

CHECKLIST ON SECRETARIAL AUDIT

Brief Provisions enabling the Secretarial Audit:

Section 204 of the C.A., 2013 read with rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, make a compulsion on certain class* of Companies, to get their records audited by an “Secretarial Auditor”, who is exclusively an Practicing Company Secretary defined u/s 2(25) of the C.A., 2013, and attach his Report** thereon with Board’s Report.

The Secretarial Auditor is required to be appointed by a Board Resolution passed in meeting of the Board.

**Secretarial Auditor shall provide his report in Form MR-3, which shall be attached to Boards Report.

*Class of Companies:

Any Public Company having-

PUC of Rs 50 crores or more

OR

Turnover of Rs 250 crores or more

CHECKLIST UNDER COMPANIES ACT, 2013

Brief areas covered under the act:

1. Meeting (General and Board)
2. Board Composition ,KMP, and Committees
3. Charges
4. Minutes
5. CSR
6. Deposits
7. Share transfer
8. Share Allotment through any mode- IPO, FPO, Preferential allotment (Private Placement in case of unlisted companies)
9. Records and Registers
10. Secretarial Standards
11. Dividend
12. Loans, Investments and Guarantees made
13. Borrowings made
14. Related Party Transactions
15. Auditors (Financial/Cost/Secretarial)
16. Alteration of MoA/AoA
17. Buy Back, if applicable

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18. Insider Trading
19. Annual Filings
20. Others

1. MEETINGS**(A) BOARD MEETINGS**

- ✓ Check whether minimum 4 BM's are held in a Fin. Year [sec.173 (1)]
- ✓ Check whether gap between 2 BM doesn't exceed 120 days
- ✓ Election of chairman and granting of leaves for absentee directors was complied.
- ✓ Check whether minimum 7 days notice is given to each director for meeting [173(3)]
- ✓ Check attendance register for quorum
- ✓ Check whether quorum i.e. minimum 2 or 1/3rd (higher) was present
- ✓ Check whether MBP-1 was taken at the first Board meeting of each year and Declaration of Independency from ID.
- ✓ Check that the power exercised by board is within its ambit provided under section 179
- ✓ Check whether meeting approving financial results/Directors report is conducted physically.

In case of BM at shorter notice:

- ✓ At least 1 Independent Director is present or has ratified the decision taken, when the same was circulated for approval

Meeting through video conferencing (VC):

- ✓ Notice specifically contained info. about availability of such facility
- ✓ The director intimated in advance (in beginning of year formally and before such meeting an specific reminder, that he shall attend by VC)
- ✓ check whether security systems and devices used were safe, secure and proper, and proper audio visual facility instruments were made available.
- ✓ proper recording of meetings were made to prepare minutes.
- ✓ attendance roll call was taken inquiring name and place from where he is attending and no other person was accompanying the director attending by VC, except differently abled and granted specific permission.
- ✓ In case any motion was negatively consented, chairman took a roll call, for taking individual opinion of each director after speaking their resp. name
- ✓ No VC was done for:
 - (i) the approval of the annual financial statements;
 - (ii) the approval of the Board's report;
 - (iii) the approval of the prospectus;
 - (iv) the Audit Committee Meetings for consideration of accounts; and

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(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

(B) COMMITTEE MEETINGS

- ✓ Check whether quorum/chairman/leaves are complied with
- ✓ Audit committee meetings are minimum 4 in year (each in quarter and gap shall not exceed 120 days)
- ✓ CSR committee shall meet atleast once
- ✓ Check whether powers exercised by committee are within its power under specific section or Board's authority. Eg: 177- audit committee

