

A Case Study
Union Government (Commercial)

**Compliance of Corporate Governance
provisions**

By

Central Public Sector Enterprises.

Regional Training Institute
Indian Audit and Accounts Department,
Mumbai.

P R E F A C E

Regional Training Institute, Mumbai was declared as knowledge centre for Corporate Governance, Finance and Audit of Municipal Corporations in August, 2012. In pursuit of excellence in our assigned areas of knowledge centre, we attempt to bring out series of interesting cases in Corporate Governance, Corporate Finance and Audit of Municipal Corporations. In preparing the case study, the models adopted by some business schools have been followed.

The Case Study “ Compliance of Corporate Governance provisions by Public Sector Enterprises ” has been prepared based on Chapter 3 of Audit Report No.2 of 2013-14 of the Comptroller and Auditor General of India – Union Government (Commercial).

I hope that the readers would benefit from this. Suggestions, if any, are welcome and would help us in future.

RTI, Mumbai.

March, 2014

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Principal Director

Corporate Governance-Compliance by Central Public Sector Enterprises

(Chapter 3 of Union Government (Commercial) Report No.2 of 2013 of Comptroller and Auditor General Of India.)

Objectives

The case study intends to familiarize readers with the Corporate Governance provisions in Companies Act, 1956 (and corresponding provisions of the new Act of 2013) and guide lines of Department of Public Enterprises (DPE) and Securities and Exchange Board of India (SEBI) on Corporate Governance that can be useful in examination of compliance of these guide lines in audit of Central Public Sector Enterprises (CPSEs).

Corporate Governance

Introduction

Corporate Governance is a system of structuring operating and controlling an organization with a view to achieving long term strategic goals to satisfy the stake holders and complying with the legal and regulatory requirements. Corporate Governance is a way of directing and controlling companies and ensure greater transparency and better and timely financial reporting. It is concerned with the morals, ethics, values parameters, conduct and behavior of the company and management. The absence of good governance structures and lack of adherence to the governance principles increases the risk of corruption and misuse of entrusted power by the management in public sector.

The direction of Corporate Governance initiatives in India has been directed mainly by the Companies Act, 1956 ,new revised Companies Act, 2013, Securities and Exchange Board of India (SEBI) and Department of Public Enterprises (DPE). The DPE had issued guidelines on Corporate Governance for CPSEs providing path for governance initiatives in public sector.

Provisions of Companies Act with regards to Corporate Governance

The Companies Act,1956 originally did not have many direct provisions regarding Corporate Governance, but different provisions of Companies Act, 2013 prescribe certain practices that go into building a robust corporate governance structure. Some such provisions of the Companies Act, 2013 are indicated below:

- Section 134 (corresponds to Section 217 of Companies Act,1956) provides that a Report by the Board of Directors containing details on the matters specified including directors responsibility statement shall be attached to every financial statement laid before a company. The responsibility statement includes that the applicable Accounting Standards have been followed in preparing the financial statements and reporting the material departures therefrom, that the companies follow their accounting policies consistently, the accounts have been prepared on going concern basis and compliance of all applicable laws.
- Section 177 (corresponds to section 292 A of Companies Act,1956) provides the requirements and manner of constituting the Audit Committee. The Audit Committee shall consist of minimum three directors with Independent Directors forming a majority and majority members must have ability to read and understand financial statements. The Section also provides for a vigil mechanism in every listed and prescribed class of companies and such mechanism shall be disclosed at the website of the company and should be mentioned in Board's report.
- Section 184 (corresponds to section 299 of the Companies Act,1956) provides the manner and periodicity in which the every director shall made disclosure of his concerns or interest in any company, body corporate, firms and parties to the contract. He concerned director should not participate in the meeting taking the decision in such cases. The contract or agreement entered in to by the company without disclosure shall be voidable at the option of the company.

SEBI guidelines on Corporate Governance

SEBI introduced (February 2000) a new clause 49 in the listing agreement which was amended in October 2004 and made effective from 1 January 2006. It provides for the composition the Board of Directors, the remuneration of non-executive directors, composition and function of Audit Committee, role of Board of Directors and Audit committee of holding vis-a-vis the subsidiary company, disclosures and compliance report etc.

DPE guidelines on Corporate Governance for CPSEs.

The DPE issued guidelines on Corporate Governance in November 1992 on the inclusion of Non-official directors on the Board of Directors. DPE issued further guidelines in November, 2001 providing for inclusion of independent directors on the Board of Directors. To bring in more transparency and accountability in the functioning of CPSEs, the government in June 2007 introduced the guidelines on Corporate Governance for CPSEs. These guidelines

were voluntary in nature. DPE reissued the guidelines in May 2010 which made mandatory and applicable to CPSEs.

