SECRETARIAL AUDIT

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Secretarial Audit

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

Applicability

Every Listed Company

Or

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.

Or

Every Private Company which is subsidiary of Public Company with above criteria

- **The Secretarial Report shall be in form MR-3 annexed with the Board Report.**

Initial Requirements

- Representation Letter from the Company
- List of other Acts applicable on the Company
- MOA & AOA of the company
- Copy of Joint Venture Agreement, Technical Collaboration Agreement if any.
- Financial Statements of last year
- Events List

The secretarial auditor should verify the Compliances relating to following:

- Memorandum and/or Articles of Association.
- Disclosures
- Issue of shares and other securities
- Transfer and transmission of shares and other securities and related matters
- Deposits
- Charges
- Auditors

- Meetings of directors/committees thereof, security holders and other stakeholders.
- Secretarial Standards
- Dividend
- Corporate Social Responsibility (CSR)
- Directors and Key Managerial Personnel (KMP)
- Loans to Directors, etc, and related party transactions
- Loans, Investments, Guarantees and Securities
- Registers, Filing of forms, returns and documents

Checklist under Companies Act

Appointment of Directors

Check whether:

- The company has ensured the eligibility of directors for election to the office of a director (Section 160).
- The appointment of additional director, alternate and nominee director, filling up of casual vacancies has been done as provided in section 161.

- The company has ensured that the appointment of directors is voted individually (Section 162).

- The company has received the consent to act as directors (Section 152) and Form **DIR12** was filed for appointment of director.

- None of the directors is disqualified from being appointed as a director (Section 164).

Section 168 of Companies Act, 2013

Resignation of Director

Check whether:

- The letter of resignation of the director is received by the company.
- The Board takes note of the resignation and intimates the Registrar in Form **DIR-12** within thirty days from the date of receipt of notice of resignation.

Section 169 of Companies Act, 2013

Removal of Director

Check whether:

- A special notice was given to the company to remove a director.
- The special notice was signed by member(s) holding not less than **1%** of total voting power or holding shares on which an aggregate sum of more than **five lakh rupees** has been paid up.
- The company has sent forthwith a copy thereof to the director concerned and the director was provided opportunity to be heard on the resolution at the meeting

- The representation, if any, made by concerned director was notified to the members on the request of the director along with the notice of the resolution.

- If the copy of the representation was not sent because the same was received too late or because of company's default, it was read out at the meeting.

- The director who was removed from office was not reappointed as a director by the Board of directors.

Board Process

Board Structure:

- Check that the minimum number of directors in a company is complied with i.e. there are at least two / three directors in private and public Company respectively.

- maximum limit of number of directors is restricted to **15 directors**

- In case the company has exceeded the maximum limit –
  special resolution for the same is required

- In listed public company check for optimum combination of executive and non-executive directors

- **Check Applicability of Women Director**

Following class of Company shall appoint at least 1 Women Director:

i. Every Listed Company
ii. Every other Public Company having-
    Paid-up Share capital of Rs. **100Cr** or more
    Turnover of Rs. **300 Cr** or more.

**** Paid-up Share capital or turnover as on the last date of latest audited financial Statements.***

- **Check the applicability of Independent Director**

In case the Company is a Public listed Company check:

Where chairman of the Board is NED, **atleast 1/3** of the Board Comprises of Independent director.

Where the Company does not have a regular Non Executive Chairman, atleast half of the Board Comprises of Independent director.

Where the regular Non- Executive chairman is a promoter **or** is related to any promoter **or** occupying management positions at the Board level or at one level Below Board.

At least ½ of the Board of Company Consist of Independent Directors.

In following category check Company has appointed at least two Independent Directors:

Public Company having:

- Paid-up Share Capital of Rs **10 Cr** or more
- Turnover of Rs. **100 Cr** or more; or
- Aggregate, outstanding loans, debentures and deposits, Rs. **50 Cr** or more

Ensure that all the Independent Directors meet the Qualifying Criteria

Check formal letter of appointment given to Independent and the terms and conditions of appointment are available on company's website

Board Meeting

Check whether:

- the company held its first meeting in **30 days** of incorporation
- There was gap of not more than **120 days** between two consecutive meetings of the Board.
- Notice in writing was sent to every director at his address registered with the company at least **7 days prior** to the meeting.

- In case meeting of the Board was called on shorter notice ensure that at least one independent director, if any, was present at the meeting.

