

**TRAINING MODULES  
FOR  
PEER REVIEWERS**

**(2015)**

*Issued by  
Peer Review Board*



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

**April 2015**

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# TRAINING MODULES FOR PEER REVIEWERS

## *How to Make Effective Use*

The objective of the training programme is to equip a reviewer with overall knowledge of the peer review methodology and the skills required for conducting reviews.

The training curriculum, thus, includes the modules as described below:

### **Design and Layout of the Training Modules**

Each module contains into participant guides meant for the reviewers under training, trainer's guides meant for the trainers who will train the participants and training materials for PowerPoint presentations to be made by the trainers.

Participant guides include the action points or exercises for participants.

Trainer's guides generally include all of the contents of the module and the time allotted to each module, to guide the facilitator both technically and in teaching techniques/ presentation methodology that he should employ when presenting a slide or group of slides.

### **Using the Training Modules**

The following should be distributed to the trainers and participants (trainees) sufficiently in advance before commencement of the course:

- ☛ The Training Modules
- ☛ Peer Review Guidelines
- ☛ The Peer Review Manual
- ☛ Frequently Asked Questions on Peer Review
- ☛ ICSI Guidelines pertaining to Practising Company Secretaries.

Both trainers and participants are expected to possess and bring to the training, a copy of ICSI publications on Technical Standards.

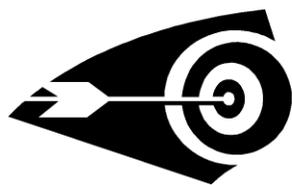
The trainer may use the Power Point Presentation to present each module. The Notes provided are aids for the trainer to present the module or a given slide(s) and include guidance on activities that he can make the group perform. He should thoroughly familiarize himself with these Notes and the subject matter. He should also know how to make a Power Point presentation and operate an LCD projector.

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*Acquainting Reviewers with Peer Review Guidelines*

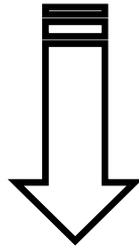


***OBJECTIVE***

*To acquaint reviewers with basic elements and guidelines of peer review*

# **TRAINER'S GUIDE**

Total Time: 30 minutes



## **Power Point Presentation**

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### **Slide Contents**

- Part I Concept of Peer Review
  - Part II Authority for Peer Review
  - Part III Guidelines For Peer Review of Attestation Services by PCS
  - Part IV Attestation services covered under Peer Review
-

## **CONCEPT OF PEER REVIEW**

Peer review contemplates examination of the systems and approach of a Practice Unit (PU) by another member of the Institute with the objective of identifying the areas, where the practising member may require guidance in improving the quality of his performance and adherence to the requirements of various technical standards.

The focus lies on the promotion of continuing quality improvement in an atmosphere of openness and mutual trust that contributes to enhancing transparency and comparability. Good practice is valued and mutual learning encouraged in a dynamic and motivating process, from which both the PU and Reviewer can benefit.

**A Peer Review examines whether a Practice Unit has adequate policies and procedures in place to comply with the Technical Standards of ICSI and other legal requirements**

### **AUTHORITY FOR PEER REVIEW**

The Council of the Institute of Company Secretaries of India is constituted under the Company Secretaries Act, 1980 for discharging the functions assigned to the Institute under the Act. Section 15 of the Act provides that “the duties of carrying out the provisions of this Act shall be vested in the Council” and enumerates various duties of the Council. With a view to regulate the profession of Company Secretaries and in terms of the powers vested, the Council is thus authorised to issue these guidelines for Peer Review. These guidelines serve as a mechanism intended to further enhance the quality of professional work of Practising Company Secretaries (PCS) over a period of time, thereby ensuring that the profession of Company Secretaries continues to serve the society in the manner envisaged.

The Guidelines on Peer Review are issued in relation to conduct of members in attestation services:

- to promulgate an appropriate mechanism for ensuring the quality of attestation services and guide the members to conduct themselves in a manner that the Council considers appropriate;
- to provide guidance in relation to the statutory powers and obligations with respect to the parties involved in peer review;
- to prescribe the scope of peer review and the procedures to be adopted during the conduct of a peer review; and
- to establish the expected conduct of members during a peer review.

### **GUIDELINES FOR PEER REVIEW OF ATTESTATION SERVICES BY PRACTICING COMPANY SECRETARIES**

- Exposure Draft of the Guidelines released at the 12<sup>th</sup> National Conference of Practising Company Secretaries held at Ooty during July 13-14-15, 2011

- Approved by the Council in its 202<sup>nd</sup> Meeting held on August 25-26, 2011
- ICSI Guideline No. 1 of 2011 – Guidelines for Peer Review of Attestation Services by Practicing Company Secretaries **notified in the official Gazette of India dated October 18, 2011**
- Guidelines **effective from October 1, 2011.**
- The Guidelines revised by the Council in its 22<sup>9th</sup> meeting held on March 19-20, 2015 in line with the recent regulatory prescriptions.
- Revised Guidelines effective from April 1, 2015.

#### **Applicability of the Guidelines on Peer Review (Para 4.1)**

Guidelines shall apply to all or any of the following cases:

- (a) Whenever a peer review is mandated
- (b) Whenever a peer review is requested
- (c) Whenever peer review is conducted

A Peer Review is said to be mandated when the Council of the Institute or any legislative amendment to law requires a Peer Review to be conducted. A Peer Review is said to be requested when a Practice Unit (PU) requests the Peer Review Board to have itself Peer Reviewed on a voluntary basis. A Peer Review is said to be conducted when a Peer Review is undertaken based on random selection initiated by the Peer Review Board.

#### **Objectives of Peer Review (Para 2)**

- To ensure that in carrying out their attestation services and professional assignments, the PCS is to –
  - (a) Comply with the Technical Standards laid down by the Institute, and
  - (b) Have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform.
- Peer Review is directed towards –
  - (a) maintenance as well as enhancement of quality of attestation services
  - (b) providing guidance to members to improve their performance and adhere to various statutory and other regulatory requirements.

#### **Scope of Peer Review (Para 7)**

Peer Review is directed at the attestation services of a practice unit –

- Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review.
- Records of attestation services relating to five years prior to the financial year shall not be subjected to review.

- Review shall focus on –
  - (a) Compliance with Technical Standards
  - (b) Quality of Reporting
  - (c) Office systems and procedures with regard to compliance of attestation services systems and procedures
  - (d) Training programmes for staff concerned with attestation functions.

## **Key Definitions**

### *Peer Review (Para 3.7)*

Peer Review deals with examination and review of systems and procedures to determine whether the systems and procedures are in:

- Existence
- Effective
- Operating continuously during the period under review
- Put in place by the Practice Unit.

### *Peer Review Board (Para 3.8)*

Peer Review Board means a Board established by the Council in terms of these Guidelines to conduct peer review.

The expression “Peer Review Board” is referred to as “Board”.

### *Attestation Services (Para 3.1)*

Attestation Services means services involving the secretarial audit and issuing of various certificates, but does not include:

- Management consulting engagements;
- Representing a client before the Authorities;
- Testifying as expert witness; and
- Providing expert opinion on points of principle, such as secretarial standards or the applicability of certain laws, or the basis of facts provided by the client.

The phrase ‘Attestation Services’ is used in these guidelines interchangeably with secretarial or compliance audit Services, Attestation Functions and secretarial audit functions.

### *Technical Standards (Para 3.11)*

Technical Standards mean and include:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;

- Compliance of the Guidance Notes issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

*Qualified Assistant (Para 3.12)*

Qualified Assistant means a person assisting the reviewer for carrying out peer review, who is a member of the Institute and has undergone adequate training in the manner considered appropriate by the Board in terms of clause 15.1 of the Guidelines.

**Qualifications of the Reviewer (Para 10.1)**

- The nature and complexity of peer review require the exercise of professional judgement.
- A reviewer shall:-
  - a) Be a member;
  - b) Possess at least ten years experience; and
  - c) Be currently in the practice as Company Secretary in Practice.

*The Peer Review Board has clarified that the requirement of at least ten years experience as a member does not necessarily entail his/her experience as a Practicing Company Secretary. Even a member who has earlier been in employment for a decade can seek empanelment as a Reviewer provided he/she is holding a certificate of practice on the date of making the application for empanelment as reviewer.*

- The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

**Training & Development of Reviewers (Para 15)**

To attain the objectives of peer review in letter and spirit:

- Adequate training facilities shall be provided from time to time to the Reviewer(s).
- Reviewers shall be expected to be fully familiar with all procedures, prescriptions, guidelines and other decisions as may be issued by the Board from time to time.

**Compliance with Peer Review Guidelines (Para 9)**

- Practice Units are required to comply with the provisions of these guidelines.
- Practice Units failing in this regard will be required to undergo appropriate review of their quality controls by the Peer Review Board in terms to specific directions as may be issued by the Council in this regard from time to time.
- Practice Units failing to comply with these Guidelines shall be liable for disciplinary action as provided under the Company Secretaries Act, 1980.

### **Selection of Members/ Firms subject to Review (Para 11)**

Peer Review (PR) on the basis of random selections or at the request of the practice unit

- If company or concern requests the Board for PR of its secretarial auditor : Cost of PR shall be borne by such company or concern
- If Council / Government or any regulatory body requests the Board for PR of any Practice Unit : Cost of PR shall be borne by the referred practice unit

### **Obligations of the Practice Unit (Para 12)**

Practice Unit shall -

- provide access to any record or document as may be asked for by the reviewer.
- afford and provide explanation or further particulars in respect of anything produced before the Peer Reviewer
- provide all assistance in connection with peer review
- allow the reviewer to inspect, examine or take any abstract of or extract from a record or document or copy there from which may be required by the reviewer.

### **Periodicity of Peer Review (Para 13)**

- Atleast once in a block of five years.
- If the Board so decides or otherwise at the request of the practice unit, the peer reviews for a practice unit can be conducted at shorter intervals.

### **Cost of Peer Review (Para 14)**

- Cost of Peer Review for reviewer and his qualified assistant(s) as may be decided by the Board from time to time, shall be borne by the Practice Unit.
- Same rate shall apply to second review also.
- Each branch / office under review would be considered separately.

### **Review Framework (Para 16)**

*Three stage process –*

#### *Stage 1: Planning*

- Intimation to PU about impending Peer Review along with Questionnaire.
- Questionnaire to be returned duly filled in within one month
- List of three suggested Peer Reviewers be sent to PU.
- PU to indicate the preference of peer reviewer within 15 days.

Peer Reviewer be intimated of selection and consent be given within 7 days.

#### *Stage 2: Execution*

- Sample of Attestation service engagements

- Confirmation of Visit
  - Initial meeting
  - Compliance Review of General Controls
  - Selection of Attestation services engagements to be reviewed
  - Review of record

*Stage 3: Reporting*

- Preliminary Report of Reviewer at the end of on-site review before the report is made to the Board.
- Practice Unit may submit its representation within 21 days from the date of Preliminary Report.
- Interim Report based on representation made by the Practice Unit and follow up review.
- Final Report of Reviewer to the Board.

**Dispute Resolution (Para 17)**

*Procedure for resolving Disagreement between PU and Peer Reviewer:*

- Written request to the Peer Review Board within 2 months of occurrence of the issue in dispute
- Copy of the Request forwarded to the opposite party(ies) for his/her comments within 15 days of receipt of request
- PRB shall examine the written request and the comments of the other party(ies) and may
  - Provide opportunity to both for personal appearance
  - Call additional clarifications
- *PRB shall pass final orders within 6 months of the reference*
  - Reject the request with reasons
  - May issue directions relating to the matter in dispute to such practice unit or the reviewer concerned and require such unit or reviewer to comply with them within 30 (thirty) days and send a report to the Board of the said compliance within 15 (fifteen) days of such compliance
  - Shall convey its decision in these regard to each of the parties within 15 days from the date of the decision
  - Copy of Order forwarded to the Council

*Appeal against Order of the Peer Review Board*

- Appeal to the Council within 2 months from the date of receipt of order
- Appeal in writing and clearly spelling out reasons for the appeal and the relief sought

- Council may pass any of the following orders:
  - Dismiss the appeal stating reasons in writing
  - Admit the appeal and remand the case back to the PRB for reconsideration
  - Pass such orders as it may deem fit.
- Order of the Council within 60 days from the date of the Appeal.

### **Confidentiality (Para 19)**

Strict confidentiality provisions shall apply to all those involved in the peer review process, namely, reviewers, members of the Board, the Council, or any person who assists any of these parties.

### **ATTESTATION SERVICES COVERED UNDER PEER REVIEW**

In the first stage, the following attestation services will need to be reviewed under Guidelines for Peer Review:

- (i) Signing of Annual Return pursuant to proviso to sub-section (1) of section 161 of the Companies Act, 1956.
- (ii) Certification/ Signing of Annual Return pursuant to section 92 of the Companies Act, 2013.
- (iii) Issuance of Compliance Certificate pursuant to proviso to subsection (1) of section 383A of the Companies Act, 1956.
- (iv) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- (v) Issuance of Certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges.
- (vi) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002.
- (vii) Conduct of Internal Audit of Operations of the Depository Participants.
- (viii) Certification under Clause 49 of the Listing Agreement .

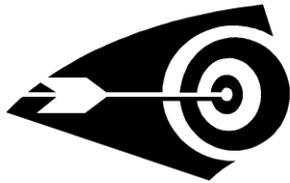
Since law is a dynamic subject, situations may arise whereby regulatory prescriptions may necessitate certification in other areas also in due course. The Council and the Peer Review Board may include other attestation services under the scope of Peer Review in other stages from time to time.

#### **PARTICIPANTS' GUIDE**

- ☛ Study - Guidelines for Peer Review of Attestation Services by Practising Company Secretaries (ICSI Guideline No. 1 of 2011) (As amended from time to time).

# ***MODULE 1***

## ***PEER REVIEW PROCESS***

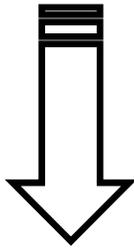


### ***OBJECTIVE***

*To understand the Peer Review Process*

# **TRAINER'S GUIDE**

Total Time: 5 minutes



## **Power Point Presentation**

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### **Slide Contents**

Part I    An Overview of the Peer Review Process

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## **AN OVERVIEW OF THE PEER REVIEW PROCESS**

Once a practice unit is selected for review, its attestation engagement records pertaining to the immediately preceding financial year shall be subjected to review.

- The PU will be notified of impending review in writing about 2 weeks in advance along with a questionnaire
- The PU will send the duly filled in questionnaire and the list of its attestation services client after the PU is advised by the Board
- Names of three reviewers will be suggested to the Practice Unit with brief profiles
- The PU will give its choice on the reviewer.
- Reviewer selects preliminary sample of files from the complete attestation services client list and informs the PU. (The initial sample may be reduced to a smaller actual sample for review. However, if the reviewer considers that the actual sample does not cover a fair cross-section of the PU's attestation services engagements, he may make further selections.)
- On-site visit arranged by mutual consent such that the review is concluded within 60 days of notification
- On-site Review may last between 1-3 full days depending upon the size of the practice unit and scope of the peer review
- At initial meeting, the accuracy of responses to questionnaire is confirmed and the reviewer seeks to obtain a full understanding of the system and form a preliminary evaluation of its adequacy
- A compliance review of five key general controls is then carried out
- Final selection of files may be the same as, more, or less than, the preliminary selection
- Review of records i.e. of PU's client files
- Reviewer may issue final report (clean or qualified) to the Board with a copy to the PU or Preliminary report given to PU; PU to respond within 10 days
- The Board considers the final report (clean or qualified) and if satisfied, will issue Peer Review Certificate
  - The Board if not satisfied, may issue recommendations to the PU and direct the reviewer for further review
  - After further review, if the Board is satisfied, Peer Review certificate will be issued else no certificate will be issued
- If reviewer is satisfied with PU's response to the preliminary report, he submits interim report to the Board
- If reviewer is not satisfied, he submits a report to the Board, with a copy to the PU

- On receipt of interim report or on request by the PU to the Board, it may instruct the reviewer to carry out a subsequent / follow-up review at its discretion
- After subsequent / follow up review, the Reviewer submits Final Report to the Board with reasons for dissatisfaction, if any
- The Board considers the final report and if satisfied, will issue Peer Review

#### Certificate

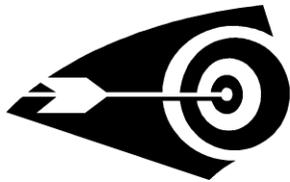
- The Board if considers appropriate, may issue recommendations to the PU and direct the reviewer for follow-up action
- Thereafter, if the Board deem fit, Peer Review certificate will be issued else no certificate will be issued.

### **PARTICIPANTS' GUIDE**

- ☛ Study - Peer Review Manual of ICSI

## **MODULE 2**

### ***Expectations from Reviewers***

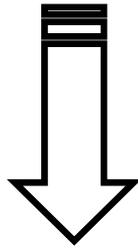


#### ***OBJECTIVE***

*To acquaint reviewers with the basic approach, methodology to be followed by them during pre review and qualities expected of them*

# **TRAINER'S GUIDE**

Total Time: 15 minutes



## **Power Point Presentation**

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### **Slide Contents**

- Part I    Empanelment of Reviewers
  - Part II    Approach of the Reviewer
  - Part III    Methodology to be followed by Reviewer
  - Part IV    Expected Qualities of Reviewer
  - Part V    Statement of Confidentiality
-

Reviewer means any member engaged to carry out peer review from the panel of reviewers.

## **Empanelment of Reviewers**

- Para 10 of the Guidelines provide for qualifications of a Peer Reviewer as follows:  
“10.1 The nature and complexity of peer review require the exercise of professional judgement. Accordingly, an individual serving as a reviewer shall:-
  - a) Be a member;
  - b) Possess at least ten years experience; and
  - c) Be currently in the practice as Company Secretary in Practice.”
- Members fulfilling the requirements of para 10.1 may make an application for empanelment in the format prescribed by the Board.
- Members need to attend a training programme for peer reviewers.
- After scrutiny of the application the Board issues the empanelment letter.
- The Board may examine the quality of the report and shall have powers to remove the reviewer from the panel of reviewers in case the quality of the review/report fails to match the desired standards.

## **Approach of the Reviewer**

- a) Not as an inspector, auditor or investigator but as a pathologist.
- b) Should be appreciative of good practices while suggesting areas of improvement
- c) Collaborative with a friendly demeanour
- d) Discussion mode as a peer to be adopted by the Reviewer
- e) Should try and give value addition to PU and not merely a tick box approach
- f) In determining issues which are subjective, the purpose is not to replace the PU's opinion with the opinion of the Reviewer but to verify the process followed in exercise of judgment by the PU. Verification of the process will include verification of diary / working papers maintained by the PU.

## **Methodology to be followed by Reviewer**

- *Offsite Review*
  - Study of information given by PU in the format and based on the same make own observations about possible areas where improvement is possible and note other aspects to be discussed in personal meeting with PU
- *Onsite Review*
  - Verification of information given by PU. Test checks in respect of attestation assignments handled by PU
  - Interaction with the staff & trainees of PU should be part of PR

- Calling for the records of the client maintained by PU to verify whether proper systems and procedures have been followed

### **Expected Qualities of Reviewer**

- a. Should be well acquainted with the technical aspects of the attestation services
- b. Should know the provisions of Code of Conduct of ICSI
- c. Should have studied the provisions of the Code of Conduct of ICSI
- d. Should get himself / herself acquainted with decisions of various courts on “deficiency in service”
- e. Relevant provisions of CS Act, 1980, Consumer Protection Act, Evidence Act, IPC, etc.
- f. Should have studied the technical standards like Secretarial Standards, Guidance Notes, Notifications issued by the Council of ICSI
- g. Should be good at drafting and written and spoken English.
- h. Professional behaviour while on visit – dress code, punctuality, neatness, soft language.
- i. Understand his/her limitations – what is outside the scope of Peer Review.

### **Statement of Confidentiality**

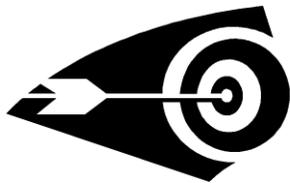
- Reviewer's access only to working papers of the PU
- Reviewer cannot carry extracts of client's working papers & records acquired by him while conducting peer review, as part of his working papers
- Reviewer bound by Code of Ethics
- Reviewer and his Qualified Assistant bound to maintain confidentiality and give a ‘Statement of Confidentiality’ as per the Peer Review Guidelines.

### **PARTICIPANTS’ GUIDE**

- ☛ Equip yourselves with the expected qualities

# MODULE 3

## *Compliance Review of General Controls*

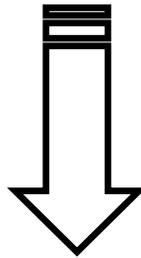


### **OBJECTIVE**

- ❖ *To obtain an understanding of expected controls*
- ❖ *To determine whether*
  - *these controls were established by the practice unit (PU), and*
  - *were functional during the period of under review*
- ❖ *To understand the context in which the Peer Review Manual introduces the concept of general controls*
- ❖ *To understand the areas covered by general controls*
- ❖ *To assess questions answered by the PU*
- ❖ *To understand the procedures*

# **TRAINER'S GUIDE**

Total Time: 45 minutes



## **Power Point Presentation**

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### **Slide Contents**

Part I Context of General Controls

Part II General Controls - Five Areas Covered

- Independence
- Outside Consultation
- Maintenance of Professional Skills & Standards
- Staff Supervision & Development
- Office Administration

## CONTEXT OF GENERAL CONTROLS

- ❖ The concept of “compliance review of general controls” emphasizes that Peer Review should be directed towards maintenance and enhancement of quality of attestation services and to provide guidance to members to improve their performance and adhere to technical standards, various statutory and other regulatory requirements.
- ❖ Reviewer should make a primary evaluation of the design and quality of installed controls and their practical effectiveness. Based on such evaluation, the reviewer needs to decide on the nature and extent of substantive procedures to obtain sufficient appropriate review evidence that the PU's attestation processes meet the professional standards expected of it by the Institute.
- ❖ If the Reviewer finds that general controls are well designed and are found to be operating effectively, a lower level of substantive testing by the reviewer may be justified.
- ❖ On the other hand, if the PU's quality controls are non-existent, badly designed or inoperative, reliance cannot be placed on them and the reviewer will need to perform a higher level of substantive testing.
- ❖ Reviewer can form an opinion by following the following process:-
  - Internal meeting between the PU & Reviewer
  - Compliance Review of General Controls
  - Selection of Engagements for Review

## GENERAL CONTROLS - FIVE AREAS COVERED

### A. *Independence*

- Independence policies and procedures
- Communication thereof
- Designation of Independence Officer
- Monitoring independence

Independence can often be an issue in smaller PUs, not so much in terms of the PCS holding financial interests in the client entity, but in terms of services provided that cause conflicts of interest. Small PUs may be performing all services including compliances and maintenance of records. The Reviewer should take care to ensure that PCS independence is maintained to the fullest extent required by law and as per Institute's technical standards.

### B. *Outside Consultation*

- Access to reference libraries and other authoritative sources
  - Literature
  - Consulting firms / individuals

- Availability of expertise for consultation
  - Maintenance of records
- Documenting resolution of differences of opinion

Consultation is emphasised because it is obviously difficult for any professional to know everything. Large PUs have in-house consulting mechanisms where one partner feels free to discuss contentious issues pertaining to an assignment with his other partners/associates and senior professionals.

Smaller PUs equally need to have a consultation process set up by accessing reference libraries (eg. those maintained by the Institute's Regional Councils) and by seeking the consultation of outside experts, if required.

In either case, whether the PU is small or big, it is necessary that such consultation is well-documented in the working papers in order that the PU has recorded evidence that it exercised due care in the performance of its professional duties.

#### C. *Maintenance of Professional Skills & Standards*

- Guidelines and requirements for PCH
- In-house mechanism for Continuing Professional Education (CPE)
- Monitoring the CPE

Professional skills should be well-honed and in tune with changing times. This is because services of a PCS cater to a business, economic and regulatory environment that is constantly changing and rapidly integrating into the global environment.

It is therefore important that PUs have a well-planned mechanism for training and upgrading the technical skills of their people. This is especially important in relation to the training of apprentices.

While, very small PUs might not have the same resources as medium-sized or large PUs for such continuing professional education (CPE) programmes for their staff, they should make efforts to ensure that their staff attend various lectures, seminars, workshops, etc., organised by the Regional Councils or Chapters thereof or study circles held under the aegis of the Regional Councils of the Institute.

In any case, all PUs ought to have, and execute a plan for CPE of their staff and monitor their attendance there. The mandatory requirements relating to PCH laid down by the Institute would also have to be followed.

#### D. *Staff Supervision & Development*

- Orientation for new trainees, employees and partners
- System of scheduling and staffing

- Checking whether there are any dummy trainees, present or otherwise in Attendance Register
- Monitoring staff training and development

For a PU, their professional staffs are possibly its greatest asset. The value of this “intellectual property” depends entirely upon investments that the PU makes in appointing and retaining the best persons, assigning the right person to each engagement, and making conscious endeavours so that its persons develop into better professionals.

New appointees, at all levels, should be quickly integrated into the PU's work culture, methodologies and professional philosophy. This should be done by conducting internal orientation programmes and enabling their participation in training courses. Such efforts should be formally planned, performed and documented in the PU's office records on an on-going basis.

#### E. *Office Administration*

- Assignments related to skill and competence
- Review of work and guidance
- Monitoring progress of engagement

Many times we hear that the staff of the PU did not have the requisite skills to perform the assignment. This is getting greater prominence as business processes are getting more and more technical and complex. For example, a question could be raised as to how knowledgeable a PU's partners, professionals and apprentices are in dealing with a sophisticated system that has been installed by their clients? And, if they are not, how competent was the PU in having performed the assignment? It is thus essential for the PU to match the skills and competence of its human resources to client requirements.

Sometimes there is no documented planning done before the assignment to help the junior staff know the reasons they are doing something. Therefore, it is essential that this quality control be carefully examined by the Reviewer.

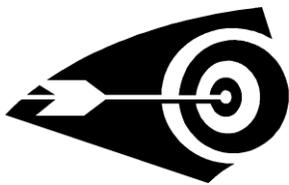
Office Administration is discussed in detail in Module 9.

