

# **Chapter-IV**

## **Corporate Governance**



#### 4.1 Introduction

##### 4.1.1 Need for Corporate Governance

Corporate Governance is a system of structuring, operating and controlling an organisation with a view to achieving long term strategic goals to satisfy the stakeholders and complying with the legal and regulatory requirements. Corporate Governance is a way of directing and controlling companies to ensure greater transparency and better financial reporting. It is concerned with the ethics, value parameters and conduct of the Company and Management. The absence of good governance structures and lack of adherence to the governance principles increase the risk of corruption and misuse of entrusted power by the Management in the public sector.

##### 4.1.2 Provisions as contained in the Companies Act, 2013

The Companies Act, 2013 was enacted on 29 August 2013 replacing the Companies Act, 1956. In addition, the Ministry of Corporate Affairs, Government of India (MCA) has also notified (31 March 2014) Companies (Appointment and Qualification of Directors) Rules 2014, Companies (Meetings of Board of Directors and its Powers) Rules 2014 and Companies (Accounts) Rules 2014. The Companies Act, 2013 together with these Companies Rules 2014 provide the framework for Corporate Governance. The requirements *inter alia* provide for:

- Mandatory appointment of Independent Directors on the Board {Section 149(4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014} for the following classes of companies:
  - Every listed public company shall have at least one-third of the total number of directors as Independent Directors; and
  - Every public Company with paid-up share capital of ₹ 10 crores or more, or turnover of ₹ 100 crore or more, or aggregate outstanding loans, debentures, and deposits, exceeding ₹ 50 crore shall have at least two Independent Directors on its Board.
- Qualifications of Independent Directors along with the duties and guidelines for professional conduct {Section 149(6) read with Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014}.
- Mandatory appointment of one Woman Director on the Board {Section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of directors) Rules, 2014} for the following classes of companies:

- every listed public company shall have at least one Woman Director on its Board; and
- every other public company having paid up share capital of ₹ 100 crore or more; or turnover of ₹ 300 crore or more shall have at least one Woman Director on its Board.
- Mandatory establishment of certain committees like Audit Committee {Section 177(1)}, Nomination and Remuneration Committee {Section 178(1)} for the following classes of Companies:
  - every listed company; and
  - every public company with a paid-up capital of ₹ 10 crore or more; or turnover of ₹ 100 crore or more; or outstanding loans or borrowings or debentures or deposits exceeding ₹ 50 crore or more.
- Holding a minimum of four meetings of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board {Section 173(1)}.

#### **4.1.3 SEBI guidelines on Corporate Governance**

After enactment of Companies Act, 2013, Securities and Exchange Board of India (SEBI) amended (April and September 2014), clause 49 of the Equity Listing Agreement to align it with the Corporate Governance provisions specified in the Companies Act, 2013.

Securities and Exchange Board of India notified (2 September 2015) the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which came into effect from 1 December 2015 repealing the earlier provisions.

SEBI, further issued (13 October 2015) a uniform listing agreement format for all types of securities which required the listed entity to comply with the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. These regulations were amended from time to time.

#### **4.1.4 Review of compliance by selected SPSEs of the Corporate Governance provisions**

As on 31 March 2020, there were 45 State Public Sector Enterprises (SPSEs) registered under the Companies Act (including three State Government Controlled Other Companies) in the State of Punjab and under the audit jurisdiction of the CAG of India (as detailed in *Annexure 10*). This chapter covers review of 29 working SPSEs for the year ended 31 March 2020. Out of these 29 SPSEs, only one SPSE *i.e.* Punjab Communications Limited is a listed<sup>1</sup> Company. The list of working SPSEs covered and inactive SPSEs excluded from this chapter is given at *Annexure 10*.

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<sup>1</sup> Listed on Bombay Stock Exchange

For the purpose of the review, an assessment was done based on the provisions contained in the Companies Act, 2013 and guidelines/regulations issued by SEBI (April and September 2014) on Corporate Governance and compliance by the SPSEs.

