

GUIDANCE NOTE ON CERTIFICATION OF CORPORATE GOVERNANCE*

(AS STIPULATED IN CLAUSE 49 OF THE LISTING AGREEMENT)

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Certification of Corporate Governance

Foreword

Today, Corporate Governance is looked upon as a distinctive brand and benchmark in the profile of Corporate Excellence and the issue of Corporate Governance has assumed lot of importance in India. Governance is a necessary discipline and a proper governance would lead to effectiveness and transparency in the functioning of any corporate entity. Regulatory bodies for the capital market also feel that corporate governance is a necessary requirement for the existence of entity in the market as a whole and as a pre-condition to the listing requirement. The compliance of the conditions of corporate governance has been given top priority by the Securities & Exchange Board of India with the objective of providing better and effective protection to the investors and also to make the market confident and vibrant.

Clause 49 of the Listing Agreement stipulates that a company shall obtain a Compliance Certificate from the Auditors of the Company regarding compliance of the conditions of Corporate Governance and that certificate be annexed with the Directors' Report which is sent annually to all the shareholders of the company. This Certificate should also be sent to the Stock Exchanges along with the annual returns filed by the company. This stipulated requirement reflects the recognition of the role of auditors, and places additional responsibilities on the profession which would go a long way in bridging the expectation gap between the society and the auditor.

In accordance with the SEBI requirement in connection with the issue of compliance certificate by the auditors, the Institute of Chartered Accountants of India is proud to meet this challenging expectation as a social responsibility. This Guidance Note seeks to guide the members of the profession in the proper discharge of this responsibility.

I wish to record my sincere appreciation of the efforts of the Chairman of the Committee on Financial Markets & Investors' Protection, Shri Kamlesh Vikamsey, Shri Pankaj Inderchand Jain, Vice-Chairman of the Committee and other members of the Committee, in bringing out this useful publication in a very short span of time. I also wish to acknowledge my appreciation to Dr. P.T. Giridharan, Secretary,

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Committee on Financial Markets & Investors' Protection who was associated with this work. I am confident that this Guidance Note will immensely help our members in discharging their duties keeping in view the changed scenario and contribute to effective and better protection to the investors.

New Delhi
May 3, 2001

N.D. GUPTA
President

Certification of Corporate Governance

Preface

The codification of Corporate Governance and its effective implementation in the true spirit would bring about a sea change in the way in which companies are directed and controlled. It would bring about better transparency in the reporting requirements in the corporate world. The entity with good corporate governance practices would be rewarded in terms of their valuations.

The major code of Corporate Governance implemented in India as well as internationally are in the field of finance. The Chartered Accountants have also been assigned a key role to play in the implementation of the code of Corporate Governance.

The audit committee has been given an important role to play in the implementation of Corporate Governance. One of the members of the audit committee is required to have financial and accounting knowledge. This would encourage companies to induct Chartered Accountants in the board and in the audit committee.

The auditor of an entity would also play a crucial role in the implementation of Corporate Governance. They are required to be present at meetings of the audit committee. This would enable the auditor to effectively communicate with members of the audit committee, majority of whom are independent directors of the board, on matters concerning audit.

The auditor is required to certify the compliance of conditions of Corporate Governance as stipulated in Clause 49 of the Listing Agreement. I am sure this Guidance Note would assist the members in carrying out such certification effectively.

The implementation of code of Corporate Governance is at its nascent stage and as such the practices and disclosure norms would gradually evolve over a period of time. As a consequence the auditors would also progressively evolve their practices in the process of certification of compliance of code of Corporate Governance.

I am thankful to Shri N. D. Gupta, President & Shri Ashok Chandak, Vice President for their initiatives in this project.

I am grateful to Mr. Pankaj Jain, Vice Chairman & Mr. Sunil Goyal,

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Mr. Vinod Jain, Mr. T. N. Manoharan, Mr. Santhana Krishnan and my esteemed colleagues in the Council and members of the Committee on Financial Markets and Investors' Protection for contributing immensely in drafting of this Guidance Note.

I am also thankful to Mr. Anand Rathi, Mr. R L Kabra, Mr. Anil Bafna, Mr. M. K. Agarwal & Mr. R. C. Agarwal, co-opted members of the Committee for their valuable inputs.

Mumbai,
May 1, 2001

Kamlesh S. Vikamsey
Chairman
Committee on Financial Markets
and Investors' Protection

Certification of Corporate Governance

1. Introduction

1.1 Corporate Governance is the system by which companies are directed and controlled by the management in the best interest of the stakeholders and others, ensuring greater transparency and better and timely financial reporting. The Board of Directors are responsible for governance of their companies.

