"For the want of a nail, the shoe was lost; for the want of a shoe the horse was lost; and for the want of a horse the rider was lost, being overtaken and slain by the enemy, all for the want of care about a horseshoe nail.” — Benjamin Franklin

The moral of the story is that a little neglect may breed great mischief. That a small neglect may bring down corporates overnight, needs no elucidation as could be seen from the recent events in India and elsewhere. Corporate governance, has received much focussed attention and been debated extensively in U.K. and U.S.A., but is a comparatively new phenomenon in emerging economies. It is now widely seen as of radical importance to corporate life and future of major businesses. A vital element of corporate governance lies in the management, which is answerable to shareholders as to the custody and conduct of the company’s business activities and the commercial exploitation and preservation of the assets.

Corporate governance is the system by which companies are run. It relates to the set of incentives, safeguards and dispute resolution process that are used to control and co-ordinate the actions of the agents on behalf of the shareholders by the Board of Directors. At the centre of the corporate governance system is therefore, the Board of Directors, the Composition of which is determined by shareholding pattern. Their responsibilities are defined by legal statutes. It is therefore inevitable that debates on corporate governance centre around the Board composition, perks of directors and ensuring their accountability to shareholders. The shareholders are responsible for appointing the directors and it is to them that Board reports on its stewardship at the Annual General Meeting. Creating of residual value is the primary concern of shareholders, but the process of value creation and its legality are equally important. Hence corporate governance relates to a code of conduct, the management of the company observes while exercising its powers. In India, with the advent of economic reforms and liberalisation, corporate governance which allows for greater transparency, accountability to shareholders and creation of value to both shareholders and the economy has assumed importance.

Sir Adrian Cadbury while defining corporate governance said that it is a system by which companies are directed and controlled and thus brought into sharp focus the role of board, shareholders and management. Corporate governance extends far beyond the confines of corporate law. The quality, quantity and frequency of financial disclosures, the extent of exercise of fiduciary responsibilities and duties by the boards towards shareholders and stakeholders, accountability and transparency in corporate functioning for maximizing shareholders’ wealth are the progressive elements and indeed the underlying spirit of corporate governance.

Corporate governance today is a strategic necessity where focus is on quality of governance. Capital and investments from international investors are available to corporates demonstrating good governance practices and thus helping them both in procuring capital at competitive rates and also in employing and retaining the intellectual capital. Research studies have established that shareholders and stakeholders reward corporates conforming to norms of corporate governance in letter and spirit as they respond positively to them.

CORPORATE GOVERNANCE THROUGH LISTING AGREEMENT

With a view to strengthen the Corporate Governance, SEBI constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla. The Committee in its report observed that “the strong Corporate Governance is indispensable to resilient and vibrant capital markets and is an important instrument of

* Assistant Director, Academics & Professional Development, The ICSI. The views expressed are personal views of the author and do not necessarily reflect those of the Institute.
investor protection. It is the blood that fills the veins of transparent corporate disclosure and high quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure.”

Based on the recommendations of the Committee, the SEBI had specified principles of Corporate Governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges in the year 2000. These principles of Corporate Governance were made applicable in a phased manner and all the listed companies with the 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 company, were covered.

SEBI, as part of its endeavour to continuously improve the standards of corporate governance in line with the needs of a dynamic market, constituted another Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to review the performance of Corporate Governance and to determine the role of companies in responding to rumour and other price sensitive information circulating in the market in order to enhance the transparency and integrity of the market. The Committee in its Report observed that “the effectiveness of a system of Corporate Governance cannot be legislated by law, nor can any system of Corporate Governance be static. In a dynamic environment, system of Corporate Governance need to be continually evolved.”

Based on the recommendations of the Committee and also with a view to promote and raise the standards of Corporate Governance, SEBI revised clause 49 of the Listing agreement vide its circular dated August 26, 2003, the implementation of which was deferred later. The Securities and Exchange Board of India on October 29, 2004 again revised the Clause 49 of the Listing Agreement.

The provisions of the revised Clause 49 were required to 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 (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.

