

SECRETARIAL AUDIT PRACTICES ANALYSIS OF FINANCIAL STATEMENT & VIOLATIONS OF CORPORATE LAWS

SECRETARIAL AUDIT IS AN AUDIT TO CHECK COMPLIANCE OF VARIOUS
LEGISLATION

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- ▶ SEC. 204(1) OF COMPANIES ACT, 2013 READ WITH RULE 9 OF COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES 2014, THE FOLLOWING COMPANIES REQUIRE TO OBTAIN SECRETARIAL AUDIT REPORT

 - ▶ A) EVERY LISTED COMPANY
 - ▶ B) EVERY PUBLIC COMPANY HAVING PAID UP SHARE CAPITAL OF RS.50 CRORES AND ABOVE
 - ▶ C) EVERY PUBLIC COMPANY HAVING TURNOVER OF RS.250 CRORES AND ABOVE

WHO CAN CONDUCT SECRETARIAL AUDIT

- ▶ ONLY A MEMBER OF ICSI HOLDING CERTIFICATE OF PRACTISE CAN CONDUCT SECRETARIAL AUDIT AND SUBMIT REPORT TO THE COMPANY.
- ▶ THIS SECRETARY AUDIT IS TO A GREAT EXTENT SIMILAR TO THE AUDIT DONE BY CHARTERED ACCOUNTANT
- ▶ HE SHOULD MAINTAIN AN AUDIT DIARY
- ▶ DEVELOP MANUAL AND CHECK LIST
- ▶ KEEP RECORDS OF BOOKS SCRUTINISED AND DOCUMENTS SEEN

- ▶ ADUIT TO BE CONTINUOUS BASIS
- ▶ QUATERL/HALF YEARLY/ANNUALLY DEPENDING ON THE SIZE AND COMPLEXICITY
- ▶ SECRETARIAL AUDIT IS ANNEXED TO THE BOARDS REPORT
- ▶ REPORT SHOULD BE IN THE FORMAT PRESCRIBED IN FORM MR-3
- ▶ FORM MR-3 NEED TO EXAMINE AND REPORT FIVE SPECIFIC LAWS
- ▶ A) COMPANIES ACT, 2013
- ▶ B) SECURITIES CONTRACT (REGULATIONS) ACT, 1956
- ▶ C) DEPOSITORIES ACT, 1996

- ▶ D) FEMA, 1999
- ▶ E) SEBI ACT, 1992
- ▶ MR-3 POINT NO. (IV) REFERS “OTHER LAWS AS MAY BE SPECIFICALLY APPLICABLE TO THE COMPANY”
- ▶ SPECIFIC INDUSTRY MEANS
- ▶ LAW APPLICABLE TO NBFC
- ▶ LAW APPLICABLE TO PHARMA INDUSTRY
- ▶ LAW APPLICABLE TO CEMENT INDUSTRY
- ▶ SO ON AND SO FORTH, THIS LIST IS END LESS

ANALYSIS OF FINANCIAL STATEMENT

- ▶ WHEN WE READ THE BALANCE SHEET, PROFIT AND LOSS ACCOUNT AND THE SCHEDULES THEREON WE COME ACROSS MANY ITEMS WHICH NEEDS TO BE GIVEN MORE EMPHASIS AS FAR THE COMPLIANCE IS CONCERNED
- ▶ FOR EXAMPLE
- ▶ A) SHARE CAPITAL - PROMOTERS HOLDING, PUBLIC HOLDING, FII, DII, JOINT VENTURE PARTNER, RBI PERMISSION FOR FOREIGN HOLDING, AUTOMATIC ROUTE OR THROUGH DIPP ESOPS, PREFERENTIAL ISSUE, BUY BACK OF SHARES, RIGHTS ISSUE, BONUS ISSUE, ETC...
- ▶ B) RESERVES AND SURPLUS - IF DEBENTURES ARE ISSUED THEN SEE WHETHER THE AMOUNT REQUIRED TO BE TRANSFERRED TO THE DEBENTURE REDEMPTION IS BEING TRANSFERRED, IF ASSET IS REVALUED OR SWEAT EQUITY IS ISSUED TO THE PROMOTERS SEE WHETHER THEY WRITE OFF THE PORTION OF THE SAME FROM THE PROFIT EACH YEAR, VALUATION OF SHARE PREMIUM
- ▶ C) UNSECURED LOAN - WHO HAS PROVIDED, INTER CORPORATE DEPOSIT, DEPOSITS FROM PUBLIC, PROMOTERS IN PURSUANT TO SCHEME APPROVED BY FII WHILE SANCTIONING LOAN

