Presentation on

Secretarial Audit

Applicable laws
including sector specific laws

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Legal Background
Clause 49 - Listing Agreement

- Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.
Section 205(1)(a)

Functions of the Company Secretary to Report to the Board about compliance with:
- the provisions of this Act,
- the rules made thereunder; and
- other laws applicable to the company.
Section 134(5)(f)

The Directors’ Responsibility Statement (DRS) shall state that—
The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and;
that such systems were adequate and operating effectively.
Secretarial Audit Report
Section 204 read with Rule 9

Applicability

- Every Listed Company
- Every Public Company:
  - Paid up capital exceeding Rs. 50 crores; or
  - Turnover exceeding Rs. 200 crores

Shall annex with its Board Report made u/s. 134(3), a Secretarial Audit Report (“SAR”) given by a Company Secretary in practice.
MR -3

• Reporting on compliance of:
  • Companies Act, 2013,
  • Securities Contracts (Regulation) Act, 1956 (‘SCRA’),
  • Depositories Act, 1996,
  • Foreign Exchange Management Act,
  • Securities and Exchange Board of India Act, 1992
• Other laws as may be applicable specifically to the company
MR -3

- Apart from Reporting on compliance of laws, the examination of applicable clauses of
  - Secretarial Standards issued by ICSI
  - The Listing Agreements
Confusion & Ambiguity

- Review Compliance Report of all laws applicable to the company - Cl.49
- CS to report about compliance of other laws applicable to the company – S205
- Directors devise proper system to ensure compliance with provisions of all applicable laws – S134;
Confusion & Ambiguity

- Have conducted the secretarial Audit of the Compliance of applicable statutory provisions and adherence to good corporate practices by .......
- Secretarial Report on other laws as may be applicable specifically to the company;
Confusion & Ambiguity

- Report that there are adequate systems and process in the company commensurate with the size and operations of the company to monitor and ensure *compliance with applicable laws, rules, regulations and guidelines.*
Objective of the process

For Government
- Good Governance
- Clause 49 – Improvement

For Director
- System and compliance of all laws

For Company
- Hassle free working

For Directors & Company
- Save Hassle, Image & Resources

Common Objective
- Compliance of all laws
Role of Scrutinizer/ Auditor

- Statutory Duty
- Value addition
- Comfort to Directors & Executive Management & CS
Practice in HMCL
Applicable laws
The Environment (Protection) Act, 1986

- Prohibition of emission or discharge of environmental pollutant

The Environment (Protection) Rules, 1986

- Furnishing of information of accident or event, caused due to pollution
- Submission of Environment Statement
The Water (Prevention and Control of Pollution) Act, 1974

- Prohibition of using of stream or well for disposal of polluting material etc.
- Application for obtaining consent for using new outlet for discharge of sewage
- Furnishing of Information of excessive discharge of pollutants caused due to an accident or unforeseen events
The Water (Prevention and Control of Pollution) Cess Act, 1977

- Payment of cess

The Water (Prevention and Control of Pollution) Cess Rules, 1978

- Affixing Meters
- Furnishing of Returns
The Air (Prevention and Control of Pollution) Act, 1981

- Prohibition for emission of Air pollutant in the excess of standards
- Restriction on use of industrial plants
The Hazardous Wastes (Management Handling and transboundary Movement) Rules, 2008

- Safety precaution while handling Hazardous wastes
- Application to obtain authorization for handling hazardous wastes
- Comply the condition specified in the Authorization
- Maintenance of Record of Hazardous wastes
- Submission of Annual Return of operations of Hazardous Wastes
- Maintenance of record hazardous waste sold, transferred and stored etc.
The Hazardous Wastes (Management Handling and transboundary Movement) Rules, 2008

- Condition for sale or transfer of hazardous wastes for recycling
- Transportation of Hazardous wastes
- To provide transporter relevant information
- Marking of Hazardous wastes containers
- Design and Setting up of Disposal facility for hazardous wastes
- To obtain approval for design and lay-out
- Packaging and labeling of Hazardous wastes
- Reporting of Accidents
- Obtaining prior approval before utilization of hazardous waste as supplementary resource or energy recovery
The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989

- Safety of the workers engaged in handling hazardous chemicals
- Submission of report of Major Accident
- Notifying the step taken to avoid any repetition of the accident
- Obtaining Approval of site of Hazardous chemicals
- Conducting mock-drill of the on-site emergency plan
- Submission of report of Mock-drill
- Preparation of site emergency plan
- Labeling or marking of container of Hazardous chemical
Gas Cylinders Rules, 2004

- To obtain prior approval for filling, possession, import and transport of Cylinders
- Marking on
  - Gas Cylinders
  - Permanent and liquefiable gas Cylinders
  - Valves
- Labeling of Cylinders
- Special precaution against accidents
- To Prevent person from committing any act, which cause fire or explosion, near the place storage of cylinder
Gas Cylinders Rules, 2004

