

Guidance Note on
Certification of
Corporate **G**overnance

(As stipulated in Clause 49 of the Listing Agreement)

Revised 2006 Edition

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The Institute of Chartered Accountants
of India
New Delhi

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Foreword

Good Corporate Governance is the core process guided by a strategic leadership to provide values with necessary checks and balances. Trust is the foundation on which principles of governance are essentially built and to be observed more by way of self-regulation. However, law generally prescribes principles of corporate governance. In the year 2000, the Securities and Exchange Board of India prescribed certain conditions for compliance of corporate governance in Clause 49 of the Listing Agreement and in October, 2004, it had further introduced various amendments in the said clause. With the revised clause 49 coming into force with effect from 1st January, 2006, the scope and application of the requirements on corporate governance have undergone vast changes.

If one looks in entirety, the revised Clause 49 places set of responsibilities and accountability on the part of Board of Directors/CEO/CFO of the company. The statutory auditors have to take into account other reports/certificates in issuance of certificate on compliance of requirements of corporate governance.

What role and responsibilities the audit professionals can envisage in the new requirements of corporate governance? What can be the best course of action during audit of corporate governance? An attempt has been made in this revised Guidance Note, which I hope that the members of the profession will immensely benefit.

I wish to record my sincere appreciation to the efforts of the committee under the Chairmanship of Shri Jayant Gokhale and other members in deliberating the matter in detail and providing guidance to the members to the best extent possible.

New Delhi
31st January, 2006

Kamlesh S. Vikamsey
President

Preface

The Indian economy and Capital Markets have recorded a fantastic and consistent growth, which has brought it considerable global attention. The regulatory authorities as well as legislation have kept pace with these developments and continuously attempted to improve the infrastructure and environment to and bring it in tune with international benchmarks. In doing so the role and responsibility of Chartered Accountants in facilitating best practices in Corporate Governance is significant.

The revised Clause 49 of the Listing Agreement (which has come into effect from 1st January, 2006) has provided a framework for validation and reporting regarding compliance with Corporate Governance requirements. Various duties have been prescribed for the Board, Audit Committee, CEO/CFO etc. and the Auditor is required to issue a certificate in regard to the Compliance of Requirements of Corporate Governance.

The nature of information covered in the report on Corporate Governance is so varied that it is impossible for every facet thereof to be “verified” and audited. However, the statutory auditor has a very onerous responsibility to the stakeholders and regulators in issuing the Certificate of Compliance. It is, therefore, critical that members of our profession approach this task with full awareness of his role. At the same time, this additional role should not be stretched beyond its intended parameters. This Guidance Note is a humble attempt to assist the auditor in performing his role in such certification as the statutory auditor. The deliberations in the Council as well as the Committee brought out clearly that Chartered Accountants will have multifarious roles in the larger context of Corporate Governance. Members of our profession will be involved as Directors, CEO, CFO, Compliance Officers and in other roles in Financial Management, Control Systems etc. All such persons can benefit from the Guidance provided. It may however, be kept in mind that the Guidance is prepared primarily to assist in performing the duty of certifying compliance with Corporate Governance requirements as prescribed under Clause 49 of the Listing Agreement.

In issuance of the same, there are certain issues such as disclosures on holding company and its relation with subsidiary companies, role and review of information by audit committee, disclosures about risk management and its framework etc., which requires judgment depending upon facts and circumstances. An attempt has been made to guide the members in the aforesaid areas taking into consideration various points of view that have been extensively debated. These are newly introduced requirements and over a period of time the processes and procedures will evolve and we shall all be enriched by experience.

The Committee on Financial Markets & Investors' Protection in its sincerity and fairness have evolved this revised guidance note after due deliberations and suggestions by the august council. I must place on record my sincere gratitude and appreciation to the valuable time spent by the members of the study group constituted at Mumbai for the purpose. I also place on record my appreciation for the efforts taken by each and every member of the committee namely S/Shri R. S. Adukia, Vice-Chairman, Charanjot Singh Nanda, H. N. Motiwalla, S. Gopalakrishnan, Jitesh Khosla, Sidharth Kumar Birla, Niranjana Saha, Nandkishore Bafna, C. V. Subramanian, Ramu Kennedy, Prabhat K. Maheshwari, M. K. Samantaray, and M. S. Sahoo. I also place on record the invaluable guidance provided by my colleagues in the council and in particular S/Shri S. C. Vasudeva, Harinderjit Singh, Pankaj Jain and others. I am also thankful to S/Shri Shailesh Bhathiya, and Sandeep Maheshwari, FCA, Mumbai for their untiring efforts in reading the basic manuscript and making finer changes.

I am thankful to Shri K. S. Vikamsey, President and Shri T. N. Manoharan, Vice-President for their guidance, technical support and encouragement in bringing out the revised publication.

