A Presentation on Secretarial Audit by CS Rishikesh Vyas
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What is Audit?

Auditing is a **systematic and independent examination** of data, statements, records, operations and performance (financial or otherwise) of an enterprise for a **stated purpose**.

In any auditing situation, the **auditor perceives and recognises the propositions** before him for examination, collects evidence, evaluates the same and on this basis, **formulates his judgment** which is communicated through his **audit report**.

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<table>
<thead>
<tr>
<th>Key Word</th>
<th>Key Thrust</th>
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<tbody>
<tr>
<td>Systematic</td>
<td>An audit should be carefully planned.</td>
</tr>
<tr>
<td>Independent</td>
<td>The auditor should not be susceptible to any influence or pressure from client or anybody else.</td>
</tr>
<tr>
<td>Data, Statements, Records, Operations and Performance</td>
<td>Indicates the scope of audit.</td>
</tr>
<tr>
<td>Stated Purpose</td>
<td>Clearly define and Have a clear idea about propositions auditor is examining.</td>
</tr>
<tr>
<td>Collects Evidence</td>
<td>Collect relevant evidence depending upon the proposition he needs to examine.</td>
</tr>
<tr>
<td>Evaluates Evidence</td>
<td>Evaluate it on the basis of his professional knowledge and skill.</td>
</tr>
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</table>
Why is Auditing Important?
Advantages of Audit

Technical -
- Internal Control
- Test of Performance of Procedures and Technology
- Realise fraudulent occurrences

Behavioural -
- Areas of Improvement
- Evaluate threats, economy, efficacy and quality.
- Analyse and understanding of functioning
Audit Audience -

Public → Management

Analyst → Shareholder

Regulators → Public
What Audit can’t do?

Predict the future

Be there all the time
What Auditors do?

- Auditors discuss the scope of the audit work with the organisation, the directors or management may request that additional procedures be performed.
- Auditors maintain independence from management and directors so that tests and judgments are made objectively.
- Auditors determine the type and extent of the audit procedures they will perform, depending on the risks and controls they have identified.
Audit specific tasks and Audit Steps -

Phase 1
- Questions

Phase 2
- Examining
- Judgements

Phase 3
- Confirmations
- Testing Internal Controls
- Watching Process and Procedures
This is a process of getting to know the organisation being audited as well as any issues that commonly affect similar organisations also this process helps to identify any areas that may need special attention.

It is about working out whether the control systems in use are sufficiently robust and reliable, and whether they comply with any regulations the organisation is subject to. The results of this work will determine how the rest of the audit process is carried out.

This is the process of gathering the evidence needed in order to assess whether an organisation’s claims about its Compliance position are fair and accurate. The strength of the organisation’s internal controls will go a long way to determining how detailed this process is. Broadly, there are two substantive procedures: 1. Substantive Analytical Procedure and 2. Substantive Tests of Detail.

With all this assessment work carried out, the auditor will use the information gathered to write a final report which is an independent opinion of the organisation’s financial position. The auditor will also prepare a letter or report for the organisation’s management, setting out any important issues that came to light whilst the audit was being carried out.
Secretarial Audit is a process to check compliance with the provisions of various laws and rules/regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes.

It is essentially a mechanism to monitor compliance with the requirements of stated laws and processes.
SECRETARIAL AUDIT REPORT
FOR THE FINANCIAL YEAR ENDED ...

(Pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration Personal) Rules, 2014)

To,
The Members,

........... Limited

I/we have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by..... (name of the company).(hereinafter called the company). Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conduct/statutory compliances and expressing my opinion thereon.

Based on my/our verification of the ....................... (name of the company’s) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/we hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on
Requirement under CA 2013

As per section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following companies are required to obtain ‘Secretarial Audit Report’ form independent practicing company secretary;

(1) Every listed company or

(2) Every public company having a paid-up share capital of Fifty Crore rupees or more; or

(3) Every public company having a turnover of Two Hundred Fifty Crore rupees or more.
Pay Attention!!

