



LATEST STATUTORY SNAPSHOT

FRIDAY, 08 FEBRUARY 2019



SECRETARIAL AUDIT REPORT AND ANNUAL SECRETARIAL COMPLIANCE CERTIFICATE

SEBI vide its Circular dated 09th May 2018 (as part of the implementation of the recommendations of Uday Kotak Committee on Corporate Governance) inter alia, inserted Regulation 24A in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), requiring listed companies and their material unlisted subsidiaries to carry out a Secretarial Audit by a Practising Company Secretary (PCS) and annex the Secretarial Audit Report (SAR) thereto in such form to be specified, with the Annual Report of such companies from the year ending 31st March, 2019 onwards

SEBI has vide Circular dated 08th February, 2019 clarified that the format of SAR under the said Regulation 24A shall be in Form MR-3 prescribed under Section 204 of the Companies Act, 2013. Form MR-3 will also be the format of SAR for unlisted material Indian subsidiary(ies), even if the said subsidiary does not fall within the requirement of furnishing SAR under Section 204 of the Companies Act, 2013.

Further, SEBI has imposed another requirement of furnishing an Annual Secretarial Compliance Report (ASCR) in the format prescribed under Annex-A to the said Circular. The scope of the ASCR is specific reporting on compliance of SEBI Regulations as may be applicable to a listed company. Further the ASCR, apart from listing out non-compliances, should also cover action if any, taken by SEBI or stock exchange on the listed company, its promoters, directors or material subsidiary(ies) under SEBI Regulations, circulars or guidelines. Additionally, an Action Taken Report on previous year's action(s) taken by SEBI or stock exchange should also be reported. ASCR is required to be certified by a PCS and has to be submitted to the stock exchange within 60 days from the end of

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the financial year. Obviously ASCR does not apply to a material subsidiary of a listed company, unless such subsidiary itself is a listed company.

It should be noted that the scope of Regulation 24A which falls under Chapter IV of the LODR is limited only to listed entities which have listed specified securities i.e., equity shares and / or securities convertible to equity shares. Hence it may appear that only a listed entity which has listed specified securities and its material unlisted subsidiary(ies) alone is required to carry out Secretarial Audit. However, under the Companies Act, 2013 the definition of "Listed Company" (Section 2(52)) is much wider and includes every company which has listed its securities on any recognised stock exchange. Hence any company which has listed its securities (as defined under Section 2(h) of Securities (Contracts and Regulation) Act, 1956) is required to undertake a Secretarial Audit in terms of Section 204 of the said Act and attach the SAR thereto in Form MR-3 as annexure to the Directors' Report. Therefore, irrespective of provisions of Regulation 24A of LODR, a listed entity as defined under the Companies Act, 2013 is required to carry out Secretarial Audit and should furnish SAR.

The insertion of Regulation 24A in LODR therefore has not brought about any change in the requirement of furnishing SAR by a listed company, per se. However, the requirement of furnishing ASCR is applicable only to a listed company which has listed its specified securities (i.e., equity shares and / or securities convertible to equity shares). Hence, a company which has listed only its debt securities is not required to furnish ASCR. Further, furnishing ASCR is independent of SAR as ASCR is a standalone specific reporting to be made to Stock Exchanges, whereas SAR is the reporting to members about the overall compliances under all applicable laws. While ASCR has to be submitted to the stock exchange within 60 days of end of financial year, SAR is submitted as part of the annual report of the listed company to the stock exchange prior to dispatch of annual report to the shareholders.

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