

National Foundation for Corporate Governance

Core Group on Corporate Governance Norms for Independent Directors

Membership

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Independence Principles for Corporate Boards and Directors

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PREFACE

The National Foundation for Corporate Governance constituted a Core Group to bring out the Independence Principles for Boards and Directors. The Group comprised of Prof. N. Balasubramanian (Chair), Mr.M.M.Chitale, Mr.Deepak Bagla, Mr.Nawshir Mirza and Mr. Ram Savor. Of these, Messrs. Chitale and Bagla could not participate in the deliberations. The group accordingly felt it would be unfair to have them accept responsibility for the final document which is now being issued under the authorship of Prof. N. Balasubramanian, Mr. Nawshir Mirza and Mr. Ram Savor.

The Core Group conducted its exchange of views largely over email based on a preliminary draft for discussion prepared by Prof. N. Balasubramanian. After several rounds of such discussions and modifications, a pre-final draft was tabled for discussion at a physical meeting held in Bangalore on 31st May 2006 which was attended by the 3 members of the Core Group as well as an invitee, Mr. Pavan Kumar, Director in the Ministry of Company Affairs, New Delhi. Based on comments at the meeting and immediately thereafter, the Principles document has been finalized and is presented in the following pages.

The structure of the document consists of two parts: the first sets out the Principles, (three in number, with several sub Principles) while the second enumerates detailed annotations of the reasoning behind these principles and the background in which the group had evolved them.

These non-binding principles are recommendatory in nature and are intended to be offered to a wide spectrum of corporations in the public and private sectors and will have applicability, when adopted, to corporations across a range of industries and business sectors, both listed and unlisted.

These Principles are now offered for further due process of public comment before review and final release by the National Foundation for Corporate Governance.

The Core Group Chair would like to record his grateful acknowledgment and appreciation of the time and inputs that the members and invitees so generously offered in the course of preparation of this document. The research and administrative support provided by Ms. C. Manjula and Mr. C.P.Vivek of the IIMB Centre for Corporate Governance and Citizenship at the Indian Institute of Management Bangalore are also acknowledged with gratitude.

Prof. N. Balasubramanian
Chairman, Core Group

National Foundation for Corporate Governance

Independence Principles for Corporate Boards and Directors

I. Ensuring the Basis for an Effective Independence Framework

The Corporate Governance environment should promote transparent, objective, and independent discussion in and decision-making by Corporate Boards

- A. Corporate legislation and regulation should promote effective contribution by independent members of a Company's Board of Directors, and of Board Committees. Towards this end, the legislative and regulatory framework should provide for appropriate strength of independent Directors on the Board and Board Committees.
- B. Corporate legislation and regulation should specify minimum criteria (positively and negatively) that would qualify or disqualify a person as an independent Director.
- C. Quorum requirements for Board and Key Board Committees (Audit, Compensation, and Nominations Committees) should be prescribed such that participation (in person or by audio-video conference) by a majority of independent Directors on the Board/Committees is required, where statutorily specified matters of importance are scheduled or brought up for discussion.
- D. Board/ Key Committee Approval of resolutions pertaining to certain statutorily specified matters of importance should require the affirmative vote of a majority of independent Directors participating (in person or by audio-video conference) in the meeting.
- E. For purposes of Article I.C and I.D above, Directors subject to conflict of interest requirements should be excluded in reckoning the qualifying number of independent Directors required for the quorum or for affirmative voting on resolutions.
- F. Corporate legislation and regulation should enable independent Directors on Company Boards to obtain, where a majority of them deem necessary, expert advice, with the costs being borne by the Company.

- G. All shareholders should effectively participate in, and contribute to, decisions relating to governance of their Companies.

II. Promoting Board Independence

The Corporate Board should be so constituted as to ensure its independence in discharging its responsibilities

- A.. The Board should have a majority of independent Directors who can objectively ensure that all matters concerning the business and operations of the Company are carried out in the best interest of the Company, all its shareholders, and all other relevant stakeholders.
- B. The Board Chair should be an independent Director elected by members of the Board and should ensure that the business of the Board is conducted in an objective, transparent and informed manner, with opportunities being provided to all members for due contribution.
- C. The Board and Committee Chairs, in consultation with the Chief Executive and the Company Secretary, should schedule meetings, determine their Board agenda, and duration as would enable participation by members, and oversee prompt and due dispatch of Board papers and other necessary material to the Directors, to facilitate discussions in an informed and meaningful manner.
- D. The Board Chair should encourage a meeting of independent Directors in executive session without any non-executive or executive members of the Board or management being present, before commencement of the full Board meeting to discuss among themselves any matter concerning the business affairs of the Company, whether or not they are part of the agenda.
- E. If the Board Chair does not qualify an independent Director, the independent Directors on the Board should designate one among them as the Lead Independent Director, to be their spokesperson. In such a case, the Lead Independent Director should chair the meetings of the independent Directors in executive session.
- F. An independent Director should chair the Board's Audit, Compensation, and Nominations Committees, and most if not all of their members should also qualify as independent Directors. None of them, however, should be an executive Director of the Company.