1.2 A number of reports and codes of Corporate Governance have already been published internationally – notable among them are the Report of Cadbury Committee, the Report of Greenbury Committee, the Combined Code of the London Stock Exchange, the OECD Code on Corporate Governance, the Blue Ribbon Committee on Corporate Governance and the Hampel Committee on Corporate Governance.

1.3 The Confederation of Indian Industry (CII) had published a Desirable Corporate Governance – A Code. The Securities and Exchange Board of India (herein after referred to as SEBI) had set up a committee under the chairmanship of Shri Kumar Mangalam Birla to formulate the code of Corporate Governance. Based on this report, SEBI has by Circular No. SMDRP/POLICY/CIR-10/2000, dated 21.2.2000 directed Stock Exchanges to amend the Listing Agreement between them (i.e., stock exchange) and entities whose securities are listed on such stock exchange and include a new clause 49 in such Listing Agreement. By Circular No.SMDRP/POLICY/CIR-13/2000 dated 09.03.2000, SEBI has clarified that for listed entities, which are not companies, but body corporates (e.g. private and public sector banks, financial institutions, insurance companies, etc.) incorporated under other statutes, clause 49 will apply to the extent that it does not violate their respective statutes, and guidelines or directives issued by the relevant regulatory authorities. The said Circular is reproduced in Appendix – A to this Guidance Note. By Circular No. SMDRP/POLICY/CIR-42/2000, dated 12.09.2000, SEBI has amended the requirements of clause 49 of the Listing Agreement. The clause 49 of the Listing Agreement after this amendment is reproduced in Appendix – B.

1.4 The schedule of implementation of Code of Corporate Governance as stipulated in Clause 49 of the Listing Agreement is as under:

- ◆ 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

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entities, which are included either in Group 'A' of the Stock Exchange, Mumbai (BSE) or in Standard & Poor's CRISIL NSE Nifty (S&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.

- ◆ 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 entity.
- ◆ 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

1.5 The code of corporate governance is broken up into mandatory and non-mandatory requirements. The non-mandatory requirements given in *Annexure-3* to Clause 49 of the Listing Agreement can be implemented by an entity as per its discretion.

1.6 As per paragraph VIII of Clause 49 of the Listing Agreement, the entity is required to obtain a certificate from the auditors of the entity as regards compliance of conditions of corporate governance as stipulated in that clause. This certificate is required to be annexed with the Directors' Report, which is sent annually to all the shareholders of the entity. This certificate is also required to be sent to the Stock Exchange(s) along with the Annual Returns filed by the entity. The expression "auditors of the company" would mean the auditors appointed to audit the financial statements of the entity under the relevant statutes.

2. Objective of this Guidance Note

2.1 This Guidance Note is intended to provide guidance for auditors in certification of the compliance of conditions of Corporate Governance as stipulated in clause 49 of the Listing Agreement between the Stock Exchange and the auditee entity (herein after referred to as "Listing Agreement"):

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

(b) The Auditors responsibility is to certify compliance of conditions of

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corporate governance as stipulated in clause 49 of the Listing Agreement.

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

2.3 This Guidance Note is intended to:

- ◆ assist in clarifying the respective responsibilities of the management and the auditor
- ◆ suggest inquiries the auditor is required to make from the management
- ◆ provide guidance on the verification procedure to the compliance of conditions of corporate governance
- ◆ outline circumstances where the auditor may issue an adverse or qualified certificate

3. Management's Responsibility

Management's responsibility for running its business implicitly requires it to take reasonable steps to ensure the implementation of the conditions of corporate governance as stipulated in clause 49 of the Listing Agreement.

4. Auditors' Responsibility

4.1 The auditors' responsibility in certifying conditions of corporate governance relate to verification and certifying factual implementation of conditions of corporate governance as conditions stipulated in clause 49 of the Listing Agreement. Such certification is neither an audit nor an expression of opinion on financial statements of the entity.

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

5. General Principles

5.1 The Standards set out in Statements on Standard Auditing Practices (herein after referred to as SAP) would be applicable in performance of certification of conditions of corporate governance by the auditor, to the

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extent relevant.

5.2 As in the case of other professional assignments, in certification of compliance of conditions of corporate governance, the auditor should comply with the “Code of Conduct”, issued by the Institute of Chartered Accountants of India.

5.3 The auditor should conduct certification of compliance of conditions on corporate governance as stipulated in clause 49 of the Listing Agreement in accordance with this Guidance Note.