#### **PARTICIPANTS' GUIDE**

- ☛ Devise any other questions, as thought fit
  - Size of PU should be considered
- ☛ Review to be mainly done by meeting/interview and corroboration of representations
- ☛ Identify controls on which you as Reviewer can rely

# MODULE 4

## *Compliance & Substantive Approach*

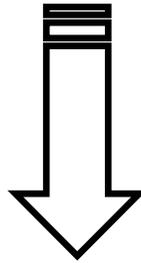


### **OBJECTIVE**

- ❖ *To acquaint reviewers with the elements of Compliance approach and substantive approach for review of records*
- ❖ *To ensure that the PU has in place proper systems for maintaining the quality of attestation services rendered;*
- ❖ *To equip reviewers with a clear understanding of how to perform an on-site review of a PU in so far as review of records is concerned*

# TRAINER'S GUIDE

Total Time: 45 minutes



## Power Point Presentation

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### Slide Contents

Part I Review procedure

Part II Compliance approach

- Controls testing - Areas Covered
- Documentation

Part III Substantive approach

Part IV Substantive testing

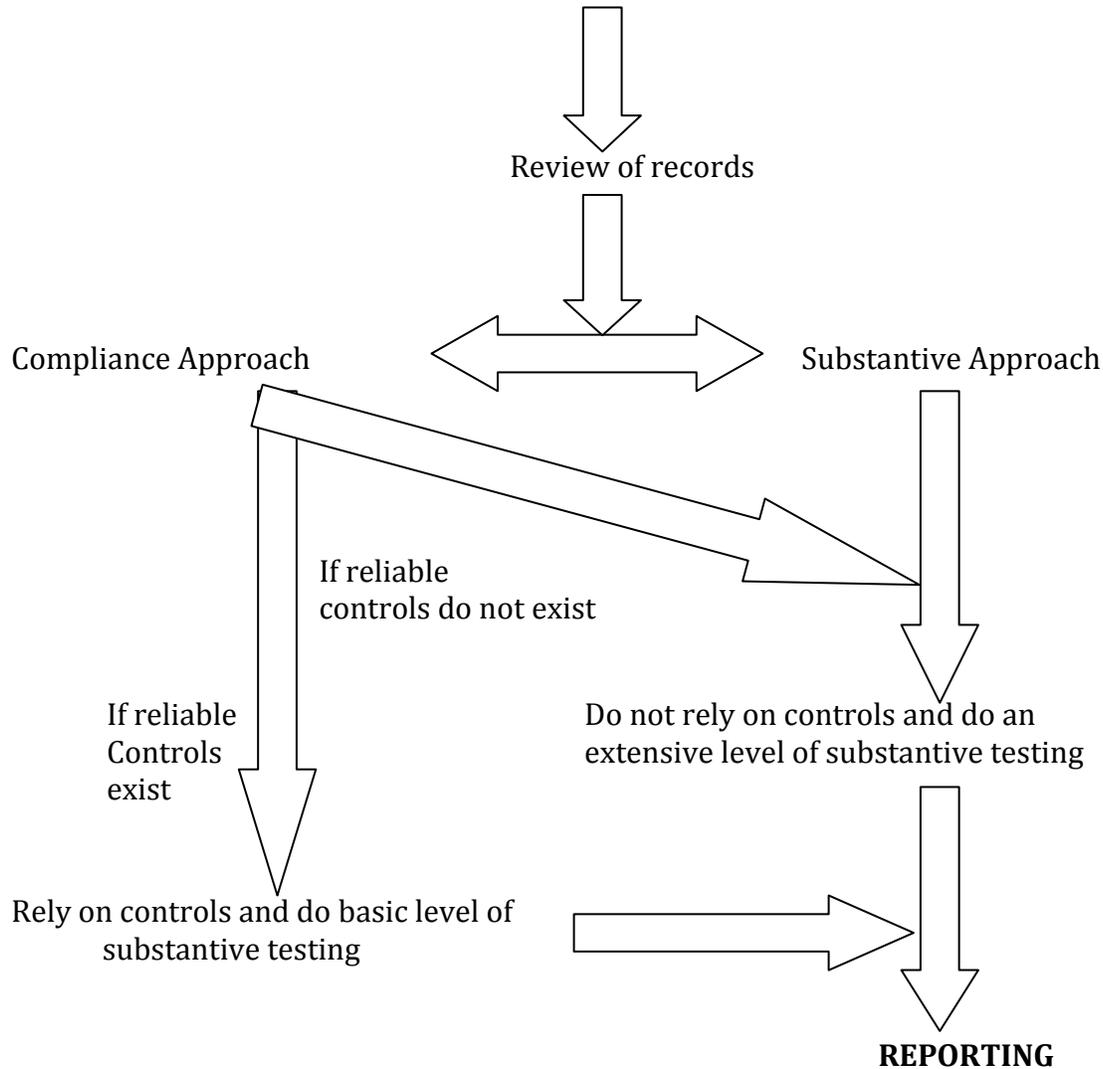
Part V Examples

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## REVIEW PROCEDURE

The review procedure can be understood by studying the flow chart given below:-

### Selection of engagements for Review



The Reviewer should make a primary evaluation of the quality of installed controls and the effectiveness of their operation practically. Based on such evaluation, the Reviewer needs to decide on the nature and extent of testing to ascertain if the attestation processes meet the professional standards expected of it by the Institute.

When reviewing records of a PU, a reviewer should keep in mind the extent of his substantive testing of the records will depend upon whether, in his opinion based on discussions with the PU and corroborative evidence in support of the assertions made, the PU is in compliance with the controls specified earlier.

If the reviewer is not comfortable with being able to form such an opinion, he/she would need to make a more extensive examination of the records than otherwise.

The reviewer's report would be based upon the findings he reaches after a review of the PU's records.

**The reviewer may adopt a compliance approach or substantive approach or a combination of both in the review of the engagement records of the attestation services.**

### **PARTICIPANTS' GUIDE**

The participants should familiarize themselves with the technical standards (Secretarial Standards, Guidance Notes, Notifications & Guidelines by the Institute etc.) that contain law dealing with the six controls: (1) record administration, (2) review and evaluation of the system of internal controls, (3) substantive tests, (4) Attestation service Reporting, (5) conclusion, and (6) report.

The participants should additionally acquaint themselves with the requirements of applicable laws that lay down pronouncements that reviewers need to be thoroughly conversant with when performing the substantive testing of PU client files.

### **COMPLIANCE APPROACH**

- The compliance approach is to assess whether proper control procedures have been established by the PU to ensure that attestation services are being performed in accordance with Technical Standards.
- Practice units should have procedures and documentation sufficient to cover each of the key areas.

If the size of the PU is small or medium the Compliance Approach may not be appropriate. In such a case, the Reviewer may choose the other approach for conduct of Review.

The procedure to be followed is as follows:-

- Reviewer should have a discussion with the PU, to find the important control areas
- Reviewer should select key control areas
- Reviewer should study the policies and procedures followed for maintaining registers, evidence documentation, staff's work supervision and attestation services.
- Presence of controls throughout the entire year needs to be verified
- Reviewer should collect sufficient evidence to justify his/her choice to use compliance approach for review

### **Controls Testing - Areas Covered**

Under Compliance Approach, records of the following key controls to be reviewed to ensure compliance with technical standards:

- Record Administration
  - Diary / working papers
  - Permanent files

- Current files
- Review and Evaluation of System of Internal Controls
  - Authorisation of Records
  - Authorisation of Registers
  - Review of the policies and procedures
- Substantive Tests
  - Basic Compliance Tests
- Attestation Service Reporting
  - Format of reports given to client
  - Documents along with the report
  - Supporting documents and records maintained for evidence purpose
- Conclusion
  - Evidences on the basis of which conclusion is drawn
- Report
  - Type of report and the underlying reasons

## **Documentation**

- Documentation is of critical importance
- Smaller PUs may have a lower level of documentation tailored to their clients, provided circumstances therefore are justified to reviewer.

Smaller firms with mostly small-sized clients might not currently have high quality documentation policies in place. However, small PUs do not render any lesser quality of professional service to their clients. It is expected that such PU would maintain enough evidence to substantiate that they in fact planned and performed high quality engagements. In view of this, all PUs irrespective of their size should revisit the quality and extent of documentation as a firm policy and endeavour to bring it in line with best practices prevailing in the profession, because they will find it rather difficult to justify to the reviewer the circumstances under which a lower level of documentation was in order.

Documentation is discussed in detail in Module 5.

## **SUBSTANTIVE APPROACH**

A substantive approach will be employed if the reviewer chooses not to place reliance on the practice unit's general and/or specific controls on attestation engagements or is of the opinion that standard of compliance is not satisfactory or not appropriate in the case of a specific Practice Unit selected for Peer Review. This approach requires a review of the attestation working papers, registers and documents in order to establish whether the

attestation service has been carried out as per Technical Standards, Guidelines and other Regulatory requirements.

The procedure to be followed is as follows:-

- Identify the key risk areas for elaborate substantive testing
- Determine materiality estimate for the substantive testing
- Allocate the work among partners, staff and apprentice trainees for timely completion and review work done by trainees
- Obtain sufficient assurance for eliminating detailed testing of any area
- Do thorough checking of permanent and current diary / working papers, documents, policies and registers
- Perform Attestation service review
- Check compliance with legal and regulatory requirements

### **PARTICIPANTS' GUIDE**

The following checklist contains the aspects a reviewer needs to examine when conducting a PU client's file review. This checklist is not exhaustive and reviewers are certainly not precluded from looking into the PU client working papers for evidence of compliance with technical standards outside of this checklist. But, the reviewer is not expected to communicate with or visit the client of the practice unit.

#### **Exercise for the Participants**

- ☛ Group Presentations (for the following checklist)
  - Time allowed to the groups for discussion and preparation: 7 to 10 minutes.
  - Time allowed for each group presentation: 5 minutes.
  - Time allowed for trainer summary of each slide: 1 minute.
- ☛ To make discussion on these technical issues both interesting and interactive as also to reduce thinking time, trainers should get the participants to work in groups of 5 or 6. Each group is assigned one slide on which its members should brainstorm and come up with a list of thoughts on what they would want to see documented in a PU client file for each one of the points.
- ☛ Simultaneously, each group is given time to prepare a five minute group presentation for the rest of the class, to be delivered by one or more group members.

Participants are expected to consult relevant technical standards where pronouncements/ law/regulations are laid down for the topics allocated to the group and come up with a shortlist of key points to be considered by the reviewer. After the group presentation, the trainer summarises the most important points in relation to each topic.

## **SUBSTANTIVE TESTING**

Substantive Testing is common in both the approaches i.e. Compliance Approach and Substantive Approach. The only difference is that in Compliance Approach reliance is placed on the internal controls, policies, procedures and documentation and basic level of substantive testing is done whereas in Substantive approach less reliance is placed on internal controls, policies, procedures and documentation due to some shortfalls in those system and therefore an extensive substantive testing is done.

### **Extensive Substantive Testing - Checklists**

- Appointment of PCS by the client
- Terms of engagement of PCS
- Obtaining information
- List of Relevant Records
- Book-keepers & authorised signatories
- Memorandum / Articles, Prospectus, Partnership Deed
- Understanding the client's business
- Understanding their compliance systems
- Understanding the controls environment
- Evaluation of assignment risk, using professional judgement
- Design of procedures to mitigate risk.
- Determine materiality estimate for the engagement
- Selection of samples
- Perform controls testing and conclude on controls reliability
- Communicate control weaknesses to management.
- Perform substantive analytical testing
- Perform substantive tests
- Reports qualifications, scope, limit, reservations
- Working Papers to have adequate evidence for assertions made in attestation services
- Working Papers to agree with reports and cross-referenced
- Complete lead schedules
- Prepare assignment summary memorandum
- Review juniors' work.
- Ensure updation of permanent file
- Check compliance with legal and regulatory requirements

- Check compliance with Secretarial Standards issued by ICSI and other technical standards
- Subsequent events review.
- Final discussion points
- Prepare management letter
- Complete staff evaluation
- Start next year's planning.
- Maintenance of Register of Attestation Services as per Guideline issued by ICSI

## **EXAMPLES**

### **PEER REVIEW OF ANNUAL RETURN AUDIT**

#### **Annual Return Audit**

As discussed earlier, Annual return Audit is an audit of:

- Share Capital
- Changes in Board's Composition
- Changes in Shareholding pattern
- Indebtedness of the Company as on date
- Transfer of unpaid dividend/ deposits / debentures etc.
- Equity Share Capital Break-up

#### **Some illustrative checkpoints**

**Check whether the following documents are verified by PU while carrying out Annual Return Audit:-**

1. Changes in Share Capital
  - Resolutions passed by Board / General meeting
  - Register of Members
  - Filing of Forms 5, 23, 2 or SH-7, SH-10, MGT-10 with ROC
  - Copy of Corporate Action forms w.r.t. further allotment of shares
  - Updated copy of MOA & AOA
  - Trading Approvals obtained from Stock Exchanges
2. Changes in Board's Composition
  - Directors' Disclosure forms
  - Register of Directors, Directors Shareholding
  - Consent / resignation letters
  - Board resolutions passed

- Form 32, 25C or MGT-14, DIR-3C, DIR-12 filed with ROC
3. Meetings
- Board / Committee Minutes
  - General Meeting minutes
  - Consent letters obtained from auditor prior to his appointment
  - Intimation letter to Auditor of his appointment at AGM—Check Form 23B or ADT-1, MGT-14
  - Proceedings filed with Stock Exchanges within 30 days
4. Shareholders
- Latest Shareholding Pattern
  - List of share transfers/ Transmissions etc. effected
  - Confirmation letter from RTA On the following :
    - List of Shareholders as on AGM date
      - In case of Demat – as on last beneficiary download data
      - In case of Physical shares – as on book closure date
    - Control reports of shareholding on NSDL /CDSL / Physical
5. Indebtedness
- Relevant Board Resolution for availing loans
  - Obtain certificate from the Company confirming the amount of Secured loans including interest outstanding / accrued but not due for payment as on the date of AGM
  - General Meeting resolution for limits u/s 293(1)(d) or as applicable under Companies Act, 2013
  - Register of Charges / ROC filings
6. Equity Share holding pattern
- Please Note the following:
- Govt. (Central & State)
  - Govt. Companies
  - Public Financial Institutions
  - Nationalized / Other Banks
  - Venture Capital
  - Foreign Holdings
  - Body Corporate
-

- Mutual Fund
- Directors/ Relatives of Director / Key Managerial Personnel
- Other Top 50 Shareholders
- 7. Other Basic Company information
  - Name of the Company – Certificate of Incorporation / Fresh incorporation certificate
  - CIN / Registration Date – Master Data / Certificate of incorporation
  - Listing Details – Copy of Listing Approvals
- 8. IEPF Transfers
  - Unpaid Dividend
  - Unpaid Deposits
  - Unpaid Debentures
    - (a) Details of Amount of unpaid dividend/deposit/debentures
    - (b) Copies of e-Forms 1 filed with ROC to check whether transferred within prescribed time limits

#### **List of Public Financial Institutions in India**

- Industrial Investment Bank of India Ltd.
- National Housing Bank.
- Small Industries Development Bank of India
- National Bank for Agriculture and Rural Development.
- Export import Bank of India.

#### **Other Important Check Points for Peer Reviewer**

- Maintenance by the Practising Company Secretary providing certification services of the following:
  - Register of Attestation Services
  - Copies of all relevant papers and documents obtained from the company for the purpose of annual return certification
- Extent of adherence to the Guidance note.
- Whether procedures followed in certification are adequate?
- Whether copies of return and data stored?
- Assessment of gaps in the system- objective and materiality

#### **PEER REVIEW OF COMPLIANCE CERTIFICATION**

##### **Check points**

- Appointment process - in case of change of PCS, whether process followed.

- Documentation maintained (copies of annual report, annual return, forms filed, representation letter, etc.)
- Checklist of PCS for this assignment, if any.
- Maker-Checker concept.
- Regulatory issues, if any
- Extent of adherence to the Guidance note.
- Whether procedures followed in certification are adequate?
- Whether copies of certificate and data stored?
- Assessment of gaps in the system- objective and materiality

### **PEER REVIEW OF SECRETARIAL AUDIT REPORT**

#### **Check points**

- Appointment process - in case of change of PCS, whether process followed.
  - The company has compliance of applicable statutory provisions.
  - Verify the 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.
  - Check that the proper Board-processes and compliance mechanism in place.
  - Whether the Company has complied with Secretarial Standards specified by the Institute of Company Secretaries of India?
  - Whether the Company has complied with the listing agreement?
  - Whether the Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors?
  - Whether 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?
- Whether majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes?

### **PEER REVIEW OF SECURITIES TRANSFER CERTIFICATION UNDER CLAUSE 47(c) OF THE LISTING AGREEMENT**

#### **Check points**

- Engagement process
- Whether PU verifies MOT and has record of the transfers received, approved, despatched and rejected?
- Whether PU has back up papers from company/RTA showing the details?

- Whether procedures followed in certification are adequate?
- Whether copies of certificate and data stored?
- Assessment of gaps in the system- objective and materiality

## **PEER REVIEW OF SHARE CAPITAL RECONCILIATION**

### **Checkpoints for Reconciliation Audit**

- Reconciliation of Capital
  - Admitted
  - Issued
  - Listed
- Maintenance of records for demat and remat
- Demat only after in-principle approval from Stock Exchange and admission granted by Depository
- Check for proper systems in place and that securities not dematerialized earlier
- Reconcile daily balances for tally of Capital
- Demat within 21 days
- Whether data regarding capital structure of the listed company and changes is available with PU?
- Details of records maintained (Control sheets) regarding DRF received, despatched, rematerialised, etc?
- Extent and sufficiency of checking range of the PU.
- Level of staff who are assigned this work-Proprietor or Partner's role.
- Difference in reconciliation - How handled?
- Assessment of gaps in the system- objective and materiality

## **PEER REVIEW OF INTERNAL AUDIT OF DP**

- Extent of adherence to the Handbook on Internal Audit of Operations of DP (with checklists)
- Extent of adherence to the Detailed Guidelines of NSDL and CDSL available.
- Regulatory queries on Audit- very common
- Assessment of gaps in the system- objective and materiality

## **PEER REVIEW OF CORPORATE GOVERNANCE CERTIFICATION**

### **Corporate Governance- Practical Aspects**

- While implementing and practicing the Corporate Governance it is necessary to examine and introduce certain elements which stand as Hallmarks of Corporate Governance.

- Establishing and well defining strategic objectives and set of corporate values and means to attain them (vision and mission statement).
- Endeavour to enhance the value of stake holders and harmonizing their interests.
- Competent Board with independent disposition assisted by its various committees and senior management.
- Documentation of definition and understanding of the role, duties, responsibilities, accountabilities of the Board, its Committees and Senior Management.
- Appropriate supervision by senior management.
- Transparency at Board level and all levels of the management.

**Check whether the following documents are verified by PU while carrying out corporate governance certification:**

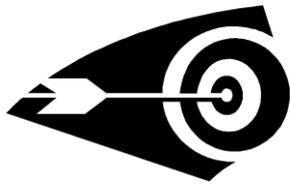
- Constitution of the Board
- Roc Filings- Form 32/DIR-12
- CEO/ CFO Certification -49 (IX)
- Board Minutes
  - Nomination Committee Minutes
  - Remuneration Committee Minutes
  - Audit Committee Minutes
- Listing Compliances
  - Composition of Board
  - Independent Director
  - Disclosures<sup>49</sup> (VIII)
  - Code of Conduct-49 (IIE)
  - Audit Committee – 49 (III)
  - Compliance Report

**Other Important Check Points**

- Comparison of working notes of the previous year to cross-verify changes.
- Quality of staff assigned for this task.
- If PCS follows his own checklist, whether it includes all areas and complies with the Guidance Note?

# MODULE 5

## *Documentation*

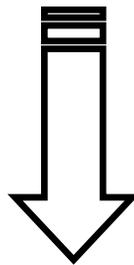


### **OBJECTIVE**

- ❖ *To understand the quality and quantity of documentation that is required to be maintained in support of a PU having planned and performed an assignment*
- ❖ *To understand the requirements for documentation*

# TRAINER'S GUIDE

Total Time: 20 minutes



## Power Point Presentation

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### Slide Contents

- Part I The essential requirements for good documentation
  - Part II The Need for adequate documentation
  - Part III Form & Content of diary / working papers
  - Part IV Quality of dairy / working papers
  - Part V Contents of Current File
  - Part VI Contents of Permanent File
-

## **THE ESSENTIAL REQUIREMENTS FOR GOOD DOCUMENTATION**

- A policy of documentation procedures should be adopted that is supported by management and routinely followed by all staff;
- The system should enable capturing all documentation and make it accessible to all the staff;
- All client interactions, should be documented except those that are strictly confidential;
- Documentation notes should be contemporaneously with client interactions; and preserved.

## **THE NEED FOR ADEQUATE DOCUMENTATION**

Every PU should document matters which are important in providing evidence that the assignment was carried out in accordance with the regulatory requirements. Additionally, PUs should maintain records but mere maintenance of adequate documentation does not, by itself, imply that quality control policies and procedures of the PU are adequate.

Documentation of conclusions drawn and, more importantly, the justification for having reached those conclusions is essential for a PU to prove that he/she applied his/her mind judiciously and objectively to the situation under report and was not improperly influenced by the management in a manner that might be construed as having impaired his independence.

Documentation of the evidence he/she tested and a written discussion of how and why he/she considered that evidence to be adequate in supporting the conclusions are crucial for a PU to prove the quality and objectivity of his decision making for the transactions and assertions made at the conclusion of the assignment.

When relying on the test check approach, a PU needs to be able to prove how he/she identified certain areas where less checking was done as they were considered low risk areas, and other areas where more checking as it was considered risky areas. The PCS should be able to demonstrate that he/she used their resources judiciously by planning the work so as to be able to perform a risk based review. A reviewer needs to follow the following process:-

## **FORM & CONTENT OF DIARY / WORKING PAPERS**

Diary is an important tool in the hands of the PU and his team. It shall provide information on the following:

- Who - who has carried out the engagement?
- Where - where has the engagement been conducted?
- When - when is engagement undertaken?
- What - what is purpose & scope of engagement?

The diary / working paper of PU must have the following details:-

- Nature of engagement
- Form of report

- Nature/complexity of client's business
- Nature/condition of client's records
- Degree of reliance on internal controls
- Need for direction, supervision and review of work done by Apprentice trainees

### **QUALITY OF DIARY / WORKING PAPERS**

A reviewer can make an opinion about the quality of diary / working paper by studying the following:-

- Diary / working papers should have adequate evidence
- Diary / working papers should agree with books registers, resolutions & other records
- Complete schedules relating to the assignment work must be maintained
- Contain evidence of Review of Apprentice / trainees work
- Each diary / working paper should contain the following information:
  - Name of the client
  - Telephone No.
  - E-mail id of client
  - Registered office address
  - Period covered by the assignment
  - Subject matter
  - File-reference
  - Name and the date on which it was prepared
  - Initials of the member of the engagement team who prepared it
  - Initials of the member of the team who reviewed the diary / working paper.

### **CONTENTS OF PERMANENT DIARY / WORKING PAPER FILE**

PU must maintain a permanent file containing the details given below:-

- Information about organisational structure
- Extracts of legal documents, agreements, minutes, Board's resolution, e-mails, etc.
- Record of evaluation of internal controls
- Past Report, if any
- Copies of management letters/representations, if any
- Record of communication with previous PU

- Notes regarding significant notification and guidance
- Significant past observations

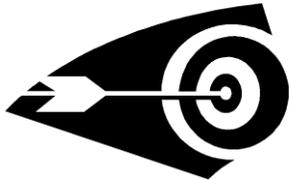
### **CONTENTS OF CURRENT DIARY / WORKING PAPER FILE**

PU must maintain a current file containing the details given below:-

- Acceptance of appointment letters or copy of boards resolution
- Minute book extracts
- Evidence of planning process and programme
- Analysis of transactions and documents
- Record of nature, timing and extent of work performed & results thereof
- Evidence of supervision of the work of the Apprentice trainee
- Letters of representation/confirmation received from management
- Communication, if any, with outside experts and third parties
- Conclusions about significant engagement issues, including how exceptions/unusual matters were resolved/ treated.

# MODULE 6

## *Technical Standards*

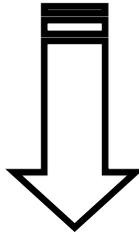


### **OBJECTIVE**

- ❖ *To equip the Reviewers with the inputs on Technical Standards required for examination of the degree of compliance with the Technical Standards*
- ❖ *To ensure that the PU, while performing attestation services, complied with technical standards*

# TRAINER'S GUIDE

Total Time: 60 minutes



## Power Point Presentation

Slide	Contents
Part I	Importance of Technical Standards in Peer Review
Part II	Secretarial Standards Board
Part III	Secretarial Standards
Part IV	Guidance Notes issued so far <ul style="list-style-type: none"><li>• Guidance Notes on Standards</li><li>• Other Guidance notes relevant to attestation services</li><li>• Other Guidance Notes</li></ul>
Part V	Notifications /Directions issued by the Council of ICSI
Part VI	Provisions of Company Secretaries Act, 1980 <ul style="list-style-type: none"><li>• Code of Conduct for Company Secretaries</li><li>• Code of Conduct for Practising Company Secretaries</li><li>• Illustrative Case Studies on Code of Conduct</li><li>• Misconduct by PU</li><li>• Immunity from Misconduct under Peer Review</li></ul>

## **PARTICIPANTS' GUIDE**

This module deals with some of the Technical Standards with which a PU is required to be in compliance. These are not the only Technical Standards with which a reviewer needs to be familiar. Besides these, reviewers are expected to have knowledge and familiarity in applying the following:

1. Framework in Respect of Secretarial Laws
2. Notifications/Directions including those of Self-regulatory nature
3. Other Guidance Notes
4. Statements, General Clarifications and Interpretations; and
5. Relevant Legislation, including the Companies Act, 2013 and other laws, rules, notifications, etc., as may affect the type of client whose attestation services are under review.

The pronouncements of the Institute become applicable and mandatory from different dates. While reviewing the practice unit's records for a particular engagement, the reviewer should examine the applicability of the relevant pronouncement to the particular engagement for the period under review.

### **Exercise for Participants**

Participants should have an interactive presentation on this Module as follows:

- ☛ Individual/Group Presentations:
  - For each presentation: 3 minutes per participant
  - For group interaction: 3 minutes per participant

## **IMPORTANCE OF TECHNICAL STANDARDS IN PEER REVIEW**

The Peer Review Process involves examination of the degree of compliance with the Technical Standards. Under Sl. No. 3.11 of Guidelines for Peer Review, Technical Standards means:

- Secretarial Standards issued by the Institute of Company Secretaries of India, wherever mandatory;
- Guidance Notes on Secretarial Standards issued by the Institute of Company Secretaries of India;
- Compliance of Guidance Notes on other subjects issued by the Institute of Company Secretaries of India;
- Notifications/Directions issued by the Council of Institute of Company Secretaries of India; and
- Compliance of the provisions of the various relevant Statutes and/or Regulations, which are applicable in the context of the specific engagements being reviewed.