- ▶ A SCHEME APPROVED UNDER THE CORPORATE DEBT RESTRUTURING
- ▶ D) SECURED LOAN - WHETHER IT IS FROM THE BANKS OR FII AND WHETHER THE TERMS OF SANCTIONS ARE ADHERED, IS A PORTION OF THE WORKING CAPITAL CONVERED INTO FCNR(B), MORTGAGE HAS BEEN REGISTERED AS PER THE TERMS OF SANCTION, ECB HAS BEEN RAISED AND END USE AS PER THE RBI GUIDELINES FROM TIME TO TIME - DIFFERS FROM INDUSTRY TO INDUSTRY, SUPPIERS CREDIT HAS BEEN OBTAINED AT WHAT TERMS WHETHER FEMA GUIDELINES HAS BEEN FOLLOWED AND WHETHER QUARTERLY, HALF YEARLY AND ANNUAL REPORTS HAS BEEN FILLED WITH RBI AND OTHER SATUTORTY AUTHORITIES AS SPECIFIED, WHETHER REGISTERED UNDER STPI, EXPORT PORMOTION ZONE, PACKING CREDIT, FORGIEN CURRENCY TERM LOAN, CROSS CURRENCY SWAPS, DERIVATIVE TRANSACTIONS ETC...

INVESTMENTS

- ▶ INVESTMENTS ARE MADE AS PER PROVISIONS OF COMPANIES ACT, FEMA, WHOLLY OWNED SUBSIDIARY, JOINT VENTURE, NECESSARY RBI PERMISSIONS ARE OBTAINED FOR INVESTMENT OUTSIDE THE COUNTRY, OPENING A BRANCH OFFICE ABROAD
- ▶ WHETHER FIPB PERMISSION IS OBTAINED IN CASE OF JOINT VENTURE IN INDIA. WHETHER IT COMES UNDER AUTOMATIC ROUTE, FEMA GUIDELINES ARE COMPLIED WITH
- ▶ INVESTMENTS IN OTHER COMPANIES WHETHER SEBI TAKE OVER GUIDELINES ARE COMPLIED WITH, ETC..
- ▶ SEE WHETHER ANY GUARANTEE OR SECURITY IS PROVIDED BY THE PARENT COMPANY FOR ITS SUBSIDIARY
- ▶ SEE WHETHER ANY STAND BY LETTER OF CREDIT IS OPENED TO FACILITATE RAISING OF WORKING CAPITAL BY SUBSIDIARIES, RBI GUIDELINES FOLLOWED

FIXED ASSETS

- ▶ WHEN FIXED ASSETS ARE IMPORTED THAT SOME TIME THE COMPANY IS REQUIRED TO PAY INITIAL PURCHASE AMOUNT BY WAY OF TRANSFER, RBI PROVIDES NORMS UNDER AUTOMATIC ROUTES AND PERMISSION ROUTE
- ▶ WHEN PROPRIETORSHIP OR PARTNERSHIP IS CONVERTED INTO A LIMITED ENTITY, HOW THE VALUATION IS DONE, HOW MANY SHARES ARE ISSUED IN LIEU OF THE ASSETS, WHETHER VALUATION REPORTS ARE IN PLACE, WHAT IMPLICATIONS IT HAS GOT UNDER THE INCOME TAX FOR TRANSFER LIKE SHORT TERM OR LONG TERM CAPITAL GAINS, REVALUATION OF ASSET, MORTGAGE OF LEASE HOLD ASSETS, MERGER OF ACQUISITION ETC...

