

REVISED CLAUSE 49

(NEW CORPORATE GOVERNANCE NORMS FOR INDIA
LISTED COMPANIES)

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Concept of Corporate Governance

Corporate Governance is the system by which companies are directed and governed by the management in the best interests of the stakeholders and others ensuring better management, greater transparency and timely financial reporting. The three key aspects of corporate governance includes inter-alia, accountability, transparency and equality of treatment for all stakeholders. Since the pivotal role in any system of corporate governance is performed by the Board of Directors, they are primarily accountable and responsible for governance of their companies.

Important Committees on Corporate Governance

| Sl.No. | Committee | Country | Date of Submission |
|--------|----------------------|-----------------|--------------------|
| 1. | Cadbury | England | 1992 |
| 2. | King Committee | South of Africa | 1994 & 2002 |
| 3. | CII | India | 1996 |
| 4. | Hampel | England | 1998 |
| 5. | Kumar Mangalam Birla | India | 2000 |
| 6. | SEBI | India | 2000 |
| 7. | Narayana Murty | India | 2003 |

Clause 49 of Listing Agreement

As Clause 49 VII (1) of the Listing Agreement, a company is required to obtain a certificate either from the auditors of the company or practicing company secretaries as regards compliance of requirements of Corporate Governance. This certificate is required to be annexed with the Directors' Report, which is sent annually to all the shareholders of the company. Further, the same certificate is also required to be sent to the stock exchange (s) along with the Annual Report filed by the company. The requirements of revised Clause 49 (hereinafter referred as Clause 49) for Corporate Governance are divided into mandatory and non-mandatory requirements.

Clause 49 is Guidance Note and this note is intended to provide guidance to auditors in certification of the compliance of requirements of Corporate Governance as stipulated in Clause 49 of the Listing Agreement between the Stock Exchange and the auditee company (hereinafter referred to as "Listing Agreement"):

The SEBI Circular dated 29th October, 2004 is the Master Circular and has replaced all the earlier Circulars issued on Clause 49 of the Listing Agreement.


The following report lists out the provisions according to the new Clause 49 of the Listing Agreement:

Clause 49 on Shareholder Rights

Clause 49 gives shareholders right to:

- ❖ Participate in and be sufficiently informed on decisions concerning fundamental corporate changes.
- ❖ Vote in shareholder meetings.
- ❖ Ask questions to the Board and propose resolutions.
- ❖ Participate in nomination and election of Board members.
- ❖ Exercise their ownership rights.
- ❖ Put forward their grievances to the Company.
- ❖ Be protected from abusive actions in the interest of controlling shareholders.

Clause 49 on Disclosure and Transparency :

- ❖ The Company should ensure timely and accurate disclosure of information to its shareholders.
 - ❖ The information should be prepared and disclosed in accordance with the prescribed standards and rules.
 - ❖ Channels for dissemination of information should provide for equal, timely and cost efficient access to relevant information by users.
 - ❖ The company should maintain minutes of the meeting explicitly recording dissenting opinions.
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CLAUSE 49 ON BOARD COMPOSITION

1. The Board should have an optimum combination of Executive Directors (ED) and Non-Executive Directors (NED), satisfying the following criteria:

- ❖ If Chairman is an ED, at-least half of the Board should be Independent Directors (ID).
- ❖ If Chairman is a Promoter or related to a Promoter, at-least half of the Board should be IDs.
- ❖ If Chairman is related to anyone occupying management position at the Board level or one level below the Board, at-least half of the Board should be IDs.
- ❖ If the Chairman is an ID, at-least one-third of the Board should be IDs.
- ❖ If the Board doesn't have a regular non-executive Chairman, at-least half of the Board should be IDs.

2. The Board should have at-least one woman director.

CLAUSE 49 ON INDEPENDENT DIRECTORS

Clause 49 defines an Independent Director as a Non-Executive Director who:

- ❖ Is NOT a Nominee Director
- ❖ Is/Was NOT a promoter / relative of the promoter of the Company or its holding, subsidiary or associate company.
- ❖ Has/had NO pecuniary relationship (apart from directorial remuneration) with the Company, its holding, subsidiary, associate company or the promoters or directors during two immediately preceding financial years.
- ❖ Whose relatives DO NOT have/had any pecuniary relationship with the Company its holding, subsidiary, associate company or the promoters or directors, amounting to 2% or more of its total income or Rs. 50 lakh during the two immediately preceding financial years.
- ❖ Who is/was NOT an employee of the Company its holding, subsidiary, associate company in the any of the three immediately preceding financial years.
- ❖ Is/has NOT been an employee/proprietor/partner of an audit /legal /consulting/any other firm which has transaction with the Company its holding, subsidiary, associate company, amounting to 10% or more of gross turnover of that firm, in any of three preceding financial years.
- ❖ Is NOT a CEO/Director of a non-profit firm that receives 25% or more of its receipts from the Company its holding, subsidiary, associate company, promoters or its directors, or holds 2% or more voting power of the Company.
- ❖ is NOT a material supplier, service provider or customer or a lessor or lessee of the company.
- ❖ Is NOT less than 21 years of age.

Clause 49 also enforces certain restrictions on the IDs, some of which are:

Outside Directorship: A person not to serve as an ID in more than 7 listed companies.

Outside Directorship: A whole-time director of one company not to serve as an ID in more than 3 listed companies.

Tenure: An ID can only hold office for two terms of five years each.

