National Seminar on Secretarial Audit, Hyderabad Chapter of ICSI

Genesis and Concept of Secretarial Audit

Section 204 of the Companies Act, 2013 and rules thereon Manner of Appointment, Role and Responsibility





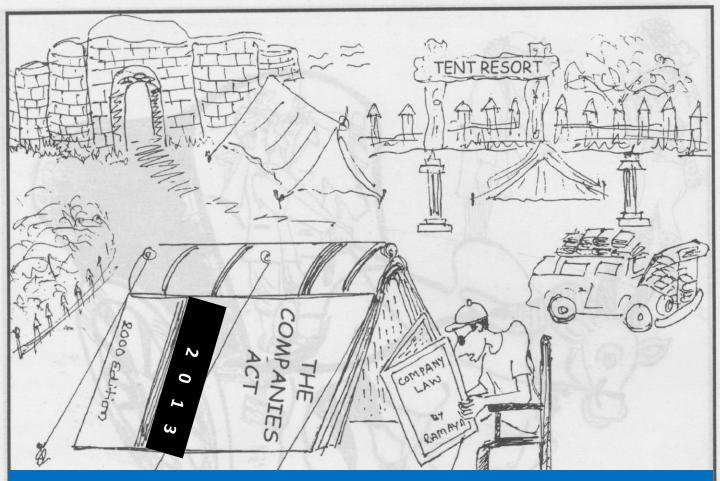




Long time ago, people who sacrifice their sleep, family, food, laughter and other joys of life were called SAINTS.

But now, they are called

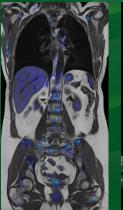




Here is a Company Secretary who has come here with his family to enjoy vacation











Evolution of Concept of Secretarial Audit (SA)

- ✓ Certificate Under Clause 47C of Listing Agreement -2000
- ✓ Corporate Governance Clause 49 of Listing Agreement Compliance Certificate by CA/PCS-2000
- ✓ Secretarial Companies Certificate- the Companies (Compliance Certificate) Rules, 2001 (Section 383A)
 - Unlisted companies with paid-up capital of Rs 10 lakh or more
- ✓ Secretarial Audit Report for reconciliation of total admitted capital with depositories and total issued and listed capital (CA or CS)

Evolution of Concept of Secretarial Audit

- ✓ Annual Return Certification
- ✓ Due Diligence certificates / reports for IPO, open offer, bonus issue, GDR issue, Banks etc.
- ✓ Secretarial Audit and
- ✓ Annual Return Signing/ certification (Companies Act 2013)

Functions of Company Secretary-Sec 205

- (1) The functions of the 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.

Functions of Company Secretary-Sec 205

- 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.

The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

- 10. Duties of Company Secretary.-
- The duties of Company Secretary shall also discharge, the following duties, namely:-
- (1) 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;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;

The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

Statutory Frame work of SA

The Companies Act, 2013

Secretarial Audit for Bigger Companies
Section 204
(1)-(4)

Section 142- Powers and Duties of Auditors and Auditing Standards

Rule 9 of the Companies
(Appointment and
Remuneration of Managerial
Personnel Rules, 2014

Appointment of SA- rule 8(4) of the Company (meetings of Board and its Powers) Rules, 2014

Form – MR-3

Secretarial audit for bigger companies (sec 204)

- Companies covered:
- (a) Every Listed Company (includes Companies whose debentures, warrants are listed) {only listing is criteria- Paid up capital and turnover has no relevance}.
- (b) Other class of companies:
 - (i) Every Public Company having a paid up share capital of fifty crore rupees or more
 - (ii) Every <u>public company</u> 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
- 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

Appointment of Secretarial auditor

- ➤ Board to appoint the Secretarial Auditor by resolution passed only at its meeting and fix his remuneration [Section 179(3)] read with rule 8(4) of the Company (meetings of Board and its Powers) Rules, 2014
- Company to file the resolution with ROC [Section 117(3)(g)] –MGT 14 within 30 days
- ➤ Period of Office: The Act is silent Appointment may be similar to statutory Auditor appointed under Section 139 (10 years whether Secretarial Auditor is a Proprietor or a firm) or it can be year to year.
- Obtain consent of the Secretarial Auditor

Signing- P-10

Applicable Statutory
Provisions/Statutory Comp,
P-1

Verification of Books ,papers, minutes, forms, returns filed : P-2

*SCRA, Specified SEBI Regulations,
Listing Agreement DP Act, FEMA
(limited) P-3

other laws as may be applicable specifically to the company P-3

Secretarial Standards of ICSI-P-3

Specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws. P-9

The Adherence to Good
Corporate Practices
/Corporate Conduct P-1

Proper Board Processes and Compliance Mechanism in place P-2

Constitution of Board of Directors
P-5

Adequate notice to directors for Board Meetings, agenda and detailed notes on agenda, system for seeking further information and clarifications before the meeting for meaningful participation.

