

1. Introduction

1.1 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.

1.2 A number of reports and codes of Corporate Governance have already been published internationally – notable among them are the Report of Cadbury Committee, the Report of Greenbury Committee, the Combined Code of the London Stock Exchange, the OECD Code on Corporate Governance, the Blue Ribbon Committee on Corporate Governance, the Hampel Committee on Corporate Governance and the Review of the Role and Effectiveness of Non-executive Directors published by the Department of Trade and Industry, U.K.

1.3 Similarly in the Indian scenario, the Confederation of Indian Industry (CII) had published in April, 1988, Desirable Corporate Governance – A Code, which was followed by setting up of a committee by The Securities and Exchange Board of India (hereinafter referred to as "SEBI") in May, 1999 under the Chairmanship of Shri Kumar Mangalam Birla to formulate the code of Corporate Governance. Based on the report of this committee and developments thereafter, SEBI has issued seven Circulars¹ on the subject of Corporate Governance inter-alia detailing provisions of Corporate Governance.

1.4 Besides, the Reserve Bank of India constituted an Advisory Group on Corporate Governance, which submitted its report in April 2001. Thereafter, the then Ministry of Finance and Company Affairs constituted a Committee on Corporate Audit and Governance under the Chairmanship of Shri. Naresh Chandra, which submitted its report in November, 2002. Currently the

¹ List of earlier seven circulars given in Appendix A at Page No 44.

Ministry of Company Affairs is considering further reforms in the arena of Corporate Governance through the Expert Committee on Simplification of New Company Law i.e., Dr J. J. Irani Committee.

Further, in its constant endeavor to improve the framework of Corporate Governance in India in line with needs of a dynamic market, SEBI constituted a Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy, which submitted its report in February, 2003. Based on the recommendations of the said Committee and public comments received on the report, SEBI in exercise of powers conferred by section 11 (1) of the Securities and Exchange Board of India Act, 1992 read with section 10 of the Securities Contracts (Regulation) Act 1956, SEBI has revised the Clause 49 of the Listing Agreement as per Circular SEBI/CFD/DIL/CG/1/2004/12/10 dated 29th October, 2004².

1.5 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. Further through the issue of another Circular SEBI/CFD/DIL/CG/1/2005/29/3 dated 29th March, 2005³ has extended the date of ensuring compliance with the revised Clause 49 (i.e. Circular dated 29th October, 2004) to December 31, 2005. Subsequently, SEBI vide Circular No. SEBI/CFD/DIL/CG/1/2006/13 dated 13th January, 2006⁴ has made further clarificatory amendments and removed certain operational difficulties.

1.6 As per the SEBI Circular dt. October 29, 2004 the provisions of revised Clause 49 shall be implemented as per the schedule of implementation given below:

- (a) For entities seeking listing for the first time, at the time of seeking in-principle approval for such listing.
- (b) For existing listed entities which were required to comply with revised Clause 49 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.

² Reproduced in Appendix D at Page Nos.48 - 49

³ Reproduced in Appendix E at Page No.50

⁴ Reproduced in Appendix F at Page No.51 - 52

Companies complying with the provisions of the existing Clause 49 at present (issued vide circulars dated 21st February, 2000, 9th March 2000, 12th September 2000, 22nd January, 2001 16th March 2001 and 31st December 2001) shall continue to do so till the revised Clause 49 of the Listing Agreement is complied with or till March 31, 2005 whichever is earlier. Subsequently, the date for ensuring compliance with the revised Clause 49 of the listing agreement was extended upto December, 31, 2005 and the revised Clause 49 of the listing agreement has come into effect from January 1, 2006.

1.7 The requirements of revised Clause 49 (hereinafter referred as Clause 49) for Corporate Governance are divided into mandatory⁵ and non-mandatory requirements. ⁶The non-compliance of any mandatory requirement of Clause 49 with reasons thereof should be specifically highlighted. The extent to which the non-mandatory requirements have been adopted / complied with should be mentioned in the Corporate Governance Report.

1.8 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 expression "auditors of the company" would mean the auditors appointed to audit the financial statements of the company under the Companies Act, 1956.

2. Objective of this Guidance Note

2.1 This Guidance 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

⁵ See Annexure I at Page Nos. 56 - 69

⁶ See Annexure ID at Page Nos.. 77 - 78

Agreement”):

2.2(a) It is the management's responsibility to ensure implementation of requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement.

(b) The Auditor's responsibility is to certify compliance of requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement.

(c) The Auditor obtains sufficient understanding of implementation of requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement.

2.3 This Guidance Note is intended to:

- ❑ assist in clarifying the respective responsibilities of the management and the auditor
- ❑ suggest inquiries the auditor is required to make from the management
- ❑ provide guidance on the verification procedure for the compliance of requirements of corporate governance
- ❑ assist in issuance of a certificate as required
- ❑ outline certain circumstances where the auditor may issue a disclaimer or adverse or qualified certificate.

3. General Approach

For issuance of Certificate on Compliance of requirements of Corporate Governance as stipulated in Clause 49 of the Listing Agreement, the following general approach may be kept in mind:

3.1 As per SEBI circular dated 13th March, 2006 the revised Clause 49 of the listing agreement has come into effect from January, 1st, 2006. Therefore, for the reporting period as on 31st March, 2006, the auditor has to ensure that for the transition period, reporting requirements have to be split into two parts i.e., one for the period ending 31st December, 2005, for which the compliance of requirements would be as per requirements prior to the revised clause and

for the period beginning from 1st January, 2006 to 31st March, 2006, the certificate would be for compliance of requirements as stipulated in the SEBI circular dated 29th October, 2004. The SEBI Circular No SEBI/CFD/DIL/CG/1/2006/13/1 dated 13th January, 2006 has reiterated this position.

3.2 While determining the optimum combination of Executive and Non-executive Directors, it may be kept in mind that since the terms 'executive' and 'non-executive' have not been defined in Clause 49, auditor has to refer to the minutes of the Board.

3.3 While determining the number of independent and non-independent directors in the Board of Directors, the auditor should keep in mind the different limits that have been prescribed in Clause 49 (1A) (i) and (ii). The said clause provides that 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.

3.4 The above clause provides for two sets of limit for the composition of independent directors in the Board where the Chairman is a Non-executive director and where the Chairman is an Executive Director.

3.5 In arriving at the number of independent directors in either of the cases as mentioned above, any fraction thereof should be rounded off to the next integer as the words used in the clause is "not less than" and "at least".

3.6 While planning and performing audit procedures and in evaluating and reporting the results thereof, the auditor should recognize that non-compliance by the company with laws and regulations may materially affect the financial statements. Also it should be noted that as per AAS 21, (Consideration of Laws and Regulations in an Audit of Financial Statements), compliance with Laws and Regulations is the responsibility of the management.

3.7 For the purpose of verification of compliance of requirements of Corporate Governance, the auditor would be required to review the policies prescribed, the process and procedures followed and the documentation in this regard.

3.8 While issuing the certificate on compliance of requirements of Corporate

Governance as stipulated in Clause 49, the auditor has to observe the timing and the procedure which are generally followed in regard to obtaining the financial statements as approved by the Board, draft Directors' Report, draft report on corporate governance⁷ and issuance of auditor's report.