However, noticing that a large number of companies are still not in the state of preparedness to be fully compliant with the requirements of revised clause 49 of the listing agreement, SEBI allowed more time to the corporates to conform to clause 49 of the listing agreement and extended the date for ensuring compliance with the revised clause 49 of the listing agreement to December 31, 2005.

**HIGHLIGHTS OF THE REVISED CLAUSE 49**

**Definition of Independent Director**

‘Independent director’ shall mean 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 the 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;
   (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 the 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.

**Additional Definitions**

The definitions of Associate, Senior Management, Relative have been incorporated. These definitions are as under:

(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.

**Nominee Directors to be treated as Independent Director**

The revised clause provides that Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors. The Explanation clarifies that ‘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].

**Non executive directors’ compensation and disclosures**

The new clause provides that all fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and require previous approval of shareholders in general meeting.

**Limits on Membership of Committees**

For the purpose of considering the limit of the committees on which a director can serve, Chairmanship/membership of the Audit Committee and the Shareholders’ Grievance Committee alone are to be considered.

**Declaration to be signed by CEO**

The revised clause states that all Board members and senior management personnel shall affirm compliance with the code on an annual basis and the Annual Report of the company shall contain a declaration to this effect signed by the CEO.

**Board Meetings**

The Board shall meet at least four times a year with a maximum time gap of three months between any two meetings.

**Audit Committee**

(i) The requirement of giving terms of reference of the Audit Committee is a must.

(ii) The requirement that all members of the Audit Committee shall be non-executive directors has been dispensed with.

(iii) 2/3rd of the members of audit committee shall be independent directors.

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

(v) 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.

(vi) 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.

(vii) Calling of executives is optional.

(viii) The term ‘external auditor’ have been replaced with the words ‘statutory auditor’.

**Meetings and Role of Audit Committee**

There is requirement of holding atleast four meetings in a year. The revised clause also provides that not more than four months shall elapse between the two meetings of audit committee.

The role of the audit committee 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 thereon.

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.
Review of Information by Audit Committee

The Audit Committee is required to mandatorily review the following information:

(a) Management discussion and analysis of financial condition and results of operations;
(b) Statement of significant related party transactions (as defined by the audit committee), submitted by the management;
(c) Management letters/letters of internal control weaknesses issued by statutory auditors;
(d) Internal audit reports relating to internal control weaknesses;
(e) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

Subsidiary Company

(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 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 is required to be placed at the Board meeting of the listed holding company.
(iv) 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.
(v) The term “material non-listed Indian subsidiary” means 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.
(vi) The term “significant transaction or arrangement” means 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.
(vii) Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions also apply to the listed subsidiary insofar as its subsidiaries are concerned.

Related Party Transactions

(i) A statement in summary form of transactions with related parties in the ordinary course of business is required to 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 are also required to 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.

Disclosures

The following disclosures are required to be made under the revised clause:

(i) Basis of Related Party Transactions
(ii) Disclosure of Accounting Treatment
(iii) Risk Management
(iv) Proceeds from Public Issues, Rights Issues, Preferential Issues etc.
(v) Remuneration of Directors
(vi) Management
(vii) Shareholders.
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 and discharging the finance 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 and that they have evaluated the effectiveness of the internal control systems of the company 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 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.

Submission of Compliance Report

The Stock Exchange Monitoring Cells are required to submit a compliance Report to SEBI within 60 days from the end of each Quarter.

Report on Corporate Governance

The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the prescribed format. The report is required to be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Compliance Certificate

The revised clause provides that the company shall obtain a certificate from either the auditors or practising 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.

Non-Mandatory Requirements

The following non-mandatory requirements have additionally been provided:

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.

COMPLIANCE CERTIFICATE BY A COMPANY SECRETARY IN PRACTICE

The scope of Corporate Governance Compliance Certificate (CGCC) by a PCS comprises certification of compliance of the conditions of corporate governance as stipulated in Clause 49. The responsibility of PCS in certifying compliance of the conditions of corporate governance would relate to verification and certification of factual implementation of conditions stipulated in Clause 49. PCS on the basis of the Report and other available records would certify the compliance of the conditions of Corporate Governance and give his certification to the Board to be annexed to its Report. If the PCS gives qualified certificate, the Board would give the comments thereon and include the same in its Report.