Dissent and its recording P-6,7

Adequate systems and processes –P-8

Secretarial Audit is also a Compliance Audit

- Apparent Compliance
- Adequate Compliance
- Absolute Compliance



Professional Capacity is the wealth

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 and environmental laws.

PDII:CA-2013 December 22, 2014

Dear Professional Colleagues,

Sub: Scope of Secretarial Audit under section 204 of the Companies Act. 2013

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
 - o Companies Act, 2013,
 - Securities Contracts (Regulation) Act, 1956 ('SCRA'),
 - Depositories Act, 1996,
 - Foreign Exchange Management Act,
 - Securities and Exchange Board of India Act, 1992;
- 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.

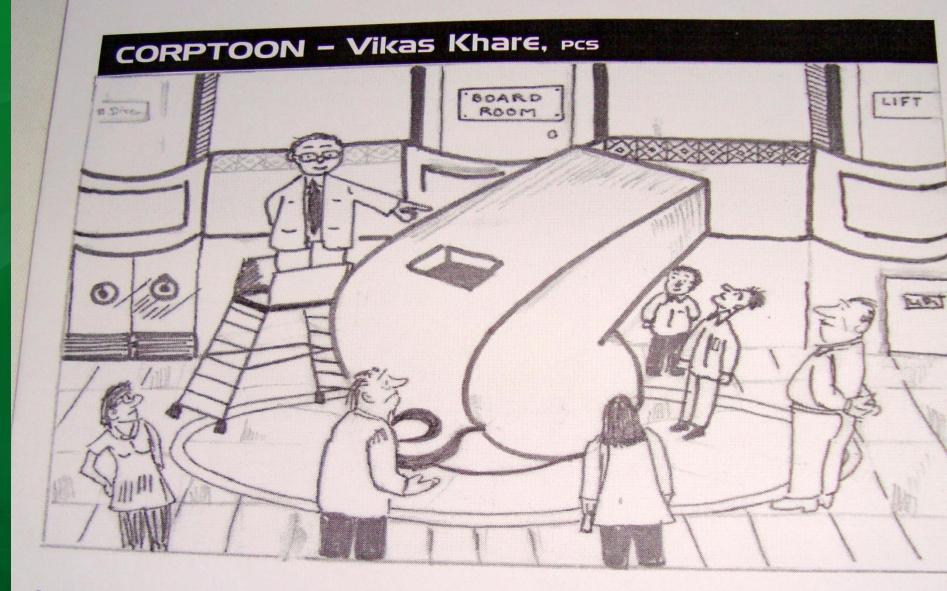
Preparing for Secretarial Audit (SA)

- Capacity Building
- Building In house Library for doing required R&D
- Preparing Checklists Templates and Matrix for conducting SA
- Structuring Template for Secretarial Audit Process
- Pooling of Professional Resources, if required.
- Understanding New Concepts/ processes under the Companies Act, Board Composition, Preferential Allotment, Board meeting through Video Conferencing, E-Voting.

Preparing for Secretarial Audit (SA)

- Clause 49 of Listing Agreement
- Secretarial Standards of ICSI (SS1 and SS2 -as submitted to MCA)
- Guidance Note is issued by the Institute of Company Secretaries of India for the Secretarial Audit & the preparation of SAR.
- Adherence to the guidance note will be a defense in case of action against PCS.