6. Documentation

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

7. Verification of Compliance of Conditions of Corporate Governance

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

7.2 “I. Board of Directors

A. The company agrees that the board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors.

Explanation: *For the purpose of this clause the expression ‘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 judgment of the board may affect independence of judgment of the director.*

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Except in the case of a government companies, institutional directors on the boards of companies should be considered as independent directors whether the institution is an investing institution or a lending institution.”

[Sub-paragraph A of paragraph I]

7.3 The auditor should ascertain whether the strength of the Board of Directors comprises not less than 50% of the directors who are non-executive directors. The expression “executive directors” and “non-executive directors” has not been explained in paragraph I of Clause 49. The non-executive directors are directors who are not involved in day-to-day management of the entity. The board noting or resolution should be verified to ascertain whether a director is an executive or non-executive director.

7.4 The expression “independent directors” has been explained in the explanation to sub-paragraph A of paragraph I of Clause 49. In this connection, it may be noted that such director should not have any other material pecuniary relationship or transactions with the entity, its promoters, its management or its subsidiaries, which in the judgment of the board may affect independence of judgment of the director. The board noting or resolution recording such judgment should be verified by the auditor for ascertaining as to which director is an independent director. It may further be noted that in companies other than Government companies, institutional directors on the board of companies should be considered as independent directors even where the institution is an investing institution or a lending institution. A non-executive director may or may not be independent.

7.5 The auditor should ascertain whether in case the chairman is a non-executive chairman, at least one-third of the board comprises of independent directors else at least one-half of the board comprises of independent directors.

7.6 “B. The company agrees that all pecuniary relationship or transactions of the non-executive directors viz-a-viz. the company should be disclosed in the Annual Report.”

[Sub-paragraph B of paragraph I]

7.7 The auditor should ascertain whether the entity has disclosed in the detailed compliance report on corporate governance in the annual report all pecuniary relationship or transactions of the non-executive directors viz-a-viz the entity. The word “pecuniary” as per Chambers 20th Century Dictionary

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means *relating to money or consisting of money*. The auditor should ensure that the said detailed report on corporate governance has been adopted by the board. The auditor should carefully note that the word “material” is absent in this sub paragraph in contrast to in explanation to sub-paragraph A of paragraph I. Hence all pecuniary relationship or transactions of such non-executive directors viz-a-viz the entity should have been disclosed in the detailed report on corporate governance in the Annual Report. In this regard, it may be noted that a pecuniary relationship or transaction with a proprietary concern of a non-executive director or a partnership firm in which such non-executive director is a partner would also be covered by this sub-paragraph.

7.8 “A. *The company agrees that a qualified and independent audit committee shall be set up and that:*

- a. *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;*
- b. *The chairman of the committee shall be an independent director;*
- c. *The chairman shall be present at Annual General Meeting to answer shareholder queries;*
- d. *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;*
- e. *The Company Secretary shall act as the secretary to the committee.”*

[Sub-paragraph A of paragraph II]

7.9 “B. *The audit committee shall meet at least thrice a year. One meeting shall be held before finalisation of annual accounts and one every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors.”*

[Sub-paragraph B of paragraph II]

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

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“S.292A – Audit Committee

- (1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as “Audit Committee” which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors.*
- (2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board.*
- (3) The members of the Audit Committee shall elect a chairman from amongst themselves.*
- (4) The members of the company shall disclose the composition of the Audit Committee.*
- (5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.*
- (6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.*
- (7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.*
- (8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.*
- (9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.*
- (10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.*

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(11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both."

7.11 The comparative chart showing the requirements under Clause 49 and Section 292A are tabulated herein below:

Clause 49 of the Listing Agreement	Section 292A of the Companies Act, 1956
1.(a) All entities seeking listing for the first time are required to set up an audit committee at the time of listing.	1. Every public company having paid-up capital of not less five crores of rupees shall constitute an audit committee immediately on the enactment of Companies (Amendment) Act, 2000, i.e. with effect from 13 th December 2000.
(b) All existing listed entities with a paid-up capital of Rs.3 Crores and above are required to set up an audit committee in a phased manner as per schedule of implementation specified in Clause 49.	
2. 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.	2. The audit committee shall have minimum three directors of which two-third of the total number of such directors shall be directors other than managing or whole-time directors.
3. The chairman of the audit committee shall be an "independent" director.	3. The members of the audit committee shall elect a chairman from amongst themselves.
4. A representative of the external auditor, when required shall be present as an invitee for the meetings of the audit committee.	4. The Auditors shall attend and participate at meetings of the audit committee.