- ▶ WHETHER INPUT MODVAT CREDIT IS PROPERLY TAKEN IN THE BOOKS AND ONLY 50% OF IT CAN BE USED TO SET OFF AGAINST RAW MATERIAL IN EACH YEAR, WHETHER THE GUIDELINES OF CENTRAL EXCISE ARE ADHERED TO
- ▶ WHETHER THE BANK HAS FUNDED FOR THE EXCISE DUTY IN ITS PROJECT APPRAISAL
- ▶ WHETHER THE COMPANY HAS AVAILED ADDITIONAL FUNDING EAR MARKING THE EXCISE DUTY ON FIXED ASSETS WITH SOME OTHER BANK OR FI
- ▶ CHECK WHETHER THE COMPANY IS WRITING OFF THE MODVAT CREDIT AND SOME COMPANIES AT TIME TAKE THE SAME WHILE AMORTORISING FOR DEPRECIATION
- ▶ CHECK WHETHER ALL THE REQUIRED RECORDS ARE KEPT AS THE EXCISE ACT

CHECK WHETHER ANY ECB IS RAISED TO ACQUIRE FIXED ASSETS IF SO WHETHER REQUIRED RBI PERMISSION IS OBTAINED AND WHETHER THE FOREIGN CURRENCY IS USED TO OBTAINED FIXED ASSETS OR IS IT DIVERTED TOWARDS WORKING CAPITAL.

SOME TIME COMPANIES RAIS ECB AND USE ONLY A PORTION OF IT TO ACQUIRE FIXED ASSETS AND LEAVE THE BALANCE FOR FUTURE USE, IN THAT CASE SEE THE OVERSEAS BANK STATEMENT, SANCTION AND END OF FUNDS STATEMENT AND SEE WHETHER THE BALANCE ECB IS KEPT IN THE OVERSEAS BANK

IS THERE ANY INSTRUMENT ISSUED TO THE LENDER AND IF SO WHETHER FEMA AND SEBI GUIDELINES ARE COMPLIED WITH

PROVISIONS

- ▶ SEE WHETHER THE PROVISION OF THE FOLLOWING IS PAID FOR LAST YEAR ARE STILL CARRYING FORWARD
- ▶ INCOME TAX
- ▶ TDS
- ▶ VAT
- ▶ GRATUITY
- ▶ PF
- ▶ ESI
- ▶ SERVICE TAX
- ▶ BONUS ETC...

OTHER ADVANCES - CURRENT ASSET

- ▶ IN THE OTHER ADVANCE NORMALLY COMPANY TEND TO INCLUDE THE AMOUNT GIVEN AS ADVANCE TO MD AND OTHER DIRECTORS, SEE WHETHER THE COMPANIES ACT PROVISIONS ARE COMPLIED WITH
- ▶ SOME TIMES RELATED PARTY TRANSACTIONS ARE SHOWN UNDER THIS HEAD SEE WHETHER PROPER DISCLOUSER IS MADE IN THE NOTES TO ACCOUNTS
- ▶ FOR HOW MUCH PERIOD IS THE ADVANCE SHOWN IN THE BOOKS, IS ANY INTEREST BEING RECEIVED ETC...

SUNDRY CREDITOR AND MISC. FIXED ASSETS ETC

- ▶ SEE WHETHER SUPPLIERS FROM SMALL SCALE SECTOR ARE PAID WITHIN THE STIPULATED TIME
- ▶ SEE THE APPORTIONMENT OF PRE-INCORPORATION, PUBLIC ISSUE EXPENSES AND BRAND BUILDING EXPENSES IS DONE AS PER THE COMPANIES AND INCOME TAX ACT
- ▶ CORPORATE SOCIAL RESPONSIBILITY IS COMPLIED BY THE COMPANIES TO WHOM IT IS APPLICABLE
- ▶ FUNDS PROVIDED TO POLITICAL PARTIES ARE WITHIN THE COMPANIES ACT GUIDELINES
- ▶ DEFERRED TAX

DEBTORS

- ▶ LOOK WHETHER PROPER PROVISIONING IS MADE FOR DOUBTFUL DEBTS
- ▶ LOOK WHETHER PROPER PROCEDURE OF RECOVERY IS FOLLOWED BEFORE ANY DOUBTFUL DEBTS IS WRITE OFF, THIS IS VERY COMMON PRACTICE BY COMPANIES WHICH BECOME SICK, THESE ARE SERIOUS VIOLATIONS OF INCOME TAX ACT
- ▶ SOME TIME EVEN WHEN THE RECEIVABLES ARE RECEIVED THE BALANCE SHEET ARE MIS-PRESENTED BY INFLATING THE DEBTORS THIS CAN BE CHECKED BY RANDOM SAMPLING AND ALSO LEDGER BALANCES

