

NOTIFICATION

07 August 2012

No. SEC/CMRRCD/2006-158/134/Admin/44: 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. 7.

The Conditions:

1. 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 case of banks and non-bank financial institutions, insurance companies and statutory bodies for which separate primary regulators like Bangladesh Bank, Insurance Development and Regulatory Authority, etc. exist, the Boards of those companies shall 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 fifth (1/5) of the total number of directors in the company's board 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 a sponsor of the company and is not connected with the company's any sponsor or director 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:

Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members;

- 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;
- e) who is not a shareholder, director or officer of any member of stock exchange or an intermediary of the capital market;
- f) who is not a partner or an executive or was not a partner or an executive during the preceding 3 (three) years of the concerned company's statutory audit firm;
- g) who shall not be an independent director in more than 3 (three) listed companies;
- h) who has not been convicted by a court of competent jurisdiction as a defaulter in payment of any loan to a bank or a Non-Bank Financial Institution (NBFI);
- i) who has not been convicted for a criminal offence involving moral turpitude.

- (iii) the independent director(s) shall be appointed by the board of directors and approved by the shareholders in the Annual General Meeting (AGM).
- (iv) the post of independent director(s) 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.
- (vi) the tenure of office of an independent director shall be for a period of 3 (three) years, which may be extended for 1 (one) term only.

1.3 Qualification of Independent Director (ID)

- (i) Independent Director shall 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 be a Business Leader/Corporate Leader/Bureaucrat/University Teacher with Economics or Business Studies or Law background/Professionals like Chartered Accountants, Cost & Management Accountants, Chartered Secretaries. The independent director must have at least 12 (twelve) years of corporate management/professional experiences.
- (iii) In special cases the above qualifications may be relaxed subject to prior approval of the Commission.

1.4 Chairman of the Board and Chief Executive Officer

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 Directors' Report to Shareholders

The directors of the companies shall include the following additional statements in the Directors' Report prepared under section 184 of the Companies Act, 1994 (Act No. XVIII of 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) An explanation if the financial results deteriorate after the company goes for Initial Public Offering (IPO), Repeat Public Offering (RPO), Rights Offer, Direct Listing, etc.
- (ix) If significant variance occurs between Quarterly Financial performance and Annual Financial Statements the management shall explain about the variance on their Annual Report.
- (x) Remuneration to directors including independent directors.
- (xi) 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.
- (xii) Proper books of account of the issuer company have been maintained.
- (xiii) 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.
- (xiv) International Accounting Standards (IAS)/Bangladesh Accounting Standards (BAS)/International Financial Reporting Standards (IFRS)/Bangladesh Financial Reporting Standards (BFRS), as applicable in Bangladesh, have been followed in preparation of the financial statements and any departure there-from has been adequately disclosed.
- (xv) The system of internal control is sound in design and has been effectively implemented and monitored.
- (xvi) 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.
- (xvii) Significant deviations from the last year's operating results of the issuer company shall be highlighted and the reasons thereof should be explained.

- (xviii) Key operating and financial data of at least preceding 5 (five) years shall be summarized.
- (xix) If the issuer company has not declared dividend (cash or stock) for the year, the reasons thereof shall be given.
- (xx) The number of Board meetings held during the year and attendance by each director shall be disclosed.
- (xxi) 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;
 - 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 5 (five) salaried employees of the company, other than the Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer and Head of Internal Audit.

- (xxii) In case of the appointment/re-appointment of a director the company shall disclose the following information to the shareholders:-
 - a) a brief resume of the director;
 - b) nature of his/her expertise in specific functional areas;
 - c) names of companies in which the person also holds the directorship and the membership of committees of the board.

2. CHIEF FINANCIAL OFFICER (CFO), HEAD OF INTERNAL AUDIT AND COMPANY SECRETARY (CS):

2.1 Appointment

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

2.2 Requirement to attend the Board Meetings

The CFO and the Company Secretary of the companies shall attend the 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 their personal matters.

3. AUDIT COMMITTEE:

- (i) The company shall have an Audit Committee as a sub-committee of the Board of Directors.
- (ii) 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.
- (iii) 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 1 (one) independent director.

- (iii) All members of the audit committee should be “financially literate” and at least 1 (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 possesses professional qualification or Accounting/ Finance graduate with at least 12 (twelve) years of corporate management/professional experiences.

- (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.
- (vi) The quorum of the Audit Committee meeting shall not constitute without at least 1 (one) independent director.

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 shall be an independent director.
- (ii) Chairman of the audit committee shall remain present in the Annual General Meeting (AGM).

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 statements before submission to the board for approval.
- (vi) Review along with the management, the quarterly and half yearly financial statements 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 the management.
- (ix) Review Management Letters/ Letter of Internal Control weakness issued by statutory auditors.
- (x) When money is raised through Initial Public Offering (IPO)/Repeat Public Offering (RPO)/Rights Issue the company shall disclose to the Audit Committee about the uses/applications of funds by major category (capital expenditure, sales and marketing expenses, working capital, etc), on a quarterly basis, as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for the purposes other than those stated in the offer document/prospectus.

