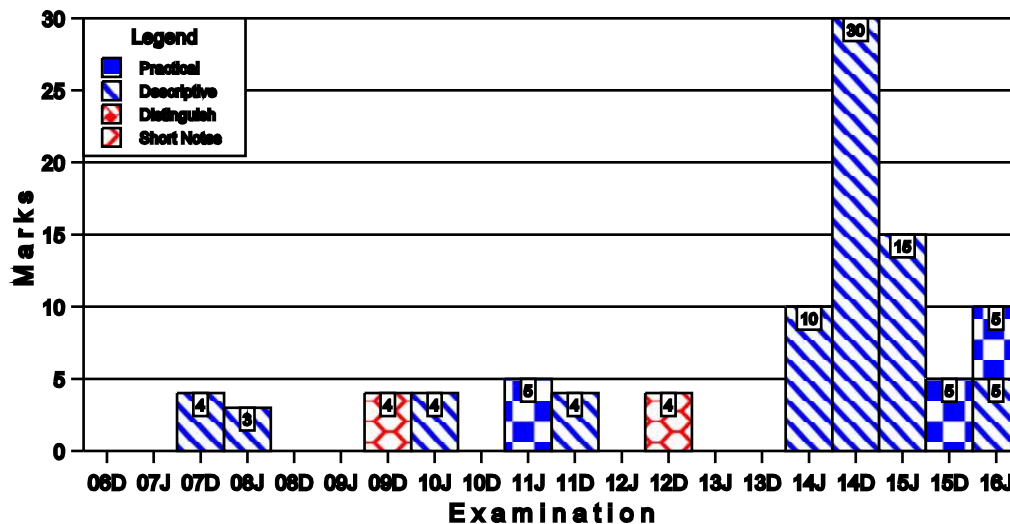


1 Secretarial Audit and Secretarial Standards - An Overview

This Chapter Includes

- Secretarial Audit – Concept
- Objective, Scope of Secretarial Audit
- Benefits and Beneficiaries
- Secretarial Audit Process
- Professional Responsibilities and Penalties
- Secretarial Standards – Concepts
- Secretarial Standards Under the Companies Act, 2013
- Secretarial Audit Report – Format

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



Chapter at a Glance

Topic	Major Highlight
Secretarial Audit	It is the process of verification of compliance with rules, procedures, maintenance of books, records etc. by an independent professional to monitor compliance with various legal requirements.
Secretarial Standard	The term 'Secretarial Standard' is defined as an explanation to Section 205 of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.
Dividend	Dividend includes any interim dividend.
Secretarial Standards Board (SSB)	The Secretarial Standards Board (SSB) formulates Secretarial Standards taking into consideration the applicable laws, business environment and the best secretarial practices prevalent.

SECRETARIAL AUDIT [SECTION 204]:

Section 204(1) of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies. Such companies are required to annex a secretarial audit report with its Board's report. As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with section 179 of the Companies Act, 2013 secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has prescribed the following class of companies for the purposes of the above said section:

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) 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)]

Company secretary in practice has been exclusively recognised for conducting secretarial audit. The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under rules. As per sub-rule (2) of Rule 9, the format of the Secretarial Audit Report shall be in Form No. MR.3.

Section 134 and Sub-section (3) of Section 204 provides that the Board of Directors, in its report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in the secretarial audit report.

Penalty: 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 one lakh rupees but which may extend to five lakh rupees [Section 204(4)].

Question:

Mr. Ravi, a practicing chartered accountant who is also a qualified company secretary, desires to take up the work of practicing company secretary, in addition to the audit of the accounts of the companies. Discuss the legal position.

Answer:

As per Reg. 168, a company secretary in practice cannot in any business or profession other than the profession of the company secretary unless it is permitted by a general or specific resolution of the Council.

However, he may act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor (but not financial auditor), management consultant, or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Courts of Law, Labour Tribunals, or any other statutory authority.

FUNCTIONS OF THE COMPANY SECRETARY:

Section 205 specifies the functions to be performed by the Company Secretary in carrying out the Secretarial Audit. These include:

1. Reporting to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
2. Ensuring that the company complies with the applicable secretarial standards.
3. Discharging such other duties as may be prescribed.

OBLIGATION OF THE COMPANY:

Section 204(2) provides that it shall be the duty of the company to give all assistance and facilities to the Company Secretary in practice, for auditing the secretarial and related records of the company.

Section 204(3) provides that the Board of Directors, in their report made in terms of Section 134(3), shall explain in full any qualification or observation or other remarks made by Company Secretary in Practice in his report under this section.

Objectives of Secretarial Audit:

The objectives of Secretarial Audit may be briefed as under:

1. To check & Report on Compliances
2. To Point out Non-Compliances and Inadequate Compliances
3. To protect the interest of the customers, employees, society etc.
4. To avoid any unwarranted legal actions by law enforcing agencies and other persons as well.

Secretarial Audit and Company Secretary in Practice:

Company secretary in practice has been exclusively recognised for conducting secretarial audit. In terms of Section 204(1), 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.

In order to provide guidance to its members who are in practice to adopt a robust and efficient process of Secretarial Audit, the Institute of Company Secretaries of India has issued this guidance note.

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 at a duly convened board meeting of the company.

Time of appointment:

It is advisable that the Secretarial Auditor is appointed at beginning of the year as secretarial audit entails checking of compliances on a continuous basis. As a good practice, the Secretarial Auditor should submit a report to the Board at the end of each quarter as to the compliances of the company.

Notice of Annual General Meeting:

Para 1.2.1 of draft Secretarial Standard on General Meetings requires that the notice in writing of every Meeting shall be given to every Member of the company. Such Notice shall also be given to the Directors and Auditors of the company, to the Secretarial Auditor, to Debenture Trustees, if any, and, wherever applicable or so required, to other specified persons.

