

Applicability: Whereas Clause 35B of the Listing agreement was effective from the date of issue of the relevant circular, Revised Clause 49 of the Listing Agreement is to be applicable from 01.10.2014. Hence, provisions mentioned herein shall be required to be complied with by the 1st of October, 2014.

However, the provisions are not applicable to the following:

- ✦ Companies with
 - ✦ Paid-up equity share capital lower than INR10 crores; and
 - ✦ Net worth less than INR25 crores.

If any of the above limits are crossed, then the clause becomes applicable to such company.

However, when the provisions become applicable, such companies shall comply within six months from such date.

- ✦ Companies whose equity shares are listed exclusively on the SME and SME-ITP platforms.

Principle based approach – The interpretation of the provisions of Revised Clause 49 shall be done in a manner that achieves the objectives of the principles mentioned in RC-49.

The following principles find mention in RC-49:

- a. The rights of Shareholders
- b. Role of Stakeholders in Corporate Governance
- c. Disclosure and Transparency
- d. Responsibilities of the Board

The Rights of Shareholders

This principle envisages effective participation, sufficient information, addressing of shareholders' grievances, minority shareholders' protection, providing of adequate and timely information, equitable treatment, providing voting facilities even from faraway places, etc. for shareholders.

Role of Stakeholders in Corporate Governance

Right of stakeholders must be protected including setting up of whistle blower mechanism.

Disclosure and Transparency

Timely and accurate information dissemination on all material matters relating to financial situation, performance, ownership and governance of the company.

Responsibilities of the Board

The responsibilities of the board have been mentioned which are aligned to meet the requirements of the provisions of RC 49.

Board of Directors

The amended RC-49 has extended the time limit to comply with the requirement of having of one woman director till 01.04.2015.

Relating to the chairmanship of the board, the word REGULAR has been added i.e. if the interim chairman to fill some vacancy (of the chairman) is an executive director but regularly, if the chairman is non-executive, then they shall be compliant if they have one-third non-executive directors in the meantime till they reappoint an independent chairman.

Independent Directors

The definition of Independent Director has been aligned with the Companies Act, 2013 meanwhile maintaining the additional conditions prevailing in the earlier clause 49 such as the one relating to material supplier. The related explanation has also been amended to match the definition of KMP and relative in lines with Companies Act, 2013.

Limit on number of directorships

Whereas the limit on number of directorships shall continue to be monitored by the Companies Act, 2013, a limit has been placed on Independent directorships by the RC-49.

Number of Independent Directorships	
If a WTD in any listed company	3
If not a WTD in any listed company	7

Maximum Tenure

The Companies Act, 2013 restricts the tenure of Independent Directors to two terms of five year each [10 years in total] with a cooling off period of 3 years before re-appointment. The period already served at commencement of Act is not considered under Companies Act, 2013.

The amendment to RC 49, dated 15.09.2014 aligns itself with the Companies Act, 2013.

Formal letter of appointment, performance evaluation of IDs as well as separate meetings of IDs find mention in the RC-49 to match requirements of Companies Act, 2013.

Formal letter of appointment and Familiarisation of IDs

The terms and conditions of appointment of ID shall be disclosed on the website of the company.

Familiarisation of IDs made mandatory by the amended RC 49, and details of such programme to be disclosed on the website of the company. A web-link of the same must also be stated in the Annual Report.

Nominee Director not to be considered as Independent Director

The RC-49 removes the inclusion of Nominee Director from the definition of ID. Moreover, Independent directors shall not be entitled to any stock option.

Director's responsibility of informing about committee positions

Whereas the earlier clause 49 made it an annual requirement for directors to inform about their committee positions, the revised clause requires intimation at time of appointment and thereafter the director shall notify changes as and when they take place. Hence, no annual intimation would be required if there is no change in the director's committee positions.

Filling vacancy of Independent Director

The vacancy on an ID's removal or resignation shall be filled within a period of 3 months (earlier 180 days) or the next Board Meeting (not more than 120 days), whichever is later.

Succession planning by Board

The board has to satisfy itself that plans are in place for orderly succession for

appointments to the board and senior management.

Code of Conduct of Directors

The code of conduct has been aligned to include the duties of IDs as mentioned under Companies Act, 2013.

Whistle Blower Policy/ Vigil Mechanism

Whistle blower policy made mandatory following the provisions relating to Vigil Mechanism under the Companies Act, 2013.

Audit Committee

The following roles of the Audit Committee have been added by RC-49:

- ✦ Review and monitor Auditor's independence and effectiveness of Audit process
- ✦ Approval or any subsequent modification of transactions with Related Parties
- ✦ Scrutiny of Inter-Corporate Loans and Investments
- ✦ Valuation of undertakings or assets of the company, wherever it is necessary
- ✦ Evaluation of Internal Financial Controls and risk management systems

Some additional conditions have been placed in relation to material subsidiaries

A material subsidiary is different from material non-listed Indian subsidiary.

RC-49 requires companies to formulate a policy for determining material subsidiary and disclose the same on the company's website with a web-link disclosure in its Annual Report.

Material subsidiary to be considered as such if investment in that company exceeds

20% of the combined net worth as per audited balance sheet of previous financial year or if subsidiary generated more than 20% of consolidated income of the company during the previous financial year.

