

Proposed (draft) amendment

No. SEC/CMRRCD/2006-158/.....: Whereas, the Securities and Exchange Commission (herein after referred to as the "Commission") deems it fit that the consent already accorded by the Commission, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh, shall be subject to certain further conditions, on 'comply' basis, in order to enhance corporate governance in the interest of investors and the capital market;

Now, therefore, in exercise of the power conferred by section 2CC of the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Commission hereby supersedes its earlier Notification No. SEC/CMRRCD/2006-158/Admin/02-08 dated 20th February, 2006 and imposes the following further conditions to the consent already accorded by it, or deemed to have been accorded by it, or to be accorded by it in future, to the issue of capital by the companies listed with any stock exchange in Bangladesh:

Provided, however, that these conditions are imposed on 'comply' basis. The companies listed with any stock exchange in Bangladesh shall comply with these conditions in accordance with the condition No. 6.

The Conditions:

1.00 BOARD OF DIRECTORS:

1.1 Board's Size

The number of the board members of the company shall not be less than 5 (five) and more than 20 (twenty):

Provided, however, that in the case of banks and non-bank financial institutions, insurance companies and statutory bodies for which separate primary regulators like Bangladesh Bank, Department of Insurance etc. exist, the Board of those companies should be constituted as may be prescribed by such primary regulators in so far as those prescriptions are not inconsistent with the aforesaid condition.

1.2 Independent Directors

All companies shall encourage effective representation of independent directors on their Board of Directors so that the Board, as a group, includes core competencies considered

relevant in the context of each company. For this purpose, the companies shall comply with the following:-

(i) At least one third (1/3) of the total number of the company's board of directors, shall be independent directors.

(ii) For the purpose of this clause "independent director" means a director-

- a) who either does not hold any share in the company or holds less than one percent (1%) shares of the total paid-up shares of the company.
- b) who is not connected with the company's sponsors or directors or shareholder who holds one percent (1%) or more shares of the total paid-up shares of the company on the basis of family relationship. His/her family members also should not hold above mentioned shares in the company.
- c) who does not have any other relationship, whether pecuniary or otherwise, with the company or its subsidiary/associated companies
- d) who is not a member, director or officer of any stock exchange, and
- e) who is not a shareholder, director or officer of any member of stock exchange or an intermediary of the capital market.
- f) is not a partner or an executive or was not partner on an executive during the preceding 3 (three) years of any of the following:
 - i. the statutory audit firm; and
 - ii. the local firm and consulting firm that have a material association with the company

(iii) The independent director(s) shall be appointed by the elected directors.

(iv) The position of independent director can not remain vacant for more than 90 (ninety) days.

(v) The Board shall lay down a code of conduct of all Board members and annual compliance of the code to be recorded.

1.3 Qualification of Independent Director (ID)

- (i) ID should be a knowledgeable individual with integrity who is able to ensure compliance with financial, regulatory and corporate laws and can make meaningful contribution to business.
- (ii) The person should preferably be a Business Leader/Corporate Leader/Bureaucrat/University Teacher with Business and Economics background/Professionals like Chartered Accountants, Cost & Management Accountants, Chartered Secretaries with at least 15 (fifteen) years of corporate management/professional experiences.

1.4 Chairman of the Board and Chief Executive

The positions of the Chairman of the Board and the Chief Executive Officer of the companies shall be filled by different individuals. The Chairman of the company shall be elected from among the directors of the company. The Board of Directors shall clearly define respective roles and responsibilities of the Chairman and the Chief Executive Officer.

1.5 The Director's Report to Shareholders

The directors of the companies shall include following additional statements in the Directors' Report prepared under section 184 of the Companies Act, 1994:-

- (i) Industry outlook and possible future developments in the industry
- (ii) Segment-wise or product-wise performance
- (iii) Risks and concerns
- (iv) A discussion on Cost of Goods sold, Gross Profit Margin and Net Profit Margin
- (v) Discussion on continuity of any Extra-Ordinary gain or loss
- (vi) Basis for related party transactions-a statement of all related party transactions should be disclosed in the annual report
- (vii) Utilization of proceeds from public issues, rights issues and/or through any others instruments
- (viii) Remuneration to directors including independent directors
- (ix) The financial statements prepared by the management of the issuer company present fairly its state of affairs, the result of its operations, cash flows and changes in equity
- (x) Proper books of account of the issuer company have been maintained
- (xi) Appropriate accounting policies have been consistently applied in preparation of the financial statements and that the accounting estimates are based on reasonable and prudent judgment
- (xii) International Accounting Standards, as applicable in Bangladesh, have been followed in preparation of the financial statements and any departure **therefrom** has been adequately disclosed
- (xiii) The system of internal control is sound in design and has been effectively implemented and monitored
- (xiv) There are no significant doubts upon the issuer company's ability to continue as a going concern. If the issuer company is not considered to be a going concern, the fact along with reasons thereof should be disclosed
- (xv) Significant deviations from last year in operating results of the issuer company shall be highlighted and reasons thereof should be explained
- (xvi) Key operating and financial data of at least preceding five years shall be summarized

