

# INDIA EXPERT

## SECRETARIAL COMPLIANCE





## **About Us**

*INDIA EXPERT, Chartered Accountants, is one of the leading providers of financial and business advisory, internal audit, statutory audit, corporate governance, & international taxation and regulatory services. With a global approach to service delivery, we are responds to clients' complex business challenges with a broad range of services*

*across industry sectors and national boundaries. The Firm has been set up by a group of energetic, open minded, highly skilled and motivated professionals who have gained experience from top consulting companies and are extensively experienced in their chosen fields has providing a wide array of Accounting, Auditing, Assurance, Risk, Taxation, & Business advisory services to various clients & their stake holders. We have been associated with various national & International recognized associations in the field of our profession; Association of International tax consultants (AITC) is one of them.*

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# SECRETARIAL COMPLIANCE



A company secretary is a senior person in either a private or public sector organization. A company secretary is commonly referred to as a corporate secretary or secretary in large publicly traded corporations in the United States and Canada. The company secretary is in charge of the company's effective functioning, especially in terms of ensuring compliance with legislative and regulatory requirements and ensuring that the boards of directors' decisions are carried out.

The Secretary of the Company ensures how an organization complies with the relevant laws and regulations and notifies members of its legal responsibility.

Company secretaries seem to be the company's designated representative on legal documents, and it is their job to make sure the company and its directors follow the law. It is also their responsibility to register and communicate with shareholders, to ensure dividends are paid, and to keep company records, such as director and shareholder lists and annual accounts, up to date.

According to the Ministry of Corporate Affairs, a company is required to comply with certain annual as well as event-based compliances.

1. Annual Based Compliances
2. Event- Based Compliances
- 3.

## 1. Annual Based Compliances:

A Private Limited Company is required to comply with various statutory compliances accordance to the Companies Act of 2013, as well as the Income Tax Act of 1961. Every Private Limited company is expected to comply with some annual mandatory compliance under the Companies Act, 2013 on a regular basis in order to keep the business running smoothly and without penalties and fines. Mandatory Private Limited Compliances are divided into three categories.

- ❖ Private Limited Company ROC Filing
- ❖ Private Limited Company Statutory Audit
- ❖ Private Limited Company ITR Filing

### • **First Board Meeting**

A Board of Directors Meeting is the company Board Meeting in which the main agenda is discussed. Any corporation is required to hold its first board meeting within 30 days of its incorporation.

**Penalty:**A penalty of Rs 25,000/- will be imposed on the company, and a penalty of Rs 5,000/- will be imposed on the officer who is in default.

### • **Minimum no. of Board Meeting:**

The Companies Act of 2013 mandates that the board of directors of the corporation hold a minimum number of board meetings each year. According to section 173 of the Companies Act of 2013, a minimum of four board meetings must be held each year, with no more than 120 days between two meetings.

**Penalty:** The company will be fined Rs 25,000/-, and the officer who is in default will be fined Rs 5,000/-.

### • **Disclosure of Interest by Directors**

Each director at: the first meeting in which he serves as a director; or the first meeting of the Board of Directors in each financial year; or When there has been a change in disclosures in Form MBP1 (along with a list of relatives and concern of relatives in the Company as defined by RPT), he shall disclose his concern or interest in any company, body corporate, firm, or other association of individuals (including shareholding interest).

Penalty: If the Director fails to comply, he or she can be sentenced to a year in jail or a penalty of up to Rs 1 lakh or both.

- **Appointment of First auditor**

Each company should appoint a company auditor to be audited by such a company on an annual basis. According to Sector 139(6), within 30 days of incorporation the First Auditor shall be appointed.

There is no penalty for failing to appoint a First Auditor because it is not mandatory to file form ADT-1 in the specific instance of appointing a First Auditor. You can, however, appoint it within 90 days by conducting an EOGM (Extra Ordinary General Meeting).

- **Appointment of Statutory Auditor**

According to Sec 139(1) of the Company Act 2013, a statutory auditor must be appointed at his 1st Annual General Meeting (AGM) by a Board of Directors at five years' term which holds office until the end of the 6th General Meeting. Within 15 days of the AGM, the company must notify the relevant Registrar of Companies (ROC). Maximum penalty will be of 12 times normal filing fees plus normal filing fees

For example, if the usual filing fees for a business with a paid-up capital of Rs 1,00,000 are Rs 300, the penalty is 3,600 (12\*300) + 300=3,900.

