CHAPTER – 11

PROTECTION OF INVESTOR THROUGH CORPORATE GOVERNANCE

1. Introduction

The Securities and Exchanges Board of India has introduced a rigorous regulatory regime to ensure fairness, transparency and good practice. For example, for greater transparency, the SEBI has mandated disclosure of all transactions where the total quantity of shares is more than 0.5% of the equity of the company. Brokers must disclose to the Stock Exchange, immediately after trade execution, the name of the client and other trade details, and the Exchange must then disseminate this information to the general public on the same day. The new environment of improved transparency, fairness, and efficient regulation led BSE to also become a transparent electronic limit order book market in 1996, with an efficient trading system similar to the NSE. Equity and equity derivatives trading in India has skyrocketed to record levels over the last ten years.366

Liberalization of the Indian economy began in 1991. Since then, we have witnessed wide-ranging changes in both laws and regulations, and a major positive transformation of the corporate sector and the corporate governance landscape. Perhaps the single most important development in the field of corporate governance and investor protection in India has been the establishment of the Securities and Exchange Board of India in 1992 and its gradual and growing empowerment since then. Established primarily to regulate and monitor stock trading, it has played a crucial role in establishing the basic minimum ground rules of corporate conduct in the country. Concerns about corporate governance in India were, however, largely triggered by a spate of crises in the early 1990’s—particularly the Harshad Mehta stock market scam of 1992--followed by incidents of companies allotting

preferential shares to their promoters at deeply discounted prices, as well as those of companies simply disappearing with investors’ money\textsuperscript{367}.

These concerns about corporate governance stemming from the corporate scandals, coupled with a perceived need of opening up the corporate sector to the forces of competition and globalization, gave rise to several investigations into ways to fix the corporate governance situation in India. One of the first such endeavors was the Confederation of Indian Industry Code for Desirable Corporate Governance, developed by a committee chaired by Rahul Bajaj, a leading industrial magnate. The committee was formed in 1996 and submitted its code in April 1998. Later the SEBI constituted two committees to look into the issue of corporate governance--the first chaired by Kumar Mangalam Birla, another leading industrial magnate, and the second by Narayana Murthy, one of the major architects of the Indian IT outsourcing success story\textsuperscript{368}.

The first Committee submitted its report in early 2000, and the second three years later. These two committees have been instrumental in bringing about far reaching changes in corporate governance in India through the formulation of Clause 49 of Listing Agreements.

The SEBI implemented the recommendations of the Birla Committee through the enactment of Clause 49 of the Listing Agreements. Clause 49 may well be viewed as a milestone in the evolution of corporate governance practices in India. It is similar in spirit and in scope to the Sarbanes-Oxley measures in the United States. The requirements of Clause 49 were applied in the first instance to the companies in the BSE 200 and S&P C&X NIFTY stock indices, and all newly listed companies, on March 31, 2001.

These rules were applied to companies with a paid up capital of INR 100 million (≈ $2.5 million) or with a net worth of INR 250 million (≈ $6.3 million) at any time in the past five years on March 31, 2002, and to other listed companies with a paid up capital of over INR 30 million (≈ $0.75


\textsuperscript{368} Importantly, Narayan Murthy has been the Chair of Infosys, a company that built its success on a widely held ownership structure rather than the traditional family-controlled Indian model; and he has led key corporate governance initiatives in India.)
million) on March 31, 2003. The Narayana Murthy Committee worked on further refining the rules, and Clause 49 was amended accordingly in 2004.

2. **Committee for corporate governance:** It was stated in press release of SEBI 2000 that “Corporate Governance is an important instrument of investor protection, and it is therefore a priority on SEBI’s agenda. The development of capital market is dependent on good corporate governance without which investors do not repose the confidence in the companies. It is imperative for the companies to maximize the shareholders value and wealth. Hence, to further improve the level of corporate governance, need was felt for a comprehensive approach at this stage of development of capital market, to accelerate the adoption of globally acceptable practices of corporate governance. This would ensure that the Indian investors are in no way less informed and protected as compared to their counterparts in the best development capital market.