(C) AGM/EGM

- ✓ AGM is held within 6 months from closure of FY and check that gap between 2 AGM does not exceed 15months (if, approval of RoC).(sec. 96)
- ✓ Check whether AGM is held between 9am to 6pm only.
- ✓ Check whether AGM is held at Regd. office or within the city only
- ✓ Check it is not called on national holiday
- ✓ Compliance of preparation and sending (clear 21 days or more) of notices (with explanatory statement) was done according to sec. 101, 102
- ✓ E-voting was provided by all listed or companies having more than 1000 shareholders. (sec. 108)
- ✓ Register of Member was not closed, unless a 7 days' notice and period did not exceed 45 days in total and 30 days at a single closure.
- ✓ Chairman was duly elected or already designated
- ✓ Quorum i.e. 5- members less than 1000, 15- less than 5000 and 30-more than 5000 (for public co.'s) (sec.103)
- ✓ In case of trans. provided under sec. 110, [rule 22 of companies (management & Admin.) Rules,2014] were transacted by postal ballot only or by E-voting, if applicable
- ✓ Check whether E-voting is kept open for min1 day and max. 3 days
- ✓ Scrutinizers report is provided within 3 days from closure of e-voting (7 days in case of postal ballot) and publish the same within 2 days on website
- ✓ Resolution requiring special notice had the backing of members holding at least 1% of the voting power/holding shares of Rs. 5,00,000. (sec.115)
- ✓ Consent of atleast 95% of the members was obtained for convening the meeting for shorter notice.
- ✓ Appointment of valid and eligible (representing max 50 members) proxy and depositing form in time.

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- ✓ Provisions relating to sending notices and holding of meeting was followed in case of adjournment, as provided in act.
- ✓ MGT-15, Report on AGM was registered within 30 days of AGM
- ✓ MGT-14 was filed for matters specified in sec.117

(D) CIRCULAR RESOLUTION (sec.175 and SS-7)

- ✓ Whether Draft motions were sent along with sufficient material
- ✓ Where 1/3rd negatively reply, the same must be taken at next BM
- ✓ Resolution passed by circulation is noted at next BM and recorded in Minutes of next BM

2. DIRECTORS/BOARD COMPOSITION(BC)/KMP/COMMITTEE

- ✓ 1/3rd of board and consist of Independent Directors, or in case of unlisted company-2 (if applicable under criteria) (sec.149)
- ✓ The Board is a rich combination of Executive/Non-executive and Independent Director
- ✓ In case of listed company, if notice received from 1000 or more or 1/10th of total no. Share holders, for a Small Shareholder Director ('SSD'), then an SSD is appointed and he fulfills the criteria mentioned in the act. (s.151, Rule 7 of appointment & qual. of Directors).
- ✓ Whether ID has completed his term (max 5 yrs), if yes, if eligible appointment for 2nd term permitted by SR (sec.149).
- ✓ No ID can be admitted for more than 2 consecutive terms (eligible after CP of 3 yrs) (sec.149).
- ✓ If any additional director admitted, DIR-12 filed?
- ✓ Whether additional director is regularized in GM?
- ✓ Check whether a woman director is appointed in case of all listed and public if PUC- 100 cr or more OR T/o 300 cr or more.
- ✓ Check No. of directorships (max 10 public Co.'s and 20 in total) as per sec. 165.
- ✓ Rotation and retirement is carried out in transparent manner (1/3rd of total elig. Directors liable and 2/3rd of liable- retire).
- ✓ Check whether DIR-8 is received at time of appointment and on yearly basis.
- ✓ Each director has attended atleast 1 meeting in person or by VC.
- ✓ Chairman & MD are not same, unless Co. has multiple business.
- ✓ If MD is appointed, he is eligible under sch-v and his term is max 5 yrs (eligible for re-appointment, thus renewal is in proper manner) and MR-1 is filed along with DIR-12.
- ✓ In case of CS/CFO/WTM/MD or any KMP; MR-1 & DIR-12 is filed (Rule 3, of return & appointment of KMP, rules 2014)

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- ✓ Remuneration* to MD/WTM (if more than 1) shall not in total exceed 10% of Net profits and individually to MD/WTM/Manager (in case of 1), 5% individually but not exceeding total 10 % of NP (sec 197), if exceeds CG approval and SR is passed in Gen. meeting.
- ✓ Remuneration to other directors i.e. Non-executive and ID's shall not exceed 1% of total NP (if there are MD/WTM in Co.) or 3% (in case No MD/WTM) (sec. 197).
- ✓ No ID is paid Sitting fees more than 1 lakh per meeting or he is not provided any stock options and his remuneration (commission) is within limits under 197
- ✓ Any non-retiring director, eligible for appointment at general meeting/new candidature for directorship, has deposited 1lakh before 14 days of GM and provisions in Sec.160 are followed in respect of voting.

