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Secretarial Audit – Compliance and recent changes

HISTORY:-

The Secretarial Audit is governed by **Section 204(1)** of the Companies Act, 2013. The requirement of Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 relating to Secretarial Audit Report has come into effect from **April 1, 2014**. This mechanism gives necessary comfort to the management, regulators and the stakeholders, with regards compliance of applicable laws and the existence of proper and adequate systems and processes in the Company. It gives additional responsibility to a Company Secretary in Practice to ensure compliance of legal and procedural requirements and processes.

It becomes the duty of the Company to give all the assistance and facilities to Company Secretary in Practice for auditing the Secretarial and related record of the Company. If the prescribed Company do not comply with the provisions as mentioned in Companies Act, 2013, penalty will be imposed.

Applicability:-

The Secretarial Audit is applicable on such Companies as per the Section 204(1) of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

It provides that:

- i.) Every *Listed Company*; or
- ii.) Every *Public Company* having a *paid-up share capital* of fifty crore rupees or more; or
- iii.) Every *Public Company* having a *turnover* of two hundred fifty crore rupees or more,

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 Form No. MR-3.

Note:

- Secretarial Audit is not applicable on the Private Company provided that it will be applicable to that Private Company which is a subsidiary of a Public Company.
- *Paid Up Capital*: The paid up share capital as per latest audited financial statement,
- *Turnover*: means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a Company during a financial year.

Appointment of Secretarial Auditor:

In terms of section 204(1), only ***a member of the Institute of Company Secretaries of India holding certificate of practice (i.e. Company Secretary in Practice)*** can conduct Secretarial Audit and furnish the Secretarial Audit Report to the Company in Form – MR-3.

The Secretarial Auditor is required to be appointed by the Board Resolution passed by the Board of Director of the Company in their Board Meeting.

Required E-Form for appointment:

The Board Resolution for the Appointment of the Secretarial Auditor is required to be filed with Registrar of the Companies in **e-form MGT-14** within a period of 30 days from the date of appointment.

Time of Appointment of Secretarial Auditor:

It is advisable that Secretarial Auditor is appointed at **beginning of the financial year** as Secretarial Audit entails checking of compliances on a continuous basis. As a good practice, the Secretarial Auditor should submit a report to the Board at the end of each quarter as to the compliances of the Company.

Secretarial Audit Report (MR-3)

The report of Secretarial Audit shall be in the prescribed format in the **Form No. MR-3** (SECRETARIAL AUDITOR REPORT) and annex with Board's Report.

Benefits of Secretarial Audit

Broadly, the need for Secretarial Audit is:

1. An effective mechanism to make sure of the compliance with the legal and procedural requirements
2. Provides a level of confidence to the Directors & Key Managerial Personnel etc.
3. Secretarial Audit ensures legal and procedural requirements so Directors can concentrate on important business matters.
4. Strengthen the goodwill of a Company for their regulators and stakeholders.
5. Secretarial Audit is an effective governance and compliance risk management tool.
6. It helps the investor in analyzing the compliance level of Companies, thereby increases the reputation.

Amendment in Secretarial Audit:-

On **8th of February, 2019** Securities Exchange Board Of India passed the circular which is issued in exercise of the powers conferred under sections 11 and 11A of the Securities and Exchange Board of India Act, 1992 read with Regulations 24A and 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 have been amended to include the following Regulation 24A:

24A: Secretarial Audit

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, **a Secretarial Audit Report**, given by a Company Secretary in Practice, in such form as may be prescribed with effect from the year ended March 31, 2019.”

A. Annual Secretarial Audit Report:

- (i) Currently, Section 204 of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires Secretarial Audit to be conducted by Practicing Company Secretaries for listed Companies and certain unlisted Companies above a certain threshold in Form No. MR-3.
- (ii) In order to avoid duplication, the listed entity and its unlisted material subsidiaries shall continue to use the same Form No. MR-3 as required under Companies Act, 2013 and the rules made thereunder for the purpose of compliance with Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as well.

b. Annual secretarial compliance report:

- (i) While the annual secretarial audit shall cover a broad check on compliance with all laws applicable to the entity, the **listed entities shall additionally**, on an annual basis, require a check by the Practicing Company Secretaries on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder, consequent to which, the Practicing Company Secretaries shall submit a report to the listed entity in the manner specified in this circular.
 - (ii) The format for the annual secretarial compliance report is placed at **Annexure-A***.
 - (iii) The annual secretarial compliance report in the aforesaid format shall be submitted by the listed entity to the stock exchanges within 60 days of the end of the financial year.
- c. The listed entities and their material subsidiaries shall provide all such documents/information as may be sought by the Practicing Company Secretaries for the purpose of providing a certification under the Regulations and this circular.

