

**MAJOR CHANGES IN**  
**CORPORATE GOVERNANCE NORMS**  
**Applicable w.e.f. 1st October 2014**

On 17<sup>th</sup> April 2014 SEBI amended Clause 49 of the Listing Agreement. This will come into effect on 1<sup>st</sup> October 2014.

Some of the key changes are:

1. Appointment of a Woman Director
2. Tenure of Independent Directors
3. Formal letter of appointment to Independent Directors
4. Performance evaluation of Independent Directors
5. Separate meeting of Independent Directors & Training of IDs
6. Succession Plan for Board/Sr. Management
7. Compulsory whistleblower mechanism
8. Constitution of Nomination and Remuneration Committee
9. Disclosure in Annual Report about Remuneration Policy and evaluation criteria
10. Related Party Transactions
11. Compulsory Electronic Voting for all shareholders resolutions  
(new Clause 35B)

**Composition of the Board** – The Board shall have optimum combination of EDs and Non-EDs with at least one woman director on the Board of the company.

**AND**

Not less than 50% of the Board comprising Non-EDs.

Requirement of Woman Director is to align with Section 149(1) of the Cos. Act, 2013.

As per new Cos. Act, Non-Listed cos. having:

- paid-up share capital of Rs.100 Cr. or more

**OR**

- Turnover of Rs.300 Cr. or more

need to have Woman Director before 31st March 2015.

## **Independent Directors –**

- Where Chairman is Non-ED - at least 1/3<sup>rd</sup> of the Board
- Where Chairman is Executive - at least 1/2 of the Board
- Also Where Chairman is Non-ED but is a promoter or is related to any promoter or person occupying management position at the Board level or at one level below the Board - at least 1/2 of the Board

Related to any promoter:

- i. If the promoter is a listed entity, its directors other than the IDs, its employees or its nominees shall be deemed to be related to it;
- ii. If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

Exclusion of Nominee Director from the definition of Independent Director.

(This is to align the definition of Independent Director under Listing Agreement with Section 149(6) of the Cos. Act, 2013.)

## **Independent Directors - Definition of Independent Director**

The definition of Independent Director has been widened in scope. Listed companies must determine the independence of existing directors in the light of new definition.

This is to align with the definition of Independent Director under Listing Agreement with Section 149(6) of the Cos. Act, 2013.

## Who is Independent Director ?

**(Sec. 2(47), 149(6) of the Companies Act, 2013 and Rules thereto and Cl. 49 of the Listing Agreement**

ID shall mean a non-executive director (i.e., not MD, WTD) other than nominee director of the Company:-

a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

b. (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

c. apart from receiving director's remuneration, has or had no 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;

d. none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

e. who, neither himself nor any of his relatives :—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —

*(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or*

*(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;*

(iii) holds together with his relatives two per cent or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;

(v) is a material supplier, service provider or customer or a lessor or lessee of the company;

f. Possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business

g. who is not less than 21 years of age

## **Limit on number of Directorships**

- As Independent Director (if he is not WTD in any listed co.) -- *maximum seven listed cos.*
- As Independent Director (if he is WTD in any listed co.) -- *maximum three listed cos.*

The restriction on no. of Directorships as Independent in listed companies is on Whole-time Director and not on MD. We have to interpret it strictly because – MD and WTD terms are distinct.

Section 165 of the Cos. Act, 2013 provides maximum number of directorships – 20 companies (including alternate directorships) out of which not more than 10 can be public companies.



## **Maximum Tenure of Independent Directors (ID) -**

- An Independent Director shall hold office for a term upto five consecutive years on the Board of a Company and shall be eligible for re-appointment for another term of upto 5 consecutive years on passing of a special resolution by the Company.
- Provided that a person who has already served as an ID for five years or more in a company as on October 1, 2014 shall be eligible for re-appointment, on completion of his present term, for one more term of upto five years only.
- Provided further that an ID, who completes his above mentioned term shall be eligible for appointment as ID in the company only after the expiration of three years of ceasing to be an ID in the company.

This is broadly in line with Section 149 of the Cos. Act, 2013.

However, as per Cos. Act two tenures of five years each can be taken by an independent director w.e.f. 1st April 2014. Any tenure of an ID on the date of commencement of this Act shall not be counted as a term.

## **Formal letter of appointment to Independent Director**

The Company shall issue a formal letter of appointment to ID in the manner as provided in the Companies Act, 2013.

The letter of appointment along with the detailed profile of ID shall be disclosed on the websites of the company and the Stock Exchanges not later than one working day from the date of such appointment.

This is to align with the Schedule IV of the Cos. Act, 2013 which provides the contents of the appointment letter of ID also.

Cos. Act - posting of the terms and conditions of appointment of ID on the website, which shall also be open for inspection at the Regd. Office by any member.

## **Performance evaluation of Independent Directors(ID)**

- a. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of IDs.
- b. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.
- c. The performance evaluation of ID shall be done by the entire Board of Directors (excluding the director being evaluated).
- d. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the ID.