In the above context, the SEBI appointed a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla, a member, SEBI Board. The members of the committee consisted of academicians, management experts, and representatives of investor association, Chamber of Commerce, stock exchanges and SEBI. The report of the committee was considered and adopted by SEBI Board in its meeting held on January 25, 2000. The recommendations are to be implemented through the amendment to listing agreement of the stock exchanges. Internationally listing agreement has been used in most markets to implement corporate governance in the listed companies. Accordingly, today SEBI has issued directions to stock exchanges to amend the listing agreement in this regard. The recommendations of the Kumarmanglam Birla Committee on Corporate Governance have been implemented by the SEBI through the listing agreement.

By its circular SEBI/ CFD/ DIL/ CG/1/ 2004/12/10, dated 29th October, 2004 SEBI notified the revised clause 49 of the listing agreement. All stock exchanges have been directed to immediately replace the existing clause 49 of 

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369 (SEBI’s press release No. PR 49, dated February 21, 2000)
the listing agreement by the revised clause 49. The schedule of implementation of the new clause 49 was as follows:

1. By all entities seeking listing for the first time, at the time of seeking in principle approval for such listing.

2. For existing listed entities which were required to comply with clause 49 which is being revised i.e those having a paid up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more at any time in the history of the company by April 1, 2005.

The SEBI Board in its meeting held on January 25, 2000 considered the recommendation of the Committee and decided to make the amendments to the listing agreement in pursuance of the decision of the Board, it is advised that a new clause, namely clause 49, be incorporate in the listing agreement.370


370 SEBI Circular no. SMDRP/POLICY/CIR-10/2000, February 21, 2000
4. Clauses 49 of Listing Agreement Regarding Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

(A) Composition of Board
(i) The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors.

(ii) Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors. Provided that where the 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.

(iii) The expression ‘independent director’ shall mean a non-executive director of the company who:

    a. apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;

    b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;

    c. has not been an executive of the company in the immediately preceding three financial years;

    d. is not a partner or an executive or was not partner or an executive

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during the preceding three years, of any of the following:

i) the statutory audit firm or the internal audit firm that is associated with the company, and

ii) the legal firm(s) and consulting firm(s) that have a material association with the company.

e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director.

f. is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

g. is not less than 21 years of age.

(iv) Nominee directors appointed by an institution, which has invested in or lent to the company shall be deemed to be independent directors.

(B) Non executive directors’ compensation and disclosures

All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders’ resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, including independent directors, in any financial year and in aggregate.

The requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 1956 for payment of sitting fees without approval of the Central Government\(^\text{372}\).

Limit for commission to Non executive Directors- The limit on remuneration payable to directors other than managing director and whole time directors within the overall limit of 11% is as follows:

(i) 1% of the net profit if the company has one or more managing director or whole time director; and

\(^{372}\) Inserted vide Circular No. SEBI/ CFD/ DIL/ CG/ 1/20065/13/1, dated 13-1-2006
(ii) 3% if the company has no managing director or whole time director. (section 304 of companies act)

Sitting Fees- A director who is not a managing or whole time director may be paid fee for attending meetings of the Board or of the committees of directors. These fees are outside the purview of the ceiling laid down in section 198 and 309 of the companies act. No approval of the Central Government under that section will be necessary to pay sitting fees upto the prescribed limit.\(^{373}\)

Directors traveling and incidental expenses- Where the articles contain a provision identical with art 65 of Table A in Schedule I to the Companies Act, the directors may be paid all traveling, hotel or other expenses properly incurred by them in attending and returning from meetings of the Board or a committee or general meetings of the company or in connection with the business of the company. These expenses are not remuneration or fees and hence do not require approval of the shareholders.

(C) **Other provisions as to Board and Committees**

(i) The board shall meet at least four times a year, with a maximum time gap of four months between any two meetings. The minimum information to be made available to the board is given in Annexure– I A.

(ii) A director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

(iii) The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

\(^{373}\) Section 310 of companies act, 1956
(iv) An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director within a period of not more than 180 days from the day of such resignation or removal, as the case may be.

However, where the company fulfills the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director within the period of 180 days shall not apply.

(D) Code of Conduct

(i) The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.

(ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

II Audit Committee- listed companies have to comply with the requirements of this sub clause besides the provisions of section 292 A of the companies act.

(A) Qualified and Independent Audit Committee.