III. Promoting Director Independence

Individual Directors on a Corporate Board should ensure their capability of independent and unbiased judgement on matters of governance is protected on an ongoing basis

- A. Individuals should at all times zealously protect their independent status with reference to any entity on whose Board they serve as independent Directors.
- B. Independent Directors shall endeavour to attend all Board and Committee meetings of their Companies, and be well prepared for objective and meaningful discussions at meetings.
- C. Independent Directors should seek, and Board and Committee Chairs shall allow, sufficient time and opportunity for comprehensive discussions on matters before the Board or Committee, including the draft minutes of previous meetings before their formal adoption.
- D. An independent Director should be encouraged to disclose not only definite but also doubtful situations of any conflict of interest, to the Board / Committee Chair, and abide by the Board/Committee decision in terms of participation in discussion or in voting on a resolution pertaining to such situations.
- E. While independent Directors are entitled to be remunerated appropriately for their services as Directors, they should ensure that the remuneration accepted by them from any Company is not disproportionately so large as to invite potential impairment of their independent status.

Explanatory Annotations

I. Ensuring the Basis for an Effective Independence Framework

The Corporate Governance environment should promote transparent, objective, and independent discussion in and decision-making by Corporate Boards

A. Corporate legislation and regulation should promote effective contribution by independent members of a Company's Board of Directors, and of Board Committees. Towards this end, the legislative and regulatory framework should provide for appropriate strength of independent Directors on the Board and Board Committees.

A.1 As a mechanism of salutary oversight of executive management as well as of dominant shareholders in management control, it is necessary that Corporate legislation and regulation mandate that Boards should have at least a prescribed minimum proportion of Directors who would meet at least the minimum specified criteria of independence. Companies should of course be free to exceed the proportions so prescribed, and also insist upon their independent Directors meeting criteria that are more rigorous than the minimum specified by law or regulation. Committees, for purposes of these Principles, refer to Audit Committees, Compensation Committees, and Governance/Nomination Committees only.

A.2 Since the purpose of Board and Committee independence is to strive for an informed and objective review and consideration of Corporate issues, it is appropriate that all the Committee members including their Chairs should be independent Directors. In order not to lose out on the insights and perspectives of other members of the Board, and indeed of any other appropriate executives or advisors on the matters under discussion, Committees may invite such others to participate in discussion, but not vote on any resolutions on such matters.

- A.3 Legislation and regulation should specifically empower Boards and Committees to hold, at their discretion, executive sessions, without any executive, non-executive, or management/ advisors of the Company being present, as often as deemed appropriate, to facilitate open and free consideration of matters under discussion.
- A.4 All members of the Board and Committees should be entitled to receive information in appropriate detail and depth on matters scheduled for consideration at the meetings, in good time. Members should be entitled to receive notices of all such meetings sufficiently in advance, and should also be enabled to ask for such meetings at their discretion when necessary, and the executive management must be obligated to convene such meetings within a reasonable time thereafter, failing which, the Directors would be entitled to convene such meetings, having due regard to any prescribed notice and quorum requirements. All expenses incurred for holding such meetings will be to the Company's account.
- B. Corporate legislation and regulation should specify minimum criteria (positively and negatively) that would qualify or disqualify a person as an independent Director.**
- B.1. The principal purpose of having "independent" Directors on Boards and Committees is to promote an informed and objective review and consideration of Corporate issues. The minimum affirmative or negative criteria of independence that Board members should meet at their initial election to the Board and on a continuing basis thereafter, should be such as would enable and facilitate such objective and informed behaviour.
- B.2 Positive criteria that should be mandated include:
- (1) Proficiency in one or more disciplines of relevance to the Company's business, including such fields as appropriate technology, human resources, finance, Corporate and other appropriate law, marketing and customer relations, sourcing, distribution, leadership and strategic insight,

communication, risk, internal control, audit, accounting, engineering, manufacturing, business ethics and values, and so on.