Rights and duties of Secretarial Auditor under the Companies Act, 2013:

Section 143 of the Companies Act, 2013 deals with powers and duties of Auditors. Sub-section (14) of the section provides that the provisions of this section shall mutatis mutandis apply to the Company Secretary in Practice conducting Secretarial Audit under section 204.

Approach to Secretarial Audit:

The object of the Secretarial Auditor's Report is to undertake evaluation and form an opinion and to report to the shareholders as to whether, and if so, to what extent, the company has complied with the laws comprising various statutes, rules, regulations, guidelines about the board processes and existence of compliance management system. This requires knowledge of the corporate laws, economic laws, securities laws, FEMA, and other laws specifically applicable to the company, corporate governance provisions, Secretarial Standards etc. To be able to give an effective report, a Company Secretary in Practice is expected to have the following:

- (1) Knowledge
- (2) Team
- (3) Documentation & back-up
- (4) Third party supporting and evidences
- (5) Adhering to the timelines
- (6) Honesty and impartiality
- (7) Maintaining Audit Diary
- (8) Back- up papers to be maintained.

Benefits and Beneficiaries of Secretarial Audit:**The Benefits:**

The benefits of secretarial audit includes the following:

- (a) It can be an effective due diligence exercise for the prospective acquirer of a company or controlling interest or a joint venture partner.
- (b) It assures the owners that management and affairs of the company are being conducted in accordance with requirements of laws, and that the owners stake is not being exposed to undue risk.
- (c) It ensures the Management of a company that those who are charged with the duty and responsibility of compliance with the requirements of law are performing their duties competently, effectively and efficiently.

- (d) Instilling professional discipline and self-regulations.
- (e) Reduces the work load of the regulators due to better and timely compliances.

The beneficiaries:

The major beneficiaries of Secretarial Audit include:

- (a) Promoters
- (b) Management
- (c) Non-executive directors
- (d) Government authorities/regulators
- (e) Investors
- (f) Other Stakeholders

Crucial area of the Secretarial Audit Report:

There are certain clauses prescribed under the Secretarial Audit, in which probability for defaults that may be committed by the company and its director is more, due to various reasons, therefore proper care must be taken specifically in the matter of following heads:

Companies Act, 2013:

1. Appointment of the KMP
2. Information filed with the ROC for change in the promoters and top 10 shareholders
3. Issuance of share certificate for the shares allotted in the earlier years
4. Acceptance of deposits from the members and general public
5. Unsecured loans obtained from the various sources
6. Loan given or guarantee or security provides to directors and their related concerns
7. Approval of contracts in which directors are interested
8. Appointment in the office or place of profit
9. Registration of creation, modification and satisfaction of charges
10. Transfer of amount of dividend in a separate bank account
11. Remittance of security deposits collected from the employees
12. Payment of dividend
13. Payment of managerial remuneration, etc.

SEBI Rules & Regulations:

1. The Depositories Act, 1996
2. The SEBI (Substantial Acquisition of Shares and Takeovers), 2011
3. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

Other Laws:

1. 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
2. Other laws (depending upon the nature of industry in which company deals)
3. All Secretarial Standards issued by the Institute of Company Secretaries of India.

Penalty for Incorrect Audit Report:

Any failure or lapse on the part of secretarial auditor may attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980.

Further Section 448 of Companies Act, 2013 deals with penalty for false statements. The section provides that if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,— (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be liable under section 447. Section 447 deals with punishment for fraud which provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. In case, the fraud in question involves public interest, the term of imprisonment shall not be less than three years. In view of this, a company secretary in practice will be attracting the penal provisions of section 448, for any false statement in any material particulars or omission of any material fact in the Secretarial Audit Report. However, a person will be penalised under section 448 in case he makes a statement, which is false in any material particulars, knowing it to be false, or which omits any material fact knowing it to be material.

Q.1 What are the laws specifically mentioned in MR-3 which need to be examined while conducting the Secretarial Audit?

A.1 In terms of Form MR-3, the Secretarial Auditor needs to examine and report on the compliance of the following five specific laws:

- (i) The Companies Act, 2013 (the Act) and the rules made thereunder;
- (ii) The Securities Contracts (Regulation) Act, 1956 ("SCRA") and the rules made thereunder;
- (iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;
- (iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;
- (v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ("SEBI Act"):-
 - (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
 - (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
 - (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
 - (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.
 - (e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.
 - (f) 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.
 - (g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
 - (h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998; In addition, the form MR-3, point.
- (vi) also refers to "Other laws as may be applicable specifically to the company.

2.10

■ *Solved Scanner CS Prof. Prog. M-I Paper 2 (New Syllabus)*

Q.2 Is Secretarial Audit applicable to a private company which is a subsidiary of a public company?

A.2 Section 2(71) of the Companies Act, 2013 defines a "Public Company as one

- (a) Which is not a private company;
- (b) Has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital as may be prescribed.

The proviso to the definition states that "Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

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

SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013:

The term 'Secretarial Standard' is defined as an explanation to Section 205 of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Thus, for the first time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

The Companies Act, 2013 has recognised the need for every company to observe Secretarial Standards. Section 118 (10) of the Companies Act, 2013 requires every company to observe secretarial standards with respect to General and Board Meetings. Also, as per Section 205(1)(b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards. Therefore, the companies are required to ensure the observance of all the secretarial standards once these are issued by the Institute of Company Secretaries of India and approved by the Central Government.

So far, the ICSI has issued ten Secretarial Standards, viz.

SS-1: Secretarial Standard on Meetings of the Board of Directors

SS-2: Secretarial Standard on General Meetings

SS-3: Secretarial Standard on Dividend

SS-4: Secretarial Standard on Registers and Records

SS-5: Secretarial Standard on Minutes

SS-6: Secretarial Standard on Transmission of Shares and Debentures

SS-7: Secretarial Standard on Passing of Resolutions by Circulation

SS-8: Secretarial Standard on Affixing of Common Seal

SS-9: Secretarial Standard on Forfeiture of Shares and

SS-10: Secretarial Standard on Board's Report.

