

Secretarial Audit

Prepared for seminar at Bhayander chapter of WIRC-ICSI – 29.07.2021

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About Us



- Vinod Kothari & Company, Company Secretaries in Practice;
 - Based out of Kolkata, Mumbai & Delhi.
- We are a team of consultants, advisors & qualified professionals having over 30 years of experience.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline

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Secretarial Audit v/s other attestation

Basis of Comparison	Secretarial Audit Report	ASC Report	Annual Return Certification	CG Certificate
Relevant Law	<ul style="list-style-type: none"> Section 204 of Act, 2013 read with Rule 9 of MR Rules, 2014 & Reg. 24A of LODR. 	<ul style="list-style-type: none"> Reg. 24 A of LODR read with SEBI Circular dated Feb 8, 2019. 	<ul style="list-style-type: none"> Section 92 (2) of Act, 2013 read with Rule 11 (2) of MGT Rules, 2014 	<ul style="list-style-type: none"> Para E of Schedule V to LODR.
Scope	<ul style="list-style-type: none"> Reporting on compliance requirements on corporate law and laws applicable specifically on the Company. 	<ul style="list-style-type: none"> Reporting on compliance, observations as well as the action taken by the company on applicable SEBI Regulations and circulars. Report on action taken on past observations/ remarks. 	<ul style="list-style-type: none"> Compliance with provisions of Act, 2013. 	<ul style="list-style-type: none"> Compliance of provisions relating to Corporate Governance as indicated in Reg. 15 of LODR.
Format	<ul style="list-style-type: none"> Form MR-3 	<ul style="list-style-type: none"> As per SEBI Circular dated Feb 8, 2019. 	<ul style="list-style-type: none"> Form MGT-8 	<ul style="list-style-type: none"> No specific format.

Basis of Comparison	Secretarial Audit Report	ASC Report	Annual Return Certification	CG Certificate
Applicability	<ul style="list-style-type: none"> • Listed companies and their material unlisted subsidiary incorporated in India; • Public companies with paid-up share capital of Rs. 50 crores or turnover of Rs. 250 crores or more. • Every company having outstanding loans or borrowing from banks or PFIs of Rs. 100 crores or more 	<ul style="list-style-type: none"> • Companies whose specified securities are listed. 	<ul style="list-style-type: none"> • Listed company; or • A company having paid-up share capital of 10 crore rupees or more; • A company having turnover of 50 crore rupees or more. 	<ul style="list-style-type: none"> • Companies having specified securities listed on stock exchange.
Inclusion in annual report	<ul style="list-style-type: none"> • Annexed to the Board's Report (that forms part of Annual Report). 	<ul style="list-style-type: none"> • It needs to be submitted by the listed entity to the stock exchanges. 	<ul style="list-style-type: none"> • No. Attached to eForm MGT-7 filed with the Registrar. 	<ul style="list-style-type: none"> • Annexed to the Corporate Governance Report (that forms part of Annual Report).
Time frame for submission	<ul style="list-style-type: none"> • Before approval of Board's Report. 	<ul style="list-style-type: none"> • Within 60 days from the end of the financial year. 	<ul style="list-style-type: none"> • Within 60 day from the date of AGM. 	<ul style="list-style-type: none"> • Before approval of Annual Report.

Basis of Comparison	Secretarial Audit Report	ASC Report	Annual Return Certification	CG Certificate
<p>Specific reporting</p>	<ul style="list-style-type: none"> • Sending of notices and agenda for Board meetings; • Board constitution and changes made therein; • Capturing of dissenting views of the board member, if any; • Presence of adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guideline; and • Specific events and their compliance. 	<ul style="list-style-type: none"> • Maintenance of proper records as per SEBI Regulations and Circular; • List of actions taken by SEBI or stock exchange for any non-compliance with respect to compliance of SEBI laws either on the listed entity, its directors, promoters and material subsidiaries; • Action taken by the listed entity and comments on such actions taken by the PCS for the reporting year as well as for the past financial years. 	<ul style="list-style-type: none"> • Annual Return in Form MGT-7 is correct and adequate; • Compliance with provisions of Act and Rules in relation to 18 points specified. 	<ul style="list-style-type: none"> • Confirmation on compliance with CG provisions as indicated in Reg. 15 of LODR. • No specific reporting.

Secretarial Auditor v/s other auditors



Particulars	Secretarial Auditor	Statutory Auditor	Internal Auditor	Cost Auditor
<p>Governing provisions for appointment</p>	<p>Section 204 of the CA, 2013 and Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and Reg. 24A of LODR.</p>	<p>Section 139 of Companies Act, 2013 and the Companies (Audit and Auditors) Rules, 2014.</p>	<p>Section 138 of Companies Act, 2013 and the Companies (Accounts) Rules, 2014.</p>	<p>Section 148 of the Companies Act, 2013 and the Companies (Cost Records and Audit) Rules, 2014.</p>
<p>Requirement to appoint</p>	<ul style="list-style-type: none"> • Every listed company; • public company having a paid-up share capital of Rs 50 crore or more or having a turnover of Rs. 250 crore or more or • Company having outstanding loans or borrowing from banks or public financial institutions of 100 crores or more. 	<p>All the companies are required to appoint Statutory Auditors.</p>	<ul style="list-style-type: none"> • Every listed company; • Public company having a paid-up share capital of Rs 50 crore; • Companies with turnover of Rs. 200 crore or more • Companies having outstanding loans or borrowing from banks or public financial institutions exceeding 100 crores or more. • Every public company having outstanding deposits of Rs. 25 crore or more. 	<p>Regulated Sectors- if overall turnover from all products or services is 50 crore or more and individually turnover is 25 crore or more.</p> <p>Non- regulated sectors - if overall turnover from all products or services is 100 crore or more and individually turnover is 35 crore or more.</p>

Particulars	Secretarial Auditor	Statutory Auditor	Internal Auditor	Cost Auditor
Appointment	After the criteria is met, appointment to be done at a Board Meeting.	<p>First auditor- to be appointed in Board Meeting within 30 days from the date of registration of the company</p> <p>Subsequent auditors - to be appointed in the Annual General Meeting</p>	After the criteria is met, appointment to be done at a Board Meeting.	After the criteria is met. Appointment to be done by Board.
Casual Vacancy	No specific provision.	<p>In case of a Company whose accounts are subject to Comptroller and Auditor-General of India (CAG) – To be filled by CAG within 30 days.</p> <p>In case of others-</p> <ul style="list-style-type: none"> • To be filled by the Board within 30 days. • If casual vacancy is a result of resignation of an auditor then such appointment to be approved by the company at a general meeting convened within 3 months of the recommendation of Board. 	No specific provision.	Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within 30 days of occurrence of such vacancy and the company shall inform the Central Government in form CRA 2 within 30 days of such appointment.

Particulars	Secretarial Auditor	Statutory Auditor	Internal Auditor	Cost Auditor
Remuneration	Remuneration to be recommended by Audit Committee and considered and approved by Board of Directors.	Section 142 of CA, 2013- The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.	Remuneration to be recommended by Audit Committee and considered and approved by Board of Directors.	Section 148 (3) of CA, 2013- remuneration to be recommended by Audit Committee and considered and approved by Board of Directors and subsequently ratified by the shareholders
Filing Requirement for appointment	MGT 14 to be filed within a period of 30 days of the Board Meeting in which the secretarial auditor is appointed	ADT 1 to be filed by the Company within 15 days from the date of Annual General Meeting in which he was appointed.	MGT 14 to be filed within a period of 30 days of the Board Meeting in which the internal auditor is appointed.	CRA 2 to be filed with the Central Government within a period of 30 days of the Board Meeting or within a period of 180 days of the commencement of F.Y. whichever is earlier.
Negative listed services	No specific provision under Act, 2013.	Services referred to in sec 144	No specific provision under Act, 2013.	No specific provision under Act, 2013.
Disqualifications	No such specific provision provided either under Act, 2013	Section 141 of the Act, 2013	No such specific provision provided either under Act, 2013	Same as applicable to Statutory Auditor [Section 148 (5)]

Provisions of Law



Applicability – 1/2

- **Section 204 of the Companies Act, 2013**

- Secretarial Audit Report needs to be annexed with Board report in case of:

- A listed company;

- ❖ Having any securities listed on stock exchange.