The guidelines issued by DPE covered the areas of composition of Board of Directors, the composition and functions of Board Committees like Audit Committee, remuneration committee, details of subsidiary companies, reports and schedules for implementation.

Audit reviewed the compliance of Corporate Governance provisions contained in Companies Act, SEBI guidelines and DPE guidelines (issued in May 2010) which were mandatory for CPSEs in 36 public sector enterprise under Ministry of Heavy Industries & Public Enterprises. These guidelines would thus form the learning points from this case study and have been mapped to the finding of the Audit Report:

Audit Findings	Learning points
<p>Board of Directors Govt. nominee Directors As per the DPE guidelines Govt. Directors should not exceed one sixth of actual strength of the Board of Directors and it is preferable to have only one representative on the Board. However, in no case they should exceed two. In four companies there were more than two Govt. Directors and in three companies there were no Govt .nominee Directors.</p>	<p>The number of Government nominee directors on the Board of Directors should be as specified in DPE guidelines.</p>
<p>Independent Directors In terms of clause 49 (1) (A)(ii) of the listing agreement and DPE guidelines, where the chairman of the Board of Director is non-executive director, at least one third of the Board should comprise of independent directors and in case he is a executive director at least half of the Board should comprise of independent directors. The nominee directors are not considered as independent directors.13companies did not have the required number of independent directors and in 21 companies there were no independent directors on the Board.</p>	<p>The Board is a significant instrument of Corporate Governance. The presence of independent representatives on the Board, capable of challenging the decisions of the management is widely considered as a means of protecting the interests of the share holders and other stake holders. Therefore the composition of Board of Directors should be reviewed and ensure that required number of independent director are there on the Board of Directors.</p>
<p>Non-executive Directors on the Board Listing agreement and DPE guidelines stipulate that the Board of Directors of the company shall have an optimum combination of executive and non-executive Directors, functional and non-</p>	<p>The total strength of the Board of Directors should be reviewed and ensure optimum combination of executive & non executive, functional & non functional should be there and not less than</p>

<p>functional Directors with not less than fifty <i>per cent</i> of Board of Directors comprising non executive directors. In 11 companies, the non executive directors constituted less than 50 <i>per cent</i> of the total Board strength.</p>	<p>50 <i>per cent</i> of the Board of Directors of the company are non-executive directors.</p>
<p>Information on activities & affairs of the Company DPE guidelines and clause 49 of the listing agreement have prescribed the minimum information about the activities and affairs of the company that should be furnished to the Board. Such information includes annual operating plans, budgets, quarterly results, minutes of the Audit Committee, information on recruitment and remuneration of senior level officers, details of Joint Ventures, foreign exchange transactions etc. In 9 companies, the required information was not furnished to the Board.</p>	<p>It should be ensured that the prescribed minimum information about the activities and affairs as per the DPE guidelines clause 49 of the listing agreement has been furnished to the Board of Directors.</p>
<p>Risk Management DPE guidelines emphasized that the Board should ensured the integration and alignment of risk management system with the corporate and operational activities and also that risk management is undertaken as a part of normal business practice and not as a separate task at set times by evolving the risk policy. In 25 companies the risk policy was yet to be evolved.</p>	<p>Enterprise risk management is managing the risk and avoiding damage to entity's reputation and associated consequences. Considering the significance of risk management in the scheme of corporate management strategies, its oversight should be one of the main responsibilities of the Board Management. It is therefore important to ensure that whether the risk policy has been evolved by the management.</p>
<p>Filling the posts of directors- functional, non-functional, Independent In respect of 15 companies there was delay of six months and more in filling the posts of directors- functional, non-functional, independent as on 31 March 2012.</p>	<p>Timely filling of vacancies in the post of directors ensures the availability of required skill and expertise in the management of the company. Any delay in filling the vacancies may hamper the effectiveness of the decision making process. The vacancy positions of top level posts should be reviewed.</p>
<p>Audit Committees Clause 49 (II) A of the listing agreement and DPE guide lines stipulates the following for Audit Committees:</p> <ul style="list-style-type: none"> - There shall be an Audit committee with minimum 3 directors as members of which two third shall be independent directors. - The chairman of the audit committee shall be an independent director. - The chairman of the audit committee should be present in Annual General Meeting to answer the shareholders' queries. - There should be a periodical review of the 	<p>Section 177 of Companies Act, 2013 (Corresponding section 292 A of the Companies Act, 1956) provided for the requirement and manner of constituting the Audit Committee. Every Listed company and such other Company as may be prescribed shall form Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members must have ability to read and understand financial statements. The section further provides the functions of audit committee. The section also provides for the establishment of vigil mechanism</p>

