



CS R. Sridharan
PRESIDENT

MCA: 2013

April 2, 2014

Shri Naved Masood, IAS
Secretary to Government of India
Ministry of Corporate Affairs
Shastri Bhawan, New Delhi

Dear Sir,

Sub.: Rules under sections 204 (1) of the Companies Act, 2013

1. This is in continuation of the discussion we (myself, CS Sanjay Grover, Council Member, CS M. S. Sahoo, Secretary and CS Sutanu Sinha, Chief Executive) had with you on 31st March 2014 on the above subject. We (myself, CS Sanjay Grover, Council Member, CS Pavan Kumar Vijay, Past President CS M. S. Sahoo, Secretary, CS Sutanu Sinha, Chief Executive and Ms. Alka Kapoor, Director) had also discussed the matter separately with Mr. M. J. Joseph, Additional Secretary and Ms. Renuka Kumar, Joint Secretary on the same day.
2. Rule 9 of the **Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014** reads as under:
"9. **Secretarial Audit Report.**- (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-
 - every public company having a paid-up share capital of fifty crore rupees or more; or
 - every public company having a turnover of two hundred fifty crore rupees or more.
 - The format of the Secretarial Audit Report shall be in Form No.MR.3."
3. Section 204(1) of the Act having bearing on this is as under:

"Secretarial audit for bigger companies

204(1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed."

4. The legislative intention of this section is that every listed company, big or small, and every big company needs secretarial audit. It does not envisage distinction between private and public companies. The need for a company to have secretarial audit company can be linked to scale of operations or presence which can be determined in terms of paid up capital, turnover, number of employees, number of shareholders, outstanding borrowings, kind of business, etc. and has no link whether a company is public or private. In fact, we have moved to a regime where the law endeavours to provides level playing field to all kinds of market participants. In fact, the Companies Act 2013 has done away with most of the exemptions / relaxations available to private companies under the earlier law. This is based on the profound realization that serious misdemeanor have been noticed in many private companies. The exclusion of private companies, irrespective of their size, from secretarial audit gives a message that the matters covered under such audit such as compliance with applicable laws is not important. It is at least as important as the financial audit which is compulsory for every company. That is why it is part of the Corporate Governance Voluntary Guidelines, 2009 of Ministry of Corporate Affairs, which is applicable to all companies.
5. The Rules under section 138 of the Act now notified have specified companies required to have internal audit as under:
- (i) Every Listed Company
 - (ii) Every Public Company having :
 - Paid up share capital of fifty crore rupees or more during the preceding financial year; or
 - Turnover of two hundred crore rupees or more during the preceding financial year; or
 - Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees (Rs.100 crore) or more at any point of time during the preceding financial year; or
 - Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
 - (iii) Every private company having-
 - turnover of two hundred crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees (Rs.100 crore) or more at any point of time during the preceding financial year

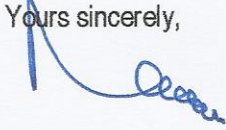
6. Of the approximately 13 lakh companies, less than 1% of companies would get covered for secretarial audit, while statutory audit is applicable to every company and internal audit is applicable to companies, public and private, over a threshold. Applicability of secretarial audit for such a small number of companies defeats the basic thrust of the new company law.
7. There are about 1700 private companies with paid up capital of more than Rs.50 crores. These companies are custodian of huge resources of the country. In fact, many of the very big companies, including MNCs, in the country are private companies. They need to undergo secretarial audit given their impact on the society and the economy.
8. The distribution of companies as per paid up capital as on 30th September, 2013 is as under:

Companies between paid capital (in Rs.)	Number of Private companies	Number of Public companies	Total Number of Companies
0-10 lakh	6,37,485	23,406	6,60,891
10 -50 lakh	1,13,745	9,999	1,23,744
50 lakh – 2 crore	62,746	10,275	73,021
2 – 5 crore	18,755	7,020	25,775
5 – 10 crore	5,938	4,331	10,269
10 – 25 crore	3,927	3,878	7,805
25 – 50 crore	1,405	1,563	2,968
50 – 100 crore	798	902	1,700
100 crore and above	820	1,244	2,064
Grand Total	8,45,619	62,618	9,08,237

It is observed from the above that private companies constitute about 93% of total companies in India. This number will increase further as the definition of private company has been modified to include companies having upto 200 shareholders subject to certain other requirements. Further the liberal dispensation would encourage conversion of public companies into private companies and most of the new companies would be private companies. As a consequence, only a few public companies will be under obligation to comply the substantive provision of the new law.

9. In view of the above, **we submit that the secretarial audit may be made applicable to those companies which are at least subject to internal audit.**

Yours sincerely,



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(CS R. Sridharan)

CC: a. Mr. M. J. Joseph, Additional Secretary, Ministry of Corporate Affairs

b. Ms. Renuka Kumar, Joint Secretary, Ministry of Corporate Affairs.