The following additional requirements are stipulated as per Clause 49 of the Listing Agreement which are silent in Section 292A:

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- i. The audit committee should invite such of the executives, as it considers appropriate (and particularly head of the finance function) to be present at the meeting of the committee, but on occasions, it may also meet without the presence of any executives of the company.
- ii. The company secretary shall act as secretary to the committee.
- iii. The audit committee shall meet at least thrice a year. One meeting shall be held before finalisation of annual accounts and once in every six months.
- iv. The quorum of the audit committee shall be two members or one-third of the members of the audit committee whichever is higher and minimum of two independent directors.
- v. The powers and role of the audit committee are elaborately contained in paragraph C & D of paragraph II.

The following additional requirements are stipulated as per Section 292A the Companies Act, 1956 which are silent in Clause 49 of the Listing Agreement:

- i. The audit committee constituted shall act in accordance with terms of reference to be specified in writing by the board.
- ii. The recommendations of the audit committee on any matter relating to financial management, including the audit report, shall be binding on the board.
- iii. If the board does not accept the recommendations of the audit committee, it shall record the reasons therefore and communicate such reasons to the shareholders.

7.12 The auditor should ascertain from the minute book of the board meeting whether a qualified and independent audit committee is set up which comprises of minimum three members. All members of the audit committee should be non-executive directors, with majority of them being independent, and with at least one director having financial and accounting knowledge.

7.13 The auditor should ascertain whether the chairman of the committee is an independent director. The expression "independent director" has been discussed in paragraph 7.4.

7.14 The auditor should ascertain from the annual general meeting (herein after referred to as AGM) attendance book and minute book whether the

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chairman of the audit committee was present at such meeting to answer shareholders queries. The AGM of the financial year which is under audit would be held subsequent to the auditor submitting the certificate of compliance of conditions of corporate governance and hence, the requirement would be to verify this condition with reference to the last AGM held.

7.15 The auditor should ascertain whether there is a practice of inviting the executives (and particularly the head of the finance function) in the audit committee meetings and he should further ascertain from the minute book of the audit committee whether such executive did attend the audit committee meetings.

7.16 The auditor should ascertain from the minute book of the audit committee, whether the finance director, head of internal audit were present as invitees in the meetings of the audit committee and whether a representative of the statutory auditor when required was present as invitee in the meetings of the audit committee.

7.17 The auditor should ascertain from the minute book of the board meeting in which the constitution of the audit committee was finalized, whether the company secretary was authorized to act as secretary to the audit committee. The auditor should also ascertain from the minute book of the audit committee whether the company secretary has acted as secretary to the audit committee. In case the entity does not have a company secretary, the requirement of this sub-paragraph cannot be implemented. The auditor should verify whether suitable alternative arrangements have been made by the entity.

7.18 The auditor should ascertain from the minute book of the audit committee whether it has met at least thrice a year. The auditor should further ascertain whether one of such meetings was held before finalization of annual accounts and whether one meeting was held every six months.

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

7.20 “C. *The audit committee shall have powers, which should include the following:*

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- a) to investigate any activity within its terms of reference.
- b) to seek information from any employee.
- c) to obtain outside legal or other professional advice.
- d) to secure attendance of outsiders with relevant expertise, if it considers necessary.

D. The company agrees that the role of the audit committee shall include the following:

- a. 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.*
- b. Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.*
- c. Reviewing with management the annual financial statements before submission to the board, focusing primarily on;*
 - Any changes in accounting policies and practices.
 - Major accounting entries based on exercise of judgment by management.
 - Qualifications in draft audit report.
 - Significant adjustments arising out of audit.
 - The going concern assumption.
 - Compliance with accounting standards.
 - Compliance with stock exchange and legal requirements concerning financial statements
 - Any related party transactions i.e. transactions of the company of material nature, with promoters or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large.
- d. Reviewing with the management, external and internal auditors, the adequacy of internal control systems.*
- e. Reviewing the adequacy of internal audit function, including the*

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structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.

- f. Discussion with internal auditors any significant findings and follow up there on.*
- g. 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.*
- h. Discussion with external auditors before the audit commences nature and scope of audit as well as have post-audit discussion to ascertain any area of concern.*
- i. Reviewing the company's financial and risk management policies.*
- j. 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."*

[Sub-paragraph C & D of paragraph II]

7.21 The sub-section 6 & 7 of Section 292A are reproduced hereunder which specify the functions of the audit committee:

"S.292A – Audit Committee

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

7.22 The auditor should ascertain from the minute book of the board meeting whether the terms of reference of the audit committee inter alia include the power, which are referred to in sub-paragraph C of paragraph II and also

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matters which are referred to in sub-paragraph D of paragraph II in order to enable the audit committee to effectively carry out the role assigned to it.

