

14. Secretary and Secretarial Practice

Appointment of a secretary and his qualifications (Section 383A)

1. Mandatory appointment

- a. Every company, having such paid-up share capital as may be prescribed, shall have a whole-time secretary. The paid up share capital prescribed for this purpose is Rs. 5 Crores.
 - b. Where the paid up share capital of a company is increased to Rs. 5 Crores or more, the company shall, within a period of 1 year from the date of such increase, appoint a whole time secretary.
 - c. Where the BOD of any such company comprise only 2 directors, neither of them shall be the secretary of the company. Accordingly, there is no absolute prohibition on a director becoming a secretary of the company.
 - d. No person shall be appointed as a whole time secretary unless he is a member if the ICSI.
 - e. Failure to appoint a secretary shall be punishable with fine up to Rs. 500 for every day during the default continues.
- Secretaries appointed by companies registered under section 25 of the companies act, 1956 are exempt from above provisions.

Secretarial Compliance certificate (Section 383A)

- A company shall file with registrar a SCC if the following conditions satisfied;
- ✓ It is not required to employ a whole-time secretary under section 383A (1).
 - ✓ It has a paid-up share capital of Rs, 10 lakhs or more.
- The certificate shall be file with the registrar within prescribed time which is as follows:
- ✓ 30 days for the date of AGM; or
 - ✓ Where no AGM is held, within 30 days from the last date on which the AGM ought to have been held.
- The certificate shall be issued only be a secretary in whole time practice.
- The certificate shall be addressed to the members of the company.
- The certificate shall be in the prescribed form.
- The certificate shall state as to whether the company has complied with all the provisions of the Companies Act, 1956.
- A copy of the certificate shall be attached with board's report.
- Non-compliance shall be punishable with fine up to Rs. 500 for every day during which the default continues.