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## 23. Organizational Development through Secretarial Audit

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### Abstract

Secretarial Audit is a comprehensive review of all the laws, statutes, and legislations applicable on a company, keeping the emphasis on the Companies Act, 2013.

This paper explains that a company has to comply with a number of rules and regulations, based on its area of operations. Being the statutory watchdog of the corporate world, it has always been the duty of the Company Secretary to make sure that all the laws and rules are being followed by the management. However, the Secretarial Audit will now work as a tool, which will help the Company Secretary to take account of all the non-compliances in a company, and to take preventive actions to avoid any kinds of frauds and errors in the organization, whilst following the rules.

The internal systems of the companies will improve, and so will the overall effectiveness of the legal compliance system which eventually will lead to smooth functioning of the organization's business and its overall development.

**Keywords:** Secretarial audit, internal system, frauds, compliance system

### Introduction

Audit in the corporate world's methodology refers to periodic examination of the records of the company by an independent third person. Such independent third person must be a professional, in order to conduct the audit fairly. Financial Audit and Tax Audit are very common for businesses, and Chartered Accountants have been conducting these audits since eternity.

In any auditing the auditor perceives and recognizes the propositions before him/her for examination, collects evidence, evaluates the same and on this basis formulates his/her judgment which is communicated through his/her audit report. Companies Act, 2013 prescribed four different kinds of Audits for companies, namely Internal Audit, Statutory Audit, Cost Audit and

Secretarial Audit. The purpose of a Statutory audit is to determine whether an organization is providing a fair and accurate representation of its financial position by examining information such as bank balances, bookkeeping records and financial transactions.

Before enactment of Companies Act, 2013, Secretarial Audit was not mandatory for the Companies. Section 204 of Companies Act, 2013 has made Secretarial Audit mandatory for Certain Companies. In Companies Act, 2013 requirement of Compliance Certificate has been withdrawn and a new and wider Concept of Secretarial Audit Report has been inserted in Section 204 of the said act. The secretarial Audit is better in the interest of every corporate management as, an independent professional will certify that the company has carried out the compliances under the Act.

Secretarial Audit is a process to check compliance with the provisions of various laws and rules/regulations/procedures, maintenance of books, records etc., by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a mechanism to monitor compliance with the requirements of stated laws and processes. The Ministry of Corporate Affairs, Government of India released CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009 on December 21, 2009. The preamble to Guidelines states that "These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines."

### **Objectives**

- 1) To Check and Report on Compliances & To Point out Non-Compliances and Inadequate Compliances.
- 2) To Protect the Interest of the Customers, employees, society etc.
- 3) To save the company from paying heavy penalties due to non-compliance.
- 4) Effective and Efficient functioning of the business of the company and overall development without hampering the business activities due to lack of compliance of the Company Law.
- 5) Understanding the significance of Secretarial Audit in developing and expanding the organization.

### **Hypothesis**

H0: Secretarial Audit does not follow the compliances and does not protect the interest of the customers, employees, society, etc.

H1: Secretarial Audit does follow the compliances and even protect the interests of the customers, employees, society, etc.

### **Scope**

- 1) The ICSI, ICAI, ICWA, Cost Accountants who conduct Secretarial Audit where selected for interviewing and sending the questionnaires.
- 2) The study covers for primary and secondary data collection.
- 3) The questionnaires where distributed amongst the ICSI, ICAI, ICWA, Cost Accountants.

### **Significance of the Study**

- 1) The Secretarial Audit is mandatory for all the Big companies to check and report on the compliances and even to point out on the non-compliances and inadequate compliances of the Companies.
- 2) The respondents whom I had asked were ready to respond on the questionnaire which I prepared and helped me out to complete my research study.

### **Limitations of the Study**

- 1) The responses which I took was from Borivali to Andheri so the scope from which I got responses was a limited area.
- 2) The questionnaire was asked to the respondents in random method and sample-based format.

### **Methodology**

#### **1) Sample Size**

I did a survey by sending questionnaire to total 70 respondents who are the employees and students of ICSI, ICAI, ICWA, Cost Accounts and even those who are not doing this course to find out the difference between both of the sample. I have sent the questionnaire via google forms and the respondents have even responded on the same.

## 2) Data Collection

- a) Primary Data- The primary data is being collected through the random professionals from Mumbai which includes the employees and students of ICSI, ICAI, ICWA, CFA, Cost Accountant, etc. via google forms.
- b) Secondary Data-This data is being collected from the book of ICSI i.e. Secretarial Audit, Compliance Management & Due Diligence, various research papers, journals, from the internet through various websites, articles, etc.

## Literature Review

Secretarial Audit Requirements- A New Concept Introduced by Companies Act, 2013.