7.23 The auditor should ascertain from the minute book of the audit committee to ascertain prima facie whether the role assigned to it within the terms of reference as stipulated in sub-paragraph D of paragraph II have been carried out.

7.24 *“E. If the company has set up an audit committee pursuant to provision of the Companies Act, the company agrees that the said audit committee shall have such additional functions / features as is contained in the Listing Agreement.”*

[Sub-paragraph E of paragraph II]

7.25 Section 292A of the Companies Act, 1956 provides that every public company having paid up capital of not less than Rs.5 Crores shall constitute an audit committee. The auditor should ascertain whether such audit committee has additional functions/ features as contained in Clause 49 of the Listing Agreement.

7.26 “III. Remuneration of Directors

- A. *The company agrees that the remuneration of non-executive directors shall be decided by the board of directors.*
- B. *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.”*

[Paragraph III]

7.27 The auditor should ascertain from the minute book of the board meeting

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whether remuneration of non-executive directors have been decided by the board of directors.

7.28 The auditor should examine the report of the board of directors on corporate governance to be included in the annual report of the entity and ascertain whether the same contains the disclosures required of remuneration to directors both executive as well as non-executive, as stipulated in sub-paragraph B of paragraph III. The auditor should correlate this data with that contained in the financial statements. The auditor should also verify whether the remuneration is in compliance with Section 309 of the Companies Act, 1956.

7.29 “IV Board Procedure

- A. *The company agrees that the board meeting shall be held at least four times a year, with a maximum time gap of four months between any two meetings. The minimum information to be made available to the board is given in Annexure – I.*
- B. *The company further agrees that a director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.*

Explanation- *For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies (i.e. private limited companies, foreign companies and companies of Section 25 of the Companies Act, etc) shall be excluded. Further only the three committees viz. the Audit Committee, the Shareholders’ Grievance Committee and the Remuneration Committee shall be considered for this purpose.”*

[Sub-paragraphs A & B of paragraph IV]

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

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

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held in every year.

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

7.31 Clause 49 and Section 285 stipulate that the board meeting shall be held at four times a year. The further requirement of clause 49 is that the maximum time gap between any two meetings should not exceed four months. The requirement under the Companies Act is that the board meeting would be held at least once in every three months. No maximum time gap between two meetings is stipulated in Section 285.

7.32 The auditor should ascertain from the minute book of the board meeting whether board meetings were held at least four times a year, with a maximum time gap of four months between any two meetings. The auditor should also ascertain whether minimum information was made available to the board as given in Annexure –1 to clause 49 of the Listing Agreement. *(Clause 49 along with its Annexures 1 to 3 of the Listing Agreement is reproduced in Appendix - B to this Guidance Note.)*

7.33 The auditor should also ascertain whether the director is a member in more than ten committees or act as chairman of more than five committees across all entities in which he is a director. This information should be verified from the mandatory annual requirement for every director to inform the entity about the committee positions he occupies in other companies as well as from the changes notified by every director when they take place. The Explanation to sub-paragraph B of paragraph IV clarifies that the limit of the committees on which a director can serve would comprise of all public limited companies, whether listed or not and excluding private limited companies, foreign companies and companies which are granted license under section 25 of the Companies Act, 1956. Further it also clarifies that only three committees namely Audit Committee, Shareholders/ Investors Grievance Committee, Remuneration Committee shall be considered for the purpose of limit.

7.34 V. Management

"A. The company agrees that as part of the directors' report or as an

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addition there to, 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."*

[Sub-Paragraph A of Paragraph V]

7.35 The auditor should ascertain whether as a part of directors' report or as an addition thereto, a management discussion and analysis report forms part of the annual report to the shareholders. The auditor should further ascertain whether the management discussion and analysis includes discussion on the matters stipulated in sub-paragraph A of paragraph V within the limits set by the entity's competitive position.

7.36 The Accounting Standard 17 Segment Reporting (AS-17) has been made mandatory by the Institute of Chartered Accountants of India in respect of accounting periods commencing on or after 1.4.2001. Hence for earlier accounting periods say ending on 31.03.2001, though AS-17 is not mandatory, the management discussion and analysis report should include segment-wise or product-wise performance. For subsequent periods, this information should be consistent with those reported in financial statements complying with AS-17.

7.37 The discussion on internal control systems and their adequacy should not be inconsistent with the opinion expressed by the auditor in his report as required by the Manufacturing and Other Companies (Auditors' Report) Order, 1988 (herein after referred to as MAOCARO) in terms of section 227(4A) of the Companies Act, 1956. If, however there is inconsistency, the auditor should draw reference to the relevant paragraphs of his report under

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section 227(4A) in his certificate on compliance of conditions of corporate governance.

