



**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

Shri Manoj Govil, IAS  
Secretary  
Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan  
New Delhi -110001

  
Ministry of Corporate Affairs  
Dy. No. 1990/R & I/MCA  
Date 25/8/2023

August 24, 2023

**Subject: Appointment and Removal of Secretarial Auditor  
under the Companies Act, 2013**  
Ref: ICSI Letter dated March 22, 2017 and October 12, 2018

Dear Sir,

The Institute of Company Secretaries of India with its vision "to be a global leader in promoting good corporate governance" has been working tirelessly through its members to strengthen the existing corporate governance framework of the India Inc. The role played by Company Secretaries both in employment and in practice has been well recognized under the Companies Act, 2013.

The Company Secretaries in practice have been known to maintain transparency and ensure compliance by way of Secretarial Audit as prescribed under the Act. However, the Companies Act, 2013 does not provide the manner of appointment and removal of Secretarial Auditor.

While the powers and duties and of auditors including reporting of fraud as contained in section 143 have been extended *mutatis mutandis* to the Company Secretary in Practice conducting secretarial audit under section 204, the provisions with regard to the appointment of auditors as contained in sections 139 and 140 have not been extended to Company Secretary in Practice conducting Secretarial Audit.

#### Submissions

Akin to statutory auditors, the Secretarial Auditors are also required to be independent of the management of the company. Just as the Auditor's reports of Financial Statement, the report of Secretarial Auditor on compliance of all the applicable laws by the company concerned is placed before the shareholders as per Form MR-3 prescribed for the purpose. Therefore, as shareholders are empowered with the appointment and removal of Auditors at annual general meeting; in case of Secretarial Auditors, since their reporting is to the shareholders, their appointment and removal should also be by the shareholders.

Furthermore, Secretarial Auditors have been assigned with the responsibility of reporting fraud to the Central Government under section 143(12) of the Act and if their appointment or removal will be subject to approval of management, the reporting may become subject to scrutiny of the management and hence defeat the purpose of independent reporting to shareholders and Central Government. Therefore, the secretarial auditor should be appointed in the Annual general Meeting of the company and other provisions with regard

#### Vision

"To be a global leader in promoting  
good corporate governance"

#### Motto

सत्यं वद। धर्मं चर।  
Speak the truth. Conduct by the law.

#### Mission

"To develop high calibre professionals  
facilitating good corporate governance"



to the term, rotation etc. should also apply. His removal should also be at the AGM of the company.

*Appointment of Secretarial Auditor of the Government Companies by CAG*

It is also submitted that the appointment of Secretarial Auditor of the Government Companies also be made by CAG in the same manner as Statutory Auditor is appointed. Accordingly, suitable amendment be made in Section 204 of the Companies Act, 2013.

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

Thanking You,

Yours faithfully,

(CS Manish Gupta)

President

The Institute of Company Secretaries of India