## 4.2 Composition of Board of Directors

### 4.2.1 Independent Directors

As per Section 149(6) of the Companies Act, 2013 ‘Independent Director’ shall mean a director other than a managing director or a whole time Director or a nominee director of the company. The presence of Independent Directors on the Board, capable of taking an independent view on the decisions of the management is widely considered as a means of protecting the interests of shareholders and other stakeholders. As per section 149(4) of Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as Independent Directors. Further, Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every public company with paid up share capital of ₹ 10 crore or more; or turnover of ₹ 100 crore or more; or with aggregated outstanding loans, debentures and deposits exceeding ₹ 50 crore shall have at least two Independent Directors on their Board. Clause 6 (a) of Section 149 of the Companies Act 2013 provided that Independent Director of SPSEs are to be appointed by Ministry or Department of the Government which is administratively in charge of the Company. As per MCA notification GSR 466(E) dated 5 June 2015, a company registered under Section 8 (*i.e.* a company established for furtherance of charitable or not for profit purposes) of the Companies Act 2013 is not required to appoint Independent Directors. Further, as per MCA circular number 09/2017 dated 5 September 2017, an unlisted public Company which is a wholly owned subsidiary is not required to appoint Independent Directors.

The list of eight SPSEs meeting criteria relating to appointment of Independent Directors is given in *Annexure 11*.

Of these eight SPSEs, in the Board of four SPSEs, detailed in **Table 4.1**, there were no Independent Directors as on 31 March 2020. Of the remaining four SPSEs, three<sup>2</sup> met the requirement of having at least two Independent Directors on their Board. In Punjab State Container & Warehousing Corporation Limited (CONWARE), there was only one Independent Director.

**Table 4.1: SPSEs not having any Independent Directors**

Sl. No.	Name of the SPSE
1.	Punjab Genco Limited
2.	Punjab State Grains Procurement Corporation Limited
3.	Punjab Water Resources Management and Development Corporation Limited
4.	Punjab State Transmission Corporation Limited

Source: Compiled on the basis of information received from SPSEs.

<sup>2</sup> Punjab Communications Limited, Punjab State Power Corporation Limited and Punjab State Bus Stand Management Company Limited

Punjab Genco Limited stated (March 2021) that each member of the Board of Directors is appointed by the State Government and the Board of Directors do not have any power to appoint any person as Independent Director. However, the fact remains that the State Government has not designated directors as Independent Directors separately and the Company should have pursued the matter with the State Government to have them designated as Independent Directors.

Punjab Water Resources Management and Development Corporation Limited replied (March 2021) the required compliances will be made in due course after following up with State Government.

Reply from Punjab State Grains Procurement Corporation Limited was awaited (June 2021).

CONWARE responded (February 2021) that the issue of appointment of another Independent Director, in conformity with applicable laws, has been referred to the State Government.

In Punjab State Transmission Corporation Limited, as against the requirement of two Independent Directors, there was one Independent Director for part of the year 2019-20 (upto 17 December 2019). Thereafter, the posts of Independent Directors remained vacant and were filled with effect from 11 September 2020.

#### ***4.2.2 Representation of Women in the Board of Directors***

Section 149(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that every listed company shall have at least one Woman Director on its Board and every other public company having paid up share capital of ₹ 100 crore or more; or turnover of ₹ 300 crore or more shall have at least one Woman Director in its Board. However, as per MCA notification GSR 466(E) dated 05 June 2015, a company registered under Section 8 of the Companies Act 2013 is not required to appoint Woman Director.

List of seven such SPSEs meeting this criteria in Punjab is given in *Annexure 12*. All these seven SPSEs have a Woman Director on its Board.

#### ***4.2.3 Non-Executive Directors on the Board of a listed company***

The Board is the most significant instrument of Corporate Governance. Clause 49 (I) (A) (i) of Listing Agreement and Regulation 17 (1)(a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulates that the Board of Directors of the company shall have an optimum combination of executive and non-executive directors with not less than 50 *per cent* of the Board of Directors comprising non-executive directors.

The clause of having at least 50 *per cent* non-executive directors on Board of the Company was applicable to the only listed SPSE (Punjab Communications

Limited). The Company had adequate numbers of non-executive directors on Board during 2019-20.

### **4.3 Appointment and functioning of Independent Directors**

#### **4.3.1 Issuance of formal letter of appointment**

As per clause IV(4) of Schedule IV of the Companies Act, 2013, the appointment of Independent Directors shall be formalised through a letter of appointment which shall set out the terms and conditions of appointment. However, it was observed that out of four SPSEs where Independent Directors were appointed, only two SPSE (Punjab Communications Limited and Punjab State Power Corporation Limited) have issued appointment letters and in two<sup>3</sup> SPSEs, the Independent Directors were appointed through orders of the State Government and no appointment letters detailing the terms and conditions were issued.

