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# Implementation of revised clause 49 of listing agreement: A case study of it industry in India

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**Abstract**
SEBI has amended the existing clause 49 of the listing agreement and the revised clause 49 shall be effective from 1st October 2014. The revision was to bring corporate governance norms in line with the new Companies Act, 2013. The revised clause imposes more stringent requirements of corporate governance on listed companies. The present paper has tried to evaluate the corporate governance norms followed by IT industry in light with the revised clause 49. For this, 10 IT companies were selected. The study found that most of the selected IT companies complied with the requirements of revised clause 49 in an attempt to make disclosure more transparent and effective.

**Keywords:** revised clause 49, corporate governance, SEBI, listing agreement

## Introduction
Corporate governance is the relationship between corporate managers, directors and the providers of the equity, people and the institutions who save and invest their capital to earn a return. It ensures that the board of directors is accountable for the pursuit of corporate objectives and the corporation itself conforms to the law and regulations [1].

Governance is taken to mean the process of deliberating, establishing, monitoring, and adjusting strategy, communicating the rules by which the strategy is implementing, and hiring, monitoring, and evaluating the senior executive team. It is both the domain and fiduciary duty of the board of directors [2].

The concept of corporate governance became a central issue after the Sarbanes- Oxley Act, 2002 was introduced in the United States. This Act was passed to restore the faith of general public in the companies in India. Clause 49 of the Listing Agreements by SEBI elaborates on the issue of corporate governance and prescribes the norms under which the companies are mandated to operate. After the new Companies Act, 2013, SEBI has amended Clause 49 of Listing Agreement to bring it into uniformity with Companies Act, 2013.SEBI amended the provisions of Clause 49 of the Listing Agreement relating to corporate governance, mandating, among other things that the board of directors of listed companies shall have an best combination of executive and non-executive directors with at least one woman director.

This Paper aims to analyse the various heads discussed under clause 49 of the listing Agreement with special reference to Information Technology sector in India. IT sector was chosen as it is an important emerging sector of the Indian economy. IT sector plays an important role in achieving the policy objectives like economic development because of that it is identified as one of the major industries in India. The size of this sector has increased at the rate of 35% per year during the last 10 years. The share of IT industry is 7% of the GDP in Indian economy according to NASSCOM [3].

## Literature Review
Meenu Maheshwari & Sapna Meena – this paper tries to study the trend of disclosure of corporate governance practices followed by SBI for the financial years 2010-11, 2011-12, 2012-13. Study concludes that SBI is showing maximum compliance towards corporate governance norms.

Sonia Sharma- the objective of this study was to evaluate the corporate governance practices in banking sector particularly in ICICI bank Ltd. These practices are evaluated on the basis of shareholding pattern, board practices, board committees and disclosures and transparency of information. It reveals that ICICI bank has complied with requirements of clause 49 of the listing agreement as far as mandatory information is concerned.

Madan Bhasin & Adliya Manama- this paper studied how far RIL is compliant of corporate governance standards by using point value system. The result reveals that this company has shown ‘very good performance’ with an overall score of 85 points.

Anurag Singh & Prof. Priyanka Gite – this paper compares the corporate governance disclosure score of selected public and private life insurance companies. The result shows that LIC has better disclosure score in comparison to private insurance companies.

Dr. Harmeet Kaur- this study tries to study the difference in disclosures of corporate governance norms of private and public sector banks in India. It was found that from all banks, Central Bank of India has the highest percentage i.e. 60.26 and Oriental Bank of Commerce is having least percentage for disclosure.

[1] International Chambers of Commerce
[2] Directors and Chief Risk Officers Guiding Principles For Compensation Committees, 2018
[3] www.imdr.edu, www. Nasscom.org

**Objectives**
1. To examine corporate governance practices of IT sector in India.
2. To benchmark the corporate governance disclosure practices of the IT sector with the revised Clause 49 of the Listing Agreement.

**Research Methodology**
This study is based on secondary data obtained from the annual reports of the year 2016-17 of ten companies from the IT sector namely Infosys, TCS, Mphasis, Wipro, Tech Mahindra, Oracle, L&T InfoTech, HCL Tech, Mind tree, and Hexaware Tech. The disclosures made by these companies in their annual reports were compared with the Revised Clause 49 of the Listing Agreement.

**Analysis and Findings**
**Composition of board of directors**
According to clause 49 not less than 50% of the board of directors comprising non-executive directors and at least one woman director. Where the chairman of the board is
- Non- executive, at least one-third of the directors to be independent directors.
- Executive chairman, at least half the board to be independent directors.

It was found that all the companies under study complied with this requirement except L&T InfoTech which had less than 50% non-executive directors in their board.

**Independent Director**
According to clause 49
- A company has to provide suitable training to independent directors and details of such training to be disclosed in the annual report.
- A company has to issue a formal letter of appointment to the independent directors.
- The independent directors to hold at least one meeting in a year.
- A person not to be a independent director in more than 7 listed companies.