*In case of No or insufficient profits Sch-v (part-ii, section-iii) is followed

- ✓ If any director has resigned, DIR-12 & DIR-11 (by retiring director) are filed.
- ✓ Provisions relating to removal and vacancy in director's office (case specific), provisions under sec. 169 are followed.
- ✓ Company has appointed KMP by an BR and is eligible, by way of appointment, if any in other CO.'s (in case of vacancy, within 6m from vacancy) [sec. 203] and DIR -12 is filed (addl. MR-1 in case of MD/WTM/Manager)
- ✓ Company secretary, if appointed, follows his duties mentioned in sec. 205
- ✓ Audit committee (sec.177), Nomination Remuneration & Human Resource committee (sec.178) stakeholder relation committee (sec.178) are formed with proper no. of Directors.
- ✓ CSR committee is formed if Co.'s NP is 5 cr or more OR NW 500 Cr or more OR T/o is 1000 Cr or more, and atleast 2% of avg. NP of past 3 FY's.

3. CHARGES (sec. 77-87)

- ✓ Check details from Co. for taking loans and creation of charge (independent check in BS)
- ✓ Whether CHG-1 /CHG-9 (for debentures) filed
- ✓ In case of delays, condonation from proper authority? (more than 30 but less than 300 days- RoC (CHG-1) and more than 300 days from CG by CHG-8 and INC-28 to inform RoC, order of CG.
- ✓ CHG-4/5 for satisfaction, within 30 days
- ✓ CHG-6 for appointment/cessation of receiver (if appl.)

4. MINUTES

- ✓ Separate Minutes Book is maintained for each meeting
- ✓ In Case of VC/Postal ballot/E-voting, match video recordings/scrutinizers report
- ✓ Minutes are initialed at each page and dated & signed at last page
- ✓ Minutes are maintained in Binded form
- ✓ SS-5 is followed

CHECKLIST ON SECRETARIAL AUDIT**5. CSR (sec. 135)**

- ✓ Whether CSR Committee exists?
- ✓ Whether min. 1 ID is member of Committee
- ✓ Average 2% of NP of past 3 FY's is spent? If not explanation in Board's Report?
- ✓ Spending is made in a proper manner and priority is given to local areas which are underdeveloped

6. DEPOSITS (SEC.73-76)

- ✓ Whether DPT-1 was duly filed (if unsecured then "unsecured" words written specifically)
- ✓ Deposits between 6-36 months [if between 3-6 m, deposit amt doesn't exceed 10% of NW of the Company]
- ✓ 25% of NW from members (not for eligible company)
- ✓ Credit Rating is obtained
- ✓ Deposit Insurance is taken (Rs 25000)
- ✓ Securities are provided and charge is registered (if secured)
- ✓ Deposit trustee is appointed and deed is executed in DPT-2 (if secured)
- ✓ DPT-3, return of deposit is filed before 30th June
- ✓ DRR is maintained (15% of amt maturing)
- ✓ Deposit receipts are issued in 21 days
- ✓ **If from public;**
- ✓ NW 100 cr or more OR T/O 500 cr or More and SR is passed in General Meeting and MGT-14 is filed
- ✓ Max. 10% of PUC+ FR (NW) from members and Max. 25% of NW from public.

7. SHARE TRANSFER/TRANSMISSION (SEC.56)

- ✓ SH-4 for transfer was delivered to Co. within 60 days from date of execution of deed.
- ✓ Company has registered and transfers shares and delivered share certi. Within 1 months from receipt of deed for transfer/ request for transmission.
- ✓ Co. has allotted share certi. Within 2 months from date of allotment and 6 months in case of debentures.
- ✓ In case of transfer of PPU shares, Co. has sent notice in SH-5 and received NoC from transferee.

