



Corporate Knowledge Foundation

THE KNOWLEDGE COMPANION

6/30/2014

## REVISED CLAUSE 49 OF LISTING AGREEMENT

**GP MADAAN**

- ❖ Founder & CEO, Corporate Knowledge Foundation
- ❖ Co- Chairman, Assocham's National Council for M & A
- ❖ Member, Secretarial Standard Board, ICSI
- ❖ Past Chairman, ICSI-NIRC

# **Need to Revise Clause 49**

**Clause 49 of the Listing Agreement deals with Corporate Governance Norms.**

**On 17<sup>th</sup> April, 2014 SEBI amended the Corporate Governance norms for listed companies in India which will be effective from 1<sup>st</sup> October, 2014 to:**

- ✓ Bring the Corporate Governance Norms in Line with Companies Act, 2013**
- ✓ Impose more stringent conditions to the listed companies through listing agreement considering the need to have better governance practices in the listed companies.**

# APPLICABILITY

## Clause 49 of Listing Agreement (LA) is applicable to

- ✓ All listed companies.
- ✓ Provisions relating to constitution of Risk Management Committee shall be applicable to top 100 listed companies by market capitalisation as at the end of the immediate previous financial year
- ✓ Other listed entities which are not companies, but body corporate or are subject to regulations under other statutes (e.g. Banks, financial institutions, insurance companies etc.). The clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities.

## OBJECTIVES

- Alignment with Companies Act, 2013
- Adoption of leading Industry Practices on Corporate Governance
- Making framework of CG more effective
- Disclosure and transparency on all material matters
- Responsibilities of the Board more stringent

# COMPOSITION OF BOARD

- Not less than fifty percent of the Board of directors comprising non-executive directors
- At least one woman director.

**Where the chairman of the Board is:**

- Non-executive, at least one-third of the Directors to be IDs
- Executive chairman, at least half of the Board to be IDs

**Provided that where the regular non-executive chairman is a promoter of the Company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the Company shall consist of independent directors.**

## INDEPENDENT DIRECTOR (ID)

**Every listed Company is required to have Independent Directors on its Board.**

**Independent director shall mean**

**“a non-executive director, other than a nominee director of the Company who fulfills the criteria of independence as laid down in the LA which is similar to the Companies Act.”**

## TRAINING OF INDEPENDENT DIRECTOR

- **The Company to provide suitable training to independent directors.**

**Details of such training imparted to be disclosed in the Annual Report.**

# FORMAL LETTER OF APPOINTMENT TO INDEPENDENT DIRECTORS

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- **The Company to issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013.**
  - **Letter of appointment and detailed profile to be disclosed on:**
    - **the websites of the Company; and**
    - **the stock exchanges**
- not later than one working day from the date of such appointment.**

## TERM OF ID

- ❑ Up to **Five** consecutive years
- ❑ Eligible for **reappointment** on passing of a **special resolution** by the Company
- ❑ Not more than **two consecutive terms**
- ❑ Eligible for appointment after **three years cooling** period
- ❑ Provided that a person who has already served as an independent director for five years or more in a Company as on October 1, 2014 shall be eligible for appointment, **on completion of his present term**, for one more term of up to five years only
- ❑ **Performance evaluation** report shall be the basis to determine whether **to extend or continue** the term of ID. The Nomination Committee shall lay down the performance evaluation criteria and the Company to disclose the same in its Annual Report.

# LIMIT ON NUMBER OF DIRECTORSHIPS FOR IDS

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- A. A person not to be independent director in more than **seven** listed companies.
- B. Further, any person who is serving as a **whole time director in any Listed Company** shall serve as an independent director in not more than **three** listed companies.

