

## Corpsec Hotline

September 10, 2003

### CHANGES TO CORPORATE GOVERNANCE REQUIREMENTS FOR LISTED INDIAN COMPANIES

The Securities and Exchange Board of India ("SEBI") issued a circular on August 26, 2003 to all the Stock Exchanges, revising Clause 49 of the Listing Agreement of the Stock Exchanges ("Listing Agreement"). Clause 49 of the Listing Agreement deals with the corporate governance compliances that an Indian listed company is required to fulfill as part of its listing obligations. The amendments cover a wide range of issues including strengthening the responsibilities of audit committees, improving quality of financial disclosures and the requirement to adopt a "Whistle Blower" Policy.

Some of the salient amendments to Clause 49 have been summarized below:

#### Board of directors

Every company is required to have a certain percentage of independent directors on its board depending on whether the company has an executive chairperson or not.

The definition of "independent directors" has been amended to mean a non-executive director who:

- Does not have a pecuniary relationship with the company, its promoters, senior management or affiliate companies
- Is not related to promoters or senior management
- Has not been an executive with the company in the immediately three preceding financial years
- Is not a partner or executive of the auditors/lawyers/consultants of the company
- Is not a supplier, service provider or customer of the company
- Does not hold 2% or more of the shares of the company.

There is certain minimum information that has to be made available to the members of the board prior to the board meeting which ranges from annual operating plans and budgets to labor problems.

A company is also required to lay down a code of conduct for members of its board and senior management.

#### Audit committee

As per the new amendments, the Audit Committee is now required to review the following information on a mandatory basis:

- financial statements and draft audit report
- management discussion and analysis of financial condition and results of operations
- Reports relating to legal compliance and risk management
- management letters issued by statutory/internal auditors
- records of related party transactions
- terms of appointment of the Chief internal auditor

#### Whistle Blower policy

A Whistle Blower Policy has been introduced whereby company personnel will have the right to directly approach the Audit Committee of the company to report an unethical or improper practice. Companies are required to facilitate this right to access and protect 'whistle blowers' from unfair termination and similar prejudicial employment practices.

#### Disclosure requirements

Companies are required to make a clear disclosure of contingent liabilities. They are also required to disclose all elements of remuneration, details of fixed and performance based components, service contracts, severance fees, stock option details etc. in the annual report. Further, all compensation paid to non executive directors must not only be fixed by the Board of Directors but also approved by shareholders in a general meeting.

As part of the director's report, there must also be a report on Management Discussion and Analysis.

#### CEO and CFO certification

The CEO and CFO are required to certify that they have verified the following:

- veracity of accounts of the company, including balance sheet and P&L account etc.,
- establishment and maintenance of internal control systems of the company,
- disclosure of significant fraud, if any, that involves management or employees having a significant role in the company's internal control systems to the Auditors and Audit Committee.

#### Report on corporate governance

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The amendments also provide a format for the Quarterly Compliance Report on Corporate Governance that must be submitted to the stock exchanges on which the company is listed, within 15 days from the close of each quarter.

Conclusion

Companies that are already listed have been given upto March 31, 2004 to comply with the above. The above changes have been made keeping in mind the recommendations of the SEBI committee on Corporate Governance headed by Mr. N.R. Narayana Murthy. The changes also seem to be in consonance with the global developments on corporate governance requirements including the Sarbanes Oxley Act.

Source: SEBI: Circular/SEBI/MRD/SE/31/2003/26/8

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