National Seminar on Secretarial Audit

Compliance of Other Laws
Real Estate & Infrastructure

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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
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

???
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.
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.
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
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.
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<tr>
<th>S. No</th>
<th>Observations</th>
<th>Risk Rating</th>
<th>Remarks</th>
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<tbody>
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<td>1</td>
<td>Non-receipt of Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 &amp; Water (Prevention and Control of Pollution) Act, 1974</td>
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<td>Non adherence to the provision of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963</td>
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<td>3</td>
<td>No provision of safety training, equipment and instructions for handling hazardous waste</td>
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<td>4</td>
<td>Non submission of Environmental Statement in Form V</td>
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<td>5</td>
<td>Non renewal of third party liability insurance policy</td>
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<tr>
<td>Observation</td>
<td>Implication</td>
<td>Recommendation</td>
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<tr>
<td>Non-receipt of Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 &amp; Water (Prevention and Control of Pollution) Act</td>
<td>Non adherence to the conditions of the consent order, shall be punishable with fine or imprisonment.</td>
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<th>Timelines</th>
<th>Responsibility</th>
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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!