Thus, it is necessary for the Reviewers to be fully familiar with the Secretarial Standards, Guidance Notes on Secretarial Standards and other Guidance Notes, Notifications/directions issued by the Council of ICSI and other relevant statutes or regulations which are applicable to the review engagement. During the course of Peer Review, the Reviewer is expected to examine the compliance of these Standards and/or Guidance Notes, Notifications/directions issued by the Council of ICSI and other relevant statutes or regulations which are applicable to the review engagement of the PU to the extent applicable.

## ***SECRETARIAL STANDARDS BOARD***

### **Secretarial Standards Board and its Objectives**

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

### **Scope and Functions of the Secretarial Standards Board**

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

### **Need for Secretarial Standards**

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

### **Scope of Secretarial Standards**

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards will be issued in conformity with the provisions of the applicable laws. Section 118(10) of Companies Act, 2013 enforces the Secretarial Standards with respect to general and Board meetings.

**SECRETARIAL STANDARDS** The Ministry of Corporate Affairs in the process of approving the Secretarial Standards specified by the Institute of Company Secretaries of India.

## **GUIDANCE NOTES ISSUED SO FAR**

### **Guidance Notes on Standards**

#### *Guidance Note on Passing of Resolutions by Postal Ballot*

Obtaining consent of the Members of a company by voting by Postal Ballot is prescribed under the Companies Act, 2013. The Ministry of Corporate Affairs (MCA) has issued The Companies (Management and Administration) Rules, 2014 to allow issue of notices through electronic mail and have laid down procedure of e-voting by electronic mode for postal ballot. This Guidance Note, explains in detail the various aspects concerning passing of resolution by Postal Ballot.

#### *Guidance Note on Board's Report*

The Guidance Note deals with the requirements of law in connection with the preparation and presentation of Board's Report. It seeks to prescribe certain practice which are desirable from the point of view of good corporate governance.

### **Other Guidance Notes Relevant To Attestation Services**

Peer review is directed at the attestation services of a practice unit (PU). The following are the other Guidance notes issued relevant to attestation services:-

#### *Guidance Note on Secretarial Audit*

Section 204 of Companies Act requires for certain class of companies to annex with its Board Report, a secretarial audit report given by the Company Secretary in Practice in Form MR-3. The Guidance Note provide a step by step approach to secretarial audit and its methods.

#### *Guidance Note on Signing of Annual Return*

With a view to equipping Members in whole-time Practice to embark upon this area of practice competently and thereby measuring upto the expectations of the Government, the Council of the Institute issued a comprehensive Guidance Note on Certification of Annual Return. The Guidance Note covers various aspects of certification of Annual Return of listed companies by a Company Secretary in whole-time practice.

#### *Guidance Note on Compliance Certificate*

The Companies (Amendment) Act, 2000 opened up an exclusive area of practice for Company Secretaries by insertion of proviso to sub-section (1) of section 383A of the Companies Act, 1956 which provides that every company not required to employ a whole-time secretary and having a paid-up share capital of rupees ten lakhs or more shall file with the Registrar of Companies a certificate from a secretary in whole-time practice as to whether the company has complied with all the provisions of the Companies Act and that such certificate shall be attached with the Board's Report. The Central Government has notified the Companies (Compliance Certificate) Rules, 2001 providing for Form of certificate, time within which it is to be filed with the Registrar of Companies and the conditions to be complied with by the companies.

While the new provisions have opened up a core area of practice for Company Secretaries, it equally casts an onerous responsibility on them and poses a greater challenge so as to justify fully the faith and confidence reposed by the Government, trade and industry and measure upto their expectations. Company Secretaries must, therefore, take adequate care

in issuing compliance certificate as it is through this certification that the confidence of the Government, trade and industry would be build up vis-à-vis our profession.

Keeping this in view, the Council of the Institute has issued a Guidance Note on Compliance Certificate in order to equip the members in practice to undertake this assignment with utmost confidence.

#### Guidance Note on Corporate Governance Certificate

The Clause 49 of the Listing Agreement, which incorporates the code of good corporate governance practice for all listed companies. The Institute has come out with a Guidance Note on Corporate Governance Certificate to provide a reliable and accessible single source reference material for professionals in general and company secretaries in particular engaged in this important aspect of corporate administration.

### **OTHER GUIDANCE NOTES**

#### Guidance Note on Diligence Report for Banks

The Institute developed this Guidance Note to enable Practising Company Secretaries to furnish regular certification of Diligence Report required under regulatory prescriptions in case of consortium/multiple banking facilities availed by borrowers. The Note contains para-wise comments and detailed checklist for issue of Diligence Report for banks.

#### Guidance Note on Internal Audit of Stock Brokers

SEBI authorized Practising Company Secretaries, amongst other professionals to carry out complete internal audit of stock brokers/trading members/clearing members on a half yearly basis. As a capacity building initiative for Company Secretaries, the Institute brought out this exhaustive Guidance Note. It covers all aspects of the capital market and trading mechanism relevant for undertaking the internal audit.

#### Guidance Note on Certification under Investor Education and Protection Fund Rules

Under the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001, Practising Company Secretaries are authorized to certify the correctness of the Statement furnished by a company to the Registrar of Companies in respect of crediting of unpaid/unclaimed dividend and other amounts to the Investor Education and Protection Fund established under the Companies Act, 1956. The Institute brought out this Guidance Note to enable our Members to discharge their responsibility under the aforesaid provision.

#### Guidance Note on Code of Conduct for Company Secretaries

In 1989, the first edition of the Guidance Note on Code of Conduct for Company Secretaries was published by the Institute. With the transformation of the practicing side of the profession, new era of speedy disposal of cases relating to misconduct, etc., it became necessary to bring out a Revised Guidance Note on Code of Conduct for Company Secretaries to bring it in conformity with the governing legislation. Accordingly, in 2011, a revised Guidance Note on Code of Conduct for Company Secretaries was released by the Institute. The Note is a self-contained document on the Code of Conduct providing updated information to the members.

### Guidance Note on Listing of Corporate Debt

SEBI had notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 to give a fillip to the corporate bond market in India and also put in place a simplified Listing Agreement for debt securities. This Guidance Note on Listing of Corporate Debt, provides a reference material for the Companies and Company Secretaries in employment complying with the Listing Agreement for Debt Securities and the Practising Company Secretary certifying the compliance of various requirements of the Listing Agreement.

### Guidance Note on Board Processes

Part V of the 'Corporate Governance Voluntary Guidelines, 2009 released by the Ministry of Corporate Affairs dealing with 'Secretarial Audit' observed that "it is important that the Board Processes and Compliance Mechanisms of the Company are robust." Recognising the importance and relevance of this subject, the Institute brought out a Guidance Note on Board Processes to enable companies to follow the best practices on the subject.

### Guidance Note on Non-Financial Disclosures

The Ministry of Corporate Affairs had issued the "Corporate Social Responsibility (CSR) Voluntary Guidelines, 2009 in December, 2009 for voluntary adoption by the corporates. Refining the CSR Voluntary Guidelines, the Ministry released the "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business" in July, 2011 suggesting a credible reporting framework on 'triple bottom line', i.e., People, Planet and Profit. Recognising the importance of this subject, The Institute released this Guidance Note on Non-Financial Disclosures to enable companies to make appropriate non-financial disclosures that address the major concerns of various stakeholders in this regard.

## **NOTIFICATIONS/DIRECTIONS ISSUED BY THE COUNCIL OF ICSI**

In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India had issued the following guidelines :-

1. Guidelines for requirement of maintenance of a Register of Attestation {Certification} services rendered by Practising Company Secretary/Firm of Practising Company Secretaries w.e.f. January 1, 2008.
2. Guidelines for issuing Secretarial Audit Report, Signing and Certification of Annual Return w.e.f. April 1, 2015.

Reviewers are expected to ensure compliance with these guidelines.

## **PROVISIONS OF COMPANY SECRETARIES ACT, 1980**

Technical Standards includes Compliance with the provisions of the Company Secretaries Act, 1980 especially provisions relating to the Code of Conduct for Practising Company Secretaries. Thus, it is necessary for the Reviewers to be fully familiar with the above Code

of Conduct of ICSI. During the course of Peer Review, the Reviewer is expected to examine the compliance of this Code by the PU to the extent applicable.

### **Code of Conduct for Company Secretaries**

One of the universally accepted characteristics of a profession is the observance of a strict code of conduct by the members of the profession. The basic reason why code of conduct is strictly to be enforced in the case of professional is, that a professional is endowed with higher faculties conditioned by an elaborate preparatory education, rigorous instruction and valuable practical training, as to distinguish, above all, righteous act/conduct from those deviant and unedifying.

Code of conduct which also goes by the synonym 'Professional ethics' encompasses a professional's conduct towards his peers, the clients, the employer and the public at large.

The learned professions the world over have accorded highest priority to professional ethical standards in the dealings and relationship of professionals with their employers, employees, Government, fellow professionals and the public at large. The fundamental principles which should govern the conduct of a professional with others have been broadly identified as to encompass:

- integrity;
- professional independence;
- professional competence;
- objectivity;
- ethical behaviour;
- conformance to technical standards, if any, prescribed; and
- confidentiality of information acquired in the course of professional work.

The code of conduct became statutory with the conversion of the Institute into a statutory body under The Company Secretaries Act, 1980 w.e.f 1<sup>st</sup> January 1981. The First and Second Schedules to the Act encompassing various instances of professional misconduct adopt to great measure, the code originally evolved by the Institute in 1977.

### **Broad Scheme of the Provisions Relating to Misconduct under the Company Secretaries Act, 1980**

Under section 9 of the Act, the Council of the Institute has the prerogative of managing the affairs of the institute and discharging the functions assigned to it by or under the Act. The Council, *inter alia*, has authority to exercise disciplinary powers by instituting inquiry into cases where it is *prima facie* of the opinion that a member is guilty of professional or other misconduct.

Professional misconduct in relation to members of the Institute is broadly structured as under:

#### **Council on Code of Conduct for Practising Company Secretaries**

- Professional misconduct in relation to members of the Institute in practice. (Part I of the First Schedule, containing twelve clauses)

- Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule, containing three clauses)
- Professional misconduct in relation to members of the Institute generally. (Part III of the First Schedule, containing four clauses)
- Professional misconduct in relation to members of the Institute in practice requiring action by a High Court (Part I of the Second Schedule, containing ten clauses).
- Professional misconduct in relation to members of the Institute generally requiring action by a High Court (Part II of the Second Schedule, containing two clauses).
- Professional Misconduct - Any act or omission specified in the First and Second Schedule to the CS Act to be a professional misconduct. It categorically provides that the Council's power to enquire into the conduct of any member under any other circumstances is in no way limited or abridged.
- Other Misconduct – Illustrative examples of “other misconduct” :
  - Where a Company Secretary retains the records, books of account and documents of the client and fails to return these to the client on request without a reasonable cause.
  - Where a Company Secretary makes a material misrepresentation.
  - Where a Company Secretary uses the services of his apprentices for purposes other than professional practice.
  - Conviction by a competent court of law for any offence under section 8(e) of the CS Act.
  - Wrong publicity causing damage to the clients.

*{For more details please read sections 21 & 22 and the First and Second Schedules to the Act and Regulations 15 to 19 of The Company Secretaries Regulations, 1982}.*

- Any member of the Institute engaging in practice without obtaining a Certificate of Practice would be deemed to be in practice and would be liable for professional misconduct. This clause also contemplates a member of the Institute engaging in the above functions in partnership with members of such other professions as may be prescribed.
- A company secretary in practice may be permitted to become a partner in more than one partnership firms of company secretaries if he has obtained consent from the other partners of each of such firms.
- The scope of the Investment Consultancy should be confined to rendering of professional advice/services to the clients in areas relating to stocks and shares, fixed deposits in companies, inter corporate loans, mutual funds, savings scheme and the like. It should not extend to acting as a broker or agent of various companies, institutions, mutual funds etc. as this would amount to engaging oneself in the business or profession other than the profession of Company Secretary.
- A member in practice shall use the designation of a Company Secretary and shall not use any other designation, whether in addition thereto or in substitution therefor.

However, use of the prefix 'practising' before the designation 'Company Secretary' would not offend section 7. Similarly, use of the suffix 'in whole-time practice' or 'in practice' after the designation 'Company Secretary' would also not offend section 7. Use of designations like Company Law Consultant, Corporate Law Advisor, Corporate Advisor, Investment Advisor, Management Consultant, Corporate Counselor, Attorney, Certified Public Secretary is prohibited.

**Briefs of professional or other misconduct cases filed against the members in which the Disciplinary Committee of ICSI has found them guilty and has decided to remove their names from the Register of Members vide its Orders dated 3rd October, 2011**

**1. Complaint of professional or other misconduct against Ms. S K, ACS.**

The Institute had received a complaint against Ms. S K, alleging that she has not exercised due diligence while certifying e-Form 2.

The Disciplinary Committee after considering the report of the Director (Discipline), oral and written submissions made by the parties, other material available on record and the admission of Ms. S K, came to the conclusion that Ms. S K was 'Guilty' of professional misconduct under clause (7) of part I of the Second Schedule of the Company Secretaries Act, 1980 as she had certified the e-Form No. 2 without verifying the receipt of money by the company from the books of accounts of the company and without verifying the relevant Board resolution of the Company.

The Disciplinary Committee after providing the opportunity of hearing to the member decided to remove name of Ms. S K from the Register of Members of the Institute for a period of 60 (sixty) days. The period of removal of name is from 11th October, 2011 to 9th December, 2011.

**2. Complaint of professional or other misconduct against Shri H V, FCS.**

The Institute had received a complaint against Shri H V alleging that he had not exercised due diligence while certifying two e-Form No. 32.

The Disciplinary Committee after considering the report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances came to the conclusion that Shri H V was 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he had certified two e-Form No. 32 without relying on the resolution passed by the Board of Directors at the duly convened meeting and further he had not ensured whether the Director who had signed the e-Form No. 32 was duly authorized to file the said e-Form No. 32.

The Disciplinary Committee after providing the opportunity of hearing to the member decided to remove the name of Shri H V from the Register of Members of the Institute for a period of 60 (sixty) days. The period of removal of name is from 11th October, 2011 to 9th December, 2011.

**3. Complaint of professional or other misconduct against Shri K K G, FCS.**

The Institute had received a complaint against Shri K K G alleging that he was holding Certificate of practice while being in employment which is in contravention of the resolution passed by the Council of the Institute.

The Disciplinary Committee after considering the Report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances, came to the conclusion that Shri K K G was 'Guilty' of professional misconduct under clause (1) of Part II of the Second Schedule of the Company Secretaries Act, 1980, as he had violated the resolution dated the 12th May, 1991, passed by the Council prohibiting the members holding Certificate of Practice to accept the employment; and was also 'Guilty' of professional misconduct under clause (2) of Part III of the First Schedule of the Company Secretaries Act, 1980, as he did not supply the information sought by the Committee.

The Disciplinary Committee proceeded *ex-parte* and decided to remove the name of Shri K K G from the Register of Members of the Institute for a period of 120 (One Hundred and Twenty) days. The period of removal of name is from 11th October, 2011 to 7th February, 2012.

#### **4. Complaint of professional or other misconduct against Shri R S, ACS.**

The Institute had received a complaint against Shri R S alleging that the he had not exercised due diligence while certifying two e-Form No. 32.

The Disciplinary Committee after considering the report of the Director (Discipline), submissions made by the parties, other material on record and the circumstances, came to the conclusion that Shri R S was 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he had certified e-Form No. 32, without exercising due diligence and was also 'Guilty' of professional misconduct under clause (2) of Part III of the First Schedule of the Company Secretaries Act, 1980, as he failed to appear before the Disciplinary Committee.

The Disciplinary Committee proceeded *ex-parte* and decided to remove the name of Shri R S from the Register of Members of the Institute for a period of 90 (Ninety) days. The period of removal of name is from 11th October, 2011 to 8th January, 2012.

#### **5. Complaint of professional or other misconduct against Shri P K T, ACS.**

The Institute had received a complaint against Shri P K T alleging that the he had not exercised due diligence while certifying two e-Form No. 18.

The Disciplinary Committee after considering the oral and written submissions made by the parties in the matter and other material available on record came to the conclusion that Shri P K T was 'Guilty' of professional misconduct under clause (7) of Part I of the Second Schedule of the Company Secretaries Act, 1980 as he had certified e-Form No. 18 on the basis of the order of the Company Law Board. The said order of the Company Law Board was not relevant.

The Disciplinary Committee after providing the opportunity of hearing to the member decided to remove the name of Shri P K T from the Register of Members of the Institute for a period of 60 (sixty) days. The period of removal of name is from 11th October, 2011 to 9th December, 2011.

## **Other Professional Misconduct Cases**

*(Source: Chartered Secretary)*

### **Case Study No.1**

**D. P. CHADHA**

**V.**

**TRIYUGI NARAIN MISRA**

**[2000 (78) SCALE 76; Dr. A. S. ANAND, CJI; R.C. LAHOTI and K. G. BALAKRISHNAN JJJ].**

Professional misconduct – **what is and what is not- duty of an advocate to his client, the court and profession.**

#### **FACTS**

The respondent (complainant) was running a school in a rented building. The owner of the building filed a suit for recovery of possession of the property but the dispute dragged on for some time. In the mean time the respondent went to his native place in Uttar Pradesh for contesting in an election. Before he left Jaipur, the appellant who was his advocate in the suit, obtained from him his signatures on a blank Venkalatnama and on a plain white paper. It was alleged that in collusion with the advocates of the house-owner he obtained an order from the court for handing over possession of the building to the owner. The appellant purportedly gave Rs.5 lakhs to the complainant and got a receipt signed by him. He also got a compromise settlement signed by the lakhs to the complainant and got a receipt signed by him. He also got a compromise settlement signed by the complainant. The building was demolished and the students were left in the lurch. Suspecting that there could be some hidden cause in the appellant rushing through the compromise at such post-haste the trial judge directed the counsel to bring the parties to the court to satisfy himself that the documents were signed by them.

On the complaint of the respondent the State Bar Council after a detailed enquiry held the appellant guilty of Professional misconduct and ordered removal of his name from the register for 5 years. The Bar Council of India in appeal enhanced the period of removal of his name from the register of advocates to 10 years. The supreme court of India in appeal noticed that the appellant was of 60 years of age and having regard to the other circumstances restored the decision of the State Bar Council.

**The Supreme Court held:**

#### **DECISION & REASONS**

##### **What is misconduct?**

The term 'misconduct' has not been defined in the Advocates Act, 1961. It is an expression with sufficiently wide meaning. Having regard to the position which advocates occupy in the process of administration of justice and justice delivery system courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right of exercise the

privilege of the profession would amount to misconduct, attracting the wrath of disciplinary jurisdiction.

### **What is not misconduct?**

It is worth nothing as to what is not misconduct. A mere error of judgement or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not misconduct. The term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject matter and the context wherein the term is called upon to be employed.

### **Duty of a legal practitioner :-**

A lawyer, in discharging his professional assignment, has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so when there are conflicting claims. While discharging duty to court a lawyer should never knowingly be a party to any deception, design or fraud. While placing the claims of law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interests of his client so long as the issue is capable of that resolution by adopting a process of reasoning.

Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of the case, the court places its confidence in the counsel. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bond of trust between the court and the counsel admits of no breaking.

If it is shown that an advocate in the pursuit of his profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competence then it is open to say that he is guilty of professional misconduct.

The court and counsel are regarded as the two wheels of chariot of justice. While the judge holds the reins, the two opponent counsels are the wheels of the chariot. Mutual confidence in the discharge of duties and cordial relations between the bench and the bar smoothen the movement of the chariot.

An advocate, while discharging his duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. A counsel need not make a concession merely because it would please the judge. Independence and fearlessness are not licenses of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of the professional norms.

It is also said that the advocate is a representative but not a delegate of the client. He will not knowingly misstate the law, he will not wilfully mistake the facts.

The charge of misconduct is a serious matter for a practising advocate. A verdict of guilt may result in reprimanding the advocate, suspending him from practice for such period as

may be deemed fit or even removing the name of the advocate from the roll of advocates. Therefore an allegation of misconduct has to be proved to the hilt.

In the instant case both the State Bar Council and the Bar Council of India have arrived at a finding of Professional misconduct having been committed by the appellant. His involvement in recording a false and fabricated compromise is clearly spelled out. The trial judge entertained a doubt about it and therefore insisted on the personal appearance of the party to ascertain that the defendant had in fact compromised the suit in the manner set out in the petition of compromise.

**[Comment:** Among the professionals in our society the lawyer, the medical practitioner, the chartered accountant and currently the Company Secretary occupy a respected position. The respective professional organizations have their professional codes of conduct. Although the expression 'professional misconduct' has not been defined the norms of conduct envisaged by each of these professions are the same. This judgement, it is respectfully submitted, is well written and deserves attention of all professionals. The purpose in specially highlighting this aspect of professional misconduct is that in a recent decision of the SEBI which decision is affirmed by the Tribunal constituted under the 1992 Act seem to have made a short shrift of the principles of natural justice. Over an inconsequential matter the SEBI, without so much as giving the chartered accountant an opportunity of being heard had come to the conclusion that the chartered accountant has committed misconduct and referred the matter to the institute. We would not venture to come to a conclusion about the reference it seems necessary to highlight the errors that (which) have crept into the decision of the forums below. What happened today to the chartered accountant may happen to any professional. Fortunately decisions of the Supreme Court are consistent. But the SEBI and the Tribunal have not referred to any of them. – PBR]

## Case Study No. 2

K. BHAGAWATHEESWARAN

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

[(1998) 93 Comp Cas 625; Y. VENKATACHALAM J. (Mad)].

**Chartered Accountants Act, 1949 – section 22-** Professional misconduct **notification issued by the Institute restricting number of tax audits which a practising chartered accountant could take in a financial year – whether violates the fundamental right of a professional to practice his profession – whether accepting more than the prescribed tax audits amounts to professional misconduct what is professional misconduct.**

### **FACTS:-**

Arguments impugning the notification in this case were the same as in Arun Grover's case (LW 10.1.1999) reported above and therefore they are not repeated in this case.

Quashing the impugned notification the High Court Held:

## **DECISION AND REASONS**

Professional misconduct: its meaning: Professional misconduct was a concept which was understood as meaning something irregular or something committed by a professional in relation to his duties which would amount to dishonestly or an act lowering the dignity of the profession. The main object of the Act was to regulate the conduct of members of the institute in carrying out their professional duties.

Charging of fees by a professional was not misconduct:

Charging of fees by a professional could never be considered as unprofessional. What a professional would consider it proper to charge as fees from his client was a matter of discretion of the individual professional. It could not be fixed or controlled by a professional body by enlarging the definition of Professional misconduct.

In the instant case the notification had given an artificial meaning by which restrictions were placed on the right of a chartered accountant to charge his professional fee. The notification had no purpose or meaning in prescribing the rate of fees. The notification had lost sight of the fact that a professional fee was chargeable only in relation to the work done and should not have any relation with other aspects like population of a city etc. Moreover, it was apparent that the notification led to discrimination among members in practice. The classification adopted by the institute was quite wrong and artificial and it amounted to an infringement into the efficiency of the professional. Yet another aspect which was evident was that there was no indication as to the basis on which 30 tax audits were fixed. Even if it was a firm of chartered accountants comprising of a group of chartered accounts the same restriction applied.

All in all therefore the fixing the number of audits which a chartered accountant could undertake in a year was arbitrary and unreasonable and was violative of the provisions of Article 14 of the Constitution.

### **Case Study No.3**

**V.P . KUMARAVELU**

**V.**

**BAR COUNCIL OF INDIA**

[1997(1) SCALE 685; S.C AGRAWAL AND SUJATA V. MANOHAR JJ.(sc)].

**Professional misconduct-advocate falling to appear in court when cases called-cases decided ex parte - whether amount to professional misconduct-negligence-when would become professional misconduct.**

## **FACTS**

The complaint against the appellant, who was a government pleader, was that by reason of his failure to appear before the court when the case entrusted to him was called, it was decided ex pane and that this had resulted in loss to the client. The Bar council of India rejected the appellant's plea that because of the negligence of his staff in putting up papers of the case on the day it was posted for hearing he was not present in the court when the

case was called. The bar council had held that the appellant was guilty of “constructive negligence”. The Bar Council also held that he was not able to control his office staff. It imposed the lighter punishment of severe reprimand.

Allowing the appeal the Supreme Court held:

### **DECISION AND REASON**

Negligence on the part of the appellant could not be constructed as “**Professional misconduct**”. There was no finding of any mala fides or any deliberate inaction on the appellant’s part in not attending to the case. Whether negligence would amount to **Professional misconduct** or not would depend upon the facts of each case. Gross negligence in the discharge of duties partakes of shades of dereliction of duty by an advocate towards his client or his case would amount to **Professional misconduct**. But negligence without moral turpitude or delinquency may not amount to **Professional misconduct**.

It was settled law that “negligence by itself is not **Professional misconduct**; into that offence there must enter the element of moral delinquency”. So too “there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to **Professional misconduct**. For an advocate to act towards his client otherwise than utmost good faith is unprofessional...Counsel’s paramount duty is to the client. When a person consults a lawyer for his advice he relies upon his requisite experience, skill and knowledge as a lawyer and the lawyer is expected to give proper and dispassionate legal advice to the protection of his interests”.

In the instant case failure of the appellant to discharge his duties was not deliberate but was on account of heavy pressure of work coupled with lack of diligence of his staff as also of his client in not sending a responsible person with papers to the appellant. The appellant could not, however, shift the entire responsibility either to the staff or the client: it was his responsibility. He was, therefore, rightly held guilty of negligence. However, in the absence of any moral turpitude or delinquency on his part, it did not amount to **Professional misconduct**. The Bar Council itself has found various mitigating circumstances.

### **Misconduct by PU**

- The fact that the PU has been Peer Reviewed does not provide immunity to PU from Disciplinary Action for Misconduct under the Code of Conduct.
- Any refusal by the PU to get Peer Reviewed shall be a misconduct under the Code of Conduct of ICSI.

### **Immunity from Misconduct under Peer Review**

The fact that the PU has been Peer Reviewed does not provide immunity from Disciplinary Action. However, neither Institute nor the Reviewer can file any complaint in respect of deficiencies observed during the course of Peer Review.