Mumbai

27th January, 2006

Jayant Gokhale

Chairman

Foreword to the First Edition

Today, Corporate Governance is looked upon as a distinctive brand and benchmark in the profile of Corporate Excellence and the issue of Corporate Governance has assumed lot of importance in India. Governance is a necessary discipline and a proper governance would lead to effectiveness and transparency in the functioning of any corporate entity. Regulatory bodies for the capital market also feel that corporate governance is a necessary requirement for the existence of entity in the market as a whole and as a pre-condition to the listing requirement. The compliance of the conditions of corporate governance has been given top priority by the Securities & Exchange Board of India with the objective of providing better and effective protection to the investors and also to make the market confident and vibrant.

Clause 49 of the Listing Agreement stipulates that a company shall obtain a Compliance Certificate from the Auditors of the Company regarding compliance of the conditions of Corporate Governance and that certificate be annexed with the Directors' Report which is sent annually to all the shareholders of the company. This Certificate should also be sent to the Stock Exchanges along with the annual returns filed by the company. This stipulated requirement reflects the recognition of the role of auditors, and places additional responsibilities on the profession which would go a long way in bridging the expectation gap between the society and the auditor.

In accordance with the SEBI requirement in connection with the issue of compliance certificate by the auditors, The Institute of Chartered Accountants of India is proud to meet this challenging expectation as a social responsibility. This Guidance Note seeks to guide the members of the profession in the proper discharge of this responsibility.

I wish to record my sincere appreciation of the efforts of the Chairman of the Committee on Financial Markets & Investors'

Protection, Shri Kamlesh Vikamsey, Shri Pankaj Inderchand Jain, Vice-Chairman of the Committee and other members of the Committee, in bringing out this useful publication in a very short span of time. I also wish to acknowledge my appreciation to Dr. P. T. Giridharan, Secretary, Committee on Financial Markets & Investors' Protection who was associated with this work. I am confident that this Guidance Note will immensely help our members in discharging their duties keeping in view the changed scenario and contribute to effective and better protection to the investors.

New Delhi
3rd May, 2001

N. D. Gupta
President

Preface to the First Edition

The codification of **Corporate Governance** and its effective implementation in the true spirit would bring about a sea change in the way in which companies are directed and controlled. It would bring about better transparency in the reporting requirements in the corporate world. The entity with good corporate governance practices would be rewarded in terms of their valuations.

The major code of Corporate Governance implemented in India as well as internationally are in the field of finance. The Chartered Accountants have also been assigned a key role to play in the implementation of the code of Corporate Governance.

The audit committee has been given an important role to play in the implementation of Corporate Governance. One of the members of the audit committee is required to have financial and accounting knowledge. This would encourage companies to induct Chartered Accountants in the board and in the audit committee.

The auditor of an entity would also play a crucial role in the implementation of Corporate Governance. They are required to be present at meetings of the audit committee. This would enable the auditor to effectively communicate with members of the audit committee, majority of whom are independent directors of the board, on matters concerning audit.

The auditor is required to certify the compliance of conditions of Corporate Governance as stipulated in Clause 49 of the Listing Agreement. I am sure this Guidance Note would assist the members in carrying out such certification effectively.

The implementation of code of Corporate Governance is at its nascent stage and as such the practices and disclosure norms would gradually evolve over a period of time. As a consequence the auditors would also progressively evolve their practices in

the process of certification of compliance of code of Corporate Governance.

I am thankful to Shri N. D. Gupta, *President* & Shri Ashok Chandak, *Vice President* for their initiatives in this project.

I am grateful to Mr. Pankaj Jain, *Vice Chairman* & Mr. Sunil Goyal, Mr. Vinod Jain, Mr. T. N. Manoharan, Mr. Santhana Krishnan S., my esteemed colleagues in the Council and members of the Committee on Financial Markets and Investors' Protection for contributing immensely in drafting of this Guidance Note.

I am also thankful to Mr. Anand Rathi, Mr. R L Kabra, Mr. Anil Bafna, Mr. M. K. Agarwal & Mr. R. C. Agarwal, co-opted members of the Committee for their valuable inputs.

Kamlesh S. Vikamsey

Mumbai
1st May, 2001

Chairman
Committee on Financial Markets
& Investors' Protection

Glossary of Terms

AS	ACCOUNTING STANDARDS
AAS	ACCOUNTING & AUDITING STANDARDS
CARO	COMPANIES (AUDITOR'S REPORT) ORDER
CEO	CHIEF EXECUTIVE OFFICER
CFO	CHIEF FINANCIAL OFFICER
CII	CONFEDERATION OF INDIAN INDUSTRY
ICAI	INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
OECD	ORGANISATION FOR ECONOMIC CO- OPERATION AND DEVELOPMENT
RBI	RESERVE BANK OF INDIA
SEBI	SECURITIES AND EXCHANGE BOARD OF INDIA
SCRA	SECURITIES CONTRACT (REGULATION) ACT