

Secretarial Audits under Corporate Laws and Annual Return Certification

THIRD EDITION



CS Milind Kasodekar
CS Shilpa Dixit
CS Amogh Diwan

HIGHLIGHTS

Amendments including

- Companies Act, 2013
- SEBI Regulations
- FEMA

ICSI Auditing Standards

- CSAS-1 to CSAS-4

B L O O M S B U R Y

Bloomsbury Professional India

Secretarial Audits under Corporate Laws and Annual Return Certification

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CS Milind Kasodekar | CS Shilpa Dixit | CS Amogh Diwan

B L O O M S B U R Y
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About the authors

CS Milind Kasodekar is a Fellow Member of the Institute of Company Secretaries of India (ICSI), Associate Member of the Institute of Cost Accountants of India (ICAI) and a Commerce and Law graduate.

He served the pharma and steel industry as a Cost Accountant for 4 years. In 1990, he started his practice as a Company Secretary, in Pune. He is serving the corporates as a Practicing Professional for last more than 25 years.

In the year 2000, he founded the firm of Practicing Company Secretaries, 'MRM Associates' and was designated as Managing Partner in the firm.

Milind's areas of professional interests are:

- Corporate Laws, Mergers and Acquisitions, Winding up & Liquidation of Companies.
- Appearance before various judicial and quasi-judicial authorities, including erst-while Company Law Board, National Company Law Tribunal, Reserve Bank of India (FEMA matters), Stock Exchanges etc. Voluntary liquidation of public and private limited companies including a listed companies and taking up assignments as Liquidator in many such companies.
- Advisory services to many organisations, which includes body corporates in and outside India, Listed Companies, Unlisted Public Companies, Private Limited Companies from different types of industry.
- Corporate Commercial Arbitration.

He has been actively associated with the Institute of Company Secretaries of India for almost 2 decades. He has contributed vigorously towards the Profession of the Company Secretaries in the following roles:

1. Chairman and Managing Committee member of the Pune Chapter of the ICSI. Pune chapter was the recipient of the "Best National Award" for the first time, under his leadership.
2. Council Member and office bearer of the Western India Regional Council of ICSI Member of the Central Council of the Institute of Company Secretaries of India for the period from 2004 to 2010.
3. Chairman of the Centre for Corporate Governance Research & Training (CCGRT) Managing Committee.
4. Program Director for the National Conference for Practicing Company Secretaries held in Pune in 2009.

5. Chairman of the Information Technology (IT) Committee of ICSI and was actively involved in the most prestigious COSMIC Project of the Institute.
6. Member of Training and Educational Facilities Committee, Examination Committee, Finance Committee and Practicing Company Secretaries Committee during 2007 to 2010.
7. Vice Chairman of the Building Committee of Western India Regional Council.
8. Chairman of the Research Committee at WIRC which came out with a publication of Corporate Calendar and Draft Listing Agreement.
9. Chairman of the Information Technology (IT) Committee of WIRC.
10. Member of the Secretarial Standards Board and also member of Peer Review Board of ICSI during 2014 to 2018.

He has been addressing in various Programs for the Professionals organized by the various Professional Institutions. He has also authored many articles & publications of ICSI. He has been 13th rank holder in the Final Examination of ICAI held in the year 1985. As a Nominated Member from the ICSI, he served on the **Cost Accounting Standards Board** for the years 2009 and 2010.

Presently he holds the position of a Director in the following Companies:

1. HU Consultancy Services Private Ltd. (A company specialized in Mergers & Acquisitions).
2. MRM Corporate Advisor Private Ltd.

He is also an Insolvency Professional registered with Insolvency and Bankruptcy Board of India (IBBI).

He is registered as Mediator and Conciliator with Regional Director Western Region for the territory of Maharashtra, Goa and Union territory of Daman and Diu and Regional Director North Western Region for the territory of Gujrat, Madhya Pradesh and Chhatisgarh.