- Public company with a paid up capital of Rs. 50 crores or more;

- Public company with a turnover of Rs. 250 crores or more; and

- Every company having outstanding loans or borrowing from banks or PFIs of Rs. 100 crores or more.

- ❖ Inserted w.e.f. January 3, 2020.

- ❖ Applicable in respect of FYs commencing from April 1, 2020.

- The paid up share capital, turnover, or outstanding loans or borrowings as the case may be, **existing on the last date of latest audited financial statement** shall be taken into account.

- ❖ Inserted w.e.f. January 3, 2020.

Applicability – 2/2

- **Reg 24A of SEBI LODR, 2015** (w.e.f. March 31, 2019)
 - Listed company;
 - ❖ Having its specified securities listed.
 - Material unlisted subsidiaries incorporated in India;
 - ❖ Means a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.
 - ❖ Inserted pursuant to recommendation made in UKC Report
 - For strengthening group oversight and improving compliance at a group level for listed entities.
 - Format of SAR will be Form MR-3
 - In order to avoid duplication.
 - Annual Secretarial Compliance Report;
 - ❖ Format prescribed vide SEBI Circular dated [February 8, 2019](#).

Period covered, Recipient of the Report

- Section 204 (1) mandates the Secretarial Audit Report (SAR) to be annexed to the Board Report prepared under Section 134.
 - Therefore, the period covered in 1 financial year.
- Sec 204 (3) requires the board to “explain in full any qualification or observation or other remarks”
 - Only if they are adverse.
- The format of SAR in Form MR-3 addresses the report to the members of the company.

Secretarial Auditor

Appointment

- Section 179(3)(k) provide that appointment of secretarial auditor is to be done by the Board at a meeting of the Board.
- Unlike in case of the statutory auditors, where appointment runs from AGM to AGM, there is no prescribed end-of-term for the secretarial auditor.

Removal

- There are no provisions in law about removal of secretarial auditor;
- The report is addressed to members:
 - However, unlike in case of statutory auditors, there is no provision for representation to members in case of removal.

Resignation

- No specific provision.

Contents of Secretarial Audit Report



Key contents of the SAR

- Factual information
 - Compliance with laws specified in MR-3 and laws specifically applicable
 - Deviations therefrom;
 - Specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the laws covered in SAR.
- Qualitative comments about composition of board of directors
 - Balance of composition;
 - Changes in board position- compliance of laws;
- Quality of information flow for board meetings;
 - Adequate notice, agenda, notes to agenda. Existence of system for seeking further clarification and meaningful participation.
- Quality of minutes;
 - Recording of views of dissenting members.
- Qualitative opinion on adequacy of compliance systems;
 - This pertains to all applicable laws.
 - Reporting under Section 205 of CA, 2013 and Reg. 17 (3) & (8) of LODR
- Factual information about major corporate events, and compliances in respect thereof;

Compliance of laws- 1/2

- Companies Act, 2013;
- SCRA Act, 1956 and the Rules made thereunder;
- Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder:
 - FDI;
 - ODI;
 - ECB.
- Regulations prescribed under SEBI Act, 1992:
 - SEBI (SAST) Regulations, 2011;
 - SEBI (SBEB) Regulations, 2014;
 - SEBI (LODR) Regulations, 2015;
 - SEBI (PIT) Regulations, 2015;
 - SEBI (ICDR) Regulations, 2018;

Compliance of laws- 2/2

- Regulations prescribed under SEBI Act, 1992:
 - SEBI (ILDS) Regulations, 2008;
 - SEBI (RTA) Regulations, 1993;
 - SEBI (Delisting of Equity Shares) Regulations, 2009;
 - SEBI (Buy-back of Securities) Regulations, 2018;
- Other Laws as may be applicable specifically to the company;
- Secretarial Standards issued by the Institute of Company Secretaries of India;
 - SS-1 w.r.t Meetings of the Board of Directors;
 - SS-2 w.r.t General Meetings;
 - Both are mandatory pursuant to Section 118(10) of Act, 2013.
 - SS-3 w.r.t Dividend;
 - SS-4 w.r.t Report of the Board of Directors;
 - Both are recommendatory.
- Listing Agreement entered by the Company, if any.
 - Post LODR, there is just uniform listing agreement.

Other laws applicable specifically to Company

- The scope of the secretarial audit is limited to only laws specifically applicable to the nature of business of the company;
- These are business-specific laws:
 - Not generic laws – for example, GST, income tax, labor laws, etc which are applicable to every entity generically;
 - [ICSI letter of Dec 22, 2014](#) refers to reliance on work of other auditors on financial laws such as taxation;
 - This is not within the scope of the secretarial audit at all; hence no question of reliance or otherwise.

Reporting about Board Meeting

- MR 3 requires the secretarial auditor to report on quality of board proceedings;
- This is a qualitative report; not a mere case of technical compliance:
 - Adequacy of systems for seeking additional information by board members.
 - Quality of board minutes:
 - That dissenting members' views are captured in the minutes;
 - Mostly board minutes contain shallow minuting.

Reporting of major corporate events

- MR 3 also requires reporting of major events, such as :
 - Public/Right/Preferential issue of shares / debentures/sweat equity, etc;
 - Redemption / buy-back of securities;
 - Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013;
 - Merger / amalgamation / reconstruction, etc;
 - Foreign technical collaborations;
- The above list is illustrative:
 - The secretarial auditor may report about major events that throw special compliance burden.

Adequacy of Compliance Systems- 1/3

- The report format further requires the secretarial auditor to comment on adequacy of compliance systems.
- Commensurate with the size and operations of the company.
- Elements of a compliance system:
 - Identification of applicable laws to different business areas.
 - **Production;**
 - ❖ Environment related laws;
 - **Marketing;**
 - ❖ Intellectual property;
 - ❖ Trade mark and like laws;
 - **Human resources;**
 - ❖ All HR related laws, protection of women at work, etc;
 - **Corporate laws;**
 - **Fiscal laws;**

Adequacy of Compliance Systems-2/3

- Fixation of responsibility centers or “owners” of each law;
- Detailed analysis of requirements of each of such laws;
 - Entry-point requirement – for example, license, registration, etc;
 - Event-based compliances for example, approval to be taken for doing something, or some filing in consequence of some event;
 - Regular compliances – for example, periodic filings, renewal, etc;
- Periodic reporting by the owner of compliances or exceptions
 - Sweeping statement that the HR department has complied with all HR laws is surely indicating a pure self certification job;

Adequacy of Compliance Systems- 3/3

- Corrective action on non compliances;
- Reporting to the CS;
- Reporting by the CS to the Board;
- Quality of the compliance system:
 - Is the board aware about compliances?
 - Is there is a maker-checker distinction? Does periodically some outsider check compliances?
 - Is the company periodically subjected to inspections by a regulator?
 - Does internal audit cover compliances of some laws?
 - How serious are periodic compliance certificates ?
 - Merely rubber stamps, or do they indicate seriousness?

