnover of two hundred fifty crore rupees or more**
- Secretarial Audit Report shall be annexed to Board's Report
- Board in their Report to explain in full any qualification or observation or other remarks made by PCS in his report (Sec 134(3))
- Format of Secretarial Audit Report shall be in Form MR-3
- For contravention – company, every officer who is in default and PCS punishable with fine – Rs 1 lakh to Rs 5 lakh



SAR MODALITIES

- Board to appoint at its meeting the Secretarial Auditor (on yearly basis) and fix his remuneration [Section 179(3)]
- Company to file the resolution with RoC [Section 117]
- Obtain consent of the Secretarial Auditor
- Period of office: usually one year



WHO CAN CERTIFY?

- Company Secretary in practice{refer Sec.2(2) of C.S. Act, 1980}.
- No specific disqualification provisions in the Act.
- Disqualifications by ICSI, SEBI, MCA may be considered before giving the mandate



MAJOR ITEMS TO BE CHECKED

- Notice, agenda, notes on agenda minutes of meetings, attendance registers
- Draft Financial Statements, Auditor's Report, Director's Report
- Statements for borrowings and investments
- All Statutory Registers
- Disclosures / consents / declarations
- Filings with RoC / regulatory authorities / RBI
- Filings / submissions to Stock Exchanges
- Relevant approvals / correspondence/disclosures by directors.
- Compliance certificates of functional heads for compliance of applicable laws



AUDIT PROCEDURE

- Determine scope of Audit
- Request for details of various corporate actions/ events subject to audit
- Develop the audit framework
- Ascertain applicable laws
- Prepare check-lists and time schedule
- Call for documents / information
- Obtain Management Representation Letter
- Discuss and seek clarification, if required
- Discuss draft report with Management
- Finalize and submit draft addressed to shareholders



SECRETARIAL AUDIT REPORT FORMAT

- MR 3

- Report is for a financial year
- Report is to be addressed to the Members similar to independent Auditors' Report




WHY SECRETARIAL COMPLIANCE REPORT

- Kotak committee recommendations
- NSE examination of SARs
- NSE REPORT - Data verified for 1000 companies for the F.Y. 2016-17 and 595 companies for the F.Y. 2015-16; identified based on the type of non-compliances, market capitalization and fines levied by the Exchange
- Suspended companies are not considered.



NSE OBSERVATIONS

- The format of secretarial audit is not very transparent. It does not tell anything about what was examined, what is the extent of compliance/non-compliance under different regulations applicable to the company.
 - Most of secretarial auditors seem to prefer to adhere to the format suggested and are **not willing to add any additional statements or annexure** to state their points in clear terms.
 - The following are the deficiencies generally noticed in the secretarial audit process:
 1. *Remark on composition of the Board would say it is compliant; no specific mention is made about whether woman director was appointed. Therefore, one is not sure if woman director is appointed when a positive certification of composition of the board is given.*
 2. *Not sure what are all the corporate actions done or not done. If done, whether the company was in compliance with it or not.*
 3. *Not sure if the affirmations suggested in the corporate governance report are in fact checked or not.*
 4. *Not sure if non-compliances with MCA requirements were verified.*
 5. *Not sure if non-compliances with Listing Regulations were verified.*
 6. *Not sure if non-compliance with other applicable laws is verified.*
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NSE FINDINGS – 15-16 AND 16-17

Sr. No.	Particulars (Reporting of Non-Compliances)	Companies with non-compliance	Reported	Not Reported
1	Corporate Governance Non-Compliances			
2	i. Composition of Board of Directors	126	74	52
3	ii. Composition of Audit Committee	63	21	42
4	iii. Appointment of Women Director	16	16	0
5	100 % Promoter Shareholding not in Demat Form	98	1	97
6	Limited Review Report non-submission	99	0	99
7	SAST & PIT Non-Compliance	57	0	57
8	Modified/Unmodified Opinion not submitted along with the Financial results	84	1	83
9	No disclosure for BRR Policy in Annual Report	12	0	12
10	No Disclosure for Dividend Policy in Annual report	51		51