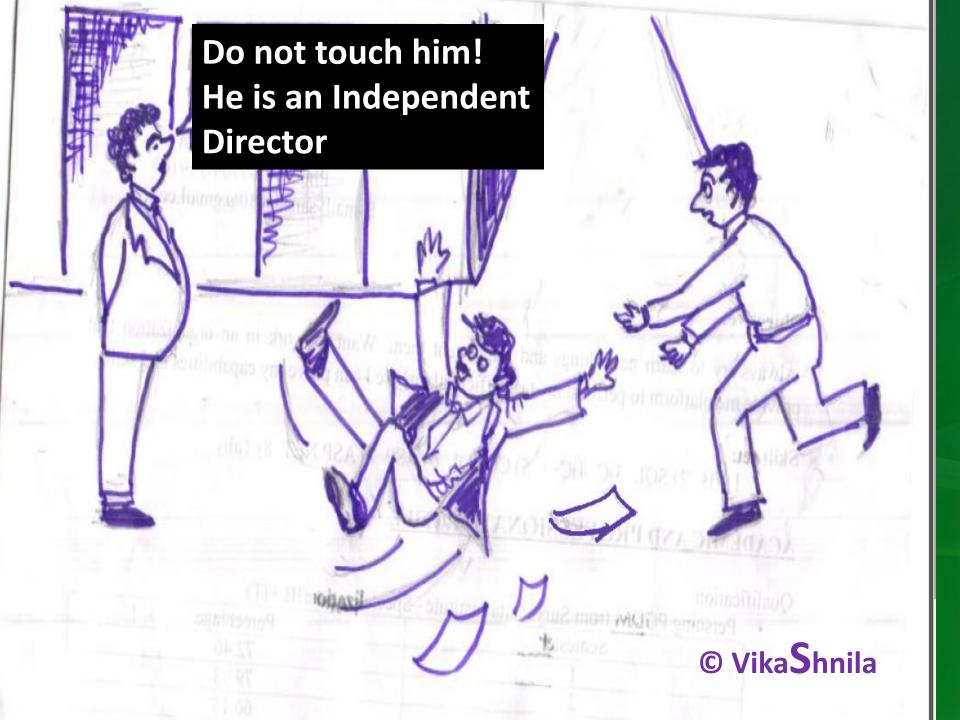




I am pleased to announce that whenever you will observe an unethical or improper practices in our company BLOW THIS WHISTLE without any fear.



Considered the legal definitions, guidelines, solicitors' pinions and finally found that only this ROBOT can be ppointed as an Independent Director



SECRETARIAL AUDIT PROCESS

- RECEIVE FORMAL LETTER OF APPOINTMENT
- PRELIMINARY DISCUSSIONS
- TEAM BUILDING In House Training
- PREPARING AUDIT SCHEDULE
- DECIDE AUDIT TOOLS TO BE USED-TEST CHECKS, INTERVIEWS AND ANALYSIS
- TAKE SEARCH OF A COMPANY ON MCA AND STOCK EXCHANGE WEBSITES, COMPANY WEB SITE

SECRETARIAL AUDIT PROCESS

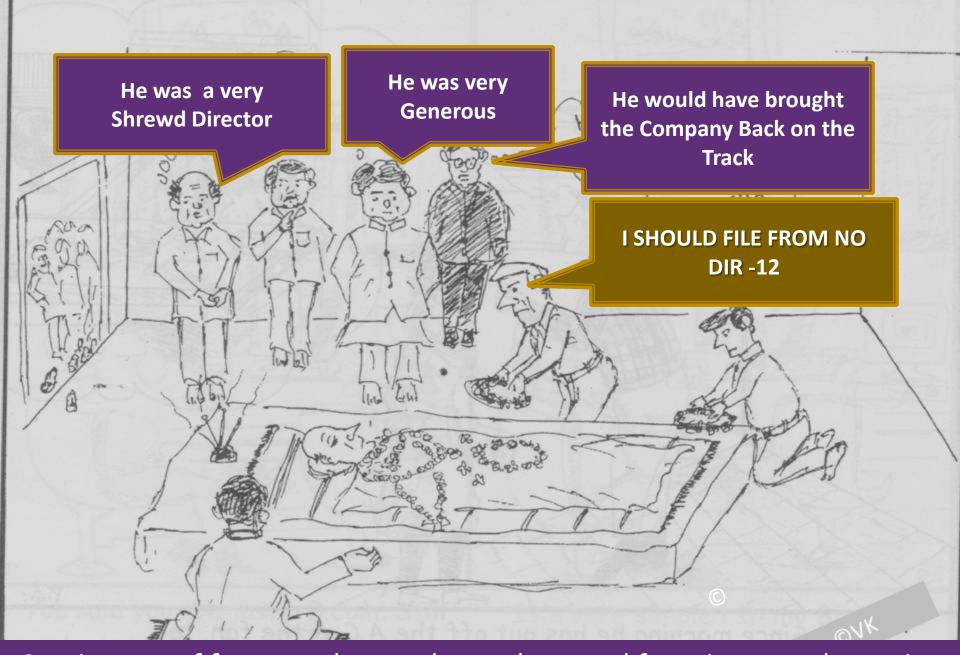
- FORM UNBIASED AND OBJECTIVE VIEW
- THOUGH ADMITTEDLY CERTAIN SUBJECTIVITY EXISTS – WHEN ONE EXPRESSES AN OPINION
- AUDIT DIARY
- KEEPING AUDIT TRAILS
- PREPARE DRAFT REPORT / FINAL AUDIT REPORT
- PRESERVING SECRETARIAL AUDIT AND SUPPORTING PAPERS FOR 8 YEARS

SECRETARIAL AUDIT PROCESS

- A letter of representation will have to be obtained from the auditee company before reporting about so many things including inter alia:
- Whether further information or clarification on agenda was called by directors. If yes, whether the same was provided or not? In what manner meaningful participation is to be ensured in the meeting?
- Whether any dissent was expressed by any director. If yes, whether the same was recorded or not?
- Whether any event or action took place in the auditee company which may have bearing on the compliances under various law, regulations, guidelines, standards and etc. e.g Whether a register kept open for inspection?
- Answers to such and few other questions can be given only by the auditee company and PCS cannot verify these independently.