He is a co-author of following Books **published by Bloomsbury India Professional:**

- Meetings – Notices Resolutions and Minutes under the Companies Act, 2013 (3 editions).
- Company Law Procedures with compliances & Check lists – A Practical Approach to the Companies Act, 2013 (7 editions).
- Bloomsbury's Quick Guide to tax & Corporate laws (4 editions).
- The Director's Handbook (3 editions).
- Ready Reckoner on the Companies (Amendment) Act, 2017 (Released in February, 2018) (E-book).

Shilpa Dixit, is a Fellow Member of the ICSI and is a Practising Company Secretary from Pune with more than 15 years of experience in practice. She has done her B. Com from Pune University and pursued her LLB from the ILS Law College, Pune.

She is being also working as an **Insolvency Professional** and is a member of Indian Institute of Corporate Affairs

She has a knowledge in the fields of Corporate Laws, Listing guide-lines and SEBI Regulations and she is an advisor to various Public and Private Limited Companies including top MNCs.

Shilpa's areas of practice include:

- The Secretarial Audits under the Companies Act, 2013;
- Due Diligence Audits under the Company Law & compliances related to SEBI Regulations;
- Periodical Audits as per the Listing Agreements with the Stock Exchanges;
- Foreign Exchange Management laws;
- Formation and Management of JV Companies;
- Formations and management of LLPs;
- Registrations under the MSMED Act etc.

She has contributed many articles on corporate laws in ICSI's journals and has received a Best Article for the Year Award in the year 2007, from the Pune Chapter of ICSI, for her article on "*Legalization of Foreign Public Documents with reference to the Hague Conference on Private International Law (Hague Apostil Convention)*".

She is a faculty to the programmes conducted by professional institutes and has served on many committees of the Pune Chapter and the Western India Regional Council of the ICSI, since 2007.

As a Chairperson of the Committee of the Practicing Company Secretaries, in the year 2009, she undertook and successfully completed the work of publishing the revised edition of the Handbook for Entrepreneurs & Professionals, published by the Pune Chapter of the WIRC of ICSI namely "All About Private Limited Companies".

She had been an Office Bearer of the Managing Committee of Pune Chapter of ICSI during 2011 to 2014 and has served the position of a Chairperson of Pune Chapter of ICSI in 2014.

In 2015, she was the first female Company Secretary getting elected from the Pune on the Western India Regional Council of ICSI. And recently she has been re-elected as Member on the WIRC for the term from 2019-2022

While as a Member WIRC, till date, She has served the position of a

- Secretary of WIRC of ICSI in the year 2015
- a Vice-Chairperson of WIRC of ICSI in the year 2017

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- A Chairperson of the Training & Education Facilities committee of WIRC of ICSI in the year 2018
- A Chairperson of the Library Committee of WIRC of ICSI in the year 2019
- A Chairperson of the IT committee of WIRC of ICSI in the year 2020
- A Chairperson of the Library Committee of WIRC of ICSI in the year 2021 & 2022

In the year, 2018 she has been also appointed as member on the Auditing Standard Board of ICSI

She has also served a position of Woman and Independent Director in one of the Listed Company based in Pune, Enkei Wheels (India) Limited from 2013 to 2021

She is a Director in two Private limited companies based in Pune.

She has co-authored the following books published by Bloomsbury India Professional:

- Secretarial Audits under Corporate Law and Annual Return certification (1st edition 2020) (2nd edition 2021)
- Meetings- Notices Resolutions and Minutes Under the Companies Act, 2013 (1st edition, 2019) (2nd edition 2020) (3rd edition 2021)
- Company Law Procedures with compliances & Check lists– A Practical Approach to the Companies Act, 2013 (2nd edition 2017) (3rd edition, 2018) (4th edition, 2019) (5th edition, 2019) (6th edition, 2020) (7th edition, 2022)
- Bloomsbury’s Quick Guide to tax & Corporate laws (2nd edition released in September 2017) (3rd edition released in August, 2018)
- ‘The Director’s Handbook’ (1st edition, 2017) (2nd edition 2020) (3rd edition 2021)
- Ready Reckoner on the Companies (Amendment) Act, 2017 (Released in February, 2018)(E-book)

She is being awarded with the “**Rotary Professional Excellence Award**” in the category of Company Secretaries at the Rotary Fest, 2019 held at Pune.