The certification may cover any of the following three situations:

(a) Clean certificate i.e. the company has complied with the conditions of Clause 49 of the listing agreement.

(b) Negative / adverse certificate i.e. the company is a defaulter in complying with the conditions of Clause 49.

(c) Certificate having qualifications i.e. the company though follows the norms prescribed under Clause 49 but there are some non-compliances which in the judgement of the PCS may affect the corporate governance of the company

Some situations may require adverse and qualified remarks by the PCS. It is therefore desired that the qualifications, reservations or adverse remarks of PCS, if any, should be stated in thick type or in italics in the CGCC.
If the scope of work required to be performed is restricted on account of limitations imposed by the client or on account of circumstantial limitations (such as certain books or papers being in custody of another person or Government Authority) the certificate may be qualified accordingly. If such limitations are so material as to render the PCS unable to express any opinion, he may state that in the absence of necessary information and records, he is unable to certify compliance of the conditions of the corporate governance by the company.

The PCS giving the CGCC should attend the Annual General Meeting to provide clarifications, if required.

**Right to Access Records**

In order that PCS can carry out necessary verification for the purpose of issuing CGCC, the company is under obligation to provide access to the PCS, to the registers, books, papers, documents, reports and records of the company wherever kept. The PCS is entitled to obtain from the officers or agents of the company, such information and explanations as he may think necessary for the purpose of certification.

To carry out the verification, the PCS should check the registers and records maintained, the attendance book and Minutes Book of the Board Meeting, Annual General Meeting, Audit Committee Meetings, Shareholders/Investors Grievances Committee Meeting, etc. He should also check the quarterly reports submitted by the company from the first day of the financial year except where there are reasons for PCS to verify the records of the earlier years.

**Professional Responsibility**

The certification of the conditions of corporate governance casts an onerous responsibility on PCS and imposes on him a greater challenge whereby he has to justify fully the faith and confidence reposed by the regulatory authority, and measure up to its expectations. In view of the provisions of clauses (8) and (11) of Part I of the First Schedule to the Company Secretaries Act, 1980, when a PCS is assigned the compliance certification work for the first time, he should communicate his appointment to the earlier incumbent, (if a PCS) by registered post. As in the case of other professional assignments, in certifying the conditions of corporate governance, the PCS should comply with the code of conduct issued by the Institute of Company Secretaries of India. Any failure or lapse on the part of a PCS in issuing a CGCC may not only attract disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980 but also make him liable for any injury caused to any person due to his negligence in issuing the CGCC. Therefore, it becomes imperative for the PCS to exercise great care and caution while issuing the CGCC and also adhere to the highest standards of professional ethics and excellence in providing his services.
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<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Provision as per Existing Clause issued on 21.02.2000 (amended upto 31st December, 2001)</th>
<th>Analysis of Difference between the Existing Clause and revised Clause</th>
</tr>
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</table>
| 1      | Definition of ‘Independent Director’ | ‘Independent directors’ means directors who apart from receiving director’s remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgement of the board may affect independence of judgement of the director. | ‘Independent director’ shall mean 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 directors, its senior management or its holding company, its subsidiaries and associates which may affect the 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;  
      (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 the 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. |
| 2      | Additional Definitions     | No such provision in old clause                                                        | The definitions of Associate, Senior Management, Relative have been incorporated. These definitions are as under:  
   (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. |
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<td>3. <strong>Nominee Directors to be treated as Independent Director</strong></td>
<td>Institutional directors on the Boards of companies should be considered as independent directors whether the institution is an investing institution or lending institution.</td>
<td>The revised clause provides that Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors. The Explanation clarifies that &quot;Institution&quot; 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].</td>
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<td>4. <strong>Non-executive Directors’ Compensation and Disclosures</strong></td>
<td>No such provision in the old clause. However, under the head, Remuneration of Directors it has been stated that ‘the remuneration of NEDs shall be decided by Board of Directors.’</td>
<td>The revised clause provides that 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. It also provides that the shareholders’ resolution should also specify the limits for the maximum number of stock options that can be granted to non-executive directors in any financial year and in aggregate.</td>
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<td>5. <strong>Other provisions as to Board meetings</strong></td>
<td>Board meeting should be held at least four time a year with a maximum time gap of four months. For considering the limit of Committee on which a director can serve, chairmanship membership of audit committee, shareholders’ grievance committee and remuneration committee was considered.</td>
<td>Board Meetings The Board shall meet at least four times a year with a maximum time gap of three months between any two meetings. Thus, Earlier the maximum time gap permissible between two meetings has been reduced to three months from the existing permissible gap of four months. <strong>Limits on Membership of Committees</strong> For the purpose of considering the limit of the committees on which a director can serve, Chairmanship/membership of the Audit Committee and the Shareholders’ Grievance Committee alone are to be considered. (Earlier the Chairmanship/ Membership of Remuneration Committee was also considered for reckoning the limit.)</td>
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<td>6. <strong>Board of Directors</strong></td>
<td>No such provision in the old clause</td>
<td>Board of Directors shall however periodically review legal 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-compliance.</td>
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<td>7. <strong>Code of Conduct</strong></td>
<td>No such provision in the old clause</td>
<td>(i) It shall be obligatory for the Board of a company to lay down the code of conduct for all Board members and senior management of a</td>
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(i) 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. 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.