Tenure: Reappointment for the second term has to be sought from shareholders through a special resolution.

Tenure: If a person has already served as an ID for 5 years or more in a company as on October 1st 2014, he will be eligible for one more term of upto 5 years only.

Tenure: An ID will be eligible for reappointment as an ID only after allowing a 3 years cooling-off period, after completion of two terms.

Stock Options: IDs will not be entitled to any stock options of the Company.

Some of the mandatory provisions regarding IDs are:

- ❖ Issue of formal letter of appointment to IDs and disclosure of such letter to shareholders.
- ❖ Performance evaluation of IDs.
- ❖ Separate meetings of IDs.
- ❖ Training of newly appointed and existing IDs.

CLAUSE 49 ON OTHER BOARD PROVISIONS

- ❖ Board meeting to be held at-least four times a year with a maximum gap of 120 days between two meetings.
- ❖ A director can't be a member in more than 10 committees (Audit and Stakeholders' Relationship) and Chairman of more than 5 committees across all the Boards of Indian listed companies.
- ❖ IDs who resign or are removed, are to be replaced with new IDs within 3 months or immediate next Board meeting, whichever is earlier, in case the requirement of IDs is not met.
- ❖ Board members have to affirm compliance with a 'Code of Conduct' on an annual basis.
- ❖ IDs to be held liable in acts of omission or commission, which occurs in their knowledge.
- ❖ Company has to mandatorily establish a whistle blower mechanism.

CLAUSE 49 ON BOARD COMMITTEES

Clause 49 has the following provisions regarding Audit Committee:

- ❖ Members: At-least three members, two-thirds of which shall be IDs
- ❖ Chairman: Chairman to be an ID
- ❖ Attendance: Chairman of the Committee to be present in AGM
- ❖ Meeting: At-least four times a year and not more than four months gaps between meetings
- ❖ Quorum: Two or one-third of the members, whichever is greater, but minimum two IDs should be present
- ❖ Role: Role of the committee also includes reviewing and monitoring auditor independence, approval of related party transactions, inter-corporate loans, valuations, etc.

Clause 49 has the following provisions regarding Nomination and Remuneration Committee:

- ❖ Members: At-least three members, all non-executive directors and at-least half to be IDs
- ❖ Chairman: Chairman to be an ID

Clause 49 has the following provisions regarding Risk Management:

- ❖ The Company should form a Risk Management Committee
- ❖ The Board should be responsible for framing, implementing and monitoring the risk management plan.
- ❖ The company should lay down procedures to inform Board members about the risk assessment and minimization procedures.

CLAUSE 49 ON SUBSIDIARIES

Clause 49 has the following provisions regarding subsidiary companies:

- ❖ At-least one ID of the company should be a director on the Board of a material non-listed Indian subsidiary.
- ❖ The audit committee should review financial statements of and investments made by the unlisted subsidiary.
- ❖ No company can dispose of shares in the material subsidiary, reducing its shareholding below 50%, without passing a special resolution in its general meeting.
- ❖ Selling, disposing or leasing of more than 20% of assets of the material subsidiary will require approval of shareholders by way of special resolution.

CLAUSE 49 ON RELATED PARTY TRANSACTIONS

Clause 49 has tightened the provisions and disclosures requirements for related party transactions (RPT). Some of the requirements are:

- ❖ RPTs to require prior approval of the audit committee.
- ❖ Material RPTs to require shareholder approval through special resolution and concerned related parties to abstain from voting on such resolutions.
- ❖ Disclosure of all material RPTs on a quarterly basis with compliance report on corporate governance.
- ❖ Disclosure of policies on dealing with RPTs, in website and Annual Report.

CLAUSE 49 ON DIRECTORIAL REMUNERATION

The provisions relating to directorial remuneration are kept unchanged. They include:

- ❖ Disclosure of all pecuniary relationships of non-executive directors with the company.
- ❖ Disclosure of detailed information on remuneration to directors.
- ❖ Disclosure of criteria of making payments to non-executive directors.
- ❖ Disclosure of shares/other instruments held by non-executive directors.

CLAUSE 49 ON OTHER DISCLOSURES

Clause 49 stipulates mandatory disclosure of many corporate actions. Some of these are:

- ❖ Directorial Resignation: Disclosure of letter of resignation of directors along with reasons, on the company website and stock exchange, within one working day of receipt of the letter.
- ❖ Letter of Appointment: Disclosure of letter of appointment of an ID along with detailed profile, on the company website and stock exchange, within one working day of date of appointment.
- ❖ Disclosure of training imparted to IDs, in the Annual Report.
- ❖ Disclosure of details of establishment of vigil mechanism, in company website and Board's report.
- ❖ Disclosure of the remuneration policy and the evaluation criteria in the Annual Report.

NON-MANDATORY REQUIREMENTS OF CLAUSE 49

Most of the provisions in the new Clause 49 are mandatory in nature. However, there are some, which are non-mandatory and are left in the discretion of the companies to adhere.

The non-mandatory requirements in the new Clause 49 are:

- ❖ The Board may appoint a non-executive Chairman who should be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.
- ❖ Disclosure of half-yearly financial performance including summary of the significant events.
- ❖ Moving towards a regime of unqualified financial statements.
- ❖ Appointment of separate individuals to the posts of Chairman and MD/CEO.
- ❖ Reporting of the internal auditor directly to the audit committee.

Thank you!