7.38 *“B. Disclosures must 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.)”*

[Sub-Paragraph B of Paragraph V]

7.39 The auditor should ascertain from the minute book of the board meeting, whether necessary disclosures as required by sub-paragraph B of paragraph V have been made to the board. The term “management” is not defined. In this connection, the board resolution or noting identifying persons who constitute management for the purpose of this sub-paragraph should be noted by the auditor. The auditor should ascertain from the minute book of the board meeting whether all disclosures received pursuant to requirement under this sub-paragraph have been laid before the board. If there are no disclosures received during the year, the auditor should ascertain from the minute book of the board meeting whether a certificate to that effect has been laid before the board. The auditor should carefully peruse the disclosures made to see its impact on the financial statements while carrying out audit under the relevant statutes. In case of transactions of the nature of secured or unsecured loan taken or unsecured loans granted from/to companies and other parties listed in the register maintained under Section 301 of the Companies Act, 1956, MAOCARO requires reporting whether the rate of interest and other terms and conditions are prima-facie prejudicial to the interest of the company. The auditor should carefully peruse the disclosures made and consider the same for reporting under MAOCARO.

7.40 “VI Shareholders

“A. The company agrees that 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; and
- d. Names of companies in which the person also holds the directorship

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and the membership of Committees of the board.”

[Sub-paragraph A of paragraph VI]

7.41 The auditor should ascertain from the communications sent, whether in the case of appointment of a new director or re-appointment of a director the shareholders have been provided with the information stipulated in sub-paragraph A of paragraph VI.

7.42 “VI Shareholders

B. The company further agrees that information like quarterly results, presentation made by companies 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.”

[Sub-paragraph B of paragraph VI]

7.43 The Auditor should ascertain from the entity’s website whether information like quarterly results, presentation made by the entity to analyst have been put on entity’s website. In the alternative whether such information has been sent in a form so as to enable the Stock Exchange in which the entity’s securities are listed to enable such Stock Exchange to put it on its own website. The auditor should also ascertain whether the other information which are mandatorily required to be disclosed to the shareholders as per the Listing Agreement or as per the Companies Act, 1956 are put on entity’s web-site or alternatively sent in such form to enable the stock exchange on which the entity’s securities are listed to enable such stock exchange to put it on its own web-site.

7.44 “VI Shareholders

“C. The company further agrees that a board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressing of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as ‘Shareholders/Investors Grievance Committee’.”

[Sub-paragraph C of paragraph VI]

7.45 The auditor should ascertain from the minute book of the board meeting

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

7.46 The auditor should also verify from the records of the Shareholders/ Investors Grievance Committee as well as from the certificate obtained by the entity from SEBI and Stock Exchange(s), if any, as regards the investors grievances pending upto the date of certificate of compliance of conditions of corporate governance. It is advisable that the board reports the extent of such pendency and the auditor certifies the same.

7.47 “VI Shareholders

D. The company further agrees that 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.”

[Sub-paragraph D of paragraph VI]

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

7.49 “VII Report on Corporate Governance

The company agrees that there shall be a separate section on Corporate Governance in the annual reports of company, with a detailed compliance report on Corporate Governance. Non compliance of any mandatory requirement i.e. which is part of the listing agreement with reasons there of and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included

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in this report is given in Annexure - 2 and list of non-mandatory requirements is given in Annexure - 3.”

[paragraph VII]

7.50 The auditor should ascertain whether the board of directors have included in the annual report of the entity a separate section on corporate governance with a detailed compliance report on corporate governance, which includes specifically highlighted non-compliance of any mandatory requirement, i.e. which is part of the Listing Agreement with reasons thereof and also the extent to which the non-mandatory requirements have been adopted. The auditor should also verify whether the suggested list of items to be included in this report as per Annexure-2 of clause 49 and list of non-mandatory requirements as per Annexure-3 of clause 49 have been incorporated in such report. *(Clause 49 along with its Annexures 1 to 3 of the Listing Agreement is reproduced in Appendix -B to this Guidance Note.)*

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

8. Management Representations

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

9. Auditors’ Certificate

9.1 “VIII 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.”

