

ICSI- Thane-16-04-23

An overview ...

SECRETARIAL AUDIT

An Exchange of ideas



COMPLIANCE....



- Definition..

Planning..Acting..Monitoring..



- Compliance

Buzz words.....



- Compliance..
- Board of Directors / Promoters
- Material Information / UPSI
- Corporate Governance
- Risk Management
- Change and Adaptability
-

Buzz words.....



- Follow the rules...
- Manage better...
- Value Addition...
- Corporate Autonomy
- **ENHANCEMENT**

The connecting dots...



- BOD
- PROMOTER
- STAKEHOLDERS

Mr. Director / Mr. CS/ Mr. KMP
..attention please..

- Change in the role.. Looking beyond...
- Days of box ticking have gone...
A guide...an advisor...a performer...
Alignment with the CA-2013...
other statues ..
extends the responsibilities...
KMP.... ACCOUNTABLE..

BOD.. Attention please...



- Governance perspective..
- Compliance perspective
- Protection of stakeholders' interest...

Time bound Role...

- Compliances...
- Quarterly
- Half Yearly
- Annually
- Event based / Market Capitalisation based/
Threshold Limits Based

GOVERNANCE IS 24X7



Audit....

- Meaning...
- Process...
- Achievement...

Types of Audit..

- Companies Act, 2013 prescribes four different kinds of Audits for companies, namely...
- Internal Audit
- Statutory Audit
- Cost Audit
- Secretarial Audit

Secretarial Audit...

- Way back in the history...
- Before enactment of Companies Act, 2013, Secretarial Audit was not mandatory..
Section 204 of Companies Act, 2013 has made Secretarial Audit mandatory for Certain Companies.
- In Companies Act, 2013 requirement of Compliance Certificate has been withdrawn.

The need for Secretarial Audit ..

- **two-fold objective; on one hand it seeks to protect the interests of all stakeholders..**
- **and on the other hand it helps to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well.**

The need...contd

- **Companies Act has undergone substantial changes ..**
- **given rise to lot of interpretation and understanding issues. ..**
- **a regular independent audit exercise is extremely essential to ensure the corporate as well the legislature that “all is well”.**

The need...contd

- **to ensure that the company is compliant in all aspects, i.e. not only the overall financial aspects but also all legal and procedural.**
- **It bridges the remaining gap and is essential to ensure that the company is functioning in line with the provisions of the various statutes applicable to it and the various rules & regulations.**

SEBI – LODR – Amendments-

- **Secretarial Audit–Regulation 24A**
 - **Secretarial audit shall continue for the listed company and its material subsidiary .The Audit report shall form a part of the Directors’ Report to the shareholders.**

Compliance assurance...

- The Secretarial Audit is better in the interest of every corporate management, as, an independent professional will certify that the company has carried out the compliances under the Act. **Secretarial Audit will fill the vacuum which presently exists in the area of legal compliance management**

Benefits...

- **it is a part of total compliance management in an organization. The Secretarial Audit is an effective tool for corporate compliance management.**
- **It helps ensure timely corrective measures when non-compliance is detected.**

Benefits ...contd..

- **Avoidance of penal provisions..**
to reduce the risk of exposure to penal provisions by providing timely check on the levels of compliances for both the company, its officers and also for the professionals.

Benefits ..contd..

- **It helps to foster the image of the company in the minds of the regulators as well as stakeholders.**
- **A duly audited company is well perceived in the minds of the stakeholders and is looked upon favorably by the society.**

Benefits ..contd..

- It protects the interest of the management, directors and key managerial personnel by reducing unwarranted exposure to legal actions and issues thereby reducing time and cost also.
- It helps to reduce cost of additional filing fees.

Benefits ..contd..

- **MIS .. highlighting the level of compliances being followed in the company and the areas which require correction.**
- **an opportunity to the company to understand the complex laws applicable to them thereby enabling them and to carry out them.**

Benefits..contd..