This is to align with Schedule IV of the Cos. Act, 2013 which provides mechanism for evaluation of IDs.

## **Separate meeting of the Independent Directors (IDs)**

(a) The IDs of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the IDs of the company shall strive to be present at such meeting.

The IDs in the meeting shall, inter-alia:

- i. review the performance of non-independent directors and the Board as a whole;
- ii. review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- iii. assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

(This is to align with Schedule IV of the Cos. Act, 2013.)

## **Training of Independent Directors**

- a. The company shall provide suitable training to independent directors to familiarize them 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.
  
- b. The details of such training imparted shall be disclosed in the Annual Report.

## **Non-EDs' compensation and disclosures**

All fees/compensation, if any paid to Non-EDs, including IDs 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-EDs, in any financial year and in aggregate.

Prior approval of shareholders shall not apply to payment of sitting fees, if made within the limits prescribed under the Companies Act, 2013.

IDs shall not be entitled to any Stock Option.

(This is to align with Section 149(9) of the Cos. Act, 2013.)

## **Board and Committees**

The Board shall meet at least 4 times in a year with a maximum gap between two meetings of the Board -120 days. This is to align with Section 173 (1) of the Cos. Act, 2013.

Membership of Committees – a Director shall not be a member in any more than 10 Committees or act as Chairman of more than 5 Committees across all companies. Every director shall inform about the Committee positions he occupies in other companies and notify changes as and when take place.

### **Explanation:**

- i) For this purpose 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 8 of the Companies Act, 2013 shall be excluded.
- ii) Also Chairmanship/membership of the Audit Committee and the Stakeholders' Relationship Committee alone shall be considered.

Contd...

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.

- **Time for filling in vacancy in Board for ID**

Vacancy in the office of ID – to be filled not later than the immediate next Board Meeting or three months from the date of such vacancy, whichever is later. (earlier it was 180 days), unless the minimum No. of IDs are already on the Board.

The Companies Act, 2013 provides for a time line of 180 days, which is applicable to non-listed cos.

- **Succession Plan**

The Board shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

This is a new requirement.



# Code of Conduct

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.

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 Code of Conduct shall suitably incorporate the duties of IDs as laid down in the Companies Act, 2013.

This is to align with Schedule IV of the Cos. Act, 2013.

## **Liability of ID**

For the first time - it has been clarified that an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.

Similar provision also in the Cos. Act, 2013.

## **Compulsory whistle blower mechanism.**

The Company shall establish a Vigil Mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethical policy.

The mechanism should also provide for adequate safeguard against victimization of director(s)/ employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.

The details of establishment of vigil mechanism shall be disclosed by the company on its website and in the Board's Report.

Similar requirement u/s 177(9) of the Cos Act, 2013 for listed companies to establish a Vigil Mechanism for Directors and Employees to report genuine concerns.

(Before amendment of Clause 49, it was a non-mandatory requirement)

## **Expanded role of Audit Committee.**

To align the role of Audit Committee as per the Cos. Act, 2013, requirements for Audit Committee, its role, powers, etc. has also been revised in Clause 49.

## **Mandatory constitution of Nomination and Remuneration Committee.**

Company shall set up a Nomination and Remuneration Committee. Chairman of the Committee shall be ID. The Committee shall have at least three members, all of whom shall be Non EDs, half of which at least shall be IDs

The role of the Committee to include the following :

1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
2. Formulation of criteria for evaluation of IDs and the Board;
3. Devising a policy on Board diversity;
4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.

**( in case of non listed cos....Chairman need not be ID. However Chairman to attend AGM. As per Listing Ag., Chairman need not attend AGM. Also as per Cos Act , Committee shall carry out evaluation of every Director's performance)**

## **Subsidiary Companies**

At least one ID on the Board of the holding company shall be a director on the Board of Director of a material non-listed Indian subsidiary company.

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

The minutes of the Board meeting 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 the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

## **Subsidiary Companies**

To formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed to Stock Exchanges and in the Annual Report.

A subsidiary shall be considered as material if the investment of the company in the subsidiary exceeds twenty per cent of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated twenty per cent of the consolidated income (of the company) during the previous financial year.

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 passing a special resolution in its General Meeting.

Selling, disposing and leasing of assets amounting to more than twenty per cent of the assets of the material subsidiary shall require prior approval of shareholders by way of special resolution.

Explanation I: "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: "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: Where a listed holding co. has a listed sub. co. which itself is a holding co., the above provisions shall apply to the listed sub. co. in so far as its sub. cos. are concerned.

## **Risk Management**

The company shall lay down procedures to inform Board members about the risk assessment and minimisation procedures.

The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.

The company shall also 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.

This is applicable to top 100 listed cos.

Presently the Company need to inform Board about the risk assessment and minimization procedures.