[Paragraph VIII]

9.2 A draft of the Auditors’ Certificate on compliance of conditions of Corporate Governance is reproduced in Appendix – C. It is important to note

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that some situations, depending upon the facts and circumstances, may require an adverse or qualified statement or a disclosure without necessarily making it a subject matter of qualification, in the Auditors' Certificate, in respect of compliance of conditions of Corporate Governance for e.g.:

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

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

10.1 The amendment to Listing Agreement as well as the Companies Act, 1956 in respect of constitution of audit committee underline the importance of audit process and its contribution to the corporate governance process. Clause 49 stipulates that a representative of the statutory auditor, when required, shall be present as an invitee for the meetings of the audit committee. Section 292A of the Companies Act, 1956 stipulate that the auditor should attend and participate at the meetings of the audit committee. In view of the provisions of the Companies Act, 1956 being mandatory requirement, the auditor would be required to attend all meetings of the audit committee.

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

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

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Appendix - A

Extent of Application of Clause 49 of Listing Agreement of Listed Entities, Which are Not Companies, But Body Corporates

Circular No.SMDRP/POLICY/CIR-13/2000 Dated 09.03.2000

Issued by the Secondary Market Department, SEBI

Please refer to our Circular *vide* SMDRP/POLICY/CIR-10/2000, dated February 21, 2000 wherein we had advised all the stock exchanges to incorporate a new clause 49 on Corporate Governance in the Listing Agreement.

The new clause 49 shall apply to all the listed private and public sector companies, in accordance with the schedule of implementation. However for listed entities, which are not companies, but body corporates (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, this clause will apply to the extent that it does not violate their respective statutes, and guidelines or directives issued by the relevant regulatory authorities.

Appendix -B

Clause 49 of the Listing Agreement

I. Board of Directors

A. The company agrees that the board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors.

Explanation: For the purpose of this clause the expression '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 judgment of the board may affect independence of judgment of the director. Except in the case of a government companies, institutional directors on the boards of companies should be considered as independent directors whether the institution is an investing institution or a lending institution.

B. The company agrees that all pecuniary relationship or transactions of the non-executive directors viz-a-viz. the company should be disclosed in the Annual Report.

II Audit Committee

A. The company agrees that a qualified and independent audit committee shall be set up and that :

- a) 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;
- b) The chairman of the committee shall be an independent director;
- c) The chairman shall be present at Annual General Meeting to answer shareholder queries;

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- d) 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;
 - e) The Company Secretary shall act as the secretary to the committee.
- B. The audit committee shall meet at least thrice a year. One meeting shall be held before finalisation of annual accounts and one every six months. The quorum shall be either two members or one third of the members of the audit committee, whichever is higher and minimum of two independent directors.
- C. The audit committee shall have powers which should include the following:
- a) to investigate any activity within its terms of reference.
 - b) to seek information from any employee.
 - c) to obtain outside legal or other professional advice.
 - d) to secure attendance of outsiders with relevant expertise, if it considers necessary.
- D. The company agrees that the role of the audit committee shall include the following:
- a) 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.
 - b) Recommending the appointment and removal of external auditor, fixation of audit fee and also approval for payment for any other services.
 - c) Reviewing with management the annual financial statements before submission to the board, focusing primarily on;
 - Any changes in accounting policies and practices.
 - Major accounting entries based on exercise of judgment by management.

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- Qualifications in draft audit report.
 - Significant adjustments arising out of audit.
 - The going concern assumption.
 - Compliance with accounting standards.
 - Compliance with stock exchange and legal requirements concerning financial statements
 - Any related party transactions i.e. transactions of the company of material nature, with promoters or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large.
- d) Reviewing with the management, external and internal auditors, the adequacy of internal control systems.
- e) 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.
- f) Discussion with internal auditors any significant findings and follow up there on.
- g) 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.
- h) Discussion with external auditors before the audit commences nature and scope of audit as well as have post-audit discussion to ascertain any area of concern.
- i) Reviewing the company's financial and risk management policies.
- j) 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.
- E. If the company has set up an audit committee pursuant to provision of the Companies Act, the company agrees that the said audit committee shall have such additional functions / features as is contained in the Listing Agreement.

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III. Remuneration of Directors

A. The company agrees that the remuneration of non-executive directors shall be decided by the board of directors.

B. 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.

IV Board Procedure

A. The company agrees that the board meeting shall be held at least four times a year, with a maximum time gap of four months between any two meetings. The minimum information to be made available to the board is given in *Annexure-I*

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

Explanation- For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies (i.e. private limited companies, foreign companies and companies of Section 25 of the Companies Act, etc) shall be excluded. Further only the three committees viz. the Audit Committee, the Shareholders' Grievance Committee and the Remuneration Committee shall be considered for this purpose."

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V. Management

A. The company agrees that as part of the directors' report or as an addition there to, 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.