  In case of absence of independent directors in meeting, check that decisions taken at such a meeting were circulated to all the directors and ratified by at least one independent director, if any.

- The quorum for a meeting of the Board of Directors of a company was satisfied.

- At least one Meeting of Independent directors of the company shall be held in a year.

- Every director discloses his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in **Form MBP 1** at the first meeting of the Board in which he participates as a director

and

thereafter at the first meeting of the Board in every financial year **or** whenever there is any change in the disclosures already made.

Annual General Meeting Process

- The first AGM is held within a period of **9 months** from the date of closing of the first financial year of the company
- Subsequent AGM was held in each case, within a period of **6 months** from the date of closing of the financial year
- The meeting was held within **15 months** of the last annual general meeting
- AGM was called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday

- The AGM was held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.
- Notice convening the meeting specifically mentioned that it was AGM.
- Notice of **21 clear days** was given for the meeting.
- Consent of alteast **95%** of the members was obtained for convening the meeting at shorter notice.
- Day, Date and hour of the meeting were mentioned in the notice alongwith the statement of business to be transacted.

- Explanatory statement setting out material facts was attached to the notice in respect of special business as contemplated by section 102.

- Appropriate quorum i.e. **2/5/15/30** as the case may be, was present at the meeting.

- Instrument of proxy was in the prescribed form.

- Voting through electronic means was carried out in compliance with relevant rules

Compliance under Private placement

In the event of **Private Placement u/s 42**

1. To ensure that persons to whom offer has been made does not exceed 200 in a financial year for each kind of security.

It is to be noted that any offer or invitation made to qualified institutional buyers or to employees of the company under scheme of employees stock option shall not be considered while calculating the limit of two hundred persons.

2. No allotment against any previous offer / invitation of any kind of security is pending

3. Company has passed special resolution for each offer / invitation (except in case of NCDs, where one resolution in a year for all offers during the year is sufficient)

4. Explanatory statement contains justification for price and premium, if any

5. Issue of a private placement offer letter was in form **PAS-4**

7. Private placement was offered to such persons whose names are recorded prior to the invitation to subscribe.

8. The Company has maintained record of offer letters in form no. **PAS-5.**

9. Company has filed offer letter with ROC in form no. **PAS-3** along with record of offer letters within **30 days** of circulation of offer letter

10. Amount against offer to be received only by cheque / demand draft / other banking channels but not by cash – only from the bank account of the subscriber

11. Company to maintain record of the bank account from which payments received. Ensure that payment has been made from the bank account of the person subscribing to such securities

12. In case of joint holders, payment was received from first applicant only

13. Allotment was completed within **60 days** from date of receipt of application form. If not , application money repaid within **15 days** of completion of **60 days.** If not repaid, the application money along with interest at 12 percent per annum from expiry of 60th day was paid.

14. Board resolution to specifically contain authority for issuance of share certificates to two directors and CS / one authorized person.

15. Share application money to be kept in separate bank account and was utilized only for (a) adjustment against allotment or (b) repayment

16. Company filed Return of allotment in form PAS-3 within 30 days

17. Share certificates were issued **within 2 months** of allotment of shares / **6 months** of allotment of debentures

18. In case of contravention, money was refunded within **30 days** of order imposing the penalty

19. Company has made entry in Register of Members

20. **In case of Stamping Of Share Certificate :**

To ensure that stamp duty has been paid according to the provisions of Stamp Act of the respective state.

Compliance regarding Loans to Directors (Sec 185)

- Check Company has not directly or indirectly advanced any loans/provided any security given guarantee to its director or any other person in whom the director is interested.

Inter Corporate Loans (Sec 186)

Check whether:

- The Board Resolution/Special Resolution has been passed with respect to loans and investments by the Company.
- Company has not made investment through more than two layers of investment companies.
- Company has not defaulted repayment of deposits while granting loans/giving guarantee/ providing security.

- Company has disclosed in the financial statements the full particular of the loans given investment made or guarantee given as prescribed under the Act.

- Company maintains register containing required particular in form **MBP-2**.

- Company has obtained prior approval of the Public financial Institution, if term loan is subsisting

Compliance regarding related party transaction (Sec 188)

- Check whether that all material transactions with related parties have been disclosed quarterly along with the compliance report on corporate governance

Related Party Transactions have been approved by the shareholders through special resolution and the ***related parties abstained from voting on such resolutions***.