CS Shilpa Dixit (July, 2023)

Amogh Diwan, ACS, B.S.L. LL.B., LL. M. (Business Law)

CS Amogh Diwan is a Practising Company Secretary currently based in Pune, India. His core areas include legal research, audits, legal consultancy, contract drafting & analysis, and setting up businesses in India. He is actively contributing to the field in various capacities since over half a decade.

He has co-authored the following books published by Bloomsbury India Professional:

- ‘The Director’s Handbook’ (presently, 3rd edition)
- ‘Meetings – Notices, Resolutions and Minutes Under the Companies Act, 2013’ (presently, 3rd edition)
- ‘Company Law Procedures’ (presently, 7th edition)
- ‘Secretarial Audits under Corporate Laws and Annual Return Certification’ (presently, 2nd edition)
- ‘Ready Reckoner on the Companies (Amendment) Act, 2017’

Furthermore, he was a Core Contributor for the commentary on company law, titled ‘ICSI Premier on Company Law – Volume I, Sections 1-148’ and has also contributed to Marathi Vishwakosh. His multiple research papers published and presented in journals and seminars (national and international) were well appreciated.

As a speaker, he has delivered various sessions at professional programmes across the country. In addition to this, he has commenced and taught a course on ‘Corporate Finance’ to LL. M. students at ILS Law College, Pune for three years.

During the year 2018, he was a member of ‘Auditing Standards Board’, ‘ICSI Core Group to harmonise and simplify the corporate and non-corporate structures in India’ of the Institute of Company Secretaries of India and ‘Training, Education and Facilitation Committee’ of Western India Regional Council of ICSI. During the year 2019 and 2021, he was a member of the Library Committee of Western India Regional Council of ICSI.

In his rich academic journey, he has secured multiple accolades. During the LL. M. course, he was recognised by the Department of Post-graduation in Law as ‘Student Par Excellence’ and secured 5th rank in University of Pune. While pursuing Company Secretary Course, he has secured All India Rank 7 (Professional stage - December 2012) and All India Rank 2 (Foundation stage - December 2010).

While completing ‘Certificate Course in Legislative Drafting’ by Institute of Advanced Legal Studies, he was adjudged as the ‘Best Legislative Drafter’.

Additionally, he has completed 1 year Certificate Courses in ‘Law and Economics’ and Certificate Courses in ‘Financial Modelling’, ‘Financial Engineering & Structured Finance’ with distinction from Gokhale Institute of Politics and Economics, Pune.

Preface and acknowledgement

“Always do right – this will gratify some and astonish the rest.” Mark Twain

While Mark Twain has uttered the quote on a lighter note, the present day scenario of regulatory enforcement requires the businesses to adopt this as their motto. This Third edition of the book comes out in a time which is marked by the use of Artificial Intelligence in regulating the entities. The use of AI in enabling the in-house adjudication mechanisms is sure to be the watershed moment in the corporate governance and compliances.

The history of audits is sure to lead us to the right approach in conducting these audits. To ensure the compliance of laws in view of the sheer impossibility of constant regulatory oversight over all regulated entities, the concept of Audits was evolved in modern corporate legislations across the world. These auditors are the impartial quasi-regulators who facilitate ensuring compliance with the provisions of the law.

Indian Companies Act, 2013 contains two such provisions with reference to the legal audits:

Firstly, in the form of certification of annual return of a listed company or a company which includes all unlisted public companies as well as the private companies, having paid-up share capital of Rs. 10 crore or more or turnover of Rs. 50 crore or more, by a Company Secretary in practice.