- (2) Experience and leadership in a Corporate business environment, or in independent practice in relevant fields.
- (3) Ability to devote adequate time and effort to attend and participate in Board and Committee meetings, besides generally remaining informed on developments of relevance to the Company.
- (4) Reasonable level of general health that would enable due discharge of directorial responsibilities

B.3 Negative criteria that should be mandated include:

- (1) No conflict of interest that may interfere with the exercise of fair and objective judgement on issues coming up for consideration. Potential conflict may be presumed in the following cases, namely, where the Person:
 - a) Is an executive or non-executive Director in another organization that competes with the Company in material lines of business activity;
 - b) Is a vendor of goods and services to, or a customer of goods and services from, the Company;
 - c) Is the owner (or his/her/it's nominee, employee or representative) of equity shares in the Company with a voting power of more than 2% of the total such equity capital for the time being, whether such voting power accrues to the person either directly or indirectly through other shareholdings in the Company over which the person has sufficient control or influence to have them voted in concert with himself or herself.

- d) Is in an executive or non-executive position of a charitable or not-for-profit organization that receives material contributions from the Company or any other organization in the same group. Contributions would be deemed material if they are in excess of 10% of the total receipts of the charitable or not-for-profit organization in a year, or on average over the immediately preceding three year period, or the contributions are in excess of 5% of the total revenues or 10% of the pre-tax profits of the Company in a year, or on average over the immediately preceding three year period.
- e) Is a nominee of a financial institution, central or state government, a holding Company, subsidiary Company, or another Company in the group, or a trust or other organization of shareholders or creditors or otherwise connected stakeholders of the Company, in each case where such a person is accustomed or expected to act on the advice or instruction of the body nominating him or her, such a relationship being presumed where the person is an employee, manager, executive officer, Director, or such other functionary by whatever title designated, and will include any other individual appointed for the purpose of representation on the Board of the Company.
- f) Has been a chief executive officer, or an executive chair, or executive Director, or a nominee Director, of the Company or its holding Company, subsidiary Company, or a group Company, within the preceding five years, at the time of proposed election as a Director.
- g) The person has been a Director on the Board of the Company, its holding Company, subsidiary Company, a group Company or organisation, in all for nine years or more reckoned from the first such election or appointment in any such Company or organization including the Company.
- h) Is one, while not impaired by any of the above criteria, is never the less a close relative (as defined by the Companies Act in force for the

time being) of a person who would have failed to qualify were he or she to be considered for election to the Board of the Company.

- i) Is one who does not meet the independence criteria required by the Board of the Company, beyond the circumstances described in (a) to (h) above.

C. Quorum requirements for Board and Key Board Committees (Audit, Compensation, and Nominations Committees) should be prescribed such that participation (in person or by audio-video conference) by a majority of independent Directors on the Board/Committees is required, where statutorily specified matters of importance are scheduled or brought up for discussion.

C.1. The objectives of inducting sufficient number of independent Directors on Company Boards are likely to be frustrated if material decisions of the Board could be processed and approved without the presence or participation of such independent Directors. To avoid such situations, legislation and/or regulation should require that a majority of independent Directors should be present, or should participate by audio-video conferencing in the meetings of the Board and its Audit, Compensation and Governance/Nominations Committees, when specified matters of importance are brought up for decision.

C.2. The general requirements as to quorum for Board/Committee meetings will continue to hold, with a super-imposed requirement that such an overall quorum should include a majority of all independent Directors on the Board/Committee.

C.3. To minimize operational difficulties that may arise due to non-availability of such independent Directors on the scheduled dates, their participation, alternatively, by audio or video conferencing should be permitted.

- C.4 Requiring the presence of a majority of independent Directors at these meetings should not be construed as discrimination between Directors on the basis of their independent status, but rather as a measure for strengthening the quality of Board/Committee processes relating to independent oversight responsibility of the Board as a whole. It will also be noted that presence and/or participation of a Director representing a constituency such as a holding Company or a financial or technical collaborator at meetings discussing specified topics is not unusual.
 - C.5 It will be necessary to limit application of these requirements to a few key and material Corporate actions, such as, preferential allotment of shares, buy-back of shares, offer for sale by a material shareholder (over say 5% of the Company's capital), material mergers and acquisitions, discontinuance of material parts of the Company's business, closure and winding up of the Company, etc.
- D. Board/ Key Committee Approval of resolutions pertaining to certain statutorily specified matters of importance should require the affirmative vote of a majority of independent Directors participating (in person or by audio-video conference) in the meeting.**
- D.1 While the majority of independent Directors are required to constitute a quorum in case of meetings discussing statutorily specified matters, approval of any related resolutions at the Board/Committee meeting will require only a majority of those independent Directors present or participating by audio/video conferencing.
 - D.2 Approval of resolutions at Board/Committee meetings require a majority of all the Directors present or participating by audio/video conferencing, with a super-imposed requirement that such an overall majority must include a majority of independent Directors present or participating by audio/video conferencing.
 - D.3 While there should be no bar on independent Directors or any other Directors abstaining from voting on a resolution, in the context of the

overriding objective of independent Board oversight, only affirmative votes of Directors would count for computing the required majority.