The Companies Act, 1956 has been in need of a substantial change for quite some time now, to make it more contemporary and relevant to corporate, regulators and other stakeholders in India and changing business scenarios in India. While several unsuccessful attempts have been made in the past to revise the existing Companies Act, 1956, there have been quite a few changes in the administrative portion of the Companies Act, 1956. One of the attempts to revise the

Companies Act, 1956 was the Companies Bill, 2012 which was passed on 18/12/2012 by the Lok Sabha, (the Lower House of the Parliament). The Bill was passed by the Lok Sabha. It was then considered and passed by the Rajya Sabha also on 8 August 2013 and after receiving President assent on 29 August 2013, Companies Act, 2013 came into force (replacing Companies Act 1956). The Companies Act, 2013 Act have far-reaching effects that are set to significantly change the manner in which corporates and businesses operate in India. Abstract: Section 204(1) of Companies Act, 2013 introduces concept of Secretarial Audit Report by Company Secretary in practice which is a welcome step. It is a step towards good corporate governance and in line with the provisions of Clause 49- C(iii) of the Listing Agreement of Stock Exchanges i.e. part of Corporate Governance which states the Board shall periodically review legal compliance reports prepared by the company as well as steps taken by the company to cure instances of non- compliance.

The following is a format specified under Secretarial Audit Report: Secretarial Audit Requirements Report is required to be provided in the format prescribed in Form MR-3. (Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014)

Applicability of Secretarial Audit to a Private Company which is a Subsidiary of a Public Company: Section 2(71) of the Companies Act, 2013 defines a "Public Company as one 1.

Which is not a private company; 2. Has a minimum paid-up share capital of five lakh rupees or such higher paid up capital as may be prescribed.

Major Areas of Compliance under the Companies Act, 2013.

The purpose of a company, formed as a commercial enterprise, is mainly to make profits by carrying on its business and maximize its wealth. While doing so, a company is directed by the Board of Directors, which is assisted by officers and professionals. In its pursuit for achieving its objectives and making profits the most important for requirement of a company is to adhere to the legislative environment in relation to such objectives and pursuits and strive, at all times, to deliver whatever has been promised, whether it is to shareholders or stakeholders or customers or vendors or service providers or suppliers or regulators, whether such promises are made in any contract or agreement, or demanded by a provision of law, or merely due to moral covenants only. In other word the company is expected to aim always to deliver whatever has been promised to different sections of the society including its stakeholders and regulators. A company would have failed in its commitment to be a responsible corporate citizen, if it doesn't comply with the provisions of law. This proposition is based on the premise that every provision of law the statute book is only in the interests of the public. The following is coverage of the Secretarial Audit: The Companies Act, 1956 and the rules made thereunder;

1. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;
2. The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
3. Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder;
4. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992.
5. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
6. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
7. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009; The Securities and Exchange Board of India (Employee Stock Option Scheme and General Compliance requirements includes:

- a. "Whether the company has kept and maintained all the statutory registers, filed all forms, returns and notices to the prescribed authorities as per the provisions of the Companies Act, 1956."
  - b. "Whether the company has followed all the requirements of the Act and Memorandum and Articles of Association in respect of notices, proxies, quorum and minutes of all general meetings (including annual general meeting and requisitioned extra-ordinary general meeting) and board and committee meetings."
8. Employee Stock Purchase Scheme) Guidelines, 1999;
  9. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
  10. The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
  11. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

An analysis of the Companies Act brings out the following: 1. The Act has 658 sections, though there are many sections which have become inapplicable or which have been omitted altogether.

2. The Act has been divided into XIII parts. For the time being, Part VIA brought into the Act by the Companies (Second Amendment) Act, 2002 has not yet come into force. 3. Part I and Part IA to Part IC of the Act relate to certain preliminary matters including provisions for the establishment and empowerment of National Company Law Tribunal and Appellate Tribunal. 4. For the time being, it is necessary to note that the provisions of the Act with regard to administration of justice through Company Law Board in certain matters continue and the National Company Law Tribunal has not yet been constituted.

### **Secretarial Audit and Compliance Management System**

The compliance system and processes in a company are dependent mainly on the following factors: (a) Nature of business(es). (b) Geographical domain of its area of operation(s). (c) Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed. (d) Jurisdictions in which it operates. (e) Whether the company is a listed company or not. (f) Regulatory authority(ies) in respect of its business operations. (g) Nature of the company viz., private, public, government company, etc.



Based on the above the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company. For example, a multiproduct / multi operation company is supposed to comply all the applicable corporate laws in addition to regulatory framework applicable at products/ operations. At corporate level, monitoring of such complex web of compliances are generally made on a back-to-back mechanism. In such cases Boards' reporting on compliances are made on the basis of reports/certification provided by field level management. As a better compliance structure in such cases it is desired to have internal checking mechanism about the quality of such report either on regular basis or sample basis.

### Conclusion

Secretarial Audit is a process to check compliance with the provisions of all applicable laws 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 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 whole conduct of secretarial audit is performed by the well expertise person called secretarial auditor – a only member of the institute of company secretaries of India holding certificate of practice. The secretarial auditor is also expected to express an opinion, after satisfying himself, that 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. The secretarial auditor has also to verify whether diverse requirements under applicable laws have been complied with.

### Suggestions

1. The research study says that the compliances followed by the Secretarial Auditor should be in an independent way and if its not than the immediate actions should be taken.
2. The research study says that if the interest of the customers, employees, society, etc is not being protected than the Secretarial Auditor should be punishable with strict rules and regulations.
3. The research study is being taken from Borivali to Andheri area but it can be taken all over Maharashtra.

4. The research study can even take place all over India but due to shortage of time it was not been able to be done.

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