

CHAPTER - IV
CORPORATE GOVERNANCE

Chapter-IV

Corporate Governance

4.1 Corporate Governance

4.1.1 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 has also notified (31 March 2014) Companies Rules, 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its powers and Accounts. The Companies Act, 2013 together with the Companies Rules provide a robust framework for Corporate Governance. The requirements *inter-alia* provide for:

- Qualifications for 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 at least one Woman Director on the Board. Section 49 (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 and every other Public Company having paid-up share capital of 100 crore or more; or turnover of ₹300 crore or more shall appoint at least one woman director in its Board.
- Mandatory establishment of Audit Committee {Section 177(1)}. Nomination and Remuneration Committee {178(1)} and Stakeholders Relation Committee {Section 178(5)}.
- Holding of 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)}.

4.1.2 SEBI guidelines on Corporate Governance

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

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.

4.1.3 Review of Compliance of the Corporate Governance provisions by selected State Public Sector Enterprises

As on 31 March 2020, there were 27 State Public Sector Enterprises (SPSEs) under the audit jurisdiction of the CAG of India out of which one SPSE⁵⁴ is under liquidation since 2000-01. List of all SPSEs including their administrative departments and month and year of incorporation is given in the **Appendix-4.1**. For the purpose of the review, an assessment framework was prepared based on the provisions contained in the Companies Act, 2013. Guidelines/regulations issued by SEBI (April and September 2014) were also reflected in the assessment framework.

The review covers one debt listed SPSE⁵⁵ and 25 unlisted SPSEs (including one SPSE⁵⁶ under the process of delisting and two inactive SPSEs⁵⁷) for the year ended 31 March 2020. One inactive SPSE (Himachal Worsted Mills Limited) which is under liquidation since 2000-01, has not been covered.

4.2 Composition of Board of Directors

The board is a governing body of either elected or appointed persons that meets at regular intervals to set policies for corporate management and oversee the activities of an organization. Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

4.2.1 Independent Directors

The presence of independent representatives 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. In terms of Section 149(4) of the Companies Act, 2013, every listed Public Company is mandatorily required to have at least one-third of the total number of Directors as Independent Directors and unlisted public companies⁵⁸ must appoint at least two independent directors in the following circumstances:

- (i) If the paid-up share capital exceeds ₹10 crore;
- (ii) if the turnover exceeds ₹100 crore; and
- (iii) if the aggregate of all the outstanding loans, debentures and deposits exceeds ₹50.00 crore.

⁵⁴ Himachal Worsted Mills Limited.

⁵⁵ Himachal Pradesh State Electricity Board Limited (only issues bonds through the market).

⁵⁶ Himachal Pradesh General Industries Corporation Limited.

⁵⁷ Agro Industrial Packaging India Limited and Himachal Pradesh Beverages Limited.

⁵⁸ As per Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014.

It was assessed that out of 26 SPSEs, 8 SPSEs fall under the purview of Section 149 (4) of the Companies Act, 2013 and Regulation 17(1) (b). Out of eight, only three SPSEs had appointed independent directors as listed in the **Table-4.1**.

Table-4.1: List of SPSEs having/not having required number of Independent Directors

Sr. No.	Name of SPSEs	No. of Directors in BoDs	Minimum requirement of Independent Directors in BoDs	Actual number of Independent Directors in BoDs
1.	Himachal Pradesh State Industrial Development Corporation Limited (HPSIDC)	14-15	2	1 (2018-20)
2.	Beas Valley Power Corporation Limited (BVPCL)	7-10	2	0 (2015-18) 2 (2018-20)
3.	Himachal Pradesh State Electricity Board Limited (HPSEBL)	9-13	2	2 (2015-20)

As seen from above, only HPSEBL had appointed the minimum number of independent directors during 2015-20.

The remaining five SPSEs were required to appoint Independent Directors, however, no Independent Directors were appointed in BoDs as given in the **Table-4.2**.

Table-4.2: List of SPSEs not having any Independent Directors

Sr. No.	Name of SPSEs	Period during which no independent directors were appointed
1	Himachal Pradesh Agro Industries Corporation Limited	2015-20
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited	2015-20
3	Himachal Backward Classes Finance and Development Corporation	2015-20
4	Himachal Pradesh Mahila Vikas Nigam	2017-20
5	Himachal Pradesh State Civil Supplies Corporation Limited	2015-20

4.2.2 Woman Director in the Board

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 and every other Public Company having paid-up share capital of ₹100 crore or more; or turnover of ₹300 crore or more shall appoint at least one woman director in its Board.