8. Qualified and Independent Audit Committee

A. A qualified and independent audit committee shall be set up and that:

The audit committee shall have minimum three members, all being non-executive directors, with the majority of them being independent, and with at least one director having financial and accounting knowledge;
The chairman of the committee shall be an independent director;
The chairman shall be present at Annual General Meeting to answer shareholder queries;
The audit committee should 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 when required, a representative of the external auditor shall be present as invitees for the meetings of the audit committee;
The Company Secretary shall act as the secretary to the committee.

(i) The requirement of giving terms of reference of the Audit Committee has been added.
(ii) The requirement that all members of the Audit Committee shall be non-executive directors has been dispensed with.
(iii) It further provides that 2/3rd of the members of audit committee shall be independent directors.
(iv) The old clause required that at least one director should have financial and accounting knowledge. The revised clause provides that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
(v) The clause provides that 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.
(vi) It further provides that 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.
(vii) Calling of executives is now optional. The words ‘should have been’ replaced with the word ‘may’.
(viii) The words ‘external auditor’ have been replaced with the words ‘statutory auditor’.

9. Meeting of Audit Committee

The audit committee shall meet at least thrice a year. One meeting shall be held before finalisation of annual accounts and

The earlier requirement of holding at least three meetings in a year has been substituted with ‘at least four meetings in a year’. The revised clause also provides that not more than four months shall elapse between the two meetings.
one every six months. meetings of audit committee. Earlier one meeting of audit committee was required to be held before finalisation of annual accounts and one meeting every six months.

| 10. Role of Audit Committee | I. The role of the audit committee shall include the following:
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<td></td>
<td>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.</td>
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<td>2. Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.</td>
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<td>3. Reviewing with management the annual financial statements before submission to the board, focusing primarily on;</td>
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<td>(i) Any changes in accounting policies and practices.</td>
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<td>(ii) Major accounting entries based on exercise of judgment by management.</td>
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<td>(iii) Qualifications in draft audit report.</td>
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<td>(iv) Significant adjustments arising out of audit.</td>
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<td>(v) The going concern assumption.</td>
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<td>(vi) Compliance with accounting standards.</td>
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<td>(vii) Compliance with stock exchange and legal requirements concerning financial statements</td>
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<td>(viii) Any related party transactions i.e. transactions of the company of material nature, with promoters or the management, their</td>
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<td>(i) The term ‘External auditor’ referred in the clause has been substituted with ‘Statutory Auditor’.</td>
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<td>(ii) The recommendation regarding re-appointment and if required, the replacement of statutory auditor has also been included in the role of audit committee.</td>
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<td>(iii) The following have been added to the role of Audit Committees:</td>
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<td>(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.</td>
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<td>(b) Review of estimates of accounting entries.</td>
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<td>(c) Reviewing, with the management, the quarterly financial statements before submission to the board for approval.</td>
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<td>(d) Reviewing, with the management, performance of statutory and internal auditors,</td>
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<td>(e) To review the functioning of the Whistle Blower mechanism, in case the same is existing.</td>
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<td>(f) Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.</td>
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<td>(iv) Review of significant adjustments can now be restricted to financial statements only. Earlier, any significant adjustment arising out of audit could be reviewed by the audit committee.</td>
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<td>(v) The definition of related party transactions has been adopted as per Accounting Standard 23 in contrast to definition given in the text earlier.</td>
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<td>(vi) The points relating to Compliance with Accounting Standards, Going Concern Assumptions and reviewing the company’s financial and risk management policies covered earlier in the role of Audit Committees have been excluded.</td>
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</table>
subsidiaries or relatives etc. that may have potential conflict with the interest of the company at large

