

Contents

	PAGE
<i>Foreword - Sarah Arokiaswamy</i>	<i>I-5</i>
<i>Foreword - Dr. P.P. Balan</i>	<i>I-6</i>
<i>Foreword - Thomas Chazhikadan</i>	<i>I-7</i>
<i>Preface</i>	<i>I-8</i>
<i>Felicitations - Dr. Mathew Kuzhalnadan</i>	<i>I-10</i>
<i>Felicitations - Prof. Raveendranath K.</i>	<i>I-11</i>
<i>About the Authors</i>	<i>I-12</i>
<i>Chapter-heads</i>	<i>I-13</i>

1

INTRODUCTORY CHAPTER

1.1	The Need for Assurance on Compliance	1
1.2	Evolution of Provisions relating to Assurance on Compliance	3
1.3	Framework for Assurance on Compliance under the Companies Act, 2013	5
1.4	Definition of Secretarial Audit	6
1.5	Mandatory Requirement for Secretarial Audit	7
1.5.1	Mandate under the Companies Act, 2013	7
1.5.2	Mandate under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	9
1.6	The Case for Voluntary Adoption of Secretarial Audit	11
1.6.1	For MSMEs - OEM orders, SME IPO and Government Schemes	12
1.6.2	For Startups - Gearing up for Funding Rounds and IPOs/ Strategic Sale	13

	PAGE	
1.6.3	For Acquisition or Investment Targets – Preparation for Due Diligence Processes	14
1.6.4	For Joint Ventures – Adherence to Compliance Standards and the terms of Joint Venture	15
1.7	Benefits of Secretarial Audit	15
1.7.1	Benefits to the Company	15
1.7.2	Benefits to the Regulators	16
1.7.3	Benefits to the other stakeholders	16
1.8	Who can perform Secretarial Audit?	17
1.9	Literature on Secretarial Audit	17

2

SECRETARIAL AUDIT AND SECRETARIAL AUDITOR

2.1	The Concept of Audit	19
2.2	An Overview of the Various Audits under the Companies Act, 2013	20
2.2.1	Audit of financial statements or Statutory Audit	20
2.2.2	Cost Audit	21
2.2.3	Internal Audit	22
2.2.4	Secretarial Audit	23
2.2.5	Whether Secretarial Audit is subsumed in other audits like Statutory Audit?	28
2.3	Nature of Secretarial Audit	28
2.3.1	Salient features of Secretarial Audit	29
2.3.2	Does Secretarial Audit indicate absolute assurance?	29
2.4	Scope of Secretarial Audit	31
2.4.1	List of laws specifically mentioned	32
2.4.2	Other Applicable Laws	32
2.4.3	Governance Aspects	33
2.4.4	Other Aspects	34
2.5.	The Contours of Responsibility of the Secretarial Auditor	34
2.5.1	Responsibility of the Secretarial Auditor	34
2.5.2	Responsibilities of those charged with Governance and the Management	36
2.6	Appointment, Qualification and Independence of a Secretarial Auditor	37
2.6.1	Appointment Procedure	37
2.6.2	Qualification Criteria	37

	PAGE	
2.6.3	Independence Criteria	38
2.6.4	Certificate to the Board before Accepting the Engagement	40
2.7	Powers of a Secretarial Auditor	40

3

STAGES OF SECRETARIAL AUDIT

3.1	Factors involved in Planning and Performing an Audit	43
3.2	Stages of an Audit	44
3.3	ICSI Auditing Standards	45
3.3.1	Applicability of ICSI Auditing Standards CSAS-1 to CSAS-4	46
3.3.2	Framework under ICSI Auditing Standards	46
3.4	Matters relating to Professional Misconduct while Obtaining Professional Work	47
3.5	Acceptance of Secretarial Audit Engagement	49
3.5.1	Pre-engagement Meeting	49
3.5.2	Factors to be Considered Before Accepting an Audit Engagement	50
3.5.3	Eligibility Certificate	50
3.5.4	Appointment of Secretarial Auditor	51
3.5.5	Audit Engagement Letter	51
3.5.6	Communication to the Previous Incumbent	52
3.5.7	Commercial terms	53
3.5.8	Changes in the Engagement	54
3.6	Planning the Audit	54
3.6.1	Plan must enable gathering of sufficient appropriate audit evidence	55
3.6.2	Elements of Audit Planning	56
3.6.3	Contents of an Audit Plan	57
3.6.4	Professional skepticism	57
3.7	Audit Documentation	58
3.7.1	Necessary Qualities of Audit Documentation	58
3.7.2	Contents of Audit Documentation	59
3.7.3	Retention of Records	60
3.8	Understanding the Environment	60
3.8.1	General Information about the company - For Master File	60
3.8.2	Information in respect of the period under audit - For Current File	62
3.8.3	Sources of information	62
3.9	Assessing the Risks	63