- (xvii) If the issuer company has not declared dividend (cash or stock) for the year, the reasons thereof shall be given
- (xviii) The number of Board meetings held during the year and attendance by each director shall be disclosed
- (xix) The pattern of shareholding shall be reported to disclose the aggregate number of shares (along with name wise details where stated below) held by:-
 - a) Parent/Subsidiary/Associated companies and other related parties (name wise details)
 - b) Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer, Head of Internal Audit and their spouses and minor children (name wise details)
 - c) Executives; and
 - d) Shareholders holding ten percent (10%) or more voting interest in the company (name wise details).

Explanation: For the purpose of this clause, the expression “executive” means top five salaried employees of the company, other than the Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer and Head of Internal Audit.

2.00 CHIEF FINANCIAL OFFICER (CFO), HEAD OF INTERNAL AUDIT, AND COMPANY SECRETARY

2.1 Appointment

The company shall appoint a Chief Financial Officer (CFO), a Head of Internal Audit and a Company Secretary. The Board of Directors should clearly define respective roles, responsibilities and duties of the CFO, the Head of Internal Audit and the Company Secretary.

2.2 Requirement to Attend Board Meetings

The CFO and the Company Secretary of the companies should attend meetings of the Board of Directors, provided that the CFO and/or the Company Secretary shall not attend such part of a meeting of the Board of Directors which involves consideration of an agenda item relating to the CFO and/or the Company Secretary.

3.00 AUDIT COMMITTEE:

The company shall have an Audit Committee as a sub-committee of the Board of Directors.

The Audit Committee shall assist the Board of Directors in ensuring that the financial statements reflect true and fair view of the state of affairs of the company and in ensuring a good monitoring system within the business.

The Audit Committee shall be responsible to the Board of Directors. The duties of the Audit Committee shall be clearly set forth in writing.

3.1 Constitution of the Audit Committee

- (i) The Audit Committee shall be composed of at least 3 (three) members.
- (ii) The Board of Directors shall appoint members of the Audit Committee who shall be directors of the company and shall include at least two independent directors.
- (iii) All members of the audit committee should be “financially literate” and at least one member shall have accounting or related financial management experience.

Explanation: The term “financially literate” means the ability to read and understand the financial statements like Balance sheet, Income Statement and Cash Flow Statement and a person will be considered to have accounting or related financial management expertise if (s)he posses professional qualification or accounting/finance graduate with at least 15 (fifteen) years experience in corporate management.

- (iv) When the term of service of the Committee members expires or there is any circumstance causing any Committee member to be unable to hold office until expiration of the term of service, thus making the number of the Committee members to be lower than the prescribed number of 3 (three) persons, the Board of Directors shall appoint the new Committee member(s) to fill up the vacancy(ies) immediately or not later than 1 (one) month from the date of vacancy(ies) in the Committee to ensure continuity of the performance of work of the Audit Committee.
- (v) The company secretary shall act as the secretary of the Committee.

3.2 Chairman of the Audit Committee

- (i) The Board of Directors shall select 1 (one) member of the Audit Committee to be Chairman of the Audit Committee, who should be an independent director
- (ii) Chairman of the audit committee shall be present in AGM to answer shareholders queries

3.3 Role of Audit Committee:

Role of audit committee shall include the following:

- (i) Oversee the financial reporting process
- (ii) Monitor choice of accounting policies and principles
- (iii) Monitor internal control Risk Management process
- (iv) Oversee hiring and performance of external auditors
- (v) Review along with the management, the annual financial statement before submission to the board for approval
- (vi) Review along with the management, the quarterly and half yearly financial statement below before submission to the board for approval
- (vii) Review the adequacy of internal audit function
- (viii) Review statement of significant related party transactions submitted by management
- (ix) Review Management Letters/Letter of internal control weakness issued by statutory auditors
- (x) Appointment, removal and fixes the terms of reference of internal auditor.

3.4 Reporting of the Audit Committee

3.4.1 Reporting to the Board of Directors

- (i) The Audit Committee shall report on its activities to the Board of Directors.
- (ii) The Audit Committee shall immediately report to the Board of Directors on the following findings, if any:-
 - a) Report on conflicts of interests;
 - b) Suspected or presumed fraud or irregularity or material defect in the internal control system;
 - c) Suspected infringement of laws, including securities related laws, rules and regulations; and
 - d) Any other matter which shall be disclosed to the Board of Directors immediately.