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

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

(ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

(iii) The Chairman of the Audit Committee shall be an independent director;
(iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;

(v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;

(vi) The Company Secretary shall act as the secretary to the committee.

(B) Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

(C) Powers of Audit Committee

The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

(D) Role of Audit Committee- As the audit committee acts as the bridge between the board, the statutory auditors and internal auditors, the role should include the following (source- Recommendations of Kumar Mangalam Birla Committee)

The role of the audit committee shall include the following:

1. Oversight of the company’s financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.

3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.

4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
   a. Matters required to be included in the Director’s Responsibility Statement to be included in the Board’s report in terms of clause (2AA) of section 217 of the Companies Act, 1956
   b. Changes, if any, in accounting policies and practices and reasons for the same
   c. Major accounting entries involving estimates based on the exercise of judgment by management
   d. Significant adjustments made in the financial statements arising out of audit findings
   e. Compliance with listing and other legal requirements relating to financial statements
   f. Disclosure of any related party transactions
   g. Qualifications in the draft audit report.

5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval

5A. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter.

6. Reviewing, with the management, performance of statutory and internal auditors, and adequacy of the internal control systems.
7. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.

8. Discussion with internal auditors any significant findings and follow up there on.

9. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.

10. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

11. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

12. To review the functioning of the Whistle Blower mechanism, in case the same is existing.

12A. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience & background, etc. of the candidate.

13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

(E) **Review of information by Audit Committee**

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;

2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;

3. Management letters / letters of internal control weaknesses issued by the statutory auditors;

4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

III. Subsidiary Companies

i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.

ii. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.

iii. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

IV. Disclosures

(A) Basis of related party transactions

(i) A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.

(ii) Details of material individual transactions with related parties, which are not in the normal course of business, shall be placed before the audit committee.

(iii) Details of material individual transactions with related parties or others, which are not on an arm’s length basis should be placed before the audit committee, together with Management’s justification for the same.

(B) Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management’s explanation as to why it believes such alternative
treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

(C) Board Disclosures – Risk management
The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.

(D) Proceeds from public issues, rights issues, preferential issues etc.
When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. Furthermore, where the company has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, it shall place before the Audit Committee the monitoring report of such agency, upon receipt, without any delay. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

(E) Remuneration of Directors
(i) All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.

(ii) Further the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
(a) All elements of remuneration package of individual directors summarized under major groups, such as
salary, benefits, bonuses, stock options, pension etc.

(b) Details of fixed component and performance linked incentives, along with the performance criteria.

(c) Service contracts, notice period, severance fees.

(d) Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.

(iii) The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company’s website and reference drawn thereto in the annual report.

(iv) The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.

(v) Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.

(F) Management

(i) 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 following matters within the limits set by the company’s competitive position:

i. Industry structure and developments.

ii. Opportunities and Threats.


iv. Outlook

v. Risks and concerns.

vi. Internal control systems and their adequacy.
vii. Discussion on financial performance with respect to operational performance.

viii. Material developments in Human Resources / Industrial Relations front, including number of people employed.

(ii) Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

(G) Shareholders

(i) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

(a) A brief resume of the director;
(b) Nature of his expertise in specific functional areas;
(c) Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and
(d) Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above

(ia) 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 where the company is listed.

(ii) Quarterly results and presentations made by the company to analysts shall be put on company’s web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

(iii) A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends
etc. This Committee shall be designated as ‘Shareholders/Investors Grievance Committee’.

(iv) 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.

V. **CEO/CFO certification**

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

(a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

(i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(ii) these statements together present a true and fair view of the company’s affairs and are in compliance with existing accounting standards, applicable laws and regulations.

(b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company’s code of conduct.

(c) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose
to take to rectify these deficiencies.

(d) They have indicated to the auditors and the Audit committee as:

(i) significant changes in internal control over financial reporting during the year;

(ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company’s internal control system over financial reporting.

VI. Report on Corporate Governance

(i) There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in Annexure- I C and list of non-mandatory requirements is given in Annexure – I D.

(ii) The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in Annexure I B. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

VII. Compliance

(1) 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.

(2) The non-mandatory requirements given in Annexure – I D may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

**Annexure I A**

**Information to be placed before Board of Directors**

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices, which are materially important
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial nonpayment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.