## SEPARATE MEETINGS OF INDEPENDENT DIRECTORS

The IDs to hold **at least one meeting in a year** to:

- Review the **performance of non IDs** and Board as a whole;
- Review the **performance of the chairperson** of the Company;
- Assess the **quality and timeliness of flow of information** between management and the Board

## SUBSIDIARY COMPANIES

- At least **one ID of holding company** to be on the Board of **material non-listed Indian subsidiary** company
- Audit Committee of listed holding co. to **review financial statements of unlisted subsidiary**
- Board **Minutes of unlisted subsidiary** to be placed before the Board of **listed holding co.** Significant transactions and arrangements to be reported.

## OTHER PROVISIONS AS TO BOARD AND COMMITTEES

- The Board to meet at least 4 times a year, with a maximum time gap of 120 days between two meetings.
- The Board to review compliance reports of all laws applicable to the Company
- A director shall not be:
  - ❑ a member in more than 10 committees; or
  - ❑ act as Chairman of more than 5 committees

across all companies (only public limited companies to be included).

## OTHER PROVISIONS AS TO BOARD AND COMMITTEES (CONTD)

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- **An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director at the immediate next Board meeting or three months from the date of such vacancy, whichever is later.**
- **The vacancy may not be filled if the Company otherwise fulfils the requirement of independent directors.**
- **The Board of the Company shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.**

# CODE OF CONDUCT

- ✓ **The Board shall lay down a code of conduct for all Board members and senior management of the Company. The code to be posted on the website of the Company.**
- ✓ **All Board members and senior management personnel to affirm compliance with the code on annual basis.**
- ✓ **The Annual Report of the Company shall contain a declaration to this effect signed by the CEO.**

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# WHISTLE BLOWER POLICY & VIGIL MECHANISM

- ✓ The Company to establish a **vigil mechanism** to report concerns about unethical behaviour, actual or suspected fraud or violation of the Company's code of conduct or ethics policy.
- ✓ The details of establishment of such mechanism shall be disclosed by the Company on its **website** and in the **Board's Report**.

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# Committees

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# AUDIT COMMITTEE

A **qualified and independent audit committee** shall be set up.

The audit committee shall have **minimum three directors as members. Two-thirds** of the members of audit committee shall be independent directors.

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1. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
2. The **chairman** of the audit committee shall be an **independent director**;
3. The **chairman** of the audit committee shall be **present at annual general meeting** to answer shareholder queries;

# Meeting of Audit Committee

The Audit Committee should meet at least **4 times** in a year and not more than **four months** shall elapse between two meetings.

The **quorum** shall be either **2 members** or **1/3<sup>rd</sup>** of the members of the audit committee whichever is greater, but there should be a **minimum of 2 independent members** present.

# NOMINATION AND REMUNERATION COMMITTEE

**The Company shall set up a Nomination and Remuneration Committee which shall comprise at least 3 directors, all of whom shall be non-executive directors and at least 1/2 shall be independent.**

**Chairman of the committee shall be an independent director.**

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## STAKEHOLDERS' RELATIONSHIP COMMITTEE

The Company to constitute “Stakeholders’ Relationship Committee” to redress the grievances of Shareholders, Debenture holders and other Security Holders.

A Non-Executive Director shall be Chairman of the Committee with such other members as may be decided by the Board.

# RELATED PARTY TRANSACTIONS

All provisions relating to Related Party Transactions (RPTs) are more or less the same as in the Companies Act, 2013.

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## Revised Clause 49

All RPTs need prior approval of Audit Committee.

Approval of all material RPTs by shareholders through Special Resolution with Related Parties abstaining from Voting.

Material is defined to mean higher of 5% of annual turnover or 20% of net worth of the Company as per the latest audited financial statements.

Transactions to be considered taken together with previous transactions during a financial year

## Companies Act, 2013

The Act requires pre approval of related party transactions which are not in ordinary course of business or are not at arm's length, by the Board or shareholders by a Special Resolution, with Related Parties abstaining from Voting.

The shareholders' approval requirement applies to large companies (more than INR 10 crore share capital) or material transactions.