NSE FINDINGS - ANALYSIS

- In 73 Companies there is non reporting for the same parameters in FY 16-17,as in the F.Y. 2015-16. Out of these 73 companies, 53 companies had the same Secretarial Auditor for both financial years
- Secretarial Audit is not focusing on the very critical requirements of Listing Regulations and such Audit is restricting its scope only to what is mentioned
- Secretarial Audit practices and reports do not help regulators/investors in assessing quality of corporate governance of a listed entity in the format of Secretarial Audit
- Improvement needed in the quality of Secretarial Audit

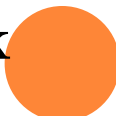


SCR HIGHLIGHT

- Provides for **reporting of non-compliances** / observations /audit qualifications/reservation or adverse remarks for each of the para in the format.
- Provides for reporting **specific observations/** qualification/reservation or adverse remarks of the Board structures/systems and processes.
- Requires that **specific events/actions having a major bearing** on the company's affairs is to be reported.
- **Para wise audit findings** may be placed as annexure where required.



SECRETARIAL COMPLIANCE REPORT

- **Additional to Secretarial audit report**
 - **LODR – Reg 24 A**
 - **Every listed entity and its material unlisted subsidiaries** incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed with effect from the year ended March 31, 2019.
 - All listed companies to submit, in addition to Secretarial Audit Report, Secretarial Compliance Report to the stock exchanges within 60 days of closure of financial year.
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MATERIAL UNLISTED SUBSIDIARY

- **“Material Unlisted Subsidiary”** means a subsidiary of a listed company **whose income or net worth exceeds 10 % of the consolidated income or net worth**, respectively, of the Company and its Subsidiaries in the immediately preceding accounting year.



SECRETARIAL AUDIT REPORT AND SECRETARIAL COMPLIANCE REPORT

- Secretarial Audit is a broad check on compliances of overall applicable acts to the Company like SEBI Act, Companies Act, Depositors Act, FEMA, SCRA and other industry specific laws while Secretarial Compliance Report restricts itself to only SEBI Act and its regulations, circulars issued thereunder.
- SCR is a feeder to SAR
- SCR applied only to Listed Entities (*Not applicable to Material Unlisted Subsidiary*)



SECRETARIAL COMPLIANCE REPORT

- Applicable from the financial year ended 31.3.2019; To be submitted Within 60 days from the closure of Financial Year by the listed entity to the Stock Exchanges. – needs to be planned accordingly
- Can same PCS who performs Secretarial Audit can issue Secretarial Compliance Report?
- **Ans:** Yes. There are no restrictions in the SEBI circular for the same.



SCR – DOCUMENTS REQUIRED TO BE EXAMINED

- a) all the documents and records made available to us and explanation provided by the listed entity,
- (b) the filings/ submissions made by the listed entity to the stock exchanges,
- (c) website of the listed entity,
- (d) any other document/ filing, as may be relevant, which has been relied upon to make this certification,
- Related SEBI regulations – an illustrative list given; all SEBI Regulations, as may be relevant and applicable to the listed entity for the review period, shall be added.



PARTS OF SCR

- Exception report - The listed entity has complied with the provisions of the above Regulations and circulars/ guidelines issued thereunder, except in respect of matters
- Maintenance of records
- Actions taken against the listed entity / directors / promoters / material subsidiaries
- Steps taken to comply with earlier observations of PCS



DUTY OF PCS TO REPORT FRAUD

- PCS, during conduct of Secretarial Audit, has sufficient reason to believe that an offence involving fraud is being committed or has been committed against the company by officers or employees of the company, he shall report the same to the Central Government immediately but not later than 60 days of his knowledge with a copy to the Board / Audit Committee seeking their reply within 45 days
- Board / Audit Committee to reply in writing the steps taken to address the fraud
- PCS shall forward his report and reply of the Board / Audit Committee with his Comments to the Central Government within 15 days of reply by Board / Audit Committee
- The Report shall be in Form ADT - 4



THANK YOU