Mind set change

PCS Should come out of typical mind set and need to understand micro issues of Corporate Governance and Substantive Law as SA is going to be very Challenging and will prove as game changer for CS profession.



Coming out of forms and procedures alone and focusing on substantive law is crucial for Secretarial Audit

The relevance of SAR

- The relevance of SAR is to the stakeholders consisting of shareholders, creditors regulators, government and public at large.
- Secretarial Audit is an independent objective Assurance intended to add value & improve the quality & compliance level of the Company.
- There has to be systematic and disciplined approach towards the Secretarial Audit by the Secretarial Auditor as well as the company.

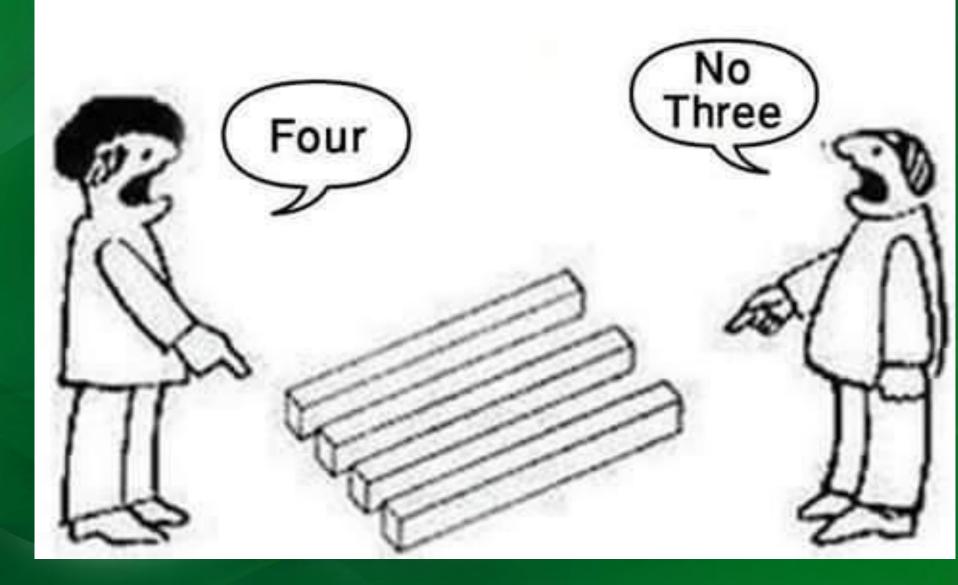
Managing Professional Relationship between ECS and PCS

- ECS and PCS should Appreciate that they have to play respective role in the activity of Secretarial Audit;
- Ego clashes should not affect the quality and outcome of Secretarial Audit;
- ECS and PCS should understand each other's stand point in the best interest and purpose of the Secretarial Audit.
- Age and experience of ECS and PCS should not come in way of the assignment.

Managing Professional Relationship between ECS and PCS

- ECS and PCS should be fair and professional to each other.
- ECS should appreciate that he opinion of an independent party is needed because a company may not be objective with respect to its own documents and records which is subject matter of Secretarial Audit.
- Any qualification in Secretarial Audit report shall be taken in proper perspective and spirit.
- Many such situational and role conflicts need to be managed from time to time.

It is really confusing!!!



How do you spell the color Grey or Gray? Which is correct ...

Well, the answer is they are **both correct**. There are two acceptable spellings. Gray is used primarily in the United States and other areas that use US English.

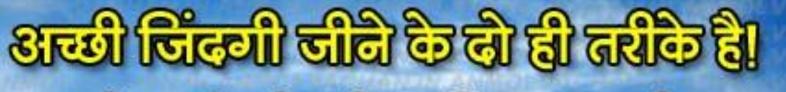




Any fool can make things complicated, it requires a to make things simple.

E.F. Schumach

meetville.com



- १. जी पसंद है उसे हासित कर ली !
- 2. जी हासिल है उसे पसंद करना सीख ली !





Difficult roads often lead to beautiful destinations.



Always have gratitude for the ICSI for pitching for the Secretarial Audit for two decades. Let us support ICSI for taking Secretarial Audit to new and enviable height. Only **WE** can contribute in that pursuit.





YOURS CS VIKAS KHARE

cs.vikaskhare@gmail.com 09881231509