CURRENT ASSETS

- ▶ VALUATION OF INVENTORY - PURCHASE PRICE OR REALISABLE VALUE WHICHEVER IS LOWER, WHETHER OUTDATED INVENTORY AND SCRAP IS SHOWN AS PART OF INVENTORY. THIS IS VERY VITAL BECAUSE WE HAVE SEEN MOST OF THE COMPANIES INFLATE THE INVENTORY TO GET DP AND DO WINDOW DRESSING OF THE BALANCE SHEET AND LATER DATE BECOME NPA AND THEN SICK
- ▶ INTER DEPARTMENTAL TRANSFER OF STOCK AND ITS VALUATION
- ▶ MONTHLY VAT STATEMENT, INPUT CREDIT - CROSS CHECK
- ▶ DEBTORS - THIS IS AREA NORMALLY UNETHICAL COMPANIES PLAY - RANDOM CHECK IS REQUIRED

FRAUD

- ▶ SEC. 447 OF THE COMPANIES ACT, 2013 DEALS WITH PUNISHMENT FOR FRAUD PUNISHMENT WITH IMPRISONMENT FOR NOT LESS THAN SIX MONTHS AND IT CAN EXTEND UPTO 10 YEARS
- ▶ SEC. 448 OF THE COMPANIES ACT, 2013 DEALS WITH PENALTY FOR FALSE STATEMENT
- ▶ SEC. 204(4) OF THE COMPANIES ACT, 2013 PROVIDES THAT A COMPANY SECRETARY IN PRACTICE CONTRAVENES SEC. 204 HE HAS BE PUNISHED WITH A FINE NOT LESS THAN RUPEES ONE LAKH AND MAY EXTEND TO RUPEES FIVE LAKHS
- ▶ IF IS VERY IMPORTANT WHENEVER ANY FRAUD IS DETECTED IMMEDIATELY REPORT THE SAME
- ▶ BALANCE SHEET IS THE KEY