The “Secretarial Standard on Meetings of the Board of Directors” (SS-1) & “Secretarial Standard on General Meetings” (SS-2), formulated by the Secretarial Standards Board of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been approved by the Central Government. Adherence to SS-1 & SS-2 are mandatory in terms of sub-section (10) of Section 118 of the Companies Act, 2013. SS-1 applies to Meetings of the Board of Directors and its Committees, in respect of which Notices are issued on or after 1st July, 2015. SS-2 applies to all types of General Meetings, in respect of which Notices are issued on or after 1st July, 2015.

SHORT NOTES

2009 - Dec [8] Write a note on the following :

(v) Secretarial Standards.

(4 marks)

Answer:

SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013

The term 'Secretarial Standard' is defined as an explanation to Section 205 of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Thus, for the first time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

The Companies Act, 2013 has recognised the need for every company to observe Secretarial Standards. Section 118 (10) of the Companies Act, 2013 requires every company to observe secretarial standards with respect to General and Board Meetings. Also, as per Section 205(1)(b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards. Therefore, the companies are required to ensure the observance of all the secretarial standards once these are issued by the Institute of Company Secretaries of India and approved by the Central Government.

So far, the ICSI has issued ten Secretarial Standards, viz.

SS-1: Secretarial Standard on Meetings of the Board of Directors

SS-2: Secretarial Standard on General Meetings

SS-3: Secretarial Standard on Dividend

SS-4: Secretarial Standard on Registers and Records

SS-5: Secretarial Standard on Minutes

SS-6: Secretarial Standard on Transmission of Shares and Debentures

SS-7: Secretarial Standard on Passing of Resolutions by Circulation

SS-8: Secretarial Standard on Affixing of Common Seal

SS-9: Secretarial Standard on Forfeiture of Shares;

SS-10: Secretarial Standard on Board's Report.

SECRETARIAL STANDARDS UNDER THE COMPANIES ACT, 2013

The term 'Secretarial Standard' is defined as an explanation to Section 205 of the Companies Act, 2013 to mean secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government. Thus, for the first time, Secretarial Standards have been accorded statutory recognition under the Companies Act, 2013.

The Companies Act, 2013 has recognised the need for every company to observe Secretarial Standards. Section 118 (10) of the Companies Act, 2013 requires every company to observe secretarial standards with respect to General and Board Meetings. Also, as per Section 205(1)(b), it is the duty of the company secretary to ensure that the company complies with the applicable secretarial standards. Therefore, the companies are required to ensure the observance of all the secretarial standards once these are issued by the Institute of Company Secretaries of India and approved by the Central Government.

So far, the ICSI has issued ten Secretarial Standards, viz.

SS-1: Secretarial Standard on Meetings of the Board of Directors

SS-2: Secretarial Standard on General Meetings

SS-3: Secretarial Standard on Dividend

SS-4: Secretarial Standard on Registers and Records

SS-5: Secretarial Standard on Minutes

SS-6: Secretarial Standard on Transmission of Shares and Debentures

SS-7: Secretarial Standard on Passing of Resolutions by Circulation

SS-8: Secretarial Standard on Affixing of Common Seal

SS-9: Secretarial Standard on Forfeiture of Shares;

SS-10: Secretarial Standard on Board's Report.

FUNCTIONS OF THE COMPANY SECRETARY

Section 205 specifies the functions to be performed by the Company Secretary in carrying out the Secretarial Audit. These include-

1. Reporting to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;
2. Ensuring that the company complies with the applicable secretarial standards;

3. Discharging such other duties as may be prescribed.

OBLIGATION OF THE COMPANY

Section 204(2) provides that it shall be the duty of the company to give all assistance and facilities to the Company Secretary in practice, for auditing the secretarial and related records of the company.

Section 204(3) provides that the Board of Directors, in their report made in terms of Section 134(3), shall explain in full any qualification or observation or other remarks made by Company Secretary in Practice in his report under this section.

2012 - Dec [7] Write a note on the following:

(ii) Secretarial audit

(4 marks)

Answer:

Secretarial Audit [Section 204]

Section 204(1) of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies. Such companies are required to annex a secretarial audit report with its Board's report. As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with Section 179 of the Companies Act, 2013 secretarial auditor is required to be appointed by means of a resolution at a duly convened board meeting.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has prescribed the following class of companies for the purposes of the above said section:

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

Company Secretary in practice has been exclusively recognised for conducting secretarial audit. This section further provides that Secretarial Audit Report is to be submitted in a format prescribed under rules. As per sub-rule (2) of Rule 9, the format of the Secretarial Audit Report shall be in Form No. MR.3.

Section 134 and Sub-section (3) of Section 204 provides that the Board of Directors, in their report, shall explain in full any qualification or observation

or other remarks made by the company secretary in practice in the secretarial audit report.

Penalty: 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 one lakh rupees but which may extend to five lakh rupees [Section 204(4)].

Secretarial Audit [Section 204]

Section 204(1) of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies. Such companies are required to annex a secretarial audit report with its Board's report. As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with Section 179 of the Companies Act, 2013 secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has prescribed the following class of companies for the purposes of the above said Section:

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

Company Secretary in practice has been exclusively recognised for conducting secretarial audit. The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under rules. As per sub-rule (2) of Rule 9, the format of the Secretarial Audit Report shall be in Form No. MR.3.

Section 134 and Sub-section (3) of Section 204 provides that the Board of Directors, in their report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in the secretarial audit report.

Penalty: 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 one lakh rupees but which may extend to five lakh rupees [Section 204(4)].

Example:

Question:

Mr. Ravi, a practicing chartered accountant who is also a qualified company secretary, desires to take up the work of practicing company secretary, in addition to the audit of the accounts of the companies. Discuss the legal position.