Punjab State Bus Stand Management Company Limited and Punjab State Container and Warehousing Corporation Limited in their reply (February 2021) accepted that no formal letter of appointment was sent by the Company.

#### **4.3.2 Code of business ethics**

Clause (IV)(4)(e) of Schedule IV of the Companies Act, 2013 requires that the letter of appointment of Independent Directors shall include the Code of Business Ethics that the Company expects its directors to follow. Further, Regulation 17(5)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) stipulates that Code of conduct prescribed by the Board of Directors of listed company shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013. The duties cast upon Independent Directors are placed at Clause III of Schedule IV of the Act.

It was observed that of the four SPSEs where Independent Directors were appointed, two<sup>4</sup> SPSEs complied with the above requirements *i.e.* the Code of Conduct prescribed by the Board of Directors included the duties of Independent Director. In remaining two<sup>5</sup> SPSEs, no Code of Conduct was prescribed by the Board.

Punjab State Bus Stand Management Company Limited replied (February 2021) that Regulation 17 (5) of SEBI (LODR) is not applicable to them. The Management contention is not acceptable as code of conduct prescribed under Schedule IV of Companies Act, 2013 applies to the Company irrespective of the fact that it is not a listed Company. The Company should have prescribed a code of conduct for its Independent Directors.

<sup>3</sup> Punjab State Bus Stand Management Company Limited and Punjab State Container and Warehousing Corporation Limited

<sup>4</sup> Punjab Communications Limited and Punjab State Power Corporation Limited

<sup>5</sup> Punjab State Bus Stand Management Company Limited and Punjab State Container and Warehousing Corporation Limited

Punjab State Container and Warehousing Corporation Limited's reply (February 2021) did not provide the details of code of conduct prescribed for its Independent Directors.

#### **4.3.3 Training of Independent Directors**

Clause (III)(1) of Schedule IV of the Companies Act, 2013 stipulates that the Independent Directors shall undertake appropriate induction training and regularly update and refresh their skills, knowledge and familiarity with the Company. However, it was observed that out of four SPSEs where Independent Directors were appointed, only one SPSE (Punjab Communications Limited) imparted training to its Independent Directors and in three<sup>6</sup> SPSEs, no such training was conducted for Independent Directors who were on their Board during the year 2019-20.

Punjab State Bus Stand Management Company Limited and Punjab State Container and Warehousing Corporation Limited in their reply (February 2021) agreed to the audit contention.

Punjab State Power Corporation Limited replied (February 2021) that the Company could not provide training to the Independent Directors due to outbreak of COVID-19 and the training for its Independent Director would be arranged soon.

#### **4.3.4 Meetings of Board of Directors and Board Committees**

##### **4.3.4.1 Meetings of Board of Directors**

The Board is the most significant instrument of Corporate Governance. It is the agency for the implementation of governance policies and practices. It is imperative that the Board devotes adequate attention to Corporate Governance and must be equipped with the requisite representation and its members should meet regularly. Section 173(1) of the Companies Act, 2013 stipulates that the Board shall meet at least four times in a year with a maximum time gap of 120 days between two consecutive meetings. However, the Board of Directors of a company registered under Section 8 of the Companies Act, 2013 required holding of one meeting every six months.

**Table 4.2** shows the 13 SPSEs where the required number of meetings of Board of Directors to be held in a year was not complied with, during 2019-20.

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<sup>6</sup> Punjab State Bus Stand Management Company Limited, Punjab State Container and Warehousing Corporation Limited and Punjab State Power Corporation Limited



**Table 4.2: Details of SPSEs where less than required number of Board meetings were held**

Sl. No.	Name of Company	Number of meetings held
1.	Amritsar Smart City Limited	2
2.	Gidderbaha Power Limited	2
3.	Jalandhar Smart City Limited	2
4.	Ludhiana Smart City Limited	2
5.	Punjab Agro Industries Corporation Limited	3
6.	Punjab Municipal Infrastructure Development Company <sup>7</sup>	0
7.	Punjab Police Housing Corporation Limited	3
8.	Punjab Police Security Corporation Limited	2
9.	Punjab State Forest Development Corporation Limited	3
10.	Punjab State Grains Procurement Corporation Limited	3
11.	Punjab State Seeds Corporation Limited	2
12.	Punjab Thermal Generation Limited	2
13.	Punjab Water Resources Management and Development Corporation Limited	3

Source: Compiled on the basis of information received from SPSEs.