Format of Annual Secretarial Compliance Report



Key contents of the ASC Report-1/2

- Reporting required
 - Compliance with SEBI Regulations, circulars, guidelines.
 - Deviation to be reported
 - Maintenance of records provided under each of the aforesaid.
- Reporting of details of action taken by SEBI or stock exchanges against:
 - Listed entity;
 - Promoters of the listed entity;
 - Directors of the listed entity;
 - Material subsidiaries of the listed entity;
- Links
 - SEBI: <https://www.sebi.gov.in/enforcement/orders.html>
 - BSE: https://www.bseindia.com/static/corporates/non_compliance_new.aspx
 - NSE: https://www1.nseindia.com/corporates/content/compliance_info.htm

Key contents of the ASC Report-2/2

- Additional Information to be provided in report
 - List of all the observations in the report for the previous year along with the actions taken by the listed entity on those observations;
 - Add the list of all observations in the reports pertaining to the periods prior to the previous year in case the entity has not taken sufficient steps to address the concerns raised/ observations;
- Example:
 - In the report for the year ended 31st Mar, 2021, the PCS shall provide a list of:
 - All the observations in the report for the year ended 31st Mar, 2021 along with the actions taken by the listed entity on those observations.
 - The observations in the reports pertaining to the year ended 31st Mar, 2020 and earlier, in case the entity has not taken sufficient steps to address the concerns raised/ observations in those reports.

Applicable SEBI Regulations – 1/7

- SEBI Regulations relating to issue /listing/ post listing of securities
 - SEBI (ICDR) Regulations, 2018
 - SEBI (ILDS) Regulations, 2008
 - Specifications related to International Securities Identification Number (ISINs) for debt securities issued under the SEBI (ILDS) Regulations, 2008 (Circular dated June 30, 2017);
 - Monitoring and Review of Ratings by Credit Rating Agencies (CRAs) (Circular dated June 30, 2017);
 - Strengthening of the rating process in respect of INC ratings (Circular dated Jan 03, 2020)
 - Enhanced disclosure in case of listed debentures (Circular dated May 27, 2019);
 - Electronic book mechanism for issuance of securities on private placement basis (Circular dated January 05, 2018);
 - Guidelines for Issue and Listing of Structured Products/Market Linked Debentures (Circular dated Sep 28, 2011);
 - Centralized Database for Corporate Bonds/Debentures (Circular dated June 04, 2021);
 - Standardization of timeline for listing of securities issued on a private placement basis (Circular dated Oct 05, 2020)
 - Centralized Database for Corporate Bonds/ Debentures (Circular dated June 04, 2021)

Applicable SEBI Regulations – 2/7

- **SEBI (PIT) Regulations, 2015**
 - System Driven Disclosures in Securities Market (Circular dated May 28, 2019);
 - Standardizing Reporting of violations related to Code of Conduct under SEBI (PIT) Regulations, 2015 (Circular dated July 19, 2019).
 - Revised Disclosure formats under SEBI (Prohibition of Insider Trading), Regulations 2015 (Circular dated Sep 16, 2015)
 - Revised disclosure formats under Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (Dated Feb 09, 2021)
 - Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 - System driven disclosures (Dated Sep 09, 2020 & June 16, 2021)
- **SEBI (SAST) Regulations, 2011**
 - Disclosure of reasons for encumbrance by promoter of listed companies (Circular Dated August 07, 2019);
 - Format for disclosure under Regulation 30 of SEBI (SAST) Regulations, 2011 (Circular dated August 25, 2014);
 - Format of regulation 31 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Circular dated Aug 05, 2015);

Applicable SEBI Regulations – 3/7

- Exemption application under Regulation 11 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (December 22, 2017);
- Circular specifying the formats for disclosures under Regulation 29(1) and (2) of SEBI (SAST) Regulations, 2011 (Circular dated Oct 20, 2011).
- System-Driven Disclosures (SDD) under SEBI (SAST) Regulations, 2011 (Circular dated Sep 23, 2020)
- **SEBI (DT) Regulations, 1993**
 - Monitoring and Disclosures by Debenture Trustee (Circular dated Nov 12, 2020).
 - Creation of Security in issuance of listed debt securities and due diligence by debenture trustee(s) (Circular dated Nov 03, 2020).
 - Contribution by Issuers of listed or proposed to be listed debt securities towards creation of “Recovery Expense Fund (Circular dated Oct 22, 2020)
 - Standardisation of procedure to be followed by Debenture Trustee(s) in case of Default by Issuers of listed debt securities (Circular dated Oct 13, 2020).
 - Standardization of timeline for listing of securities issued on a private placement basis (Circular dated Oct 05, 2020)

Applicable SEBI Regulations – 4/7

- SEBI (LODR) Regulations, 2015
 - Fund raising by issuance of Debt Securities by Large Entities (Circular Dated November 26, 2018);
 - Continuous Disclosure Requirements for Listed Entities Regulation 30 of SEBI (LODR) Regulations, 2015 (Circular dated September 09, 2015);
 - Resignation of statutory auditors from listed entities and their material subsidiaries (Circular dated October 18, 2019).
 - Revised Formats for Financial Results and Implementation of Ind-AS by Listed Entities (Circular dated July 05, 2016);
 - Revised Formats for Financial Results and Implementation of Ind AS by listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares (Circular dated August 10, 2019);
 - Format for Business Responsibility Report (BRR) (Circular dated Nov 04, 2015);
 - Disclosure of reasons for delay in submission of financial results by listed entities (Circular dated Nov 19, 2018);
 - Manner of Achieving Minimum Public Shareholding (Circular dated Feb 22, 2018);
 - Format for Voting Results (Circular dated Nov 04, 2015)
 - Format on Statement of Deviation or Variation for proceeds of public issue, rights issue, preferential issue, Qualified Institutions Placement (QIP) etc. (Circular dated Dec 24, 2019)

Applicable SEBI Regulations – 5/7

- Format for Statement indicating Deviation or Variation in the use of proceeds of issue of listed non-convertible debt securities or listed non-convertible redeemable preference shares (NCRPs) (Circular dated Jan 17, 2020)
- Disclosure of holding of specified securities and Holding of specified securities in dematerialized form (Circular dated Nov 30, 2015);
- Procedure and formats for limited review / audit report of the listed entity and those entities whose accounts are to be consolidated with the listed entity (Circular dated March 29, 2019);
- Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (Circular dated Sep 12, 2019);
- Standardized norms for transfer of securities in physical mode (Circular dated Nov 06, 2018).
- Enhanced Due Diligence for Dematerialization of Physical Securities (Circular dated Nov 05, 2019).
- Business responsibility and sustainability reporting by listed entities (Circular dated May 10, 2021).
- Format of compliance report on Corporate Governance by Listed Entities (Circular dated May 31, 2021).
- e-Voting Facility Provided by Listed Entities (Circular dated Dec 09, 2020).
- Non-compliance with provisions related to continuous disclosures. (Circular dated Nov 13, 2020)
- Extension of time for holding the Annual General Meeting (AGM) by top 100 listed entities by market capitalization (Circular dated July 23, 2021)

Applicable SEBI Regulations – 6/7

- SEBI (Delisting of Equity Shares) Regulations, 2009
- SEBI (Buy Back of Securities) Regulations, 2018
 - Formats for filing reports in terms of regulations 15(i) and 20(j) of SEBI (Buy Back of Securities) Regulations, 1998 (Circular dated September 17, 2013);
 - Streamlining the Process for Acquisition of Shares pursuant to Tender Offer made for Takeover, Buy Back and Delisting of Securities (Circular dated Dec 09, 2016).
- SEBI (SBEB) Regulations, 2014
 - Requirements specified under the SEBI (Share Based Employee Benefits) Regulations, 2014 (Circular dated June 16, 2015);
- SEBI (ILSDI&SR) Regulations, 2008
- SEBI (ILNCRPS) Regulations, 2013

Applicable SEBI Regulations – 7/7

- SEBI Regulations relating to registration as Intermediary
 - SEBI (Portfolio Managers) Regulations, 2020
 - SEBI (FPI) Regulations, 2019
 - SEBI (D&P) Regulations, 2018
 - SEBI (RA) Regulations, 2014
 - SEBI (IA) Regulations, 2013
 - SEBI (KRA) Regulations, 2011
 - SEBI (Intermediaries) Regulations, 2008
 - SEBI (CRA) Regulations, 1999
 - SEBI (Custodian) Regulations, 1996
 - SEBI (MF) Regulations, 1996
 - SEBI (Bankers to an Issue) Regulations, 1994
 - SEBI (RTA) Regulations, 1993
 - SEBI (Underwriters) Regulations, 1993
 - SEBI (Merchant Bankers) Regulations, 1992
 - SEBI (Stock Brokers) Regulations, 1992

Approach to Secretarial Audit



Assessment of Compliance risk

- a) Secretarial auditor should develop methodology for risk assessment;
- b) Relevance of risk assessment:
 - Intensity of auditor's scrutiny depends on risk assessment;
- c) Different entities have different degrees of risk and risk areas;
- d) Approach to secretarial audit has to be conditioned based on risk assessment;
- e) MR 3 speaks of the auditor having “reasonable basis for evaluating the corporate conducts/statutory compliances”. It is the risk assessment that provides that reasonable basis.