Answer:

Reg. 168, prohibits a company secretary in practice from engaging in any business or profession other than the profession of the company secretary unless it is permitted by a general or specific resolution of the Council.

However, he may act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management auditor (but not financial auditor), management consultant, or as a representative on financial matters including taxation and may take up an appointment that may be made by the Central or any State Government, Courts of Law, Labour Tribunals, or any other statutory authority.

2014 - Dec [7] (b) Write a note on the following:

(iii) Overseas investment by proprietorship concern/unregistered partnership. **[Old Syllabus]** (4 marks)

Answer:

Overseas Direct Investments by proprietorship concern / unregistered partnership firm in India

The following terms and conditions are required to be complied with for considering the proposal of ODI, by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the approval route:

- (a) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Govt. of India from time to time.
- (b) The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10%

- of the average export realisation of the preceding 3 years and a consistently high export performance.
- (c) The Authorised Dealer bank is satisfied that the proprietorship concern /unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated.
 - (d) The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India and
 - (e) The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last 3 years' export realisation or 200 per cent of the net owned funds of the proprietorship concern / unregistered partnership firm in India, whichever is lower.

DISTINGUISH BETWEEN

2014 - June [2] (b) Distinguish between the following:

- (ii) 'Foreign direct investment as per OECD' an 'foreign direct investment as per UNCTAD'. **[Old Syllabus]** (5 marks)

Answer:

Foreign Direct Investment as per OECD

The OECD FDI regulatory restrictiveness indexes presented here demonstrate that the services sector tend to have higher FDI restrictions across countries, followed by primary sectors. The manufacturing sector remains the most open economic sector.

Foreign Direct Investment as per UNCTAD

FDI refers to an investment made to acquire lasting interest in enterprises operating outside of the economy of the investor. Further, in cases of FDI, the investor's purpose is to gain an effective voice in the management of the enterprise. The foreign entity or group of associated entities that makes the investment is termed the "direct investor".

DESCRIPTIVE QUESTIONS

2007 - Dec [3] (a) State the objectives of secretarial audit. (4 marks)

Answer :

The Objectives of Secretarial Audit

The objectives of Secretarial Audit may be briefed as under:

- To check & Report on Compliances
- To Point out Non-Compliances and Inadequate Compliances
- To Protect the interest of the Customers, employees, society etc.
- To avoid any unwarranted legal actions by law enforcing agencies and other persons as well.

2008 - June [3] (c) Name the secretarial standards issued by the Institute of Company Secretaries of India. (3 marks)

Answer :

Secretarial Standards issued by the Institute of Company Secretaries of India

SS-1: Secretarial Standard on Meetings of the Board of Directors

SS-2: Secretarial Standard on General Meetings

SS-3: Secretarial Standard on Dividend

SS-4: Secretarial Standard on Registers and Records

SS-5: Secretarial Standard on Minutes

SS-6: Secretarial Standard on Transmission of Shares and Debentures

SS-7: Secretarial Standard on Passing of Resolutions by Circulation

SS-8: Secretarial Standard on Affixing of Common Seal

SS-9: Secretarial Standard on Forfeiture of Shares and

SS-10: Secretarial Standard on Board's Report.

2010 - June [7] (a) Answer the following with reference to Secretarial Standard-7 on passing of Board resolution by circulation process :

- (i) Who is authorised to decide that certain resolutions (other than those specified in section 175) are to be taken up for consideration by circulation as against in a meeting? (2 marks)
- (ii) What procedure is to be followed for passing a resolution by circulation? Are interested directors eligible to receive the proposed resolution and related papers? (2 marks)

Answer :

- (i) a. Check whether the decision of obtaining approval of the Board for a particular business by means of a resolution by circulation had been taken by an authorised person as per the Standard.
- b. Check that no resolution was taken up for passing by circulation in cases where it was required by the requisite number of Directors to be taken up at a Board Meeting.

Question:

In course of administration of the affairs of a limited company, Chairman of its Board of Directors came across a matter, which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convey and hold a Board Meeting. The Chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board Meeting. You are required to advise him on the matter as per the provisions of the Companies Act, 2013.

Answer:

The Chairman may be advised to secure approval by passing resolution by circulation if the proposed matter is not covered exclusive at board meeting. Section 175 of the Companies Act, 2013 provides a solution to such eventualities in the form of passing a resolution by circulation. Therefore, the Chairman and Board of Directors of the company are advised to pass the resolution by circulation.

However, following points should be considered by the Chairman and Board of Directors of the company regarding passing a resolution by circulation:

- The matters which are expressly stated to be passed through board meeting cannot be passed by way of circular resolution and can be passed only at the Board Meeting.
- Where one third directors require that any resolution under circulation must be decided at board meeting, chairman should put resolution to be decided at board meeting.

The following procedure needs to be followed for the purpose of passing

a resolution by circulation:

- Send the draft of the resolution together with the necessary papers, if any, to all the directors at their registered address in India. It is send either by hand delivery or by post or by courier or through electronic means.
- Obtain one copy of the draft resolution duly signed by the directors, whether approving the resolution or disapproving the same.
- It may be noted that the resolution shall be deemed to be passed by the Board if majority of directors who are entitled to vote on the matter approve the resolution by signing one copy and returning the same to the company.
- The resolution passed by circulation shall be placed before the next Board Meeting for confirmation.
- The resolution shall be recorded in the minutes of the next Board Meeting.

Answer:

(ii) Procedure

- a. Check that the resolution passed by circulation alongwith necessary papers had been circulated to all the directors of the company.
- b. Check whether the procedure laid down by the Standard in respect of sending of draft resolution and necessary papers, contents of the note thereof, mode of circulation etc. had been duly followed.
- c. Check whether the note indicated the last date by which the Director had to respond and manner thereof.

