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## SECRETARIAL AUDIT COMPLIANCE UNDER COMPANIES ACT 2013 IN INDIA - A STUDY

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**Abstract:** *Secretarial Audit is a compliance audit. It is a part of total compliance management in an organization. The Secretarial Audit is an effective tool for corporate compliance management, done by an independent professional and it helps to ensure timely corrective measures when non-compliance is detected and the same is done by verification of records and documents to check compliance with the provisions of various laws and rules/procedures, maintenance of books, records etc., to ensure that the company has complied with the legal and procedural requirements and also followed due processes. The objective of the Audit is to protect the interests of the customers, employees, revenue, environment and the directors and officers of the company and to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well. As per the section 204 of the Companies Act 2013, and as per Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, all listed Companies and every public company having a paid up capital of fifty crore rupees or more or every public company having a turnover of two hundred and fifty crore rupees or more shall have the Secretarial Audit done by a Company Secretary in practice. The corporate sector is governed by a complex web of laws, rules and regulations. Several companies that have fallen sick had committed violations of various legal provisions and shown utter disregard for the various Board and other processes contemplated in the Companies Act.*

**Keywords:** *Companies Act, Secretarial Audit, Compliance management, Auditor, Company.*

### INTRODUCTION

The corporate sector is governed by a complex web of laws, rules and regulations. However, enactment of laws is not enough and the desired results cannot be achieved unless their implementation is geared up. Several companies that have fallen sick had committed violations of various legal provisions and shown utter disregard for the various Board and

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other processes contemplated in the Companies Act. There were no mechanisms in place to verify compliance of provisions of various laws applicable to a company. In these circumstances, a mechanism to ensure that the company has complied with the legal and procedural requirements, the Board and other processes and compliance mechanisms are robust, to measure the capability of the Board that it has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company is required. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.

## **REVIEW OF LITERATURE**

**Sabarinathan (2010)**, provides a critical assessment of the adequacy and structure of the statutory levers that SEBI operates. The assessment indicates that SEBI is a suitably empowered and autonomous organization that has the necessary legal authority to be an effective regulator.

**Varma (2009)**, in a study, Satyam Fraud: The Regulatory Response stated that a major fraud was an opportunity to push through important reforms which would otherwise be resisted by powerful vested interests. It stated that this opportunity was missed in India. Point out that the initial regulatory response to the Satyam fraud was swift and appropriate, but this momentum was lost very quickly. Those who hoped for comprehensive and decisive reforms had been disappointed. This means the Corporate Governance principles only rely mainly on the SEBI clause 49 for enforcement

**La Porta et al (2003)**, it examines the adequacy of these institutions based on a detailed analysis of the provisions of these statutes and arrives at some tentative inferences about the adequacy of the available institutional prerequisites. Such an understanding is essential to assess the effectiveness of the regulatory regime. Recent attempts to assess the extent and quality of protection to equity investors and creditors have involved an analysis of the details of the legal provisions.

**MCA (2009)**, According to the MCA, it “enables a statutory platform for essential Corporate Governance requirements essential for functioning of the companies with transparency and accountability, recognizing and protecting the interests of various stakeholders.” An optimal corporate law had been identified earlier as an important prerequisite. The law governing companies in India is the Indian Companies Act, 1956 (the Companies Act, hereafter). The



Companies Act is a comprehensive piece of statute covering nearly all aspects of the working of a body corporate in India. Modeled along and derived substantially from its British antecedents, The Companies Act and the rules made there under are an important element of the regulation of a company in India and are applicable to all body corporate in India.

**In 1992, the Indian Parliament passed the Securities and Exchange Board of India Act, 1992, to establish the Securities and Exchange Board of India (SEBI) in its new incarnation as an empowered regulator of the Indian Securities Market.**

### **OBJECTIVES OF STUDY**

- a) To study the factors that necessitate secretarial audit
- b) To examine the legislations that govern secretarial audit for companies

### **FACTORS THAT NECESSITATE SECRETARIAL AUDIT**

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.

#### **Which Companies are Required to Appoint Secretarial Auditor?**

As per section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following companies are required to obtain 'Secretarial Audit Report' from independent practicing company secretary;

1. Every listed company
2. Every public company having a paid-up share capital of Fifty Crore rupees or more;  
or
3. Every public company having a turnover of Two Hundred Fifty Crore rupees or more.

"Turnover" means the aggregate value of the realisation 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. [Section 2(91)]. Secretarial Audit is also mandatory to a private company which is a subsidiary of a public company, and which falls under the prescribed class of company

#### **Scope of Secretarial Audit**

Secretarial auditor has to examine, check and report compliances made by the company under the following laws and rules made there-under during the period under review;



1. The Companies Act, 2013 (the Act) and the rules made there-under;
2. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made there-under;
3. The Depositories Act, 1996 and the Regulations and Bye-laws framed there-under;
4. Foreign Exchange Management Act, 1999 and the rules and regulations made there-under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-

- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992
- 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 Employee Stock Purchase Scheme) Guidelines, 1999
- The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008
- 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
- The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009
- The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998
- Secretarial Standards issued by The Institute of Company Secretaries of India.

## **LEGISLATIONS THAT GOVERN SECRETARIAL AUDIT FOR COMPANIES**

### **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 passed at a duly convened Board meeting and resolution for appointment shall be filed with Registrar of Companies within 30 days in E-form MGT-14. It is advisable for Secretarial Auditor to get the letter of engagement



from the company. Secretarial Auditor should formally accept the letter of engagement. Further, as a prudent corporate practice, it is advisable that change in the Secretarial Auditor during the year is reported to the members in the Board's Report.

#### **Powers to Secretarial Auditor**

The Companies Act, 2013 has empowered secretarial auditor and has given him all rights and powers as given to statutory auditor. As per section 204 of the Companies Act, 2013, the secretarial auditor company shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor.

#### **Punishment for Default**

Sub-Section 4 of Section 204 of the Companies Act, 2013, provides that if a company or any officer of the company or the company secretary in practice, contravenes the provisions of section 204 of the Act, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

#### **Disqualifications for Appointment of the Secretarial Auditors**

The Companies Act, 2013 does not provide any disqualifications for the appointment of the Secretarial Auditors. However, it should be considered that the Secretarial Auditor shows utmost integrity and independence of judgment in the performance of his duties, a person referred to in section 144 of the Act, should not be appointed or re-appointed for giving Secretarial Audit Report to a company.

#### **Penalty for Non-compliance of Section 204**

If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than Rs.1 lakh but which may extend to Rs. 5 lakh.

#### **CONCLUSION**

Mutual funds now represent perhaps most appropriate investment opportunity for most investors. As financial markets become more sophisticated and complex, every investor needs to financial intermediary who provides the required knowledge and professional expertise on successful investing. As the investor always try to maximize the returns and



minimize the risk. Mutual fund satisfies these requirements by providing attractive returns with affordable risks. The fund industry has already overtaken the banking industry, more funds being under mutual fund management than deposited with banks. With the emergence of tough competition in this sector mutual funds are launching a variety of schemes which caters to the requirements of the particulars class of investors. SEBI has taken a far-reaching step towards ensuring due diligence and transparency in all investment decisions. SEBI has done a commendable job in terms of stringent regulation. However, the penalties must be more severe and appropriate, so that they deter the market participants from indulging in malpractices. It must ensure that new norms for corporate disclosures have more depth and are implemented over a shorter time period.

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