(This shall not apply to transactions between in case of wholly owned subsidiary and holding company and between two government companies)

Minute Book And Register

Check whether the Minutes book has been maintained in respect of:

1. General meetings of the members;
2. Meetings of the creditors.
3. Meetings of the Board; and
4. Meetings of each of the committees of the Board.

Resolutions passed by postal ballot are recorded in the minute book of general meetings

- The pages of the minutes book have been consecutively numbered.

- Each page of minutes of a **Board meeting** is initialed or signed and the last page is dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting.

- Each page of minutes of a **general meeting** is initialed or signed and the last page is dated and signed by the chairman of the same meeting within the aforesaid period of thirty days.

- The minute books of general meetings, and the minutes books of the Board and committee meetings are maintained in the custody of the company secretary or any director duly authorized by the board.

- To ensure that all the **registers** are maintained properly, Related to-

i. Share Certificate
ii. Sweat Equity shares
iii. Members
iv. Register of charges
v. Register of Director and KMP and their shareholding
vi. Register of Loans and Investment
vii. Register of Contracts

Section 203 of Companies Act, 2013

Check whether the section is applicable on the company or not?

Check Whether the company has complied with section 203 with respect to appointment of a manager or managing director.

Check whether the provisions relating to appointment and remuneration of Managerial Persons are complied under sections 196, 197, 203 and Schedule V.

- Ensure that the procedural aspects relating to appointment of managing director or whole-time director or manager including the filing of the necessary returns are complied with.

- Ensure that as per section 197, the total managerial remuneration payable by a public company does not exceed **11%** of the net profits of the company

- and where the limit is exceeded

  the same is approved in general meeting and approved by the Central Government.

- if a company has no profits or when its profits are inadequate, the company shall pay no remuneration to its directors, except in accordance with schedule V.

Alteration in MOA

Check whether:

- The company has passed the special resolution and filed MGT.14 as per Companies (Management and Administration) Rules, 2014
- The company has altered its name with the approval of Central Government
- The company has obtained fresh certificate of incorporation from the Registrar in Form No.INC.25 as per Companies (Incorporation) Rules, 2014

- If the company has shifted the registered office from one state to another state, it is with the approval from the Central government.

- In case company has raised money from public through prospectus and still has any un utilized amount out of the money so raised, a **Special Resolution** has been passed by the company to change its objects for which it raised the money through prospectus.

Alteration in AOA

Check whether:

- The company has passed special resolution with respect to alteration of articles.
- In case of conversion of a private company into a public company or vice versa, the application was filed in Form No. **INC. 27**
- A copy of the order of the competent authority approving the alteration has been filed with the Registrar in Form No. **INC.27** together with the printed copy of the altered articles within fifteen days of the receipt of the order from the competent authority.

- Every alteration made in the memorandum or articles has been noted in every copy of the memorandum or articles.

- The company sends on payment of fee, a copy of each of the following documents to a member within seven days of the request being made by him.

Disclosures on WEBSITE

- **Notice of Annual General Meeting** shall be simultaneously placed on the website of the company if any and on the website as may be notified by the Central Government.

- **Results declared along with the scrutinizer's report** shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members

- The **notice of the postal ballot** shall also be placed on the website of the company and such notice shall remain on such website till the last date for receipt of the postal ballots from the members

- The Board of every company *approve the* **corporate social responsibility policy** for the company and disclose contents of such Policy in its report and also place it on the company's website, if any

- Prescribed companies shall establish a **vigil mechanism** for directors and employees to report genuine concerns and the details of establishment of such vigil mechanism shall be disclosed by the company on its website, if any,

- The terms and conditions of **appointment of independent directors** shall also be posted on the company's website.

- The company shall within 30 days from the date of receipt of **notice of resignation from a director**, post the information on its website, if any.

- Every company inviting deposits from the public shall upload a copy of the circular on its website, if any

- Closure of register of members or debenture holders or other security holders and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company

Professional Indemnity Insurance

- This policy is meant for professionals to cover liability falling on them as a result of errors and omissions committed by them while rendering professional services

- The policy covers all sums which the insured professional becomes legally liable to pay as damages to third party in respect of any error or omission on his/her part committed while rendering professional services

- The legal cost and expenses incurred in defense of the case, with the prior consent of the insurance company are also payable subject to the overall limit of indemnity selected

- The policy offers a benefit of retroactive period on continuous renewal of policy where by claims reported in subsequent renewal but pertaining to earlier period after first inception of the policy also become payable.

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