2011 - Dec [5] (c) What are the advantages for companies for adopting the secretarial standards issued by The Institute of Company Secretaries of India? (4 marks)

Answer :

- (i) The Institute of Company Secretaries of India (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standard Board (SSB) with the objective of formulating secretarial standards.
- (ii) The adoption of secretarial standards will have a substantial impact on the improvement of quality of secretarial practices being followed by companies.
- (iii) By following the secretarial standards in letter and spirit companies will be able to ensure adoption of uniform, consistent and best secretarial practices with corporate sector.
- (iv) Uniformity of best practices, consistently applied will result in furthering the shareholder's democracy by laying down principles for better corporate disclosures thus adding value to the general endeavour to strive for good Governance.

2014 - June [1] (a) Examine and comment on the following:

- (ii) The ultimate goal of the Secretarial Standards is to promote good corporate practices leading to better corporate governance.

(5 marks)

Answer:

The Statement is Correct : The ultimate goal of the Secretarial Standards is to promote good corporate practices leading to better corporate governance. The Standards are for good secretarial practices and desirable corporate governance with a view to ensuring shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law. The adoption of the Secretarial Standards by the corporate sector will, over the years have a substantial impact on the improvement of quality of secretarial practices being followed by companies, making them comparable with the best practices in the world.

2014 - June [1] {C} Examine and comment on the following.

- (v) Proprietorship concerns and unregistered firms are not allowed to set-up a joint venture/wholly -owned subsidiary outside India.

[Old Syllabus] (4 marks)

Answer:**The Statement is not Correct**

With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietorship concerns and unregistered partnership firms are allowed to set up JVs / WOS outside India with the prior approval of the Reserve Bank subject to satisfying certain eligibility criteria. An application in form ODI may be made to The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5th Floor, Fort, Mumbai 400001, through the AD Category - I bank. AD Category - I banks may forward the applications to the Reserve Bank along with their comments and recommendations for consideration.

2014 - June [1A] (Or) (iii) Explain the objects, scope and benefits of Secretarial Audit. (5 marks)

Answer:**The Objectives of Secretarial Audit**

The Objectives of Secretarial Audit may be briefed as under.

- To Check & Report on Compliances
- To Point out Non-Compliances and Inadequate Compliances
- To Protect the interest of the Customers, Employees, Society etc.
- To avoid any unwarranted legal actions by law enforcing agencies and other persons as well.

Scope of Secretarial Audit

The Scope of Secretarial Audit comprises verification of the compliances under the following enactments, rules, regulations, notifications and guidelines.

The Benefits:

The benefits of secretarial audit includes the following:

- (a) It can be an effective due diligence exercise for the prospective acquirer of a company or controlling interest or a joint venture partner.
- (b) It assures the owners that management and affairs of the company are being conducted in accordance with requirements of laws and that the owners stake is not being exposed to undue risk.

- (c) Secretarial Audit being proactive measure for compliance with a plethora of laws, it will have a salutary effect of substantially lessening the burden of the law-enforcement authorities.
- (d) Instilling professional discipline and self-regulations.

2014 - June [6] (b) State the provisions of the Foreign Exchanges Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 relating to:

- (i) Eligibility
- (ii) Restrictions/prohibitions
- (iii) Approvals required.

[Old Syllabus] (6 marks)

Answer:

(i) ELIGIBILITY

An Indian party is eligible to make direct investment in Joint Venture or Wholly Owned Subsidiary outside India. As per Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 Indian party includes:

- (i) A company incorporated in India;
- (ii) Body created under an Act of Parliament;
- (iii) Partnership Registered under Indian Partnership Act, 1932;
- (iv) Any other entity as may be notified by the Reserve Bank.

In case of partnership, individual partner can hold foreign securities for and on behalf of the firm, only if host country regulations or operational requirements warrant such holding.

(ii) RESTRICTIONS/PROHIBITIONS

- (a) Indian parties are prohibited from making direct investment in a foreign entity engaged in real estate /banking business. It may be noted that Indian Banks operating in India can set up WOS abroad, provided they obtain clearance under Banking Regulation Act, 1949.
- (b) Investment in Pakistan is not permitted under Automatic Route.
- (c) A person resident in India is not permitted to make Overseas Direct Investments unless RBI's prior approval is obtained. However, he may purchase a foreign security out of funds held in Resident Foreign Currency (RFC) account maintained in accordance with

the Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000.

(iii) APPROVALS REQUIRED

- (a) Approval from Board of Directors.
- (b) Shareholders of the Company.
- (c) Approval from Department of Economic Affairs, Ministry of Finance, if required.
- (d) Approval from Reserve Bank of India (pre/post facto).

2014 - June [8] Critically examine and comment on the following:

- (ii) Company Secretary as compliance officer in monitoring shares transfers. **[Old Syllabus]** (4 marks)

Answer:

Company Secretary as Compliance Officer in monitoring share transfers

In pursuance of prescribed Regulation of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 a listed company has to appoint a Company Secretary as a Compliance Officer who will be responsible for monitoring the share transfer process and report to the company's board in each meeting. As a Compliance Officer, the Company Secretary is required to directly liaise with the authorities such as SEBI, Stock Exchanges, ROC etc. and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and complaints related matters.

Therefore, it is imperative for Company Secretaries to be conversant with the legal and procedural aspects of transfer of shares/debentures.

2014 - Dec [1] (b) Bright Vision Ltd. wishes to appoint a secretarial auditor. Prepare a brief note for the Chairman of the company about the prerequisites for carrying out a secretarial audit. (5 marks)

Answer:

To

The Chairman

Bright Vision Ltd.

Subject: Prerequisites for carrying out a Secretarial Audit

Dear Sir,

Section 204 of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies.

Such companies are required to annex a secretarial audit report with its Board's report.