Secondly, Secretarial Audit of a listed company and a public company having a paid-up share capital of Rs. 50 crores or more or a public company having a turnover of Rs. 250 crores or more and all Companies having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crore or more as at the end of Financial year. The Audit is required to be performed by a Company Secretary in practice.

Another important audit which has been introduced in the year 2019, is an audit under Reg. 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The same has evolved into a secretarial compliance report both for the listed entity as well as its material subsidiaries.

This book aims to provide complete support for conducting these audits. Further, the Audit checklists are flexible enough to be tailored to suit the need of any specific voluntary audit for all types of companies.

The primary aim of the book is to serve the need of a Company Secretary in practice conducting all these audits. However, the book is also useful for the auditee

companies to ensure that they are in full compliance with the law and ready to face any audit or regulatory action.

A Company Secretary employed in any company may use this book as a guide to effectively discharge his duties under the section 205 of the Companies Act, 2013 or implement systems in his organisation.

Apart from this any stakeholder including the entrepreneurs and non-residents who are doing business in India or intend to do business in India aiming to understand the law in an easy transaction-wise manner is sure to benefit from a perusal of this book.

We are grateful to our publisher, Bloomsbury India Professional, for giving us this one more opportunity to contribute another book in our fruitful association spread over six books.

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How to use this book?

This book endeavours to be a guide for conducting effective secretarial audit, including audit under clause 24A of the Listing agreement and annual return certification audits. While this book may also be used for proactively ensuring compliance of various provisions, more help in the form of checkpoints, action points, procedures, and forms, can be obtained from 'Company Law Procedures with Compliances and Checklists' 6th Edition by Bloomsbury India Professional.

For the required drafts of resolutions and minutes, reference may be made to the third edition of 'Meetings- Notices, Resolutions, and Minutes under the Companies Act, 2013' by Bloomsbury India Professional.

As the audit checklists are prepared to be applicable to the broadest types of companies, *including private companies*, it demands a certain level of generalisation and does not account for the specifics. To make sure that all such factors are covered by the audit, following steps or points are required to be noted:

- Check for any changes in law (Act, rules, notifications, circulars, standards, various returns/formats of the forms etc.) after the publication of the book if the audit exercise pertains to a date later than the date of the book.
- If the law has changed during the year under Audit, check the compliance accordingly.
- The checklists under other legislations are not relevant for the purpose of certification of Annual Return.
- For Secretarial Audit, both the points for certification of Annual Return as well as checklist under other laws is relevant.
- Check the Articles of Association of the Company and whether they mandate any specific procedure for approvals of certain matters/any different way of approval (unanimous resolutions etc.)/prohibit use of a specific procedure etc.
- As the book is written with running companies in mind, no separate checklists are provided for companies that are in corporate insolvency resolution process or liquidation. In case of such companies, check all existing compliances with appropriate changes as well as any specific applicable compliances.
- On a similar line, this book covers the checklists of certification of annual return and secretarial audit, both of which have statutory mandate. If any voluntary audit is undertaken by the user, the checklists may require modification in the light of scope of the work.
- All the checklists are exclusively based on the compliances applicable for the company and not for other parties to the transaction.

- As this book essentially deals with the minimum legal requirements, the discretion of the user in framing of the audit opinion may go beyond the requirements and indeed, in a few cases, such extra layer of checking is warranted.
- There are other points to be considered by the professional in discharge of his duties. Attention is drawn to the provisions of the Regulation 3 of the ICSI Unique Document Identification Number (UDIN) Guidelines, 2019 which requires generation of UDIN at the time of or 7 days before the signing of these certifications and audits. Further, the ICSI Auditing Standards CSAS-1 to CSAS-4 are mandatory from 1st of April, 2021 which are required to be followed.

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