- E. For purposes of Article I.C and I.D above, Directors subject to conflict of interest requirements should be excluded in reckoning the qualifying number of independent Directors required for the quorum or for affirmative voting on resolutions.

- E.1 In compliance with the generally required position on the subject of interested Directors, only such of the Directors as are not interested in any way in the subject matter of the resolution would count for both the quorum and the voting requirements.

- F. Corporate legislation and regulation should enable independent Directors on Company Boards to obtain, where a majority of them deem necessary, expert advice, with the costs being borne by the Company.

- F.2. A key role of the Board is to exercise supervisory oversight on the work of executive management, and this responsibility devolves on the independent Directors on the board, since the non-independent executive directors can not be expected to sit in judgement on their own proposals and actions.. In the discharge of this responsibility, it may be necessary for them to obtain independent external advice on important matters before the Board (such as valuations in case of mergers, acquisitions and divestitures, major litigation, etc); legislation and regulation should in such circumstances require the companies to pay for such advice. To preempt possible abuse or unnecessarily excessive use of this facility, it should be necessary for a majority of all independent Directors on the Board, or on a Board committee, to approve decisions for such external advice.

- F.2 In the interests of probity of conduct, it would be inappropriate, in normal circumstances, to seek such external advice from an advisor with whom any of the Independent directors on the Board, or as the case may be, on the Committee, is concerned, as a partner or as chief executive or in any

other capacity of executive authority or influence in that entity.. If such a choice is unavoidable, and deemed to be in the best interests of the company, it would be appropriate for the interested Director first to make full disclosure of the interest (and hence potential conflict) and then to withdraw from the meeting leaving the other Independent Directors debate and decide on the matter

G. All shareholders should effectively participate in, and contribute to, decisions relating to governance of their Companies.

G.1 Shareholders have a major responsibility in promoting their Company's Board and director independence. They should ensure their participation in resolutions electing independent Directors, either in person or by proxy, so that their votes could be reckoned in deciding the results.

G.2 Institutional shareholders have a special responsibility in ensuring their block of votes together with any proxies they receive are exercised to elect as independent Directors persons whose presence on the Board would enhance its independence. Institutional investors could also further the cause of good governance in regard to Board and director independence, by discussions with the Company's Board and its executive management concerning the induction of appropriate independent Directors, and voting for them at the elections. Conversely, Institutional shareholders could also dissuade Companies from proposing for election as independent Directors, persons not considered appropriate, and voting against such elections at general meetings. Publicising their decisions with supporting reasons to their own constituents and the market in general, would likely have salutary impact on errant or indifferent managements and preempt inappropriate choices being pushed through at members' general meetings.

- G.3 Shareholders in operational control should, while proposing persons for election as independent Directors on their Boards, take special care to ensure that Board independence would be enhanced and strengthened by such inductions. Nomination Committees could assist controlling shareholders (and the latter should welcome such counsel) with objective evaluations of proposed additions to the strength of independent Directors on their Boards

II. Promoting Board Independence

The Corporate Board should be so constituted as to ensure its independence in discharging its responsibilities

- A.. The Board should have a majority of independent Directors who can objectively ensure that all matters concerning the business and operations of the Company are carried out in the best long term interest of the Company, all its shareholders, and all other relevant stakeholders.

A.1 It should be ensured that there is a majority of independent Directors on the Board *at all times*.

- B. The Board Chair should be an independent Director elected by members of the Board and should ensure that the business of the Board is conducted in an objective, transparent and informed manner, with opportunities being provided to all members for due contribution.

B.1 The concept of duality at the top of the Board structure is to encourage an appropriate countervailing of concentrated authority if the positions of CEO and Board Chair were to be held by the same individual. Also, considering the supervisory and monitoring role of the Board over the executive led by the CEO, it would be dysfunctional to have as the Chair a person whose performance and propositions are to be so overseen. A non-independent Chair, in theory, is unlikely to be able to provide the

requisite standards of supervisory oversight authority that an independent Chair could.