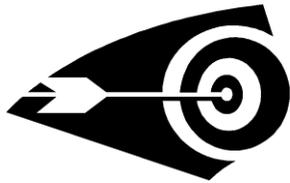
Clause 18 of Peer Review Guidelines provide as follows:

“Immunity

- 18.1 A practice unit, which makes available records or documents to a reviewer, shall not incur any liability under the Code of Conduct under the Company Secretaries Act, 1980 and the Regulations framed thereunder, by reason of compliance with these Guidelines on Peer Review.
- 18.2 The reviewer, by virtue of carrying out the peer review shall not incur any liability other than the liability arising out of his own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed thereunder as well as under the relevant clauses of these Guidelines.
- 18.3 The members of the Peer Review Board shall not incur any liability by virtue of their having discharged the responsibilities as given in these Guidelines and/or as may in future be specified by the Council, other than the liability arising out of their own conduct under the Code of Conduct under the Company Secretaries Act, 1980 and Regulations framed there under as well as under the relevant clauses of these Guidelines.”

# **MODULE 7**

## ***Carrying out attestation assignments by PU***

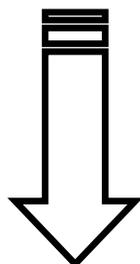


### ***OBJECTIVE***

*To give the Reviewers an overview of select attestation services and inputs for substantive review of attestation services*

# TRAINER'S GUIDE

Total Time: 60 minutes



## Power Point Presentation

### Slide Contents

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Part I	Annual Return Certification <ul style="list-style-type: none"><li>• Diary for Annual Return Certification</li></ul>
Part II	Compliance Certificate
Part III	Issuing Secretarial Audit Report
Part IV	Certification of Securities Transfers (Clause 47 (C)) <ul style="list-style-type: none"><li>• Checklists</li><li>• Specimen Certificate</li></ul>
Part V	Share Capital Reconciliation <ul style="list-style-type: none"><li>• Checkpoints for Reconciliation Audit</li><li>• Report</li></ul>
Part VI	Internal Audit of Depository Participants <ul style="list-style-type: none"><li>• Audit Report</li></ul>
Part VII	Corporate Governance Certification

## **ANNUAL RETURNS**

### **Importance of Annual Return**

- Annual Return brings out the true picture of the company between the two AGM's held.
- Annual Return helps in order to have a clarity on the Directorial changes, changes in capital structure, Shareholdings as on that date, transfers in the corresponding period.
- It is a very good tool to analyse the company's current state of affairs.
- All companies are required to furnish the annual return.

### **Legal Provisions**

The substantive provisions relating to Annual Return are contained in sections 159 to 163 of the Companies Act, 1956. In addition, references to Annual Return have been made, which have a bearing on issuance of certain certificates under section 600 read with the Application of section 159 to Foreign Companies Rules, 1975 and the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001 framed under section 205C of the Act.

Section 92 of the Companies Act, 2013 has been dealing with Annual Return. The references to Annual Return have been made in sections 94, 95, 134, 164, 271, 374 & 455 of the Act.

### **Contents & Format**

Sub-section (1) of section 159 of 1956 and sub-section (1) of section 92 of 2013 Act prescribes the details that should be furnished in the Annual Return of a company having a share capital.

They are:

- (a) The address of its Registered Office, principal business activities, particular of its holding, subsidiary and associate companies.
- (b) Its shares, debentures and other securities and shareholding pattern.
- (c) The indebtedness of the Company.
- (d) Details of its Members and Debenture-holders, past and present since close of previous financial year.
- (e) Details of its Promoters, Directors, Key Managerial Personnel, past and present since close of previous financial year.
- (f) The details of meetings of members or a class thereof, Board and its committees along with attendance.
- (g) Details of remuneration of directors and key managerial personnel.
- (h) Details of penalty or punishment imposed on company, its directors or offices and details of compounding of offences and appeals made against such penalty or punishment.
- (i) The matters relating to certification of compliances, disclosures etc.
- (j) The details in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.

As provided by 2013 Act, the Annual Return should be signed by two officers of the company consisting of;

- (i) The Company Secretary of the company; and
- (ii) A Director of the company

If the company does not have a Company Secretary, the Annual Return should be signed by a Company Secretary in Practice.

The Annual Return in relation to One Person Company should be signed by the Company Secretary, or where there is no Company Secretary, by the director of the company.

In addition to the above officers to the company, the sub-section (2) of Section 92 of the Act and the Companies (Management and Administration) Rules, 2014 requires that the Annual Return should also be signed by a Secretary in whole-time practice, in the case of companies whose shares are listed on a recognised Stock Exchange or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more.

When a Secretary in whole-time practice signs the Annual Return filed with the Registrar, he thereby authenticates the Return as binding on him and certifies that the facts stated and the material furnished in the return are duly and fully (i.e. correctly and completely) stated and given.

Since the Secretary in whole-time practice has to certify that facts as stated in the Return are correct and complete, the Secretary in whole-time practice has the right to call for further facts and material from the company to satisfy himself as to the requirements of section 161 of 1956 Act and section 92 of 2013 Act. He may also require from the officers of the company such information and explanations as he may consider necessary for the performance of his duties, as a Secretary in whole-time practice, under sections 159 and 161 of 1956 Act and 92 of the 2013 Act.

*For more details, refer the Guidance Note of ICSI on 'Signing of Annual Return'.*

## **ANNUAL RETURN CERTIFICATION**

Annual return Certification is:

- Applicable for all listed companies or a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more,
- Undertaken once in a year within 60 days of the AGM held

It is carried out for the purpose of certification of Annual Returns.

Annual return Certification is an audit of:

- Share Capital
- Changes in Board's Composition
- Changes in Shareholding pattern
- Indebtedness of the Company as on date
- Transfer of unpaid dividend/ deposits / debentures etc.
- Equity Share Capital Break-up

## Diary for Annual Return Certification

### **BRIEF PROFILE OF THE COMPANY**

1. Name of the Company			
2. Registration No./CIN			
3. State Code			
4. Date of Incorporation			
5. Whether Shares are Listed			
Whether the Company's Shares are delisted during the period of annual return and the approval of the stock exchange are obtained.	S. No.	Name of Stock Exchange	Date of Approval of Delisting from Stock Exchange
	1		
	2		
	3		
	4		
Name of Stock Exchange where shares are listed	1		
	2		
	3		
	4		
6. Stock Exchange Code Totals			
7. Telephone No.		Fax No.	
8. Email ID of Company			
9. Registered Office address of the Company			

## **GUIDE FOR THE AUDITORS OF RSA**

### **R.S.A. Particulars**

Date of Audit	
Period of Audit	
Company Secretary verifying the Annual Return	
Secretarial Trainee	
Company Secretary Signing the Annual Return	

### **Documents to be obtained / verified**

1. Memorandum and Articles of Association
2. Forms & receipts filed with the Registrar of Companies
3. Register of Members.
4. Share Transfer Register.
5. Register of Directors & Directors shareholding.
6. Disclosure Forms from Directors for the period prior to annual return audit.
7. Register of Charges.
8. Minutes of the Board, AGM, Share Transfer, Remuneration, Audit Committees.
9. Copy of Latest Balance Sheet along with the Notice of AGM.
10. Shareholder list in CD in PDF Format, Share Transfers taken place between previous AGM Date and Current AGM Date, Controls of the Data as on the Date of Annual General Meeting of the Company or the latest Beneficial Positions downloaded from Depository participants by RTA of the Company prior to the date of AGM provided there is no change in the number of shareholders in between the latest beneficial positions data prior to the AGM date and the date of AGM.
11. Certificate from RTA stating the number of shareholders as on AGM Date.
12. Indebtness Certificate signed by Company Secretary/ CFO of the Company.

13. Listing and Trading Approvals) from Stock Exchanges, Credit Confirmation from Depositories namely NSDL and CDSL respectively/ Confirmation from both depositories in respect of allotment of equity shares of the Company during the period between the previous AGM date and current AGM date.
14. Intimation to SEs, Confirmation from NSDL and CDSL for change of the name of the company, change in the face value of equity shares, change in ISIN of the Company and the Scrip Code/ Symbol of the Company, etc.
15. Of change of name of the company, change in the face value of the company, new ISIN No of the Company in respect of the allotment or as a result of any change in capital structure due to any corporate action taken by the Company during the period between previous AGM Date and Current AGM Date.
16. Board Resolution for any type of corporate actions taken by the Company.
17. Corporate Action Forms made by the Company with Depositories.
18. Equity Shareholding pattern and its break up as on AGM Date.

## ***CHECKLISTS***

### **I. DETAILS OF MEETINGS HELD**

1. Date of the Board Meeting held during the year:	1.	2.
	3.	4.
	5.	6.
	7.	8.
	9.	10.
	11.	12.
	13.	14.
	15.	16.
	17.	18.
	19.	20.
2. No. & Date of Previous AGM		
3. No. & Date of Current AGM		
4. Book Closure Date		

## II. CAPITAL STRUCTURE OF THE COMPANY

### 5. Authorised Share Capital Break-up: (As on 31<sup>st</sup> March)

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

### 5(a) Authorised Share Capital Break-up: (After 31<sup>st</sup> March to till the date of AGM)

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

### 6. Issued Share Capital Break-up: (As on 31<sup>st</sup> March)

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**6.(a) Issued Share Capital Break-up: (After 31<sup>st</sup> March to till the date of AGM)**

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**7. Subscribed Share Capital Break-up: (As on 31<sup>st</sup> march)**

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**7.(a) Subscribed Share Capital Break-up: (After 31<sup>st</sup> March to till the date of AGM)**

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**8. Paid-up Share Capital Break-up: (As on 31<sup>st</sup> March)**

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**8(a) Paid-up Share Capital Break-up: (After 31<sup>st</sup> March to till the date of AGM)**

S. No.	Type of Share	No. of Shares	Face Value per Share	Amount
	Equity			
	Preference			
	Total			

**9. Debentures Break-up: (As on 31<sup>st</sup> March)**

S. No.	Type of Debentures	No. of Debentures	Face Value per Debenture	Amount
	Total			

9(a) **Debentures Break-up:** (After 31<sup>st</sup> March to till the date of AGM)

S. No.	Type of Debentures	No. of Debentures	Face Value per Debenture	Amount
	Total			

10. Check whether if there is any increase in the Authorised Share Capital of the Company

Yes  No

S. No.	Details of increase in Share Capital	Date of Board meeting and General Meeting in which it is approved	Details of filing of e Forms with RoC
1.			
2.			
3.			
4.			

11. Check whether if there is any allotment made during the year:

S. No.	Date of Board Meeting in which allotment was made	Details of Allotment	Details of filing of E Forms with RoC
1.			
2.			
3.			
4.			

12. **Indebtedness of the Company** (Amount in Rs.) : Rs.  
(Secured loans including interest outstanding/ accrued but not due for payment)

Whether certificate of indebtedness obtained from the Co.: YES [ ] NO [ ]

13. **Equity Share Capital Break-up :** Percentage No. of Shares

(i)	Government		
(ii)	Govt. Companies		
(iii)	Public Financial Institutions		
(iv)	Nationalised / other Banks		
(v)	Mutual Funds		
(vi)	Venture Capital		
(vii)	Foreign Holdings (FIIs, FCs, FFIs, NRIs, OCBs,)		
(viii)	Bodies Corporate		
(ix)	Directors/Relatives of Directors		
(x)	Other top 50 shareholders		
(xi)	Others		

**No. of Shareholders as on the date of AGM:**

Whether the certificate obtained from the RTA? YES [ ] NO [ ]

(Get a Certificate from Company's Registrar and Transfer Agent about the number of shareholders of the Company at the Annual General Meeting Date.)

### III. TRANSFER OF SHARES

14. Check whether if there is any transfer made during the year: Yes [ ] No [ ]

**If Yes**

S. No.	Date of Board Meeting in which Transfer/Transmission was made	Folio No. & Name of Transferor and No. of Shares	Folio No., Name of Transferee & Date of Dispatching of Certificate
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Check whether since the date of the last annual return the transfer of all shares, debenture, the issue of all further certificates of the shares and debentures, have been appropriately recorded in the books maintained for the purpose. Yes [ ] No [ ]

### IV. DIRECTORS DETAILS

15. Details of Directors / Managers/ Secretary

S. No.	Names of Directors/ Managers/Secretary	Date of Appointment	Date of Ceasing	Date of Birth	Nationality	Address
1.						
2.						
3.						

4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						

**V. CHANGES IN DIRECTORSHIP**

16. Check whether there is any Change in Directorship/Managership/Secretaryship, If yes:

S. No.	Date of Board Meeting in which the Director/ Manager/ Secretary is appointed or ceased	Details of Forms filed with the RoC	Names of the Director/ Manager/ Secretary
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**VI. DIVIDEND DEPOSITS AND DEBENTURES****17. (A) Amount of Dividend Declared during the past years**

S. No.	Financial Year	Date of Declaration of Dividend	Amount declared/ Percentage of Dividend	Date and Amount of transfer to unpaid dividend account
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

**(B) Amount of unclaimed dividends transferred to Fund.**

S. No.	Financial Year	Due Date for transfer of amount to IEPF	Date of transfer of amount to IEPF	Amount of unclaimed/unpaid dividend transferred to IEPF
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

(C) Amount of Application money due for refund transferred to fund.

Application Money Year	Amount of Applicat ion money due for refund	Amount transfer red to IEPF	Allotme nt date	Date of transfer to investors education fund	Amount of Interest accrued and Date of transfer to fund
1 <sup>st</sup> previous year					
2 <sup>nd</sup> previous year					
3 <sup>rd</sup> previous year					
4 <sup>th</sup> previous year					
5 <sup>th</sup> previous year					
6 <sup>th</sup> previous year					
7 <sup>th</sup> previous year					
8 <sup>th</sup> previous year					

(D) Amount of Matured deposits to be transferred:

Matured deposits Year	Amount of Matured deposits	Amount transfer red to the fund	Date of accepting deposit	Date of transfer to investors education fund	Amount of Interest accrued and Date of transfer to fund
1 <sup>st</sup> previous year					
2 <sup>nd</sup> previous year					
3 <sup>rd</sup> previous year					
4 <sup>th</sup> previous year					

5 <sup>th</sup> previous year					
6 <sup>th</sup> previous year					
7 <sup>th</sup> previous year					
8 <sup>th</sup> previous year					

(E) Amount of matured Debentures to be transferred:

<b>Matured debentures</b>	Amount of Matured debentures	Amount transferred to the fund	Date of accepting deposit	Date of transfer to IEPF	Amount of Interest accrued and Date of transfer to fund
<b>Year</b>					
1 <sup>st</sup> previous year					
2 <sup>nd</sup> previous year					
3 <sup>rd</sup> previous year					
4 <sup>th</sup> previous year					
5 <sup>th</sup> previous year					
6 <sup>th</sup> previous year					
7 <sup>th</sup> previous year					
8 <sup>th</sup> previous year					
<b>Interest on deposit and debentures</b>					
<b>Year</b>					
1 <sup>st</sup> previous year					
2 <sup>nd</sup> previous year					
3 <sup>rd</sup> previous year					

4 <sup>th</sup> previous year					
5 <sup>th</sup> previous year					
6 <sup>th</sup> previous year					
7 <sup>th</sup> previous year					
8 <sup>th</sup> previous year					

18. Check whether the return state the facts, as they stood on the date of the Annual general meeting aforesaid, correctly and completely:

Yes [ ] No [ ]

19. Check whether the whole of amount envisaged in clauses (a) to (e) of sub-section 2 of section 205C of the Companies Act, 1956 or sub-section (5) of section 124 of the Companies Act, 2013 remaining unpaid or unclaimed for a period of seven years from the date they become payable by a company has been credited to the Investor Education and Protection fund:

Yes [ ] No [ ] NA [ ]

20. Check whether the company has not, since the date of Annual General Meeting with reference to which the last return was submitted or in the case of a first return, since the date of the incorporation of the company, issued any invitation of the public to subscribe for any shares or debentures of the company:

Yes [ ] No [ ] NA [ ]

21. Check whether where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists of persons who under sub clause (1) are not to be included in reckoning the number of fifty:

Yes [ ] No [ ] NA [ ]

22. The company did not have an average turnover of Rs. Ten crores or more during the relevant period.

Yes [ ] No [ ] NA [ ]

23. Since the date of last Annual general meeting with reference to which the last annual return was submitted or since the date of incorporation of the company, if it is the first return, the company did not hold twenty five percent or more of the paid up share capital of one or more public companies.

Yes [ ] No [ ] NA [ ]

24. Director : .....

25. Director/managing Director/ manager/secretary : .....

### Audit Observations

## **COMPLIANCE CERTIFICATE**

### **Legal Provisions**

The Companies (Amendment) Act, 2000 inserted a proviso to sub-section (1) of section 383A of the Companies Act, 1956, with regard to issue of Compliance Certificate. In terms of the proviso, the Central Government has prescribed the Companies (Compliance Certificate) Rules, 2001 for issue of Compliance Certificate by a Practising Company Secretary.

Every company having a paid-up share capital of rupees ten lakhs and above but not exceeding rupees two crore as well as every company which does not have a whole-time Secretary and having a paid up share capital of rupees two crore and above but not exceeding rupees five crore, is required to file with the Registrar of Companies a Compliance Certificate from a secretary in whole-time practice and also attach a copy of that certificate with the Board's report.

### **Periodicity**

The Compliance Certificate shall relate to the period pertaining to the financial year of the company.

### **Scope of Compliance Certificate**

The scope of Compliance Certificate would comprise of certification of the compliance of various requirements under the Companies Act and the Rules thereunder.

The PCS should certify compliance only in respect of matters specified in the Form prescribed under the Companies (Compliance Certificate) Rules, 2001 and where any matter is not applicable, he should specify accordingly.

### **Right to access records**

PCS for the purpose of issue of Compliance Certificate shall have right to access at all times to the registers, books, papers, documents and records of the company whether kept in pursuance of the Act or any other Act or otherwise and whether kept at the registered office of the company or elsewhere and shall be entitled to require from the officers or agents of the company, such information and explanations as the PCS may think necessary for the purpose of such certificate.

### **Methodology for carrying out audit for Certification**

The PCS requests the company for access to various documents and books including the Memorandum and Articles of Association of the company, Annual Reports and Compliance Certificates, if any, of the last two to three years, various statutory and other registers including the Minutes Books, copies of forms and returns filed with the ROC etc. which he considers essential for the purposes of laying down the certification programme.

PCS should verify all the available records. However, depending on the facts and circumstances he may obtain a letter of representation from the company in respect of matters where verification by PCS may not be practicable, for example matters like —

- (i) show cause notices received;

(ii) persons and concerns in which directors are interested.

### **Certification with Qualification**

As specified in the Form of Compliance Certificate, the qualification, reservation or adverse remarks, if any, may be stated by the PCS at the relevant places. It is recommended that the qualifications, reservations or adverse remarks of PCS, if any, should be stated in thick type or in italics in the Compliance Certificate.

If the scope of work required to be performed, is restricted on account of limitations imposed by the client or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority) the certificate may be qualified as such.

PCS shall have due regard to the circulars and/or clarifications issued by the then Department of Company Affairs and Ministry of Corporate Affairs from time to time. It is recommended that a specific reference of such circulars at the relevant places in the certificate may be made, wherever necessary.

*For more details, refer Guidance Note on 'Compliance Certificate' of ICSI.*

## **ISSUING SECRETARIAL AUDIT REPORT**

### **Genesis of Secretarial Audit**

A corporation has to function within the periphery of host of legislations. It is essential for a corporation to abide by plethora of applicable laws, rules, procedures, regulations and the internal regulatory framework.

Under most of the laws, the persons who are responsible for compliance and liable for punishment for non-compliances are directors, the Company Secretary and officers who have been designated to ensure compliances of specific laws and regulations applicable to a company.

Under the Companies Act, 2013, a managing and/or whole-time director, along with other Key Managerial Personnel and other Directors may be treated as 'officers who are in default' and will be liable for penal consequences for non-compliance, while under most of the other laws, persons in charge of and responsible for the conduct of business of the company are held responsible.

Secretarial Audit is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes.

Secretarial Audit also covers non financial aspects of the business having impact on its business and performance and verifies compliances of applicable laws, regulations and guidelines. Nonetheless, this exercise also mitigates business risk to a great extent. It evaluates the manner in which the affairs of a company are conducted. While pursuing its business activities, the company has to comply with the rules and regulations relating to the Companies Act, Securities laws, FEMA, industry specific laws and general laws like Labour Laws, Competition Law and Environmental and Pollution Related laws.

Secretarial Audit postulates verification on a test basis of records, books, papers and documents to check compliance with the provisions of various statutes, laws and rules & regulations by a Company Secretary in Practice to ensure compliance of legal and procedural requirements and processes.

Secretarial Audit is, therefore, an independent and objective assurance intended to add value and improve operations of a company. It helps to accomplish the organisation's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes.

### **Recommendation by Parliamentary Standing Committee on Finance**

#### *Report of Parliamentary Standing Committee on Finance*

Twenty- first report of Standing Committee on Finance on the Companies Bill, 2009 in the year 2009-2010 recommended Secretarial Audit in listed and bigger companies. The extracts from the Report are as follows:

- "Para 7.8: \*\*\*\*\*Secretarial Audit may also be mandated for bigger companies, including all listed companies; as it inter-alia provides necessary assurance to the investors that

the affairs of the Company are being conducted in accordance with the legal requirements;

- Para 10.53: Keeping in view its significance for ensuring procedural compliance by companies, particularly with regard to various statutory disclosures and to ensure adherence to prescribed secretarial standards, the Committee recommend that Secretarial Audit report may be required to be attached with financial statements by companies exceeding certain threshold limit of paid-up share capital.
- Para 13.33: In accordance with the suggestions made by the Committee to include secretarial audit for bigger companies, delineation of functions and role of chief financial officer and company secretary, the Ministry have proposed to include three new sub-clauses 178A, 178B and 178C in clause 178. Clause 178A, which deals with Secretarial Audit is given below:
  - New sub-clause 178A- Provisions to be included in the Bill to mandate Secretarial audit for bigger companies New Clause 178A-
    - (1) Every company having a paid up share capital of rupees five crore or more or such other amount as may be prescribed by Central Government from time to time shall annex with its Board's Report made in terms of sub-section (3) of section 120 of the Act, a Secretarial Audit Report given by a company secretary in practice in such form as may be prescribed.
    - (2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and other records of the company.
    - (3) The Board of Directors, in their Report made in terms of sub-section (3) of section 120 of the Act, shall explain in full any qualification or observation or other remarks made by company secretary in practice in his report under sub-section(1).
    - (4) Where any default is made in complying with the provisions of this section,—
      - (a) the company and every officer who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;
      - (b) the company secretary in practice who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees”.

### **Applicability of Secretarial Audit**

Section 204 of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies.

Such company is required to annex a secretarial audit report with its Board's report.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

- (a) every public company having a paid-up share capital of fifty crore rupees or more;
- or

- (b) every public company having a turnover of two hundred fifty crore rupees or more.

The term 'Turnover' has been defined in section 2(91) as the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.

*Private Company which is a subsidiary of a Public Company*

Section 2(71) of the Companies Act, 2013 defines a "Public Company as one

- (a) Which is not a private company;
- (b) Has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital as may be prescribed.

The proviso to the definition states that "Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles."

In view of this, it is clear that Secretarial Audit is applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies.

The companies which are not covered under section 204 may obtain Secretarial Audit Report voluntarily as it provides an independent assurance of the compliances of applicable laws of the company.

The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under the rules. As per sub-rule (2) of rule 9, the format of the Secretarial Audit Report shall be in Form No. MR.3 (**Annexure A**).

### **Purpose of Secretarial Audit**

Secretarial Audit provides an effective mechanism to ensure that compliance of various legislations and regulations including the Companies Act and other corporate and economic laws applicable to the company has been diligently done. This would give necessary comfort to the Management, Regulator, and the stakeholders.

Secretarial Audit helps to detect the instances of non-compliances and facilitates taking corrective-measures.

Secretarial Audit facilitates monitoring compliances with the requirements of law through a formal compliance management programme which can produce positive results to the stakeholders of a company:

- Companies that go the extra mile with their compliance programs lay the foundation for good governance.
- Companies with an effective compliance management programme have lesser chance of receiving penalties, both monetary and by way of imprisonment.
- Companies that imbibe business and personal ethics and an effective compliance management programme within their work culture often enjoy

employee and customer loyalty and public respect for their brand, which can translate into better market capitalization and shareholder returns.

- Recognition for the company as a good corporate citizen.

Few benefits that accrue from the Secretarial Audit are as under:

(a) *Promoters*

Secretarial Audit assures the promoters of a company that those in-charge of its management are conducting its affairs in accordance with the requirements of laws and the owners stake is not being exposed to unintended risks.

(b) *Non-executive/Independent directors*

Secretarial Audit provides comfort to the Non-executive/Independent Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective.

(c) *Government authorities/regulators*

It also facilitates reducing the burden of the regulators in ensuring compliances and they can take timely actions against the offenders.

(d) *Investors*

Secretarial Audit helps the investors in taking informed investment decision, as it evaluates the company in terms of compliance and governance norms being followed by the company.

(e) *Other Stakeholders*

It is an effective due diligence exercise for the prospective investors or joint venture partners. Further Financial Institutions, Banks, Creditors and Consumers can measure the law abiding nature of company management.

### **Secretarial Audit and Company Secretary in Practice**

Company secretary in practice has been exclusively recognised for conducting secretarial audit. In terms of section 204(1), only a member of the Institute of Company Secretaries of India holding certificate of practice (company secretary in practice) can conduct Secretarial Audit and furnish the Secretarial Audit Report to the company.

In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, the Institute of Company Secretaries of India has issued this guidance note.

### **Appointment of Secretarial Auditor**

As per rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting of the company.

### **Time of appointment**

It is advisable that the Secretarial Auditor is appointed at beginning of the 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.

### **Notice of Annual General Meeting**

Para 1.2.1 of draft Secretarial Standard on General Meetings requires that the notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

### **Rights and duties of Secretarial Auditor under the Companies Act, 2013**

Section 143 of the Companies Act, 2013 deals with powers and duties of Auditors. Sub-section (14) of the section provides that the provisions of this section shall *mutatis mutandis* apply to the Company Secretary in Practice conducting Secretarial Audit under section 204.

### **Assistance and facilities to the company secretary in practice while conducting secretarial audit**

Section 204(2) of the Companies Act, 2013 provides that it is the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

### **Cost to the Company**

Taking into account the assurance provided and the avoidance of penalties and the consequent saving of the possible liabilities, the cost of Secretarial Audit is far less than the benefits which the directors and the stakeholders would derive from Secretarial Audit.