- Manner of Storage of Cylinder
- Earthing of Electric apparatus
- Attachment of warning
- General precautions for maintenance of gas cylinders
- Manner of Disposal of compressed gas, in case of the expiration, suspension, cancellation of License
- Notice of accident to
  - the Chief Controller
  - the nearest Police Station
  - the District Magistrate
The Static and Mobile Pressure Vessels (Unfired) Rules, 1981

- Prohibition of
  - employment of children and intoxicated person
  - smoking, fires, lights and dangerous substance near the vessel
- Special precaution against accidents
- Marking on Pressure Vessels
- Painting of vessel
- To Prevent person from smoking and carrying match, fires or article cause ignition near the place Vessel
The Static and Mobile Pressure Vessels (Unfired) Rules, 1981

- Annual test of relief valves of static pressure vessel
- Maintenance of record of test
- Periodic testing of pressure vessel
  - in service and containing corrosive or toxic gases
- Periodic testing of Cryogenic pressure vessel and vessel for liquid carbon dioxide in service
- Obtaining certificate of test from the competent person
- Fencing and earthing
- Cleanliness around the vessel
- Arrangement of fire protection
The Petroleum Rules, 2002

- Application for Approval of Container
- Construction of Containers of Petroleum Class A, B & C
- Exhibition of warning on containers
- Prevent escape of petroleum
- Prohibition of
  - employment of children and intoxicated persons
  - smoking, fires, lights near the petroleum substance
- Take special precaution against accident cause due to Petroleum
- Taking precaution to prevent fire
The Petroleum Rules, 2002

- Manner of Cleanliness of Installation, service station or storage shed
- Providing drainage facilities near installation or storage shed
- Precautions for preventing access of unauthorized person in storage or installation
- Fencing of installation and storage shed
- Prohibition of using storage shed or installation other than storage of petroleum
- Marking of capacity of tanks
The Petroleum Rules, 2002

- Construction of storage tanks
- Height of the storage tank
- Protect the storage tanks and Receptacles against corrosion
- Standard of Air space in the storage Tank
- Obtaining and Furnishing Certificate of Safety
- Marking of Number of license at storage shed
- Notice of accident to the
  - Chief Controller and nearest police station
- Restriction against loading/unloading of tank vehicle and on loading/unloading of petroleum at night
State Specific Non-Biodegradable Garbage (Control) Act, 1998

- Prohibition to throw garbage in public drains and sewage
- Place non-biodegradable garbage designated places
- Duty of owner/occupier to collect and deposit non-biodegradable garbage
- To provide for separate receptacles or dustbins
The Bio-Medical Waste (Management & Handling) Rules 1998

- Treatment and disposal of waste in accordance with the standards prescribed
- Segregation of bio-medical waste at the point of generation
- Labeling of bio-medical waste
- Application for Grant of authorization and to operate a bio-medical waste facility
- Annual report to the Authority
- Reporting of the accident
The Boiler Act, 1923

- Application
  - of Registration of Boiler
  - for renewal of Registration certificate
- Marking the Registration No. on the Boiler
- Prior approval of Chief inspector for making any alteration, addition or renewal to structure of Boiler
- Report of accident
The Motor Vehicles Act, 1988

- Prohibition of
  - driving motor vehicle without driving license
  - alteration in motor vehicle
- Prohibition to use motor vehicle without having insurance against third party risk
- Application of
  - Registration of Motor vehicle (Including Trailer)
  - Renewal of Certificate of Registration
  - Assignment of new registration mark
- Application for grant of Authorization for National permit
The Motor Vehicles Rules, 1989

- Display of the Registration mark on the motor vehicles
- Size of letter and numeral of the Registration mark
- Report of transfer of ownership of motor vehicle within State
- Report of transfer of ownership of motor vehicle outside the State
- Endorsement of hire-purchase, lease or hypothecation Agreement
- Prohibition of alteration in motor vehicle
State Specific Plastic Bag (Manufacture, Sales and Usage) And Non-Biodegradable Garbage (Control) Rules, 2002

- Prohibition of manufacture, sale and usage of recycled plastic bags for food
- Prohibition on throwing garbage in public places, drains sewer etc.
- Provide separate receptacles or dustbins
The e-waste (Management and Handling) Rules, 2011

- Channelisation of e-waste
- Maintenance of Records of e-waste
Labour Laws
Payment of Bonus Act, 1965

- Eligibility of Bonus
- Payment of Minimum bonus and Maximum bonus
- Time limit for payment of bonus

Payment of Bonus Rules, 1975

- Maintenance of Register of
  - Computation of the Allocable surplus
  - Set-on and set-off the Allocable surplus
  - Showing the amount of bonus
- Submission of Annual Return of bonus paid
The Employees State Insurance Act, 1948
The ESI(General) Regulations, 1950

- Registration of Factory
- Deposit of
  - Employees' Contributions
  - Employer's Contributions
- Submission of
  - Half-yearly Return of contributions
  - Return of Contributions on closure or demand
  - Statement of Abstention verification
- Maintenance of Register of Employees
The Employees State Insurance Act, 1948
The ESI(General) Regulations, 1950