- **Annual General meeting (AGM)**

According to Section 96 of the Companies Act of 2013, every company must hold an annual general meeting (AGM) once a year:

- ✓ Within 6 months of the financial year's end, during regular business hours (10 a.m. to 7 p.m.) on a day that is not a public holiday,
- ✓ with 21 days of notice

At the company's registered office.

**Penalty:** The Company and each officer of the Company who is in default shall be punishable with a fine of up to one lakh rupees and, in the case of continuing default, with a further fine of up to 5,000/- rupees for each day that such default continues.

- **Filing of Annual Return (Form MGT-7) :**



Within 60 days of the Annual General Meeting, every Private Limited Company must file its Annual Return. The annual return will cover the period from April 1st to March 31st. -

**Penalty:** A fine of Rs 100/- is levied per day.

- ✓ Each of the company's main members and the defaulting members will be considered to pay a penalty of Rs. 50,000 and, if the default continues, also the late charge of Rs. 100 per day.
- ✓ The penalty is up to a maximum of Rs. 5,00,000

- **Filing of Financial Statements:**

Each Private Limited Company must file the balance sheet and the statement of profit and loss account and the director's report in the form AOC-4 and within 30 days after the annual general assembly, .

Penalty: A penalty of Rs 100 per day is levied for failure to file Form AOC on time. Besides that, the company charges the Rs. 1000 penalty per day as default and can reach a maximum of Rs. 10,00,000.

- **DIN KYC of Directors of the company:**

For each person holding DIN/DPIN as of 31 March of the financial year, the DIR-3-KYC or DIR-3 KYC-WEB must be provided for the said financial year on or before 30 September of the next financial year.

- ✓ eForm DIR-3 KYC is to be submitted by the person holding DIN for the first time, or by the DIN holder who once submitted his KYC in eform DIR-3 KYC, but wishes to refresh its data.
- ✓ DIR-3-KYC-WEB shall be used in the previous financial year by the DIN holder that submitted DIR-3 KYC eform and no updates are required.

Penalties: Rs, 5000/-.

- **Disclosure of outstanding dues to MSME in form MSME-1:**

If a company owes a outstanding payment to a micro or small business and the payment has been pending for more than 45 days, the company must provide information according to the timeline below.

- ✓ By 31 October respectively for April to September.
- ✓ By 30 April respectively for October to March.

Penalty: For directors, the penalty is up to Rs.25000 (minimum) and Rs.3 lakhs (maximum) and imprisonment for 6 months, or both.

- **Disclosure of Outstanding loan/amount in form DPT-3:**

All companies with any outstanding loan/amount as of the 31st March of each financial year must provide details and bifurcation of such outstanding amount by the 30th June, regardless of whether such amount falls under the definition of deposit or not.

Penalty: Failure to file Form DPT 3 by the due date will result in a penalty of Rs 5,000 and Rs 500 per day if the default continues, imposed on the company and its officers in default.

- **Company Statutory Audit:**

Every company is required to prepare its accounts and have them audited by a Chartered Accountant at the end of the financial year. For the purpose of filing with the Registrar, the Auditor must have an Audit Report as well as the Audited Financial Statements.

Penalty:

- ✓ A company shall be fined between Rs. 25,000 and Rs. 5,00,000/-, and
- ✓ each officer of the company who is in default shall be punished with imprisonment for a period not exceeding one year or something fine not less than Rs. 10,000 but not more than Rs. 1,00,000/-, or both.

- **Proof of circulation of Notice through email or post**

A notice of every meeting transmitted by directors should maintain a proof of circulation of notice either by e-mail or by letter and maintain records in the Company's registered office

- **Filing of Income Tax Returns:**

Filing of Income Tax Returns: Every company is required to file an income tax return annually if it is subject to the Penalty: If you file your ITR after the due date (31 August) but before the 31 December, you will be fined Rs 5000. The penalty for returns filed after December 31, 2019 will be raised to Rs.10,000.

## 2. Event- Based Compliances:



Event-Based Compliance is a type of mandatory compliance that differs from periodic and annual compliance with the ROC and other regulatory authorities. These event-based compliances relate to any entertaining or unexpected events, incidents, or changes in the size of the organization.

Business registration appears to be the most critical aspect of starting a new company. However, if a limited private corporation is formed under the Companies Act of 2013, there are several adjustments that must be made several times.