### **Approach to Secretarial Audit**

The object of the Secretarial Auditor's Report is to undertake evaluation and form an opinion and to report to the shareholders as to whether, and if so, to what extent, the company has complied with the laws comprising various statutes, rules, regulations, guidelines about the board processes and existence of compliance management system. This requires knowledge of the corporate laws, economic laws, securities laws, FEMA, and other laws specifically applicable to the company, Corporate governance provisions, Secretarial Standards etc. To be able to give an effective report, a Company Secretary in Practice is expected to have the following:

- (1) *Knowledge* : While conducting the Audit, the Secretarial Auditor should have the knowledge of exact nature and activities of the company and the laws which are applicable to the company. He should have understanding of existence of compliance system, Board processes & procedures, secretarial standards etc.
- (2) *Team* : He is required to ensure that he has a team of appropriately trained staff, who can support the preparation of the report. Most importantly they should be informed of the basic audit requirements and ethics. Related legislative and administrative updates should be shared and communicated with the team to build and maintain the expertise.

- (3) *Documentation & backup* : He is expected to develop a manual & checklists which will help in evaluation process. He is required to keep proper record of documents checked during the course of audit.
- (4) *Third party supporting and evidences* : It would always be helpful to check filing made by the company at MCA & other authorities independently. Verification and enquiries can also be made with the other statutory and internal auditors and consultants and Independent Directors of the Company
- (5) *Adhering to the timelines* : Schedule set to conduct the audit process should be strictly adhered to in order to gain the confidence of the client and boost the expertise level of the team.
- (6) *Honesty and impartiality* : A Company Secretary in Practice has the professional duty to provide an unbiased and objective view. Company Secretary in Practice should be independent from the company being audited.  
The Secretarial Auditor is expected to ensure that activities of the client company are in accordance with the applicable procedure and that supporting evidence maintained by the company is genuine.
- (7) *Maintaining Audit Diary* : The Audit exercise needs to be planned and executed professionally and verifications done by the team members should be recorded daily. Such maintenance of diary would help in keeping audit trail that would come in handy to ensure the quality of audit.
- (8) *Back up papers to be maintained* : The Secretarial Auditor should maintain Audit Diary and back up papers like working papers, supporting documents, observations, management explanations, basis for his conclusions more particularly for qualifications in the report etc. as these will provide the audit evidence for defending himself in any possible allegation of misconduct so also peer review and help in defending himself in case of any enquiry or questions from regulators.

### **General Principles/Guidelines while conducting Secretarial Audit**

Audit is an intelligent and critical examination of the books and records of business done by an independent qualified person. It is done. by process of verification of documents, registers, filings, information, Systems, procedures and explanations received from the clients.

Audit scope determines the time involved in audit exercise, depth of auditing, aspects to be covered etc. Audit scope depends on, relevant legal provisions, nature of audit, objectives of audit & terms of engagement. However the terms of engagement cannot, restrict the scope of an audit in relation to matters which are prescribed by legislation.

In the context of Secretarial Audit as contemplated by section 204 of the Companies Act 2013 and the Rules, a very pertinent question which arises for consideration is the extent of detailed verification/ evaluation that has to be resorted to before reporting or giving opinion on compliance of the provisions of various laws as mentioned in form MR 3 and specific laws applicable to the company concerned .

The audit should be organized to cover adequately all aspects of the enterprise as far as they are relevant to the audit objectives. Appropriate verification has to be done with the help of Checklists.

Therefore, certain techniques of sample checking and test checking should be applied before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for conducting Secretarial Audit. However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

It is a well established principle in any auditing practice that an auditor is not expected to carry out a 100% checking of every piece of paper and information available in the company, in verifying the final facts and figures represented in the end document. In financial audit, for instance, the auditor is not expected to make a thorough scrutiny of each and every invoice raised / voucher created by the company before accepting the sales figure given in the Balance Sheet.

The following are general techniques of auditing

- A) sample checking
- B) test checking
- C) random checking
- D) trial and error checking

The same techniques may be applied and adopted in secretarial audit. For instance...while verifying the list of past and present shareholders, a company secretary in practice cannot be expected to check every folio of the Register of Members, whose number could run into lakhs. Similarly, the number of share transfers registered in a year could run into thousands. If one is expected to check every transaction in these matters, it could be well almost impossible to meet the statutory time limits for completing the audit assignment.

Therefore, certain techniques of sample checking and test checking should be applied before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for conducting Secretarial Audit.

Guiding principles can be adopted while deciding about the extent of checking that is required based on size of company, nature of industry, number of transactions and other relevant factors. The following guiding principles be adopted while deciding about the extent of checking that is required.

- (i) The need for every detailed checking is greatly reduced if there are adequate measures of internal control and checks and balances built into the systems and procedures of the organization. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another, before the whole process is complete. The system could also provide for automatic cross verification - particularly in cases where the process is computerized.
- (ii) The principle of materiality is another important concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance.

For example, in the case of share transfers, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.

(iii) 'High risk' areas could be identified and subjected to more extensive scrutiny than others.

For instance, in the case of shares on which there are restrictions on transfer-statutory or otherwise, a more extensive examination is warranted.

In conclusion, it may be pointed out that a company secretary in practice will do well to remember that the ultimate responsibility of the facts and figures certified will rest with him. While the extent of checking is a matter of personal judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements, certified by him. A Company Secretary in Practice is advised to exercise all possible care, reasonable skill & due diligence.

If question arises whether the approach to audit should be full or part or sample basis, then Company Secretary in Practice is advised to always prefer for complete checking if transactions are less and if size of the organization is medium or small. However for bigger organization quality time need to be given throughout the financial year by frequent visits at regular intervals.

Adequate enquiries should be made in respect of matters which are capable of direct verification. Mere getting certification from experts and or Management may defeat the purpose of this audit.

He should obtain sufficient appropriate evidences through the verification of compliances and other substantive procedures to enable him to draw reasonable conclusions to form an opinion.

### **Minimum fees to be charged with respect to conduct of Secretarial Audit**

There is no minimum fees prescribed by ICSI for conducting Secretarial Audit by Company Secretary in practice. However, it would be in the fitness of things that Company Secretary in practice takes proper call about fees considering the nature & size of the company, type of company and the efforts required to be put in while carrying out Secretarial Audit. It is expected that member should maintain high standard and quality in audit process.

### **Peer review of Secretarial Auditors**

As of now, there is no requirement of peer review of Secretarial Auditors.

### **Process of Secretarial Audit**

Secretarial Audit is a process to check compliance with the provisions of all laws applicable specifically to the company and rules/regulations/procedures; adherence to good governance practices with regard to the systems and processes of seeking and obtaining approvals of the Board and/or shareholders, as may be necessary, for the business and other activities of the company, carrying out activities in a lawful manner and the maintenance of minutes and records relating to such approvals or decisions and implementation. The Secretarial Auditor also expresses an opinion as to whether there exist 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.

#### *Communication to earlier Incumbent*

Whenever a practicing company secretary is appointed as Secretarial Auditor in place of the existing Secretarial Auditor, he/she should communicate the appointment to the earlier incumbent in writing, in view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 and the relevant pronounced judgments.

#### *Acceptance of Appointment*

A formal letter for appointment should be issued by the company to the secretarial auditor along with the copy of the board resolution for appointment. The secretarial auditor shall confirm acceptance of appointment in writing.

#### *Preliminary Discussions/Surveys*

It is important to have relevant information about the company. The secretarial auditor is expected to take an overview of the operations of the company and interact with the personnel involved to know about the nature of the business. He may opt for surveys for generating information about the company.

#### *Preliminary Meeting*

The preliminary meeting with the senior management and the staff involved in the audit will give a fair idea of what is expected and the manner in which audit activities are to be undertaken. At this stage a time frame of the secretarial audit should be determined and finalized. The secretarial auditor shall discuss the scope and objectives of the audit, gather information on important Board processes, evaluate existing control systems and prepare the audit plan.

Draft Secretarial Standard- 1 i.e. Secretarial Standard on Meetings of Board of Directors also provides the 'list of laws applicable specifically to the company' as one of the illustrative items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting.

#### *Finalization of Audit Plan and Briefing the Staff*

It is important to work out an audit plan. The plan involves briefing the audit staff as to allotment of work, fieldwork responsibilities and other roles. The audit plan should comprehensively outline the fieldwork and usage of auditing tools. The review of controls helps the auditor determine the areas of highest risk and design tests to be performed in the fieldwork section. It is essential that the audit plan adheres to the timelines. Detailed checklist for each aspect of secretarial audit should be prepared and audit staff should be properly sensitized before commencement of audit.

#### *Testing, Interviews and Analysis*

The secretarial auditor may use a variety of tools and technology to gather information about the company's operations. The secretarial auditor should determine whether the controls identified during the preliminary review are operating properly and in the manner described by the Company. Fieldwork typically consists of interviewing the staff of the

company whether formally or informally, reviewing procedure manuals, processes, testing and analysing compliance with applicable policies and procedures and laws, rules, regulations and assessing the adequacy of controls. This exercise may result in significant findings which the secretarial auditor may bear in mind while preparing the secretarial audit report.

The Act places the secretarial auditor on the same footing as the statutory auditor in terms of powers, duties and responsibilities while conducting the audit. [Section 143(14)(b)]

#### *Working Papers*

Working papers are a vital tool of the audit process. They form the basis for expression of the audit opinion. They connect the management's records and information to the auditor's opinion. They are comprehensive and serve many functions. A sample worksheet is placed at **Annexure 'B'**.

#### *Management Representation Letter*

It is strongly advised that the Company Secretary in Practice obtains a management representation letter from the auditee company. The letter may be signed by Company Secretary/Managing Director/ Senior Management who would normally have authority to issue the same. Suggested format of the management representation letter is placed as **'Annexure C'**. The format may be changed, depending on the circumstances and facts governing each audit. The Secretarial Auditor can use this letter of representation as part of his audit evidence.

A Company Secretary in Practice is advised to exercise all possible care, reasonable skill & due diligence. Adequate enquiries should be made in respect of matters which are capable of direct verification. Mere getting certification from management may defeat the purpose of the audit.

#### *Audit Summary for Discussions*

It is recommended that the findings during the course of audit are summarized and presented for initial discussions with the management for their views/clarifications/replies.

#### *Submission of Secretarial Audit Report*

After considering the clarifications/replies of the management, the secretarial auditor shall prepare the secretarial audit report in Form No.MR. 3. The report is addressed to the members but is to be submitted to the Board. The report shall contain the opinion on the statutory compliances examined by the auditor and shall state whether in his opinion the Company is carrying out / not carrying out due compliances of the applicable provisions of the various laws. The report shall be provided with or without qualifications. The specimen of 'Qualified Secretarial Audit Report' is provided later in the Guidance Note.

#### **Signing**

The Secretarial Audit Report should be signed by the secretarial auditor who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ ACS number along with Certificate of Practice Number issued by the Institute of Company Secretaries of India.

## **Reporting with Qualification**

A qualification, reservation or adverse remarks, if any, should be stated by the Secretarial Auditor at the relevant places in his report in **bold type** or in *italics*. If the Secretarial Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons therefor. If the scope of work required to be performed is restricted on account of restrictions imposed by the company or on account of circumstantial limitations (like certain books or papers being in the custody of another person who is not available or a Government Authority), the Report should indicate such limitations. If such limitations are so material that the Secretarial Auditor is unable to express any opinion, the Secretarial Auditor should state that in the absence of necessary information and records, he is unable to report on compliance(s) relating to such areas by the Company.

Further, the Board of Directors, in its Board's report, shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.

## **Duty to Report Fraud**

A very significant duty has been cast on the company secretary in practice under section 143 (12) of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as 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, he shall immediately report the matter to the Central Government.

The Companies (Amendment) Bill, 2014 passed by Lok Sabha proposes to substitute section 143(12) as under:

“(12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed:

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed:

Provided further that the companies, whose auditors have reported frauds under this subsection to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.”

Further, as per the Companies (Audit and Auditors) Rules, 2014, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge.

In case, company secretary in practice does not comply with the provisions of section 143(12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Sub-section (13) of Section 143 provides that no duty shall be regarded as having been contravened by reason of his reporting the matter (fraud) if it is done in good faith.

Fraud detection and reporting requires the Practicing Company Secretary to focus beyond compliance. The Delhi High court observed in the matter of Globe Motors Limited v Mehta Teja Singh & Company that although an agreement in which a director was interested could not said to be invalid in view of compliance with the requirements of the Act, yet it is only a formal aspect of compliance with the statutory provisions; the basic question is as to the conduct of the director and whether it satisfies the test considering their fiduciary relationship to the company. Justice Sachar further observed that the directors are expected to display utmost good faith towards the company in their dealings with the company or on behalf of the company; they should not use the company's money or other property or information or other matters in their possession in order to gain any advantage to themselves. Therefore a practicing company secretary should not be satisfied only with compliance during secretarial audit. He needs to look beyond and satisfy himself that the transactions which have taken place during audit period do not contain any fraud element.

Clause (f) of Explanation under section 447 of the Companies Act 2013 defines "Fraud" in relation to affairs of a company or anybody corporate includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interest of the company or its shareholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

A perusal of the definition brings out the following elements of "Fraud":-

- (a) Any act committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (b) Any omission committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (c) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (d) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (e) Any act committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.

- (f) Any act committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (g) Any omission committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (h) Any omission committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (i) Any omission committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (j) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (k) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (l) Any concealment of any fact committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (m) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to deceive the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.
- (n) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to gain undue advantage from the company or shareholders or creditors or any other person.
- (o) Any abuse of position committed by any person or any other person with the connivance in any manner with intent to injure the interest of the company or shareholders or creditors or any other person whether or not there is any wrongful gain or wrongful loss.

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. In the past “Fraud” has been noticed in many cases of scams in the following kinds of transactions:-

- Related Party Transactions – In major scams like Satyam scam, Polypack scam etcetera, the genesis of fraud was found in RPT. In the case of Satyam scam, RPT transactions were put through for approval for approximately rupees

14000 crore between satyam computer and maytas properties and maytas infrastructure. In the case of Tyco scam, the CEO and MD carried out 88 separate RPT deals with business entities owned by the sons and relatives of the CEO of Tyco. This scam led to the promulgation of the Code of Corporate Governance in UK.

- Excessive managerial remuneration – There were many corporate scams like Worldcom, Tyco scam, Global Crossing, Fannie Mae etcetera where KMP drew excessive remuneration from the company. In these scams either the profits were overstated to draw excessive remuneration or remuneration was drawn through wrong entries in books. Though the remuneration paid is within the limits prescribed in schedule V, it is necessary to find out whether fraud element is present
- Insider Trading – In major scams like Enron, Health South, Galleon etcetera, criminal insider trading was found. Share transfers are to be examined to find out whether KMP or employees of the company either bought or sold shares of the company before any critical event. In Enron, KMP sold off their shares just before filing of Chapter 11 application by the company for bankruptcy. In the case of Health South KMP sold off their shares before announcement of loss for the year

Inter Company transactions – Group company transactions are to be examined carefully to identify fraud elements. Intercompany investments, guarantees, loans and provision of security may be detrimental or injurious to the interest of the lending company, its shareholders and other stakeholders. In the case of HIH scam, a leading health insurance company, the intercompany transactions indirectly benefitted KMP of the parent company

- Mergers/demergers/acquisitions – In many scams relating to acquisitions fraud in the form of asset stripping has taken place as in the case of Phone4U, Penta Media etcetera.
- IPO frauds – The problem of vanishing companies has posed major problem to Regulators. These companies diverted IPO funds for purposes other than those stated in the prospectus. Frauds generally take place when funds raised from public by way of IPO or deposits or otherwise or from Banks and Financial Institutions are not utilized for the stated purposes. Therefore during secretarial audit the fund utilization needs to be examined to identify fraud.
- Ponzy schemes – There were many scams in this category like Speak Asia, Saradha chits etcetera. During secretarial audit it is necessary to identify whether any principal amount is used to give returns to customers instead of paying returns out of profits

The above mentioned areas are not exhaustive but only some given as examples to guide fraud detection. As per rule 13 of the Companies (Audit and Auditors) Rules 2013, the Practicing Company secretary has to bring to the notice of the audit committee the findings relating to fraud and call for reply within 45 days. Within 15 days after obtaining reply the PCS has to submit his report including the reply of audit committee to the

Secretary, Ministry of Corporate Affairs, Govt. of India in the format prescribed in ADT-4 If the audit committee does not give any reply, PCS has to submit report as stated above within 60 days.

### **Scope of Secretarial Audit**

In terms of Form No.MR-3, the Secretarial auditor needs to examine and report the compliance of the following five specific laws:

- (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;
- (v) 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;

In addition, the form MR-3, point (vi) also refers to 'Other laws as may be applicable specifically to the company.'

Consultation meets were held with the Corporates (through Company Secretaries in employment) as well as Company Secretaries in practice, and taking into consideration the views emerging therefore, the Council of the ICSI at its 226<sup>th</sup> meeting held on November 21, 2014 decided on the Scope of Secretarial Audit 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, 1999 to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowing,
  - Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 as specified in MR-3.
- Reporting on compliance of 'Other laws as may be applicable specifically to the company' shall mean 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.

The provisions relating to audit of accounts and financial statement of a company is dealt in the Statutory Audit, and that relating to taxation is dealt in Tax Audit, the Secretarial Auditor may rely on the reports given by statutory auditors or other designated professionals.

However, Secretarial Auditor is expected to report on the Secretarial Compliance of these laws. A sample checklist is placed at **Annexure-D**

#### **'Other areas' which need to be checked**

Secretarial Auditor needs to examine and report on the 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;

Format of Secretarial Audit report also requires reporting on whether-

- 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.
- There are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with all applicable laws including general rules like labour laws, competition law, Environmental laws, regulations and guidelines.

Secretarial Auditor is required to report and provide details of specific events and actions that occurred during the reporting period having major bearing on the affairs of the company in pursuance of above referred laws/ rules & regulations.

### **Professional Responsibility and Penalty for incorrect Audit Report**

Section 448 of Companies Act, 2013 deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

In view of this, a company secretary in practice will be attracting the penal provisions of section 448, for any false statement in any material particular or omission of any material fact in the Secretarial Audit Report. However, a person will be penalised under section 448 in case he makes a statement, which is false in any material particular, knowing it to be false, or which omits any material fact knowing it to be material.

It is pertinent to note that section 448 applies to “any person”. In view of this, a company secretary in practice, who is an independent professional, will be attracting the penalty, as prescribed in section 448 in case his observations in the secretarial audit report turns out to be false or he omits any material fact, knowing it to be false or material.

Section 204(4) further provides that if company secretary in practice contravenes the provisions of section 204, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Besides, the Company Secretary in Practice shall be liable for professional or other misconduct mentioned in First or Second Schedule or in both the Schedules to the Company Secretaries Act, 1980 and where held guilty, be liable for the following actions:

- (i) where found guilty of professional or other misconduct mentioned in the First Schedule:
  - (a) reprimand;
  - (b) removal of name from the Register of members upto a period of three months;
  - (c) fine which may extend to one lakh rupees.
- (ii) where found guilty of professional or other misconduct mentioned in the Second Schedule:
  - (a) reprimand;
  - (b) removal of name from the Register of members permanently or such period as may be thought fit by the Disciplinary Committee;
  - (c) fine which may extend to five lakh rupees.

### **Functions of Company Secretary in Employment**

Section 205 of the Companies Act, 2013 provides that the functions of company secretary (in employment) shall include the following:

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

Significantly, the section provides for compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company as a part of the functions of a company secretary.

In addition, the Central Government has prescribed the following additional duties for Company Secretary (in employment) through rules:

- (1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and

(8) such other duties as may be assigned by the Board from time to time.

### **Steps for preparing for Secretarial Audit**

A company should prepare itself for secretarial audit by taking the following steps:

1. *Compliance Programme*: It is essential for every company to have a compliance management system in place, that is updated from time to time. The compliance management system covers generally aspects such as its objective, list of applicable laws, compliance risk management framework, establishment of systems and processes for effective compliance, appointment of chief compliance officers, compliance ownership and so on.

#### *Evaluating or Recommending a Compliance programme in the course of Secretarial Audit*

The Secretarial Auditor should evaluate such aspects in the course of Secretarial Audit that should help him in identifying the gaps, if any, in the compliance management system in terms of policy, procedure, implementation, compliance risk management, compliance structure, training & Communication, monitoring & control. Based on the evaluation of Compliance management system, recommendations may be made to strengthen the same. The company secretary in practice can also recommend for compliance management system if the company does not have one.

A template of Compliance Management System placed at **Annexure E**.

2. *Team* : Compliance with various laws and legal parameters by the company is essential to avoid unwanted litigations. A company may constitute a team of officers responsible for compliances under different laws.
3. *Maintenance of Records* : The entity at all levels should imbibe the practice of maintaining proper records. Concerned employees must be sensitized with the importance of record management system and ensure availability of records for verification.
4. *Preparation of Compliance Chart* : A company may prepare compliance chart under various laws applicable to the company as a checklist. Various charts are readily available but a customized chart suited to the specific requirements of the company may be a better option.
5. *Conduct Compliance Awareness Programmes*: A company may organize compliance awareness programmes at all the organizational levels to sensitize the employees about the requirement and importance of compliance and penalties for non-compliance.

Further section 204 provides that it is the duty of the company to give all assistance and facilities to the company secretary in practice, for conducting the secretarial audit. Hence, it becomes the responsibility of the working directors/company secretary of the company to provide the required information to the Company Secretary in Practice to enable him to conduct the Secretarial Audit in a timely and efficient manner.

**Form No. MR-3**  
**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 of Managerial Personnel) 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 conducts/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 \_\_, \_\_ 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:

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

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.

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.*

**Sample WorkSheet**

<b>1.</b>	<b>CAPITAL STRUCTURE</b>				
<i>Particulars</i>	<i>As on 01/04/2014</i>	<i>Add: Increase in Capital (if any)</i>	<i>Less: Reduction in Capital (if any)</i>	<i>Date of passing resolution</i>	<i>Capital as on 31/03/2015</i>
Authorised Capital					
Equity					
Preference					
Unclassified					
Issued Capital					
Subscribed Capital					
Paid-up Capital					
Public Issue			Not Applicable		
Rights Issue			Not Applicable		
Bonus Issue			Not Applicable		
Private Placement/ Preferential Allotment (Other than conversion)			Not Applicable		
Private Placement/ Preferential Allotment (arising out of conversion)			Not Applicable		
Allotment of shares pursuant to ESOP			Not Applicable		
Allotment consequent to Scheme of Arrangement/ Merger/ Amalgamation etc.			Not Applicable		
Buy-back of Shares		Not Applicable			
Reduction of capital		Not Applicable			
Share Forfeited (if any)					











	d) Complete list of Sundry Creditors containing the following details:	
	i. Nature of Balances	
	ii. Opening Balance and Transactions made	
	e) Statement of Related Party Transactions as per AS-18 and the Approval of Board/Shareholder for approving the transaction related to RPT.	
	f) Details of Dividend declared:	
	<b>Particulars</b>	
	<i>Amount Paid</i>	
	<i>Percentage of dividend paid</i>	
	<i>Dividend Tax Paid</i>	
	<i>Date of Payment of Dividend</i>	
	<i>Actual amount claimed by the shareholder</i>	
	<i>Amount transferred to unpaid dividend account</i>	
	<i>Amount transferred to IEPF and SRN of Form I and 5INV</i>	
<b>9.</b>	<b>APPROVALS FROM RESERVE BANK OF INDIA</b>	
	a) Whether company has made any foreign investment or company has received FDI?	
	b) Whether company has filed annual statement related to Foreign assets and liabilities? If yes, Please mention filling date	
	c) Whether company is having External Commercial Borrowing/issued FCCB? If yes provide copy of LRN issued by RBI and Form ECB 2.	
	d) Whether company has made any investment in Abroad/provided guarantee to the Foreign Company? If yes, provide details.	
	e) Whether any Show cause notice received by the company issued by Director of Enforcement/ RBI under	

	FERA/FEMA/DIPB/other appropriate authority and reply submitted by the company for the said notices.	
<b>10.</b>	<b>PROSPECTUS</b>	
	a) Copy of prospectus filled with the RoC from time to time.	
<b>11.</b>	<b>DEPOSITS</b>	
	a) Whether any deposits u/s 73 & 74 of CA 2013 have been accepted by the company.	
	b) If yes, Whether the provisions of the Deposit rules u/s 73 & 74 of CA 2013 have been complied with.	
<b>12.</b>	<b>OTHERS</b>	
	a) All Statutory Registers	
	i. Register for application and allotment of shares	
	ii. Register for transfer of shares	
	iii. Register of Director, and Key Managerial Personnel	
	iv. Register of Members	
	v. Register of Charges	
	vi. Register of contracts in which directors and KMP are interested	
	vii. Register of Disclosure of Interest by the Directors	
	viii. Register for declaration of interest in the shares held by another person who is not a beneficial owner	
	ix. Register for payment of Dividend	
	x. Register for unpaid/unclaimed Dividend	
	xi. Register for Fixed Assets along with the locations of the assets	
	xii. Register of Investments, Loans, Guarantee and Securities provided by the company	
	xiii. Common Seal Register	
	xiv. Register of issue of duplicate share certificates	
	xv. Register of Debenture-holders	
	xvi. Register of buy-back of shares	
	xvii. Register of Employee Stock Options	

Name of the Company								
Forms and Returns filed by the Company pursuant to the provisions of the Companies Act, 2013 read with the Rules/ Regulations made thereunder								
Financial Year 2014 - 15								
<i>Sr. No.</i>	<i>Form No.</i>	<i>Section &amp; Rule Applicable</i>	<i>Particulars of Filing</i>	<i>Date of Filing</i>	<i>Whether filed within the prescribed time</i>	<i>In case of delay, whether prescribed procedure followed and additional fees paid</i>	<i>SRN</i>	<i>Status</i>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

**Specimen Management Representation Letter  
for Secretarial Audit**

The following letter is a general guidance. Representation made by management may vary from one entity to another and from one year to another. It should be adopted in the light of individual requirements and circumstances.