Studying the Financial Statement

- Closely observe the financial statements
 - i. Most compliance points have some indicators in financial statements
 - ✓ **Liability side**
 - ▫ Nature of securities issued;
 - ▫ Top 5 shareholders – to identify entities holding significant influence;
 - ▫ Borrowings – for creation of charges;
 - ▫ Other liabilities – to understand applicability of deposit rules;
 - ✓ **Asset side**
 - ▫ Loans given;
 - ▫ Investments made;
 - ✓ **Notes to accounts**
 - ▫ Related party relationships and transactions;
 - ✓ **Transactions with subsidiary & group companies**

Determining focus area

Nature of Company

Shareholding pattern of the Company

Sector in which the Company is engaged

Investments of the Company

Manner of raising funds

Nature and quantum of RPTs

Planning the audit -1/3

- SA 310 deals with knowledge of business of the auditee. However, in case of secretarial audit, the more important aspect is the knowledge of ownership and management structure of the client. Hence, SA to note:

Shareholding structure:

- i. Companies which have groups of shareholding interests, such as JV companies, etc are more likely to have a balance of internal control, since the presence of multiple controlling stakeholders serves as a check on unbridled discretion. On the contrary, companies which are owned by a single controlling block holder are more prone to exercise of individual discretion.

Planning the audit -2/3

- ii. Companies having a significant FDI stake etc are different from companies which have diversified shareholding.
- iii. If there is a presence of institutional investors/ strategic investors

Management Structure:

- Companies managed by a professional top management are different from those which have a shareholder-manager at the top.
- Companies which have more flat top management may be less at risk than those with a single head.

Board quality – independent directors:

- Are the IDs also directors in other companies of repute?
- Are the IDs strong corporate governance professionals?

Planning the audit -3/3

- **Simplicity of control:**
 - How is the shareholding in the company;
- **Related party transactions:**
 - Sale of output to holding/subsidiary/ affiliate companies;
 - Purchase of inputs/capital goods from related parties;
 - Financial transactions with related parties;
 - Appointment of KMPs' relatives to offices.

Composition of Board of directors

- Whether the Board is duly constituted-
 - This refers to compliance with statutory provisions;
 - Directors appointed as per provisions of law;
 - Rotational/non rotational directors;
 - Minimum number of independent directors;
 - Woman director.
- Proper balance of independent, non executive and executive directors-
 - Changes during the year were compliant with the law;
 - Whether approval or intimation to sectoral regulators was required to be made.

Board / Committee related compliances

**Nature of
Committees
formed, TOR**

**Flow of
information**

Powers delegated

**Effectiveness of
meetings,
decisions taken**

Familiarization of IDs

General meeting related compliances

Approval for mandatory items in the required manner

Disclosure in explanatory statement

Manner of voting related compliances

Presence of required persons at the GM

Post GM compliances

Key Provisions under Companies Act, 2013



Key focus areas under Act, 2013

Section 42 – Private placement

Sections 55, 62– Shares

Section 71 – Debentures

Sections 73, 76 Deposits

Sections 77 to 82 Charges

Section 89 Beneficial interest

Section 90-Register of SBO in a Company

Sections 123 to 125 – Dividend, IEPF

Sections 134– Board’s Report

Section 135 – CSR

Key focus areas under Act, 2013

Section 139– Auditors

Section 149, 152, 161– Board composition

Section 177, 178– AC, NRC, SRC

Section 179 , 180 – Powers of Board, Restriction

Section 184- Disclosure of interest by directors

Section 185 – Loans to directors and related entities

Section 186- Loans and investments by companies

Section 188 – Related party transactions

Section 196, 197 – Managerial Remuneration

Section 203– Appointment of KMPs

Common audit findings under Act, 2013-1/4

- Section 77-87
 - Register of charges may not have an entry for the floating charge created.
 - Whether the register reflects same amount against each charge ID as reflecting in the index of charges.
- Section 177
 - Scrutiny of inter-corporate loans and investment.
 - Evaluation of the performance of the auditor
 - Approval for managerial remuneration, CSR expenditure and other RPTs.
 - Absence of specific whistle blower policy. Companies adopt the code of the parent overseas company which is kind of code of ethics.
 - Evaluation of internal financial controls and risk management systems;
 - Review of the functioning of the whistle blower mechanism.

Common audit findings under Act, 2013-2/4

- Section 118
 - Minutes not carrying date of entry
 - Minutes do not specify mode of attendance and compliance of VC norms.
- Section 135
 - being channelized by writing a cheque (s) based on requirement of the beneficiary/project over a financial year or even longer.
 - Not placing the utilization report or impact analysis.
 - Only 1-2 meetings of CSR in a year.
- Section 139
 - Appointment not done for block of 5 years
 - Non-audit services not approved by Audit Committee.
- Section 179
 - Absolute delegation without caveats, reporting back
 - Non-filing of MGT-14 in case of delegation, modification of powers delegated.

Common audit findings under Act, 2013-3/4

- Section 185, 186
 - Lending in violation of Section 185.
 - Route of co-applicant/ co-borrowing
 - Waiver of interest on loans
- Section 197
 - Breach of ceiling without shareholder approval.
 - Remuneration to directors for professional service u/s 197 (4)
 - Disclosure in Notice of general meeting not in line with Schedule V;
- Section 203
 - More than one position held by same person;
 - Existing KMPs taking up board positions without approval.
 - Not filing casual vacancy within 6 months.

Common audit findings under Act, 2013-4/4

- Statutory Registers
 - Register u/s 189
 - MBP-4, Part B not updated in line with MBP-1 .
 - Part A of the Register not placed in the next BM.
 - Register u/s 187 w.r.t. shares held by nominees in demat not maintained.
 - Register of Directors and director's shareholding not updated
 - Register of members not updated in case of transfers from one nominee to another
 - SBO Register not maintained.
- Others
 - Not opening of separate bank account for dividend.
 - Consent as per SS-1 for circulating the UPSI at shorter notice.
 - Notice in Form BEN-4 not sent to non-individual shareholders holding more than 10%
 - Updating list of related parties under IND-AS 24
 - Familiarizing the Board of regulatory updates
 - Especially Banks, NBFCs and HFCs.
 - Attendance sheets not carrying signature of invitees.