4. Reviewing with the management, external and internal auditors, the adequacy of internal control systems.
5. Reviewing the adequacy of internal audit function, 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.
6. Discussion with internal auditors any significant findings and follow up there on.
7. 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.
8. Discussion with external auditors before the audit commences about nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
9. Reviewing the company’s financial and risk management policies.
10. 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.
|   | Review of information by Audit Committee | No such provision in the old clause | The Audit Committee shall mandatorily review the following information:  
(a) Management discussion and analysis of financial condition and results of operations;  
(b) Statement of significant related party transactions (as defined by the audit committee), submitted by the management  
(c) Management letters / letters of internal control weaknesses issued by statutory auditors  
(d) Internal audit reports relating to internal control weaknesses  
(e) The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee. |
|---|---|---|---|
|   | Subsidiary Companies | No such provision in the old clause | (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 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.  
(iv) 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.  
(v) The term “material non-listed Indian subsidiary” means 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.  
(vi) The term “significant transaction or arrangement” means 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.  
(vii) Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions also apply to the listed subsidiary insofar as its subsidiaries are concerned.” |
|   | Basis of | No such provision in the old clause | (i) A statement in summary form of transactions with related parties in |
| **related party transactions** | the ordinary course of business is required to 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 are also required to 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. |
|---|---|
| 14. **Disclosures of Accounting Treatment** | No such provision in the old clause.  
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. |
| 15. **Risk management** | No such provision in the old clause  
The company is required to put in place procedures to inform Board members about the risk assessment and minimization procedures. These procedures are to be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. |
| 16. **Proceeds from Public Issues, Rights issues, Preferential Issues, etc.** | No such provision in the old clause  
When money is raised through an issue, i.e. public issue, rights issue, preferential issues, etc., it is required to 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 is required to 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. However, such disclosures are to be made only till such time that the full money raised through the issue has been fully spent.  
This statement would 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. |
| 17. **Remuneration** | The company agrees that the remuneration (i) The condition that the remuneration of non-executive directors shall be |
| **of Directors** | of non-executive directors shall be decided by the board of directors.  

The company further agrees that the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the annual report.  
- All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension etc.  
- Details of fixed component and performance linked incentives, along with the performance criteria.  
- Service contracts, notice period, severance fees.  
- Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.  

(ii) The company shall publish its criteria of making payment 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. Company shall disclose in annual report, details of number of shares and convertible instruments held by non-executive directors,  
(iii) Non-executive directors shall be required to disclose their stock holding (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.  

| **18. Management** | Disclosure should be made by the management 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.)  

The disclosure is required to be made by ‘senior management’ in contrast to the earlier requirement of making disclosure by ‘management’.  

| **19. Shareholders** | 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  

In addition to the existing disclosures as to shareholding of non-executive directors is also required to be made. |
| 20. | **CEO/CFO certification** | No such provision in the old clause | 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 and that they have evaluated the effectiveness of the internal control systems of the company 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 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.

| 21. | **Report on Corporate Governance** | No such provision in the old clause regarding submission of quarterly compliance report to Stock Exchanges. | The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format prescribed in Annexure 1B of the clause. The report is required to be signed either by the Compliance Officer or the Chief Executive Officer of the company.