8. ISSUE OF SHARE CAPITALFOR PREFERENTIAL ALLOTMENT

- ✓ BR filed in MGT-14
- ✓ SH-7 (if inc. in authorised cap.)

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- ✓ Meeting of members (with proper notice and expl. Statement disclosures) convened to pass SR
- ✓ Confirm valuation report for satisfaction of issue price and certificate of its statutory auditor, confirming that the provisions of the Act are followed.
- ✓ PAN of allottees are available
- ✓ Shares not to be allotted to persons who have sold any equity shares of the issuer in preceding six months.
- ✓ Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution (exemptions under SAST, 2011)
- ✓ The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.
- ✓ PAS-3 is submitted

IPO/FPO NOT COVERED HERE AS THEY ARE PART OF SEBI LAWS AND LISTING AGREEMENT

9. REGISTERS AND RECORDS

- ✓ Register of Renewed / duplicate shares (SH-2) [Rule 6 of Companies (Share Capital and Debentures), Rules, 2014]
- ✓ Register of Sweat Equity Shares (SH-3) [sec. 54, Rule 8 of Companies (Sh. Cap & Deb.), Rules, 2014]
- ✓ Register of ESOP (SH-6) [sec. 162 rule 12 of above]
- ✓ Register of Buy-back (SH-10) [sec. 68 and above mentioned rules)
- ✓ Register of Deposits
- ✓ Register of Charges (CHG-7) sec.87
- ✓ Register of Members (MGT-1)
- ✓ Register of debenture holders and other security holders in MGT-2
- ✓ MGT-4, MGT-5 [provisions for Registered & beneficial owner]
- ✓ MBP-4 (RPT)
- ✓ Register for Attendance of Directors
- ✓ Register for Directors/KMP
- ✓ Register for use of Common Seal
- ✓ Register for Securities destroyed (Bought Back)
- ✓ Whether entries in these registers were made within time prescribed under the Act.

10. SECRETARIAL STANDARDS

- ✓ SS-1 and SS-2 are followed (sec.118)

11. DIVIDEND (sec. 123)

- ✓ The Dividend amt. is transferred to DIVIDEND A/c in 5 days from Declaration and payment is completed within 30 days from the declaration of the Dividend.
- ✓ The amt. remaining unpaid for 30 days is transferred to Unpaid Div. A/c within 7 days from the completion said 30 days i.e. from declaration- 30+7 days and DIV-1 is filed.
- ✓ Rate of dividend doesn't exceed the AVG of dividend paid in past 3 yrs.
- ✓ If dividend is declared even if no profits, then Rule-3 of DIVIDEND rules, 2014 are followed.

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- ✓ Company has filed INV-5, where applicable

12. LOANS, INVESTMENTS AND GUARANTEES MADE (SEC. 186)

- ✓ The Loan/Inv/Guarantee made, is within limits i.e. 60% of NW OR 100% of FR
- ✓ If beyond limits provided, an SR is passed (If so, consent of PFI whose loan is pending is taken) [MGT-14]
- ✓ No defaults for Deposits are pending

13. BORROWINGS AND SALE OF UNDERTAKING [180(1)(c), 180(1)(a)]

- ✓ The Borrowings doesn't exceed 100% of NW, if exceeds, an SR is passed. [MGT-14]
- ✓ Board has powers to sell/lease or otherwise dispose off the undertaking of the company, provided by an SR in general meeting.[MGT-14]

14. RELATED PARTY TRANSACTIONS (SEC. 188)

In a FY:

- ✓ In case of sale/purchase trans. 10% of T/o or 100 cr (lower)
- ✓ In case of sale/buy of property 10% of NW or 100cr (lower)
- ✓ In case of leasing- 10% of NW or 100cr (lower)
- ✓ Availing services of any kind- 10% of T/o or 50 cr (lower)
- ✓ Appointment to place of profit – more than 2.5 lakhs per month
- ✓ Underwriting commission exceeding 1% of NW
- ✓ If limits exceed, SR is passed (with Exp. statement)
- ✓ MGT-14 to take note of Int. director