- C. **The Board and Committee Chairs, in consultation with the Chief Executive and the Company Secretary, should schedule meetings, determine their Board agenda, and duration as would enable participation by members, and oversee prompt and due dispatch of Board papers and other necessary material to the Directors, to facilitate discussions in an informed and meaningful manner.**
 - C.1 while much of the agenda matters would normally originate from the executive, and therefore the work relating to preparing the draft agenda and related papers would have to be done by the Company secretary working with and the direction of the CEO, it is necessary that the final authority to approve the agenda and accompanying papers be vested in the independent Board Chair. This is to ensure that the Board agenda includes all necessary items including those brought forward from previous meetings, and that the related papers for circulation to Directors are comprehensive and offer a complete picture of the topics scheduled for discussion.
 - C.2 The role of the Company Secretary in this matter is quite crucial. In well developed economies, the professional Company Secretary is not only a confidential official but also an expert guide and counselor to the Board and its Chair in the proper conduct of the meetings and compliance with the applicable legislative and regulatory provisions. Although administratively reporting to the CEO or another senior member of the Executive management, the Secretary is in fact an Officer of the Company and is Secretary to the Board, and thus answerable to the Board Chair for the proper preparation and circulation of the agenda and related papers.
 - C.3 It is a good practice to publish an accepted rolling annual calendar of dates and time durations of all Board and Committee meetings for the information of Directors, who could plan their commitments accordingly. Such a practice

also permits proper scheduling of workflows in the Company and external agencies like statutory auditors, geared to meeting the notified dates. In exceptional circumstances, these notified dates may be changed with due notice to all concerned, but that should preferably be the exception rather than the rule.

- C.4 It would also be helpful to schedule, on an annual calendar basis, key topics for discussion at designated Board/ Committee meetings. Such topics may include, illustratively but not limited to, annual business plans and strategy, internal controls and risk management, research and development, human resources development, corporate communications, and so on. Such scheduling would enable the executive to prepare appropriately for such presentations and discussions, while also ensuring that no important topic gets omitted or inadequately addressed for want of preparation or time at such meetings.
- C.5. Duration of meetings need careful timing of discussions, and would be helped if agenda papers were to be circulated sufficiently in advance to the participants. Members can also help by proper prior reading and preparations so that contact time at meetings can be effectively utilized. It is also a desirable practice for Directors to send in their queries or comments to the CEO and the Board Chair in advance, so that the Executive is not taken by surprise at meetings, and consequently are either unable to provide satisfactory responses or are inclined to offer less-than-adequate responses, either of which is dysfunctional to the effective conduct of the meeting.
- C.6 While time management is critical in the conduct of meetings, especially considering the limited availability of the Directors and the relative infrequency of scheduled meetings, care should be exercised by the Chairs to ensure adequate opportunity is available to members interested

in offering comments or asking for clarifications. It may be better, in such circumstances, to defer to the next meeting some agenda items of no pressing urgency than to rush through the whole agenda with a feeling of some items not having been given the level of discussion they deserved. As a measure of more effective meeting management, Chairs could also take up the more important and urgent matters earlier than the rest so that they receive the attention they deserve.

- D. **The Board Chair should encourage a meeting of independent Directors in executive session without any non-executive or executive members of the Board or management being present, before commencement of the full Board meeting to discuss among themselves any matter concerning the business affairs of the Company, whether or not they are part of the agenda.**

D.1. It would be appropriate to have this executive session as a matter of routine prior to all Board meetings; such a practice would help in internalizing the practice, and more importantly, eliminate any unnecessary concern or speculation that may be the result if such meetings are seen to be held only in case of "some problems." Opportunity may be availed of at these meetings to raise and debate any sensitive matters, and also to exchange ideas on any agenda items among independent Directors, since there may not often be many other opportunities for them to collectively share their views.

D.2. The independent Board chair may as appropriate brief the CEO of any important views emerging from such executive sessions, either one-to-one or in the full Board meeting. This would help any possible embarrassment an individual Director may feel if he or she were to make such points in the full session on their own.

D.3. It may not be necessary for any formal minutes to be kept of the discussions at these executive sessions. For purposes of later recall, the independent Board chair may maintain any notes that he or she deems necessary. The conclusions and other impact of such discussions would

flow into the discussions of the full business sessions where they can be properly minuted. Similar practice will also apply to Committee Chairs in respect of the proceedings of their Committees' executive sessions. In the interests of continuity, an outgoing Board or Committee Chair should pass on such notes to their respective incoming Chairs.