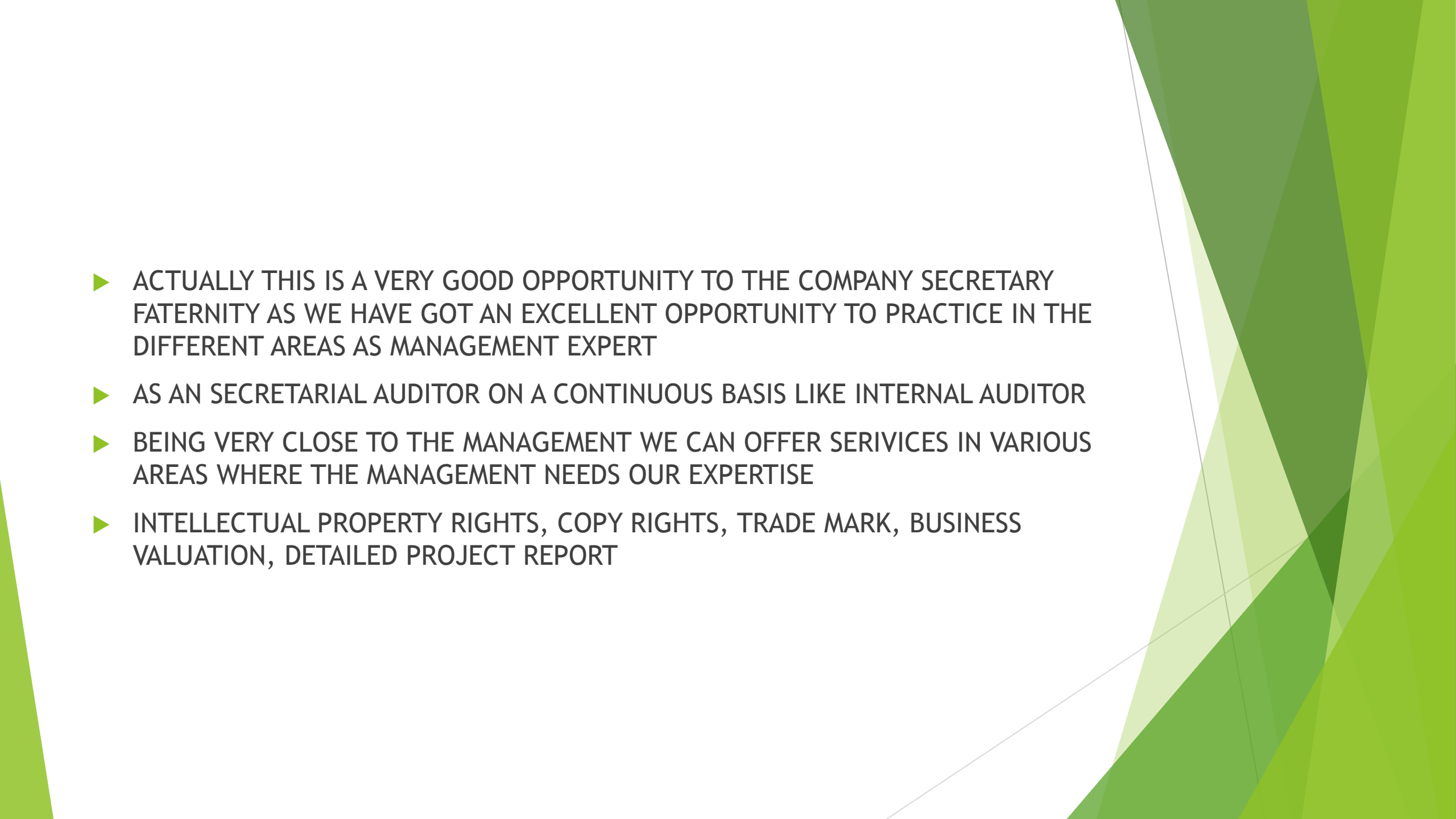
CORPORATE DEBT RESTRUCTURING

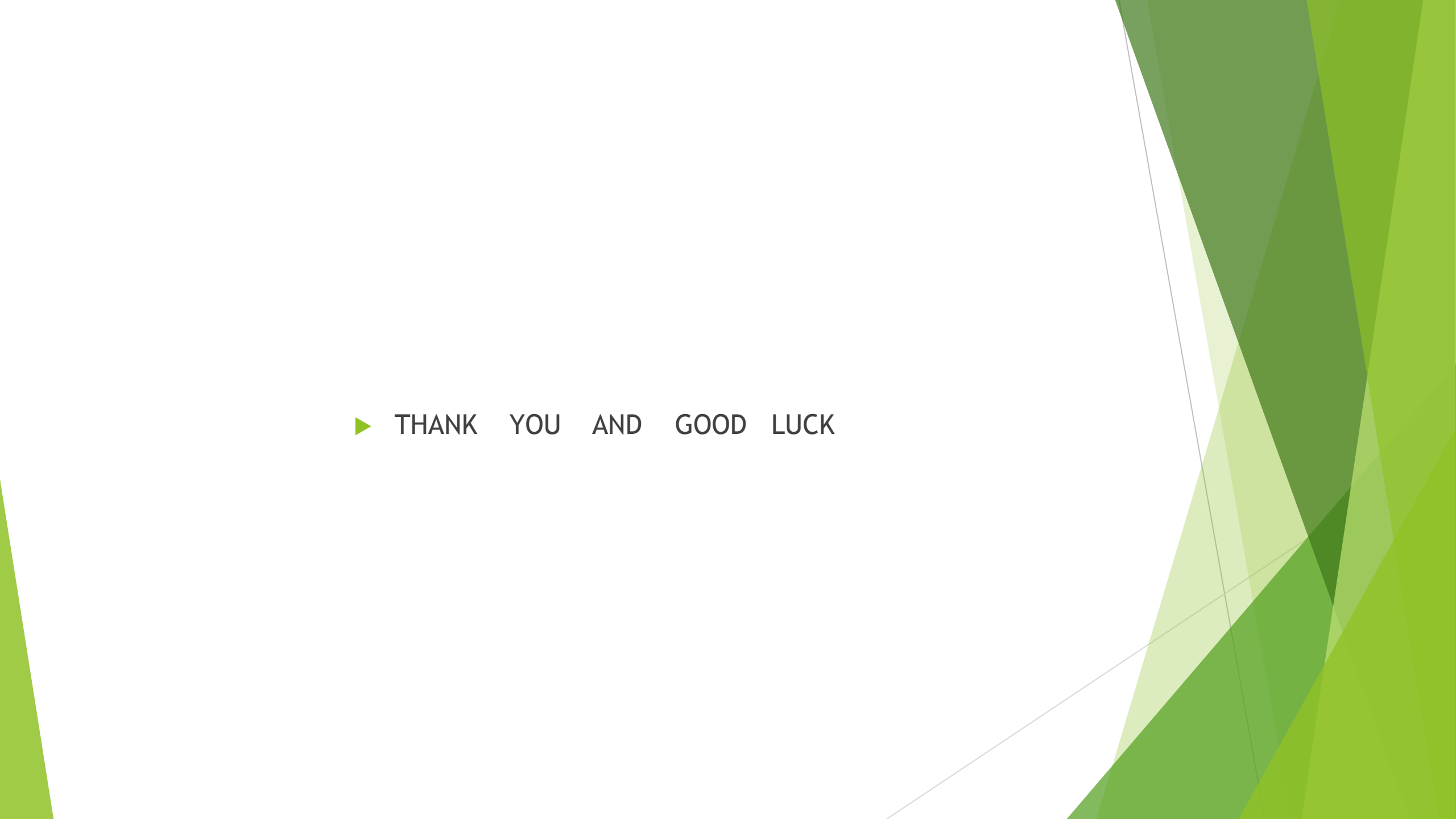
- ▶ WHENEVER ANY COMPANY GOES FOR CORPORATE DEBT RESTRUCTURING AS PER THE RBI GUIDELINES THERE ARE MANY CONDITIONS WHICH THE COMPANY HAS TO FULFILL, WHETHER RESOLUTION IS PASSED IN THE AGM OR EGM
- ▶ LIKE 25% OF THE SACRIFICE AMOUNT HAS BE BROUGHT IN BY THE PROMOTERS UP FRONT
- ▶ THE PROMOTERS NEED TO BRING IN MARGIN IN THE FORM OF ADDITIONAL EQUITY OR INTEREST FREE UNSECURED LOAN AND THIS SHOULD NOT BE RETURNED TO THE PROMOTERS TILL THE LOAN IS FULLY REPAYED
- ▶ IF ANY LOAN HAS BEEN CONVERTED INTO EQUITY WHETHER PROPER PROCEDURE IS FOLLOWED AND ALL THE GUIDELINES AS PER THE COMPANIES ACT, LISTING GUIDELINES AND SEBI IS FOLLOWED