Compliances under Listing Regulations



Compliances under Listing Regulations (1/2)

- Eligibility for exemption under CG Norms
- Board related;
 - Composition, information to be placed, number of directorship related,
 - Obligations w.r.t. IDs, NEDs,
- Committee related
 - Composition, terms of reference, actual information placed before the Committees;
- Filing of information/ returns
 - Quarterly, half yearly, annually
- Publication of notice/ website related compliances;
- Disclosure of material events;
 - Prior and post.
- Financial results
 - Format, disclosure as per Schedule VI, intimations.
- Shareholding
 - MPS, filing of SHP, reclassification of holdings

Compliances under Listing Regulations (2/2)

- Annual report related;
- Subsidiary related compliances
- Policy related compliances
- Related party transactions
 - Prior Audit Committee approval obtained?
 - Where subsequently ratified, was it on account of mere breach of limits granted under omnibus approval or delayed identification of related party?
 - Whether the list of related party is regularly updated
 - Identification of related parties as per IND-AS 24.
 - Whether sufficient information is placed before AC to ascertain if the RPT is in the interest of the company?
 - Any external agency certificate to evaluate if transactions were on arm's length?
 - Whether material RPT reported in quarterly CG report?
 - Whether material transactions approved by shareholders?

Compliances related to subsidiary-1/2

- Policy for determining 'material' subsidiary;
- Composition of Board
 - At least 1 ID of holding co in the material unlisted sub;
- Review of financial statement by Audit committee
 - Particularly, investments made by the unlisted subsidiary;
- Minutes of unlisted subsidiary
 - To be placed before Board of Hold co;
- Statement of all significant transactions and arrangements of unlisted subsidiary
 - Periodical placement before Board;
- Not to dispose off shares of material subsidiary
 - Resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50% without passing a special resolution;
 - Not applicable for a scheme of arrangement duly approved by a Court/Tribunal.
- Secretarial Audit of material unlisted subsidiary incorporated in India

Compliances related to subsidiary-2/2

- Sell, dispose, lease of assets of material sub
 - Amounting to more than 20 % of its material sub on an aggregate basis during a financial year;
 - Unless prior SR;
 - Not applicable for a scheme of arrangement duly approved by a Court/Tribunal;
- Disclosure to be provided in the Corporate Governance Report (forming part of Annual Report)-
 - Annual affirmations on composition of Board of unlisted material sub and Compliance of Corporate Governance requirements with respect to subsidiary;
- Disclosure of event related to subsidiary which are material for Hold Co to SE;
- Disclosing details of payment made to statutory auditor of the parent and all entities in the network firm/network entity of which the statutory auditor is a part.
- Reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary by AC

Material Events

- Reg 30 read with Schedule III:
 - Deemed material events;
 - No determination of materiality is required;
 - To be disclosed asap to SE;
 - First to disclose to SE and then others;
 - Events to be material based on determination;
 - To check provisions in the Policy;
 - Whether the Policy is specific for the manner of determination
 - Subjective or objective criteria;
 - Whether Committee of KMPs is always responsible for determination of materiality;
 - What factors are considered for such determination;
 - Whether any rule of thumb is provided internally for such determination;
 - Minutisation of decision taken by the Committee;

Required policies, plans, framework etc



List of policies, framework-1/2

- **Companies Act, 2013**
 - Corporate Social Responsibility Policy (Section 135);
 - Whistle Blower Policy (Section 177);
 - Policy, relating to the remuneration for the directors, key managerial personnel and other employees (Section 178);
 - Risk Management Policy [Section 134(3)(n)];
 - Framework for formal annual evaluation by the Board of its own performance, that of its committees and individual directors [Section 134(3)(p)];
- **SEBI (PIT) Regulations**
 - Codes of Fair Disclosure and Conduct [Reg 8];
 - Code of Conduct to Regulate, Monitor and Report Trading by Designated Persons [Reg 9];
 - Systems for internal controls; [Reg 9A];
- **SEBI circular dated April 20, 2018**
 - Policy on stationery management.

List of policies, framework-2/2

- SEBI (LODR) Regulations, 2015
 - Policy for preservation of documents (Reg 9);
 - Policy for determining ‘Material Subsidiary’ [Reg 16(1)(c)];
 - Policy on succession planning (Reg 17)
 - Code of Conduct [Reg 17(5)];
 - Risk assessment and minimization procedures [Reg 17(9)];
 - Policy on Board Diversity (Reg 18);
 - Risk Management Policy (Reg 21);
 - Vigil Mechanism (Reg 22);
 - Policy on materiality of Related Party Transactions (Reg 23);
 - Policy for determination of materiality of the disclosure of events and information [Reg 30(4)(iii)];
 - Archival Policy [Reg 30(8)];
 - Business Responsibility Policy (Reg 34);
 - Dividend Distribution Policy (Reg 43A);

Policy on Material Subsidiary

- Whether the Policy covers the process of determination of a subsidiary as material?
- Whether the Policy provides for the specific compliances to be observed by the company on having a material sub? Should include compliances related to:
 - Disposal of the shares in such sub;
 - Selling, disposing and leasing of assets;
 - Composition of Board with 1 ID of hold co. in case of Material non-listed Indian sub;
- Whether the Policy covers general compliances related to subsidiaries? Should include compliances related to-
 - Review the financial statements, in particular, the investments made by the unlisted subsidiary company by audit committee;
 - Placing of statement of all significant transactions and arrangements entered into by the unlisted sub before the Board of hold co;
 - Placing of board meeting minutes of unlisted sub before the board of hold co.

Policy on Determination of Materiality

- Key principles of determination of materiality;
- Deemed events;
- Guidelines of determination of materiality;
- Events based on guidelines;
- Factors in arriving materiality decision;
 - Quantitative criteria may be based on Price of shares, assets, turnover
- Guidance when an event is deemed to have occurred;
- Manner of disclosure of events;
- Person responsible for disclosure;
- Preservation of records.

Related Party Transactions Policy

- Whether the Policy provides for the manner of review and approval of the RPTs
- Whether criteria for omnibus approval has been approved by the Board? Whether the same has been incorporated in the Policy?
- Whether the Policy specifies the manner of approval for transactions not at arm's length/ not in the ordinary course of business?
- Whether the Policy provides the concept of ordinary course of business?
- Whether the Policy covers how to determine arm's length nature of a transaction?
- What all disclosures are required?
 - Board's report;
 - Corporate Governance Report;
 - Annual affirmation to SE;
 - Entry in registers.

Nomination and Remuneration Policy

- Whether the Policy is clear on its scope?
- Whether the terms of reference of NRC is covered?
- What are the principles for selection of IDs?
- What is the overall criteria for selection of executives of the company?
- What are the general policies for remuneration?

Dividend Distribution Policy

- General policy of the company as regards dividend;
- Considerations relevant for decision of dividend pay-out; External & internal factors:
 - Statutory requirements;
 - Agreements with lending institutions/ Debenture Trustees;
 - Proposals for major capital expenditures etc;
 - Extent of realized profits as a part of the IND AS profits of the Company;
 - Expectations of major stakeholders, including small shareholders;
 - Operating cash flow, net sales, return on invested capital;
 - Magnitude of earnings;
- Circumstances under which dividend payout may or may not be expected;
- Manner of utilisation of retained earnings;

Common audit findings under LODR-1/2

- Incorrect interpretation of exemption under Reg. 15
- Terms of reference not reviewed annually to align with amendments.
- Regulation 30
 - Decision of KMPs not minutised.
 - Changes in details of authorised KMP under Reg. 30 not informed to stock exchange.
- Non-intimation of issue of duplicate share certificates.
- Website disclosures do not reflect
 - Information filed with the stock exchanges
 - Contact information of GRO
 - Newspaper advertisements.
 - Shareholding pattern
- Information to stock exchange on ISIN circular compliance
- That there is no restrictive clause under AoA for consolidation and re-issuance of debentures.