4. Management's Responsibility

Managements' responsibility for conducting its business implicitly requires it to take reasonable steps to ensure the implementation of the requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement. Under the terms of the Listing Agreement, a company is statutorily bound to implement the requirements of Clause 49 of the Listing Agreement. This flows from provision of Section 21 of the Securities Contracts (Regulation) Act, 1956. Section 23 of SCRA, 1956 provides for stringent penalties⁸ for non-compliance of Section 21 of the said Act.

5. Auditor's Responsibility

5.1 The Auditor's responsibility in certifying compliance of requirements of corporate governance relate to verification and certification of factual implementation of requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement. Such verification and certification is neither an audit nor an expression of opinion on financial statements of the company.

5.2 The certificate from the Auditor as regards compliance of requirements of corporate governance is neither an assurance as to the future viability of the company nor the efficiency or effectiveness with which the management has conducted the affairs of the company.

⁷ See Annexure – IB at Page No. 72 - 73

⁸ Presently, the non-compliance with the conditions of the listing agreement attract a penalty, punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

6. General Principles

6.1 The Standards set out in Statements on Auditing and Assurance Standards (hereinafter referred to as AAS) would be applicable in performance of certification of requirements of corporate governance by the Auditor, to the extent relevant.

6.2 As in the case of other professional assignments, in certification of compliance of requirements of corporate governance, the Auditor should comply with the “Code of Ethics” issued by the Institute of Chartered Accountants of India.

6.3 The Auditor should conduct verification of compliance of requirements of corporate governance as stipulated in Clause 49 of the Listing Agreement in accordance with this Guidance Note.

7. Documentation

The auditor should document matters, which are important in providing evidence to support the certificate of factual findings in accordance with AAS 3 on “Documentation”.

8. Verification of Compliance of Conditions of Corporate Governance

8.1 The verification of compliance of requirements conditions of Corporate Governance is discussed hereunder with reference to various paragraphs of Clause 49 of the Listing Agreement. The relevant paragraphs are reproduced followed by the verification procedure.

8.2 Board of Directors

1. (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.*
- (iii) For the purpose of the sub-clause (ii), 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 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, and*
 - (f) is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.*

Explanation: *For the purposes of the sub-clause (iii):*

- (a) Associate shall mean a company which is an "associate" as*

defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.

- (b) *"Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.*
- (c) *"Relative" shall mean "relative" as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956.*
- (iv) *Nominee directors appointed by an institution, which has invested in or lent to the company shall be deemed to be independent directors.*

Explanation: *"Institution" for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a "corresponding new bank" as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts]."*

[Clause 49 I (A)]

8.3 The auditor should ascertain throughout the reporting period whether the Board of Directors comprises not less than 50% of the directors who are non-executive directors. The expressions "executive directors" and "non-executive directors" have not been explained in Clause 49. The non-executive directors are directors who are not involved in day-to-day management of the company. However, the expression "independent director" has been explained in the Clause 49 I (A) (iii) of the Listing Agreement. The minutes of the Board in this regard should be verified by the auditor for ascertaining as to which director is an independent director. It may further be noted that nominee directors appointed by an institution⁹, which

⁹ See Explanation to Clause 49 I(A)(iv) given above in this page

has invested in or lent to the company shall be deemed to be independent directors. For the purpose of applying the test of “independence” of a director, reference may be made to Clause 49 I (A) (iii). It may, however, be noted that in the ultimate analysis, apart from the above referred objective tests, judgment based on facts of the case may also be kept in mind. A non-executive director may or may not be independent. However, an executive director cannot be considered as an independent director. Also such independent director should not be related to promoters or persons occupying management positions at the Board level or at one level below the Board. The minutes of the Board of Directors' should be verified to ascertain whether a director is an executive director or a non-executive director.

8.4 The auditor should also verify that where the Chairman of the Board is a non-executive director, at least $1 / 3^{\text{rd}}$ of the Board should comprise of independent directors. In case the Chairman is an executive director, at least half of the Board should comprise of independent directors. In determining the number of requisite independent directors and / or non-executive directors, the fraction, if any, in number of one-half or one-third as the case may be should be rounded off. Since the terms in this clause refer to ‘not less than’ and ‘at least’, it would be appropriate to compute the number by rounding off any fraction to the next integer. For example, in a Board headed by non-executive Chairman and comprising of six other directors (i.e., seven directors) the independent directors should be three or more.

8.5 Annual Declaration by directors to the Board of Directors may be examined for this purpose. If Board of Directors has followed any particular procedure(s) to ascertain independence of directors, the Auditor should examine the same. Effect of changes in the composition of the Board and / or its Chairman and its impact on compliance throughout the reporting period may also be looked into.

8.6 It may be noted that a independent non-executive director apart from receiving remuneration should not have any material pecuniary relationship or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director.

8.6.1 Since the meaning of the term ‘associate’ is not apparent from Clause

49, a reference may be made to AS 23 (Accounting for Investments in Associates in Consolidated Financial Statements) which defines an associate as an enterprise in which the investor has significant influence and which is neither a subsidiary nor a joint venture of the investor. However, for the purpose of sub-clause (iii) only an associate, which is a company should be considered.

8.6.2 The term 'promoter' has been defined in Explanation I in paragraph 6.8.3.2 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000¹⁰. The same term has also been differently defined in Regulation 2(1)(h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997¹¹. Further the term 'promoter' has also been defined in Clause 4 (12) of the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999¹².

8.6.3 Also, such independent director should not be a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director and should not also be a substantial shareholder of the company. In determining 'not a substantial shareholder', he should not own 2% or more of the block of voting shares. For this purpose, reference can be made to Section 299 of the Companies Act, 1956.

8.6.4 According to Section 2(41) of the Companies Act, 1956, 'relative' means, with reference to any person, any one who is related to such person in any of the ways specified in Section 6, and no others. Further according to Section 6 of the Companies Act, 1956, a person shall be deemed to be a relative of another if, and only if:

- (a) they are members of a Hindu Undivided Family; or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in schedule 1A¹³.

¹⁰ See Appendix G at Page Nos. 53 - 54

¹¹ See Appendix G at Page Nos. 53 - 54

¹² See Appendix G at Page Nos. 53 - 54

¹³ See Appendix H at Page No 55

8.7 I (B) Non-executive Directors' Compensation and Disclosures

- (i) *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.*

¹⁴Provided that 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.

[Clause 49 I (B)]

8.8 The auditor

- ❑ should ascertain from the minutes of the Board of Directors' meeting, shareholders' meetings, relevant agenda papers, notices, explanatory statements etc., whether remuneration of non-executive directors has been decided by the Board of directors and previous approval of the shareholders in general meeting have been obtained.
- ❑ May note that no approval from the Central Government is required so along as the remuneration is within the limits prescribed in Schedule XIII to the Companies Act, 1956.
- ❑ May note that in regard to sitting fees payable to non-executive directors, prior approval in general meeting will not be required if made within the limits prescribed under the Companies Act, 1956.
- ❑ Should also verify whether the remuneration is in compliance with Section 198, 309, 314, 349 and 350 of the Companies Act, 1956 and whether the stock options that are granted to the non-executive directors are in accordance with SEBI (Employee Stock Option

¹⁴ Inserted by SEBI Circular dt 13th January, 2006 – See Appendix F at Page Nos. 51 – 52.

Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

- ❑ Should further refer to the Articles of Association of the Company wherever applicable.
- ❑ Should examine the report of the Board of directors on Corporate Governance to be included in the annual report of the company and ascertain whether the same contains the disclosures required of remuneration to non-executive directors. The auditor should correlate this data with that contained in the financial statements.

8.9 Since Clause 49 I (B) (i) refers to stock options that can be granted to non-executive directors, reference may be made to ICAI Guidance Note on Accounting for Employee Share-based Payments which defines the following terms:

- ❑ Employee Stock Option plan is a plan under which the enterprise grants Employee Stock Options.
- ❑ Employee Stock Option is a contract that gives the employees of the enterprise the right, but not the obligation, for a specified period of time, to purchase or subscribe to the shares of the enterprise at a fixed or determinable price.
- ❑ Employee Stock Purchase Plan is a plan under which the enterprise offers shares to its employees as part of a public issue or otherwise.

8.10 Where application of this clause requires the value of ESOP to be determined, the services of expert may have to be utilized. In this regard, reference may be made to AAS 9 dealing with 'Using the Work of an Expert'

8.11 I (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 months¹⁵ between any two meetings. The minimum information to be made available to the board is given in Annexure– I A¹⁶.*

¹⁵ Substituted in place of 'three months' by SEBI Circular dt. 13th January, 2006 – See Appendix F at Page Nos. 50 - 52

¹⁶ Annexure 1 A given at Page Nos. 70 - 71

- (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.

Explanation:

1. For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 25 of the Companies Act shall be excluded.
 2. For the purpose of reckoning the limit under this sub-clause, Chairmanship / membership of the Audit Committee and the Shareholders' Grievance Committee alone shall be considered.
- (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.

[Clause 49 I (C)]

8.12 Section 285 of the Companies Act, 1956 is reproduced hereunder:

“S.285. Board to meet at least once in every three calendar months-
In the case of every company, a meeting of its Board of Directors shall be held at least once in every three months and at least four such meetings shall be held in every year.

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification”.

8.13 Clause 49 and Section 285 stipulate that the Board meeting shall be held at least four times a year. The further requirement of Clause 49 is that the maximum time gap between any two meetings should not exceed four¹⁷ months. The requirement under the Companies Act, 1956 is that the Board meeting would be held at least once in every three months.

8.14 The auditor should ascertain from the minutes book of the Board meetings whether Board meetings were held at least four times a year, with a maximum time gap of four¹⁸ months between any two meetings. The auditor should also ascertain whether minimum information was made available to the Board as given in Annexure – 1C¹⁹ to Clause 49 of the Listing Agreement.

8.15 The auditor should also ascertain that a director of the Company is not a member in more than ten committees or is acting as chairman of more than five committees across all companies in which he is a director. A suitable declaration from the management and / or director should be obtained to this effect. This information should be verified from the mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies as well as from the changes notified by every director when they take place. The Explanation (1) to Clause 49 (1) (C) (ii) clarifies that the limit of the committees on which a director can serve would comprise of all public limited companies, whether listed or not and excluding private limited companies, foreign companies and companies which are granted license under section 25 of the Companies Act, 1956. Further Explanation (2) clarifies that only two committees namely Audit Committee, and Shareholders' Grievance Committee shall be considered for the purpose of limit.

8.16 For the purpose of reviewing compliance reports of all laws applicable to the company, the said reports prepared by the company as well as steps taken by the company to rectify instances of non-compliances, the auditor should take into consideration AAS 21, dealing with consideration of Laws and Regulations in an Audit of Financial Statements. It is the management's

¹⁷ Substituted in place of 'three months' by SEBI Circular dt. 13th January, 2006 – See Appendix F at Page Nos. 51 - 52

¹⁸ *ibid.*

¹⁹ At Page Nos 74 - 76

responsibility to ensure that company operations are conducted in accordance with Laws and Regulations. The responsibility for the prevention and detection of non-compliance rests with the management. The auditor's responsibility is limited to verification that management has taken suitable steps and has put in place policies and procedures to ensure compliance with laws and regulations and to detect deviation from such procedures.

8.17 I (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.*

Explanation: *For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.*

[Clause 49 I (D)]

8.18 The auditor should ascertain whether the Board of Directors of the company has laid down a code of conduct for all Board members and senior personnel of the company and obtain a copy of the same. He should also verify whether all Board members and senior management personnel have affirmed compliance with the code on an annual basis and whether the code has been posted on company's website.

9. Audit Committee

9.1 II (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.*

Explanation 1: *The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.*

Explanation 2: *A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.*

- (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.*

[Clause 49-II (A)]

9.2 II (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.

[Clause 49 II (B)]

9.3 Section 292A of the Companies Act, 1956 relating to Audit Committee is reproduced herein below:

“Section 292A – Audit Committee

- (1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as “Audit Committee” which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors.*
- (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board.*
- (3) The members of the Audit Committee shall elect a chairman from amongst themselves.*
- (4) The annual report of the company shall disclose the composition of the Audit Committee.*
- (5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.*
- (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.*

- (7) *The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.*
- (8) *The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.*
- (9) *If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.*
- (10) *The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.*
- (11) *If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both".*

The comparative chart showing the requirements under Clause 49 and Section 292A relating to audit committee is tabulated herein below:

Clause 49 of the Listing Agreement	Section 292A of the Companies Act, 1956
a) All companies seeking listing for the first time, at the time of seeking in principle approval for such listing and (b) All existing listed companies with a paid-up capital of Rs.3 Crores and above or net worth of Rs. 25 crores or more at any time in the history of the	1. Every public company having paid-up capital of not less than five crores of rupees shall constitute an audit committee immediately on the enactment of Companies (Amendment) Act, 2000, i.e. with effect from 13th December, 2000.

company are required to set up an audit committee.	
2. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.	2. The audit committee shall have minimum three directors of which two-third of the total number of such directors shall be directors other than managing or whole-time directors.
3. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.	3. No such reference is contained in the Companies Act, 1956.
4. The Chairman of the audit committee shall be an "independent" director and shall be present at Annual General Meeting to answer queries of the shareholders.	4. The members of the audit committee shall elect a chairman from amongst themselves. The Chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.
5. A representative of the external auditor, when required shall be present as an invitee for the meetings of the audit committee. The audit committee may invite such of the executives to be present at the meetings of the committee. The Finance Director, head of internal audit	5. The Auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the audit committee but shall not have the right to vote.

and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.	
6. The Company Secretary shall act as Secretary to the audit committee.	6. No such reference is contained in the Companies Act, 1956.

