

PROPOSED CHANGES TO CLAUSE 49 OF THE LISTING AGREEMENT

The extant Clause 49 of the listing agreement, after taking into account the recommendations of the Narayana Murthy Committee came into effect on January 1, 2006. Since the coming into effect of the revised Clause 49, SEBI has received comments from various quarters - the public, the corporate and industry associations suggesting amendments to certain provisions of Clause 49. The various suggestions received along with SEBI's views were placed before the Primary Market Advisory Committee (PMAC) in their meeting held on December 4, 2006. After taking into account the views of the PMAC, the revised changes proposed to Clause 49 are placed herewith for public comments for a period of 21 days i.e. from 12/03/2007 to 02/04/2007.

Sl no.	Existing provisions of Clause 49	Proposed amendments	Rationale for the proposed amendments
1.	<p>Board composition and Disclosures:</p> <p>Clause 49.I.A.ii states that where the Chairman of the Board is a non-executive director, 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.</p>	<p>It is proposed that a provision be added stating that if the non-executive Chairman is a promoter or is related to promoters or persons occupying management positions at the Board level or at one level below the Board, he would not be treated as independent director and the company in such a case, would be required to have 50% independent directors on its Board.</p>	<p>SEBI is in receipt of views / representations that in certain companies the promoters or promoters of the promoter company or their close relatives designate themselves as non-executive Chairman of the listed company and hence, they cannot be considered truly "non-executive" in the sense of the term.</p>
2.	<p>Relation between independent directors:</p> <p>There is no existing provision in Clause 49 which speaks about the relation amongst independent directors.</p>	<p>It is proposed to stipulate that companies shall disclose the relation between independent directors inter-se as well as other directors of the company not holding management position, in all documents where the details of the Board of directors are incorporated/ given for information of the public/ shareholders. It may not be possible to mandate a blanket provision that independent directors should not be related to each other.</p>	<p>Views/representations have been received by SEBI stating that some companies have independent directors who are related to each other. They further state that such practices are only technical compliance and do not uphold the spirit of the clause and hence such persons should not be considered independent.</p>

3.	<p>Time gap between the resignation /removal of an independent director and the appointment of another in his place:</p> <p>There is no existing provision on this issue which speaks about the time gap for the appointment of an independent director in case there is a resignation or removal of an existing one.</p>	<p>It is proposed to stipulate that an independent director who resigns or is removed from the Board shall be replaced by a new independent director within a time-gap of not more than 90 days from such resignation / removal. Without any time limit, a company may continue to remain non-compliant and may take a plea that it has not been able to find an independent director.</p>	<p>SEBI is in receipt of views / representations stating that there should be a time limit for the appointment of an independent director in case there is a resignation or removal of an existing one.</p>
4.	<p>Entry norms for independent directors in terms of age, qualifications and experience:</p> <p>There are no existing norms for independent directors in terms of age, qualifications and experience</p>	<p>It is proposed to stipulate that the minimum age of an independent director shall be atleast 21 years.</p> <p>It may not be possible to stipulate experience, maximum age or qualifications for an independent director since it would differ from company to company based on the line of activities it is engaged in. Further, the Companies Act does not specify the experience/ qualifications/ age limit for a director.</p>	<p>Views/representations received by SEBI state that there should be norms for independent directors in terms of age, qualifications and experience.</p>
5.	<p>Nominee directors as independent directors:</p>	<p>It is proposed to stipulate that nominee directors</p>	<p>SEBI has received views / representations stating that</p>

	<p>As per the provisions of Clause 49.I.A.iv, nominee directors of institutions are considered as independent directors; the word 'institution' has been defined for the purpose.</p>	<p>would not be considered as independent directors and consequently, the provision which allows nominee directors appointed by institutions to be considered as independent directors may be deleted.</p>	<p>nominee directors basically represent interest of the institution which has nominated them, be it a lending or investing institution; as such, these directors should not be considered as independent directors. Further, SEBI has taken a view that Government nominees in Government companies would not be treated as independent directors since they have a material pecuniary relationship with the Government as they receive salary and other perks from the Government.</p>
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