CLAUSE 49 OF LISTING AGREEMENT

Clause 49 of the Listing Agreement (for short "**Clause 49**") has been prescribed by the Securities Exchange Board of India to elaborate on the issue of Corporate Governance and to strengthen the Corporate Governance framework for listed companies in India. Clause 49 is applicable to all the listed companies in India except (i) companies with equity share capital of less than Rs 10 crore, (ii) companies having net worth not exceeding of Rs 25 crore, and (iii) companies listed on SME and SME-ITP platforms of the stock exchanges. Clause 49 comprehensively covers various aspects with reference to Companies concerning (Only the aspects concerning BOD and the Audit Committee have been discussed here):

- Board of Directors
- Audit Committee
- Subsidiary Companies
- Disclosures
- CEO/CFO certification
- Report on Corporate Governance
- Compliance

Composition of Board of Directors

i. Clause 49 discusses about the composition of the Board of Directors in any Company whereby it necessarily mandates 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.
ii. Further, where the Chairman of the company 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.

An independent director is a non executive director and is defined in Clause 49 (iii) of the Agreement which lays down an inclusive list to thereby ensure no present or past connection/ interest in the Company.

The terms executive director and non executive director are not defined under the Companies Act or under any other Act for that matter. However the basic difference between them are that an executive director is one who is either in whole time or in part time employment of the Company and has a significant personal interest in the Company as a source of income. A non-executive director on the other hand is one who is neither a Whole-time Director nor a Managing Director. These directors do not take part in the daily affairs of the company and are appointed for advising the Company.

Limit on Directorship

A person is restricted from acting as an Independent Director on the board of more than seven Companies. However in case such a person is serving as a whole time director in any listed company then the said limitation is for 3 companies.

Separate Meeting

The independent directors of a company are required to hold at least one meeting of only independent directors and where no other members or director are present.

Evaluation:

The evaluation of the performance of the independent directors must be made as per the criteria laid down by the Nomination Committee which must be disclosed in the annual report.

Audit Committee- Clause 49 (III):

The Audit Committee must consist of a minimum of 3 members. Further two-thirds of the members of the Audit Committee are required to be Independent Directors. The Chairman of the Audit Committee has to be an Independent Director and must be present in the Annual General Meeting to answer queries. All members of the Audit Committee are required to be financially literate whereas one member should be an expert in accounting or related financial management.

Meeting of the Audit Committee: The Committee must meet 4 times a year with a gap of not more than 4 months between two meetings. The quorum must be 2 members or one third of total members whichever is greater, but minimum 2 independent directors must be present.

Powers of Audit Committee: The powers of the Committee extend to investigation of any activity within its terms of reference, seeking information from employees, obtaining outside legal or professional advice and securing the attendance of expert outsiders in the relevant area.

Role of Audit Committee:

Oversight of the company's financial reporting process, Recommendation on the appointment, remuneration and approval of payment of statutory auditors, review annual financial statement of the Company along with the Auditor's report, review quarterly financial statements before submission to the Board for approval, review the independence and performance of the auditors, reviewing adequacy of internal audit system, approval of appointment of the CFO.

Review of Information by Audit Committee:

The Committee is mandatorily authorized to review the Management discussion and analysis of financial condition and results of operation, the statement of significant related party transactions, management letters issued by statutory auditors, the management letters and the appointment, removal or terms of remuneration of Chief Internal Auditor.