The following additional requirements are stipulated as per Clause 49 of the Listing Agreement on which Section 292A (relating to audit committee) is silent:

- (i) The audit committee may invite such of the executives, as it considers appropriate (and particularly head of the finance function) to be present at the meeting of the committee, but on occasions, it may also meet without the presence of any executives of the company.
- (ii) The company secretary shall act as secretary to the committee.
- (iii) The audit committee shall meet at least four times in a year. The gap between two meetings should not be more than four months.
- (iv) The quorum of the audit committee shall be two members or one-third of the members of the audit committee whichever is higher and minimum of two independent directors be present.
- (v) The powers and role of the audit committee are elaborately contained in Clause 49 II (C) & (D).
- (vi) All members of the audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

The following additional requirements are stipulated as per Section 292A the Companies Act, 1956 (relating to audit committee) on which Clause 49 of the Listing Agreement is silent:

- (i) The audit committee constituted shall act in accordance with terms

of reference to be specified in writing by the Board.

- (ii) The recommendations of the audit committee on any matter relating to financial management, including the audit report, shall be binding on the Board.
- (iii) If the Board does not accept the recommendations of the audit committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

9.4 The auditor should ascertain from the minutes book of the Board meetings whether a qualified and independent audit committee is set up which comprises of minimum three members. The auditor should ascertain whether two-thirds of the members of audit committee are independent directors and whether all members of audit committee are financially literate and at least one member has accounting or related financial management expertise. The term "financially literate"²⁰ means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

9.5 The auditor should ascertain from the minute book of the audit committee whether the audit committee has met at least four times in a year and not more than 4 months have elapsed between two meetings.

9.6 The auditor should ascertain from the minute book of the audit committee whether quorum i.e. two members or one-third of the members of the audit committee, whichever is higher with a minimum of two independent directors was present in every meeting of the audit committee.

9.7 The auditor should ascertain whether the Chairman of the Audit Committee is an independent director. The expression "independent director" has been discussed in Clause 49 (I) (A) (iii) vide paragraph 8.2²¹.

9.8 The auditor should ascertain from the annual general meeting (herein after referred to as AGM) attendance book and minutes book whether the chairman of the audit committee was present at such meeting to answer

²⁰ As given in Explanation 1 to Clause 49 II (A) dealing with Qualified and Independent Audit Committee – See Page 17.

²¹ See at Page Nos. 7 – 9.

shareholders' queries. In case the Chairman has not been present at the AGM, auditor should ensure that this is suitably disclosed. The AGM of the financial year which is under audit would be held subsequent to the auditor submitting the certificate of compliance of conditions of corporate governance and hence, the requirement would be to verify this condition with reference to the last AGM held.

9.9 The auditor should ascertain whether there is a practice of inviting the executives (and particularly the head of the finance function) in the audit committee meetings and he should further ascertain from the minutes book of the audit committee whether such executives did attend the audit committee meetings. His presence at such audit committee meetings (pursuant to Section 292A) would be required only when he has been invited to, duly given notice of such meeting

9.10 The auditor should ascertain from the minutes book of the audit committee, whether the finance director, head of internal audit representative of the statutory auditor when required was present as invitee in the meetings of the audit committee.

9.11 II(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.*

[Clause 49 II (C)]

9.12 The auditor should check whether the terms of reference of the audit committee have been suitably framed mentioning the above powers. It is mandatory for the above-mentioned four powers to be vested in the Audit Committee. The Board may delegate / vest further powers to the committee. Further it may be noted that the four powers as mentioned above are only

illustrative and not exhaustive.

9.13 II (D) Role of Audit 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*
- 6. Reviewing, with the management, performance of statutory and*

internal auditors, 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 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.*
- 13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.*

Explanation (i): *The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by the Institute of Chartered Accountants of India.*

Explanation (ii): *If the company has set up an audit committee pursuant to provision of the Companies Act, the said audit committee shall have such additional functions / features as is contained in this clause.*

[Clause 49 II (D)]

9.14 The sub-section 6 & 7 of Section 292A are reproduced hereunder which specify the functions of the Audit Committee:

“S.292A – Audit Committee

- (6) *The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.*
- (7) *The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary”.*

9.15 The auditor should ascertain from the minutes of the Board meeting whether the terms of reference of the audit committee inter alia include the power, which are referred to in Clause 49 II (C) and also matters which are referred to in Clause 49 II (D) in order to enable the audit committee to effectively carry out the role assigned to it.

9.16 II (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.*

[Clause 49 II (E)]

9.17 The auditor should ascertain from the minutes book of the audit committee and other sources like agenda papers, etc. whether the audit

Committee has reviewed the above-mentioned information. The auditor should ascertain whether as a part of directors' report or as an addition thereto, a management discussion and analysis report forms part of the annual report to the shareholders. Under the old Clause 49, this was specifically mandated, but now not spelt out clearly. The auditor should further ascertain whether the management discussion and analysis includes discussion on the matters stipulated in this sub-clause.

9.18 Where certain deficiencies or adverse findings are noted by the audit committee, the auditor will be required to see that these have been suitably dealt with by the management in the Report on Corporate Governance.

9.19 The auditor should ascertain that the information reviewed by the Audit Committee is consistent with the reporting in the financial statements including those drawn up giving segment wise break-up for compliance of AS 17 (Segment Reporting)

9.20 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.*

Explanation 1: *The term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.*

Explanation 2: *The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.*

Explanation 3: *Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.*

[Clause 49 (III)]

9.21 Clause 49 III (i) requires the appointment of at least one of the independent director of a holding company to be appointed as a director of a material non-listed Indian subsidiary company. The concept of “material” non-listed subsidiary is explained in Explanation 1 under the said clause.

9.22 In regard to taking note of the proceedings of the Board of the unlisted company, Clause 49 III (iii) requires the minutes of the Board of every unlisted subsidiary to be placed before the Board of the holding company. Apart from the above, the management of the holding company 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. This applies only in regard to “significant transaction or arrangement” the meaning of which is given in Explanation 2 under the clause.

9.23 Reading the Explanation 2 in totality, it would be seen that the disclosure to the Board of the holding company would apply only where such significant transaction or arrangement are entered into by a company which is a material unlisted subsidiary as mentioned above.

9.24 It may further be noted that the plain reading of Explanation 2 would indicate that the least of total revenues, total expenses, total assets or total liabilities of the immediately preceding accounting year are to be considered as the basis for computing benchmark of 10% thereof. However, the use of the words ‘or’ coupled with ‘as the case may be’ would support the more logical view that one has to apply the test comparing with like items. For example a capital expenditure has to be compared with aggregate capital expenditure for the year. When making the comparison of any transaction

with 'total revenues', 'total expenses' etc., one may take into consideration the total revenue or expenditure 'likely to' arise for the entire financial year and not necessarily the aggregate expenditure incurred.

9.25 Clause 49 III (ii) requires the audit committee of the listed holding company to review the financial statements and in particular, the investments made by the unlisted subsidiary company would apply all unlisted subsidiary companies. This is required in regard to all unlisted subsidiaries, without reference to materiality or place of incorporation etc. Where however the subsidiary of a listed company is itself a listed company, the Explanation 3 would apply.