# ENHANCED DISCLOSURES

## Related Party Transactions

- **Details** of all material transactions with related parties shall be **disclosed quarterly** along with the compliance report on corporate governance.
- The Company shall **disclose the policy** on dealing with Related Party Transactions on its **website** and also in the **Annual Report**.

# ENHANCED DISCLOSURES (CONTD.)

## Management

.  
 As part of the Directors' Report or as an addition thereto, a Management Discussion and Analysis Report should form part of the Annual Report to the shareholders. This management discussion & analysis should include discussion on the matters listed in Sub-clause VIII(D).

# ENHANCED DISCLOSURES (CONTD.)

## Management (contd.)

- Senior management to make disclosures to the Board relating to all material financial and commercial transactions (of personal interest) that may have a potential conflict with the interest of the Company.
- The Code of conduct for the Board of directors and the senior management shall be disclosed on the website of the Company.

# ENHANCED DISCLOSURES (CONTD.)

## Shareholders

- In case of the appointment/re-appointment of a director, the shareholders must be provided with the details of the director
  
- Disclosure of relationships between directors inter-se shall be made in the:
  - Annual Report;
  - Notice of appointment of a director;
  - Prospectus and letter of offer for issuances; and
  - Any related filings made to the stock exchanges

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# ENHANCED DISCLOSURES (CONTD.)

## SHAREHOLDERS (CONTD.)

- Quarterly results and presentations made by the Company to analysts to be hosted on Company's web-site.
- To expedite the process of share transfers, the Board of the Company shall delegate the **power of share transfer to an officer or a committee** or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

# ENHANCED DISCLOSURES (CONTD.)

## Resignation of director

### ➤ The Company:

- to disclose director's letter of resignation along with the **detailed reasons** on its website; and
- to forward a copy of such letter to the stock exchanges

**not later than one working day from the date of receipt of resignation**

# ENHANCED DISCLOSURES (CONTD.)

## Disclosures in Annual Report

- There shall be a **separate section on Corporate Governance** in the Annual Reports of Company, with a detailed compliance report on Corporate Governance.
- Disclosure of the compliances of mandatory requirements and adoption/non-adoption of the non-mandatory requirements to be made.

## ENHANCED DISCLOSURES (CONTD.)

- ✓ The Company to disclose use/ application of funds raised through
  - Public Issue
  - Rights Issue
  - Preferential Issue etc.on a Quarterly/ Annual basis as a part of Financial Results.
  
- ✓ The Annual Disclosure Statement shall be certified by the Statutory Auditors.

## CEO/CFO'S CERTIFICATION

The CEO and the CFO or any other person heading the finance shall certify to the Board that:

- They have reviewed financial statements and the cash flow statement for the year and that these statements are true and are not misleading;
- These statements are in compliance with existing accounting standards, applicable laws and regulations.

## CEO/CFO'S CERTIFICATION (CONTD. )

- There are no transactions which are fraudulent, illegal or violative of the Company's code of conduct.
- They accept responsibility for establishing and maintaining internal controls for financial reporting

# Compliance Certificate

❖ The Company shall obtain a certificate from either the **Auditors or Practicing Company Secretaries** regarding compliance of conditions of corporate governance as stipulated in this clause and **annex the certificate with the Directors' Report**, which is sent annually to all the shareholders of the Company.

❖ The same certificate shall also be sent to the Stock Exchanges along with the Annual Report filed by the Company.

## MONITORING

- Monitoring Cell set up by SEBI to assess compliances by companies and report non-compliances to SEBI within 60 days from the end of the quarter.

*Governance through Law is beyond the realm of law. It stems from the culture and the mindset of the management and cannot be regulated by law alone.*

*Can a mere provision in law would achieve miracles?*

*Morality can't be legislated but behaviour can be regulated-Martin Luther King*



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**Thank You**  
**GP Madaan**  
**91 9810530312**  
**[gpmadaan@ckfindia.org](mailto:gpmadaan@ckfindia.org)**

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