[XYZ Limited]

M/s ABC & CO,

Date:

Company Secretaries,

ZYZ Road,

-----

Dear Sir,

This representation letter is provided in connection with your audit of the Secretarial Records maintained under 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; (v) The Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and other applicable laws including labour laws like Factories Act, Payment of Gratuity Act etc for the year ended on 31st March, 2015 Environmental Laws and Competition Laws for the purpose required in it. We the undersigned acknowledge our responsibility for maintaining the Secretarial records referred above and confirm, to the best of our knowledge and belief, the following representations:

*Company Law*

1. The Company has maintained books of accounts as required under Section 128 of the companies Act, 2013
2. The Company has complied with all the provisions of Companies Act, 2013 relating to Statutory Audit/Cost Audit/Internal Audit.
3. No request for transfer or transmission of shares have been received by the company during the year other than as recorded
4. Statutory Registers were kept open for public inspection during working hours on all working days
5. Notice of Board meetings were duly sent to all the directors
6. No resolutions were passed by way of circulation during the year under review other than \_\_\_\_\_
7. Company has not obtained any secured loan from any financial institution/banks other than those mentioned in the register of charges
8. Notice of annual general meeting has been duly sent to all the members
9. No show cause notice has been received by the company under the Acts referred above or any other laws applicable on the company
10. Minutes of the Board and general meetings were entered in the minute books within thirty days from the day of the meeting

11. The share certificates were properly stamped
12. The entries in the statutory registers were made within the prescribed time
13. The company has not done any alteration to the Articles of Association or Memorandum of Association other than those of which the necessary compliance as to alteration is carried out and the proofs of the filling with ROC are available in Records.
14. We have provided to you all relevant information and have given access to all data and records
15. There is no pending litigation and claims other than reported in the balance sheet by way of contingent liability.
16. No event other than reported to you specifically has occurred during the year which has a major bearing on the company's affairs in pursuance of the laws, rules, regulations, guidelines, standards, etc. referred to above.
17. The views of all the dissenting Directors (if any) on important matters have been captured and recorded in the minute.
18. The venue and time of Board meeting was finalized with the consultation of all board members.
19. \_\_\_\_\_
20. \_\_\_\_\_

*Securities Laws*

1. All Price Sensitive Information was informed to the stock exchanges from time to time
2. All investors complains directly received by the company are recorded on the same date of receipt.
3. \_\_\_\_\_
4. \_\_\_\_\_

*Labour Laws*

1. All the premises and establishments have been registered with the appropriate authorities.
2. The Company has not employed any child labour/Bonded labour in any of its establishments.
3. The company is ensuring the compliance of PF/ESI and other social security measures to the contract employees. One of the responsible officers of the company carries out the survey regarding the compliance of this.
4. \_\_\_\_\_
5. \_\_\_\_\_

*Environmental Laws*

1. The Company is not discharging the contaminated water at the public drains/rivers. The company has efficient water treatment plants at its factory premises (if applicable)
2. The company has been disposing the hazardous waste as per applicable rules

We are attaching herewith the list of various applicable laws to the company other than the laws listed above.

For XYZ Limited]

Date  
Place

Director

Director

**Sample Checklist**  
**COMPLIANCE REPORT UNDER INCOME TAX ACT**

<b>MONTHLY</b>	<b>MONTH : ..... 2014</b>		
<b>NATURE OF COMPLIANCE</b>	<b>DUE DATE</b>	<b>DATE OF COMPLAINE</b>	<b>REMARKS</b>
Payment of TDS : Salaries Director Remuneration / Sitting Fees Contractors Professional Fees Interest/Commission	07 days from the end of the month		

<b>QUARTERLY</b>	<b>QUARTER : ..... 2014</b>		
<b>NATURE OF COMPLIANCE</b>	<b>DUE DATE</b>	<b>DATE OF COMPLAINE</b>	<b>REMARKS</b>
Payment of Advance Tax Up to 15% Up to 45% Up to 75% Up to 100% Filing of Returns of TCS u/s 206C Filing of Returns of TDS Salary u/s 192 Filing of Returns of TDS on Director Remuneration u/s 194J(1)(ba) Filing of Returns of TDS Interest u/s 194A Filing of Returns of TDS Contract u/s 194C Filing of Returns of TDS Prof. Fees u/s 194J Filing of Returns of TDS Comm. u/s 194I	15.06.2014 15.09.2014 15.12.2014 15.03.2015 15 days from the end of the Quarter		

ANNUALLY		FINANCIAL YEAR ENDED : 2014-15			
NATURE OF COMPLIANCE		DUE DATE	DATE OF COMPLAINECE	REMARKS	
Tax Audit u/s 44-AB		30.09.2014			
Filing of Returns of Income u/s 139(1)		30.09.2014			
Filing of Return on Specified Domestic Transactions					
Filing of Transfer Pricing Report					
<b>STATUS OF PENDING CASES /NOTICES RECEIVED:</b>					
DATE OF NOTICE REED	A.Y	CONTENTS OF THE NOTICE	AMOUNT OF DEMAND	STATUS OF ACTION TAKEN	REMARKS
<b>SPECIAL REMARKS IF ANY:</b>					

**COMPLIANCE REPORT UNDER SALES TAX ACT/ VAT ACT**

MONTHLY		MONTH: ..... 2014			
NATURE OF COMPLIANCE	DUE DATE	DATE OF PAYMENT	AMOUNT PAID	BALANCE IF ANY	REMARKS
Payment of Tax : State (VAT) C.S.T Entry Tax/ LBT Professional Tax	10 days from the end of the month				

QUARTERLY		QUARTER: ..... 2014			
NATURE OF COMPLIANCE	DUE DATE	DATE OF COMPLAINECE	REMARKS		
Filing of Returns: Returns of State (VAT) Returns of C.S.T. Returns of Entry Tax Returns of Professional Tax	30 days from the end of the quarter				

<b>POSITION OF SALES TAX DUES AS ON .... / ..... / 2014</b> <b>(Rs. In Lacs)</b>					
<b>PERIOD</b>	<b>State VAT</b>	<b>C.S.T.</b>	<b>ENTRY TAX</b>	<b>TOTAL</b>	<b>REMARKS</b>

<b>STATUS OF PENDING CASES/NOTICES RECEIVED AS ON ..... / ..... / 2014</b> <b>(Rs. In Lacs)</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>
<b>SPECIAL REMARKS IF ANY</b>					

**COMPLIANCE REPORT UNDER CENTRAL EXCISE ACT**

FILING OF RT-12 RETURNS (ER-1) & E.R.-6

DUE DATE: 10.07.2014

DATE OF COMPLIANCE: .... / .... / 2014

<b>STATUS OF PENDING CASES/NOTICES RECEIVED</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>

**COMPLIANCE REPORT UNDER THE FINANCE ACT, 1994 (SERVICE ACT)**

FILING OF HALF YEARLY SERVICE TAX RETURNS FOR THE HALF YEAR ENDED ON ..... 2014

DUE DATE : 25.10.2014

DATE OF COMPLIANCE : .... / .... / 2014

<b>STATUS OF PENDING CASES/NOTICES RECEIVED</b>					
<b>DATE OF NOTICE RECEIVED</b>	<b>A.Y.</b>	<b>CONTENTS OF THE NOTICE</b>	<b>AMOUNT OF DEMAND</b>	<b>STATUS OF ACTION TAKEN</b>	<b>REMARKS</b>

## **COMPLIANCE MANAGEMENT SYSTEM**

### *Prologue:*

Compliance is a permanent and integral part of business processes that is ongoing and needs continuous tuning in line with the business environment and the applicable regulatory ambit. Compliance Management System should provide processes for

- preventing non-compliances through mechanism such as Compliance risk Management framework, Policies, Processes & Procedures, Training and Communication, Code of Conduct & Ethics programme etc.;
- detecting non-compliances through mechanisms such as effective whistle blowing, compliance controls, compliance audits etc.;
- responding to non-compliance through remedial action, implementation of control tools for non-recurrence of such non-compliance etc.

Through an effective Compliance Management System, the business and its constituents learn about the compliance responsibilities individually and for the organisation as a whole, making them a part of business processes; review operations to ensure responsibilities are carried out and requirements are met; and timely corrective action are taken.

The objective of this template is to help the secretarial auditor in evaluating the critical aspects of compliance management. Check-lists have been provided under each head, along with the intent of the questions. Secretarial Auditor may fine tune the same to company specific depending on the nature of industry, size of organisation and other relevant aspects that impact the compliance management system.

## **COMPLIANCE MANAGEMENT SYSTEM - TEMPLATE**

### *The Objectives*

The objective of Compliance Management System is to manage the compliance risk effectively, to promote ethical culture in the organisation, resulting in the maintenance and enhancement of the reputation of the Company. Compliance management through systematic processes helps in achieving compliance of all applicable laws.

The objective of Compliance Management System is -

- To establish and maintain centralised mechanism to ensure compliance with all applicable laws (both Indian and International).
- To establish and maintain effective co-ordination of functional units and the compliance department under the overall supervision of the Board.
- To incorporate changes in the existing applicable laws or introduction of new laws, into the compliance process in real time manner.
- Effective communication of the changes in the regulatory mandates to the applicable functional and other units in real time manner.
- To provide training on compliance requirements at regular intervals.
- To introduce and implement ethics programmes for Board, Senior Management and other staff members.
- To establish pro-active compliance risk management culture into the organisation.

- To establish effective monitoring and control systems.
- To adopt fair market practices.
- To establish mechanisms to prevent, detect, report and to respond to non-compliances.
- To introduce effective whistle blowing mechanism.
- To establish compliance dashboard.
- .....
- .....

*The Scope*

1. A. Compliance with applicable laws
  - .....
  - .....
  - .....
  - .....

(To be kept updated and amended from time to time)
- B. Adherence to Company Specific internal policies and procedures
  - Code of Conduct
  - Code on prevention of Insider Trading
  - Policy on related party transaction
  - IT Policy
  - .....
  - .....
2. Adherence with Vision and Mission statement of the Company.
3. To devise code of conduct for Board, senior management and employees
4. Conducting training on compliance, ethics, code of conduct.
5. Establishment of Corporate Compliance Committee.
6. Appointment of Chief Compliance officer.
7. Quarterly compliance Report to be presented to the Board.
8. Identification and classification of various compliance risks.
9. Organisation of compliance Audit, feed back, remedies.
10. ....
11. ....

*Compliance Risk*

Compliance risk is the current and prospective risk to earnings or capital arising from violations of, or non-conformance with, laws, rules, regulations, prescribed practices, internal policies, and procedures, or ethical standards. This risk exposes the institution to fines, civil money penalties,

payment of damages, and the voiding of contracts. Compliance risk can lead to diminished reputation, reduced expansion potential and an inability to enforce contracts.

#### *The Chief Compliance Officer*

The Corporate Compliance Officer (CCO) is the custodian of the Corporate Compliance Plan. The CCO should report on compliance activities that include but are not limited to:

- To establish and review the centralised compliance management system in tune with business environment, strategic decisions of the company and the regulatory amendments.
- To guide and educate the Board on various compliances, regulatory and policy based compliances.
- To devise clear compliance structure
- Liaison between Board, Functional heads and compliance staff.
- To advise the Compliance department regularly and as and when required.
- To devise annual compliance plan.
- To define the role and responsibilities of functional units and disseminate the information.
- To organise training for the Board and the staff on ethics and compliance.
- To establish and strengthen the Compliance Dashboard.
- Inform the Board and the functional departments about changes in the applicable regulatory landscape and its implications on the organisation.
- To establish processes for effective monitoring and control.
- To present quarterly compliance report before the Board.
- .....
- .....
- .....

#### *Board Level Corporate Compliance Committee*

The primary responsibility of the Corporate Compliance Committee is to oversee the company's Corporate Compliance Program with respect to:

- (I) compliance with the laws, rules and regulations applicable to the company;
- (II) Compliance with the Company's Code of Conduct;
- (III) Compliance with Company's policies and procedures;
- (IV) Compliance with established standards;
- (V) Compliance with prevention and detection of fraud, misappropriation etc.;
- (VI) Oversight of the risk management activities of the company and the protection of stakeholders;
- (VII) Making recommendation to revise the compliance management programme.

#### *The Compliance Department*

The company should have a dedicated compliance department which should be independent and sufficiently resourced. It should not be entrusted with any business targets. They have to work

closely with functional units. The staff of compliance department should have fair knowledge of applicable laws, internal policies etc and should be imparted training at regular intervals. The Chief Compliance Officer shall oversee the activities of Compliance Department.

*The Compliance Dashboard*

- The Compliance Dashboard should alert the company in the risk prone areas or non compliances.
- It should display the compliance obligations on the compliance calendar or dashboard
- Before the date of regulatory mandate, and e-mail should be sent to the compliance owner.
- The Compliance owner should send the response once compliance is done.

The compliance dashboard helps in simplifying the compliance obligation, effectively managing the compliance risk, facilitating board oversight, effective co-ordination of functional units.

*Compliance System- Checklists*

Sl. No.	Question	Yes/No	Intent
<b>Board Oversight</b>			
1	Does the Board approve compliance of applicable Report ?		The Board should be updated quarterly Compliance with the laws at least every quarter, ensuring compliance by all functional heads and presented by Compliance department/Chief compliance officer helps in effective Board oversight.
2	Does the Board review Compliance Management programme at regular intervals ?		Compliance Management programme has to be revisited at regular intervals in tune with the business environment, regulatory changes etc.
3	Do the members make use of Compliance Dash Board effectively and act upon it when required ?		The Board Members are expected to visit Compliance Dashboard every day in over-seeing the compliance level in the organisation.
4	Is the Board updated with the applicable laws?		The Board should be updated with the applicable laws at regular intervals that helps the Board in reviewing compliance plan, overseeing compliances, reading compliance dash board etc.
<b>Chief Compliance Officer</b>			
1	Has the Company appointed Chief Compliance Officer ?		Overall Ownership should lie with an exclusive individual who has strong hold on laws, rules and regulations. Appointment of Chief Compliance Officer helps in effective co-ordination of compliances by business units.

2	Has the role of Chief Compliance officer been specifically defined?		As part of Compliance programme, the specific duties of Chief Compliance Officer be defined. This helps in casting the responsibility as well.
3	Is the Chief Compliance Officer an independent person?		Chief Compliance Officer shall be an independent person who should not have any pecuniary interest with the company and should not be associated with any specific business unit.
4	Is the Chief Compliance Officer reporting to Board?		Chief Compliance Officer reporting directly to Board helps in direct and effective communication of compliance aspects with the top management.
5	Does the Compliance Officer participate in major decisions?		The Chief Compliance officer should participate in important strategic and contractual decisions. This helps him in assessing the legal implications of the same on the company.
<b>Systems and Processes</b>			
1	Has the company put in place, a centralised mechanism for tracking and monitoring compliance?		When there are business/functional units at different locations, centralised mechanism of tracking and monitoring compliance helps in effective co-ordination of different business units.
2	Has the company put in place the process for development and approval of table of applicable laws, function wise and criticality wise?		The company should have defined process in place for updating the table of applicable laws. For example at every quarter or introduction of new law or amendment to existing law, as the case may be
3	Does the company have in-built mechanism in place for alerts whenever there is any identification of various laws and its applicability to the organisation, specifically based on the functions ? If so, is the implementation		The process should provide for change in the regulatory ambit applicable to the company.

	process for the same effectively reviewed and monitored ?		
4	Has the company paid any penalty for any compliance failure? If so, has the company made gap analysis and taken remedial measures?		The compliance mechanism should provide for no-tolerance to non-compliances. Non-compliances are to be addressed through establishing necessary controls for the same.
5	Has the company appointed designated compliance officials (Compliance owners) at unit level ?		Compliance Owners at unit level helps in ensuring compliance in the respective business units.
6	Has the company co-ordinated the activities of designated compliance official functional heads, Chief Compliance officer and the Board of Directors?		Co-ordination of unit level compliances are essential for ensuring overall compliance.
7	Is the Compliance Management System subject to periodic Audit?		The existing Compliance management should be subject to periodic audit that helps in bringing effective control.
<b>Corporate Compliance Committee</b>			
1	Has the company constituted corporate compliance committee?		Constituting the Board level Corporate Compliance Committee helps in the effective involvement of the Board in compliance management.
2	Are Functional Heads and Chief Compliance Officer participating in the meetings of Corporate Compliance		Participation of Functional Heads and the Chief Compliance Officer in the meeting of Corporate enhances the quality of discussions and decisions.

	Compliance Committee Committee ?		
3	Does the committee meet atleast in every quarter ?		The Committee should meet atleast once in a quarter. This may be in line with assessment
<b>Compliance Risk Management</b>			
1	Is compliance risk a part of ERM ?		Compliance risk should be classified as one of the major risks under ERM.
2	Has the company classified the compliance risk based on criticality (Legislation-wise) ?		Some non- compliances result compoundable too. The company should identify the compliances based on criticality. Compliance risks are to be assessed by Chief Compliance Officer in consultation with functional heads.
3	Are the Compliance Owners aware of financial implications of critical non-compliances ?		The Compliance Owners should be aware of implications of non- compliances.
4	Does the Company undertake Compliance Risk Analysis ?		Compliance risk analysis helps establishing effective compliance controls.
<b>Training and Communication</b>			
1	Has the company imparted training to senior management & employees on compliance programme covering regulatory aspects and the internal policies ?		Regular training helps in understanding the intent, process and consequences of compliances in better manner.
2	How does the company communicate with the employees on ethical issues ?		Reiterating on ethical issues is essential in any organisation, that would bring overall ethical culture in the organisation.

## **CERTIFICATION OF SECURITIES TRANSFERS (Clause 47(c))**

In furtherance of objective of protecting the interests of investors in securities, SEBI through the introduction of Clause 47(c) of the Listing Agreement provided for speedy registration of securities and monitoring by the Board of Directors of listed companies by the Stock Exchanges and SEBI regarding share transfer work in listed companies.

Clause 47(c) provides that is that a listed company should insist on the RTA to produce to it a certificate from a practising company secretary that all transfers have been completed within the stipulated time.

Under sub-clause (c) of clause 3, a listed company is required to issue certificates within one month of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. Thus, with regard to securities transferred generally, a listed company is required to transfer and issue the relative certificate for securities within a period of one month, from the date of lodgement of transfer.

Also clause 6 of listing agreement provides that the issuer will, if so required by the exchange, certify transfers against letters of allotment, certificates and balance receipts and in that event the company will promptly make on transfers an endorsement to the following effects:

“Name of the Issuer \_\_\_\_\_

Certificate /Allotment Letter No. \_\_\_\_\_ for the within mentioned \_\_\_\_\_ securities is deposited in the Issuer’s office against his transfer No. \_\_\_\_\_

Signature(s) of official(s)\_\_\_\_\_

Date \_\_\_\_\_.”

Apart from this various other clauses like Clause 7,8,10,11,12,12A,13,14,15,16,17,21, 23,34,47 in the Listing Agreement cover the gamut of Share Transfer.

Keeping the aforesaid provisions in the listing agreement in view before certifying that a listed company has complied with these requirements, a Company Secretary should normally be required to verify in respect of each transfer lodged with the company, whether the relative certificate has been despatched after making endorsement of transfers within the stipulated time. While this is the general rule, it may not be always physically possible for a Company Secretary to verify each and every transfer deed, particularly, in the case of a company whose shares are going through the systems and procedures in place with regard to transfers of securities, consolidation, renewal or exchange of securities and for endorsement of calls assess the extent to which he has to verify the facts for the purpose of this certification, e.g. if a PCS is convinced of the adequacy of the systems and procedures, he may decide to have a random or test check and decide to issue a certificate based on such a check. However, it should be borne in mind at the time of a random or test check if the PCS comes across considerable deficiencies in this regard, he should undertake complete check of all transfers. In any case no hard and fast rule can be laid down as regards the extent to which this check should be conducted. This will depend largely upon the position existing in the company and the position existing in the company and the

judgement of the Practising Company Secretary concerned, even though he is required to certify about the completeness of transfer and despatch of certificates within the stipulated time.

The examination should not be confined only to duly completed transfer deeds lodged with the company but it should also include transfer lodged with the company which are deficient and are retained by the company after making a reference or returned to the lodger for making good the deficiency. Keeping in view the purpose for which the certification has been stipulated, it is but proper that the verification should cover all transfers lodged with the company whether they are fit for transfer or not. Transfer in respect of deficient transfer, return or reference to the lodger should also be done within a period of one month from the date of lodgement of transfer deeds. There should not be any delay in this regard.

### **Periodicity of Certification**

While the letter from SEBI to the Stock Exchanges makes no reference to the periodicity of certification, the Bombay Stock Exchange has stipulated that such a certification should be given within one month of the close of each half of the financial year. Further the exchanges at Mumbai, Pune, Calcutta and Uttar Pradesh (Kanpur) have stipulated that the certificate given by the Practising Company Secretary should be sent to it within 24 hours of its receipt by the listed company. In view of the fact that the financial year varies from company to company, the period to which such a certificate has to be given may also vary. Accordingly, this certificate in relation to securities quoted on the Stock Exchange should be in relation to each half of the financial year of the company.

### **Checklists**

Certification would broadly cover the following checks:

- Check the number of requests received by the company for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
- Make a tabular format underlining the date of the request receipt & the date for completion of the request.
- Check that the entire request received by the company for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies has been completed within one month of the date of lodgement of transfer.
- Ensure that verification covers all transfers lodged with the company, whether the case is fit for transfer or not.
- Check that all books, records & papers relating to receipt of transfer document have been properly examined.
- Check that whether the transfer deed has been properly registered by the listed company.
- Check that listing company has dispatched the relative certificate within stipulated time.

- Check that if the company has not completed the request for transfer within one month of lodgement for transfer, necessary information/return of transfer deed has been intimated to the person making the request.
- Check that the company maintains proper records for number of transfer pending for registration.
- Ensure that company follows the Companies (Issue of Share Certificates) Rules, 1969.
- Ensure that certification is given within one month from each half of the financial year to the company.
- Ensure that the copy of the certificate has been sent to the stock exchange within 24 hours of the receipt of the certificate by the company.

The PCS should in respect of share certificates issued on consolidation, sub-division or duplicate share certificates examine the records maintained by the company under the Companies (Issue of Share Certificates) Rules, 1969 before issuing the certification.

### **Specimen Certificate**

#### **CERTIFICATE UNDER CLAUSE 47 OF THE LISTING AGREEMENT FOR THE HALF YEAR ENDED (half year ended March / September)**

I have examined all Share Transfer Deeds, Memorandum of Transfers, Registers, files and other documents relating to \_\_\_\_\_ Limited (*name of the company*) maintained by \_\_\_\_\_ (*name of the RTA*) pertaining to transfer of equity shares of the company for the period from \_\_\_\_\_ (*beginning date of the half year*) to \_\_\_\_\_ (*end date of the half year*) for the purpose of issuing a Certificate as per Clause 47(C) of the Listing Agreement entered into by, \_\_\_\_\_ Limited (*name of the company*) with \_\_\_\_\_ (*name of the stock exchange*) and basing on the information provided by the Company and hereby certify that the Company has delivered during half year ended on \_\_\_\_\_ (*half year ended March / September*).

- A) Share Certificate relating to the Share Transfer Deeds received during the period from 1<sup>st</sup> (*beginning date of the half year*) to (*end date of the half year*) as entered in the Memorandum of Transfers have been issued within one month from respective date of lodgment of each deed excepting those rejected on technical grounds.
- B) Share Certificates in respect of requests for exchange of duplicate and split certificates have been issued within one month of lodgment.

Date : \_\_\_\_\_ (Name, Membership No and Signature of PCS)

Place:

Please note that:

- 1) This Certificate should be given by a Practising Company Secretary.
- 2) The Certificates should be given for Half Year ended March and September.

## **SHARE CAPITAL RECONCILIATION**

### **Genesis of this Concept in Indian Capital Market**

- Notification dated 8<sup>th</sup> Feb 2000 – Single ISIN – (Committee on Demat and Rolling settlement)
- Direction to Depository – 18<sup>th</sup> Feb 2000
- Notice to issuer by NSDL - 3<sup>rd</sup> March 2000
- Legality of the notification questioned???????
- Press release SMDRP dated 23<sup>rd</sup> May 2000
- Partly Paid shares allowed separate ISIN
- Direction to Stock Exchanges 8<sup>th</sup> March 2001
  - In Principle approval for further listing of Capital
- Delay in Listing of Shares by Companies
- Amendment in Listing agreement as above
- Confirmation from SE to Depositories
- Scam as it broke out.....
- News paper report spoke of about more than 2000 crores?
- Direction to Stock Exchanges 27<sup>th</sup> December 2002 for Common Agency
- Connectivity
  - Directly by Company
  - Through RTA
  - Indirectly through RTA
- Notification dated 31<sup>st</sup> December 2002
- DP regulations amended 2<sup>nd</sup> September 2003
  - Regulation 53A Common agency
  - 53B Redressal of grievances
  - 55A Secretarial Audit by CS or CA
- Single ISIN (Informal Guidance) given by SEBI

### **Checkpoints for Reconciliation Audit**

- Reconciliation of Capital
  - Admitted
  - Issued
  - Listed
- Maintenance of records for demat and remat
- Demat only after in-principle approval from SE and admission granted by Depository
- Check for proper systems in place and that securities not dematerialized earlier
- Reconcile daily balances for tally of Capital
- Demat within 21 days

**Report**

Date: \_\_\_\_\_

**Report with regard to Reconciliation of Share Capital**

**For the quarter ended \_\_\_\_\_**

**ISIN: \_\_\_\_\_**

We have examined the Register of Members, beneficiary details furnished by the Depositories and other relevant books and records, correspondence, and information maintained by \_\_\_\_\_ LIMITED (herein after referred to as "The Company") having its Registered office at \_\_\_\_\_ and its Registrar and Share Transfer Agent, \_\_\_\_\_ for issuing this certificate, in accordance with Circular No. D & CC/FITTC/CIR-16/2002 dated December 31, 2002 issued by the Securities and Exchange Board of India.

In our opinion and to the best of our knowledge and based on such examination as well as information and explanations furnished to use which to the best of our knowledge and belief were necessary for the purpose of our certification and based on such verification as considered necessary we hereby certify the report for the quarter ended \_\_\_\_\_ as detailed below:-

1.	For Quarter Ended		
2.	ISIN		
3.	Face Value		
4.	Name of the Company		
5.	Registered Office Address		
6.	Correspondence Address		
7.	Telephone & Fax Nos,		
8.	Email address		
9.	Name of the Stock Exchanges where the Company's Securities are listed		
		No. of Shares	% of Total Issued capital
	Issued Capital as per Balance Sheet		
	*Less: Shares Forfeited		
	*Less: Share kept in abeyance		

	Issued Capital		
11.	Listed Capital (All Exchanges) (as per Company records)		
12.	Held in Dematerialized form in CDSL		
13.	Held in Dematerialized form in NSDL		
14.	Physical		
15.	Total No. of Shares (12+13+14)		
16.	Reasons for difference between (11 & 15), (10 & 11), (10 & 15)		

17. Certifying the details of changes in share capital during the quarter under consideration as per Table below:

Particulars ***	No. of shares	Applied/not applied for listing	Listed on Stock Exchanges (specify names)	Whether intimate to CDSL	Whether intimated to NSDL	In-principle Approval Pending from Stock Exchanges (specify names)
1)						
2)						
18.	Register of Members is updated (Yes/No)					
	If not, updated upto which date					
19.	Reference of previous quarter with regards to excess dematerialized shares, if any,					
20.	Has the Company resolved the matter mentioned in point no.19 above in the current quarter? If not, reason why?					