9.26 IV. Disclosures

IV (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.*

[Clause 49 IV (A)]

9.27. The Report on Corporate Governance requires disclosure of certain transactions with related parties or transactions, which may not be 'arms length' transactions. The auditor is required to verify whether the management has placed periodically the information before the Audit Committee.

9.28 The transactions required to be disclosed by the management are as under:

- (a) Transactions with related parties; entered into in the ordinary

course of business are to be disclosed in summary form (Grouping them into broad categories of the transactions).

- (b) Transactions with related parties which do not fall within the normal business transactions (and are therefore not covered in (a) above) are to be disclosed individually if such transactions are material transactions.
- (c) Transactions with any party (related or otherwise), which are not considered as arm's length transactions, are to be disclosed individually if such transactions are material transactions.

9.29 The auditor has to verify whether a transaction is a related party transaction as per AS 18 (Related Party Disclosures). As per AS 18, parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and / or operating decisions. For the purpose of carrying out verification, reference may be made to AAS 23 (Related Parties).

9.30 Materiality depends on the size and nature of the item judged in the particular circumstances.

9.31 IV (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.

[Clause 49 IV (B)]

9.32 In this regard the auditor has to refer to Sections 211(3B), 217(2AA) and 227 of the Companies Act, 1956. Also the auditor should refer to the CEO / CFO certification given under Clause 49 (IV).

9.33 IV (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.

[Clause 49 IV (C)]

9.34 The auditor should ascertain whether the executive management has a proper defined framework for risk management and its control. This would involve defining such framework on the lines illustrated in Appendix – B²².. For a broad reference for assessment of risk etc., and techniques of assessment, he has to further ascertain that such framework in terms of procedure has been informed to the Board members. The evaluation of internal control and risk management is a part of the audit process as mentioned in the auditing standards.

9.35 The risk management framework provides an integrated approach in identifying, assessing, prioritizing, mitigating, monitoring and reporting business risks across the organization. The company is required to develop a framework on the basis of which executive management is required to assess risks and minimize the impact of risk. Further, these risk management procedures are required to be reviewed periodically by the management.

9.36 The existence of a risk management framework may be evidenced by the following parameters²³. Some of these are tangible and can be evidenced by appropriate documentation. Whereas intangibles are concerned, the existence of it needs to be ascertained through enquiries and interviews. Further the auditor should also ensure that the management has effectively implemented the risk management framework and that it is applied to activities and processes of the business and communicated throughout the organization.

9.37 IV (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 use

²² See Appendix B at Page No.44

²³ See Appendix-B at Page No.44

/ 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. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

[Clause 49 IV (D)]

9.38 The object of this sub-clause is to ensure that in case of diversion of funds from the proceeds of issues²⁴, it should be appropriately brought to the notice of audit committee for suitable action to be taken. Also, it is desirable that quarterly and yearly report on the same is placed before the audit committee for its review and action if any. It is to be noted that the disclosure under the sub-clause should continue to be made till such time the issue money is utilized in full and the statutory auditors certify the said statement. Further it may be noted that statement shall pertain only to the year in which money has been raised or till such time the money is fully spent whichever is later.

9.39 The following procedure may be noted in carrying out the aforesaid action on the uses and applications of funds from proceeds from public issues etc:

- ❑ The quarterly report on the uses / application of funds shall be placed before the Audit Committee by the management.
- ❑ Diversion of funds, if any shall be brought to the attention of the Audit Committee by the management
- ❑ The management would then obtain the duly certified statement from the statutory auditors of the company and place it before the Audit

²⁴ Issues would include public issues of depository receipts, Foreign Currency Convertible Bonds (FCCB) referred to by various SEBI Regulations.

Committee to enable the discontinuance of reporting thereafter.

9.40 IV (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.*

[Clause 49 IV (E)]

9.41 All pecuniary relationship or transactions of the non-executive director vis-à-vis the company is required to be disclosed in the annual report. Auditor should check whether the particulars regarding remuneration package of individual directors summarized under major groups have been disclosed in the section in the Corporate Governance of the annual report.

9.42 Sub-Clause (iii) requires the publication of the criteria of making payments to non-executive directors. This implies that the Board or the Remuneration Committee will have to frame a specific policy for such remuneration. Such policy or criteria will have to be published in its annual report. Alternatively, if the same is put up on the company's website, a reference to this disclosure will have to be made in the annual report.

9.43 Companies are required to annually disclose the details relating to shareholding by the non-executive directors. However, non-executive directors shall be required to make such disclosure on one time basis prior to his joining the Board. Further, the notice of general meeting proposing to appoint such Director is required to disclose details of shareholding of the directors in the company. For this purpose, the Director shall make suitable disclosure to the company prior to his appointment and annually.

9.44 IV (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

(iii) Segment-wise or product-wise performance

(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.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.

[Clause 49 IV (F)]

9.45 The above information presented by the Management is likely to include non-financial information, which may be outside the area of auditors' expertise. In such situations, the auditor may keep in mind the AAS 20 relating to Knowledge of the Business and the fact that he is only required to review the compliance with Disclosure requirements and not verify the particular facts as disclosed by the management.

9.46 The auditor should ascertain that this information [i.e. segment-wise or product-wise performance (sub-clause (iii) as stated above) and considered as a part of Management Discussion and Analysis Report] is consistent with what is reported in financial statements complying with AS 17 (Segment Reporting) and also as per provisions of Section 211, 217(2AA) and 227 of the Companies Act, 1956.

9.47 IV (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*
- (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.*

[Clause 49 IV (G)]

9.48 The auditor should ascertain from the communications sent, whether in the case of appointment of a new director or re-appointment of a director the shareholders have been provided with the information stipulated in sub-clause (i) as mentioned above.

9.49 The auditor should see that the references contained in the above paragraph are complied therewith.

9.50 The Auditor should ascertain from the company's website whether information like quarterly results, presentation made by the entity to analyst have been put on company's website. In the alternative whether such information has been sent in a form so as to enable the Stock Exchange in

which the company's securities are listed to enable such Stock Exchange to put it on its own website. The auditor should also ascertain whether the other information which are mandatorily required to be disclosed to the shareholders as per the Listing Agreement or as per the Companies Act, 1956 are put on company's web-site or alternatively sent in such form to enable the stock exchange on which the company's securities are listed to enable such stock exchange to put it on its own web-site.

9.51 The auditor should ascertain from the minute book of the Board meeting whether a Board committee namely Shareholders / Investors Grievance Committee has been set up under the chairmanship of a non-executive director to specifically look into the redressing of shareholder and investors complaints like transfer of shares, non receipt of balance sheet, non receipt of declared dividends, etc. Further the auditor should also ascertain from the minute book of the Shareholders / Investors Grievance Committee whether such committee is prima-facie functioning.

9.52 The auditor should also verify from the records of the Shareholders / Investors Grievance Committee as well as from the certificate obtained by the company from SEBI and Stock Exchange(s), if any, as regards the investors grievances pending upto the date of certificate of compliance of conditions of corporate governance.

9.53 The auditor should ascertain from the minute book of the Board meeting whether the company has delegated the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The auditor should also verify from the records maintained to ascertain whether the delegated authority has attended to share transfer formalities at least once in a fortnight. The auditor may verify whether any transfer request are pending for more than a fortnight and are not attended to in terms of this sub-paragraph.