In terms of these provisions, Woman Directors were to be appointed in three SPSEs. In two SPSEs (Himachal Pradesh State Electricity Board Limited and Himachal Pradesh State Civil Supplies Corporation Limited), one woman director was appointed during 2015-20. In Beas Valley Power Corporation Limited one Woman Director was

appointed during 2018-20. Himachal General Industries Corporation Limited had also appointed one woman director during 2018-20, though, it was not mandatory.

4.3 Appointment and functioning of Independent Directors

4.3.1 Issuance of formal letter of appointment

As per clause 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. It was observed that all the Companies mentioned in **Table-4.1**, had issued appointment letter to Independent Directors.

4.3.2 Code of Conduct

Section 149 (8) of the Companies Act, 2013 contains the code guide to professional conduct of independent directors as prescribed in Schedule IV. It was observed that the SPSEs listed in **Table-4.1**, which appointed Independent Directors in their BoDs, did not incorporate code of conduct in the terms and conditions of appointment letter of Independent Directors.

4.3.3 Training of Independent Directors

As per Schedule IV (Para III (1) – Duties of Independent Directors) of Companies Act, 2013, Independent Directors should undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the Company. The Company is also required to provide suitable training to Independent Directors to familiarize them with the Company, their roles, rights, responsibilities in the Company, nature of the activities in which Company operates, business model of the Company etc.

However, it was observed that in the SPSEs listed in **Table-4.1**, no such training was conducted for Independent Directors who were on the Board during the last five years ending 31 March 2020.

4.4 Meetings of Board of Directors and Board committees

4.4.1 Meetings of the Board of Directors

The Board of Directors is the agency for the implementation of governance policies. It is imperative that the Board devotes adequate attention to Corporate Governance and its members should meet regularly. Section 173(1) of 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.

Audit observed that only two SPSEs⁵⁹ (out of 26) incorporated (June 2018 and April 2019) had conducted required minimum number of BoD meetings during

⁵⁹ Shimla Jal Prabandhan Nigam Limited and Sri Naina Devi Ji And SriAnandpur Sahib Ji Ropeway Company Limited.

2018-20. However, Companies which did not conduct required number of BoD meetings during the year are detailed in **Table-4.3**.

Table-4.3: Year-wise detail of SPSEs where less than four meetings or required number of meetings in case of newly incorporated SPSEs were held during 2015-20

Sr. No.	Name of Company	Number of BoDs meetings held during the year				
		2015-16	2016-17	2017-18	2018-19	2019-20
1	Himachal Pradesh Agro Industries Corporation Limited	-	-	3	-	-
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited	3	-	-	-	3
3	Himachal Pradesh State Forest Development Corporation Limited	-	-	-	3	3
4	Himachal Backward Classes Finance and Development Corporation (HBCF&DC)	2	2	Nil	Nil	Nil
5	Himachal Pradesh Mahila Vikas Nigam	2	2	1	1	1
6	Himachal Pradesh Minorities Finance and Development Corporation	-	2	2	Nil	Nil
7	Himachal Pradesh Road and Other Infrastructure Development Corporation Limited	-	-	-	-	3
8	Himachal Pradesh State Industrial Development Corporation Limited	-	-	-	-	2
9	Dharamshala Smart City Limited (incorporated during August 2016)	NA	3	-	3	3
10	Shimla Smart City Limited (incorporated during January 2018)	NA	NA	-	3	-
11	Himachal Pradesh General Industries Corporation Limited	-	-	-	-	3
12	Himachal Pradesh State Civil Supplies Corporation Limited	-	-	-	-	3
13	Himachal Pradesh State Electronics Development Corporation Limited	2	2	2	3	3
14	Himachal Pradesh State Handicrafts and Handlooms Corporation Limited	-	-	-	3	2
15	Himachal Pradesh Tourism Development Corporation	-	-	3	2	1
16	Himachal Pradesh Kaushal Vikas Nigam	1	2	1	1	1
17	Himachal Consultancy Organisation Limited	-	-	-	2	3
18	Beas Valley Power Corporation Limited	-	-	3	-	3
19	Himachal Pradesh Power Corporation Limited	-	-	-	-	3
20	Himachal Pradesh Power Transmission Corporation Limited	-	3	3	-	-
21	Himachal Pradesh State Electricity Board Limited	-	-	3	-	-
22	Agro Industrial Packaging India Limited	1	2	2	2	2
23	Himachal Pradesh Beverages Limited (Incorporated during April 2016)	NA	-	3	-	-
24	Ropeways and Rapid Transport System Development Corporation HP Limited (July 2019)	NA	NA	NA	NA	1