-God
SECRETARIAL AUDIT REPORT
FOR THE FINANCIAL YEAR ENDED ... ... ...
[Pursuant to section 204(1) of the Companies Act, 2013 and rule No.9 of the Companies (Appointment and Remuneration Personnel) Rules, 2014]
SECRETARIAL AUDIT REPORT
FOR THE FINANCIAL YEAR ENDED ... ... ...
To,
The Members,
............... Limited

I/We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by........ (name of the company).(hereinafter called the company). Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon.
Form MR. 3

Based on my/our verification of the ........................................ (name of the company’s) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit,

I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on _____, _____ complied with the statutory provisions listed hereunder and also that the Company has proper **Board-processes** and **compliance mechanism** in place to the extent, in the manner and subject to the reporting made hereinafter:
Form MR. 3

I/we have examined the books, papers, minute books, forms and returns filed and other records maintained by ............. (‘the Company’) for the financial year ended on __, ______ according to the provisions of:

(i) The Companies Act, 2013 (the Act) and the rules made thereunder;

(ii) The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the rules made thereunder;

(iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;

(iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 (‘SEBI Act’):

(a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
(b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
(c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
(d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
(f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
(h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;
Form MR. 3

(vi) ........................................................................................................... (Mention the other laws as may be applicable specifically to the company)

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I/we have also examined compliance with the applicable clauses of the following:

(i) Secretarial Standards issued by The Institute of Company Secretaries of India.

(ii) The Listing Agreements entered into by the Company with ..... Stock Exchange(s), if applicable;

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above subject to the following observations:

Note: Please report specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the above para wise.
I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out in compliance with the provisions of the Act.

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.
Majority decision is carried through while the dissenting members’ views are captured and recorded as part of the minutes.

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Note: Please report specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period.
I/we further report that during the audit period the company has ... (Give details of specific events / actions having a major bearing on the company’s affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above).

For example:

(i) Public/Right/Preferential issue of shares / debentures/sweat equity, etc.

(ii) Redemption / buy-back of securities

(iii) Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013

(iv) Merger / amalgamation / reconstruction, etc.

(v) Foreign technical collaborations
Form MR. 3

Place : Signature:

Date : Name of Company Secretary in practice / Firm:

ACS/FCS No.

C P No.:

Note: Parawise details of the Audit finding, if necessary, may be placed as annexure to the report.
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 for example for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.

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.
<table>
<thead>
<tr>
<th>Taxation</th>
<th>Labour</th>
<th>Environmental</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income tax</td>
<td>Factories</td>
<td>Air (Prevention and Control of Pollution) Act, 1981</td>
<td>Foreign Exchange</td>
</tr>
<tr>
<td>Excise</td>
<td>Bonus</td>
<td>Water (Prevention and Control of Pollution) Act, 1974</td>
<td>Stamp Act</td>
</tr>
<tr>
<td>Customs</td>
<td>Minimum Wages</td>
<td>The Noise (Regulation and Control) Rules 2000</td>
<td>Registration Act</td>
</tr>
<tr>
<td>Sales And VAT</td>
<td>Industrial Dispute</td>
<td>The Environment (Protection) Act 1986</td>
<td>Contract Act</td>
</tr>
<tr>
<td>Professional</td>
<td>Workmen Compensation</td>
<td></td>
<td>Urban Land (Ceiling &amp;Regulation Act</td>
</tr>
<tr>
<td></td>
<td>Employees State Insurance</td>
<td></td>
<td>Transfer of Property Act</td>
</tr>
<tr>
<td></td>
<td>Employees PF &amp; Misc</td>
<td></td>
<td>Information and Technology Act</td>
</tr>
<tr>
<td></td>
<td>Payment of Gratuity</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contract Labour</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Maternity Benefit</td>
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</tbody>
</table>
Grey Areas