In general, event-based company compliances are one-time, frequent, or occasionally reporting or agreements that are either mandated by the relevant laws or desirable in order to maintain legal perfection and security. Any change in the company's registered information must be reported to the appropriate ROC and other regulatory/statutory authorities. Again, the board of directors has the authority to ensure that the company's operations do not violate the rules and provisions set out in its MOA and AOA. The company acts in a completely responsible and reliable manner, without engaging in any illegal or intentional neglect of its obligations, most particularly the provision of accurate information (to all people and companies involved) about its current financial status and business activities.

### **ROC Event Based Compliances.**

- Compliments Which are not required to be affixed while agreements concern compliance with every year, but are required to comply with whenever there is an option of fixing events, i.e., change in directors, change in MOA/AOA, or any other circumstances which require the submission of information to the Registrar of Companies (ROC).
- In fact, in the event of an annual or periodic event, the organization must have the appropriate documentation and resolutions to send to the ROC in order to notify it of the adjustments. Any illegal or deliberate failure to disclose correct details about such changes or business events will lead to criminal charges being brought against the company and its directors.



- These compliances are one-time, fast, or periodic reporting that is required by the relevant laws in order for it to remain legally protected and safe.
- The type and nature of the transactions or events determine the timing and accuracy of such a 'ROC Event Based Compliances' procedure. Non-compliance is punishable by severe penalties under the new company law. In the event of a default, the companies, as well as key managerial employees, are subject to panel stipulations.
- Non-compliance results in a significant commercial penalty as well as other non-monetary penalties. As a result, it is critical that such events be tracked and compliances met on time to avoid penalties or additional fees.

Some examples of Event-based Compliances are as follows:

- ✓ Appointment or Resignation of a Director;
- ✓ Appointment of Managing Director;
- ✓ Change in the statutory auditors;
- ✓ Transfer of Shares;
- ✓ Increase of Authorized Capital;
- ✓ Change of Name of Company;
- ✓ Change of Object of Company;
- ✓ Change in Registered Office address
- ✓ Registration / Modification or Satisfaction of Charge etc.
- ✓ Appointment of Auditor
- ✓ Statutory Audit of Accounts
- ✓ Filing of Annual Return (Form MGT-7)
- ✓ Filing of Financial Statements (Form AOC-4) Board Meetings
- ✓ Annual General Meeting
- ✓ Preparation of Directors' Report
- ✓ ITR and Audit requirement

Note: A company that fails to comply with these mandatory ROC filings in India may face severe penalties, and the directors may face criminal charges under the Act.

When you're running a company, you're probably more concerned with the clients, the quality of service, and the profit margin. It's possible that ensuring compliance with government-mandated legislation is the last thing on your mind. Ignoring these regulations, on the other

hand, can be costly to your business. Your company will keep ahead of problems until they become a big concern if you manage enforcement properly.

## Frequently Asked Questions:



### 1. Who is subject to Secretarial Audit?

Following are the categories of Company that required issued Secretarial Audit Report:

- ✓ Every Listed Entity;
- ✓ Material Unlisted Subsidiary of Listed Entity;
- ✓ Every Public Company with a share capital of more than Rs. 50 crore;
- ✓ Every Public Company with a turnover of more than Rs. 250 crore;

### 2. What's the distinction between a Secretarial Audit and a Secretarial Compliance Report?

A secretarial audit includes a vast inspection on compliance with all applicable acts to the company, such as the SEBI Act, Companies Act, Depositors Act, FEMA, SCRA, and other industry specific laws, whereas a secretarial compliance report only covers the SEBI Act and its regulations and circulars.

### 3. What is the Secretarial Audit Report format?

The MR-3 format will continue to be used for Secretarial Audit Reports.

### 4. What is a Secretarial Compliance Report?

It is a study on the SEBI act, rules, circulars, and guidelines, among other things. As a result, it focuses on the SEBI regulation angel.

### 5. Who would be responsible for the Secretarial Compliance Report?

Whole time Company Secretary is responsible to issue Secretarial Compliances.

### 6. To whom does the Secretarial Compliance Report apply?

Every Listed Entity, to be precise. (This does not apply to Material Unlisted Subsidiary.)

### 7. What considerations must be made when preparing a Secretarial Compliance Report?

A Practicing Company Secretaries (PCS) must independently check and track compliance with SEBI regulations. He/she is required to report on applicable SEBI regulations, their compliance, deviations, if any and his/her independent remark on a specific deviation. A PCS must not only audit the previous financial year, but also comment on the action taken by the listed entity in response to the deviation identified in the previous compliance report.

#### 8. When is the Secretarial Compliance Report required?

From the financial year ending March 31st.



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