

National Seminar on Secretarial Audit

Compliance of Other Laws
Real Estate & Infrastructure

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Faridabad Chapter, NIRC of ICSI – Sunday, 26th April, 2015



Secretarial Audit - An Opportunity

Secretarial Audit - Evolution

- Section 383A
- Company Secretary in Employment
 - Rs. 5 cr. or more paid up capital
- Company Secretary in Employment or Secretarial Audit Certificate
 - Rs. 2 to 5 cr. paid up capital
- Secretarial Audit Certificate
 - Rs. 10 lacs paid up capital

Secretarial Audit – Evolution...

- Corporate Governance Voluntary Guidelines, 2009
 - Introduced the concept of Secretarial Audit
- Objectives – Secretarial Audit
 - Ensure transparent, ethical and responsible governance;
 - Empower the Board with robust compliance mechanisms
- Secretarial Audit - Practising Company Secretary
- Board's responsibility - Secretarial Audit

Secretarial Audit – Evolution...



Every listed company and such others class of companies as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a PCS, in such form as may be prescribed.

Secretarial Audit – 2013 Act

- Enhanced scope and applicability
- Board's Report to include secretarial audit report
- Board's Report to include explanation in full on qualification, observation or other remarks provided in the secretarial audit report

Secretarial Audit - Purpose

- Compliance Management
- Legal Compliance Reporting System
- Self regulation
- Independent Appraisal Process of the secretarial practices, systems & procedures.

Secretarial Audit – Purpose...

- Transparency and arms-length transactions
- Timely communication
- Better Compliance environment
- Protection of Interest of the Stakeholders.

Secretarial Audit - Perspective

- Private Companies : 8.00 lacs +
- Public Companies : 0.70 lacs +
- Listed Companies : 0.05 lacs +

Secretarial Audit - Applicability

- Section 204 – Secretarial Audit for bigger companies
 - Listed companies
 - Other companies as may be prescribed
- Secretarial Audit Report
 - Company Secretary in practice
 - Form of Report as may be prescribed
- Board's Report – s. 134 (3)
 - Explain in full any qualification or observation or other remarks
- Contravention of s. 204 – punishable with fine

Secretarial Audit - Functions

- Functions of Company Secretary (s. 205)
 - Report to the Board
 - Compliance of Companies Act and other laws applicable to the company;
- S. 205 (2)

“.....any other law for the time being in force.”

Secretarial Audit - Challenges

- Secretarial Auditor 's duty u/s 143 (12) & (14)
 - While conducting the audit of the Company, if **Secretarial Auditor** has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, then it is the duty of Secretarial Auditor to report the same to the Central Government.

Secretarial Audit – Challenges...

Punishment for false statement (s. 448)

*“.....**any person** makes a statement-*

- Which is false in any material particulars, knowing it to be false; or*
- Which omits any material fact, knowing it to be material,*

he shall be liable under section 447”

