

# Corpsec Hotline

April 11, 2008

## SEBI INTRODUCES CHANGES TO CORPORATE GOVERNANCE REQUIREMENTS

Clause 49 of the Listing Agreement i.e. an agreement between the company and the stock exchange on which the securities of the company are listed, deals with the corporate governance compliances that an Indian listed company is required to fulfill at time of getting listed with the stock exchange. The Securities and Exchange Board of India ("SEBI"), vide circular SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004, had issued the revised Clause 49 of the Listing Agreement, which came into effect from January 1, 2006. The revised Clause 49 has been amended by SEBI vide circular issued on April 8, 2008 as under:

### Mandatory Provisions:

#### Composition of the Board of Directors - Independent Directors

Every company is required to have a combination of executive and non-executive directors on the board of the company ("Board").

The requirement of the number of independent directors on the Board depends on whether the chairperson of the Board is an executive director or a non-executive director. An independent director is a non-executive director fulfilling requisite criteria as provided under Clause 49 of the Listing Agreement. If the chairperson of the Board is a non-executive director, then at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.

This have been further modified to include that in case where the chairperson is a non-executive director but is a promoter or is related to promoters or persons occupying management positions at the Board level or at one level below the Board, then at least one-half of the board of the company should consist of independent directors. Further, the minimum age for independent directors has been fixed to 21 years.

In order to ensure that the requisite number of independent directors is always maintained on the Board of the company; SEBI has provided that the gap between resignation/removal of an independent director and appointment of another independent director in his place shall not exceed 180 days. However, this provision would not apply in case a company fulfils the minimum requirement of independent directors in its Board, as may be applicable to such company.

#### Reporting Requirements

In order to bring more transparency in the management of the company, in addition to existing disclosures that needs to be furnished to the shareholders and to the stock exchanges, SEBI has provided that a company will also be required to make disclosures of relationships between directors inter-se 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.

### Non-mandatory provisions:

Clause 49 of the Listing Agreement also lists down a few non mandatory provisions. Under the non mandatory provisions of the amended clause, SEBI has suggested that the person who is being appointed as an independent director should possess the requisite qualifications and experience which would be of use to the company and which, in the opinion of the company, would enable him to contribute effectively to the company in his capacity as an independent director.

#### Conclusion

The amended provisions will lead to more independent management of the affairs of a listed company and further protects the interest of public shareholders.

Source: SEBI: Circular/SEBI/CFD/DIL/CG/1/2008/08/04

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