SECRETARIAL AUDIT

SECRETARIAL AUDIT: Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company.

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In Companies Act, 2013 requirement of Compliance Certificate has been withdrawn and a new and wider Concept of Secretarial Audit Report has been inserted in Section 204 of the said act.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.

APPLICABILITY

Secretarial Audit has been made mandatory only for bigger Companies. Private Limited Companies has been kept out of preview of Secretarial Audit, irrespective of their paid-up capital, turnover and various Laws applicable to private companies.

As per Section 204(1) of Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014 following companies are required to obtain Secretarial Audit Report:

1. Every Listed Company;
2. Every Public Company having a paid up capital of Rs. 50 Crore or more;
3. Every Public Limited company having a turnover of Rs. 250 Crore or more

As prescribed in Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the format of the Secretarial Audit report shall be in Form MR-3

Companies falling under Section 204(1) of the Companies Act, 2013 are also required to annex Secretarial Audit Report with Board Report.

The Board of Director has to give explanation in the Board's Report to every qualification and observation or other remark made by the Secretarial Auditor. The Board of Director has to ensure that there should be system in the company through which compliance officer can control on all compliances under applicable law.

Companies which are not falling under Section 204(1) of the Companies Act, 2013, may obtain Secretarial Audit Report Voluntarily as it provides an independent assurance of the compliance in the company.

APPLICABILITY OF SECRETARIAL AUDIT TO PRIVATE COMPANIES

A Private Company which is a subsidiary of Public Limited Company shall be deemed to be Public Limited Company for the purpose of the Act even where such subsidiary company continues to be a Private Company in its Articles.

By this definition it can be inferred that Secretarial Audit would be applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of company as prescribed above.

QUALIFICATION OF SECRETARIAL AUDITOR

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.

As per section 2 (25) of Companies Act, 2013 "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;

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 passed at a duly convened Board meeting and resolution for appointment shall be filed with Registrar of Companies within 30 days of such Appointment in E-form MGT-14.

SCOPE OF SECRETARIAL AUDIT

Secretarial Audit has a very vast scope. It extends not only to Companies Act but cover all laws, rules and regulations applicable to the entity under audit. Scope of Secretarial Audit has not defines under Companies Act, 2013 and rules made thereunder. Therefore the Council of members of ICSI at its 226th meeting held on November 21, 2014 decided that Scope of Secretarial Audit would include the following:

- Reporting on compliance of Five laws as mentioned in form MR-3 o Companies Act, 2013,
    1. Securities Contracts (Regulation) Act, 1956 ('SCRA'),
    2. Depositories Act, 1996,
    3. Foreign Exchange Management Act,
    4. Securities and Exchange Board of India Act, 1992;

- Reporting on compliance of 'Other laws as may be applicable specifically to the company' which shall include 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, and environmental laws.
- In case of financial laws like tax laws and Customs Act etc., Secretarial Auditor may rely on the Reports given by statutory auditors or other designated professionals.

DOCUMENTS TO BE EXAMINED/VERIFIED WHILE CONDUCTING SECRETARIAL AUDIT, THE POINTS ARE INCLUSIVE AND NOT EXHAUSTIVE:

i. Books , Papers, as per Section 2 (12) of Companies Act, 2013,"book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.
ii. Memorandum of association
iii. Articles of association
iv. Certificate of Incorporation
v. Audited balance sheet(s).
vi. Statutory Registers maintained by the Company i.e, Register of Members/ Register of debenture holder/ Register of Charges/ Register of Directors and Key Managerial Personnel/ Register of Loans, Guarantee, Security etc.
vii. Details of E-forms filed during the period.
viii. Notice of calling Board Meetings.
ix. Notice of calling Extra Ordinary General meeting, Annual General Meeting along with the explanatory statement.
x. Minutes of the Board meetings, Extra Ordinary General meeting, Annual General Meeting, Audit Committee Meetings, Nomination & Remuneration Committee Meetings, etc.
xi. Notices of disclosure of directors' interests in Form No. MBP-1 as well as specific notices received from time to time from the directors and recorded in the minutes of Board meetings.
xii. Copy of documents related to the appointment/Resignation of Statutory Auditor of the company.
xiii. Copies of contracts made between the company and any of the related parties u/s section 188 of Act.
xiv. Details of inter-corporate investments/loans/guarantees/securities etc.

xv. Copy of Internal Audit Report given by Internal Auditor appointed u/s138 of Companies Act, 2013.

xvi. For Companies having Foreign Direct Investment

a) Copy of Foreign Inward Remittance Certificate.

b) Copy of Form FC-GPR.

c) Copy of Annual return on Foreign Liabilities & Assets (FLA).

d) Certificates received from Company Secretary and Chartered Accountant.

e) Copy of approval Reserve Bank of India/ Foreign Investment Promotion Board.

NOTICE OF ANNUAL GENERAL MEETING TO SECRETARIAL AUDITOR

Para 1.2.1 of 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.

Who we are?

Chronicle Advisors is a single window solution that provides a spectrum of services to its clients in a qualitative manner and is well known for its expertise in Secretarial, Corporate Restructuring, Legal, FEMA, IPR, Securities Market, Taxation (Direct & Indirect). We provide one stop solutions for all your corporate compliances and consultancies.

Whom to Contact?

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- Mr. Agarwal is a law graduate, Associate member of ICSI and a commerce graduate from Delhi University
- He has almost 1.5 years of experience of working in M/s Chronicle Advisors LLP, Corporate Consultant Firm and 2 years of experience of working in M/s Grover Ahuja & Associates, a practicing Company Secretary Firm and 1 year of management exposure in M/s MAA Industries, Agro based firm.
- His area of expertise include
  - ✓ Intellectual Property Right
  - ✓ Corporate Restructuring
  - ✓ Corporate Consultancy
  - ✓ Government Liasoning
  - ✓ Due Diligence Audits
  - ✓ XBRL Filing
  - ✓ CSR Advisory
  - ✓ ISO Certification
  - ✓ Business License & Registration

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- Mrs. Basu Ray is a law graduate, Associate Member of ICSI and a commerce graduate from Delhi University
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- Her area of expertise include
  - ✓ Mergers & Acquisitions
  - ✓ Corporate Restructuring
  - ✓ JVs and Foreign Collaborations
  - ✓ Due Diligence Audits
  - ✓ Secretarial Audit Transaction Documents
  - ✓ Protection of Intellectual Properties and International Law

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