



Secretarial Audit is based on the principle of “**Prevention is better than cure**” rather than postmortem exercise and to find faults. It 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.

INTRODUCTION:

In today's dynamic corporate environment, transparency, accountability, and good governance are non-negotiable. To ensure Companies adhere to these principles, regulatory frameworks have prescribed specific audits and compliance checks—two of the most critical being:

- **Secretarial Audit under Section 204 of the Companies Act, 2013**
- **Annual Secretarial Compliance Report (ASCR) under Regulation 24A of SEBI (LODR) Regulations, 2015**

Though both are executed by a **Practicing Company Secretary ("PCS")** and relate to compliance verification, they are not interchangeable. Each has a different scope, legal backing, reporting mechanism, and objective.

In this article, we will decode both frameworks in depth and understand why Companies must comply with both independently.

1. SECRETARIAL AUDIT

Secretarial Audit is a type of compliance audit. It forms an important part of a company's overall compliance system. It is a useful tool that helps identify any non-compliance and allows the company to take timely corrective actions.

APPLICABILITY

As per Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014:

- **Every Listed Company**
- **Every Public Company with:**
 - a. Paid-up Share Capital of ₹50 crore or more, or
 - b. Turnover of ₹250 crore or more
- **Every Company has outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more.**



As per Notification of **SEBI (LODR) (Amendment) Regulations, 2018**, the Secretarial Audit is mandatory for listed entities and their material unlisted subsidiaries incorporated in India shall undertake a Secretarial Audit by a Secretarial Auditor who must be a Peer Reviewed Company Secretary. The Secretarial Audit Report, in the prescribed format, shall be annexed to the annual report of the listed entity.

SCOPE OF SECRETARIAL AUDIT

Reporting on the Compliance of the following laws as mentioned in form MR-3:

- Companies Act, 2013 and the rules made thereunder;
- Securities Contracts (Regulation) Act, 1956 ('SCRA'), and the rules made thereunder;
- Depositories Act, 1996, and the rules made thereunder;
- 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;
- Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act')
- Reporting on the compliance of secretarial standards issued by the Institute of Company Secretaries of India;

2. ANNUAL SECRETARIAL COMPLIANCE REPORT

The Annual Secretarial Compliance Report (ASCR) is an important document for listed companies. It ensures that they are following the regulatory requirements, especially those laid down by the Securities and Exchange Board of India (SEBI). This report is issued by a Practicing Company Secretary (PCS), who verifies the company's compliance with SEBI regulations and circulars. The ASCR is then submitted to the stock exchanges.

APPLICABILITY

- All listed entities
- Material unlisted subsidiaries as per Regulation 16 of LODR



SCOPE OF ANNUAL SECRETARIAL COMPLIANCE REPORT (ASCR)

1. **Verification of SEBI Compliance** Ensures compliance with provisions of the SEBI Act, 1992, and the rules, regulations, circulars, and guidelines issued thereunder.
2. **Review of Actions Taken** Checks whether the company has taken proper action on any observations made in previous reports or by regulatory authorities like SEBI or stock exchanges.
3. **Examination Period** Covers compliance status for the financial year under review (April 1st to March 31st).
4. **Reporting Deviations** Identifies and reports any non-compliance, delays, or deviations in filings or compliance with SEBI regulations.
5. **Applicability to Listed Entities** Mandatory for all listed entities, including those with listed specified securities, as per SEBI (LODR) Regulations, 2015.
6. **Professional Certification** Must be issued only by a qualified Practicing Company Secretary (PCS) in the prescribed format (as per SEBI Circular CIR/CFD/CMD1/27/2019 dated February 8, 2019).

Comparison Secretarial Audit (Section 204) Vs. Annual Secretarial Compliance Report (Regulation 24a)

Section 204 covers a broad scope including all applicable laws, while Regulation 24A focuses strictly on SEBI compliances.

The former is filed with the ROC, while the latter is submitted to the stock exchanges. Both reports are necessary and serve complementary roles.

Why Listed Company Must Do Both?

These reports serve different purposes:

Section 204: Compliance check from the perspective of all regulations and laws in force

Reg. 24A: Focused SEBI compliance audit together, they reinforce the company's transparency, governance, and investor confidence.



Consequences of Non-Compliance

- Companies Act provide penalties under Sections 448 and 450 for Secretarial Audit
- SEBI penalties and regulatory action for non-submission or incorrect ASCR filing

Case Laws:

1. Faurecia India Private Limited – Penalty for Non-Submission of Secretarial Audit Report

In a recent adjudication, M/s. Faurecia India Private Limited was penalized for failing to obtain and annex the secretarial audit report for the financial year 2020–21 to its Board's Report, as mandated under Section 204 of the Companies Act, 2013. The Registrar of Companies (ROC) imposed penalties on the company and its officers for this non-compliance.

2. Best Commercial Enterprises Ltd – Prosecution for Failure to Conduct Secretarial Audit

In this case, Best Commercial Enterprises Ltd, a listed entity, failed to conduct its secretarial audit and annex the secretarial audit report for FY 2016–2017, violating Section 204(1) of the Companies Act, 2013. The company's directors and officers were held liable under Section 204(4) and faced prosecution initiated by the ROC.

Conclusion

Both Secretarial Audit and ASCR are essential parts of a Company's governance framework. They must be treated not just as compliance exercise but as opportunities to reflect sound corporate governance. It is advisable that the Secretarial Auditor is appointed at the beginning of the financial year as secretarial audit entails checking compliances on a continuous basis. As good practice, the Secretarial Auditor should submit a report to the Board at the end of each quarter as to the compliance of the company.

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