How to Begin

Secretarial Audit

(Compliance of All Applicable Law)

27/03/2015
Introduction & Objective

Secretarial Audit
Introduction

Secretarial Audit is a process to Check–

- Compliance of ALL APPLICABLE LAWS;
- ADEQUACY of SYSTEM & PROCESSES to manage compliance of all applicable laws;

By an independent professionals.
Objective & Need

To fascinate INDUSTRY in complying of all applicable law

Fascinate industries to lays down the foundation of Good Corporate Governance

Helps the INVESTORS in taking informed investment decision

Strengthen the image and goodwill of a company

Secretarial Audit is an effective compliance risk management and Governance tool

Provides a level of confidence to the BOD

Protect the interest of SOCIETY & STAKEHOLDERS

Reduce the burden of the REGULATORS in ensuring compliance

Secretarial Audit is an effective governance tool.

Secretarial Audit is to be on the principal of “prevention is better than cure” rather than post mortem exercise and to find faults.
Advantages of Secretarial Audit

- Easy Quantification of risk
- Establishing Risk appetite
- Identify and prioritize controls
- Multitude of Compliance obligations
- Building Strong Foundations
- Extended Confidence to
  - Investors
  - Independent Directors
  - Management
- Gaining Competitive Edge
- Good Compliance System leads to
- Excellence in Operations
Types of Audit
<table>
<thead>
<tr>
<th>Particulars</th>
<th>Statutory Audit</th>
<th>Internal Audit</th>
<th>Cost Audit</th>
<th>Secretarial Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability</td>
<td>All Companies</td>
<td>Such class of companies as may be prescribed under Section 138 of CA 2013</td>
<td>Such class of companies engaged in the production of such goods or providing such services as may be prescribed under Section 148 of the CA 2013</td>
<td>Every Listed Company and a company belonging to other class of companies as may be prescribed under Section 204 of the CA 2013</td>
</tr>
<tr>
<td>Auditor</td>
<td>CA</td>
<td>CA / CMA</td>
<td>CMA (Practice)</td>
<td>CS (Practice)</td>
</tr>
<tr>
<td>Scope of the Audit</td>
<td>Audit of the Financial Records and Financial Statement of the Company</td>
<td>Involve s in the Audit of day to day function and activities of the company</td>
<td>Audit of the Cost records of the Company</td>
<td>Review of proper Compliance Management System in the Company;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Audit of Compliance of ALL APPLICABLE LAW on the Company.</td>
</tr>
<tr>
<td>Reporting Point</td>
<td>Members</td>
<td>Board of Directors</td>
<td>Board of Directors</td>
<td>Members (with the Annexure to Board Report)</td>
</tr>
<tr>
<td>Periodicity</td>
<td>Yearly</td>
<td>To be prescribed by Audit Committee / BOD</td>
<td>Yearly</td>
<td>Yearly</td>
</tr>
</tbody>
</table>
Begin the New Era of Secretarial Audit
Companies Act - 2013
Sec 204 of Companies Act 2013: Secretarial Audit for Bigger Companies
Applicability – Present Rules

Applicable to

✓ All Listed Companies and
✓ Public Companies

- Paid up Capital of Rs. 50 Cr or more; Or
- Turnover of Rs. 250 Cr or more

Secretarial Audit Report shall be annexed to the Board Report.

Board in their Report to explain in full any qualification or observation or other remarks made by PCS in his report.
All Applicable Laws– System Part

Adequate System and Procedure
What is Compliance of all laws?

**COMPLIANCE OF ALL LAW** -
As may be specifically applicable to the company (point (vi) as per MR-3).
Do you usually confront with these??