Punjab Thermal Generation Limited and Gidderbaha Power Limited replied (February 2021) that they could not hold the requisite number of meetings as they had not commenced business and also due to the lockdown.

Amritsar Smart City Limited, Jalandhar Smart City Limited, Ludhiana Smart City Limited, Punjab Municipal Infrastructure Development Company, Punjab Police Housing Corporation Limited and Punjab Police Security Corporation Limited in their replies (March 2021) stated that the Board of Directors of these companies comprise senior government officers who hold their office in *ex-officio* capacity. The meetings are scheduled based on their availability.

Punjab Water Resources Management and Development Corporation Limited stated (March 2021) that the Company could not hold four meetings of Board of Directors due to COVID pandemic.

Punjab State Seeds Corporation Limited stated (March 2021) that due to non-availability of directors, necessary number of Board meetings could not be held and assured to take necessary steps to comply with the requirement next year.

Punjab State Forest Development Corporation Limited and Punjab Agro Industries Corporation Limited replied (March 2021 and January 2021) that they could not hold the fourth meeting scheduled on 25 March 2020 due to national lockdown. The reply of the companies is not acceptable as it could not hold the Board meeting within the relaxation period *i.e.* upto 30 September 2020 granted by the Ministry of Corporate Affairs *vide* circular number 11/2020 dated 24 March 2020.

Reply from Punjab State Grains Procurement Corporation Limited was awaited.

<sup>7</sup> Being a Section 8 company PMIDC was required to conduct only two Board meetings.

#### 4.3.4.2 Meetings of Board Committees

Clause (III)(3) of Schedule IV of the Companies Act, 2013 states that Independent Directors should strive to attend all the meetings of Board of Directors and Board Committees of which he/she was a member. Some of the Independent Directors, however, did not attend some of these meetings. **Table 4.3** below indicates the number of such Independent Directors who did not attend the meetings of the Board and Committees during 2019-20:

**Table 4.3: Meetings of the Board and Committees not attended by one or more Independent Directors during the year 2019-20**

Sl. No.	Name of the SPSE	Number of Board meetings not attended by one or more Independent Directors	Number of Audit Committee meetings not attended by one or more Independent Directors	Number of Nomination and Remuneration Committee meetings not attended by one or more Independent Directors
1.	Punjab Communications Limited	Three meetings not attended out of four meetings.	One meeting not attended out of four meetings.	No meeting was held
2.	Punjab State Bus Stand Management Company Limited	Three meetings not attended out of four meetings.	One meeting not attended out of two meetings.	One meeting was held which was not attended.

Source: Compiled on the basis of information received from SPSEs.

Punjab State Bus Stand Management Company Limited replied (February 2021) that notice of every meeting is served to the Directors and efforts will be made to ensure attendance of the Directors.

Punjab Communications Limited replied (February 2021) that it is not mandatory on the part of every Independent Director to attend the Board meeting. However, Audit is of the view that the Company may persuade the Independent Directors to attend the Board meetings so that an independent view on the decisions of the management may be taken in the interests of the stakeholders.

#### 4.3.4.3 Attending General Meetings of the Company

Clause (III) (5) of Schedule IV of the Companies Act, 2013 states that Independent Directors shall strive to attend the General Meetings of the Company. Out of four SPSEs where Independent Directors were appointed, in one<sup>8</sup> SPSE the Independent Directors attended all the General Meetings. **Table 4.4** indicates three SPSEs where Independent Directors did not attend the General Meetings of the Company during the year 2019-20.

<sup>8</sup> Punjab State Container and Warehousing Corporation Limited

**Table 4.4: General meetings not attended by one or more Independent Directors**

Sl. No.	Name of the SPSE	Number of General Meetings not attended by one or more Independent Directors
1.	Punjab Communications Limited	One AGM not attended out of two AGMs held.
2.	Punjab State Bus Stand Management Company Limited	One AGM not attended out of three AGMs held.
3.	Punjab State Power Corporation Limited	One EGM not attended out of four AGMs and two EGMs.

Source: Compiled on the basis of information received from SPSEs.

Punjab Communications Limited replied (February 2021) that it is not mandatory for every Independent Director to attend the Annual General Meeting of the Company. However, Audit is of the view that the Company may persuade the Independent Directors to attend the General meetings so that an independent view on the decisions may be taken in the interests of the stakeholders.