21.	Mention the total No. of requests, if any, confirmed after 21 days and the total No. of requests pending beyond 21 days with the reasons for delay:			
	Total No. of Demat Requests	No. of Requests	No. of Shares	Reasons for delay
	Confirmed after 21 days			
	Pending for more than 21 days			
22.	Name, Telephone & Fax No. Of the Compliance Officer of the Company			
23.	Name, Address, Tel & Fax No, Registration No. of the Auditor			
24.	Appointment of Common Agency for Share Registry Work			
25.	Any other detail that the Auditor may like to provide (eg. BIFR Company, delisting from SE, Company changed its name, etc.)			

\*\*\* Rights, Bonus, Preferential Issue, ESOPs, Amalgamation, Conversion, Buyback, Capital Reduction, Forfeiture, Any other (to specify)

## INTERNAL AUDIT OF DEPOSITORY PARTICIPANTS

### Depository Participants

- The Depositories Act, 1996 and SEBI (Depositories and Participants) Regulations, 1996 provide regulatory framework for functioning of depositories of India.
- Registration of DP is mandatory with SEBI
- Subject to rules, regulations, byelaws
- Have certain rights and obligations
- The two Depositories in India i.e. NSDL & CDSL have allowed Practising Company Secretaries to undertake internal audit of the operations of Depository Participants (DPs).

### The schedule for submission of internal audit reports

<i>Half year</i>	<i>Period of Internal Audit</i>	<i>Due date for submission of the report</i>
1st	1st April to 30th September	15th November
2nd	1st October to 31st March	15th May

### Objectives of Internal Audit

- To assure the management that the operations of the Participant are in compliance with prescribed rules and regulations.
- To assure management that the DPM system is managed and maintained in a proper manner.
- To assure management that the capacity of computer system, staff strength and internal procedures are commensurate with the business.
- To assure management and DEPOSITORIES that the business operations of the Participant are conducted in a manner that all the foreseeable risks are addressed to with appropriate internal control mechanism.
- To assure management that the operations are conducted in a manner that there is no loss of revenue and receivables are received promptly.

### Scope of Internal Audit

Internal Audit should cover all facets of operations to achieve the desired objective of carrying out internal audit.

An illustrative list:

- Audit of Organisational Structure
- Audit of DPM Operations

- Audit of Account opening procedures
- Audit of demat requests
- Audit of delivery instructions
- Audit of other transactions/services
- Audit of branches/franchisees
- Back office software
- Scope of audit for records and documents maintained
- Information provided to Depositories

### **Audit Report**

The audit report should state the scope, period of coverage and nature and extent of audit work performed.

The audit report should contain the following:

- Findings, conclusions, recommendations, reservations and qualifications.
- Areas where the internal controls are weak or do not exist.
- Areas where internal controls exist, but exceptions are observed.
- If any major/significant deviation is observed, the same should be reported separately in the covering page of the audit report.
- If observation is in the nature of a deviation or recommendation by the auditor, management response should be sought and recorded in the report.
- Comment by auditor on whether management has taken necessary action as stated in the management's response in last audit report.
- Improvements brought about in the operations between the last audit and the current audit.
- Comments by the auditor on the remedial action taken by the Participant on the observations made by Depositories.
- A statement by the auditor that this circular was read, understood and the internal audit report is based on the guidelines given in this circular.
- A statement by the auditor that the auditor is neither related to officials of DP and/or does not have any interest in the management of the DP nor has any partner/proprietor in the firm who is also a DP official.
- Auditor's membership number should be mentioned at the end of the report.
- If auditor wishes to do 'Exceptional reporting' a statement 'All applicable areas given in the circular above have been verified & found satisfactory. This report gives deviations only' should be made by the auditor.

*For more details, refer Handbook on Internal Audit of Operations of Depository Participants of ICSI.*

## **CORPORATE GOVERNANCE CERTIFICATION**

Corporate Governance is a system by which companies are directed and controlled”.

### **Objectives of Corporate Governance**

- Protecting the long term interest and enhancing the values of shareholders and other stakeholders (viz. customers, employees, creditors, bankers, regulators and society at large)
- Harmonizing rights & interest of shareholders and stakeholders by continuous exercise of striking balance.
- Reducing the risks normally faced by the company / organization.
- Responsibility to introduce and effectively implement Corporate Governance is exclusively of Board of Directors in a manner that it becomes way of organizational life and not merely written rules or regulations or code of ethics.
- Ethics & Transparency are cardinals of Corporate Governance.

### **Legal Provisions**

Practising Company Secretaries (PCS) have been given a role to contribute towards improvement of standards of good Corporate Governance among listed companies, under Clause 49 of the listing agreement. The said clause provides that the company shall obtain a certificate from either the auditors or practising company secretary(ies) regarding compliance of the conditions of Corporate Governance.

Clause 49 XIA mandates that, the Corporate Governance Compliance Certificate (“CGCC”) shall be annexed to the Directors’ Report, which is sent annually to all the shareholders of the company. The CGCC is also required to be sent to the Stock Exchange(s) along with the annual report filed by the company. Clause 49 XI(A) provides that, the same certificate shall be sent to the Stock Exchanges along with the annual report filed by the company.

Non-compliance of any mandatory requirement of Clause 49 of the Listing Agreement with reasons thereof and the extent to which the non-mandatory requirements have been adopted, should be specifically highlighted in the CGCC.

### **Applicability of Clause 49**

Clause 49 is applicable to:

- a) entities seeking listing for the first time, at the time of seeking in-principle approval for such listing;
- b) existing listed entities;

including bodies corporate (other than mutual funds), e.g., Private and public sector banks, financial institutions, insurance companies etc. incorporated under other statutes, as long as Clause 49 does not violate their respective statute and the guidelines or directives issued by the relevant regulatory authorities.

## **Right to access records**

In order that the PCS can carry out the necessary verification for the purpose of issuing CGCC, the Company should provide the PCS access to the registers, books of accounts, papers, documents, reports and records of the Company wherever kept. The PCS is entitled to obtain from the officers or agents of the Company, such information and explanations as he may consider necessary for the purpose of such certification.

## **Methodology for carrying out for Certification**

To carry out the certification, the PCS should check the registers and records maintained, the attendance book and Minutes Book of the Board Meetings, General Meetings, Audit Committee Meetings, Shareholders/Investors Grievances Committee Meetings, etc. He should also check the quarterly reports submitted by the Company to the Stock Exchange from the first day of the financial year. Where the PCS considers it necessary to verify the records of earlier years, for the purpose of certification, he may do so.

## **Period of CGCC**

The CGCC from the PCS should relate to the financial year of the listed Company under Report.

## **Communication to earlier incumbent**

In view of the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, when a PCS is assigned the compliance certification work of the Company for the first time, he should communicate his appointment to the earlier incumbent, if a PCS, by registered post. Even if the earlier incumbent is not a PCS, it is desirable and a good practice to communicate the appointment to him.

## **Presence of PCS at the Annual General Meeting**

The PCS who has issued the CGCC should make himself available at the Annual General Meeting to provide clarifications, on CGCC, if required.

## **Scope of Certification**

The scope of CGCC would comprise certification of compliance of the conditions of Corporate Governance as stipulated in the Listing Agreement and Voluntary Guidelines issued by the Ministry of Corporate Affairs. The responsibility of PCS in certifying compliance of the conditions of Corporate Governance would relate to verification and certification of factual implementation of conditions stipulated therein. For certifying the compliance of the conditions of Corporate Governance under Clause 49 of the Listing Agreement, PCS can rely on the duly approved report of the Board of Directors on Corporate Governance, as regards the disclosures of various items in the Annual Report are concerned.

## **Mode of issuing CGCC**

For issuing CGCC a three-step procedure needs to be followed:

- (i) The PCS would first obtain from the listed entity its draft report on Corporate Governance.

- (ii) PCS would examine relevant records relating to Corporate Governance and obtain necessary information and explanation from the management. An illustrative list of compliance inputs and checklists has been indicated in each paragraph in this Guidance Note. The list is however, not exhaustive.
- (iii) PCS on the basis of the report and verification of such other records as well as information and explanation so obtained, would certify the compliance of the conditions of Corporate Governance and give his certification to the Board to be annexed to the Board's Report.
- (iv) Where a Company has adopted the Voluntary Guidelines, the PCS would also certify the compliance thereof.

### **Types of Certification**

The certification may be unqualified or qualified:

- (a) *Unqualified certificate*: An unqualified certificate should be issued when the PCS forms the opinion that the conditions of Corporate Governance have been duly complied with by the Company in accordance with Clause 49.
- (b) *Qualified certificate*: A qualified certificate should be issued when the PCS concludes that there are certain specific non-compliances or inadequacies. A qualified certificate should contain a brief description of non-compliances or inadequacies in compliances and the extent thereof.

It is recommended that the qualifications, if any, should be stated in thick type or in *italics* in the CGCC.

If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons therefor.

If the scope of work required to be performed is restricted on account of limitations imposed by the client, or on account of other limitations (such as certain books or papers being in custody of another person or Government Authority), the certificate may indicate such limitations. If such limitations are so material that the PCS is unable to express any opinion, the PCS should state that "in the absence of necessary information and records, he is unable to certify compliance or otherwise of the conditions of Corporate Governance by the Company".

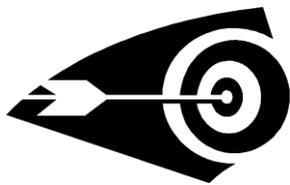
*For more information, refer Guidance Note on 'Corporate Governance Certificate' of ICSI*

#### **PARTICIPANTS' GUIDE**

Participants are expected to give inputs on how they carry out attestation services of their clients and the documents they rely on.

# MODULE 8

## *Quality of Reporting by PU*

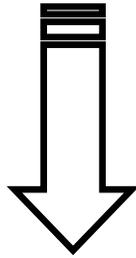


### **OBJECTIVE**

- ❖ *To acquaint Reviewers of requisites of a quality report*
- ❖ *To facilitate high quality of reporting by PU*

# TRAINER'S GUIDE

Total Time: 30 minutes



## Power Point Presentation

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### Slide Contents

- Part I      Desired quality
  - Part II     Level of supervision
  - Part III    Diary / working papers
  - Part IV    Compliance
  - Part V     Specific disclosures
  - Part VI    Different Kinds of Reports
-

## **DESIRED QUALITY**

Any professional's work is judged prima facie by the layout and contents of the report. It is therefore necessary for the PU to take much care in ensuring that this document measures up to a high quality benchmark. The PU should review and assess the conclusions drawn from the evidence obtained as the basis for the attestation services.

- Report should contain a suitable and understandable language
- PU should have policies and procedures to provide reasonable assurance that the reports issued are supported by conclusions reached at each stage of engagement
- Conclusions are adequately referenced
- Form and content of report comply with expectations.

## **LEVEL OF SUPERVISION**

Reviewer has to determine level of supervision of engagement under review based on:

- Complexity of subject matter
- Qualifications of team
- Extent of consultation available & used
- Degree of authority delegated to apprentice trainees
- Performance of team
- Risks inherent in the engagement

## **DIARY / WORKING PAPERS**

- Must contain adequate evidence to support attestation services
- Work of other experts used
- When reviewing diary / working papers, reviewer to examine them from this viewpoint too

## **COMPLIANCE**

- PU to comply with reporting standards prescribed under law
- Comply with applicable form and content requirements under statute, regulation or contract

## **SPECIFIC DISCLOSURES**

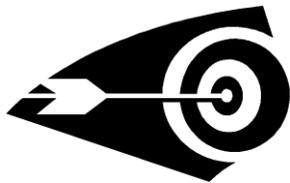
- Scope of limitation
- Use of work of other experts
- Departure from applicable regulatory requirements
- Inadequate disclosures
- Material future event causing uncertainties in present report
- Any other matter that the PU wants to emphasise

## **DIFFERENT KINDS OF REPORTS**

- Unqualified or clean report
  - Acceptable rules and regulations are consistently applied
  - Complies with relevant statutory and other regulatory requirements
  - Adequate disclosure of all material matters relevant to proper presentation, subject to statutory requirements, where applicable.
  - No significant limitations affect the performance of the engagement.
- Qualified Reports
  - Describe limitations in the Report
  - Significant uncertainty, resolution of which dependent upon future events and may affect the Report
  - Limitation on scope which is material and pervasive as PU is unable to obtain sufficient and appropriate information
  - Disclose the misleading or incomplete information.

# MODULE 9

## *Office Administration and Systems*



### **OBJECTIVE**

- ❖ *To acquaint the reviewers with expectations they should have when reviewing Office Systems and Procedures, Training and Office Administration*
- ❖ *To equip the reviewers with a background on what to look for when examining a PU's office set-up, quality controls and personnel training*

# TRAINER'S GUIDE

Total Time: 30 minutes



## Power Point Presentation

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### Slide Contents

- Part I Office Administration
- 5 's' office – a clean, uncluttered & well organized office space
- Part II Office Systems and Control
- Engagement Trails
  - Engagement Diary / Working Papers
- Part III Peer Review of Office Systems and Procedures

Under Para No. 7.1(2)(iii) of the Guidelines for Peer Review, the Peer Review is expected to examine the Office systems and procedures with regard to compliance of attestation services.

## **OFFICE ADMINISTRATION**

Office Administration is an essential feature to any organisation irrespective of its size, nature and the area of operations. No activity can be organised without systems, procedures and rules.

Office Administration generally focuses on:

- Management of employees
- Ensuring adequate resources needed for continuous productive results
- Overseeing the day-to-day operations, etc.

In today's world Office administration is a combination of:

- Information Technology,
  - Latest Hardware, Software and Networking necessary to keep up with the professional expectations
  - Regular back up of important files, documents and diary / working papers
  - Maintenance and updation of website of PU
- Human Resource Management,
  - The procedure for recruiting new employees and apprentice trainee
  - In-house training and development
  - Proper procedure for dealing with retirements and rotations
- Office Resource Management,
  - A PCS office shall be equipped with a library or reference materials relating to professional services. Library may also be e-library.
  - Moreover, it is also important to keep abreast with the latest amendments and changes of law with constant knowledge updation as a tool.
  - Constant efforts must also be taken to motivate the staff and trainees and train them regularly.
  - Filing system followed by the PU
- Written Communication,
  - Track of all incoming and outgoing letters, reports, etc.
  - Proper back up of communication done by e-mail and other electronic means.
- Verbal Communication,
  - No important communication to be done verbally

- Training employees and apprentice trainees to be well behaved and polite
- Research And Budgeting
  - Maintaining a separate research department
  - Allocation of separate budget for research

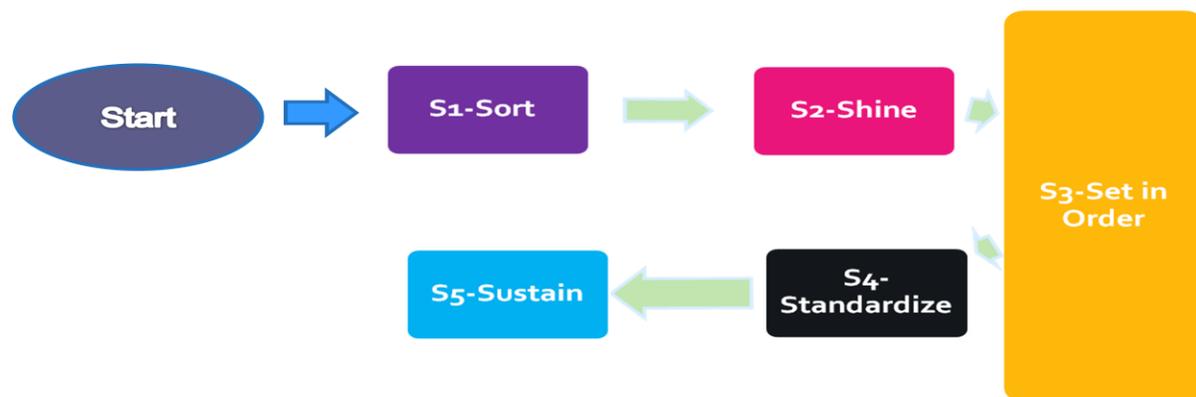
A Company Secretary is a qualified professional to render services interalia, in

- Corporate Laws,
- Company Secretarial Practice,
- Corporate Governance,
- Administration,
- Management, etc.,

Office Administration in a PCS office specifically focuses on:

- Ensuring provision of quality services to the satisfaction of the clients
- Ensuring achievement of technical standards in compliance of law
- Keeping abreast with the latest amendments and changes of law with constant knowledge updation as a tool.

### 5 'S' in office - a clean, uncluttered & well organized office space



#### 1. SORT –

*Definition:* Eliminate non-essential items from the office space

*Goal:* An uncluttered office space

## 2. SHINE

*Definition: Remove dirt & debris, inspect equipment & eliminate sources of contamination*

*Goal: A clean office place – one that shines, & that minimizes sources of contamination*

## 3. SET IN ORDER

*Definition: (a) Evaluate the office space & add smart office space features*

*(b) Create a well-ordered, visually instructive office space*

*Goal: A office space that is visually instructive & is the source of minimal waste & human errors.*

## 4. STANDARDIZE –

*Definition: Maintain standards to maintain 5 'S' improvements*

*Goal: Develop procedures, checklists, & other mechanisms to maintain a work environment that is visually instructive, has minimal waste & human error and is clean, uncluttered, & organised.*

## 5. SUSTAIN –

*Definition: Monitor, expand & refine 5 'S' results*

*Goal: A office space that automatically restores order, regulates activity, & continuously improves*

## OFFICE SYSTEMS AND CONTROL

Maintenance of proper records is a very significant and indispensable part of office systems and procedures. Thus in a PCS office, Engagement Trails and maintenance of diary becomes significant while carrying out attestation services.

### Engagement Trail

Trail is a record showing who did the work and what operations he or she has performed during a given period of time.

Trails are useful both for maintaining security and recovering lost transactions.

Most systems and database management systems include a trail component. In addition, there are separate trail software products that enable network administrators to monitor use of network resources.

Engagement Trail is a form of evidence that can be used to trace transactions to verify their validity and accuracy. It is a method to gather data about activity in the system for analyzing the events based on the data collected.

### Engagement Diary/Working papers

Engagement Diary is an important tool in the hands of the PU and his team.

It shall provide information on the following:

- Who - who has carried out the engagement?
- Where - where has the engagement been conducted?
- When - when is engagement undertaken?
- What - what is purpose & scope of engagement?

It shall contain:

- Basic Information about the company
- Information about the PU
- Scope & objective of the engagement carried out
- Methodology of carrying out
- Period of engagement
- Documents inspected

#### **PEER REVIEW OF OFFICE SYSTEMS AND PROCEDURES**

The Peer Reviewer shall verify whether the PU has adequate office systems, policies and procedures in place. However, the extent and scale of these systems may vary from one PU to another, depending upon the size and level of practice of the PU.

PU Policies may include:-

- Implementation of PU's quality (QC) control policies and procedures; all engagements conducted as per Act
- Communication of PU's QC policies and procedures ensures awareness, understanding and implementation by all levels of staff
- Implementation of those PU's QC policies and procedures appropriate to engagement.

Professional Development to be undertaken by PU:-

- Establishment and communication of PU's independence policies
- In-house training and development programs
- Access to libraries, internet and other sources of updated technical knowledge
- Designation of experts available for consultation in area of expertise
- Proper rotation of employees and apprentice trainees so that work does not get monotonous
- Assigning work after considering the skill, education qualification and experience
- Maintaining a clear policy on accountability to be undertaken at various levels of work and positions

The Reviewer shall particularly examine the following aspects, besides forming his own judgment during the Review:

- Whether the PU has a document management system which should ideally include the filing system, record storage and retrieval system, If so, whether in hard copy or soft copy,
- The policy followed for filing and maintenance of records is available to all employees and trainees
- Whether allocation of attestation assignments among the Trainees are commensurate with the capability of the staff,
- Whether the assignments are properly carried out by Trainees and the attestation services are verified by the Proprietor or Partner of the PU or a Qualified Assistant in the office of the PU before authentication.
- Training Programs for staff (including apprentices) concerned with attestation functions, including appropriate infrastructure.

Proper training and capacity development of the Apprentice Trainee(s) and other staff in the office of the PU is very essential to maintain the quality of attestation services. As it may become difficult for the PU to attend to every attestation service, most PUs generally relies on the Trainees for execution of the attestation services. In this context, the Peer Reviewer may examine whether:

- the Trainees are maintaining a Training Diary to record the work done every day and whether the Dairy is being examined by the Practice Unit periodically,
- register for recording the attendance of trainee is maintained and it is ensured that dummy signatures and dummy trainee are not getting included
- any Staff Induction Process is in place,
- the Staff are periodically encouraged to attend any Training Program or any other Capacity Building Programmes, including any in-house mechanism for their professional development,
- the office of the PU is equipped with a library or reference material relating to professional services,
- the overall décor/appearance of the office of the PU is satisfactory,

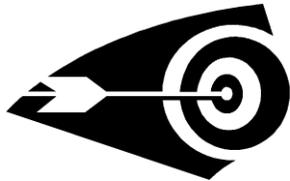
The list furnished above is only illustrative. The Peer Reviewer may like to examine any other matters also. However, in doing so, the Peer Reviewer shall keep in mind the size of the Practice Unit and its scale of operations.

#### **PARTICIPANTS' GUIDE**

- ☛ Participants are expected to explain in brief the systems and procedures followed by them in their office.

# **MODULE 10**

## ***REPORTING BY PEER REVIEWER***

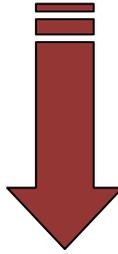


### ***OBJECTIVE***

*To acquaint reviewers with basic elements and guidelines of reporting*

# TRAINER'S GUIDE

Total Time: 45 minutes



## Power Point Presentation

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<b>Slide</b>	<b>Contents</b>
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Part I	Stages of reporting
Part II	General considerations for reporting
Part III	Structure of the Report
Part IV	Contents of the Report
Part V	Guidelines for Qualifying Review Report
Part VI	Illustrative Reports – Extracts
Part VII	Appendix

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## **STAGES OF REPORTING**

The central element of a peer review is the assessment i.e. the professional judgment by the peers.

Para 16.3 of the Guidelines for Peer Review provides the provisions for report of Peer Reviewer. It has been provided that at the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the practice unit. The reviewer shall report on the areas where systems and procedures had been found to be deficient or where he has noticed non-compliance with reference to any other matter.

The different stages of reporting in detail as per the Guidelines are as follows:

### **Preliminary Report of Reviewer**

- At the end of an on-site review, the reviewer shall, before making his report to the Board, communicate a preliminary report to the PU.
- The Reviewer shall report on the areas where:
  - systems and procedures had been found to be deficient or
  - he has noticed non-compliance with reference to any other matter.
- The reviewer shall not name any individual in his reports.
- The PU shall have 21 days beginning the day after the day the preliminary report is received, to make any submissions or representations, in writing to the reviewer, concerning the preliminary report.

### **Interim Report of Reviewer**

- If the reviewer is satisfied with the reply received from PU, he shall submit an appropriate Report to the Board.
- In case the reviewer is not satisfied with the reply of the PU, the reviewer shall accordingly submit his Interim Report to the Board.
- In pursuance of the provisions contained above or on receipt of a request from PU, the Board may instruct the Reviewer to again carry out the review after 6 months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- On receiving such report from a Reviewer, the Board, having regard to the Report and any submissions or representations attached to it, may:
  - make recommendations to the PU concerned regarding the application by it of Technical Standards;
  - Issue instructions to the Reviewer to carry out, a further peer review as regards that PU specifying the matters as regards which the review is to be carried out;  
if it is of the opinion  
that
    - In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;

- In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;
- The Board will make recommendations to PU where, based on the report of the Reviewer, it appears that PU has satisfied:
  - all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and
  - the major key control objectives but some weaknesses exist in others.
- The PU is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.
- In pursuance of the provisions above or on receipt of a request from PU the Board may instruct the reviewer to again carry out the review after six months to verify that systems and procedures have been streamlined and accordingly, on being satisfied, submit a report to the Board.
- A follow up review will be required where PU has not satisfied the Board that all the key control objectives have been maintained.
- Where, in the view of the Board the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the PU, the Board will make recommendations, which it expects PU to implement in order to ensure the maintenance of Technical Standards.
- The implementation of these recommendations will be examined during the follow up review.
- In case the reviewer is not satisfied even at, the subsequent review, he shall submit his Report to the Board incorporating his reasons for dissatisfaction.

### **Final Report of Reviewer**

- The Reviewer will prepare a final Report to the Board (the Reviewer's Report), incorporating the findings as discussed with PU.
- The final report will be examined/ inspected by the Board in terms of the degree of compliance with the Technical Standards by the reviewed PU.
- The model forms of such final Reports shall be communicated to the Reviewer by the Board.
- The Board shall consider the reviewer's final report and the PU's submissions.
- The Board may issue recommendations, if considered appropriate, to the PU and/or instruct the Reviewer to perform any follow-up action.
- The Board may, if deemed fit, then issue Peer Review Certificate to the practice unit.

- The Reviewer shall not communicate any Report(s) unless the examination of such Report(s) and related records has been made by him or by a partner or an employee of his firm.

### **GENERAL CONSIDERATIONS FOR REPORTING**

1. The Qualified Assistant will promptly write those parts of the report, which the Reviewer had assigned to them.
2. The Reviewer with support from the Assistant will finalize the report, reflecting collective views without naming any individual.
3. Final report would include all those major points as indicated below.
4. The report should be a professional, constructive and objective evaluation, pointing towards PU's strengths, challenges and improvements.

### **STRUCTURE OF THE REPORT**

The Reviewer may reflect his own writing style for the report, but for uniformity sake following broad structure is suggested.

#### **(1) Letter of Engagement**

#### **(2) Table of contents**

#### **(3) Introduction**

Composition of Team, visit duration and dates, scope of review and review process

#### **(4) PU profile**

1. Brief description of the PU, status, constitution, number and particulars of certification, major areas of practice and unique features, if any.
2. While describing PU profile, an explicit evaluation should be made whether the PU complies with relevant ICSI guidelines.