- E. **If the Board Chair does not qualify an independent Director, the independent Directors on the Board should designate one among them as the Lead Independent Director, to be their spokesperson. In such a case, the Lead Independent Director should chair the meetings of the independent Directors in executive session.**
 - E.1 The concept of Lead Director is to allow for the benefits of an independent Board chair to be had even where the positions of the Board chair and CEO are held by the same individual. The Lead Director should be chosen by the independent Directors on the Board, and would function as their spokesperson. Given the importance and stature of the position, it would be preferable that the independent Directors choose their Lead Director by consensus rather than by election.
 - E.2 The Lead Director's role involves close consultation with the (combined) CEO/Board Chair, in selecting candidates for Committee Chair positions, setting the Board agenda and finalization of agenda papers, and presiding over and moderating executive sessions of independent Directors.
 - E.3 The services of the Company Secretary and other support staff should also be made available to the Lead Director as and when requested.
- F. **An independent Director should chair the Board's Audit, Compensation, and Nominations Committees, and most if not all of their members should also qualify as independent Directors. None of them, however, should be an executive Director of the Company.**
 - F.1 It is preferable to have all members including the Chairs of the three important Board (Audit, Compensation, and Nominations) Committees

qualifying as independent Directors. This is so because the Audit Committee exercises key monitoring and surveillance functions over executive management, besides reviewing and approving the financials; the Compensation Committee is charged with the task of determining remuneration including performance-based bonuses and stock options to executive management; and the Nominations Committee is responsible for structuring the Board with requisite independence and oversight competencies.

- F.2 Having regard to the shareholding pattern of the Company, the Board may opt to have on its Nominations Committee one or more members from the controlling organizations (other than any executive Director of the Company), or have them as permanent invitees to the Committee. Such inclusions as members should however not be allowed to overly dilute the independence of the Committee as a whole which should have a significant number of members qualifying as independent. Similarly, it may be a good practice to have as permanent invitees to the Audit Committee, members of the Board, who though not qualifying as independent, may bring value to the deliberations of the Committee through their group-wide experience and exposure..
- F.3. In any event, it would be a good practice for the Audit and the Nominations Committees meeting in executive sessions, to limit participation only to the independent members on the Committee. This practice is similar to the executive sessions of the Board where participation is usually limited to independent Directors on the Board.
- F.4. In constituting the Compensation Committee, care should be exercised to exclude members of Boards with mutuality of interest or influence over each other. For example, it would not be appropriate for a Director on Company A to serve on its Compensation Committee if the CEO or a

Senior Executive Officer of Company A sits on the Compensation Committee of Company B where the former serves as the CEO or a Senior Executive Officer. The intention is to avoid potential situations of commonality of interest being exploited at the expense of the shareholders of either Company.

III. Promoting Director Independence

Individual Directors on a Corporate Board should ensure their capability of independent and unbiased judgement on matters of governance is protected on an ongoing basis

A. Individuals should at all times zealously protect their independent status with reference to any entity on whose Board they serve as independent Directors.

A.1 Given the importance attached to their independent status in the overall Corporate governance framework, independent Directors should ensure that they do not allow any circumstances to develop subsequent to their appointment that could compromise that status. It is important to recognize that the independent status must be ensured consistently and without any break throughout their tenure as independent Directors.

A.2 Before accepting a position as an independent Director, the individual should carry out some reasonable due diligence on the Company, its Board membership, and his or her appropriateness to serve on such a Company Board. Potential Directors should ascertain from their predecessors (in case of a vacancy being filled) the circumstances of their exit, and from other independent Directors on the Board, the general quality and tenor of discussions at Board and committee meetings. Such inquiries would assist the individual to make an informed decision on the extent of personal contribution and level of acceptability of independent views in the organization.

A.3 It is necessary that Directors should maintain their independent status not only in fact, but also be seen to be doing so. Towards this end, Directors may prefer to avoid situations that may appear to compromise their independent status in relation to their Companies. In particular, they should avoid situations such as, but not limited to, acceptance of conspicuously valuable gifts and favours, use of their Board connection for personal benefit, acquiescence with similar actions by their immediate relatives and other persons with their explicit or presumed concurrence, and so on. Also to be avoided by non-executive independent Directors are practices such as, but not limited to, displaying details of their non-executive Directorships on personal and business stationery such as letterheads, calling cards, etc. (Such details may however be permissible in personal CVs and other such introductory material, when specifically requested, and described in context, with clear indication of their non-executive status.)