	PAGE	
3.10	Determining Materiality	63
3.10.1	Necessary to determine materiality	63
3.10.2	What is materiality?	64
3.10.3	Quantitative Materiality Threshold is not Sufficient for Compliance Aspects	65
3.11	Performing Various Audit Procedures	66
3.12	Evaluating Audit Evidence	67
3.13	Forming an Opinion	68
3.14	Drafting and Submitting the Secretarial Audit Report	68
3.15	Presence at AGM	69

4

UNDERSTANDING THE COMPANY'S ENVIRONMENT, INTERNAL CONTROLS AND PRELIMINARY REVIEW OF DOCUMENTS

4.1	Understanding the Entity and its Environment	70
4.1.1	Nature of Business	71
4.1.2	Basic Information from MCA's Company Master Data	72
4.1.3	Promoters	73
4.1.4	Board Composition	73
4.1.5	Evolution of Capital and Shareholding Pattern	74
4.1.6	Corporate Restructuring in the Recent Past	76
4.1.7	Registrations, Licences, Approvals and Permissions from Authorities	76
4.1.8	Action Taken by Authorities, Orders passed and Ongoing Litigations and Prosecutions	77
4.1.9	Details of Auditors	77
4.2	Internal Controls and Compliance Systems	77
4.2.1	What are Internal Controls	77
4.2.2	Policies	79
4.2.3	Organisational Chart and Levels of Authority	80
4.2.4	Standard Operating Procedures	81
4.2.5	Compliance Systems - Internal Compliance Controls and Internal Governance Controls	82
4.2.6	Extent of Adoption of Technology	85
4.2.7	Internal Audit Reports	85

	PAGE	
4.3	Relying on the Work of Other Professionals	86
4.3.1	Relying on the Work of Statutory and Tax Auditors	86
4.3.2	Scope of Statutory Audit in respect of Compliance and Governance Matters	87
4.4	Access to Books of Account and other Records	88
4.5	Preliminary examination of Filings for New Clients - Master Information	88
4.5.1	Charter Documents	89
4.5.2	MCA Filings	91
4.5.3	Stock Exchange Filings and Offer Documents filed with SEBI	92
4.6	Previous Years' Financial Statements	92

5

PART I - CURRENT FILE AND CORPORATE LAWS

5.1	Compilation of Information for Current File	95
5.1.1	Latest Charter Documents	95
5.1.2	Meetings held during the financial year	96
5.1.3	E-Forms filed during the Financial Year	99
5.1.4	Registers under the Companies Act, 2013	99
5.1.5	Whether the Company has met any new Threshold-Based Compliance Criteria	101
5.1.6	Other Filings during the Financial Year	101
5.1.7	Media News Coverage and Websites of Enforcement Agencies	101
5.1.8	Specific Information from the Company	102
5.1.9	Matters to be observed from Internal Audit Reports	105
5.1.10	Previous Year Financial Statements and Provisional Financial Statements	105
5.2	Matters to be verified under Corporate Laws	106
5.2.1	Classification of Matters to be verified in case of Compliance	107
5.2.2	Periodic Compliance	107
5.2.3	Event-based Compliance	108
5.2.4	Matters relating to Nature of Business	108
5.2.5	Matters relating to Articles of Association	108
5.2.6	Amounts Received - Potential Classification as Deposits	109
5.2.7	Matters to be noticed in respect of some exempt amounts	110
5.2.8	Issue of Securities	110
5.2.9	Shareholding Pattern	116