- How to identify the laws and implement them?
- How to make compliances on time?
- How to do Audit and till what extent?
Compliance of ALL APLICABLE LAWS
General Laws
(Applicable to all companies)

Corporate laws
Taxation Laws
Industrial & Labour Laws
Property laws

(Based on Number of employees)

10 or more
20 or more
25 or more
100 or more
1000 or more
Event Based Laws

- Intellectual Property Laws
- Custom Tax laws
- Foreign Exchange Laws
Structure Based Laws

Different Corporate Structures

- Listed Public Companies
- Unlisted Public Companies
- Public Sector Undertakings
Sector Specific Laws

Manufacturing

Trading

Service
State Wise Laws

- Labour Welfare Act
- Shops and Commercial Establishment Act
- National Festival Holiday Act

- Punjab Shops and Commercial Establishments Act, 1958
- Punjab Labour Welfare Fund Act, 1965
Different Geographical Laws

Global Operations

Indian Operations
Secretarial Audit – The Process
## Secretarial Audit – The Process

<table>
<thead>
<tr>
<th>Draft Corporate Dossier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ascertain All Applicable Laws on the Company</td>
</tr>
<tr>
<td>Prepare Draft Check List and Due Date</td>
</tr>
<tr>
<td>Meeting with Compliance Head -</td>
</tr>
<tr>
<td>To Finalize Corporate Dossier</td>
</tr>
<tr>
<td>List of All Applicable Laws &amp; Organizational Structure for Compliance Purpose</td>
</tr>
<tr>
<td>Final Due date for Compliance purpose &amp; Creation of Data Centre for undertaking the Audit</td>
</tr>
</tbody>
</table>

### Planning of Audit Programme

| Commence Audit and finding of Observation |
| Meeting with Compliance Head for finalizing the Observation / Remarks of the Audit |
| If satisfied with the reply of Compliance Head remove the Observation |
| If not satisfied the observation would be part of the Audit Report |

### Audit Report
Case Study

Secretarial Audit

Cement Industry
Case Study – Cement Industry

Understanding The Company

CEMENT INDUSTRY

- Public Limited Company
- Listed Company – BSE, NSE
- Manufacturing & Trading
- Exporting Company
- 10,000 No. of Employees (Approx.)
- Units Located at Bhubaneswar, Rajnagpur
Case Study – Cement Industry

Identification of Applicable Laws

On the basis of General Corporate Information – Public Company, Listed at BSE, NSE

- Companies Act, 2013
- Income Tax Act, 1961
- Securities Contracts (Regulation) Act, 1956
- Depositories Act 1996
- SEBI (Insider Trading) Regulations, 2009
- SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011
- Listing Agreement
- FEMA
Case Study – Cement Industry

Identification of Applicable Laws

On the basis of Sector – Manufacturing and Trading

- National Environment Policy
- Air (Prevention and Control of Pollution) Act, 1981
- Environment (Prevention of pollution control) Act, 1986
- Central Excise Act, 1944
- The Central Excise Tariff Act, 1985
- Water (Prevention and Control of Pollution) Act, 1974
- Water (Prevention and control of pollution) Cess Act, 1977
Case Study – Cement Industry

Identification of Applicable Laws

On the basis of Type of Industry – Cement

- Cement (Quality Control) Order, 2003
- The Mines Act, 1952
- Hazardous Waste (Management Handling & Tran boundary Movement), 2008
- The Wildlife (Protection) Act, 1972
- Mines and Minerals (Development and Regulation) Act, 1957
- Explosives Act, 2008
Case Study – Cement Industry

Identification of Applicable Laws

*On the basis of No. of Employees*

- Employees’ Provident Funds & Miscellaneous Provisions Act, 1952
- Factories Act, 1948
- Payment of Gratuity Act, 1972
- Industrial Dispute Act, 1947
- Employees State Insurance Act, 1948
- Payment of Wages Act, 1936
- Minimum Wages Act, 1948 & Minimum Wages (Central) Rules, 1950
- Maternity Benefit Act, 1961
- The Boilers Act, 1923
- Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Act, 1988
- Indian Fatal Accidents Act, 1855
- The Contract Labour (Regulation and Abolition) Act, 1970
- Industrial Disputes Act, 1947
- Payment of Bonus Act, 1965
Some Example of Sector Specific Law
Oil & Petroleum Sector Specific Law

Other than General Law these are the Specific Law which are required to be checked during Audit of “Oil & Petroleum Companies”

- The Petroleum Act, 1934
- Petroleum and Minerals Pipelines (Acquisition of Right of User Inland) Act, 1962
- Explosives Act, 1884
- The Oil field (Regulation & Development) Act, 1948
- Petroleum and Natural Gas Regulatory Board Act, 2006
- The Oil Industry (Development) Act 1974
- The Mines Act, 1952
- Mines and Minerals (Regulations and Development) Act, 1957
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976
- Offshore Areas Minerals (Development and Regulation) Act, 2002
You Cannot Escape the Responsibility of Tomorrow By Evading It Today.