B. Independent Directors should attend all Board and Committee meetings of their Companies, and be well prepared for objective and meaningful discussions at meetings.

B.1 Barring unforeseen circumstances and personal ill-health, Independent Directors should make every effort to attend all Board and Committee meetings where they are Chairs or members. This follows the serious nature of the obligation to their fiduciaries, which they assumed when consenting to become Directors on the Company's Board and its Committees. While this admonition would apply to all Directors on Boards, it is especially more relevant to independent Directors. In order that independent Directors may fulfill these obligations to the best of their ability, it is advisable that they limit the number of their Directorships of Companies to levels consistent with the time available for conscientiously fulfilling those obligations.

B.2 Independent Directors should acquaint themselves with the general status and trends of the businesses their Companies are involved in, so that they could meaningfully understand and appreciate matters coming up for discussion at Board and Committee meetings. While most of the independent Directors on Boards will have their own specializations and expertise gained by study and experience, it is important that they participate in, and contribute to, the decision making processes at meetings of the Board

and its Committees, because their business role as Directors is much broader and more onerous than, for example, that of a consultant with specific expertise.

B.3 Independent Directors must devote adequate time and effort to study Board and Committee agenda papers, and be fully prepared for meaningful discussion of those matters. It would be helpful to them (and to the Company) if they could in advance of the meetings seek any clarifications or other inputs, so that they could be better prepared for the discussions, besides contributing the effective time management of the meetings themselves.

C. Independent Directors should seek, and Board and Committee Chairs shall allow, sufficient time and opportunity for comprehensive discussions on matters before the Board or Committee, including the draft minutes of previous meetings before their formal adoption.

C.1 Often under time pressures, Directors may justifiably feel that adequate discussion on some matter did not take place or that they did not have an opportunity of expressing their views on the matter as completely as they would have liked. Board and Committee Chairs together with the Directors should work towards meeting these viewpoints. Independent Directors have a job to do, a role to perform, and a responsibility to discharge. They should through, better preparation and closer coordination with the Chairs, endeavour to achieve satisfactory discussion time and opportunities.

C.2 Minutes of meetings of the Board and its Committees are important documents, and are conclusive evidence of what transpired at these meetings. As such, every effort should be made to have the minutes correctly reflect the discussions and decisions at these meetings. Every Director, including Independent Directors, have a responsibility to go through the draft minutes and suggest for adoption necessary changes, if any, so as to ensure the finally approved minutes truly and faithfully reflect the discussions and decisions of the meetings.

D. An independent Director should be encouraged to disclose not only definite but also doubtful situations of any conflict of interest, to the Board / Committee Chair, and abide by the Board / Committee decision in terms of participation in discussion or in voting on a resolution pertaining to such situations.

D.1 As a general rule, independent Directors are unlikely to have any conflicts of interest issues with the Company of a permanent or continuing nature. There could be occasions though where the Board or a Committee has for consideration matters in which an independent Director could find himself / herself in a temporary situation of conflict of interest. In the interests of transparency and objectivity, in such situations, it would be necessary for the independent Director to disclose the nature of interest, and withdraw from the meeting while the subject is discussed. It is also important to have the minutes of the meeting duly record such disclosure and withdrawals for the sake of good order.

D.2 Even where on occasion, an independent Director is in doubt as to the existence of any conflict of interest situation, it is good practice for the concerned Director to disclose the facts and circumstances of the situation and abide by the ruling of the Board or the Committee as to whether in fact there was in existence a conflict of interest situation. Such disclosures enhance the credibility of the institution of independent Directors and are the preferred course of action for independent Directors to follow.

E. While independent Directors are entitled to be remunerated appropriately for their services as Directors, they should ensure that the remuneration accepted by them from any Company is not disproportionately so large as to invite potential impairment of their independent status.

E.1 Independent Directors, by virtue of their experience, expertise, acumen, and credibility, contribute to higher standards of governance, and are entitled to be remunerated adequately and even attractively, depending upon their stature and the demands on their time, for their services as members on Boards and Committees. Company Directorships involve onerous fiduciary responsibilities and demand significant time commitment in order that such responsibilities may be adequately discharged. Individuals should not therefore accept independent Directorships at levels of remuneration that are so low as to be incommensurate with the dignity and responsibility of

their position. On the other hand, there is also a perceived need for self-restraint on the quantum of such remuneration. Commensurate with expectations and recognizing the value they bring to the quality of Board deliberations as much as their, the remuneration nevertheless should be reasonably justifiable, and certainly not conspicuously or disproportionately so large as to potentially impair the independent status of the Directors.