	PAGE	
5.2.10	Dividend	117
5.2.11	Directors	118
5.2.12	Meetings and Board Processes	120
5.2.13	Committees of the Board	122
5.2.14	Disclosure of Interest by Directors	122
5.2.15	Related Party Transactions	123
5.2.16	Loans and Guarantees Given and Investments made	127
5.2.17	Borrowings	128
5.2.18	Managerial Remuneration and Appointment of Key Managerial Personnel (KMP)	128
5.2.19	Corporate Social Responsibility (CSR)	130
5.2.20	General Meetings	131
5.2.21	Annual Report	133
5.2.22	Disclosures in Annual Return	133
5.2.23	Accounts and Audit	134

5A

PART II - SECURITIES LAWS, FEMA REGULATIONS, OTHER APPLICABLE LAWS, AND OTHER ASPECTS

5A.1	Securities Market Regulations	135
5A.1.1	SEBI (Listing Obligations and Disclosures Requirements), Regulations, 2015 (Listing Regulations)	135
5A.1.2	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	138
5A.1.3	SEBI (Prohibition of Insider Trading) Regulations, 2015	139
5A.1.4	Other SEBI Regulations and the Listing Agreement	140
5A.1.5	Compliance with Listing Agreements in case of Listed Companies	141
5A.2	FEMA, 1999 and the Rules and Regulations thereunder	142
5A.2.1	Foreign Direct Investment (FDI)	142
5A.2.2	External Commercial Borrowings (ECB)	144
5A.2.3	Overseas Investments (OI)	145
5A.3	Other Specifically Applicable Laws	147
5A.3.1	Responsibility of Identifying and Segregating Applicable Laws	147
5A.3.2	Role of Secretarial Auditor	147
5A.3.3	Factors to be Considered for Identification and Segregation of Laws	149

	PAGE	
5A.3.4	Some specific aspects to keep in mind in respect of certain industries	151
5A.4	Adequacy and effectiveness of systems in place to ensure compliance with general laws	155
5A.5	Governance Aspects	156
5A.5.1	Specific Aspects of Governance Processes in Secretarial Audit	157
5A.6	Other Aspects	157
5A.6.1	Adequacy and Effectiveness of Compliance Systems	157
5A.6.2	Specific events having a major bearing on the company's affairs	158

6

AUDITORS' RESPONSIBILITY IN RESPECT OF FRAUD

6.1	What is fraud?	160
6.1.1	Provisions relating to fraud under section 447 of the Companies Act, 2013	161
6.1.2	Definition under the Indian Penal Code, 1860	163
6.1.3	Definition under the Indian Contract Act, 1872	163
6.1.4	Provisions relating to fraud under the SEBI Act, 1992 and the regulations thereunder	164
6.1.5	Fraud under SA 240 - The Auditor's Responsibilities Relating to Fraud issued by the ICAI	165
6.2	A Study of Responsibility in Relation to Frauds	165
6.2.1	Responsibility of those charged with governance	166
6.2.2	Section 143(12) - Duty to 'Report' Frauds	167
6.2.3	Responsibility of Auditor in Discovery of Frauds	168
6.2.4	Auditor's Responsibility in Respect of Frauds in a Nutshell	175
6.2.5	Reporting of Fraud	175
6.3	Areas requiring in-depth focus in fraud detection	177
6.3.1	Related Party Transactions	177
6.3.2	Excessive Managerial Remuneration	177
6.3.3	Insider Trading	178
6.3.4	Mergers/Demergers/Acquisitions	178
6.3.5	Ponzi Schemes and Public Deposits	178
6.3.6	Tools for Risk Assessment in respect of Frauds	179
6.3.7	Understanding Frauds	181
6.3.8	Qualities Required to Detect and Report Frauds	182