- **helps the shareholders, creditors and other stakeholders by providing them a report regarding the level of compliance being followed in the company.**
- **A company secretary conducting secretarial audit is duty bound to report any instances of fraud being committed in the company.**

Applicability..



- Section 204 (1).. and
- Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Applicability..

- every Listed company
- for every public company having a paid-up share capital of Rs.50 Cr or more; or every public company having a turnover of Rs. 250 Cr or more or o/s loans or borrowings from banks or PFIs of Rs.100Cr or more
- The Secretarial Audit Report shall be in the Form MR-3 and shall be annexed with its Board's report as per section 134 (3).

Role, Duties and Powers of the Secretarial Auditor

- **A Secretarial Auditor is appointed by the Board of directors to conduct an audit and provide his report, to the members of the Company and this report has to be annexed to the Board's Report.**
- **As per Section 143, which deals with powers of auditors, the provisions of the said Section 143 are, *mutatis mutandis*, applicable to a secretarial auditor also.**

Rolecontd

- **This implies that the Secretarial Auditor has the same power and duties which are applicable to a statutory auditor.. scope of audit. This includes both powers as well as duties, including**
- **the duty to report fraud as contemplated under sub-section 12 of Section 143.**

Process...the commencement..



- Discussion..
- Define and Identify the scope
- Formal engagement letter

Meeting Teams & Planning the Audit Program

- Working papers...
- Observations...summary...discussion...
- Audit Report

Thrust areas...



1. Companies Act-2013
2. The SCRA 1956 & Rules
3. The Depositories Act, 1996 & Byelaws...
4. The FEMA , 1999
5. The SEBI Act, 1992 (including applicable Regulations and Guidelines)
6. OTHER SPECIFIC LAWS applicable to the Company
7. General Laws....test check basis..
8. SS-1&2

SEBI ...

- The SEBI (SAST) Regulations, 2011;
- The SEBI (Prohibition of Insider Trading) Regulations, 2015;
- The SEBI (ICDR) Regulations, 2018;
- The SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021;
- The SEBI (LODR), 2015
- De-listing ...Buy back related..

CS.. Attention please...



- Governance perspective..
- Compliance perspective
- Protection of stakeholders' interest...

Action points...



- The continuous process of compliance begins...

COVID-19..



- Virtual Data Room...

Illustrative list under the Companies Act, 2013

- *General Compliances*
- Keeping and maintaining all statutory registers, filed all forms, return and notices to respective authorities as per companies Act, 2013
- Whether company follow all requirements of the Act and provisions of MOA & AOA.. Entrenchment provisions.. CA 2013

Illustrative list under the Companies Act, 2013

- **Details of Documents to be Checked**
- *Registers and Records*
- Register & Index of members /debenture holders
- Foreign registers of members / debenture holders
- Registers and returns
- Minutes book of meetings including class meeting/creditors meeting

Checklist...contd..

- Register of investments
- Register of deposits
- Register of charges
- Books of accounts & cost records
- Register of contracts
- Register of directors, MD, Manager , CFO & Secretary
- Register of Directors' shareholding

Checklist ..contd..

- Register of investments, loans made, guarantee given or security provided
- Register of renewed & duplicate certificates
- Register of directors' attendance. cross check
- Register of shareholders' attendance
- Register of proxies
- Register of Transfer
- Register of fixed assets

Checklist..contd..



- *Returns*
- Annual Returns
- Annual Accounts
- Return of Allotment
- Notice of change in situation of Registered office
- Court or NCLT/NCLAT Order

Checklist..contd..

- Return of Appointment of MD/WTD/Manager
- Return of Deposits
- Registration of Resolutions and Agreements
- Registration of Creation/ modification/ satisfaction of Charge

Checklist..

- *Meetings related:*
- Board of Directors Meetings,- section 173
- Extraordinary General Meeting, section 100
- Annual General Meeting, as per Section 96
- Committee Meetings duly convened as per provisions of Companies Act, 2013
- Minutes of All Meetings maintained u/s 118
- Proof of Dispatch of Notices -BOD
/members

Checklist..contd..

