



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CL: MCA: 2023

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Secretary
Ministry of Corporate Affairs
Government of India
Shastri Bhawan
New Delhi-110001


Ministry of Corporate Affairs

August 24, 2023

Dy. No. 1938 /R & I/MCA

Date 25/8/2023

**Subject: Request for amendment in section 204 and section 149(6) (e) (ii) (A)
of the Companies Act, 2013**

Reference: ICSI Letter dated July 07, 2023

Respected Sir,

We wish to draw your kind attention towards the provisions of section 204 (Secretarial Audit for Bigger Companies) of the Companies Act, 2013 (the Act) which reads as under:

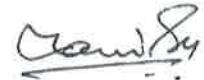
'(1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.

(2) 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.

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be liable to a penalty of two lakh rupees'.

In this regard, we wish to state that the above-mentioned section provides for the secretarial audit of specified companies, however the term 'Secretarial Auditor' is not defined anywhere under the Act or rules made thereunder. Further, the Act provides for the secretarial audit report to be prepared by the 'Company Secretary in Practice' in his individual capacity and does not include the terms 'Secretarial Auditor or Secretarial Audit Firm'. However, in case of statutory auditor, the term 'audit firm' is provided in section 141 and its proviso in the Companies Act, 2013 for eligibility, qualifications and disqualification of statutory auditors of the company which reads as under:



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'141. (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners authorized in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.'

In view of above, we hereby submit that a proviso may be inserted to sub-section (1) of section 204 of the Companies Act, 2013, in following manner:

'Provided that a secretarial audit report shall be given by the company secretary in practice or firm of secretarial auditors or a firm whereof majority of partners practicing in India are qualified for appointment as secretarial auditor and may be appointed by its firm name to be the secretarial auditor of a company'.

Further, we wish to draw your kind attention towards section 149(6)(e) (ii)(A) of the Companies Act, 2013 which reads as under:

"149 (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, --

(e) who, neither himself nor any of his relatives--

(i)...

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of--

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or consulting firm that has or had any transaction with the company, its holding, subsidiary, or associate company amounting to ten per cent. or more of the gross turnover of such firm;"

In terms of the above provisions, for being appointed as independent director, a person, *inter-alia*, should not be employee/ proprietor/ partner of firm of a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company in the last 3 financial years.

In this regard, we wish to submit that a company secretary in practice is restricted to become independent director of a company even if he is rendering any consultancy services. However, the other professionals are restricted only if they are rendering services as statutory auditors or cost auditors.



In order to bring parity, it is submitted that the secretarial auditor be restricted for being eligible for appointed as independent director in such companies and not any other company secretary in practice. Accordingly, the term 'company secretary in practice' be replaced with the term 'secretarial auditor' in the above mentioned clause of section 149 of the Companies Act, 2013 as under:

Section 149(6)(e)(ii)(A): a firm of auditors or ~~company secretaries in practice~~ secretarial auditor or cost auditors of the company or its holding, subsidiary or associate company; or

We request you to kindly consider the submission favorably while carrying out the amendments in the Companies Act, 2013.

We shall be pleased to provide any further information in this regard on hearing from your goodself.

Thanking You,

Yours faithfully,

(CS Manish Gupta)

President

The Institute of Company Secretaries of India