Common audit findings under LODR-2/2

- Lapse/Delay in intimation of record dates / payment date in case of listed debentures
- Matters to be placed before Board
 - Quarterly details of forex exposures
 - Minutes of unlisted subsidiary
- Publishing in vernacular newspapers in English language
- Policy on stationery management
- Approval under Reg 17 (1A) of LODR

Compliances under PIT Regulations



Code of Conduct for Prohibition of Insider Trading

- Definition of Designated persons
 - Whether extensively covers the persons involved? Definition aligned with recent amendments?
- Pre-clearance limit for trading
 - Whether the same is determined on dual aspect – Eg. 1000 shares or value of Rs. 10 lakhs whichever is lower.
 - Whether prior to approving any trades, the compliance officer takes **declarations** to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information?
 - Whether the code of conduct specified any reasonable timeframe, which in any event shall **not be more than seven trading days**, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed?

- Reporting by the Compliance Officer:
 - To the chairman of Audit Committee/ Board;
 - Periodicity of reporting, matters reported;
- Closing and re-opening of trading window
 - As per provisions, differential closing of TW.
 - For all securities listed?
- Contra trade restrictions
 - Procedure and circumstances for grant of waiver.
- Process and circumstances of bringing people inside;
- Mechanism to handle leak of UPSI;
- Whether the code provides for all formats of reporting?
- Violations under the Code
 - Reported to SEBI?
 - Any system of taking disciplinary action?
- Code framed as an intermediary?
- Code amended as per recent amendments in the Regulations?

Code of Practices and Procedures for Fair Disclosure of UPSI

- Definition of UPSI;
- Person responsible for disclosure;
- Functions of the Chief Investor Relations Officer;
- Disclosure Policy;
 - Need to know basis
 - Third party dealings
 - ✓ Practice of making transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the website
- Dealing with market rumours
 - Verification and response
- Is there a separate investor relation policy which provides for who attends the investor meets, who addresses rumours, what is the silent period etc.

Other checkpoints

- Whether the employees are sensitized on the Code of conduct and requirement under the regulations?
- Whether the scope of employees covered under Code is very wide covering all employees?
 - In that case, whether the company follows different practice in case of violation by a designated employee versus an employee having no access to UPSI?
- Mechanism adopted by Company to implement insider trading code
 - Mobile app, software, intranet to ensure real time updation by employees as well as compliance officer.
 - How does information flows to compliance officer and how the same is reported by Compliance officer to chairman of Audit/ Board periodically.
- Internal controls implemented by Company
- Disclosure requirements
 - Initial, continual and off-market.
 - Tracking of trades by company

Other Checkpoints – grey list, analysts meet

- What is grey list?
 - Those securities (external companies) in respect of which executives of the company may have UPSI
 - Not only does the company bar trading on its own securities, but it also bars trading on external securities, based on likelihood of UPSI with company's executives
- Whether the Company maintains a grey list?
 - Is there a mechanism for the implementation of the same?
- Frequency of unscheduled meetings with analysts.
 - Whether transcripts put up on website, presentation shared with Stock Exchange.
- Maintenance of records, structured digital database.
- Compliances by listed entity as a DP.
- Whether any action has been initiated by SEBI against the company or any other of its promoter, director KMP, officer or employee under PIT, regulation in present or past?

Checkpoints in brief – trading window

- Whether trading window is closed only when agenda for Board meeting is dispatched to directors and intimation of BM made to stock exchange?
- Whether the company has the practice of differential closure of trading window (it may be closed for a longer period for employees actually involved in a particular UPSI)
- Whether the company has prescribed a trading period known as trading window, and trading window shall be closed at the time where price sensitive information are unpublished
 - To ensure no trading in securities by the directors or designated employees during closure of trading window
- Whether the disclosures made by any person includes those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions?

Common audit findings under PIT-1/2

- Code of Conduct
 - Not aligned with the Schedule
 - Identification of DPs
 - Code of Conduct as fiduciary/ intermediary not framed;
 - Grey list not maintained.
 - Reporting of off-market trades not covered.
 - Not reporting violations of the Code by DPs to SEBI.
- Code of Fair Disclosure
 - Framing and amendment of Code of fair disclosure not informed to the stock exchange.
 - Not uploaded on website.

Common audit findings under PIT-2/2

- Changes in details of CIRO not informed to the stock exchange
- Employees not sensitized under the regulations. Frequent violations.
- Non-intimation of closure of trading windows to external agencies.
- Not tracking trades of listed preference shares/ listed debentures.
- Mechanism for handling leak of UPSI.
- No mechanism to evaluate effectiveness of internal controls.
- Structured digital database not maintained in the manner prescribed.

SEBI (SAST) Regulations, 2011



Checkpoints in brief

- Compliances as a Target Company
 - In case of open offer, where the TC has performed its obligations under SAST [Reg.26]
- Compliances as an acquirer or promoter
 - Whether company has any investment in equity listed entities?
 - Whether there were any acquisition of shares or voting rights or control?
 - Open offer triggered or eligible for exemption?
 - In case of exemption, check reporting as per Reg. 10.
 - Disclosure under Reg. 29 (1) & (2) and Reg. 30.
 - As per format prescribed.
 - Whether the investments have been pledged or encumbered?
 - Disclosure under Reg. 31.
 - Whether confirmation on encumbrance placed before Audit Committee.
 - Whether shareholder holding 25% of the paid up capital of the company has acquired 5% or more share or voting rights in financial year?