- e- Filing
- **MGT- 14** within 30 Days of passing Resolutions -/ BOD or Members/others
- MGT-14 in case of Board Resolutions
- To make political contributions
- To Diversify the Business of the Company
- To Approve Financial statements and Board's Report

Checklist..contd

- To approve Merger, Amalgamation or Reconstruction
- To takeover of the Company
- To Appoint Secretarial Auditor (section 204 of Companies Act, 2013)
- To Appoint Internal Auditor (section 138 of Companies Act, 2013)
- To invest the funds of Company under section 186 of Companies Act, 2013

Checklist ..contd..

- To Appoint or Remove KMP
- To issue securities including debenture, by letter of offer
- To Borrow Monies from any sources including Directors
- To authorize Buy Back of Securities under Section 68

Checklist... General Meetings

- MGT- 14 in case of Ordinary Resolutions *related...*
- For Appointment of Director u/s152
- Invitation given to member- Deposit- u/s73
- Appmnt- Small Shareholder Director- 151
- Appointment of independent Director
- Private Placement of Securities
- Conversion of Section 8 Company in any other kinds or alteration of its MOA
- Change of its registered office under section 12 and 13 of Companies Act, 2013

General meetings related..

- MGT-14 in case of Special Resolutions
- Conversion of Private Company into OPC
- Approve the any scheme for giving loan to MD/WTD under section 185
- Loan or Investment by Company exceeding the limit under section 186
- Special resolution for winding of the Company

General Meetings..

- Issue of Bonus Shares - LODR
- Change of the name of the Company-LODR
- Appoint Managerial Personnel / NEDs exceeding the age of 75 Years-Link LODR
- Remuneration to managerial personnel in case of inadequacy of profit a per Sch V
- Resolutions u/s 180 (a), (b) and (c)

General Meetings..related

- Re- appointment of Independent Director
- For keeping of the register any other place in India
- For buyback of share as per section 68
- For reduction of share capital as per section 66
- Issue of Sweat equity share as per section 54

SS-I and II

- Secretarial Standards..compliance..

SCRR & SEBI

- (1) Check –company is listed with any SE;
- (2) Check whether the company has issued shares/debentures/bonds to the public. If yes, whether:
 - (a) An application for this purpose to the stock exchange has been made along with the documents and particulars mentioned in Rule 19(1) of the Securities Contracts (Regulation) Rules, 1957;

SCRR & SEBI...contd..

- (b) listing agreement –approval and execution. ..incl conditions if any by SE
- (c) Whether listing was done within the statutory time limit
- (d) Where permission for listing has been refused by the Stock Exchange:
 - Whether appeal was filed
 - What is the outcome of the appeal?
- (e) LODR compliance ..

CS.. Extended role ..As a guide

- Framing of policies by the Board of Directors (LODR-Reg – 9) maintaining records..

Beyond being a record keeper ...

Facilitator

The bitter pill...

- **Penal provisions prescribed under the Act- Section 143 (12)**
- **Non-compliance by any auditor, cost accountant or company secretary in practice -punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.**

Bitter pill...contd..

- **Penalty prescribed under Section 204**
- **Non compliance – 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 one thousand rupees per day but which may extend to five lakh rupees.**

Secretarial Audit Report...



- Specimen..

Part-II

- Annual Secretarial Compliance Report

SA and ASCR---LODR

[Secretarial Audit {and Secretarial Compliance Report}].

- 24A. ,,,,(1) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity. }]

ASCR

- {(2) Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.}

Format of ASCR



- Specimen as explained ..