9.54 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 reporting²⁵ and that they have evaluated the effectiveness of the 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 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:*
 - (i) *significant changes in internal control over financial reporting²⁶ 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*

²⁵ Inserted by SEBI Circular dt 13th January, 2006 – See Appendix F at Page Nos 51 - 52

²⁶ Inserted by SEBI Circular dt 13th January, 2006 – See Appendix F at Page Nos 51 – 52

internal control system over financial reporting²⁷".

[Clause 49 V]

9.55 The amendments effected in Clause 49V(c) & (d) clearly bring out that

- (a) the responsibility entrusted to the CEO / CFO is in relation to establishing and maintaining internal controls for financial reporting.
- (b) The CEO / CFO certificate has to assert that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting.
- (c) The CEO / CFO certificate will further state the manner in which deficiencies (if any) in the design or operation of such internal controls has been disclosed to the auditors and the audit committee.
- (d) The CEO / CFO certification will also state the steps they have taken or propose to take to rectify these deficiencies in the design or operation of such internal controls pertaining to financial reporting.

9.56 In the context of internal controls, the auditor should ensure that

- (a) the management has institutionalized an internal control framework with respect to financial reporting controls. The framework should be examined in the context of the documentation created for each significant process in terms of the related risk and mitigating control;
- (b) he has further examined whether the assessment process followed for evaluation of controls is reasonable and there is a process by which significant deficiencies as well as steps taken to correct them is communicated to the audit committee and to the auditors; and
- (c) he should also examine whether a process exists in the company whereby all significant changes in the accounting policies and in the system of internal controls are communicated to the audit committee and the auditors.

²⁷ Inserted by SEBI Circular dt 13th January, 2006 – See Appendix F at Page Nos. 51 - 52

9.57 The auditor should examine the adequacy of the process followed for issuing the CEO / CFO certificate and should review the same in regard to matters stated in Para 9.52 above and the consideration of the same by the Audit Committee. For this purpose he should refer to the minutes of the Audit Committee.

9.58 In certain situations negative or adverse comment or exclusions / disclaimer contained in the CEO / CFO certificate, the auditor should take cognizance of the same as the circumstances require in the audit report and or the Certificate of Compliance of conditions of Corporate Governance.

9.59 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.*

[Clause 49(VI)]

9.60 The auditor should ascertain whether the Board of directors have included in the annual report of the company, a separate section on corporate governance with a detailed compliance report on corporate governance. This would specifically highlight non-compliance of any mandatory requirement. (i.e. which is part of the Listing Agreement) with reasons thereof and also the extent to which the non-mandatory requirements have been adopted. The auditor should also verify whether the suggested list of items to be included in

this report as per Annexure - I C²⁸ of Clause 49 and list of non-mandatory requirements as per Annexure - I D²⁹ of Clause 49 have been incorporated in such report. *(Circular on Revised Clause 49³⁰ along with its Annexures³¹ is reproduced at the end of this guidance note.*

9.61 Any data in the report on corporate governance should not be inconsistent with that contained in the financial statements.

10. Management Representations

The auditor should consider obtaining management representations on conditions of Corporate Governance in accordance with AAS 11, "Management Representations".

11. Auditors' Certificate

11.1 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.*

²⁸ Page Nos 74 - 76

²⁹ Page Nos 77 - 78

³⁰ See Page Nos 48 - 49

³¹ Annexures – See Page Nos. 56 - 78

[Clause 49(VII)]

11.2 A draft of the Auditors' Certificate on compliance of conditions of Corporate Governance is given in *Appendix – C*.³² Depending upon the facts and circumstances, some situations may require an adverse or qualified statement or a disclosure without necessarily making it a subject matter of qualification in the Auditors' Certificate, in respect of compliance of requirements of Corporate Governance for e.g.,

- (a) The number of non-executive directors is less than 50% of the strength of Board of directors.
- (b) A qualified and independent audit committee is not set up.
- (c) The chairman of the audit committee is not an independent director.
- (d) The audit committee does not meet four times a year.
- (e) The necessary powers in terms of Clause 49 II (D) of the Listing Agreement have not been vested by the Board in the audit committee.
- (f) The time gap between two Board meetings is more than four months.
- (g) A director is a member of more than ten committees across all companies in which he is a director.
- (h) The information of quarterly results is neither put on the company's website nor sent in a form so as to enable the Stock Exchange on which the entity's securities are listed to enable such Stock Exchange to put it on its own website.
- (i) The power of share transfer is not delegated to an officer or a committee or to the registrar and share transfer agents.

³² Appendix – C at Page Nos.46 - 47

12. Role of Auditor in Audit Committee & Certification of Compliance of Conditions of Corporate Governance

12.1 The amendment to Listing Agreement as well as the Companies Act, 1956 in respect of constitution of audit committee underline the importance of audit process and its contribution to the corporate governance process. Clause 49 stipulates that a representative of the statutory auditor, when required, shall be present as an invitee for the meetings of the audit committee. Section 292A of the Companies Act, 1956 stipulate that the auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.

12.2 The auditor would be informing the audit committee on various matters connected with the audit from time to time. He can contribute significantly in assisting and advising the audit committee as per the request of the audit committee, particularly in improving corporate governance, oversight of financial reporting process, implementation of accounting policies and practices, compliance with accounting standards, strengthening of the internal control systems in regard to financial reporting and reporting processes.

12.3 The auditor would be devoting substantial professional time in assisting the management and the audit committee to enable it to discharge its functions effectively and in certification of requirements of corporate governance.

12.4 The auditor has to keep in mind that his role is not to drive corporate governance directly by ensuring compliance of the requirements of corporate governance. It is the management responsibility for ensuring the same and in the process he would play a significant role in assisting the management for ensuring better standards of corporate governance.

APPENDIX - A

Sr. No.	Reference No.	Date
1.	SMDRP/POLICY/CIR-10/2000	February 21, 2000
2.	SMDRP/POLICY/CIR-13/2000	March 09, 2000
3.	SMDRP/POLICY/CIR-42/2000	September 12, 2000
4.	SMDRP/POLICY/ CIR- 03/01	January 22, 2001
5.	SMDRP/POLICY/ CIR- 19/01	March 16, 2001
6.	SMDRP/POLICY/ CIR- 53/01	December 31, 2001
7.	SEBI/MRD/SE/31/2003/26/08	August 26, 2003

APPENDIX - B

DISCLOSURE ABOUT RISK MANAGEMENT

Sources of Risk	Components of Risk
1. Business Risk	1. Diversifiable Risk (Unsystematic Risk)
2. Financial Risk	2. Non-diversifiable Risk (Systematic Risk)
3. Interest Rate Risk	
4. Liquidity Risk	
5. Market Risk	
6. Event Risk	

Risk Management Frame work

Structure	Infrastructure	Processes	Awareness
1. Reporting Lines 2. Role and Responsibilities	1. Methodologies 2. Systems 3. Tools	1.Risk Identification 2.Risk Measurement 3.Risk Prioritization 4.Risk Monitoring 5.Risk Escalation	1. Risk Policies 2. Risk Strategy 3. Risk Appetite of the Organization

APPENDIX - C

CERTIFICATE

To the Members of

(Name of the Company)

We have examined the compliance of conditions of corporate governance by (name of the company), for the year ended on _____, as stipulated in Clause 49 of the Listing Agreement of the said company* with stock exchange(s).