EFFECT OF THIS AMENDMENT:-

With the recent changes in Secretarial audit it was observed that the listed entities and the Private Company which is a subsidiary of Listed Public Company along with Annual report shall also annex Secretarial Audit Report given by Practicing Company Secretaries from 31st march, 2019 (which means that they have to submit 2 audited report given by Practicing Company Secretaries).

*** Format of Annexure-A**

(On the letter head of the Practicing Company Secretary)

Secretarial compliance report of [●] [Name of the listed entity] for the year ended _____

I/We..... have examined:

- (a) all the documents and records made available to us and explanation provided by [●] [Name of the listed entity] ("the listed entity"),
- (b) the filings/ submissions made by the listed entity to the stock exchanges,
- (c) website of the listed entity,
- (d) any other document/ filing, as may be relevant, which has been relied upon to make this certification,

for the year ended [●] ("Review Period") in respect of compliance with the provisions of :

- (a) the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and the Regulations, circulars, guidelines issued thereunder; and
- (b) the Securities Contracts (Regulation) Act, 1956 ("SCRA"), rules made thereunder and the Regulations, circulars, guidelines issued thereunder by the Securities and Exchange Board of India ("SEBI");

The specific Regulations, whose provisions and the circulars/ guidelines issued thereunder, have been examined, include:-

- (a) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
- (b) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- (c) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- (d) Securities and Exchange Board of India (Buyback of Securities) Regulations, 2018;
- (e) Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;
- (f) Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
- (g) Securities and Exchange Board of India (Issue and Listing of Non-Convertible and Redeemable Preference Shares) Regulations, 2013;
- (h) Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015;
- (i)(other regulations as applicable) and circulars/ guidelines issued thereunder;

and based on the above examination, I/We hereby report that, during the Review Period

- (a) The listed entity has complied with the provisions of the above Regulations and circulars/ guidelines issued thereunder, except in respect of matters specified below:-

Sr.No	Compliance Requirement (Regulations/ circulars / guidelines including specific clause)	Deviations	Observations/ Remarks of the Practicing Company Secretary
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- (b) The listed entity has maintained proper records under the provisions of the above Regulations and circulars/ guidelines issued thereunder insofar as it appears from my/our examination of those records.
- (c) The following are the details of actions taken against the listed entity/ its promoters/ directors/ material subsidiaries either by SEBI or by Stock Exchanges (including under the Standard Operating Procedures issued by SEBI through various circulars) under the aforesaid Acts/ Regulations and circulars/ guidelines issued thereunder:

Sr. No.	Action taken by	Details of violation	Details of action taken E.g. fines, warning letter, debarment, etc.	Observations/ remarks of the Practicing Company Secretary, if any.

- (d) The listed entity has taken the following actions to comply with the observations made in previous reports:

Sr. No.	Observations of the Practicing Company Secretary in the previous reports	Observations made in the secretarial compliance report for the year ended... (The years are to be mentioned)	Actions taken by the listed entity, if any	Comments of the Practicing Company Secretary on the actions taken by the listed entity

(Note:

1. Provide the list of all the observations in the report for the previous year along with the actions taken by the listed entity on those observations.

2. Add the list of all observations in the reports pertaining to the periods prior to the previous year in case the entity has not taken sufficient steps to address the concerns raised/ observations.

E.g. In the report for the year ended 31st Mar, 2021, the Practicing Company Secretaries shall provide a list of:

- all the observations in the report for the year ended 31st Mar, 2020 along with the actions taken by the listed entity on those observations.
- the observations in the reports pertaining to the year ended 31st Mar, 2020 and earlier, in case the entity has not taken sufficient steps to address the concerns raised/ observations in those reports.)

Place:

Signature:

Date:

Name of the Practicing Company Secretary

ACS/ FCS No.:

C P No.:

CONCLUSION:-

Secretarial Audit has not been made mandatory for private Companies and small public Companies. These Companies may adopt secretarial audit practices for ensuring compliance and avoiding the risks associated with non-compliance.

An audit is to be on the principle of “Prevention is better than cure” rather than post-mortem exercise and to find faults. It strengthens the image and goodwill of a Company in the minds of regulators and stakeholders. It acts as an effective compliance risk management tool or a governance tool.

The benefits are available to-

1. promoters,
2. executive directors,
3. officers of the Company,
4. regulators,
5. government authorities,
6. investors,
7. financial institutions,
8. banks,
9. creditors and consumers alike.