Other Laws

Appointment at which meeting Committee/Board or Shareholders

Inter conflict under areas of Companies Act

No eligibility criteria
Are Company Secretaries Ready?
<table>
<thead>
<tr>
<th>HELPFUL</th>
<th>INTERNAL</th>
<th>EXTERNAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>STRENGTHS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WEAKNESSES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OPPORTUNITIES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>THREATS</td>
<td></td>
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</tbody>
</table>
SWOT = Strength

- Vital bridge between Idea and Execution
- 360 degree resourceful
- Participation at each stage
- Qualitative work at Competitive Cost

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SWOT = Weakness

Rudimentary Approach

Marketing and Information Technology

Infrastructure and Reach
SWOT = Opportunity

- Representation, Opinions, Secretarial Audit, Business Services etc
- Ever changing Laws
SWOT = Threat
Secretarial Audit
Starting Point
Secretarial Audit Way Forward

- Audit Scope
- Details of Corporate Actions and Compliances
- Building Audit Structure
- Applicable Laws
- Checklist and Timelines
- Action
- Backup Certification, Legal Opinion etc
- Management Representation Letter
- Draft Report and Clarification
- Finalization and Submission of Report

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<table>
<thead>
<tr>
<th>Key Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice, Agenda, Minutes and Back Up papers</td>
</tr>
<tr>
<td>Financials and Correspondence Compliances</td>
</tr>
<tr>
<td>Statutory Register</td>
</tr>
<tr>
<td>Declarations and Disclosures</td>
</tr>
<tr>
<td>Filings and related Documents</td>
</tr>
<tr>
<td>Regulatory and Legal Correspondences</td>
</tr>
<tr>
<td>Approvals</td>
</tr>
<tr>
<td>Back Up Certificates</td>
</tr>
<tr>
<td>Process</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Data Collection – About the Company; About Applicable Laws, Rules and Regulations</td>
</tr>
<tr>
<td>Preparing a List of Preliminary Documents Requirements</td>
</tr>
<tr>
<td>Compilation of Chronological Order of Events</td>
</tr>
<tr>
<td>Process</td>
</tr>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>Generation of Questionnaire – General and Specific</td>
</tr>
<tr>
<td>Administration of Questionnaire; Identifying Respondents and Collecting Responses</td>
</tr>
<tr>
<td>Preparing a Record of Findings and Conclusion</td>
</tr>
<tr>
<td>Identification of Grey Areas</td>
</tr>
<tr>
<td>Ironing out Differences of Opinion and Ambiguities</td>
</tr>
<tr>
<td>Management Representations, Legal Opinions, Judicial Pronouncements and Articles Relied Upon</td>
</tr>
</tbody>
</table>
Acceptance Letter; Confirmation of Period and Scope; Fees and other Terms & Conditions

Issue of Letter containing Preliminary Document Requirements

Check List for Analysis of MoA and AoA
Category wise List of Applicable Laws; Rules and Regulations

Updated Master Guide to Case Laws and Articles

Updated Modules that are Event Based and General Matters

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<table>
<thead>
<tr>
<th>Category of Risks</th>
<th>Nature of consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very High</td>
<td>There could be order of closure of operation of the company due to non-compliance or reputation loss of the company</td>
</tr>
<tr>
<td>High</td>
<td>Imprisonment</td>
</tr>
<tr>
<td>Medium</td>
<td>Monetary fine, may be one time or continuous – linked to number of days of default</td>
</tr>
<tr>
<td>Low</td>
<td>Insignificant lapses, discovered internally from internal assessment and closed to ensure proper compliance</td>
</tr>
</tbody>
</table>
3 Golden Rules for Remuneration

Remuneration = Liability

Remuneration = Satisfaction

Remuneration = Time + Value Addition

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Industry does not mind Cost of Compliance but you have to give Value Addition. Regulatory Recognition and Empowerment will follow what Industry follows but for that you have to be ahead of times.

Scope and Benefits Unlimited so is Liability. Need of the hour is Research and Development.

Remember!
HELLO

I AM... AN EXPERT

Commerce + Marketing = Value Addition

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THANK YOU

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