Himachal Backward Classes Finance and Development Corporation in its reply stated (February 2021) that the Board meetings were conducted as per date, time and venue given by the Chairman of the corporation appointed by the State Government. The reply is not acceptable, as during 2015-17, the Corporation had conducted two meetings instead of four and no meeting was held during 2017-20. Five SPSEs (Himachal Pradesh Kaushal Vikas Nigam, Himachal Pradesh State Electronics Development Corporation Limited, Himachal Pradesh Beverages Limited, Himachal Pradesh State Forest Development Corporation Limited and Himachal Pradesh Power Corporation Limited) confirmed (between January 2021 and August 2021) the stated facts.

4.4.2 Independent Directors

Schedule IV (III) (3) of the Companies Act, 2013 states that Independent Directors should strive to attend all the General meetings of Board of Directors and of Board Committees of which he/she was a member. However, some of the Independent Directors did not attend Board/Committee meetings as indicated in **Table-4.4**.

Table-4.4: Independent Directors who did not attend some of the Board/Committee meetings

Sr. No.	Name of the SPSEs	No. of Independent Directors who did not attend Board meetings	No. of meetings not attended	No. of independent directors who did not attend some Board's committee meetings (Audit Committee)	No. of meetings not attended
1	Himachal Pradesh State Industrial Development Corporation Limited	2 (2015-16)	1	-	-
		1 (2015-16)	1		
		1 (2016-17)	3		
		1 (2017-18)	1		
		2 (2017-18)	1		
		1 (2018-19)	3		
		1 (2019-20)	1		
2	Himachal Pradesh State Electricity Board Limited	1 (2015-16)	1	1 (2015-16)	1
		1 (2016-17)	3	1 (2017-18)	1
		1 (2019-20)	1	-	-

In reply, the HPSEBL stated (February 2021) that the independent directors had attended the Board meetings during 2015-16 and 2016-17. The reply was not based on facts, as out of the two, one independent director did not attend Board meeting held on 29 March 2016 and three meetings were not attended by one independent director during 2016-17.

4.4.3 Conducting of Annual General Meetings

As per Section 96 of the Companies Act, 2013, every Company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its Annual General Meeting and shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between the date of one Annual General Meeting of a Company and that of the next provided that in case of the first Annual General Meeting, it shall be held within a period of nine months from the date of closing of the first financial year otherwise in other cases within the period of six months.

The details of AGMs held in all SPSEs given in **Table-4.5** during 2015-20 or from the date of its incorporation to 31 March 2020.