As per Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

- (a) every public company having a paid-up share capital of ₹ 50 Crores or more; or
- (b) every public company having a turnover of ₹ 250 crores or more.

Company Secretary in practice has been exclusively recognised for conducting secretarial audit. The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under rules. As per sub-rule (2) of Rule 9, the format of the Secretarial Audit Report shall be in Form No. MR. 3.

Section 134 and sub-section (3) of Section 204 provides that the Board of Directors, in its report, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in the Secretarial Audit report.

Yours' faithfully
XYZ

2014 - Dec [1A] (Or) (i) Point out the penalties for failure to furnish information/return, etc., under the Depositories Act, 1996. (5 marks)

- (ii) As per the Secretarial Standards issued by the ICSI, what are the requirements to be taken into account while forfeiting the shares? (5 marks)

- (iii) The shares of Agile Ltd. were listed on a recognised stock exchange. The stock exchange delisted the shares of the company. The aggrieved company approaches you as a Practising Company Secretary for advice. State the remedies available under the provisions of the Securities Contracts (Regulation) Act, 1956. (5 marks)

- (iv) As a Practicing Company Secretary, describe the procedure for appeal to the Securities Appellate Tribunal under the Depositories Act, 1996. (5 marks)
- (v) The Institute of Company Secretaries of India wants to issue a new Secretarial Standard. Describe the procedure involved in issuing of Secretarial Standards. (5 marks)

Answer:

(i) **Penalty for failure to furnish information, return, etc. under the Depositories Act, 1996**

Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder:

- (a) to furnish any information, documents, books, returns or report to the Board, fails to furnish the same within the time specified therefore, he shall be liable to a penalty [which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 lakh for each day during which such failure continues subject to a maximum of ₹ 1 crore] for each such failure;
- (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or bye-laws, fails to file return or furnish the same within the time specified therefor, he shall be liable to a penalty [which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 lakh for each day during which such failure continues subject to a maximum of ₹ 1 crore];
- (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty [which shall not be less than ₹ 1 lakh but which may extend to ₹ 1 lakh for each day during which such failure continues subject to a maximum of ₹ 1 crore].

Answer:

(ii) **1. Authority**

- The Articles should contain a provision for forfeiture of shares.
- Forfeiture of shares requires approval of the Board in a duly convened meeting.

2. Procedure

- **Non – Payment of Calls**

A forfeiture of shares held by a member should be made under the authority of the Board, if a call on the shares, together with interest accrued thereon, in accordance with the terms of issue of the shares, remains unpaid after the day appointed for payment thereof.

- **Notice**

If a member fails to pay any call, on or before the day of payment thereof, the company should during such time at which part of the call or instalment remains unpaid, serve a notice on the member asking for the payment of the call remaining unpaid, together with interest which may have accrued.

Notice should be served by the company on the defaulting member by registered post acknowledgment due.

The notice should be sent at the address registered with the company.

- **Contents of Notice**

The notice should state the amount of the call due and the interest accrued thereon.

The Notice should also specify a day not being earlier than the expiry of 21 days from the date of posting of the notice on or before which the payment required by the notice is to be made; and state that in the event of non-payment on or before the day so specified, the shares in respect of which the call was made including the amount already paid thereon will be forfeited.

If the notice is not given, the forfeiture cannot be effected.

- **Forfeiture on non - payment**

If the amount payable specified in the notice was not paid within the stipulated date, any share in respect of which the notice has been given may at any time thereafter be forfeited.

Any entitlement of the defaulting member for dividends on his partly paid up shares may be adjusted against his dues on calls.

3. Requirements of Forfeiture

- The Board at a duly convened meeting should approve the forfeiture and authorize any director or manager or the secretary to make a declaration of such forfeiture.
- An authenticated list of shares to be forfeited together with the names of shareholders thereof should be placed before the Board for this purpose.
- The date of approval by the Board is the date of forfeiture.
- Upon forfeiture, any director or manager or the secretary, authorized by the Board of the company shall make a declaration specifying the particulars of shares forfeited.
- The declaration shall be conclusive evidence of forfeiture as against all persons claiming to be entitled to the shares of the company which have been forfeited.
- The Board should issue individual notices to the defaulting members whose shares have been forfeited.
- Entries in the register of members should be made with regard to forfeited shares.
- Share certificates in relation to forfeited shares shall stand cancelled upon forfeiture.
- There should be a reference to the forfeiture of shares in the report of the directors to the shareholders.
- In case of listed companies, notice of forfeiture of shares and actual forfeiture should be intimated to the stock exchange.

4. Annulment of forfeiture

- The Board can annul the forfeiture by passing a resolution before the reissue of forfeited shares.
- On annulment, the name of the member should be restored in the register of members for those shares.
- In case of shares issued in physical form, fresh share certificates should be issued for those shares.
- The forfeiture can be annulled by the Board at its discretion, if the member pays all outstanding calls due on the shares together with interest.

- The member whose shares have been forfeited should be duly informed by the Board on revoking the forfeiture and restoring the name of the member on the register of members.

5. Effect of Forfeiture

- A person whose shares have been forfeited would cease to be a member of the company, in respect of those shares.
- A person whose shares have been forfeited would notwithstanding the forfeiture, remain liable to pay to the company all moneys, which at the date of forfeiture were payable by him to the company in respect of the shares.
- The liability of the defaulting member shall not cease till the company receives the full payment which is due in respect of shares. The name of the defaulting member will be placed as a past member on the list of contributories if a winding up of the company commences within one year of the date of forfeiture.

6. Re-issue

- A forfeited share may be re-issued or otherwise disposed of on such terms and in such a manner as the Board may think fit.
- Re-issue of forfeited shares is a sale of shares and it does not amount to an allotment. The company should duly record the particulars of the members who acquire those shares as if it was a transfer of shares.
- The directors would fix a price for the forfeited share that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture.
- In the case of a company whose shares are listed at a recognized stock exchange, re-issue of forfeited shares shall be as per Guidelines for Preferential Issue of the Securities and Exchange Board of India and the listing agreement.
- **Effect of Re-issue**
 - On re-issue the transferee should be registered as the holder of the share.
 - A new share certificate should be issued in the name of the transferee who shall be registered as the holder of the shares.