The compliance of conditions of corporate governance is the responsibility of the management. Our examination was limited to procedures and implementation thereof, adopted by the company* for ensuring the compliance of the conditions of the Corporate Governance. It is neither an audit nor an expression of opinion on the financial statements of the company*.

In our opinion and to the best of our information and according to the explanations given to us, [subject to the following:

1.

2.] **

We certify that the company* has complied with the conditions of Corporate Governance as stipulated in the abovementioned Listing Agreement.

We state that such compliance is neither an assurance as to the future

* In the event the entity is not a "company" under the Companies Act, 1956 appropriate reference may be made in place of the word "company"

** Delete, if not applicable

viability of the company* nor the efficiency or effectiveness with which the management has conducted the affairs of the company*.

For and on behalf of

ABC & Co.

Chartered Accountants

()

Partner / Proprietor

Membership No.

Place:

Date:

APPENDIX - D

SEBI/CFD/DIL/CG/1/2004/12/10

October 29, 2004

**The Managing Director / Executive Director / Administrator
of all the Stock Exchanges**

Dear Sir / Madam,

**Sub: Corporate Governance in listed Companies –
Clause 49 of the Listing Agreement**

1. All Stock Exchanges are hereby directed to amend the Listing Agreement by replacing the existing Clause 49 of the listing agreement (issued vide circulars dated 21st February, 2000, 9th March 2000, 12th September 2000, 22nd January, 2001, 16th March 2001 and 31st December 2001) with the revised Clause 49 given in Annexure I through I D to this circular. SEBI Circular no. SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003 (which has been since deferred) is hereby withdrawn. The revised Clause 49 also specifies the reporting requirements for a company.
2. Please note that this is a master circular which supersedes all other earlier circulars issued by SEBI on Clause 49 of the Listing Agreement.
3. The provisions of the revised Clause 49 shall be implemented as per the schedule of implementation given below:
 - (a) For entities seeking listing for the first time, at the time of seeking in-principle approval for such listing.
 - (b) 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.**

Companies complying with the provisions of the existing Clause 49 at present (issued vide circulars dated 21st February 2000, 9th March 2000, 12th September 2000, 22nd January 2001 16th March 2001 and 31st December 2001) shall continue to do so till the revised Clause 49 of the Listing

Agreement is complied with or till **March 31, 2005**, whichever is earlier.

4. The companies which are required to comply with the requirements of the revised Clause 49 shall submit a quarterly compliance report to the stock exchanges as per sub Clause VI (ii), of the revised Clause 49, within 15 days from the end of every quarter. The first such report would be submitted for the quarter ending **June 30, 2005**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

5. The revised Clause 49 shall apply to all the listed companies, in accordance with the schedule of implementation given above. However, for other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised 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. The revised Clause 49 is not applicable to Mutual Funds.

6. The Stock Exchanges shall ensure that all provisions of the revised Clause 49 have been complied with by a company seeking listing for the first time, before granting the in-principle approval for such listing. For this purpose, it will be considered satisfactory compliance if such a company has set up its Board and constituted committees such as Audit Committee, Shareholders / Investors Grievances Committee etc. in accordance with the revised clause before seeking in-principle approval for listing.

7. The Stock Exchanges shall set up a separate monitoring cell with identified personnel to monitor the compliance with the provisions of the revised Clause 49 on corporate governance. The cell, after receiving the quarterly compliance reports from the companies which are required to comply with the requirements of the revised Clause 49, shall submit a consolidated compliance report to SEBI within 60 days from the end of each quarter.

Encl: Annexure I, I A, I B, I C & I D³³

³³ See at Page Nos.56 - 69

APPENDIX - E

SEBI/CFD/DIL/CG/1/2005/29/3

March 29, 2005

**The Managing Director / Executive Director / Administrator
of all the Stock Exchanges**

Dear Sir / Madam,

Sub: Corporate Governance – Clause 49 of the Listing Agreement

Please refer to SEBI circular no. SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004 containing the revised provisions of Clause 49 of the listing agreement.

It has been brought to our notice that a large number of companies are still not in a state of preparedness to be fully compliant with the requirements as contained in the aforesaid circular. As it is our wont that all listed companies and companies desirous of getting listed should achieve best corporate governance status, it was felt that more time should be allowed to them to conform to Clause 49 of the listing agreement as revised in terms of the aforesaid circular. Accordingly, the date for ensuring compliance with the revised Clause 49 of the listing agreement has been now extended upto December 31, 2005.

Yours faithfully,

APPENDIX - F

SEBI/CFD/DIL/CG/1/2006/13/1

January 13, 2006

**The Managing Director / Executive Director / Administrator
of all the Stock Exchanges**

Dear Sir / Madam,

**Sub: Corporate Governance in listed Companies – Clause 49 of the
Listing Agreement**

SEBI, vide circular SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004, issued the revised clause 49 of the listing agreement, which was to come into effect by April 1, 2005. Since it was brought to SEBI's notice that a large number of companies were still not in a state of preparedness to be fully compliant with the requirements as contained in the revised clause 49, SEBI extended the date for ensuring compliance with the revised Clause 49 of the listing agreement upto December 31, 2005 vide circular no. SEBI/CFD/DIL/CG/1/2005/29/3 dated March 29, 2005. The revised clause 49 thus has come into effect from January 1, 2006.

SEBI has been in receipt of a number of requests / suggestions to bring about clarifications on certain provisions of the revised Clause 49. After examining the same, it has been decided to make the following changes to certain provisions of the revised clause 49:

- ❑ The maximum time gap between two Board meetings has been increased from three months to four months.
- ❑ Sitting fees paid to non-executive directors as authorized by the Companies Act, 1956 would not require the previous approval of shareholders.
- ❑ Certification of internal controls and internal control systems by CEO / CFO would be for the purpose for financial reporting.

In view of the above, certain changes have to be incorporated in the revised Clause 49, details of which are placed in Annexure I

The Stock Exchanges are advised to accordingly amend the listing agreement with immediate effect.

Yours faithfully,

ANNEXURE I (to Circular dt 13th January 2006)

Clause 49 of the Listing Agreement shall be amended as follows:

1. After sub-clause (I)(B), the following proviso shall be inserted, namely:

“Provided that 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.”
2. In sub-clause (I)(C), for the words “three months” occurring in the first sentence, the words “four months” shall be substituted;
3. Sub-clause (V)(c) shall be substituted with the following, namely:

“(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.”
4. Sub-clause (V)(d) shall be substituted with the following, namely:

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

 - (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”.