Table-4.5: Year-wise detail of SPSEs where AGM conducted or not conducted

Sr. No.	Name of Company	Year in which AGM was conducted (Yes / No)				
		2015-16	2016-17	2017-18	2018-19	2019-20
1	Himachal Pradesh Agro Industries Corporation Limited	Yes	Yes	Yes	Yes	Yes
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited	Yes	Yes	Yes	Yes	Yes
3	Himachal Pradesh State Forest Development Corporation Limited	Yes	Yes	No	No	No
4	Himachal Backward Classes Finance and Development Corporation	Yes	No	No	No	No
5	Himachal Pradesh Mahila Vikas Nigam	Yes	Yes	Yes	Yes	Yes
6	Himachal Pradesh Minorities Finance and Development Corporation	No	No	No	No	No
7	Himachal Pradesh Road and Other Infrastructure Development Corporation Limited	Yes	Yes	Yes	Yes	Yes
8	Himachal Pradesh State Industrial Development Corporation Limited	Yes	Yes	Yes	Yes	Yes
9	Dharamshala Smart City Limited (Incorporated during July 2016)	NA	No	No	Yes	No
10	Shimla Smart City Limited (Incorporated during January 2018)	NA	N A	NA	No	Yes
11	Himachal Pradesh General Industries Corporation Limited	Yes	Yes	Yes	Yes	Yes
12	Himachal Pradesh State Civil Supplies Corporation Limited	Yes	Yes	Yes	Yes	Yes
13	Himachal Pradesh State Electronics Development Corporation Limited	Yes	Yes	Yes	Yes	Yes
14	Himachal Pradesh State Handicrafts and Handloom Corporation Limited	Yes	Yes	Yes	Yes	Yes
15	Himachal Pradesh Tourism Development Corporation	Yes	Yes	Yes	No	No
16	Himachal Pradesh Kaushal Vikas Nigam	NA	Yes	No	Yes	Yes
17	Himachal Consultancy Organisation Limited	Yes	Yes	Yes	Yes	Yes
18	Shimla Jal Prabandhan Nigam Limited (Incorporated during July 2018)	NA	NA	NA	No	Yes
19	Beas Valley Power Corporation Limited	Yes	Yes	Yes	Yes	Yes
20	Himachal Pradesh Power Corporation Limited	Yes	Yes	Yes	Yes	Yes
21	Himachal Pradesh Power Transmission Corporation Limited	Yes	Yes	Yes	Yes	Yes
22	Himachal Pradesh State Electricity Board Limited	Yes	Yes	Yes	Yes	Yes
23	Agro Industrial Packaging India Limited	No	No	Yes	No	No
24	Himachal Pradesh Beverages Limited	NA	NA	Yes	Yes	Yes
25	Sri Naina Devi Ji And Sri Anandpur Sahib Ji Ropeway Company Limited (Incorporated during April 2019)	NA	NA	NA	NA	NA
26	Ropeways and Rapid Transport System Development Corporation HP Limited (Incorporated during July 2019)	NA	NA	NA	NA	NA

Out of 26 SPSEs, two⁶⁰ SPSEs were newly incorporated during 2019-20 and one⁶¹ SPSE did not conduct any AGM during 2015-20. Fourteen SPSEs held the required number of AGMs during 2015-20 and remaining nine SPSEs also did not comply with the above criteria from time to time.

⁶⁰ Sri Naina Devi Ji And Sri Anandpur Sahib Ji Ropeway Company Limited and Ropeways and Rapid Transport System Development Corporation HP Limited

⁶¹ Himachal Pradesh Minorities Finance and Development Corporation.

The Himachal Backward Classes Finance and Development Corporation stated that the AGMs were conducted as per date, time and venue given by the Chairman of the corporation. The reply is incorrect as no AGM was conducted by the corporation during 2016-20 whereas five SPSEs (Himachal Pradesh Kaushal Vikas Nigam, Himachal Pradesh State Electronics Development Corporation Limited, Himachal Pradesh Mahila Vikas Nigam, Himachal Pradesh Minorities Finance and Development Corporation and Himachal Pradesh Beverages Limited) have confirmed (between January 2021 and August 2021) the facts.

4.4.4 Attending Annual General Meetings of Company

Schedule IV(III) (5) of the Companies Act, 2013 states that Independent Directors shall strive to attend the General Meetings of the Company. **Table-4.6** indicates the SPSEs where Independent Directors did not attend the annual general meetings of the Company.

Table-4.6: Independent Directors who did not attend Annual General Meetings

Sr. No.	Name of SPSE	No. of Independent Directors in BoDs	No. of Independent Directors who did not attend AGM	Period
1	Himachal Pradesh State Industrial Development Corporation Limited	2	1	2015-16
		2	2	2016-17
		2	2	2017-18
		1	1	2018-19
		1	1	2019-20

4.5 Audit Committee

Audit Committee is one of the important pillars of the Corporate Governance mechanism in the Company. It is charged with the oversight of financial reporting and disclosures. It boosts the confidence in the integrity of the Company's financial reporting, the internal control process and the risk management systems. It reviews and monitors the auditor's independence and performance and effectiveness of audit process. It examines the financial statement and the auditor's report thereon.

4.5.1 Applicability of Audit Committee

Section 177 of the Act read with rule 6 of the Companies (Meetings of the Board and Powers) Rules, 2014 stipulates that the Board of Directors of every listed Company and the following classes of Companies is required to constitute an Audit Committee of the Board:

- All Public Companies with a paid-up capital of ₹10 crore or more;
- All Public Companies having turnover of ₹100 crore rupees or more;
- All Public Companies, having in aggregate, outstanding Loans or Borrowings or Debentures or Deposits exceeding ₹50 crore or more.