- The title of the transferee should not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

Answer:**(iii) Delisting of Securities****21A**

- (1) A recognised stock exchange may delist the securities, after recording the reasons thereof, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act :

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange for delisting the securities within 15 days from the date of the decision of the recognised stock exchange for delisting the securities and the provisions of Sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

Answer:**(iv) Appeal to Securities Appellate Tribunal****23A**

- (1) Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder, [or by an order made by an adjudicating officer under this Act] may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- (2) Every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order made by the

Board is received by the person referred to in sub-section (1) and it shall be in such form and be accompanied by such fee as may be prescribed : Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.
- (5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within 6 months from the date of receipt of the appeal.

Answer:

(v) **Procedure for issuing Secretarial Standards**

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.
2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.
4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Ministry of

Corporate Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

5. On the basis of the preliminary draft and the discussion with the bodies/organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI and also put on the Website of ICSI to elicit comments from members and the public at large.
6. The draft of the proposed Secretarial Standard will generally include the following basic points:
 - (a) Concepts and fundamental principles relating to the subject of the Standard;
 - (b) Definitions and explanations of terms used in the Standard;
 - (c) Objectives of issuing the Standard;
 - (d) Disclosure requirements; and
 - (e) Date from which the Standard will be effective.
7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

2014 - Dec [3] (d) Mention the pre-requisites to secretarial audit.

[Old Syllabus] (4 marks)

Answer:

Section 204(1) of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies. Such companies are required to annex a

secretarial audit report along with their Board's report. As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with Section 179 of the Companies Act, 2013 secretarial auditor is required to be appointed by means of a resolution passed at a duly convened board meeting.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has prescribed the following class of companies for the purposes of the above said section:

(a) every public company having a paid-up share capital of ₹ 50 crores or more; or

(b) every public company having a turnover of ₹ 250 crores or more.

Secretarial Audit is the process of independent verification, examination of level of compliances of applicable Corporate Laws to a company. The audit process if, properly devised ensures timely compliance and eliminates any un-intended non compliance of various applicable rules and regulations. An action plan by the Corporate Secretarial Department is to be designed so as to ensure that all event based and time based compliances are considered and acted upon. Secretarial Audit is to be on the principle of "Prevention is better than cure" rather than as a post mortem exercise and to find faults. Broadly, the need for Secretarial Audit are:

- Effective mechanism to ensure that the legal and procedural requirements are duly complied with.
 - Provides a level of confidence to the directors, officers in default, Key Managerial Personnel etc.
 - Directors can concentrate on important business matters as Secretarial Audit ensures legal and procedural requirements are complied with.
 - Strengthen the image and goodwill of a company in the minds of regulators and stakeholders,
-
- Secretarial Audit is an effective compliance risk management tool.
 - It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.
 - Secretarial Audit is an effective governance tool.

2015 - June [1] (a) “Secretarial Standards Board is doing multifarious functions.” Comment. (5 marks)

(c) “Secretarial audit is prevention rather than post-mortem.” In the light of this statement explain the need of secretarial audit particularly with reference to corporate law compliances. (5 marks)

Answer:

(a) The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are:

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards/Guidance Notes at periodic intervals.

Answer:

(c) Secretarial Audit is the process of independent verification, examination of level of compliance of applicable Corporate Laws to a company. The audit process if properly devised ensures timely compliance and eliminates any un-intended non compliance of various applicable rules and regulations. An action plan of the Corporate Secretarial Department is to be designed so as to ensure that all event based and time based compliances are considered and acted upon. Secretarial Audit is to be on the principle of “Prevention is better than cure” rather than post mortem exercise and to find faults. Broadly, the need for Secretarial Audit is:

- Effective mechanism to ensure that the legal and procedural requirements are duly complied with.
- Provides a level of confidence to the directors, officers in default, Key Managerial Personnel etc.
- Directors can concentrate on important business matters as Secretarial Audit ensures legal and procedural requirements.

- Strengthen the image and goodwill of a company in the minds of regulators and stakeholders.
- Secretarial Audit is an effective compliance risk management tool.
- It helps the investor in analyzing the compliance level of companies, thereby increases the reputation.
- Secretarial Audit is an effective governance tool.

2015 - June [1A] (Or) (ii) "Compliance of secretarial standards is good for governance." Explain. (5 marks)

Answer:

The ultimate goal of the Secretarial Standards is to promote good corporate practices leading to better corporate governance. The Standards are for good secretarial practices and desirable corporate governance with a view to ensuring shareholders democracy and utmost transparency, integrity and fair play, going beyond the minimum requirements of law. The adoption of the Secretarial Standards by the corporate sector will, over the years have a substantial impact on the improvement of quality of secretarial practices being followed by companies, making them comparable with the best practices in the world. Many companies today are voluntarily adopting the Secretarial Standards in their functioning. The annual reports of several companies released during the last few years include a disclosure with regard to the compliance of the Secretarial Standards.

2016 - June [1A] (Or) (i) You are the Secretarial Auditor of Admire Ltd. State the matters to be considered by you while preparing the audit report. (5 marks)

PRACTICAL QUESTIONS

2011 - June [4] (b) Sunil is a Company Secretary holding certificate of practice. He has accepted the assignment of secretarial audit of XYZ Ltd. for the financial year ended 31st March, 2010. He received the notice of his

2.36

■ **Solved Scanner CS Prof. Prog. M-I Paper 2 (New Syllabus)**

assignment on 15th April, 2010 and signed the audit report on 30th June, 2010. It is noticed that Sunil ceased to be a Company Secretary in practice from 1st June, 2010. Examine the validity of the report dated 30th June, 2010 signed by Sunil. (5 marks)

Answer :

The Board appointed Mr. Sunil as Secretarial Auditor. He was company secretary holding certificate of practice. While Sunil received the notice on 15th April 2010 he was practicing company Secretary where as on the date of signing of Secretarial Audit Report he was not company secretary in practice in terms of Company Secretaries Act, 1980. Hence report submitted as company secretary in practice was not valid.