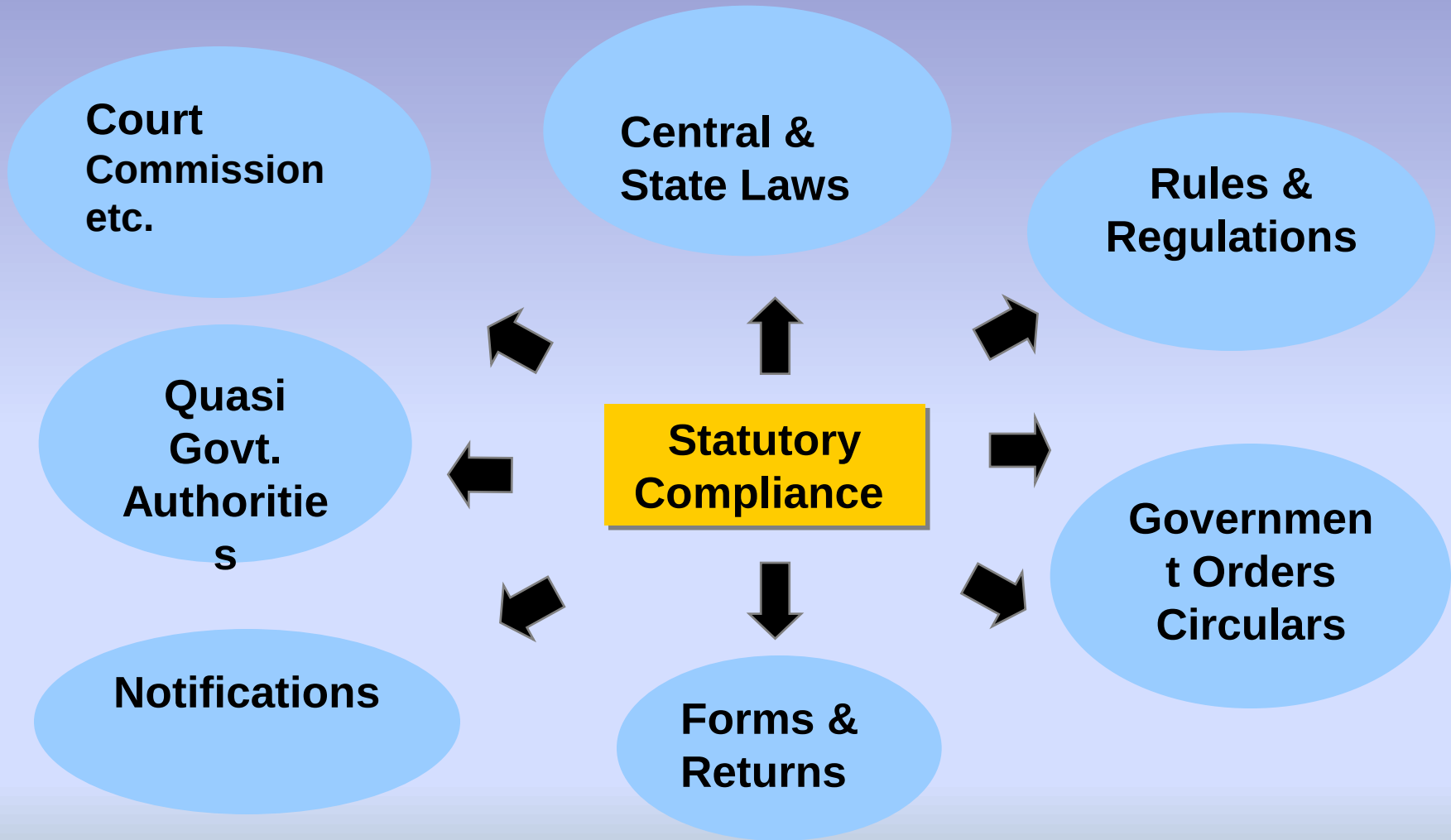
s. 447 : Imprisonment and fine

Secretarial Audit – Challenges...

Report on all applicable laws

???

Laws/Compliances ?



Constitution of India

Genesis of all Laws
Lays down powers & obligations of Legislature, Executive and the Judiciary;
Inter-state Relations, Law / Tax enforcing Powers & Fundamental Rights

Other Laws

Corporate Laws
As applicable to a Corporate Entity

Contracts

Indian Contract Act
Sale of Goods Act
International Contracts on English Law

Companies Act 1956

Major regulation for the Corporate Sector
Amended to incorporate clauses on Corporate Governance
Amendment 2003 in line with the Sarbanes Oxley Act

Anti-Trust Laws

Old MRTP Law being replaced by Competition Law
Deals in Monopolistic, Unfair & Restrictive Trade Practices

Consumer Protection

Law gives power to user of goods and services
Three tier Consumer Courts to impart speedy redressal
Over 600 Consumer Courts

Intellectual Property Laws

Regulates Copyrights, Designs, Patents, Trademarks
Major changes proposed to bring in line with international standards
Enforcement proposed to be more stringent

International Conventions

India signatory to WTO regulations and grants MFN status to signatories
Signatory to major conventions to protect "environment"
Signatory to Geneva & New York conventions on enforcement of Arbitral Awards