The paid-up Share Capital or turnover or outstanding loans, or Borrowings or Debentures or Deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes of this rule.

Audit observed that out of 26 SPSEs, nine SPSEs were eligible to constitute an Audit Committee, however, only six SPSEs (including Himachal Pradesh General Industries Corporation Limited, Himachal Pradesh Power Corporation Limited and Himachal Pradesh Power Transmission Corporation Limited which constituted audit committee voluntarily though it was not mandatory) given in **Table-4.7**, constituted Audit Committee.

Table-4.7: SPSEs where Audit Committee Constituted

Sr. No.	Name of Companies where Audit Committee Constituted
1	Himachal Pradesh State Industrial Development Corporation Limited (HPSIDCL)
2	Himachal Pradesh General Industries Corporation Limited (HPGIC)
3	Beas Valley Power Corporation Limited (BVPCL)
4	Himachal Pradesh Power Corporation Limited (HPPCL)
5	Himachal Pradesh Power Transmission Corporation Limited (HPPTCL)
6	Himachal Pradesh State Electricity Board Limited (HPSEBL)

In remaining six SPSEs given in the **Table-4.8**, no audit committee was constituted in compliance of above stated rules.

Table-4.8: SPSEs where Audit Committee was not Constituted

Sr. No.	Name of Companies where Audit Committee was not Constituted
1	Himachal Pradesh Agro Industries Corporation Limited (HPAICL)
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited (HPMC)
3	Himachal Backward Classes Finance and Development Corporation (HBCF&DC)
4	Himachal Pradesh MahilaVikas Nigam (HPMVN)
5	Himachal Pradesh State Civil Supplies Corporation Limited (HPSCSCL)
6	Agro Industrial Packaging India Limited (AIPIL)

4.5.2 Composition of Audit Committee

Section 177 (1) and (2) of the Companies Act, 2013, stipulates that there shall be an Audit Committee with a minimum of three directors as members of which two-thirds shall be Independent Directors.

The criteria was not met by any of the six SPSEs mentioned in **Table-4.7**.

4.5.3 Meetings of the Committee

Out of six SPSEs where Audit Committee was constituted, all the SPSEs had conducted audit committee meeting during 2015-20 except Himachal Pradesh Power Transmission Corporation Limited which constituted audit committee in January 2009 but has not conducted any meeting so far. No audit committee meeting was held by Himachal Pradesh Power Corporation Limited during 2016-17 and 2019-20.

4.5.4 Evaluation of Internal Control Systems

Clause 5 of the Section 177 of the companies Act, 2013 stipulates that the Audit Committee may call for the comments of the auditors about internal control system and may also discuss any related issue with the internal and Statutory auditors and management of the Company. Audit observed that none of the Audit Committees

appointed by SPSEs mentioned in **Table-4.7** evaluated internal financial control systems and risk management systems.

4.5.5 Review of Performance of Statutory and Internal Auditors

Clause 5 of Section 177 of the Companies Act, 2013 stipulates that the Audit Committee should review with the management, the performance of Statutory Auditors and Internal Auditors.

Audit noticed that out of six SPSEs in case of three SPSEs given in **Table-4.9**, such performance evaluation of Statutory Auditors and Internal Auditors was not reviewed.

Table-4.9: SPSEs where Performance of Statutory Auditors and Internal Auditors reviewed / not reviewed by the Audit Committee

Sr. No.	Name of the SPSEs where performance of Statutory Auditors and Internal auditors was reviewed	Name of the SPSEs where performance of Statutory Auditors and Internal auditors was not reviewed
1	Himachal Pradesh State Electricity Board Limited	Himachal Pradesh State Industrial Development Corporation Limited
2	Himachal Pradesh Power Corporation Limited	Himachal Pradesh General Industries Corporation Limited
3	Beas Valley Power Corporation Limited.	Himachal Pradesh Power Transmission Corporation Limited

Audit Committee of HPSEBL recommended to timely finalise the financial statements (including BVPCL) and streamline the process of finalisation of accounts. It also recommended for adoption of accounts finalised by the CAG along with CAG's comments by AGMs or taking extension of time for conducting AGMs. In HPPCL, the Audit Committee advised Director (Finance) for ensuring timely finalisation of accounts of the Company in subsequent years, but no concrete action has been initiated by the Management in this regard. The financial statements for the year 2019-20 and onwards remained in arrears (May 2021).