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;

- 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. 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.
- (vii) Any other service that the Audit Committee determines.

- (viii) No partner or employees of the external audit firms shall possess any share of the company they audit at least during the tenure of their audit assignment of that company.

5. SUBSIDIARY COMPANY:

- (i) Provisions relating to the composition of the Board of Directors of the holding company shall be made applicable to the composition of the Board of Directors of the subsidiary company.
- (ii) At least 1 (one) independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of the subsidiary company.
- (iii) The minutes of the Board meeting of the subsidiary company shall be placed for review at the following Board meeting of the holding company.
- (iv) The minutes of the respective Board meeting of the holding company shall state that they have reviewed the affairs of the subsidiary company also.
- (v) The Audit Committee of the holding company shall also review the financial statements, in particular the investments made by the subsidiary company.

6. DUTIES OF CHIEF EXECUTIVE OFFICER (CEO) AND CHIEF FINANCIAL OFFICER (CFO):

The CEO and CFO shall certify to the Board that:-

- (i) They have reviewed financial statements for the year and that to the best of their knowledge and belief:
 - a) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - b) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards and applicable laws.
- (ii) There are, to the best of knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violation of the company's code of conduct.

7. REPORTING AND COMPLIANCE OF CORPORATE GOVERNANCE:

- (i) The company shall obtain a certificate from a practicing Professional Accountant/Secretary (Chartered Accountant/Cost and Management Accountant/Chartered Secretary) regarding compliance of conditions of Corporate Governance Guidelines of the Commission and shall send the same to the shareholders along with the Annual Report on a yearly basis.

Explanation: Chartered Accountant means Chartered Accountant as defined in the Chartered Accountants Act, 1949 (Act No. XXXVIII of 1949); Cost and Management Accountant means Cost and Management Accountant as defined in the Cost and Management Accountants Ordinance, 1977 (Ordinance No. LIII of 1977); Chartered Secretary means Chartered Secretary as defined in the PwUW©†m‡µUvi xR AvBb, 2010 (2010 m‡bi 25 bs AvBb).

- (ii) 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.

Annexure

Status of compliance with the conditions imposed by the Commission's Notification No. SEC/CMRRCD/2006-158/134/Admin/44 dated 07 August 2012 issued under section 2CC of the Securities and Exchange Ordinance, 1969:

(Report under Condition No. 7.00)

Condition No.	Title	Compliance Status (Put \checkmark in the appropriate column)		Remarks (if any)
		Complied	Not complied	
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)				
1.2 (ii) g)				
1.2 (ii) h)				
1.2 (ii) i)				
1.2 (iii)				
1.2 (iv)				
1.2 (v)				
1.2 (vi)				
1.3 (i)				
1.3 (ii)				
1.3 (iii)				
1.4				
1.5 (i)				
1.5 (ii)				
1.5 (iii)				
1.5 (iv)				
1.5 (v)				

Condition No.	Title	Compliance Status (Put \checkmark in the appropriate column)		Remarks (if any)
		Complied	Not complied	
1.5 (vi)				
1.5 (vii)				
1.5 (viii)				
1.5 (ix)				
1.5 (x)				
1.5 (xi)				
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1.5 (xv)				
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1.5 (xvii)				
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1.5 (xxi) a)				
1.5 (xxi) b)				
1.5 (xxi) c)				
1.5 (xxi) d)				
1.5 (xxii) a)				
1.5 (xxii) b)				
1.5 (xxii) c)				
2.1				
2.2				
3 (i)				
3 (ii)				
3 (iii)				
3.1 (i)				
3.1 (ii)				
3.1 (iii)				
3.1 (iv)				
3.1 (v)				

Condition No.	Title	Compliance Status (Put ✓ in the appropriate column)		Remarks (if any)
		Complied	Not complied	
3.1 (vi)				
3.2 (i)				
3.2 (ii)				
3.3 (i)				
3.3 (ii)				
3.3 (iii)				
3.3 (iv)				
3.3 (v)				
3.3 (vi)				
3.3 (vii)				
3.3 (viii)				
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3.4.1 (i)				
3.4.1 (ii) a)				
3.4.1 (ii) b)				
3.4.1 (ii) c)				
3.4.1 (ii) d)				
3.4.2				
3.5				
4 (i)				
4 (ii)				
4 (iii)				
4 (iv)				
4 (v)				
4 (vi)				
4 (vii)				
4 (viii)				
5 (i)				
5 (ii)				
5 (iii)				
5 (iv)				

Condition No.	Title	Compliance Status (Put \checkmark in the appropriate column)		Remarks (if any)
		Complied	Not complied	
5 (v)				
6 (i) a)				
6 (i) b)				
6 (ii)				
7 (i)				
7 (ii)				

This Notification shall be complied within 31 December 2012.

By order of the Securities and Exchange Commission

Prof. Dr. M. Khairul Hossain
Chairman.