7**EVALUATION OF AUDIT EVIDENCE, FORMING OF
OPINION AND PREPARATION OF SECRETARIAL
AUDIT REPORT**

7.1	Evaluating Audit Evidence	184
7.1.1	Evaluation of Audit Evidence <i>v.</i> Drawing Conclusions	184
7.1.2	Gathering and Evaluation of Evidence is a Simultaneous and Iterative Process	187
7.2	Forming an opinion	190
7.3	Process for Forming of Opinion	191
7.3.1	Consideration of Materiality	191
7.3.2	Principles involved in Forming of Opinion	193
7.3.3	Decided Cases, Clarifications and Opinions	198
7.3.4	Generally Accepted Auditing Practices	198
7.3.5	Third Party Report or Opinion	198
7.4	Management Representation Letter	199
7.4.1	Responsibility of the Secretarial Auditor in respect of matters in the Management Representation Letter	200
7.4.2	Matters in respect of which Management Representation Letter is Required	200
7.5	Unmodified/Modified Opinion	201
7.5.1	Unmodified Opinion	201
7.5.2	Modified Opinion	202
7.5.3	Presentation of modified opinion or disclaimer of opinion	203
7.6	Limitation on the Scope of Audit	204
7.7	Auditor's Responsibility	205
7.8	Format of Report	206
7.8.1	Signature Block	207

8**ENSURING QUALITY CONTROL IN SECRETARIAL AUDIT**

8.1	Quality Control	209
8.2	The ICSI Manual on Quality Control Processes	210
8.3	Components Necessary for Establishing Quality in a Firm's Functioning	210
8.3.1	Objectives of Ensuring Quality and Establishing Quality Control	210

	PAGE	
8.3.2	Steps in achieving quality objectives	211
8.3.3	Setting up of Quality Control System	212
8.3.4	Consistent adherence to the established system	214
8.3.5	Monitoring adherence to the Quality Control System	214
8.3.6	Maintenance of the Quality Control System	215
8.4	Internal Quality Control Aspects	215
8.4.1	Leadership Responsibilities	216
8.4.2	Ethical Requirements	217
8.4.3	Human Resources	220
8.4.4	Performance Evaluation	220
8.4.5	Monitoring	220
8.5	Quality in Client Interaction	221
8.5.1	Acceptance and Continuation of Client Relationships and Specific Engagements	221
8.5.2	Integrity level of client and the Firm's Ethical Stance	223
8.5.3	Allocating Responsibilities for Engagement Team and Partners	223
8.6	Quality Considerations Specific to Secretarial Audit	224

9

ROLE OF SECRETARIAL AUDIT IN CORPORATE GOVERNANCE, STRATEGY AND SUSTAINABILITY

9.1	Secretarial Audit and Corporate Governance	227
9.1.1	Board Composition	228
9.1.2	Board Processes	229
9.1.3	Holding Promoters Accountable	229
9.1.4	Shareholders' Democracy	230
9.1.5	Shareholder Activism	230
9.1.6	Investor Grievance Redressal	231
9.1.7	Upholding Terms of SHA (Shareholders' Agreement)	231
9.1.8	Compliance Management Systems and Internal Control Processes	232
9.1.9	Managerial Remuneration	232
9.1.10	Disclosure of Interest and Related Party Transactions	232
9.2	Secretarial Audit and Strategy	233
9.2.1	Group Structures for Diversification and Vertical Integration	233
9.2.2	Raising Funds for Expansion	234
9.2.3	Managing Alliances, Joint Ventures	234

	PAGE	
9.2.4	Better Control Mechanisms towards Efficiency	234
9.2.5	Brand Equity and Goodwill	234
9.3	Secretarial Audit and Sustainability	235
9.3.1	Sustainable Growth of the Company	235
9.3.2	Sustainable Development of the Stakeholders	236
9.3.3	Sustainable Development of the Nation	237

ANNEXURES

Annexure 1:	Form No. MR-3	241
Annexure 2:	Statement on Auditor's Responsibility to be annexed with the Secretarial Audit Report and forms an integral part of the Report	244
Annexure 3:	Independence Criteria under section 141(3) of the Companies Act, 2013	246
Annexure 4:	Threshold-based compliance under the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	247
Annexure 5:	Sample tables for evolution of capital	256
Annexure 6:	Compilation of information for current file and useful charts	258
Annexure 7:	Excerpts from SA 240, CSAS-2 and CSAS-4 on Auditors' Responsibility in Respect of Frauds	271