Abraham Lincoln
Secretarial Audit is only Responsibility of Practicing Company Secretaries ????
NO ITS JOINT EFFORT OF COMPANY / COMPLIANCE TEAM /COMPANY SECRETARY AND PRACTICING COMPANY SECRETARY (PCS)
Responsibility of Compliance Team / Company Secretary and PCS in Secretarial Audit

**Role of Compliance Team / Company Secretary**

- Timely Compliance under All APPLICABLE LAWS on the Company;
- Create a Effective Compliance Management System (CMS);
- Ensure that the CMS is working properly

**Role of PCS During Secretarial Audit to check compliance of ALL APPLICABLE LAWS on the Company**

- Analyze the CMS of the Company and check its sufficiency – OBSERVATION
- Audit the Compliance of ALL APPLICABLE on the Company – OBSERVATION / RESERVATION / QUALIFICATION / REMARKS
Board Of Directors Has To Ensure That There Should Be Proper Implementing Effective Compliance Management System In The Company To Comply With All Applicable Laws Because Only Board Is Answerable To Every Qualification And Observation Or Other Adverse Remark Made By The Secretarial Auditor, In The Board Report.

Compliance Management System
Preparation for Implementing Compliance Management System
About CCM

- First Five Steps
- Remediation
- Compliance Monitor
- Compliance Scheduler
- Alerts & Notifications
- Task Performance
- Online & Offline Support
- Form Archives
- Compliance statistics
- Risk Assessment & Analysis
- Report Wizard

Corporate Compliance Management
CCM – First Five Steps

Corporate Dossier

Questionnaire

Identification Process

Evaluation Process

Compliance Organ Structure
# STEP I - Corporate Dossier

## Understanding the Company

<table>
<thead>
<tr>
<th>Company’s History &amp; Background</th>
<th>Business Setup</th>
<th>Board of Directors</th>
<th>Capital Structure &amp; Evolution</th>
<th>Management &amp; Administration buildup</th>
<th>Financial &amp; Debt Structure</th>
</tr>
</thead>
</table>

STEP II - Questionnaire

For identifying various applicable laws
# STEP III - Identification Process

(Like Cement Industry)

<table>
<thead>
<tr>
<th>Category</th>
<th>Laws</th>
</tr>
</thead>
</table>
| **General Laws**                     | - Companies Act  
- Taxation Laws                                                         |
| **Securities Laws**                  | - Listing Agreement  
- Takeover Regulations                                                   |
| **Event Based Laws**                 | - Foreign Exchange Laws  
- Intellectual Property Laws                                              |
| **Sector Specific Laws**             | - Environment Act  
- Excise Act                                                            |
| **Segment Wise Laws**                | - Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1980  
- Banking Regulation Act, 1949                                               |
| **Area Specific Laws**               | - Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975  
- Bombay Labour Welfare Fund Act Act, 1953                                  |
STEP IV - Evaluation Process

[Event based Laws]

Evaluating the applicable laws after due identification process

Identification: FEMA, 1999

Evaluation: FEM (Exports of goods & services) Regulations, 1999
Step V - Compliance Organisation Structure

CEO

Compliance Officer

Securities Law Department
  - Executive

Company Law Department
  - Executive

Taxation Department
  - Executive

Responsibilities
  - High
  - Low

Reporting
  - For Rights Assignment

All Rights available

Duty Allocation
Can we do all this **MANUALLY**

with thousands of Law ??
Let IT Work For You............
Go for IT ...