15. AUDIT

(A) Finance Audit

- ✓ Auditors (CA) are eligible and certificate is received
- ✓ Quarterly reports are duly approved in committee meetings and ratified/ approved in BM.
- ✓ Year end financial statements are approved in BM (such BM is in person)
- ✓ Justification to CA's remarks are given in director's report.
- ✓ Whether the term of CA doesn't exceed two consecutive terms and his appointment gets ratified in AGM (each year) and ADT-1 is filed
- ✓ In case of casual vacancy (ADT-3), it is filled primarily in 30 days by board and then ratified in GM within 3 months from BM
- ✓ In case of removal, prior permission (ADT-2) of CG has been taken & SR has been passed.

(B) Internal Audit

- ✓ An Internal auditor is appointed [rule 13 of companies (accounts), rules 2014]

(C) Secretarial Audit

- ✓ An PCS is appointed by BR
- ✓ Justification on comments in Sec. Audit Report (MR-3) is provided in DR

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(D) Cost Audit

- ✓ Certificate is received, proving that he is not disqualified
- ✓ Appointment is made in 180 days of commencement of FY –CRA-2 is filed
- ✓ CRA-4 (CRA-3 attachment), is filed to CG

16. ANY ALTERATION IN MOA/AOA

- ✓ New Certi. Of Incorpor. Has been obtained, in case of alteration of name. (Check whether CG approval is taken in case of voluntary change)
- ✓ MGT-14 have been filed for meetings
- ✓ CG approval for change of Regd. office out of state
- ✓ Object change with members approval only
- ✓ Altered articles with members approval by SR (MGT-14)

17. BUY BACK

- ✓ If less than OR Equal to 10% of Paid up Equity cap. + FR –An BR is passed
- ✓ If limits are crossed, SR is passed [completed within 1 year from any resolution for Buy back]
- ✓ Buy back in a year is less than 25% of its PUC+FR [In case of Equity- 25% shall be calc. as of Paid up Equity capital + FR]
- ✓ Ratio of Sec.+unsec. debts is less than twice its PUC + FR
- ✓ Securities are destroyed within prescribed time i.e. 7days (physical shares)
- ✓ No securities are issued in next 6 months
- ✓ SH-8, SH-9, SH-10(register), SH-11 with SH-15 are filed according to time period prescribed
- ✓ Check Stock Exchg. compliance

18. INSIDER TRADING (sec. 195)

- ✓ An insider trading (prohibition) code exists and is updated according to SEBI rules
- ✓ Price sensitive Info. Was properly and timely sent to SE to avoid IT
- ✓ Pre-clearance were taken (and trans. Within 1 week) from Compliance officer before dealing in securities
- ✓ Trading window was closed during 'specified transactions' like declaration of financial statements etc. and is opened after 24 hrs of completion of events.
- ✓ No reverse transaction took place, once a particular transaction was done like buy, then no sell.
- ✓ No dealing in F&O of company's securities.

19. ANNUAL FILING

- ✓ Financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures under section 129 shall be in Form AOC-1
- ✓ BR contains info in AOC-2 (RPT)
- ✓ Salient features of Fin. Statements in AOC-3 (to send to shareholders)- sec. 136
- ✓ AOC-4, to be filed with ROC, within 30 days of AGM
- ✓ MGT-7, annual report submitted to RoC within 60 days

CHECKLIST ON SECRETARIAL AUDIT**20.OTHERS**

- ✓ Return of Allotments i.e. PAS-3 are filed as when any allotment is made.
- ✓ The company has not directly or indirectly advanced any loans/provided any security/given guarantee to its directors or any other person in whom the director is interested.
- ✓ No debentures are issued for period exceeding 10 years (30 yrs for Infra. Project co.'s), and an debenture trustee is appointed, alongwith entering into an debenture trust deed.
- ✓ In case of ESOP, Companies (Share Capital and Debentures) Rules, 2014 are followed, alongwith it, disclosures mentioned in rule 12(9) of Co's. (Share Cap and Deb.) rules, 2014 are made in Directors report.

-----THANK YOU-----

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