12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.

13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.

14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.

15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

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**Annexure I B**

*Format of Quarterly Compliance Report on Corporate Governance*

**Name of the Company:**

**Quarter ending on:**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Clause of Listing agreement</th>
<th>Compliance Status Yes/No</th>
<th>Remarks</th>
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<tbody>
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<td>I Board of Directors</td>
<td>49 I</td>
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<td></td>
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<tr>
<td>(A) Composition of Board</td>
<td>49(IA)</td>
<td></td>
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<tr>
<td>(B) Non-executive Directors’ compensation &amp; disclosures</td>
<td>49 (IB)</td>
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<td></td>
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<tr>
<td>(C) Other provisions as to Board and Committees</td>
<td>49 (IC)</td>
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<tr>
<td>D) Code of Conduct</td>
<td>(49 (ID))</td>
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<td>II. Audit Committee</td>
<td>49 (II)</td>
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<tr>
<td>(A) Qualified &amp; Independent Audit Committee</td>
<td>49 (IIA)</td>
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<td></td>
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<td>(B) Meeting of Audit Committee</td>
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<td>(C) Powers of Audit Committee</td>
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<td>(D) Role of Audit Committee</td>
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### IV. Disclosures 49 (IV)

- (A) Basis of related party transactions 49 (IV A)
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- (C) Board Disclosures 49 (IV C)
- (D) Proceeds from public issues, rights issues, preferential issues etc. 49 (IV D)
- (E) Remuneration of Directors 49 (IV E)
- (F) Management 49 (IV F)
- (G) Shareholders 49 (IV G)

### V. CEO/CFO Certification

### VI. Report on Corporate Governance 49 (V)

### VII. Compliance 49 (VII)

**Note:**

1) The details under each head shall be provided to incorporate all the information required as per the provisions of the Clause 49 of the Listing Agreement.

2) In the column No.3, compliance or non-compliance may be indicated by Yes/No/N.A. For example, if the Board has been composed in accordance with the Clause 49 I of the Listing Agreement, "Yes" may be indicated. Similarly, in case the company has no related party transactions, the words “N.A.” may be indicated against 49 (IV A).

3) In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the AGM/EGM, it might be indicated in the "Remarks" column as – “will be complied with at the AGM”. Similarly, in respect of matters which can be complied with only where the situation arises, for example, "Report on Corporate Governance" is to be a part of Annual Report only, the words "will be complied in the next Annual Report" may be indicated.
Annexure I C

Suggested List of Items to Be Included In the Report on Corporate Governance in the Annual Report of Companies

1. A brief statement on company’s philosophy on code of governance.

2. Board of Directors:
   i. Composition and category of directors, for example, promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as lender or as equity investor.
   ii. Attendance of each director at the Board meetings and the last AGM.
   iii. Number of other Boards or Board Committees in which he/she is a member or Chairperson
   iv. Number of Board meetings held, dates on which held.

3. Audit Committee:
   i. Brief description of terms of reference
   ii. Composition, name of members and Chairperson
   iii. Meetings and attendance during the year

4. Remuneration Committee:
   i. Brief description of terms of reference
   ii. Composition, name of members and Chairperson
   iii. Attendance during the year
   iv. Remuneration policy
   v. Details of remuneration to all the directors, as per format in main report.

5. Shareholders Committee:
   i. Name of non-executive director heading the committee
   ii. Name and designation of compliance officer
   iii. Number of shareholders’ complaints received so far
   iv. Number not solved to the satisfaction of shareholders
   v. Number of pending complaints
6. **General Body meetings:**
   i. Location and time, where last three AGMs held.
   ii. Whether any special resolutions passed in the previous 3 AGMs
   iii. Whether any special resolution passed last year through postal ballot – details of voting pattern
   iv. Person who conducted the postal ballot exercise
   v. Whether any special resolution is proposed to be conducted through postal ballot
   vi. Procedure for postal ballot

7. **Disclosures:**
   i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
   ii. Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
   iii. Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
   iv. Details of compliance with mandatory requirements and adoption of the nonmandatory requirements of this clause.

8. **Means of communication:**
   i. Quarterly results
   ii. Newspapers wherein results normally published
   iii. Any website, where displayed
   iv. Whether it also displays official news releases; and
   v. The presentations made to institutional investors or to the analysts.