B. Disclosures must 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.)

VI Shareholders

A. The company agrees that 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 ; and
- c) Names of companies in which the person also holds the directorship and the membership of Committees of the board.

B. The company further agrees that information like quarterly results, presentation made by companies to analysts shall be put on company's web-

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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.

B. The company further agrees that a board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressing of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as 'Shareholders/Investors Grievance Committee'.

C. The company further agrees that 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.

VII Report on Corporate Governance

The company agrees that there shall be a separate section on Corporate Governance in the annual reports of company, with a detailed compliance report on Corporate Governance. Non compliance of any mandatory requirement i.e. which is part of the listing agreement with reasons there of and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in *Annexure-2* and list of non-mandatory requirements is given in *Annexure -3*.

VIII 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.

Schedule of Implementation

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.

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- ◆ 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&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.
- ◆ 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.

As regards the non-mandatory requirement given in *Annexure – 3*, they shall be implemented as per the discretion of the company. However, the disclosures of the adoption/non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

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Annexure 1

Information to be placed before board of directors

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.

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14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory nature or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

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Annexure 2

Suggested List Of Items To Be Included In The Report On Corporate Governance In The Annual Report Of Companies

1. A brief statement on company's philosophy on code of governance.
2. *Board of Directors:*
 - Composition and category of directors for example promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as Lender or as equity investor.
 - Attendance of each director at the BoD meetings and the last AGM.
 - Number of other BoDs or Board Committees he/she is a member or Chairperson of.
 - Number of BoD meetings held, dates on which held.
3. *Audit Committee.*
 - Brief description of terms of reference
 - Composition, name of members and Chairperson
 - Meetings and attendance during the year
4. *Remuneration Committee.*
 - Brief description of terms of reference
 - Composition, name of members and Chairperson
 - Attendance during the year
 - Remuneration policy
 - Details of remuneration to all the directors, as per format in main report.
5. *Shareholders Committee.*
 - Name of non-executive director heading the committee
 - Name and designation of compliance officer

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- Number of shareholders complaints received so far
 - Number not solved to the satisfaction of shareholders
 - Number of pending share transfers
6. *General Body meetings.*
- Location and time, where last three AGMs held.
 - Whether special resolutions
 - Were put through postal ballot last year, details of voting pattern.
 - Person who conducted the postal ballot exercise
 - Are proposed to be conducted through postal ballot
 - Procedure for postal ballot
7. *Disclosures.*
- Disclosures on materially significant related party transactions i.e. transactions of the company of material nature, with its promoters, the directors or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large.
 - Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
8. *Means of communication.*
- Half-yearly report sent to each household of shareholders.
 - Quarterly results
 - Which newspapers normally published in.
 - Any website, where displayed
 - Whether it also displays official news releases; and
 - The presentations made to institutional investors or to the analysts.
 - Whether MD&A is a part of annual report or not.

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9. *General Shareholder information*

- AGM : Date, time and venue
- Financial Calendar
- Date of Book closure
- Dividend Payment Date
- Listing on Stock Exchanges
- Stock Code
- Market Price Data : High, Low during each month in last financial year
- Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
- Registrar and Transfer Agents
- Share Transfer System
- Distribution of shareholding
- Dematerialization of shares and liquidity
- Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
- Plant Locations
- Address for correspondence

Annexure 3

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 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

The half-yearly declaration of financial performance including summary of the significant events in last six-months, should be sent to each household of shareholders.

D Postal Ballot

Currently, although the formality of holding the general meeting is gone through, in actual practice only a small fraction of the shareholders of that

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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, 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 :

- a. Matters relating to alteration in the memorandum of association of the company like changes in name, objects, address of registered office etc;
- b. Sale of whole or substantially the whole of the undertaking;
- c. Sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%;
- d. Making a further issue of shares through preferential allotment or private placement basis;
- e. Corporate restructuring;
- f. Entering a new business area not germane to the existing business of the company;
- g. Variation in rights attached to class of securities;
- h. Matters relating to change in management

Appendix C

CERTIFICATE

To the Members of

(name of the entity)

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

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

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

1.

2.

] **

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

We state that no/_____ *** investor grievance(s) is/are*** pending for a period exceeding one month against the company* as per the records maintained by the Shareholders/ Investors Grievance Committee.

We further state that such compliance is neither an assurance as to the future viability of the company* nor the efficiency or effectiveness with which the management has conducted the affairs of the company*.

For and on behalf of

ABC & Co.

Chartered Accountants

()

Partner / Proprietor

Place :

Date :

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

** Delete, if not applicable.

*** Delete whichever is not applicable.