APPENDIX - G

SEBI (Disclosure and Investor Protection) Guidelines, 2000

According to the Explanation I in paragraph 6.8.3.2, for the purpose of sub-clause (k) and (l) (of Clause 6.8.3.2) the term “promoter” shall include:

- (a) The person or persons who are in overall control of the company;
- (b) The person or persons who are instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public;
- (c) The person or persons named in the prospectus as promoter(s);

Provided that a director / officer of the issuer company or person, if they are acting as such merely in the professional capacity shall not be included in the Explanation.

Regulation 2(1)(h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997

Promoter means:

- (i) The persons or persons who are in the control of the company, directly or indirectly, whether as a shareholder, director or otherwise; or
- (ii) Person or persons named as promoters in any document of offer of securities to the public or existing shareholders, and includes
 - (a) Where the promoter is an individual:
 - (1) a relative of the promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);
 - (2) any firm or company, directly or indirectly, controlled by the promoter or a relative of the promoter or a firm or Hindu undivided family in which the promoter or his relative is a partner or a coparcener or a combination thereof;

Provided that, in case of a partnership firm, the share of the promoter or his relative, as the case may be, in such firm should not be less than 50%.

(b) where the promoter is a body corporate:

- (1) a subsidiary or holding company of that body; or
- (2) any firm or company, directly or indirectly, controlled by the promoters of that body corporate or by the relative or a firm or Hindu undivided family in which the promoter or his relative is a partner or coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of such promoter or his relative, as the case may be, in such firm should not be less than 50%;]

**SEBI (Employee Stock Option Scheme and
Employee Stock Purchase Scheme) Guidelines, 1999**

According to Clause 4 (12), “promoters” means:

- (a) The person or persons who are in over all control of the company;
- (b) The person or persons who are instrumental in the formation of the company or programme pursuant to which the shares were offered to the public;
- (c) The person or persons named in the offer document as promoter (s);

Provided that a director or officer of the company, if they are acting as such only in their professional capacity will not be deemed to be a promoter.

[Explanation: Where a promoter of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of the company].

APPENDIX - H

List of relatives as per Schedule 1A to the Companies Act, 1956

1. Father
2. Mother (including step Mother)
3. Son (including step-Son)
4. Son's wife
5. Daughter including step-daughter
6. Father's father
7. Father's mother
8. Mother's mother
9. Mother's father
10. Son's son
11. Son's son's wife
12. Son's daughter
13. Son's daughter's husband
14. Daughter's husband
15. Daughter's son
16. Daughter's son's wife
17. Daughter's daughter
18. Daughter's daughter's husband
19. Brother (including step brother)
20. Brother's wife
21. Sister including step sister
22. Sister's husband.

ANNEXURE - I

Clause 49 - Corporate Governance - Circular No. SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004

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.

(iii) For the purpose of the sub-clause (ii), 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 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; and
- (f) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

Explanation: For the purposes of the sub-clause (iii):

- (a) Associate shall mean a company which is an “associate” as defined in Accounting Standard (AS) 23, “Accounting for Investments in Associates in Consolidated Financial Statements”, issued by the Institute of Chartered Accountants of India.
 - (b) “Senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.
 - (c) “Relative” shall mean “relative” as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956.
- (iv) Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors.

Explanation: “Institution” for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a “corresponding new bank” as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts].”

(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.

³⁴Provided that 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.

(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 months³⁵ between any two meetings. The minimum information to be made available to the board is given in Annexure– I A.³⁶

(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.

Explanation:

1. For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 25 of the Companies Act shall be excluded.
2. For the purpose of reckoning the limit under this sub-clause, Chairmanship / membership of the Audit Committee and the Shareholders' Grievance Committee alone shall be considered.

(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.

(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

³⁴ Inserted by SEBI Circular dt. 13th January, 2006 – See Appendix F at Page Nos 51 - 52

³⁵ Substituted in place of 'three months' by SEBI Circular dt. 13th January, 2006 – See Appendix F at Page Nos 51 - 52.

³⁶ Page Nos. 70 - 71

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.

Explanation: For this purpose, the term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors.. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

II. Audit Committee

(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.

Explanation 1: The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation 2: A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- (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

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
 - (d) Compliance with listing and other legal requirements relating to financial statements
 - (e) Disclosure of any related party transactions
 - (f) Qualifications in the draft audit report.
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval
6. Reviewing, with the management, performance of statutory and internal auditors, 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.
13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Explanation (i): The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

Explanation (ii): If the company has set up an audit committee pursuant to provision of the Companies Act, the said audit committee shall have such additional functions / features as is contained in this clause.

(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.

Explanation 1: The term “material non-listed Indian subsidiary” shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation 2: The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation 3: Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

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. 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
- (iii) Segment-wise or product-wise performance

- (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.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors).

This would also include all members of management one level below the executive directors including all functional heads.

(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

(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 reporting³⁷ and that they have evaluated the effectiveness of the internal control systems of the company pertaining to financial reporting³⁸ and they have disclosed to the

³⁷ Inserted by SEBI Circular dt 13th January, 2006 – See Appendix F at Page Nos 51 - 52

³⁸ Inserted by SEBI Circular dt 13th January, 2006 - See Appendix F at Page Nos 51 - 52

auditors and the Audit Committee, deficiencies in the design or operation of 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
 - (i) significant changes in internal control over financial reporting³⁹ 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 reporting⁴⁰.

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 C⁴¹ and list of non-mandatory requirements is given in Annexure – I D⁴².
- (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 B⁴³. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company

³⁹ Inserted by SEBI Circular dt 13th January, 2006 - See Appendix F at Page Nos 51 - 52

⁴⁰ Inserted by SEBI Circular dt 13th January, 2006 - See Appendix F at Page Nos 51 - 52

⁴¹ See Page Nos 74 - 76

⁴² See Page Nos 77 - 78

⁴³ See Page Nos 72 - 73

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 D⁴⁴ 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.

⁴⁴ See Page Nos 77 - 78

ANNEXURE - IA

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 judgment 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.

ANNEXURE - IB

Format of Quarterly Compliance Report on Corporate Governance

Name of the Company:

Quarter ending on:

Particulars	Clause of Listing Agreement	Compliance Status Yes / No	Remarks
I. Board of Directors	49 I		
(A) Composition of Board	49(IA)		
(B) Non-executive Directors' compensation & disclosures	49 (IB)		
(C) Other provisions as to Board and Committees	49 (IC)		
(D) Code of Conduct 49(ID)			
II. Audit Committee	49 (II)		
(A) Qualified & Independent Audit Committee	49 (IIA)		
(B) Meeting of Audit Committee	49 (IIB)		
(C) Powers of Audit Committee	49 (IIC)		
(D) Role of Audit Committee	49 (IIE)		
III. Subsidiary Companies	49 (IV)		
IV. Disclosures	49 (IV)		
(A) Basis of related party transactions	49 (IVA)		

(B) Board Disclosures	49 (IVB)		
(C) Proceeds from public issues, rights issues, preferential issues etc.	49 (IVC)		
(D) Remuneration of Directors	49 (IVD)		
(E) Management	49 (IVE)		
(F) Shareholders	49 (IVF)		
V. CEO / CFO Certification	49 (V)		
VI. Report on Corporate Governance	49 (VI)		
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 - IC

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 non-mandatory 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 - ID

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.

(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.