



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

CIRCULAR

CIR/CFD/POLICY CELL/7/2014

September 15, 2014

To
All Recognised Stock Exchanges

Dear Sir(s)/Madam(s),

Sub: Corporate Governance in listed entities - Amendments to Clause 49 of the Equity Listing Agreement

1. This circular is in continuation to circular No. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 on amendments to Clauses 35B and 49 of the Equity Listing Agreement. In terms of the said circular, the revised Clause 49 would be applicable to all listed companies with effect from October 01, 2014.
2. The Ministry of Corporate Affairs has issued the following circulars on matters related to Corporate Governance clarifying certain provisions of the Companies Act, 2013:

Sr. no.	Reference	Date	Subject matter
1.	Circular No.14/2014	June 09, 2014	Clarification on rules prescribed under the Companies Act, 2013- matters relating to appointment and qualification of directors and independent directors
2.	Circular No.30/2014	July 17, 2014	Clarifications on matters relating to related party transactions
3.	Notification	August 14, 2014	Amendment to Company (Meetings of board and its powers) Rules, 2014

3. Post issuance of the SEBI circular dated April 17, 2014, SEBI vide letter dated August 12, 2014, sought the status of preparedness of top 500 listed companies



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

by market capitalization, for ensuring timely compliance with the revised Clause 49.

4. Meanwhile, SEBI has received representations from market participants including companies and industry associations, highlighting certain practical difficulties in ensuring compliance, seeking clarifications on interpretation of certain provisions and suggesting various options to ease the process of implementation.
5. The aforesaid issues were examined and discussed in the Primary Market Advisory Committee of SEBI.
6. In order to address the above mentioned concerns and facilitate the listed companies to ensure compliance with the provisions of the revised Clause 49, it has been decided to make certain amendments to Clause 49. The amendments are given as Annexure to the circular.
7. It is reiterated that the provisions of Clause 49 as specified in Circular dated April 17, 2014, as amended through this circular would be applicable with effect from October 01, 2014 except Clause 49 (II)(A)(1).
8. The above amendments are carried out in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.
9. All Stock Exchanges are advised to ensure compliance with this circular and carry out the amendments to their Listing Agreement as per the Annexure.
10. This circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and Listing".

Yours faithfully,

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Encl : Annexure – Amendments to Clause 49 of the Listing Agreement



Amendments to Clause 49 of the Listing Agreement

1. Applicability of Clause 49

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- a. Companies having paid up equity share capital not exceeding Rs.10 crore and Net Worth not exceeding Rs.25 crore, as on the last day of the previous financial year;

Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

- b. Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

2. Clarification on applicability of appointment of woman director

The provisions regarding appointment of woman director as provided in Clause 49 (II)(A)(1) shall be applicable with effect from April 01, 2015.

3. Amendment to Clause 49(II)(B)(1)(c)

The clause shall be substituted with the following:

"(c) apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year."

4. Amendment to Clause 49(II)(B)(3)(a)

The clause shall be substituted with the following:

"The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/ circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time."



5. Amendment to Clause 49(II)(B)(4)(b)

The clause shall be substituted with the following:

"(b) The terms and conditions of appointment shall be disclosed on the website of the company."

6. Amendment to Clause 49(II)(B)(7)

The clause shall be substituted with the following:

"7. Familiarisation programme for Independent Directors

a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.

b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report."

7. Amendment to Clause 49(IV)(A)

The clause shall be substituted with the following:

" A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee."

8. Amendment to Clause 49(V)(D)

The clause shall be substituted with the following:

"(D)The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report."

9. Amendment to Clause 49(V) (F)

The clause shall be substituted with the following:

"(F). No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal."

10. Amendment to Clause 49(V)(G)

The clause shall be substituted with the following:

"(G). Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

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

Explanation (ii): *For the purpose of sub-clause (V)(C), 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 (iii): *For the purpose of sub-clause (V), 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."*

11. Amendment to Clause 49(VI)

The clause 49(VI)(C) shall be substituted with the following:

"(C) The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. "



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

The following clauses shall be inserted after Clause 49(VI)(C):

- "(D) The majority of Committee shall consist of members of the Board of Directors.*
- (E) Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors."*

12. Amendment to Clause 49(VII)(A)

The following explanation shall be inserted after Clause 49(VII)(A):

"Explanation: A "transaction" with a related party shall be construed to include single transaction or a group of transactions in a contract."

13. Amendment to Clause 49(VII)(B)

The clause shall be substituted with the following:

"B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:

- (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or*
- (ii) such entity is a related party under the applicable accounting standards."*

14. Amendment to Clause 49(VII)(C)

The clause shall be substituted with the following:

"(C)The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company."

15. Amendment to Clause 49(VII)(D)

The clause shall be substituted with the following:

"(D)All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company subject to the following conditions:



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

- a. *The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on Related Party Transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.*
- b. *The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;*
- c. *Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price if any and (iii) such other conditions as the Audit Committee may deem fit;*

Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding Rs.1 crore per transaction.

- d. *Audit Committee shall review, atleast on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given.*
- e. *Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year"*

16. Amendment to Clause 49(VII)(E)

The following proviso and explanations shall be inserted after Clause 49(VII)(E):

"Provided that sub-clause 49 (VII)(D) and (E) shall not be applicable in the following cases:

(i) transactions entered into between two government companies;

(ii) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

*Explanation(i):**For the purpose of Clause 49(VII), "Government company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013."*

*Explanation(ii):**For the purpose of Clause 49(VII), all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not."*



भारतीय प्रतिभूति और विनियम बोर्ड Securities and Exchange Board of India

17. Amendment to Clause 49(VIII)(A)(2)

The clause shall be substituted with the following:

"(2) The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report."

18. Amendment to Clause 49(VIII)(F), (G) and (H)

These clauses shall stand deleted.

19. Amendment to clause 49(IX)

The words " 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:"

shall be substituted with:

"The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that :"