Punjab State Bus Stand Management Company Limited stated (February 2021) that notice of every AGM/EGM is served to the Independent Directors also and shall make efforts to ensure attendance of the Directors.

#### **4.4 Filling up of post of Directors and Company Secretary**

Timely filling up of vacancies in the posts of Directors ensures the availability of required skill and expertise in the management of the company. Any delay in filling of vacancies may hamper the effectiveness of the decision-making process. Section 203(4) of Companies Act, 2013, stipulates that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

It was observed in Punjab State Transmission Corporation Limited, the post of Executive Director (Administration) remained vacant for a period of 27 months (from 2 May 2017 to 26 August 2019) and the post of Executive Director (Finance & Commercial) remained vacant for 18 months (from 13 April 2018 to 23 October 2019). The posts of both directors were filled in 2019-20 (ED/Administration on 27 August 2019 and ED/Finance and Commercial on 24 October 2019).

As per Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, every listed Company and every other public Company having a paid-up capital of ₹ five crore or more<sup>9</sup> shall have a whole time Company Secretary.

<sup>9</sup> The limit of ₹ five crore has been revised to ₹ 10 crore with effect from 1 April 2020 vide notification GSR 13 (E) dated 3 January 2020.

However, four<sup>10</sup> companies meeting this criteria did not have a full time Company Secretary during 2019-20.

## **4.5 Audit Committee**

### **4.5.1 Composition of Audit Committee**

Section 177 (1) and 177 (2) of the Companies Act, 2013 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 provides that every listed public company and companies covered under Rule 4<sup>11</sup> of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an Audit Committee with a minimum of three directors as members, of which majority shall be Independent Directors.

In terms of above stipulations, eight SPSEs mentioned in *Annexure 11* were required to constitute Audit Committee. All these SPSEs had constituted the Audit Committee.

Further, of these eight SPSEs, in five SPSEs<sup>12</sup> majority of the members of the Audit Committee were not Independent Directors for the reason that they either did not have independent directors on their Board or in case of CONWARE had vacancy of one independent director on its Board. Further, the Audit Committee did not carry out the duties spelt out in Section 177 of Companies Act, 2013 as in **Table 4.5** below:

**Table 4.5: Review of functions performed by the Audit Committees**

Sl. No.	Name of the SPSE	Audit Committee considered	Audit Committee did not consider
1.	Punjab Communications Limited	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of annual financial statements.</li> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>	

<sup>10</sup> Punjab State Seeds Corporation Limited, Punjab Tourism Development Corporation Limited, Punjab Water Resources Management and Development Corporation Limited and Punjab Small Industries and Export Corporation Limited

<sup>11</sup> Every listed Company and every public company with paid up share capital of ₹ 10 crore or more; or turnover of ₹ 100 crore or more; or with aggregated outstanding loans, debentures and deposits exceeding ₹ 50 crore shall have at least two Independent Directors on their Board.

<sup>12</sup> Listed at **Table 4.1** under paragraph 4.2.1 of this Report and Punjab State Container and Warehousing Corporation Limited

Sl. No.	Name of the SPSE	Audit Committee considered	Audit Committee did not consider
2.	Punjab State Power Corporation Limited	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of annual financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>
3.	Punjab State Transmission Corporation Limited	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• Review of annual financial statements.</li> </ul>	<ul style="list-style-type: none"> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> <li>• appointment of internal auditor and internal audit report.</li> </ul>
4.	Punjab Genco Limited	<ul style="list-style-type: none"> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>	<ul style="list-style-type: none"> <li>• Review of annual financial statements.</li> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> </ul>
5.	Punjab State Grains Procurement Corporation Limited	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of annual financial statements.</li> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>	
6.	Punjab State Bus Stand Management Company Limited	Review of annual financial statements.	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of internal control systems in the Company.</li> </ul>

			<ul style="list-style-type: none"> <li>• Review of adequacy of internal audit functions.</li> </ul>
7.	Punjab State Container and Warehousing Corporation Limited	<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of annual financial statements.</li> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>	
8.	Punjab Water Resources Management and Development Corporation Limited		<ul style="list-style-type: none"> <li>• The report of Statutory Auditor and supplementary audit report of CAG.</li> <li>• The appointment of internal auditor and internal audit report.</li> <li>• Review of annual financial statements.</li> <li>• Review of internal control systems in the Company.</li> <li>• Review of adequacy of internal audit functions.</li> </ul>

*Source: Compiled on the basis of information received from SPSEs.*

Punjab State Transmission Corporation Limited assured (February 2021), with respect to the functions to be carried out by the audit committee, compliance of the observation of Audit in future. Punjab State Power Corporation limited, Punjab Genco Limited, Punjab State Bus Stand Management Company Limited and Punjab State Container and Warehousing Corporation Limited have not furnished their specific replies.