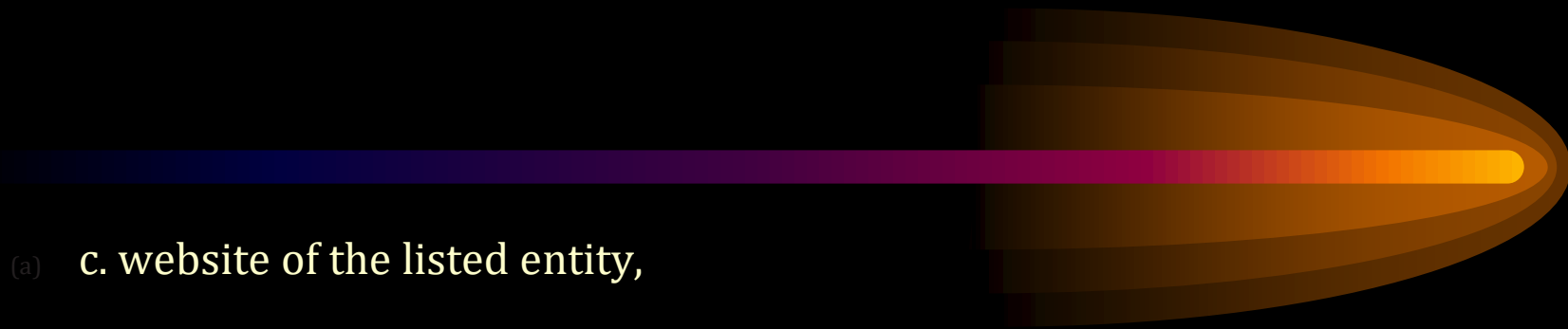
Format of ASCR

(On the letter head of the Practicing Company Secretary)

Secretarial Compliance Report of [●] [Name of the listed entity] for the financial year ended _____

I/We _____ have examined:

- a. all the documents and records made available to us and explanation provided by [●] [Name of the listed entity] (“the listed entity”), the filings/ submissions made by the listed entity to the stock exchanges,
- (a) b. website of the listed entity,

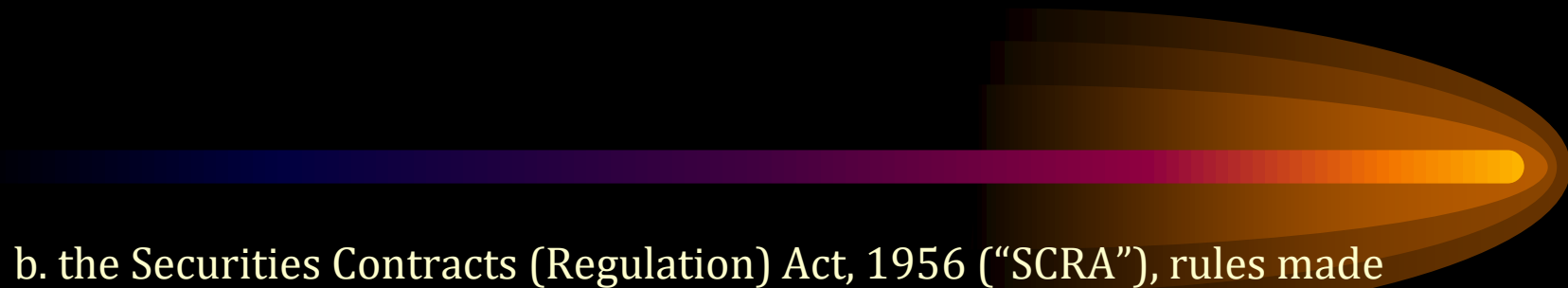


(a) c. website of the listed entity,

(b) d. any other document/ filing, as may be relevant, which has been
relied upon to make this certification,

for the year ended [●] (“Review Period”) in respect of compliance with the
provisions of :

a. the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) and
the Regulations, circulars, guidelines issued thereunder; and



b. the Securities Contracts (Regulation) Act, 1956 (“SCRA”), rules made thereunder and the Regulations, circulars, guidelines issued thereunder by the Securities and Exchange Board of India (“SEBI”);

The specific Regulations, whose provisions and the circulars/ guidelines issued thereunder, have been examined, include:-

- a) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
- b) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- c) Securities and Exchange Board of India (Substantial Acquisition)
- d) Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018;

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- e) Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021;
 - f) Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
 - g) Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021;
 - h) Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;(other regulations as applicable) and circulars / guidelines issued thereunder;
 - i) (Other regulations as applicable) and circulars / guidelines issued thereunder


(Note: The aforesaid list of Regulations is only illustrative. The list of such SEBI Regulations, as may be relevant and applicable to the listed entity for the review period, shall be added.)