9. **General Shareholder information:**
   i. AGM : Date, time and venue
   ii. Financial year
   iii. Date of Book closure
   iv. Dividend Payment Date
   v. Listing on Stock Exchanges
   vi. Stock Code
   vii. Market Price Data: High, Low during each month in last
financial year
viii. Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
ix. Registrar and Transfer Agents
x. Share Transfer System
xi. Distribution of shareholding
xii. Dematerialization of shares and liquidity
xiii. Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
xiv. Plant Locations
xv. Address for correspondence

Annexure I D

Non-Mandatory Requirements

(1) The Board
A non-executive Chairman may 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. Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company. The company may ensure that the person who is being appointed as an independent director has the requisite qualifications and experience which would be of use to the company and which, in the opinion of the company, would enable him to contribute effectively to the company in his capacity as an independent director.”

(2) Remuneration Committee
i. The board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company’s policy on specific remuneration packages for executive directors including pension rights and any compensation payment.
ii. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive
directors may comprise of at least three directors, all of whom should be non-executive directors, the Chairman of committee being an independent director.

iii. All the members of the remuneration committee could be present at the meeting.

iv. The Chairman of the remuneration committee could be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

(3) **Shareholder Rights**
A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

(4) **Audit qualifications**
Company may move towards a regime of unqualified financial statements.

(5) **Training of Board Members**
A company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

(6) **Mechanism for evaluating non-executive Board Members**
The performance evaluation of non-executive directors could be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer Group evaluation could be the mechanism to determine whether to extend /continue the terms of appointment of non-executive directors.

(7) **Whistle Blower Policy**
The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company’s code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the
Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

50. The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time.”

52. **Corporate Filing and Dissemination System (CFDS), viz.,**

   **www.corpfiling.co.in**

   (1) The company agrees -

   (a) to file on the CDFS, such information, statements and reports as may be specified by the Participating Stock Exchanges in this regard.

   (b) that the Compliance Officer, appointed under clause 47(a) and the company shall be responsible for ensuring the correctness, authenticity and comprehensiveness of the information, statements and reports filed under this clause and also for ensuring that such information is in conformity with the applicable laws and the listing agreement.

   (c) to ensure that the electronic filing of information through CFDS, pursuant to compliance with any clause of the listing agreement, shall be done within the time limit specified in the respective clause of the listing agreement.

   (d) to put in place such infrastructure as may be required to comply with the clause.

Explanation: For the purposes of this clause –

(i) The term “Corporate Filing and Dissemination System (CFDS)” shall mean the portal at the URL www.corpfiling.co.in or such other website as may be specified by the participating stock exchanges from time to time to take care of exigencies, if any.
(ii) The term “Participating Stock Exchanges” shall mean the stock exchanges owning and maintaining CFDS.

53. The company agrees to notify the stock exchange and also disseminate through its own website, immediately upon entering into agreements with media companies and/or their associates, the following information:-

a. Disclosures regarding the shareholding (if any) of such media companies/associates in the company.

b. Any other disclosures related to such agreements, viz., details of nominee of the media companies on the Board of the company, any management control or potential conflict of interest arising out of such agreements, etc.

c. Disclosures regarding any other back to back treaties/contracts/agreements/MoUs or similar instruments entered into by the company with media companies and/or their associates for the purpose of advertising, publicity, etc.

54. The issuer company agrees to maintain a functional website containing basic information about the company e.g. details of its business, financial information, shareholding pattern, compliance with corporate governance, contact information of the designated officials of the company who are responsible for assisting and handling investor grievances, details of agreements entered into with the media companies and/or their associates, etc. The company also agrees to ensure that the contents of the said website are updated at any given point of time.”

Provided always and the company hereby evocably agrees and declares that unless the Exchange agrees otherwise the Company will not without the previous permission in writing of the Central Government withdraw its adherence to this agreement for listing its securities.

And the Company hereby further agrees and declares that all or any of its securities listed on the Exchange shall remain on
the list entirely at the discretion of the EXCHANGE AND THAT, the Exchange may, in its absolute discretion, suspend or remove the securities from the list at any time and for any reason whatsoever. For the said suspended security to be re-admitted to dealings on the Exchange, the company shall pay to the Exchange such amount as re-instatement fees as may be prescribed by the Exchange from time to time.