Cyber Laws

IT ACT 2000 comprehensively covers provisions for conducting and concluding transactions in electronic form
Provides for acceptance of data in electronic form
Covers offenses committed outside India so long the systems used in India

International Trade Laws

EXIM Policy governs International Trade
Policy for 5 years - amendments every year
Outlines benefits to Exporters & restrictions on Imports

Property Law

All contracts of sale, purchase, lease, mortgage should be in written form
Stamp Duty payable on all conveyance

Motor Vehicle Laws

Applicable to Motor Vehicles
Product Engineering to comply with the applicable rules & regulations
Interaction with the Ministry of Highways & Surface Transport

Labor & Industrial Laws

Stringent Labor Laws to safeguard interests of labor
Laws monitor conditions of work, wages, retirements, pensions, disputes
Regulatory legislation which is deterrent to growth

Environmental Laws

Recent focus on compliance with Environmental Laws
Deals with pollution of air - water,
conservation of forests and disposal of waste

Arbitration Laws

New Indian law based on international UNICTRAL model
Interference by courts restricted to ensure speedy redressal

Criminal Law

Indian Penal Code 1860 outlines offenses and punishment
Code of Criminal Procedure 1973 outlines governance of criminal law
Trade Marks Act and Negotiable Instruments also has criminal provisions

Foreign Exchange Laws

Draconian FERA replaced by FEMA
Current Account transactions freed from regulation
FDI norms liberalized

Scope - ICSI

Scope includes:

- Reporting on compliance of Five laws as mentioned in form MR-3
 - Companies Act, 2013
 - Securities Contracts (Regulation) Act, 1956 ('SCRA')
 - Depositories Act, 1996
 - Foreign Exchange Management Act
 - Securities and Exchange Board of India Act, 1992

Scope – ICSI...

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

Scope – ICSI...

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.

Scope – ICSI...

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.

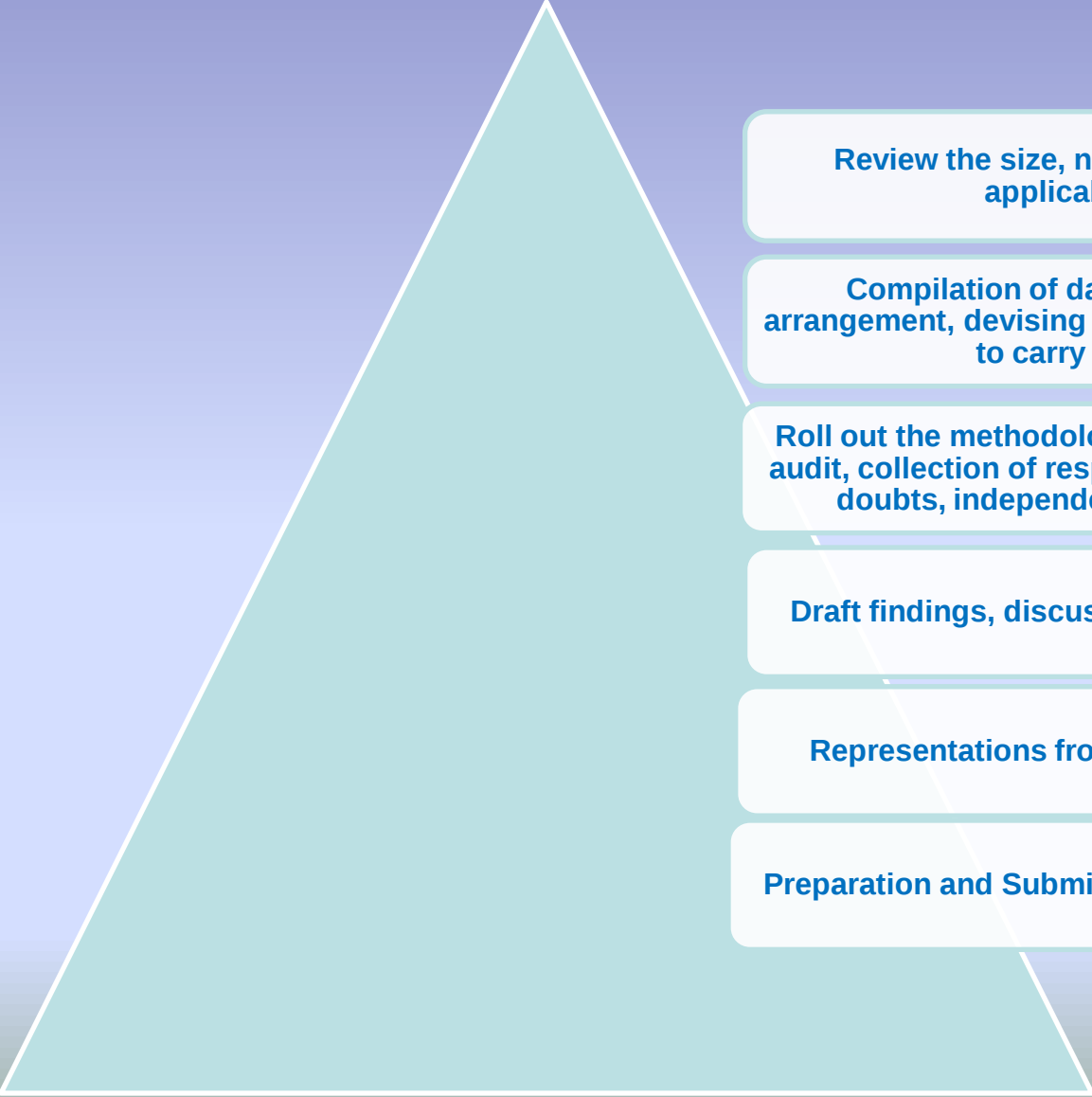
Scope – ICSI...