3.4.2 Reporting to the Authorities

If the Audit Committee has reported to the Board of Directors about anything which has material impact on the financial condition and results of operation and has discussed with the Board of Directors and the management that any rectification is necessary and if the Audit Committee finds that such rectification has been unreasonably ignored, the Audit

Committee shall report such finding to the Commission, upon reporting of such matters to the Board of Directors for three times or completion of a period of 6 (six) months from the date of first reporting to the Board of Directors, whichever is earlier.

3.5 Reporting to the Shareholders and General Investors

Report on activities carried out by the Audit Committee, including any report made to the Board of Directors under condition 3.4.1 (ii) above during the year, shall be signed by the Chairman of the Audit Committee and disclosed in the annual report of the issuer company.

4.00 EXTERNAL / STATUTORY AUDITORS

The issuer company should not engage its external/statutory auditors to perform the following services of the company; namely:-

- (i) Appraisal or valuation services or fairness opinions;
- (ii) Financial information systems design and implementation;
- (iii) Book-keeping or other services related to the accounting records or financial statements;
- (iv) Broker-dealer services;
- (v) Actuarial services;
- (vi) Internal audit services; and
- (vii) Any other service that the Audit Committee determines.

5.00. REMUNERATION COMMITTEE

- (i) The company shall have a Remuneration Committee as a sub-committee of the Board of Directors.
- (ii) The Remuneration Committee shall submit the proposal of remuneration of all the directors including chairman, chief executive, advisors and consultants to the Board of Directors. If the Board of Directors differs with the proposal of

remuneration presented by the Remuneration Committee then the reason of difference will be mentioned in the Annual Report.

- (iii) The Remuneration Committee shall be responsible to the Board of Directors. The duties of the Remuneration Committee shall be clearly set forth in writing.

5.1 Constitution of Remuneration Committee

- (i) The Remuneration Committee shall be composed of at least 3 (three) members.
- (ii) The Board of Directors shall appoint members of the Remuneration Committee who shall be directors of the company and shall include at least one independent director.
- (iii) When the term of service of the Committee members expires or there is any circumstance causing any Committee member to be unable to hold office until expiration of the term of service, thus making the number of the Committee members to be lower than the prescribed number of 3 (three) persons, the Board of Directors shall appoint the new Committee member(s) to fill up the vacancy(ies) immediately or not later than 1 (one) month from the date of vacancy(ies) in the Committee to ensure continuity of the performance of work of the Remuneration Committee.

5.2 Chairman of the Remuneration Committee

The Board of Directors shall select 1 (one) member of the Remuneration Committee to be Chairman of the Remuneration Committee.

5.3 Reporting of the Remuneration Committee

The Remuneration Committee shall report its activities to the Board of Directors.

6.00 REPORTING AND COMPLIANCE OF CORPORATE GOVERNANCE

- (i) The companies shall submit a quarterly compliance report to the stock exchange and the commission within 15 days from the close of the quarter as per the above mentioned format.

- (ii) The company shall also obtain a certificate from a Professional Accountant/Secretary (Chartered Accountant/Cost & Management Accountant/Chartered Secretary) regarding compliance of conditions of Corporate Governance Guideline of SEC and shall send the same to the shareholders along with the Annual Report on a yearly basis.
- (iii) The directors of the company shall state, in accordance with the annexure attached, in the directors' report whether the company has complied with these conditions as per the following format:

(Report Under Condition No. 6.00)

Condition No	Title	Compliance Status (Put √ in the appropriate column)	
		Complied	Not Complied
1.00			
1.1			
1.2 (i)			
1.2(ii)a)			
1.2(ii)b)			
1.2(ii)c)			
1.2(ii)d)			
1.2(ii)e)			
1.2(ii)f)i.			
1.2(ii)f)ii.			
1.2(iii)			
1.2(iv)			
1.2(v)			
1.3(i)			
1.3(ii)			
1.4			
1.5(i)			
1.5(ii)			
1.5(iii)			
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1.5(xix)			
1.5(xix)a)			
1.5(xix)b)			
1.5(xix)c)			
1.5(xix)d)			
2.00			
2.1			

Condition No	Title	Compliance Status (Put \checkmark in the appropriate column)	
		Complied	Not Complied
2.2			
3.00			
3.1 (i)			
3.1 (ii)			
3.1 (iii)			
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3.1 (v)			
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3.3(viii)			
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3.4.1(ii)b)			
3.4.1(ii)c)			
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3.4.2			
3.5			
4.00			
4.00 (i)			
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4.00 (v)			
4.00 (vi)			
4.00 (vii)			
5.00			
5.00 (i)			
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5.00 (iii)			
5.1(i)			
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5.2			
5.3			