## Related Party Transactions

A. A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

B A 'related party' is a person or entity that is related to the company, if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:

1. A person or a close member of that person's family is related to a company if that person:
  - a. is a related party under Section 2(76) of the Companies Act, 2013; or
  - b. has control or joint control or significant influence over the company; or
  - c. is KMP of the company or of a parent of the company; or
  
2. An entity is related to a company if any of the following conditions applies:
  - a. The entity is a related party under Section 2(76) of the Companies Act, 2013; or
  - b. The entity and the company are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others); or
  - c. One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member); or

- d. Both entities are joint ventures of the same third party; or
- e. One entity is a joint venture of a third entity and the other entity is an associate of the third entity; or
- f. The entity is a post-employment benefit plan for the benefit of employees of either the company or an entity related to the company. If the company is itself such a plan, the sponsoring employers are also related to the company; or
- g. The entity is controlled or jointly controlled by a person identified in (1).
- h. A person identified in (1)(b) has significant influence over the entity (or of a parent of the entity); or

**Explanation:** “control” shall have the same meaning as defined in SEBI Takeovers) Regulations, 2011.

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 five percent of the annual turnover or twenty percent of the net worth of the company as per the last audited financial statements of the company, whichever is higher.

D. All Related Party Transactions shall require prior approval of the Audit Committee.

E. All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.

## Disclosures

### A. Related Party Transactions

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

### 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 undertaking business transaction in the Corporate Governance Report.

## **Remuneration of Directors**

1. All pecuniary relationship or transactions of the Non EDs vis-à-vis the company shall be disclosed in the Annual Report.
2. In addition to the disclosures required under the Companies Act, 2013, 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.

3. The company shall publish its criteria of making payments to Non EDs in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report.

4. The company shall disclose the number of shares and convertible instruments held by nonexecutive directors in the annual report.

5. 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

## Management

As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:

- a. Industry structure and developments.
- b. Opportunities and Threats.
- c. Segment-wise or product-wise performance.
- d. Outlook
- e. Risks and concerns.
- f. Internal control systems and their adequacy.
- g. Discussion on financial performance with respect to operational performance.
- h. Material developments in Human Resources / Industrial Relations front, including number of people employed.

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.

3. The Code of Conduct for the Board of Directors and the senior management shall be disclosed on the website of the company

## Shareholders

1. In case of 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
2. Disclosure of relationships between directors inter-se shall be made in the Annual Report, notice of appointment of a director, prospectus and letter of offer for issuances and any related filings made to the stock exchanges where the company is listed.
3. 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.
4. A committee under the Chairmanship of a non-executive director and such other members as may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as 'Stakeholders Relationship Committee' and shall consider and resolve the grievances of the security holders of the company including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.



5. 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.

## **Disclosure of resignation of Directors**

The company shall disclose the letter of resignation along with the detailed reasons of resignation provided by the director of the company on its website not later than one working day from the date of receipt of the letter of resignation.

The company shall also forward a copy of the letter of resignation along with the detailed reasons of resignation to the stock exchanges not later than one working day from the date of receipt of resignation for dissemination through its website.

As per new Companies Act, a Director has to give detailed reasons in the resignation and has also to forward a copy of resignation along with detailed reasons to the office of ROC.

As per Listing Agreement the company shall, in addition, put the resignation letter and detailed reasons on its website not later than one working day.

## **Disclosure in Annual Report**

The following shall be disclosed in the Annual Report:

- (1) Training imparted to IDs
- (2) Establishment of Vigil Mechanism (Also in Board Report)
- (3) Remuneration Policy and the evaluation criteria

## **Proceeds from Public Issues, Rights Issues Preferential Issues, etc.**

When money is raised through an issue, the Company shall disclose the uses/applications of funds by major category (Capital Expenditure, Sales and marketing, working capital, etc.) on a quarterly basis as apart of qtly. declaration of financial results to the Audit Committee.

On annual basis the co. shall prepare a statement of funds utilised for the purposes other than those stated in the offer document/prospectus/notice and place before Audit Committee.

- Disclosure till full money raised has been fully spent.
- Such statement shall be certified by the statutory auditor of the company.

## **CEO / CFO Certification**

CEO, i.e., MD or Manager (as per Cos. Act) and CFO shall certify to the Board –

- that the financial statements do not contain any materially untrue statement or omit any material factor contain statements that might be misleading.
- that they accept responsibility for establishing and maintaining internal control .....
- that statements present true and fair view of the cos. affairs .....

(pl. see para ix of the Listing Agreement for details.)

## **Report on Corporate Governance**

- There shall be a separate Section on Corporate Governance in the Annual Report of the Company with a detailed Compliance Report on Corporate Governance.
- Non-compliance of any mandatory clause to be specifically highlighted.  
(Suggested list including non-mandatory requirements is appended to Clause 49)
- A Qtly. Compliance Report is to be submitted to SEs within 15 days of the close of the Qtr.

## **Compliance**

The Company shall obtain a certificate from either the auditors or practicing CS re. compliance of conditions of Corporate Governance and annex the same with the Directors' Report.

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

Annexure – X of the clause contains list containing information to be placed before the Board of Directors.

# **THANKING YOU**

**By: PK Rustagi  
VP (Legal) & Company Secretary  
JK Tyre & Industries Ltd.**