The clause provides that non-compliance of any mandatory requirement, i.e. which is part of the listing agreement with reasons

The words ‘shall’ has been replaced with the word ‘should’.

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thereof and the extent to which the non-
mandatory requirements have been adopted
shall be specifically highlighted.

22. **Compliance**  
The company agrees that it shall obtain a
certificate from the auditors of the company
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 returns
filed by the company.

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. Thus, earlier, the certificate was required to be sent to the stock exchanges along with Annual Return.

23. **Suggested list of items to be included in Report on Corporate Governance**  
The suggested items include information regarding brief statement on company’s
philosophy on code of governance, Board of Directors, Audit Committee, Remuneration Committee, Shareholders Committee, General Body Meetings, Disclosures, Means of Communication, General Shareholder information.

Under the head shareholders committee `number of pending complaints has been replaced with number of pending share transfers’.

Under the head disclosures, the following additional disclosures are required to be made:
(i) Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
(ii) Details of compliance with mandatory requirements and adoption of the non-mandatory requirements of this clause

Under the head means of communication, the following disclosures required to be made earlier have been dispensed with:
- half-yearly report sent to each household of shareholders
- whether MD&A is a part of annual report or not.

24. **Non-mandatory requirements**  

**Non-Mandatory Requirements**

(a) Chairman of the Board  
A non-executive Chairman should be entitled to maintain a Chairman’s office at the company’s expense and also allowed reimbursement of expenses incurred in performance of his duties.

(b) Remuneration Committee  
i. The board should set up a remuneration committee to determine on their behalf and on behalf of the shareholders with

The non-mandatory requirement related to postal ballot has been dispensed with.

Under the head ‘Remuneration Committee’ the word ‘could’ appearing in (iii) and (iv) has been replaced with the word ‘should’.

The following non-mandatory requirements have additionally been provided:

**Tenure of Independent Directors**  
Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company.
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 should 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 should be present at the meeting.

iv. The Chairman of the remuneration committee should 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.

(c) 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.

(d) Postal ballot
Currently, although formality of holding the general meeting is gone through, in actual practice only a small fraction of the shareholders of that company do or can really participate therein. This virtually makes the concept of corporate democracy illusory. It is imperative that this situation which has lasted too long needs an early correction. In this context, for shareholders who are unable to attend the meetings,

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

**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.

**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.

**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.
there should be a requirement which will enable them to vote by postal ballot for key decisions. Some of the critical matters which should be decided by postal ballot are given below:
(i) Matters relating to alteration in the memorandum of association of the company like changes in name, objects, address of registered office etc;
(ii) Sale of whole or substantially the whole of the undertaking;
(iii) Sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%;
(iv) Making a further issue of shares through preferential allotment or private placement basis;
(v) Corporate restructuring;
(vi) Entering a new business area not germane to the existing business of the company;
(vii) Variation in rights attached to class of securities;
(viii) Matters relating to change in management.

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<th>25.</th>
<th><strong>Schedule of Implementation</strong></th>
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<td>The above amendments to the listing agreement have to be implemented as per schedule of implementation given below: By all entities seeking listing for the first time, at the time of listing. Within financial year 2000-2001, but not later than March 31, 2001 by all entities, which are included either in Group ‘A’ of the BSE or in S&amp;P CNX Nifty index as on January 1, 2000. However to comply with the recommendations, these companies may have to begin the process of implementation as early as possible.</td>
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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
| Within financial year 2001-2002, but not later than March 31, 2002 by all the entities which are presently listed, with paid up share capital of Rs. 10 crore and above, or networth of Rs 25 crore or more any time in the history of the company. Within financial year 2002-2003, but not later than March 31, 2003 by all the entities which are presently listed, with paid up share capital of Rs.3 crore and above. | 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. However, SEBI vide its circular SEBI/CFD/DIL/CG/1/2005/29 dated March 29, 2005 has extended the date of compliance of revised clause to December 31, 2005. |