2014 - Dec [3] (c) Nagma buys 1,200 shares in a company from Garima on the faith of a share certificate issued by the company. Nagma tenders to the company a transfer deed, duly executed, along with Garima's share certificate for transferring the shares in her name. The company discovers that the certificate in the name of Garima has been fraudulently obtained and refuses to register the transfer. Is Nagma entitled to get the shares transferred in her name? Advise. **[Old Syllabus]** (4 marks)

Answer:

Where the Article of association of a company gives power to the Board to refuse registration of a transfer of shares such power must be exercised by a resolution of the Board. The Board may refuse to register the transfer as long as they are acting in the interests of the company, but if they exercise their discretion to refuse *malafide*, i.e., they act oppressively or corruptly, Tribunal will interfere and order registration.

The refusal to register transfer of shares on the ground that the transferor had been indulging in acts which were against the interests of the company shall not be tenable. [*Pawan Gupta v. Hicks Thermometers (India) Ltd.*]

Hence, in the given case, Nagma is not entitled to get the shares transferred in her name.

2014 - Dec [5] (b) Fresh Capital Service Ltd. (FCSL) purchased 190 lakh equity shares of ₹ 10 each of Sun Spinners Ltd. (SSL) from a scheduled bank. Duly executed transfer deeds along with the share certificates were

sent to SSL by registered post for transfer of shares in favour of FCSL. However, SSL refused to receive the same. FCSL again sent the registered post, but this time also, it was refused by SSL.

FCSL then filed petition under section 58 of the Companies Act, 2013 to the Company Law Board/Tribunal to declare petitioner FCSL as member of SSL. CLB/CLT gave direction to SSL to take action for registration/transfer of the shares in favour of the petitioner within a period of one month.

SSL, however, still did not comply with the direction of CLB/CLT on the contention that SSL had taken a loan from a scheduled bank and the 190 lakh shares were issued to the bank as security till the repayment of the loan. Part-payment of the loan had already been made by SSL to the bank. In the company's register of members, the bank was shown the absolute owner of 190 lakh shares under question. SSL also filed a counter to the present company petition. However, in the matter, no order restraining the transfer of shares was issued by CLB/CLT.

In the light of above facts, decide whether FCSL can get the shares transferred in its name.

[Old Syllabus] (6 marks)

Answer:

The facts of the case in chronological order are as follows:

- (1) SSL - a public limited company, as per its contention has borrowed from a scheduled bank and issued 190 lakh shares as security for repayment.
- (2) In the Register of Members of SSL, the bank has been shown as the absolute owner of the shares.
- (3) SSL (as per its contention) has already made part repayment of the loan.
- (4) The scheduled bank in the mean time has sold the concerned shares to FCSL-a public limited company.
- (5) The duly executed transfer deeds along with the share certificates were sent by registered post to SSL by FCSL for transfer in its name.
- (6) SSL did not even receive the same and when it was again sent by FCSL by registered post, it was again refused by SSL to even receive the same.
- (7) FCSL petitioned CLB under Section 58 of Companies Act, 2013 and CLB ordered SSL to register in favour of FCSL.

- (8) SSL did not comply on the ground that the shares in question were issued to the bank only as security for prompt repayment of loan and they had no authority to sell the same.
- (9) SSL also filed a counter to CLB but CLB did not pass any order restraining transfer of shares.

The point of issue is whether the sale by the bank was valid or not. Though the shares were issued to the bank only as security, it was shown in the register of members of SSL that the bank was the absolute owner. As per Section 58 (2) the securities of any member in a public company shall be freely transferable. In such a case when the shares have been transferred by the bank and FSCIL bought the same in good faith, the shares have to be registered in the name of FSCIL in the register of members of SSL. SSL has to separately proceed against the scheduled bank with sufficient documentary evidence for selling the shares which were only issued as security for loan availed by SSL.

2015 - Dec [1] (c) Top Ltd. is having a paid-up capital of ₹ 40 crore and turnover of ₹ 300 crore during the financial year 2014-15. The company decided to appoint a Company Secretary in Practice for conducting its secretarial audit. Mention the requirements of the secretarial audit report as per the provisions of the Companies Act, 2013. Examine whether it is mandatory for the company to have such a secretarial audit. (5 marks)

Answer:

Secretarial Audit [Section 204]:

Section 204(1) of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies. Such companies are required to annex a secretarial audit report with its Board's Report. As per Rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, read with Section 179 of the Companies Act, 2013 secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, has prescribed the following class of companies for the purposes of the above said section:

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

Company Secretary in practice has been exclusively recognised for conducting secretarial audit. The section further provides that Secretarial Audit Report is to be submitted in a format prescribed under rules. As per sub-rule (2) of Rule 9, the format of the Secretarial Audit Report shall be in Form No. MR. 3.

Section 134 and Sub-section (3) of Section 204 provides that the Board of Directors, in its report, shall explain in full any qualification or observation or other remarks made by the Company Secretary in practice in the secretarial audit report.

Hence, In the given case, Top Ltd. is mandatory to have such a secretarial audit.

2016 - June [1A] (Or) (iv) Buma Ltd. has some urgent items which could not be concluded in the Board Meeting. The Board decides to pass the said items by way of resolution by circulation. As the Company Secretary, advise the company about the steps to be taken as laid down in the Companies Act, 2013 and applicable secretarial standard. (5 marks)