Special Resolution requirements:

Without passing of Special Resolution in its General Meeting, a company cannot:

- ✦ Dispose of shares in material subsidiary which would reduce holding below 50%.
- ✦ Sell, dispose or lease assets amounting to more than 20% of the total assets of material subsidiary.

Nomination and Remuneration Committee [NRC]

The constitution, rules and other aspects of the NRC are mentioned in the RC-49. However, it mentions that the chairman of the company cannot be the chairman of the NRC aligning itself with the CA, 2013.

Provisions relating to Risk Management

This clause relating to Risk Management Committee shall be applicable to the top 100 listed companies by market capitalization as at the end of the immediate previous financial year.

A Risk Management Committee to be formed. It shall be the responsibility of board for framing, implementing and monitoring the Risk Management plan of the company.

The board may delegate monitoring and reviewing of the risk management to the committee and such other functions as it deems fit.

Majority of the members must be members of the Board. Whereas senior executives of company can be members, the chairman of the committee has to be a board member.

Related Party Transactions

RC-49 contains definition of RPT as well as RP. RP is defined as per the Companies Act, 2013 and also includes definition as per applicable Accounting Standard. RPT is defined to include single transaction as well as group of transactions in a contract.

RC-49 requires that the company shall formulate a policy on materiality of RPT as well as on dealing with RPT [not only material RPT]. The same shall be disclosed on website and web-link in the Annual Report.

A RPT shall be considered material if transaction / transactions to be entered into individually or taken together exceed 10% of the annual consolidated turnover as per the latest audited financial statements of the company.

RC 49 as well as Companies Act, 2013 require **all RPTs**, irrespective of being entered into in the ordinary course at arm's length; to be approved by the AC.

However, amended RC-49 introduces a concept of omnibus approval to be granted by the Audit Committee to RPT subject to following conditions:

- ✦ Transaction must be repetitive in nature
- ✦ Approval must be in line with RPT policy
- ✦ Criteria for granting such omnibus approval shall be laid down by the Audit Committee.

- ✦ The Audit Committee shall satisfy itself for the need of such omnibus approval.
- ✦ Transactions entered under the Omnibus approvals are to be reviewed by the Audit committee
- ✦ Omnibus approvals are to be valid for a period not exceeding one year. Fresh approvals would be required thereafter.
- ✦ Omnibus approvals shall specify:
 - ✦ Name of RP
 - ✦ Nature/ Period/ Maximum amount of transaction
 - ✦ Indicative base price/ current contract price and formula for variation
 - ✦ Other conditions as the Audit committee may deem fit
- ✦ Where the need for RPT cannot be foreseen and above details are unavailable, Audit Committee may grant omnibus approval for such transactions with a maximum limit of INR1 crore.

All material RPT to be approved by means of a special Resolution and that ALL the related parties, (whether that RP is a party to the said RPT or not) shall abstain from voting on such transactions. However, approval from the Audit Committee and Special Resolution at General Meeting won't be required for transactions entered into between a holding company and its wholly owned subsidiary company, whose accounts are consolidated with the holding company and placed before shareholders for approval. *Such approval shall be required for all prospective transactions. However,*

Key Impact of Revised Clause 49 of the Listing Agreement

contracts/ arrangements which are likely to continue after 31.03.2015 will be required to be approved by the shareholders in the first GM to be held after 01.10.2014. The companies may alternatively choose to get it approved in GM prior to 01.10.2014 also.

A quarterly disclosure of all the material transactions with Related Parties to be filed by the company, along with the compliance report on Corporate Governance, which is filed with the stock exchanges.

Glossary

AR	Annual Report	N	No
BR	Board's Report	RC-49	Revised Clause 49
CA, 2013	Companies Act, 2013	RP	Related Party
GM	General Meeting	RPT	Related Party Transactions
KMP	Key Managerial Person	WTD	Whole Time Director
LAR	Web-Link in Annual Report	Y	Yes
ID	Independent Director		

There has been a specific stress on the word 'effective' under the new text of the Revised Clause 49 indicating SEBI's intention of wanting listed entities to have proper and effective procedures rather than just having on-paper compliance mechanisms which do not serve the purpose when needed.

The Additional Disclosure Compliance Checklist:

The following is the **additional disclosure checklist** that is required to be followed by the company under the Revised Clause 49:

Checklist under Revised Clause 49: What's New?				
Particulars	Framing Policy/ Document/ Procedures?	Forming Committee?	Disclosing on website?	Disclosing in Annual Report/ Board Report/ Link in Annual Report?
Code of Conduct	Y	N	Y	N
Dealing with RPT	Y	N	Y	LAR
Determination of Material Subsidiaries	Y	N	Y	LAR
Familiarisation of ID	Y	N	Y	LAR
Risk Management	Y	Y	N	N
Terms and conditions of appointing ID	N	N	Y	N
Whistle Blower Policy	Y	N	Y	BR

The above mentioned checklist summarizes the new disclosure requirements added by the RC-49 and it must be noted that this is in addition to the earlier checklist for compliance with the Earlier Clause 49 and not a total checklist.

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