4.5.6 Review of Information/Documents by Audit Committee

All the SPSEs were subject to the audit of CAG as per the statutory mandate. Section 143 (6) of the Companies Act, 2013, authorises CAG to carry out supplementary audit of accounts of Government Companies. Further Section 177 (4) (iii) of the Companies Act, 2013 provides that Audit Committee shall examine the financial statements and Auditors' Report thereon. Thus, in case of SPSEs, it was the responsibility of the Audit Committee to review the findings of CAG.

Audit observed that out of six SPSEs (including HPGIC, HPPCL and HPPTCL which constituted audit committee voluntarily though not mandatory) eligible to constitute Audit Committee, the Audit Committee of Himachal Pradesh State Industrial Development Corporation Limited and Himachal Pradesh Power Transmission Corporation Limited had not reviewed the findings of CAG.

4.5.7 Other Committees

(i) Nomination and Remuneration Committee

Section 178 (1) of the Companies Act, 2013 and read with Rule 6 of the Companies (Meeting of Boards and its Powers) Rules, 2014 states that the following classes of Companies are required to constitute a Nomination and Remuneration Committee:

- All Public Companies with a paid-up capital of ₹10 crore rupees or more;
- all Public Companies having turnover of ₹100 crore rupees or more;
- all Public Companies, having in aggregate, outstanding Loans or Borrowings or Debentures or Deposits exceeding ₹50 crore or more.

Audit observed that out of 26 SPSEs, nine SPSEs were eligible to constitute a Nomination and Remuneration Committee, however, only two⁶² SPSEs constituted Nomination and Remuneration Committee. In remaining seven SPSEs, no Nomination and Remuneration committee was constituted given in the **Table-4.10**.

Table-4.10: SPSEs where Nomination and Remuneration Committee was not constituted

Sr. No.	Name of SPSEs
1	Himachal Pradesh Agro Industries Corporation Limited
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited
3	Himachal Backward Classes Finance and Development Corporation
4	Himachal Pradesh MahilaVikas Nigam
5	Himachal Pradesh State Civil Supplies Corporation Limited
6	Agro Industrial Packaging India Limited
7	Himachal Pradesh State Industrial Development Corporation Limited

4.6 Appointment of Company Secretary

State Public Sector Enterprises need a Company Secretary to strengthen its governance and compliance of Acts and rules made there under, as applicable to the Company. Section 203(1) of Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that every Public Company having a Paid-Up Share Capital of ₹10 crore or more shall have a whole-time Company Secretary.

Audit observed that 14 SPSEs as per detail given in **appendix-4.2** were eligible to appoint a whole time Company Secretary, however, only four SPSEs⁶³ appointed a whole-time Company Secretary and in remaining 10 SPSEs the work was being done through a part-time Company Secretary as given in **Table-4.11**.

Table-4.11: SPSEs where Company Secretary was appointed on Part Time Basis

Sl. No.	Name of the company	Period of accounts	Paid-up capital (₹ in crore)	Whether Company Secretary required (paid-up share capital of ten crore rupees or more)	Company Secretary (Part Time/Whole Time)
1	Himachal Pradesh Agro Industries Corporation Limited	2017-18	18.85	Yes	Part time
2	Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Limited	2017-18	38.77	Yes	Part time
3	Himachal Backward Classes Finance and Development Corporation	2013-14	13.00	Yes	Part time
4	Himachal Pradesh MahilaVikas Nigam	2014-15	12.51	Yes	Part time

⁶² Himachal Pradesh State Electricity Board Limited and Beas Valley Power Corporation Limited.

⁶³ Himachal Pradesh State Electricity Board Limited, Himachal Pradesh State Forest Development Corporation Limited, Beas Valley Power Corporation Limited and Himachal Pradesh Power Corporation Limited.