E.2 In assessing the reasonableness of independent Directors' remuneration, factors that may be considered are: the general market trends obtaining in the nature of business or industry (to evaluate levels of peer pressure for similar Directorial talent), the size of business and its complexities (to evaluate the breadth and depth of expertise required for the Company), the remuneration levels obtaining within the Company for its executive management (to evaluate reasonableness of parity between the governors and the governed), and so on.

E.3 It is for the individual independent Director to set his standards and abide by them. While personal remuneration is entirely a matter of mutual agreement and subject only to the law of the land as applicable, the ends of responsible individual and Corporate behaviour suggest that these and other relevant factors be considered in eventually deciding upon the remuneration levels. The independent Director's role and responsibility in this matter are to ensure that the remuneration is not only acceptable but also appropriate, especially in the context of maintaining his or her independent status.

E.4 Subject to any legislative or regulatory provisions in this regard, Independent Directors' remuneration may consist of participation fees (for each meeting attended or participated in through audio-video-conferencing), a monthly retainer, an annual performance-related bonus, or a combination of all such methods. A further method of independent Director remuneration in certain circumstances is through stock grants and stock options, at prices determined by the Board, subject to regulatory and accounting requirements. Although this conforms to the theory of aligning directors' and shareholders' interests to further strengthen shareholder wealth maximization objectives, such a method is open to question in case of independent directors, if the extent of benefit derived from

such grants is disproportionately large. Independent Directors serving on Audit Committees may be particularly vulnerable to charges of bias in selecting accounting policies and reporting practices, should their directorial remuneration include a disproportionately large stock grant or option component. Company boards should review such policies relating to grant of such options, to institute necessary safeguards, and specifically record in the meeting minutes why the grants if any were unlikely, in their opinion, to influence the independence status of the concerned directors.

E.5 Irrespective of any such regulatory provisions, it is a responsible practice to consider any gains accruing to the independent Directors (as for example the difference between issue price and market price of the stock) as part of the remuneration in the year of such grants, for purposes of assessing the reasonableness of the overall remuneration. It is also desirable that the total value of all remuneration including grant of stock options, is disclosed in the Directors' annual report to shareholders.

E.6 While most board and committee decisions are reached by a process of consensus-building through discussion and debate, there may be situations where one or more directors do not subscribe to the eventual decision. Should a director have strong reasons for dissent even after such discussions, he or she should, with due respect to the majority view of the board, require that his or her dissent be taken on record, with brief reasons therefore. It is also important that the concerned director ensures that the minutes of the meeting as confirmed at a subsequent meeting of the board or committee adequately reflects the dissent and its justification to his or her satisfaction. In order to help the minuting process, the concerned director may also offer a suitable draft for inclusion in the minutes. If the board decision involves any issue of breach of law, particularly of a potentially criminal nature, he or she would be well advised to seek appropriate legal counsel, and notify his or her intention of doing so at the meeting; the concerned director should also ensure that this intimation is duly recorded in the minutes of the meeting.

E.7 Should an independent director reach a conclusion of not being able to effectively discharge his or her duties as such, resignation from the board is certainly an available

and indeed a powerful option, but one that needs to be exercised with great discretion and forethought, since such an action is likely to hurt the interests of the company, its shareholders, and stakeholders, precisely the purpose to preempt which the independent directors were in the first place, elected to the board. Should after due consideration of all the facts and circumstances of the case, an independent director decides to resign, he or she should communicate that decision to the board Chair, together with the reasons that prompted such a drastic action. Any such communication should be circulated by the board Chair, failing that, by the concerned director to the other directors on the board; the communication should be recorded in the minutes of the meeting that considers the resignation. If after further discussions, and resolution of issues to the satisfaction of the concerned director, the resignation is withdrawn, the minutes of the meeting that considers the issue should nevertheless take on record the communication and reflect faithfully the discussions at the meeting and record the final decision. It is the responsibility of the concerned director (if he or she withdraws the resignation) and the remaining directors, including independent directors, to ensure the minutes of the meeting adequately and truthfully cover the events, discussions, and the result.

E.8 Any independent director resigning from a board before expiry of his or her full term, should have the freedom, and indeed the obligation, to candidly share, in complete confidence, his or her experiences with any person proposed for induction on to the same board, on being approached in the course of his or her own due diligence process. Company Codes of Conduct and other procedures should provide for such communication as acceptable practice, so that there are no potential issues of breach of confidences etc against the concerned director and the company.