Reporting on compliance of

‘Other laws as may be applicable
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Secretarial Audit - Process



Review the size, nature, industry and applicable laws.

Compilation of data , chronological arrangement, devising methods and strategies to carry out audit

Roll out the methodology of carrying out the audit, collection of responses, clarification of doubts, independent evaluation etc.

Draft findings, discussions and conclusion

Representations from the management

Preparation and Submission of Audit Report

Secretarial Audit – Scope...

- Industry specific laws
 - CLU/Zoning Regulations
 - Municipal laws/Local laws
 - Allotment of land – purpose
 - Concession Contracts
 - PPP Projects
- Environmental laws
 - EC/CTE/CTO
 - NGT directions
 - CGWA guidelines

Secretarial Audit – Scope...

- Design & Construction laws
 - Municipal laws
 - National Building Code
 - National Highways Act
 - Aircraft Act
 - Ancient Monuments Act
 - Mines & Minerals Act
 - Excavation Approvals

Secretarial Audit – Scope...

- Industrial and Labour laws
 - Minimum Wages Act
 - Contract Labour Regulation Act
 - PF Act
 - Gratuity
 - Building & Other Construction Workers Act
 - Workmen Compensation Act
 - Fire & Safety
 - Explosives Act
 - Petroleum Act

Secretarial Audit – Scope...

- Other laws
 - Apartment Ownership Act
 - Trademark Act
 - Competition Law
 - Consumer Protection Act
 - Lift Laws
 - SEZ laws/EPZ laws
 - Advertisement laws etc.

Review – Secretarial Audit

S. No	Observations	Risk Rating	Remarks
1	Non-receipt of Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 & Water (Prevention and Control of Pollution) Act, 1974		
2	Non adherence to the provision of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963		
3	No provision of safety training, equipment and instructions for handling hazardous waste		
4	Non submission of Environmental Statement in Form V		
5	Non renewal of third party liability insurance policy		

Observation	Implication	Recommendation
Non-receipt of Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 & Water (Prevention and Control of Pollution) Act	Non adherence to the conditions of the consent order, shall be punishable with fine or imprisonment.	.
	Timelines	
	Responsibility	

Think Beyond...
Ordinary
Mundane
Required
Statutory
Peripheral
Think Beyond.....

Don't just audit Compliance Systems

Help Develop & Nurture a Holistic Compliance
Mind Set

Thank you!