5	Himachal Pradesh Minorities Finance and Development Corporation	2013-14	13.02	Yes	Part time
6	Himachal Pradesh Road and Other Infrastructure Development Corporation Limited	2018-19	25.00	Yes	Part Time
7	Himachal Pradesh State Industrial Development Corporation Limited	2017-18	30.82	Yes	Part time
8	Himachal Pradesh Tourism Development Corporation	2015-16	12.30	Yes	Part time
9	Himachal Pradesh Power Transmission Corporation Limited	2017-18	286.45	Yes	Part time
10	Agro Industrial Packaging India Limited	2013-14	17.72	Yes	Part time

The Himachal Backward Classes Finance and Development Corporation stated (February 2021) that appointment of company secretary will be made after approval of the service committee of the State Government. The reply was not based on facts, as the corporation never took up the matter with the State Government. Himachal Pradesh Power Corporation Limited confirmed (February 2021) the stated facts.

4.7 Whistle Blower Policy

Section 177 (9) of the Companies Act, 2013 and Rule 7 of the Companies (Meeting of Boards and its Powers) Rules, 2014 stipulate that the Company shall establish a vigil mechanism for directors and employees to report concerns about unethical behavior, actual or suspected fraud or violation of the Company's code of conduct or ethics policy. It was, however, observed that out of 26 SPSEs, only three SPSEs⁶⁴ established whistle blower mechanism.

4.8 Extraordinary delay in completing the delisting process

Himachal Pradesh General Industries Corporation Limited (HPGIC) was the only listed company in the State; however, its shares had not been traded since 1976. The Company had requested (December 1994) Delhi Stock Exchange (DSE) to de-list its shares. Security and Exchange Board of India (SEBI) on the request of DSE, accorded (September 2002) consent for delisting the Company subject to compliance of clause 40 A (ii) of the Listing Agreement and Regulation 21 (3) of SEBI Regulation 1997 relating to minimum number of shares to be acquired by the acquirer. No action to de-list was initiated until 2012. SEBI *vide* circular dated May 30, 2012 issued guidelines facilitating the exit of derecognised/Non-operational stock exchanges and exit to the shareholders of Exclusively Listed Companies (ELCs) by allowing them to get listed on nationwide Stock Exchanges after complying with the diluted listing norms of nationwide stock exchanges, failing which it will cease to be a listing company and would be moved to the Dissemination Board. Further *vide* circular dated May 22, 2014, it *inter-alia* provided that ELCs, on de-recognised/non-operational stock exchanges, can also opt for voluntary delisting by following the existing delisting

⁶⁴ Himachal Pradesh Power Corporation Limited, Himachal Pradesh Power Transmission Corporation Limited and Himachal Pradesh State Electricity Board Limited.

norms of SEBI. It was also specified that if the ELCs fail to comply with the same, they shall cease to be listed companies and be moved to Dissemination Board.

SEBI *vide* its circular dated October 10, 2016 described procedure of exit to investors. The promoter in consultation with the designated stock exchange shall appoint an 'independent valuer' from the panel of expert valuers of the designated Stock Exchange. In case the fair value determined is positive, the promoter of the Company shall acquire shares of such Companies from the Public Shareholders by paying them such value determined by the valuer. The Promoter shall open an escrow account in favour of Independent Valuer/designated Stock Exchange and deposit therein the total estimated amount of consideration on the basis of exit price and number of outstanding public shareholders.

Audit observed that the Company being a SPSE and its promoters are the State Government (Equity: ₹7.04 crore) and others (Equity: ₹0.12 crore), therefore, the Company has requested the State Government for in - principle approval for delisting of shares by adopting exit offer and for sanction of ₹1.47 crore for payment to shareholders on the basis of valuation of shares for completion of statutory requirement. State Government has sanctioned the above amount during June 2020 for compliance of SEBI guidelines. Thereafter, the Company requested (December 2020) the Director of Industries, Himachal Pradesh to transfer/deposit the same amount in the escrow account opened as per SEBI guidelines for delisting of private share of the Company and the same was deposited (March 2021) by the Company after receipt from Director of Industries in the escrow account. However, even after elapse of 26 years, the SPSEs failed to complete the delisting process up to August 2021.

4.9 Internal Audit Framework

Role of Internal Audit

4.9.1 Introduction as well as importance of internal audit

Internal Audit has been recognized as an aid to the higher management for monitoring the financial performance and effectiveness of various programs, schemes and activities. Internal Audit also provides reasonable assurance that the operations are carried out effectively and efficiently, reliable financial reports and operational data and the applicable laws and regulations are complied with so as to achieve organisational objectives.