All the companies except Mphasis disclosed information about training of independent directors. None of the companies except Mindtree provided information about formal letter of the appointment. All the companies disclosed the information regarding meeting of the independent directors. Only 4 companies provided information about independent directorship in other listed companies.

**Subsidiary Companies**
According to clause 49
- At least one independent director of holding company to be on the board of material non-listed Indian subsidiary companies.
- Audit committee of listed holding company to review financial statements of unlisted subsidiary.
- Board minutes of unlisted subsidiary to be placed before the board of listed holding company.

None of the companies disclosed the information regarding independent director of holding company to be on the board of material non-listed Indian subsidiary companies. 5 companies gave information about their audit committee to review financial statement of unlisted subsidiary. Only 4 companies placed board minutes of unlisted subsidiary before the board of listed holding company.

**Other provisions as to board and committees**
According to clause 49
- The board to meet at least 4 times in a year, with a maximum time gap of 120 days between two meetings.
- Membership of a director in various committees should not exceed 10 committees.
- .a director shall not act as a Chairman of more than 5 committees across all companies.

All the companies under study complied with the above provisions.

**Code of conduct**
The board shall lay down the code of conduct for all board members and senior management of the company. The company should post the code of conduct on its website. All board members and senior management personnel have to affirm the compliance with the code.
All the companies under study had a code of conduct and their board affirmed its compliance.

**Whistle blower policy and vigil mechanism**
- According to clause 49 a company should have a vigil mechanism to identify non-compliance of the company's code of conduct or ethics policy and to disclose unethical behaviour, actual or suspected fraud. The details of such mechanism shall be disclosed by the company on its website and in the Board's Report.

All the companies had a whistle blower policy and vigil mechanism.

**Audit Committee**
According to clause 49 a qualified and independent audit committee shall be set up by the companies.
- The audit committee shall be composed of atleast three directors as members. Out of these two thirds of the members shall be independent directors.
- At least one member shall have accounting related financial management expertise and all audit committee members should be financially literate.
- The audit committee shall appoint an independent director as its chairman.
- The chairman of the audit committee shall be present at the annual general meeting.
- The audit committee should meet at least 4 times in a year.
- The quorum of the meeting of audit committee should be one third of committee members or two members of the committee whichever is greater, but there should be minimum of two independent directors present.

All companies under study complied with proper composition, independent director as chairman, at least 4 meetings in a year and proper quorum of the meetings. 4 and 6 companies disclosed the information about financially literacy of the members and their chairman's presence at annual general meeting respectively.

**Nomination and Remuneration Committee**

According to clause 49 –

- The committee should have at least three director, all of whom shall be non-executive directors and at least half of the committee shall comprised of independent dorectors.
- Chairman of the committee shall be an independent director.

All the companies complied with the requirement regarding half of the members of the committee to be independent; four companies did not have all the members as non-executive directors. All the companies had an independent director as chairman of the committee.

**Stakeholders' relationship committee**

The companies should constitute stakeholders' relationship committee with a non-executive director as its chairman.

All the companies under study complied with this provision of clause 49 of listing agreement.

**Related party transactions**

According to clause 49

- There shall be quarterly disclosures of details of all material transactions with related parties.
- The company on its website and annual report should disclose the policy on dealing with related party transactions.

All the companies followed this provision.

**Management**

According to clause 49

- A company to have a Management Discussion and Analysis Report
- Senior management of the board shall make disclosures regarding all material financial and commercial transactions of personal interest that may have a potential conflict with the interest of the company.

All the companies except Mphasis disclosed their management discussion and analysis report. Only L&T InfoTech's senior management fulfilled the above requirement.

**Shareholders**

According to clause 49

- Shareholders must be provided with details of the director in case of their appointment / reappointment.
- Disclosure of relationships between directors interse shall be made.
- Quarterly results to be displayed on the companies' website.
- To expedite the process of share transfers, the board shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents.

7 companies under study provided the details of the directors in the case of appointment and reappointment. Only Wipro made no disclosure regarding relationships between directors interse. All the companies provided information about their quarterly results and share transfer system.

**Disclosures in annual reports**

According to clause 49

- There shall be a separate section on corporate governance in the annual report of a company.
- Disclosure of the compliances of mandatory requirements and adoption/ non-adoption of non-mandatory requirements to be made.

All the companies had a separate section on corporate governance in their annual reports. 6 companies disclosed information regarding compliance of mandatory and non-mandatory requirements.

**CEO/CFO's Certification**

Clause 49 requires that CEO and CFO shall certify that they have reviewed the financial statements and cash flow statement and these statements are true and in compliance with existing accounting standards, applicable laws and regulations.

4 companies under study did not attach CEO/CFO certificate with their annual reports.

**Compliance Certificate**

According to clause 49 a company shall obtain a certificate from either the auditors or practising companies' secretaries regarding the compliance of conditions of the corporate governance and annex the certificate with their Directors' report.

All the companies under study met this requirement.

**Conclusion**

Majority of the companies under study are complying with the most of the provisions of revised clause 49 of the listing agreement. This shows that companies are disclosing all material matters in their annual reports to make corporate governance more effective.

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