I/We hereby report that, during the Review Period the compliance status of the listed entity is appended as below:

Sr. No.	Particulars	Compliance Status (Yes/No/ NA)	Observations /Remarks by PCS*
1.	Secretarial Standards: The compliances of the listed entity are in accordance with the applicable Secretarial Standards (SS) issued by the Institute of I		


	Company Secretaries India (ICSI), as notified by the Central Government under section 118(10) of the Companies Act, 2013 and mandatorily applicable.		
2.	Adoption and timely updation of the Policies: <ul style="list-style-type: none"> • All applicable policies under SEBI Regulations are adopted with the approval of board of directors of the listed entities • All the policies are in conformity with SEBI Regulations and have been reviewed & updated on time, as per the regulations/circulars/guidelines issued by SEBI 		
3.	Maintenance and disclosures on Website: <ul style="list-style-type: none"> • The Listed entity is maintaining a functional website 		




	<ul style="list-style-type: none"> • Timely dissemination of the documents/ information under a separate section on the website • Web-links provided in annual corporate governance reports under Regulation 27(2) are accurate and specific which re- directs to the relevant document(s)/ section of the website 		
4.	<p>Disqualification of Director:</p> <p>None of the Director(s) of the Company is/ are disqualified under Section 164 of Companies Act, 2013 as confirmed by the listed entity.</p>		

5.	Details related to Subsidiaries of listed entities have been examined w.r.t.: a) Identification of material subsidiary companies b) Disclosure requirement of material as well as other subsidiaries		
6.	Preservation of Documents: The listed entity is preserving and maintaining records as prescribed under SEBI Regulations and disposal of records as per Policy of Preservation of Documents and Archival policy prescribed under SEBI LODR Regulations, 2015.		


7.	Performance Evaluation: The listed entity has conducted performance evaluation of the Board, Independent Directors and the Committees at the start of every financial year/during the financial year as prescribed in SEBI Regulations.		
8.	Related Party Transactions: a) The listed entity has obtained prior approval of Audit Committee for all related party transactions; or b) The listed entity has provided detailed reasons along with confirmation whether the transactions were subsequently approved/ratified/rejected by the Audit Committee, in case no prior approval has been obtained.		



9.	Disclosure of events or information: The listed entity has provided all the required disclosure(s) under Regulation 30 along with Schedule III of SEBI LODR Regulations, 2015 within the time limits prescribed thereunder.		
10.	Prohibition of Insider Trading: The listed entity is in compliance with Regulation 3(5) & 3(6) SEBI (Prohibition of Insider Trading) Regulations, 2015.		




11.	Actions taken by SEBI or Stock Exchange(s), if any: No action(s) has been taken against the listed entity/ its promoters/ directors/ subsidiaries either by SEBI or by Stock Exchanges (including under the Standard Operating Procedures issued by SEBI through various circulars) under SEBI Regulations and circulars/ guidelines issued thereunder except as provided under separate paragraph herein (**).		
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12.	Additional Non-compliances, if any: No additional non-compliance observed for any SEBI regulation/circular/guidance note etc.		
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Compliances related to resignation of statutory auditors from listed entities and their material subsidiaries as per SEBI Circular CIR/CFD/CMD1/114/2019 dated 18th October, 2019:

Sr. No.	Particulars	Compliance Status (Yes/No/NA)	Observations /Remarks by PCS*
1.	Compliances with the following conditions while appointing/re-appointing an auditor		
	i. If the auditor has resigned within 45 days from the end of a quarter of a financial year, the auditor before such resignation, has issued the limited review/ audit report for such quarter; or		

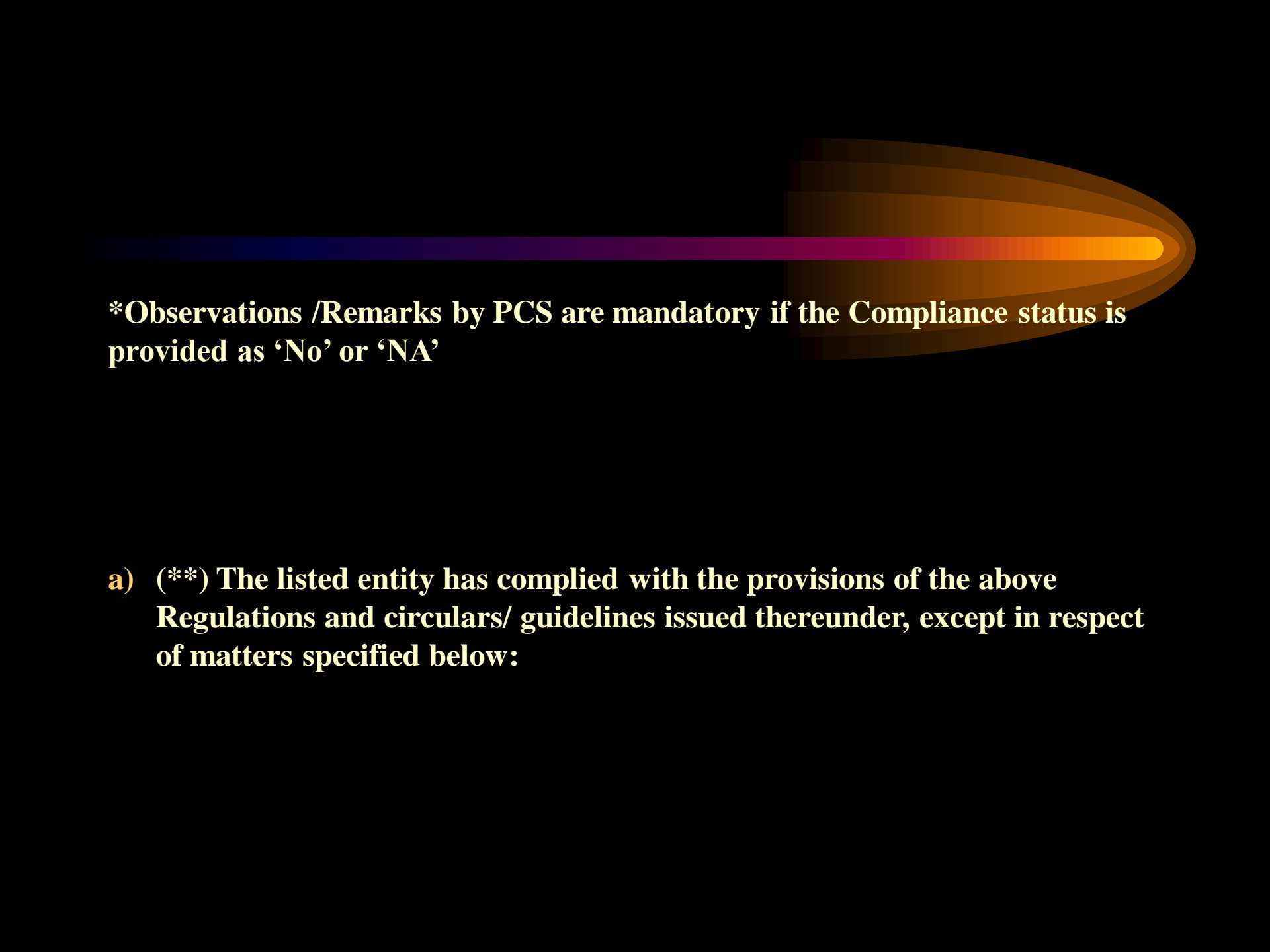
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|--|---|--|--|
| | <ul style="list-style-type: none">ii. If the auditor has resigned after 45 days from the end of a quarter of a financial year, the auditor before such resignation, has issued the limited review/ audit report for such quarter as well as the next quarter; or
iii. If the auditor has signed the limited review/ audit report for the first three quarters of a financial year, the auditor before such resignation, has issued the limited review/ audit report for the last quarter of such financial year as well as the audit report for such financial year. | | |
|--|---|--|--|