## **4.6 Other Committees**

### **4.6.1 Nomination and Remuneration Committee**

Section 178 (1) of the Companies Act, 2013 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014 provides that every listed

public company and companies covered under Rule 4<sup>13</sup> of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute a Nomination and Remuneration Committee with a minimum of three non-executive directors as members, of which not less than one-half shall be Independent Directors. The work of the Committee *inter alia* involves identification of persons who are qualified to become directors and who may be appointed in senior management; recommend to the Board for their appointment and removal; and carry out evaluation of every director's performance. It will also recommend to the Board policy relating to remuneration to the directors, key managerial personnel and other employees.

In terms of above stipulations, eight companies (*Annexure II*) were required to constitute a Nomination and Remuneration Committee. However, two SPSEs mentioned in the **Table 4.9** below did not have their Nomination and Remuneration Committee.

**Table 4.6: SPSEs not having Nomination and Remuneration Committee**

Sl. No.	Name of the SPSE
1.	Punjab State Grains Procurement Corporation Limited
2.	Punjab Water Resources Management and Development Corporation Limited

Source: Compiled on the basis of information received from SPSEs.

Punjab Water Resources Management and Development Corporation Limited stated (March 2021) that they have not constituted the Nomination and Remuneration Committee as they do not have Independent Director in their Board. The reply was awaited from Punjab State Grains Procurement Corporation Limited.

Of the six SPSEs which were compliant, having constituted Nomination and Remuneration Committee, three SPSEs listed in **Table 4.7** below did not have required number of Independent Directors to be part of the Committee.

**Table 4.7: Number of Independent Directors in Nomination and Remuneration Committee**

Sl. No.	Name of the SPSE	Total Numbers of Directors in the Committee	Independent Directors in the Committee
1.	Punjab Genco Limited	4	0
2.	Punjab State Container and Warehousing Corporation Limited	3	1
3.	Punjab State Transmission Corporation Limited	3	0

Source: Compiled on the basis of information received from SPSEs.

Punjab State Transmission Corporation Limited stated (February 2021) that most of the provisions of the Companies Act in respect to Nomination and Remuneration Committee do not apply to a Government Company since

<sup>13</sup> Every listed Company and every public company with paid up share capital of ₹ 10 crore or more; or turnover of ₹ 100 crore or more; or with aggregated outstanding loans, debentures and deposits exceeding ₹ 50 crore shall have at least two Independent Directors on their Board.

directors are appointed by the Government. The senior functionaries are appointed/ promoted as per the rules and regulations approved by the Board of Directors. Therefore, need was not felt to conduct meeting of Nomination and Remuneration Committee during 2019-20. The fact, however, remains that no exemption relating to formulation of Committee and holding meeting was available to a Government Company.

Punjab Genco Limited has not furnished any specific reply.

**4.6.2** In case of any contravention of the provisions of Section 177 relating to Audit Committee and Section 178 relating to Nomination and Remuneration Committee of the Companies Act, 2013, the Company shall be punishable with fine which shall not be less than ₹ one lakh but may extend to ₹ five lakh and every officer of the defaulting company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ twenty-five thousand but which may extend to ₹ one lakh, or with both on any SPSE covered in audit.

It was noted that no such penalty had been imposed by Ministry of Corporate Affairs during 2019-20 on any SPSE covered in this Chapter.

#### **4.7 Whistle Blower Mechanism**

Section 177 (9) of the Companies Act, 2013 read with Rule 7 of the Companies (Meeting of Boards and its Powers), Rules 2014 stipulate that every listed company or a company which accepts deposits from public or borrowed money from banks or financial institutions in excess of ₹ 50 crores shall establish a vigil mechanism for directors and employees to report their genuine concerns or grievances. Seven companies as listed in *Annexure 13* were required to establish the Whistle Blower Mechanism.

However, it was observed that in three SPSEs, listed in **Table 4.8** below, there was no whistle blower mechanism.