#### **(5) Information obtained and its source**

#### **(6) Name, position and title of person interviewed**

#### **(7) Assessment**

1. Based on the presentation and evaluation under (2) above, the strengths and challenges faced by the PU, and suggestions to overcome the challenges should be made.
2. The strengths of PU should be summarized to commend and encourage.
3. The challenges the PU faces should be highlighted to focus attention and make suggestions for improvement.
4. Any limitation or restriction on the scope of work or data made available by the PU

#### **(8) Recommendations**

Recommendations may include ratings with rationales for making the recommendations. The provisional rating may have stipulations that challenges/weaknesses pointed out to be overcome within prescribed frame.

## **(9) Appendices**

The Checklist (Appendix-1) should be completed and appended to the report.

### **CONTENTS OF THE REPORT**

1. The report should contain among others:

- An indication of what a system of quality control encompasses and a reference to the quality control standards.
- A statement indicating that the system of quality control is the responsibility of the reviewed firm.
- A reference to the description of the scope of the peer review conducted.
- Existence of limitation, if any, on the review conducted with reference to the scope envisaged in the Statement of Peer Review.
- A statement indicating that the review did not necessarily disclose all instances of lack of compliance with technical standards.
- An opinion on whether the reviewed firm's system of quality control has been designed to meet the requirements of the quality control standards for attestation services and whether it was complied with during the year reviewed to provide the reviewer with reasonable assurance of complying with technical and ethical standards in all material respects.
- Where the reviewer concludes that a modification in the report is necessary, a description of the reasons why it is necessary for modification.
- The report should also contain suggestions.
- A reference to the preliminary and interim report, if any.
- An attachment which describes the peer review conducted, including an overview and information on planning and performing the review.

2. The peer review report should be issued on the reviewer's (individual) letterhead and signed by the reviewer. The report should be addressed to the Peer Review Board with a copy to the PU and should be dated as of the date of the conclusion of the review.

3. In deciding on the type of report to be issued, a reviewer should consider the evidence obtained and should document the overall conclusions with respect to the year being reviewed.

- Whether the practice unit has initiated adequate mechanism for training of staff.
- Whether the practice unit ensures the availability of expertise and/or experienced individuals for consultation, where necessary, with the consent of the client.
- Whether the skill and competence of assistants is considered before assignment on an attestation engagement.
- Whether the progress of attestation service is monitored and work performed by each assistant is reviewed by the partner incharge and necessary guidance is provided to assistants.

- Whether the practice unit has established procedure to record the engagement plan, the nature, timing and extent of procedures performed and the conclusions drawn from the evidences obtained.
- Whether the practice unit maintains permanent files and the current files as per the standards laid down by the ICSI.
- Whether the practice unit verifies compliance with laws and regulations to the extent it has material effect on financial statements.
- Whether the internal controls within the practice unit contribute towards maintenance of quality of reporting.

## **HOW TO QUALIFY THE REPORTS?**

### **Guidelines for Qualifying Review Report**

- ✓ Compliance with technical standards
- ✓ Compliance with quality control policies
- ✓ Compliance with documentation
- ✓ Compliance with relevant regulations

### **PARTICIPANTS' GUIDE**

#### **DRAFTING OF REPORTS IN ENGLISH**

- ☞ Use simple words and phrases that most people are familiar with.
- ☞ Keep sentences length short, not more than 15-20 words.
- ☞ Avoid verbiage. Eliminate the words which are superfluous.
- ☞ Prefer single word instead of a group of words.
- ☞ Replace legalese (words which have no special legal meaning but have legal flavour) by simple, familiar words.
- ☞ Prefer active voice unless passive voice is more effective.
- ☞ Avoid non-English (mainly Latin) words and phrases.
- ☞ Avoid archaic, outdated, old-fashioned words and phrases.
- ☞ Do not use two or more words where one would be enough.
- ☞ Use verbs instead of nouns.
- ☞ Mention only the matters covered under the Guidelines.

## ILLUSTRATIVE REPORTS

### Model Preliminary Report for a firm

Report No.

Date

*{Name of practice unit}*

Dear Sir/Madam,

This is with reference to the peer review of your firm carried out by me on *{mention the date}* for the period(s) *{mention the period(s)}*. I am expressing my opinion on the quality control system as designed by your firm and its implementation. My observations regarding the deficiencies observed by me in the system of quality control for the attestation services of your firm is enclosed as Appendix\_\_\_\_\_.

You are requested to send your representation/ comments on the observations, so that the report may be submitted to the Peer Review Board.

Signature of the Reviewer

(Name of the Reviewer)

C. P. No.

Reviewer's Code No.

Place:

## Illustrative Final Report

### A. Clean Final Report

Report No.

Date

Peer Review Board.

As per your letter no. \_\_\_\_\_ dated \_\_\_\_\_, I have carried out the peer review of *{name of the practice unit}* for the period(s) *{mention the periods reviewed}*. The review was conducted in accordance with the Peer Review Guidelines issued by the Institute of Company Secretaries of India. The major focus of the review was on Compliance with Technical Standards, Quality of Reporting, Office systems and procedures and the Training Programme for staff (including trainees and Apprentices) concerned with attestation function including appropriate infrastructure. I am expressing an opinion on the implementation of quality control policies and procedures designed to ensure the compliance of Technical Standards and maintenance of quality of attestation services and its implementation.

Review would not necessarily disclose all weaknesses in the quality of attestation work or all instances of lack of compliance with Technical Standards, since it is based on selective tests. As there are inherent limitations in the effectiveness of any system of quality control, departure from the system may occur and not be detected. Also, projection of any evaluation of system of quality control to future periods is subject to the risk that the system of quality controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In my opinion the system of quality control for the attestation services of *{name of practice unit}* for the period under review has been designed so as to carry out professional attestation services assignments in a manner that ensures compliance with technical standards laid down by the Institute and maintenance of the quality of attestation service work they perform.

Signature of the Reviewer

(Name of the Reviewer)

C. P. No.

Reviewer's Code No.

Place:

## ***B. Qualified Final Report***

Report No.

Date

Peer Review Board

As per your letter no. \_\_\_\_\_ dated \_\_\_\_\_, I have carried out the peer review of *{name of the practice unit}* for the period(s) *{mention the periods reviewed}*. The review was conducted in accordance with the Peer Review Guidelines issued by the Institute of Company Secretaries of India. The major focus of the review was on Compliance with Technical Standards, Quality of Reporting, Office systems and procedures and the Training Programme for staff (including trainees and Apprentices) concerned with attestation function including appropriate infrastructure. I am expressing an opinion on the implementation of quality control policies and procedures designed to ensure the compliance of Technical Standards and maintenance of quality of attestation services and its implementation.

Review would not necessarily disclose all weaknesses in the quality of attestation work or all instances of lack of compliance with Technical Standards, since it is based on selective tests. As there are inherent limitations in the effectiveness of any system of quality control, departure from the system may occur and not be detected. Also, projection of any evaluation of system of quality control to future periods is subject to the risk that the system of quality controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In my opinion, because of the deficiencies described below, the system of quality control for the attestation services of *{name of practice unit}* for the period under review has not been designed so as to carry out professional attestation services assignments in a manner that ensures compliance with technical standards laid down by the Institute and maintenance of the quality of attestation service work they perform.

### **Reasons for Qualified Opinion**

- 1 The review disclosed that the firm's quality control policies and procedures do not provide a means of ensuring that the records reported on include all relevant information. As a result, we noted record that did not include all of the information required by the technical standards and, in one instance, information that were materially misleading.
- 2 The review also disclosed that as required by the firms policy the review of the work performed by each assistant is not done to ensure that the work is performed in accordance with assignment, results properly documented, and objective of procedures achieved. Similarly some weaknesses were noticed in the internal control system which requires improvement. The list of the areas which require improvement is enclosed as Annexure to this report.

As per the requirement of Peer Review Guidelines, I had sent the preliminary report to the practice unit for their representation relating to the above aspect. In my opinion, the representation received from the practice unit is not satisfactory. A copy of preliminary report and the practice unit's representation thereon are enclosed as Annexure to this report.

Signature of the Reviewer

(Name of the Reviewer)

C. P. No.

Reviewer's Code No.

Place:

Annexure to the Final Report of M/s \_\_\_\_\_

**General instructions: Tick 'Yes' / 'No', wherever applicable.**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Observations</b>
1	Date on which questionnaire is received	
2	Number of initial samples selected for review	
3	(a) Was there any change made in initial sample selected by the Reviewer? (b) If 'Yes', specify the number selected, after change	
4	Name of the person (if any) who helped in the conduct of review	
5	(a) Whether general controls are in existence and operating effectively during the period under review? (b) If 'No', please specify areas: (i) Independence (ii) Professional Skills and Standards (iii) Outside Consultation (iv) Staff Supervision and Development (v) Office Administration	Yes / No
6	Whether attestation administration is satisfactory?	
7	Whether engagement diary / working papers are properly maintained?	Yes No
8	Whether review of internal control systems was carried out properly in performing attestation engagement?	Yes / No
9	(a) Whether proper systems and procedures exist within the PU to ensure compliance with technical standards? (b) If 'No', specify areas: (i) Secretarial Standards issued by ICSI (ii) Guidance Notes of ICSI	Yes / No

	(iii) Institute's Notifications/ Directions (iv) Relevant Statutes &/or Regulations	
10	Whether the quality of reports in respect of format and content found proper?	Yes / No
11	(a) Whether the Reviewer has issued preliminary report? (b) Whether the preliminary report issued by the Reviewer contained any deficiencies? (c) If 'Yes', please specify the areas of deficiencies ..... ..... .....	Yes / No Yes / No / NA
12	(a) Whether PU has responded to the preliminary report? (b) Whether the Reviewer is satisfied with the response received from the PU?	Yes / No / NA Yes / No / NA
13	If the Reviewer is not satisfied with the response of the PU, whether interim report or qualified report has been issued?	Yes / No / NA
14	(a) Is the Final Report qualified? Yes No NA (b) If 'Yes', specify the reasons ..... .....	
15	Whether the Reviewer received full co-operation from the PU during review?	Yes / No
16	Is there any point which the Reviewer wants to bring to the notice of the Board? If yes, please elaborate separately. ..... .....	

Signature

Date:

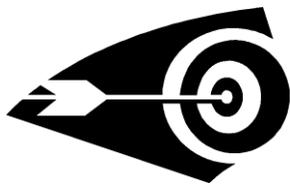
Name of the Reviewer

C.P. No:

Reviewer Code No:

# **MODULE 11**

## ***FOLLOW UP/ SUBSEQUENT REVIEW***

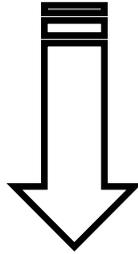


### ***OBJECTIVE***

*To acquaint the reviewer of the requirements and process of follow-up / subsequent review*

# TRAINER'S GUIDE

Total Time: 10 minutes



## Power Point Presentation

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### Slide Contents

Part I	Subsequent Review when Required?
Part II	Follow-up Review when Required?
Part III	Time Period
Part IV	Points to be reviewed by Peer Reviewer
Part V	Final Reporting by Peer Reviewer

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## **Subsequent Review when Required?**

The Peer Review Board may instruct the Reviewer to carry out subsequent review of any PU in the following cases:

1. Based on the Interim Report and any submissions or representations attached to it,
  - if the response of the PU to Preliminary Report is not satisfactory;
  - if the Board is of the opinion that,
    - In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;
    - In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards;
2. On receipt of a request from PU

## **Follow-up Review when Required?**

The Peer Review Board may order Follow-up review, if:

- it is satisfied that all the key control objectives have not been maintained by the PU
- it is of the view that the deficiencies are likely to materially affect the overall quality of an attestation services engagement of the PU.

## **Time Period**

The subsequent review shall be carried out within 6 months of receipt of instructions from the Board.

## **Points to be reviewed by Peer Reviewer**

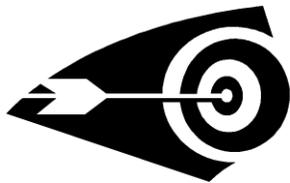
- Subsequent review
  - Verify that systems and procedures have been streamlined
  - Adherence to Technical Standards by each of the partners of the firm or the member practicing on his own account, as the case may be
  - Any other matter as may be instructed by the Board
- Follow-up review
  - Maintenance of key control objectives
  - Verify that the deficiencies likely to materially affect the overall quality of an attestation services engagement of the PU is removed
  - The implementation of the recommendations of the Board to ensure the maintenance of Technical Standards

## **Final Reporting by Peer Reviewer**

- In case the reviewer is satisfied at the subsequent / follow-up review, he shall submit his Final Report to the Board incorporating the findings as discussed.
- In case the reviewer is not satisfied even at, the subsequent / follow-up review, he shall submit his Final Report to the Board incorporating his reasons for dissatisfaction.

# **MODULE 12**

## ***DEVELOPING SOFT SKILLS***

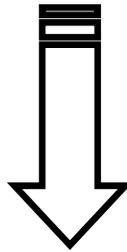


### ***OBJECTIVE***

*To help the reviewers to develop soft skills required for conducting peer review effectively*

# TRAINER'S GUIDE

Total Time: 30 minutes



## Power Point Presentation

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### Slide Contents

- |         |  |
|---------|--|
| Part I  | Communication Skills   |
|         | <ul style="list-style-type: none"><li>• Listening Skills</li><li>• 10 Tips to Improve Your Communication</li><li>• Effective communication</li><li>• Giving and Receiving feedback</li><li>• Characteristics of Effective Feedback</li></ul> |
| Part II | Time Management  |
|         | <ul style="list-style-type: none"><li>• 10 Tips on Time Management</li></ul>   |
-

## COMMUNICATION SKILLS

Communication Skills becomes important for the Peer reviewer as he is required to communicate with the Practice Unit, provide comfort to the P.U. and an assurance to him that he has adhered to various statutory, documentary and other regulatory requirements, correct the deficiencies noticed, suggest corrective measures and thereby enhance his professional competence. All these are not possible without effective communication skills.

### *Listening skills*

There are a number of situations when a Reviewer need to solicit good information from others during Peer Review; these situations include interviewing staff of PU, solving work problems, seeking to help PU on work performance, and finding out reasons for performance discrepancies. Hence, listening becomes important.

A Turkish proverb goes as '*Listening requires more intelligence than speaking*'.

The following lists some suggestions for effective listening:

- Listen openly and with empathy to the other person
- Judge the content, not the messenger or delivery; comprehend before you judge
- Use multiple techniques to fully comprehend (ask, repeat, rephrase, etc.)
- Active body state; fight distractions
- Ask the other person for as much detail as he/she can provide; paraphrase what the other is saying to make sure you understand it and check for understanding
- Respond in an interested way that shows you understand the problem and the employee's concern
- Attend to non-verbal cues, body language, not just words; listen between the lines
- Ask the other for his views or suggestions
- State your position openly; be specific, not global
- Communicate your feelings but don't act them out (e.g. tell a person that his behaviour really upsets you; don't get angry)
- Be descriptive, not evaluative-describe objectively, your reactions, consequences
- Be validating, not invalidating (not "You wouldn't understand"); acknowledge other's uniqueness, importance
- Be conjunctive, not disjunctive (not "I want to discuss this regardless of what you want to discuss")
- Don't totally control conversation; acknowledge what was said
- Own up: use "I", not "They" ... not "I've heard you are uncooperative"
- Don't react to emotional words, but interpret their purpose
- Practice supportive listening, not one way listening
- Decide on specific follow-up actions and specific follow up dates
- Be aware of defensiveness

A major source of problem in communication is defensiveness. Defensiveness is common, particularly with reviewees when you are dealing with a problem. Try to make adjustments to compensate for the likely defensiveness. Realize that when people feel threatened they will try to protect themselves; this is natural. This defensiveness can take the form of aggression, anger, competitiveness, avoidance among other responses. A skillful listener is aware of the potential for defensiveness and makes needed adjustment. He or she is aware that self-protection is necessary and avoids making the other person spend energy defending himself/herself.

### ***10 Tips to Improve Your Communication***

Some of the common breakdown areas of communication are:

1. **Criticism:** One of the fastest ways to build a wall between two persons is the introduction of criticism. Nothing brings up the defensive walls of a person than when they perceive they are being unjustly criticized. It really doesn't matter if the criticism is or is not warranted. The key element is whether the person perceives it as unwarranted.
2. **Perceived presence of nervousness or anxiety in the speaker:** It undermines the respect and confidence the speaker needs in order to communicate effectively.
3. **Ambiguity of the message:** When communicating effectively, the speaker must be prepared with who, what, when, where, why and how of the message.

#### Tips

**1. Pay Attention.** It sounds odd to start off a list of how you can communicate better with a skill set for how you can listen better but it is paramount. To be effective at communication, you must be able to take in information provided by the other person. If you understand what they are saying to you, it is much easier to find a way to make your message relevant to them.

**2. Be Consistent.** To be clearly understandable is to be clearly predictable. That is not the same as being boring or unoriginal. The consistency here is consistent eye contact, constantly honest, consistently reliable, and consistently dependable.

**3. A rose by any other name.** As a matter of fact, a rose by any other name does not smell as sweet; at least not, when you are referring to a person's name. Nothing in language is as sweet to a person as the sound of their own name positively spoken by others. Use the name of the person you are addressing frequently and positively.

**4. Common Ground.** Find an area in which you and the other person can agree. Even if you only have a favourite ball team in common, start there. It is an old but dependable strategy to open the communication lines. Sales people call this the "get them saying yes" strategy.

**5. Have a stake.** It is almost impossible to communicate effectively about something you don't care about. But, if you are passionate about your message the irresistible tide of inspiration is a powerful communication tool.

**6. Believe you are an effective communicator.** This falls back to the positive affirmation techniques. Develop your mantra if you must. "I am well understood."; "Others respect my opinion." "I care - and am seen as caring - with those with whom I communicate".

**7. Be Genuine.** You are the only you on the face of the earth. You are unique and highly valuable. No other person has exactly the same perspective on a situation that you have. Realize this and your confidence in communication will soar.

**8. Strategically Read the other speaker.** Many have difficulty reading the true message. For example, when you receive the feedback statement, "I'll think about it," or "I don't know about that right now," the response (from someone who has difficulty asserting their disagreement) may be a disguised "No". Realize this and either accept it or change your approach.

**9. Breathe.** Seriously, remembering to breathe in a stressful communication is of paramount importance. Full, deep, measured breathes are miraculous for clearing your mind, sharpening your wit and mastering your emotions.

**10. Never argue.** It is a complete waste of time. A man convinced against his will is actually unconvinced. When you reach an impasse, table the discussion, re mass your mental troops and approach the conversation again at another time.

## **PARTICIPANTS' GUIDE**

### ***Effective Communication***

On the surface, it would seem that getting good information is easy. But like other forms of communication, it takes planning and experience to develop skills in this area.

- ☛ **Focus the discussion on the information needed.**
- ☛ **Use open-ended questions to expand the discussion.**
- ☛ **Use closed ended questions to prompt for specifics.** "What projects are you working on that take time away from your work on this project" (warning: closed ended questions are often disguised as open ended as in "Are you going to have trouble finishing this project?")
- ☛ **Encourage dialogue through eye contact and expression.** This involves nodding in agreement, smiling, leaning toward the speaker, making statements that acknowledge the speaker is being heard.
- ☛ **State your understanding of what you are hearing.** "So it sounds like these phone calls have ended up taking a lot more time than you expected; you think we should talk about priorities; is this your position?"
- ☛ **Summarize the key points.** Try to get some agreement on the next steps and show appreciation for the effort made so far. "So let's call set up a time when we can meet and iron this out; keeping the schedule updated is a high priority and I'd like to get this settled by Wednesday.

Participants are expected to share their experiences or the problems they have faced while communicating with people and how they tackled them.

## **Giving and Receiving Feedback**

Often, we struggle with one of the most important yet trickiest and most difficult management tasks involving communication: providing constructive and useful feedback to others. Effective feedback is absolutely essential to effectiveness in workplace.

Feedback taps basic human needs-to improve, to compete, to be accurate; people want to be competent. Feedback can be reinforcing; if given properly, feedback is almost always appreciated and motivates people to improve.

Be aware of the many reasons why people are hesitant to give feedback; they include fear of causing embarrassment, discomfort, fear of an emotional reaction, and inability to handle the reaction. It is crucial that we realize how critical feedback can be and overcome our difficulties; it is very important and can be very rewarding but it requires skill, understanding, courage, and respect for yourself and others.

Withholding constructive feedback is like sending people out on a dangerous hike without a compass. This is especially true in today's fast changing and demanding workplace.

### **Characteristics of Effective Feedback**

Effective Feedback has most of the following characteristics:

- Descriptive (not evaluative) - Sharing of information, rather than giving advice allows a person to decide for himself, in accordance with his own goals and needs.
- Avoid accusations, present data if necessary
- Describe your own reactions or feelings, describe objective consequences that have or will occur, focus on behaviour and your own reaction, not on other individual or his or her attributes
- Suggest more acceptable alternative, be prepared to discuss additional alternatives, focus on alternatives
- Specific instances rather than generalities
- Focused on behaviour not the person. It is important that we refer to what a person does rather than to what we think he is. Thus we might say that a person "talked more than anyone else in this meeting" rather than that he is a "loud-mouth."
- Takes into account the needs of both the receiver and giver of feedback. It should be given to help, not to hurt. We too often give feedback because it makes us feel better or gives us a psychological advantage.
- It is directed toward behaviour which the receiver can do something about. A person gets frustrated when reminded of some shortcoming over which he has no control.
- It is solicited rather than imposed. Feedback is most useful when the receiver himself has formulated the kind of question which those observing him can answer or when he actively seeks feedback.
- Feedback is useful when well-timed (soon after the behaviour, depending, of course, on the person's readiness to hear it, support available from others, and so forth). Excellent feedback presented at an inappropriate time may do more harm than good.

- It involves the amount of information the receiver can use rather than the amount we would like to give. To overload a person with feedback is to reduce the possibility that he may be able to use what he receives effectively. When we give more than can be used, we are more often than not satisfying some need of our own rather than helping the other person.
- It concerns what is said and done, or how, not why. The "why" involves assumptions regarding motive or intent and this tends to alienate the person generate resentment, suspicion, and distrust. If we are uncertain of his motives or intent, this uncertainty itself is feedback, however, and should be revealed.
- It is checked to insure clear communication. One way of doing this is to have the receiver try to rephrase the feedback. No matter what the intent, feedback is often threatening and thus subject to considerable distortion or misinterpretation.
- It is followed by attention to the consequences of the feedback. The supervisor needs to become acutely aware of the effects of his feedback.
- It is an important step toward authenticity. Constructive feedback opens the way to a relationship which is built on trust, honest, and genuine concern and mutual growth.

When we are on the receiving end of feedback we should be careful to avoid these pitfalls. Try to keep these points in mind.

- Try not to be defensive
- Check on possible misunderstanding ("Let me restate what I am hearing")
- Gather information from other sources
- Don't overreact
- Ask for clarification

### **PARTICIPANTS' GUIDE**

Participants are expected to share their experiences or the problems they have faced to get feedback from people in their day to day practice and how they tackled them. All participants can then come up with possible solutions, do's and dont's.

### **TIME MANAGEMENT**

A Peer Reviewer has to complete the entire task of review in the specified period. There are time-limits for separate stages as well. Hence, time management becomes important. Time Management becomes all the more significant as the Peer Reviewer himself is a PCS and needs to concentrate on his practice as well while conducting review of his peer.

#### **Ten Tips on Time Management**

1. Compass, not clock!
  - Have 100% clarity on what specifically your priorities are
    - What really matters to you?

- Where can you make the biggest impact?
  - What will help you leave a legacy?
  - Plan weekly if needed
  - What are those few things, if done really well, will really wow others?
2. Manage distractions
- All of us flooded with distractions – only 20% of emails/calls linked to our priorities
    - Quiet Hour: Block time in advance on your priorities. Find a hideaway
    - Refer to a document/email only once (delete/respond)
    - Stay focused – Key things MUST happen superbly, even if others have to fall off the plate!
    - Do not over schedule. Allow some flexible time (20%?) for crisis/interruptions
3. Work through others
- Build capability in others and delegate appropriately
    - Influence/energize others to work on your key priorities
    - Enable: Build their capability so that their output does not need supervision
    - Can be done at all levels – horizontal delegation, upward delegation
    - Break total priority into smaller manageable chunks
4. Crisis Prevention!
- Spend quality time in envisioning the future and take steps today!
  - Capability building, Process improvements, etc.
  - It is amazing: how efficient you can get, if the right process/systems are in place (up to 40% time reduction)
  - If you are always firefighting – something's wrong!
5. Live the 80/20 principle
- Pare to Principle: 80% of value is created from 20% of the activities
    - Double the time spent on these 20%!
  - 80% of a job can be completed in 20% of the time
    - Check: Do we really need to spend hours making it 100% accurate?
  - Caution: Focusing on 80% does not mean abandoning the last 20%!
6. Stop procrastinating
- We often delay work, or just work inefficiently:
    - Work is unpleasant
-

- Too difficult, Vague
  - Makes us feel indecisive
- Understand your energy cycle during the day
  - Step out, take a stand and finish off with it (remember: refer to one document only once!)
7. Push back as needed
- It is OKAY to say NO to requests, to decline additional responsibilities, to ask for additional resources/time
  - Quality execution of the task in hand better than many more things shabbily done!
  - Resume: List of achievements, not activities! So focus on results, not width of work
8. Keep a log
- Memory may not always serve us right!
  - Make a To Do List – typically the night before. Write it down!
  - Keep your mind free for important things!
  - Commit to deadlines/deliverables
9. Clean desk policy!
- Lot of time gone in searching for documents/emails/files
  - Keep only the relevant stuff handy – rest archive/destroy
  - Cleanliness of desk/inbox is linked to effectiveness
10. Keep learning
- Review past performance – where could you have managed better
  - Identify learnings/guidelines for future
  - Use cassettes to learn something during commutation
  - Almost develop your personal philosophy of time!
  - Life, after all, is all about improvements!

## **PARTICIPANTS' GUIDE**

### ***Make Your Action Plan***

- ☞ What are your Key Roles
- ☞ What is your Goal in those Roles
- ☞ What is your timeline in meeting those goals
  - Break into timelines
  - What is the MOST IMPORTANT thing you can do in each role within this planning timeline?
- ☞ Put down and Block time for those activities (that help meet your goals)
  - Commit to them
- ☞ Allocate only the remaining time for “regular activities”
- ☞ Follow with discipline

### ***One last!!!***

- ☞ Have Fun!
- ☞ Unless you really enjoy your work, we may as well trash this training!

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