- Reduce time consumption in repetitive tasks.
- Devote more time on Strategic analysis, value additions and planning.
- Use online regulatory services.
- Make use of exhaustive databases, checklists, research papers available online.
- Manage multiple tasks through IT.
- Use IT to shorten procedure and shift to STRATEGIES and PLANNING.
Use Technology to Beat Technology
Effect of Technology

✓ Easy Compliance

✓ Impossible Non-Compliance
# Compliance Scheduler

<table>
<thead>
<tr>
<th>Title</th>
<th>Form No</th>
<th>Due Date</th>
<th>Title</th>
<th>Form No</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Tax</td>
<td>ITR-6</td>
<td>On or before 31st October of the assessment year</td>
<td>Return of Income</td>
<td>ITR-6</td>
<td>On or before 31st October of the assessment year</td>
</tr>
<tr>
<td>Notice by Occupier</td>
<td>--------</td>
<td>At least 15 days before he begins to occupy or use</td>
<td>Notice by Occupier</td>
<td>--------</td>
<td>At least 15 days before he begins to occupy or use</td>
</tr>
<tr>
<td>Appointment of Director</td>
<td>Form 29 &amp; 32</td>
<td>Within 30 days of appointment</td>
<td>Appointment of Director</td>
<td>Form 29 &amp; 32</td>
<td>Within 30 days of appointment</td>
</tr>
<tr>
<td>Shareholding Pattern</td>
<td>Fixed Format</td>
<td>Within 21 days from the end of each Quarter</td>
<td>Shareholding Pattern</td>
<td>Fixed Format</td>
<td>Within 21 days from the end of each Quarter</td>
</tr>
</tbody>
</table>
Developing Compliance Management Tools

Checklist

- Law wise
- Period wise
Effective Usability

- Triggering date & time
- Triggering information input
  - Organisation type, Capital deployed, Business type
  - Product profile

S o f t w a r e
Elements of Effective Compliance Program

Customization of ..... At One Place
ROLE OF

Company Secretary In Corporate Compliance Management?
Company Secretary is primarily responsible to coordinate with COMPLIANCE OF ALL LAWS

Therefore, WE ARE ANSWERABLE......
Learn

80:20

Theory
Present way of working

- Procedure Works

- Strategy
- Problem Solving
- Corporate Planning
Change of work Scenario By using Technology

- Procedure Works
- Strategy
- Problem Solving
- Corporate Planning
See the horizon beyond Company Law

It's time to go beyond the pre-defined framework.

Always say ‘YES’, it's my area of work.
Move with a Direction

Services Provided by an Ordinary CS

Piecemeal services

Move with a new Direction
“Problems becomes opportunities, when right people come together ...”
Thus, Opportunities are Unlimited ...
Its just a matter of Creativity, Confidence and Communication
...and also Perception and Positive Thinking
So now, we need to prepare ourselves to create niche in the emerging scenario ...
But merely optimism will not do

optimism with Confidence & Right Attitude will ...
The emerging scenario requires us to reinvent everything - to think of ourselves as compared to others …
When Opportunity does not knock your door....”
Build a Door
But now opportunities have knocked your door ...
But still ...
You have to get off from your seat and open the door....”

One ounce of practice is worth
Twenty thousand tons of big talk.

- Swami Vivekananda
## Views about Secretarial Audit

<table>
<thead>
<tr>
<th>Particulars</th>
<th>System &amp; Procedure</th>
<th>Main Corporate Laws</th>
<th>Law specific to the Company</th>
</tr>
</thead>
</table>
|             |                    | 5 Laws as mentioned in MR-3 .  

- Companies Act, 2013;  
- SCRA, 1956;  
- Depositories Act, 1956;  
- FEMA;  
- SEBI Act, 1992 | Sector Specific Laws | General Laws | Financial Laws |
| ICSI View | ✓ | ✓ | ✓ | Such as Tax Law, Custom Act |
| PCS / Members View s | ✓ | ✓ | ✓ | No Clarity whether rely on the report given by other Auditors or required separate audit |
Pavan Kumar Vijay
Managing Director

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