DIFFERENT ACT APPLICABLE TO DIFFERENT SEGMENTS

- ▶ THE COMMON LAW APPLICABLE TO MOST OF THE MANUFACTURING UNITS
- ▶ LABOUR LAWS
- ▶ PROVIDENT FUND
- ▶ EMPLOYEES STATE INSURANCE
- ▶ GRAUTITY ACT
- ▶ PATENTS
- ▶ TRADE MARK
- ▶ COPYRIGHT

- 
- ▶ BOILER ACT
 - ▶ MINIMUM WAGES
 - ▶ POLLUTION CONTROL
 - ▶ BANKING ACT
 - ▶ INSURANCE ACT
 - ▶ PHARMA INDUSTRY
 - ▶ CEMENT INDUSTRY
 - ▶ CHEMICAL INDUSTRY - USEAGE OF HAZADEOUS CHEMICALS

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- The background of the slide features abstract, overlapping green geometric shapes in various shades of green, creating a modern and dynamic visual effect. The shapes are primarily located on the right side and bottom of the slide, with some extending towards the center.
- ▶ ACTUALLY THIS IS A VERY GOOD OPPORTUNITY TO THE COMPANY SECRETARY FATHERNITY AS WE HAVE GOT AN EXCELLENT OPPORTUNITY TO PRACTICE IN THE DIFFERENT AREAS AS MANAGEMENT EXPERT
 - ▶ AS AN SECRETARIAL AUDITOR ON A CONTINUOUS BASIS LIKE INTERNAL AUDITOR
 - ▶ BEING VERY CLOSE TO THE MANAGEMENT WE CAN OFFER SERIVICES IN VARIOUS AREAS WHERE THE MANAGEMENT NEEDS OUR EXPERTISE
 - ▶ INTELLECTUAL PROPERTY RIGHTS, COPY RIGHTS, TRADE MARK, BUSINESS VALUATION, DETAILED PROJECT REPORT

The background features abstract, overlapping green geometric shapes in various shades of green, primarily concentrated on the right side of the slide. The rest of the background is white.

► THANK YOU AND GOOD LUCK