2.	Other conditions relating to resignation of statutory auditor		
	<ul style="list-style-type: none"><li data-bbox="386 549 1304 714">i. Reporting of concerns by Auditor with respect to the listed entity/its material subsidiary to the Audit Committee:<ul style="list-style-type: none"><li data-bbox="386 728 1304 1392">a. In case of any concern with the management of the listed entity/material subsidiary such as non-availability of information / non-cooperation by the management which has hampered the audit process, the auditor has approached the Chairman of the Audit Committee of the listed entity and the Audit Committee shall receive such concern directly and immediately without specifically waiting for the quarterly Audit Committee meetings.		

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- | | | | |
|--|--|--|--|
| | <p>b) In case the auditor proposes to resign, all concerns with respect to the proposed resignation, along with relevant documents has been brought to the notice of the Audit Committee. In cases where the proposed resignation is due to non-receipt of information / explanation from the company, the auditor has informed the Audit Committee the details of information/ explanation sought and not provided by the management, as applicable.</p> <p>c) The Audit Committee / Board of Directors, as the case may be, deliberated on the matter on receipt of such information from the auditor relating to the proposal to resign as mentioned above and communicate its views to the management and the auditor.</p> | | |
|--|--|--|--|

	<p>ii. Disclaimer in case of non-receipt of information:</p> <p>The auditor has provided an appropriate disclaimer in its audit report, which is in accordance with the Standards of Auditing as specified by ICAI / NFRA, in case where the listed entity/ its material subsidiary has not provided information as required by the auditor.</p>		
3.	<p>The listed entity / its material subsidiary has obtained information from the Auditor upon resignation, in the format as specified in Annexure-A in SEBI Circular CIR/ CFD/CMD1/114/2019 dated 18th October, 2019.</p>		



***Observations /Remarks by PCS are mandatory if the Compliance status is provided as 'No' or 'NA'**

- a) (**) The listed entity has complied with the provisions of the above Regulations and circulars/ guidelines issued thereunder, except in respect of matters specified below:**

b) The listed entity has taken the following actions to comply with the observations made in previous reports:

Sr. No	Compliance Requirement (Regulations/ circulars/ guidelines including specific clause)	Regulation/ Circular No.	Deviations	Action Taken by	Type of Action (Advisor y/ Clarification/ Fine/Show Cause Notice/ Warning , etc.)	Details of Violation	Fine Amount	Observations/ Remarks of the Practicing Company Secretary	Management Response	Remarks
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Note:

- 1. Provide the list of all the observations in the report for the previous year along with the actions taken by the listed entity on those observations**
- 2. Add the list of all observations in the reports pertaining to the periods prior to the previous year in case the entity has not taken sufficient steps to address the concerns raised/ observations**

E.g. In the report for the year ended 31st March, 2023, the PCS shall provide a list of:

- a. all the observations in the report for the year ended 31st March, 2022 along with the actions taken by the listed entity on those observations.**



b. the observations in the reports pertaining to the year ended 31st March,2022 and earlier, in case the entity has not taken sufficient steps to address the concerns raised/ observations in those reports.)

Place:

Signature:

Date:

Name of the Practicing Company Secretary

ACS/ FCS No.:

CP No.:

UDIN :

PR No :

Welcoming ideas





THANK YOU