- Maintenance of
  - Accident Book
  - Inspection Book
- Notice of accident and Report of Accident
- Furnishing particulars of accident
- Report of death of employee caused by employment injury
- No dismissal or punishment to employee during period of sickness
The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employees Provident Funds Schemes 1952
- Payment of contribution
- Maintenance of Inspection notebook
- To obtain declaration from new employee.
- Furnishing of particulars of ownership and change thereof

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Submission of Electronic Challan cum Return (ECR)

The Employees Deposit Linked Insurance Scheme, 1976
- Submission of Monthly Contribution Statements

The Employees Pension Scheme, 1995
- To obtain declaration from new employee.
The Apprentices Act, 1961

- Training of apprentices in the ratio as prescribed.
- Payment to apprentices
- Providing health, safety and welfare of apprentice
- Compensation for injury
The Apprentices Rules, 1962

- Registration of contract of apprenticeship
- Compensation in case of termination of apprenticeship
- Hours of work, overtime, leave and holidays
- Qualification of person placed in-charge of training of apprentices
- Report for
  - Half year Ending June and December
- Submission of
  - Index Card upon engagement of graduate or technician or technician (Vocational) apprentice
The Contract Labour (Regulation and Abolition) Act, 1973

Responsibility for payment of wages

Contract Labour (Regulation & Abolition) Central Rules, 1971

Nomination of authorized person
The Minimum Wages Act, 1948

- Fixation of minimum rate of wages as prescribed by the government
Factories Act, 1948

- Records of Compensatory holidays
- Maintenance of sufficient and suitable Lighting
- To maintain lighting as per standard
- Notice of charge of manager to be send
- Application for approval of plans
- Maintenance of record of Particulars of work room
- Application for Registration of the factory
- Application for grant of license
- Application for Amendment of License
The Payment of Gratuity Act, 1972

- Payment of
  - Gratuity amount
  - Premium of insurance or contribution towards fund
- Taking compulsory Insurance Policy
- Establishes Approved Gratuity Fund
- Registration of establishment
The Payment of Wages Act, 1936

- Maintenance of Register of wages
- Fixation of wage periods
- Time and days of payment of wages
- Display of wage rates
- Display of the notice of Payment of wages
- Deductions for absence from duty and loss
- Maintenance of Register of Deduction for damage or loss
- Deductions for recovery of advances and Loans
- Display of approved list of act and omission
The Payment of Wages Act, 1936

- Submission of list of act and omission
- Information to be given to paymaster
- Submission of Annual Return of fines
- Display of the notice of abstract of the Act
- Payment of undisbursed wage
- Register of Advance
The Inter-State Migrant Workmen (Regulation of Employment and conditions of Service) Act, 1979

- Registration of establishments
- Prohibition of employment of inter-state migrant
- Wages, welfare and other facilities to the inter-state migrant workman
- Payment of wages to the inter-state migrant workman
- Payment to be made in the presence of the representative of the principal employer
The Maternity Benefit Act, 1961

- Payment of maternity benefit
- Leave for tubectomy
- Submission of Annual Return
- Receipt of Maternity Benefit Payment
- Payment of maternity benefit in case of death of woman
- Payment of medical bonus
- Leave for
  - miscarriage etc. & payment of said leave
- Display of Abstracts of Act and Rules
The Industrial Dispute Act, 1947

- Constitution of Works Committee
- Notice of permission for retrenchment of workmen
- Half-yearly return on the constitution and functioning of Works Committee
- Setting of Grievance Settlement Authority
- Payment of full wages during the pendency of proceedings in Higher courts
- Prohibition of Lock-out
  - during Conciliation proceedings
  - during pendency of proceedings before Labour Court, Tribunal or National Tribunal
The Industrial Dispute Act, 1947

- Prohibition of Lock-out
  - during pendency of arbitration proceedings
  - of any workman operation of Settlement or Award
- Compensation in case of Retrenchment
- Re-employment of retrenched workmen
- Notice of permission for closure
- Application for permission for closure
- Copies of application for permission for closure
The Industrial Employment (Standing Orders) Act, 1946

- Submission of
  - Draft Standing Orders
- Statement to be attached with order
- Posting of Standing Orders
- Payment of Subsistence allowance
The Equal Remuneration Act, 1976

- Duty of employer to pay equal remuneration
- No discrimination in recruitment
- Maintenance of Register
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules

- Constitution of an Internal Complaints Committee
- Action during the pendency of an inquiry
- Actions to be taken by employer after completion of Inquiry report.
- Punishment for false or malicious complaint and false evidence.
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules

- Committee to submit Annual Report
- Information in the Annual Report.
- Duty to produce information or records if demanded by Inspection Officer
The Employees' Compensation Act, 1923
(earlier known as Workman’s Compensation Act, 1923)

- Liability of compensation in case of personal injury
- Payment of
  - compensation in case of death
  - compensation in case of legal disability or compensation to a woman
  - any other compensation
- Maintenance of Notice book of the accidents
Trade Unions Act, 1926

- Compliance with respect to the provisions of the Act.
State Specific Laws

- Compliance with all state specific laws, acts, rules as the case may be.
Thank you