**Table 4.8: SPSEs not having Whistle Blower Mechanism**

<b>Sl. No.</b>	<b>Name of the SPSE</b>
1.	Punjab State Grains Procurement Corporation Limited
2.	Punjab Municipal Infrastructure Development Company
3.	Punjab Water Resources Management and Development Corporation Limited

*Source: Compiled on the basis of information received from SPSEs.*

Punjab Municipal Infrastructure Development Company is in the process of laying down appropriate vigil mechanism for its directors and employees.

Punjab Water Resources Management and Development Corporation Limited stated (March 2021) that vigil mechanism is not applicable as it is not a listed company and also it has not borrowed any amount from Bank or Financial Institutions. The reply is not acceptable as the Company had outstanding loans in excess of the limit prescribed in the criteria for establishment of vigil mechanism.

The reply from Punjab State Grains Procurement Corporation Limited was awaited.



## 4.8 Internal Audit Framework

### 4.8.1 Role of Internal Audit

Internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system. Internal audit, therefore, provides assurance that there is transparency in reporting, as a part of good governance.

### 4.8.2 Legal Framework

Section 138(1) of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014 provides that the following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm, namely:

- a) every listed company;
- b) every unlisted public company having paid up share capital of ₹ 50 crore or more; or turnover ₹ 200 crore or more during the preceding financial year; or outstanding loans ₹ 100 crore or more; or outstanding deposits ₹ 25 crore or more at any point of time during the preceding financial year;
- c) every private company having turnover of ₹ 200 crore or more; during preceding financial year or outstanding loans of ₹ 100 crore or more at any point of time during the preceding financial year.

### 4.8.3 Audit Findings

As per the criteria, 11 SPSEs (*Annexure 14*) were required to appoint an internal auditor. However, three<sup>14</sup> SPSEs have not appointed internal auditors.

Punjab State Bus Stand Management Company Limited and Punjab Water Resources Management and Development Corporation Limited stated (February 2021) that they have appointed the Internal Auditor, however, their internal audit report has not been submitted (March 2021).

The status regarding remaining six SPSEs is detailed in **Table 4.9**:

<sup>14</sup> Punjab State Grains Procurement Corporation Limited, Punjab Municipal Infrastructure Development Company and Punjab State Civil Supplies Corporation Limited

**Table 4.9: Status of Internal Audit in SPSEs**

Sr. No.	Name of Company	Particulars
1.	Punjab Communications Limited	Internal auditors were appointed; Internal Audit report was submitted quarterly to Audit Committee of the company. The audit committee discussed the report and gave its recommendations to the Board.
2.	Punjab State Power Corporation Limited	PSPCL has got internal audit conducted in 146 divisions and the internal audit reports were considered by the Audit Committee.
3.	Punjab State Transmission Corporation Limited	Internal audit for the year 2019-20 was conducted departmentally and reports were discussed by the Audit Committee.
4.	Punjab Agro Foodgrains Corporation Limited	Internal Auditors were appointed. The frequency of reporting is quarterly. Audit committee discussed the reports of internal audit and found them satisfactory.
5.	Punjab State Industrial Development Corporation Limited	Internal auditor was appointed. Internal Audit Reports were submitted quarterly. Internal Audit Reports were submitted to Board of Directors, however, no action taken by Board of Directors.
6.	Punjab Agro Juices Limited	The frequency of Internal Audit is annual and report is discussed in Board of Directors.

Source: Compiled on the basis of information received from SPSEs.

#### **4.9 Conclusion**

Out of 29 selected SPSEs reviewed in Audit, 13 SPSEs did not conduct the required number of Board meetings in 2019-20, four SPSEs did not have any Independent Directors on their Board as on 31 March 2020 and there was shortfall in requisite number of Independent Directors in one SPSE. In four SPSEs, where Independent Directors were appointed, formal letters of appointment were sent by only two SPSEs. In five SPSEs, the Audit Committee did not review internal control systems of the Company, performance of Statutory Auditors and internal auditors and adequacy of internal audit functions. Three SPSEs have not appointed any internal auditors.

#### **4.10 Recommendations**

The respective Administrative Departments of the SPSEs may impress upon them - to conduct the Board meetings as per the requirement of Companies Act, 2013; to appoint the requisite number of Independent Directors, where applicable; and constitute Audit Committee and Nomination and Remuneration Committee, wherever applicable. The Audit Committee should also discharge the functions set out in Companies Act, 2013. The SPSEs need to strengthen their internal audit functions and the Audit committee as well as follow up the observations of internal audit.