IN WITNESS WHEREOF the Company has caused these presents to be executed and its Common Seal to be hereunto affixed as of the day and year first above written.

The Common Seal of the above named __________
_________________________________ was hereunto affixed pursuant to a resolution passed at a meeting (Signature of the Director)
of the Board of Directors held on the ______day of _________________________, 20___ in the presence of ________________________________ (Signature of the Director)
_________________________Director(s) of the Company.

5. Conclusion
The key mandatory features of Clause 49 regulations deal with the (i) composition of the board of directors; (ii) the composition and functioning of the audit committee; (iii) governance and disclosures regarding subsidiary companies; (iv) disclosures by the company; (vi) CEO/CFO certification of financial results; (vi) reporting on corporate governance as part of the annual report; and (vii) certification of compliance of a company with the provisions of Clause 49.

The composition and proper functioning of the board of directors emerges as the key area of focus for Clause 49. It stipulates that non-executive members should comprise at least half of a board of directors. It defines an “independent” director and requires that independent directors comprise at least half of a board of directors if the chairperson is an executive director and
at least a third if the chairperson is a non-executive director. It also lays down rules regarding compensation of board members, sets caps on committee memberships and chairmanships, lays down the minimum number and frequency of board meetings, and mandates certain disclosures for board members.

Clause 49 pays special attention to the composition and functioning of the audit committee, requiring at least three members on it, with an independent chair and with two-thirds made up of independent directors—and having at least one “financially literate” person serving. The Clause spells out the role and powers of the audit committee and stipulates minimum number and frequency of and the quorum at the committee meetings.

With regard to “material” non-listed subsidiary companies (those with turnover/net worth exceeding 20% of a holding company’s turnover/net worth), Clause 49 stipulates that at least one independent director of the holding company must serve on the board of the subsidiary. The audit committee of the holding company should review the subsidiary’s financial statements, particularly its investment plans. The minutes of the subsidiary’s board meetings should be presented at the board meeting of the holding company, and the board members of the latter should be made aware of all “significant” (likely to exceed in value 10% of total revenues/expenses/assets/liabilities of the subsidiary) transactions entered into by the subsidiary. The areas where Clause 49 stipulates specific corporate disclosures are: (i) related party transactions; (ii) accounting treatment; (iii) risk management procedures; (iv) proceeds from various kinds of share issues; (v) remuneration of directors; (vi) a Management Discussion and Analysis section in the annual report discussing general business conditions and outlook; and (vii) background and committee memberships of new directors as well as presentations to analysts. In addition, a board committee with a non-executive chair is required to address shareholder/investor grievances. Finally, it is mandated that the process of share transfer (that had been a long-standing problem in India) be expedited by delegating authority to an officer or committee or to the registrar and share transfer agents.

The CEO and CFO or their equivalents need to sign off on the company’s financial statements and disclosures and accept responsibility for establishing
and maintaining effective internal control systems. The company is also required to provide a separate section of corporate governance in its annual report, with a detailed compliance report on corporate governance. It is also required to submit a quarterly compliance report to the stock exchange where it is listed. Finally, it needs to get its compliance with the mandatory specifications of Clause 49 certified by auditors or by practicing company secretaries. In addition to these mandatory requirements, Clause 49 also mentions non-mandatory requirements concerning the facilities for a non-executive chairman, the remuneration committee, half-yearly reporting of financial performance to shareholders, moving towards unqualified financial statements, training and performance evaluation of board members, and perhaps most notably a clear “whistle blower” policy.

By and large, the provisions of Clause 49 closely mirror those of the Sarbanes-Oxley measures in the United States. In some areas, like certification compliance, the Indian requirements are even stricter. There are, however, areas of uniqueness as well. The distinction drawn between boards headed by executive and non-executive chairmen and the lower required share of independent directors is special to India—and is also somewhat intriguing, given the prevalence of family-run business groups. The market reaction to the corporate governance improvements sought by Clause 49 seems to have been quite positive, somewhat in contrast to the mixed response to Sarbanes-Oxley’s adoption\textsuperscript{374}.

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