4.9.2 Legal Framework

As per section 138 of Companies Act, 2013 read with Rule 13 of Companies (Accounts) Rules, 2014, certain class of Companies are required to appoint internal Auditors. Rule 13 of Companies (Accounts) Rules, 2014 prescribes that the following Companies are required to appoint an internal auditor or firm of internal auditors namely:

- (a) Every listed company.
- (b) Every unlisted public company having:

- (i) Paid up share capital of: ₹50.00 crore or more during the preceding financial year; or
- (ii) Turnover (income) of: ₹200.00 crore or more during the preceding financial year; or
- (iii) Outstanding loans or borrowings from banks or public financial institutions exceeding: ₹100.00 crore or more at any point of time during the preceding financial year; or
- (iv) Outstanding Deposits of: ₹25.00 crore or more at any point of time during the preceding financial year.

Audit observed that out of 26 SPSEs, five⁶⁵ SPSEs were required to appoint Internal Auditors or firm of Internal Auditors as per Section 138 of Companies Act, 2013. Internal Audit of one SPSE (Himachal Pradesh State Electricity Board Limited) is being conducted by its own staff. In respect of remaining four SPSEs as given in **Table-4.12**, Internal Audit is conducted through appointment of Internal Auditors (Chartered Accountants) after the approval of BoDs.

Table-4.12: SPSEs where Internal Audit is conducted through appointment of CAs

Sr. No.	Name of Companies where Internal Audit is conducted through appointment of Chartered Accountants
1	Himachal Pradesh State Civil Supplies Corporation Limited
2	Himachal Pradesh Power Corporation Limited
3	Himachal Pradesh Power Transmission Corporation Limited
4	Beas Valley Power Corporation Limited

4.9.3 Audit findings

Internal Audit

Out of 26 SPSEs, internal audit for the year 2019-20 was completed in 15 SPSEs. There were arrears of one year in two SPSEs; two years in one SPSE and three years in two SPSEs (**Appendix-4.3**). It was observed that in the remaining six SPSEs where internal audit was not carried out, four were newly incorporated and two SPSEs⁶⁶ neither conducted Internal Audit nor decided the frequency for it.

Conclusion

Out of 26 SPSEs reviewed, eight SPSEs were eligible to appoint Independent Directors, however, only three SPSEs appointed independent directors and out of which, only one SPSE (Himachal Pradesh State Electricity Board Limited) had appointed the required minimum number of independent directors during 2015-20.

As per provisions, three SPSEs were required to appoint Woman Directors, however, only Himachal Pradesh State Electricity Board Limited and Himachal Pradesh State Civil Supplies Corporation Limited had appointed one Woman Director during 2015-20 and Beas Valley Power Corporation Limited appointed one Woman Director during 2018-20.

⁶⁵ In addition to the five internal audit is also conducted in HPGIC though not mandatory.

⁶⁶ Himachal Pradesh Mahila Vikas Nigam and Agro Industrial Packaging India Limited (inactive).

In three SPSEs (Himachal Pradesh State Electricity Board Limited, Himachal Pradesh State Industrial Development Corporation Limited and Beas Valley Power Corporation Limited) which appointed Independent Directors in their BoDs, code of conduct was not incorporated and no training was conducted for Independent Directors. Some of the Independent Directors also did not attend some BoD's /Board Committee's meetings.

Out of 26 SPSEs, nine SPSEs were eligible to constitute an Audit Committee, however, only six SPSEs appointed such audit committee (including Himachal Pradesh General Industries Corporation Limited, Himachal Pradesh Power Corporation Limited and Himachal Pradesh Power Transmission Corporation Limited which constituted an audit committee voluntarily though not mandatory).

Performance evaluation of Statutory Auditors and Internal Auditors was not reviewed in three out of six SPSEs. No whistle blower mechanism was established in 23 out of 26 SPSEs. Only four out of 14 eligible SPSEs appointed a whole time Company Secretary, in remaining 10 SPSEs, the work of Company Secretary was being done by part-time Company Secretary.

Recommendation

Government of Himachal Pradesh may impress upon the respective Administrative Departments to ensure compliance to Sections of Companies Act, 2013 so as to achieve the objectives of Corporate Governance in SPSEs.