FEMA Regulations – FDI, ODI and ECB

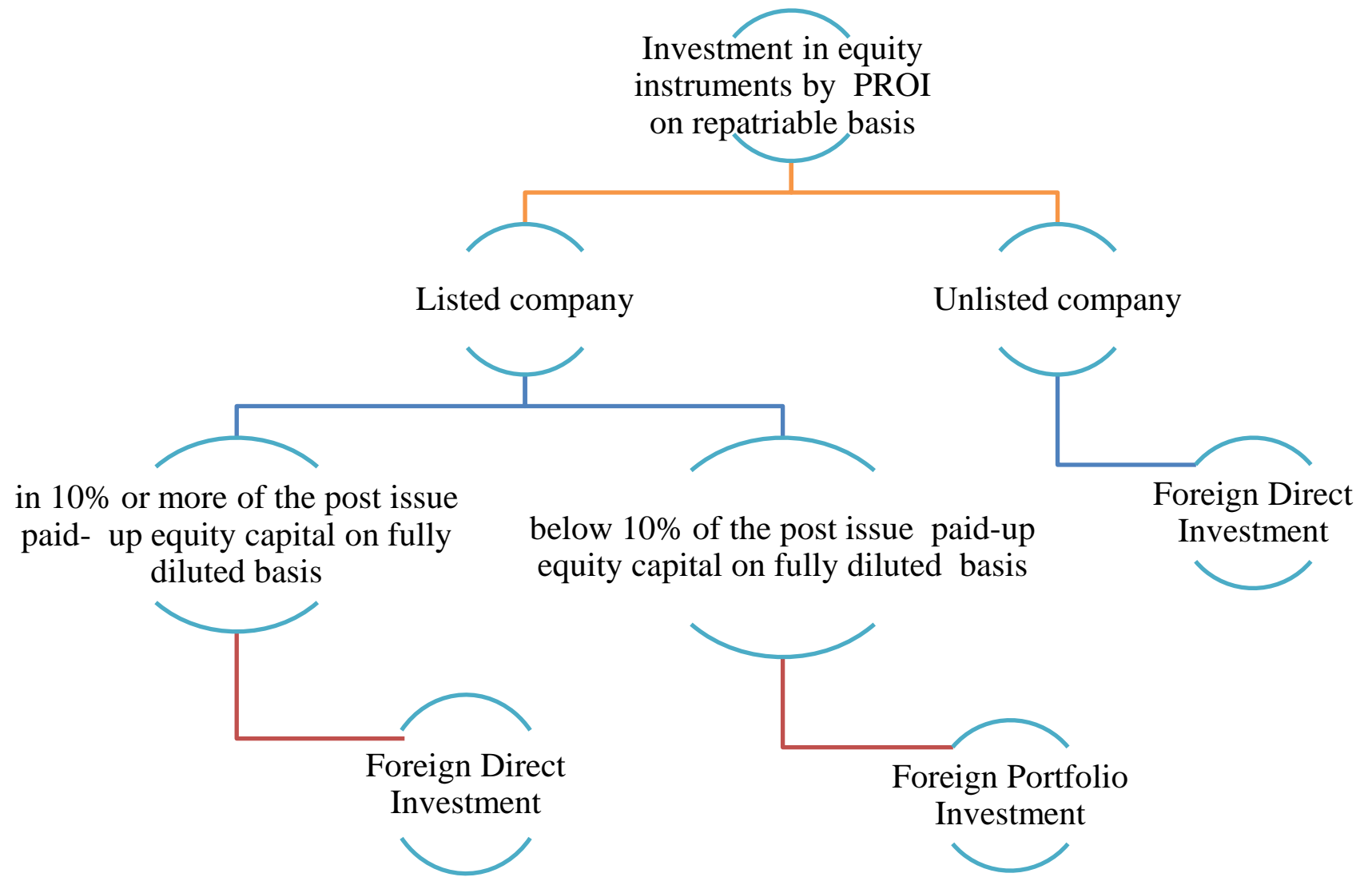


FEMA- Foreign Direct Investment

FEM (Non – Debt Instruments) Rules, 2019

- notified on October 17,2019
- supersedes FEM (Transfer of Issue of security by a person resident outside India) Regulations, 2017
- supersedes FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018
- FEM (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019
 - notified on October 17, 2019
- Sectors specified v/s Sectors not specified
- Automatic v/s approval route
- Foreign Direct Investment v/s Foreign Portfolio Investment
- Direct investment v/s indirect foreign investment
- Repatriable v/s non-repatriable

FDI v/s FPI



Checkpoints under FDI

- Issue of equity instruments against
 - Swap of equity instruments;
 - Import of capital goods or machinery or equipment;
 - Pre-operative or pre-incorporation expenses.
- Rights issue or bonus issue
 - Sectoral cap compliance, pricing, renunciation
- ESOP
 - Sectoral cap, approval required, if any
- Schemes of arrangement
 - Scheme approved by NCLT, sectoral cap, sector of transferee company.
- Share warrants
 - Conversion formula/ price determined upfront. 25% upfront, balance 18 months.

Checkpoints under FDI

- Transfer by entity
 - Acquisition from PROI
 - Transfer to PROI
 - Pricing guidelines and reporting compliance
- Downstream investment by entity which is FOCC
 - Adherence to conditions for DI;
 - Reporting – to FIFP and RBI
 - Annual compliance
- Reporting
 - on FIRMS within timeline
 - Allotment & Transfer of equity instruments
 - Downstream investment
 - ESOP
 - Depository Receipts
 - Reporting of FLA within timeline
 - On FLAIR, by July 15
 - Late submission fee levied, if any
 - Whether paid? Or matter compounded before RBI?

Checkpoints under ODI

- Financial commitment within 400% of net worth
 - Whether RBI approval applicable
- Receipt of share certificate or proof of invest within 6 months.
- Repatriation of receipts
 - within 60 days.
 - Within 90 days in case of disinvestment
- Any charge created on domestic assets in favor of overseas lender to JV/WOS/SDS
- Sale of shares in JV/WOS
 - Write off, if any, Pricing, Extent of operation, approval of RBI required, if any.
- Restructuring of balance sheet of JV/WOS by listed/ unlisted Indian Party
 - Reporting requirement.
- Reporting requirements
 - Form ODI – Part I (on remittance);
 - Form ODI – Part II (APR) by Dec 31;
 - Form ODI – Part III (on Disinvestment)
 - Form ESOP (annually)

Checkpoints under ECB

- Whether company is an eligible borrower?
 - All entities entitled to receive FDI
- Whether the lender is a recognized lender?
 - The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECBs.
 - Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
 - Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad.
- Whether the ECB is for permitted end-use?
- Whether ECB is availed for minimum average maturity
- Whether the ECB is compliant of all-in-cost ceiling?
- Whether the ECB availed is within prescribed ceiling?
- Compliance with Reporting requirements
 - Form ECB, Form ECB -2, FLA, FC-GPR (in case of conversion)

End use prescriptions

- The negative list, for which the ECB proceeds cannot be utilized, would include the following:
 - Real estate activities.
 - Investment in capital market.
 - Equity investment.
 - Repayment of Rupee loans
 - **except in case of ECB from foreign equity holder.**
 - On-lending to entities engaged in above activities.

Minimum Average Maturity Period (MAMP)

Generally MAMP for ECBs shall be **3 YEARS**. However, different criteria of MAMP is provided for some companies:

Raised by (Borrower)	Raised from (Lender)	Raised upto/for	MAMP
Manufacturing companies	Eligible Lender	Upto 50 million or its equivalent per FY	1 year
Eligible borrower	Foreign equity holder	a) General corporate purposes b) Repayment of rupee loans	5 years
Eligible borrower	Eligible Lender except foreign branches/ overseas subsidiaries of Indian banks	a) Working capital purposes or general corporate purposes b) Repayment of rupee loans availed domestically for purposes other than capital expenditure	10 years
NBFCs	Eligible Lender except foreign branches/ overseas subsidiaries of Indian banks	On lending for working capital purposes or general corporate purposes	7 years
NBFCs	Eligible Lender except foreign branches/ overseas subsidiaries of Indian banks	On leading for repayment of rupee loans availed domestically for purposes other than capital expenditure	10 years

ICSI Auditing Standards

CSAS-1 to CSAS-4

- These Standards shall be effective and recommendatory to be accepted by the auditors on or after 1st July 2019. However, the same shall be mandatorily applicable to the audit assignments obtained on or after **1st April 2021** (*Earlier April 2020 extension provided in view of COVID-19 pandemic*).
- Guidance note has been issued for CSAS-1 to CSAS-4

ICSI-Auditing Standards

CSAS-1:

Auditing Standard on Audit Engagement

1. Appointment, engagement letter;
2. Communication to previous auditor;
3. Limits on audit engagement;
4. Conflict of interest*;
5. Confidentiality

CSAS-2:

Auditing Standard on Audit Process & Documentation

1. Audit planning
2. Risk assessment
3. Audit checklists
4. Collection, verification and analysis of audit evidence.
5. Documentation, record keeping and retention.

CSAS-3:

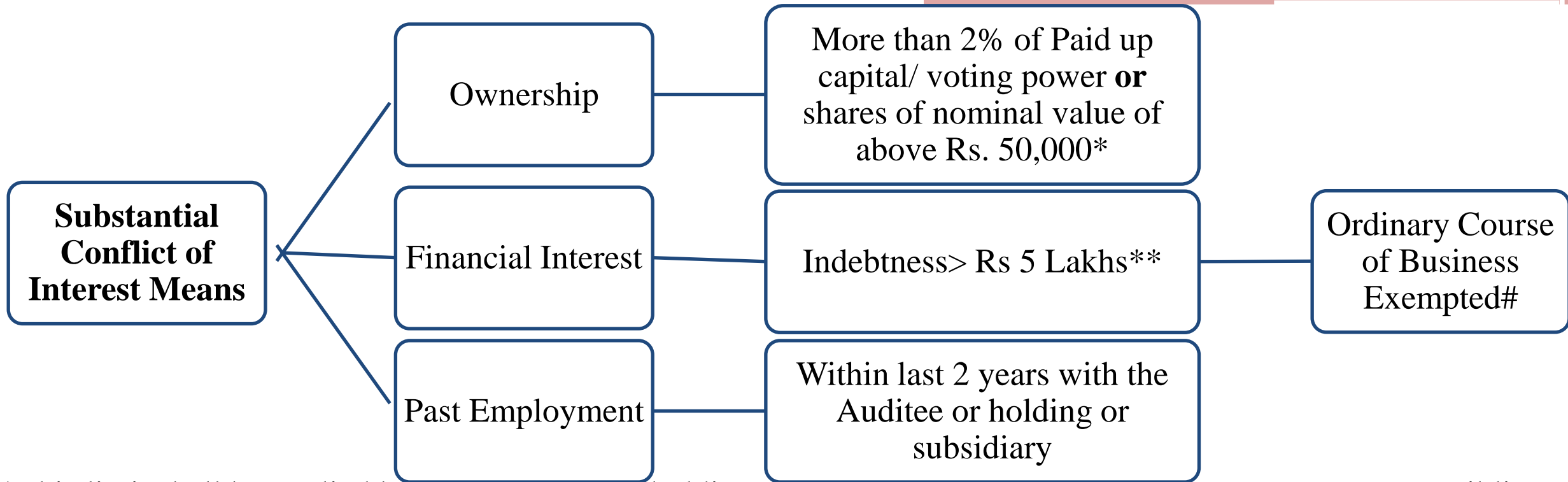
Auditing Standard on Forming of Opinion

1. Modified opinion
2. Unmodified opinion
3. Specifying Auditor's responsibility in the report;
4. Format of report, things to be specified in the signature block.

CSAS-4:

Auditing Standard on Secretarial Audit

1. Identification and segregation of applicable laws;
2. Verification of corporate conduct and compliance of laws;
3. Board composition, Board processes;
4. System and process;
5. Fraud reporting



*This limit shall be applied based on combined holding of the Auditor along with partners, spouse, parent, sibling, and child of such person or of the spouse, any of whom is dependent financially on such person.

** The limit of Rs. 5 lakh shall be applicable to the combined indebtedness of the audit firm including indebtedness by the partners in their individual capacity.

The term “ordinary course of business” has not been defined. Hence, it can be subjective and may vary on case-to-case basis.

Limits

Audit Assignments	Limit per F.Y
1. Secretarial Audits per partner/ PCS : a. Unit not peer reviewed b. Unit peer reviewed	 10 15
2. Annual Secretarial Compliance Reports individually/per partner a. Unit not peer reviewed b. Unit peer reviewed	 5 10
3. In case of the following, Secretarial Audit/ Secretarial Compliance Report to be done by Peer Reviewed Units only : a. Top 100 companies as per market capitalization b. Top 500 companies as per market capitalization c. All listed companies d. All companies	 w.e.f. 01.04.2020 w.e.f. 01.04.2021 w.e.f. 01.04.2022 w.e.f. 01.04.2023

Format of Audit Report (GN on CSAS – 3)

- The report shall be addressed to the Appointing Authority;
- Shall have a separate para on Auditor's responsibility;
- Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report;
- Audit Report may point out areas of compliance and non-compliance, as well as areas for improvement;
- Audit Report prepared must be precise, accurate, clear and should be unbiased with suggestions and opinions;

Auditor's responsibility

- Separate para expressing opinion on following:
 - Whether the audit has been conducted as per the applicable Auditing Standards.
 - Whether the Auditor has obtained reasonable assurance about whether the statements prepared, documents or Records maintained by the Auditee are free from misstatement.
 - That Auditor has the responsibility to only express his opinion on the evidences collected, information received and Records maintained by the Auditee or given by the Management.
 - Whether the Auditee has followed applicable laws, act, rules or regulations in maintaining their records, documents, statements, or have complied with applicable laws or rules while performing any corporate action.

- Further, as per Peer Review Guidelines of the ICSI, it is mandatory to mention the Peer Review Certificate Number in Secretarial Audit Report/Annual Secretarial Compliance Report and the signature of the PCS should be in following format:
- As per UDIN Guidelines, 2019 effective from Oct 1, 2019 UDIN to be specified in the attestation.

<p>Date:.....</p> <p>Place:.....</p>	<p>For XYZ & Associate Company Secretaries Firm Registration No. Name</p> <p>FCS</p> <p>CP.....</p> <p>PR</p> <p>UDIN.....</p>
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Annexure to Secretarial Audit Report issued by Company Secretary in Practice
(Qualified/Non-qualified)

To,
The Members
XYZ Limited

Our report of even date is to be read along with this letter.

1. Maintenance of secretarial record is the responsibility of the management of the company. Our responsibility is to express an opinion on these secretarial records based on our audit.
2. We have followed the audit practices and processes as were appropriate to obtain reasonable assurance about the correctness of the contents of the Secretarial records. The verification was done on test basis to ensure that correct facts are reflected in secretarial records. We believe that the processes and practices, we followed provide a reasonable basis for our opinion.

Annexure to Secretarial Audit Report issued by Company Secretary in Practice (Qualified/Non-qualified)

3. We have not verified the correctness and appropriateness of financial records and Books of Accounts of the company.
4. Where ever required, we have obtained the Management representation about the compliance of laws, rules and regulations and happening of events etc.
5. Where ever required, we have obtained the Management representation about the compliance of laws, rules and regulations and happening of events etc.
6. The Secretarial Audit report is neither an assurance as to the future viability of the company nor of the efficacy or effectiveness with which the management has conducted the affairs of the company.

Guidance to professionals in practice to carry out their assignments – 1 of 2

- ICSI guidance dated [April 20, 2021](#)

- PCS may sign/authenticate/attest any return/report/certificate/any other document, electronically by DSC instead of physical signatures in accordance with the IT Act, 2002 and the UDIN norms, wherever applicable, as prescribed by ICSI shall be complied with;
- DSC shall contain date and time stamp, in such cases individual/firm stamp/seal need not be affixed;
- PCS shall ensure non disclosure/ confidentiality norms for data access, wherever required;
- Secretarial audit/other assignments maybe undertaken virtually by using appropriate IT tools such as data rooms, cloud servers, remote access tools for accessing relevant documents including signed extracts of minutes;
- PCS may obtain electronically signed extracts of minutes or other relevant records/documents, for their purpose of their records.

Guidance to professionals in practice to carry out their assignments – 2 of 2

- ICSI guidance dated April 20, 2021

- Client meetings may be conducted virtually;
- PCS shall adhere to best professional standards and practice
- PCS shall mention facts about prevalent conditions which has impacted verification of documents and may include a statement as give below:
 - “We have conducted online verification and examination of records as facilitated by the Company, due to Covid-19 and subsequent lockdown (wherever applicable) for the purpose of issuing this report/certification/ document (as applicable)”;
- Government norms w.r.t. containment of COVID-19 shall be strictly complied with.

ADVISORY FOR ENSURING COMPLIANCE UNDER REG. 39(4) AND SCHEDULE VI OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 WHILE ISSUING SECRETARIAL AUDIT REPORT

Dear Professional Colleague,

In terms of the provisions of Section 204 of Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed Company and a Company belonging to prescribed class of companies shall annex with its Board's Report, a Secretarial Audit Report, given by a Company Secretary in Practice, in the prescribed Form MR -3.

In terms of Regulation 24A (1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("hereinafter referred as SEBI LODR"), every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a Company Secretary in Practice. For this purpose, Secretarial Audit Report is to be given in Form MR-3 prescribed under Section 204 of Companies Act, 2013.

Further, Regulation 39(4) of the SEBI LODR requires a listed entity to comply with the procedural requirements specified in Schedule VI while dealing with securities issued pursuant to the public issue or any other issue or corporate benefits, physical or otherwise, which remain unclaimed and/or are lying in the escrow account, as applicable.

With an intent to further strengthen the effectiveness of the Secretarial Audit Report and protect the interest of investors of unclaimed shares, Company Secretaries in Practice are advised to thoroughly check the compliance with the procedural requirements delegated to share transfer agents by a listed entity in respect of dealings with unclaimed securities under Regulation 39(4) and Schedule VI of SEBI LODR specifically w.r.t Unclaimed/Demat Suspense Account while issuing Secretarial Audit Report to listed entities.