<p>terms of reference to audit committee to ensure that the work of the committee is aligned with the business need.</p> <ul style="list-style-type: none"> - Audit committee should meet at least four times in a year. - Audit Committee should hold discussion with internal auditors on significant findings - The audit committee should review the functioning of 'Whistle Blower Mechanism' in case the same exists in the company. - Audit committee should hold discussion with statutory Auditors before the audit commences. - Audit committee oversees the work of statutory auditors, internal audit and hence are in a position to advise the Board in its strategic decisions from view of finance and compliance of laws, regulations. There should be a system of regular reporting to the Board in the form of report. It will help the Board in identifying the deficiencies and take immediate corrective action. <p>It was noticed in audit that there was no Audit Committee in 19 companies, in 11 companies, two thirds of the members of the audit committee were not independent directors, in 8 companies, the chairman of the audit committee was not an independent director. In 7 companies, the chairman of the audit committee did not attend the AGM. In 6 companies, there was no system of periodical review of the terms of reference of the audit committee. Eight companies held less than four audit committee meetings in a year. Audit Committee of 4 companies did not held discussion with internal auditors and in 8 companies, with statutory auditors. There was no whistle blower mechanism in 8 companies. In 9 companies, there was no system of preparing regular reports by the audit committee and only the minutes of the meetings were submitted to the Board.</p>	<p>in every listed and prescribed class of companies. The establishment of such mechanism shall be disclosed in the website of the company and in the Board's report of the company.</p> <p>The DPE guidelines require to be modified in view of the New Companies Act provisions.</p>
<p>Code of conduct for all Board members Clause 1(D) of the listing agreement and Para 3.4 of DPE guidelines stipulate that the Board shall lay</p>	<p>It should be ensured that the model code of business conduct and ethics should be circulated</p>

<p>down a code of conduct for all Board members and senior management of the company. The code of conduct shall be circulated and also posted on the website of the Company. All persons concerned shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by Chief Executive. In 15 companies model code of business conduct and ethics was not circulated.</p>	<p>and followed. The secretarial audit of the companies should also be conducted.</p>
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6. Conclusion

DPE guidelines on corporate governance though mandatory are not being complied with by some of the Central Public Enterprises. The new Companies Act, 2013 provisions vide Sections 134, 177 and 184 relate to Corporate Governance. The compliance to these provisions is also required to be ensured. The DPE guidelines are also required to be modified regarding Audit committee provisions. The compliance of DPE guidelines may be monitored by the Administrative Ministries of the Central Public Enterprises.

Enclosures:

- i) **Chapter 3 of C&AG's Audit Report 2 of 2013 of Union Government (Commercial).**
- ii) **DPE guidelines issued in May 2010 (Mandatory for CPSEs).**
- iii) **SEBI guidelines of clause 49 in listing Agreement issued in February 2000 and October 2004.**
- iv) **Extract of clauses 134, 177 and 184 of Companies Act 2013.**

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Corporate Governance

3.1 Introduction

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 (shareholders, employees, customers, suppliers, government and community) and complying with the legal and regulatory requirements. Corporate Governance is a way of directing and controlling companies. It is concerned with the morals, ethics, values, parameters, conduct and behaviour of the company and management. It is the system by which companies are directed and controlled by the management in the best interest of the shareholders and other stakeholders ensuring greater transparency and better and timely financial reporting. The absence of good governance structures and lack of adherence to the governance principles increases the risk of corruption and misuse of entrusted power by the management in public sector.

3.1.1 Corporate Governance in India

The direction of Corporate Governance initiatives in India has been dictated mainly by the Companies Act, 1956, Securities and Exchange Board of India (SEBI) and Department of Public Enterprises (DPE). While the various amendments to the Companies Act, 1956 gave the governance direction to the companies in the country as a whole, the DPE had issued guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs) providing the path for governance initiatives in the public sector.

3.1.2 DPE guidelines on Corporate Governance for CPSEs

The DPE issued guidelines on Corporate Governance in November 1992 on the inclusion of non – official directors on the Board of Directors. DPE issued further guidelines in November, 2001 providing for inclusion of independent directors on the Board of Directors.

To bring in more transparency and accountability in the functioning of CPSEs, the government in June, 2007 introduced the guidelines on Corporate Governance for CPSEs. These guidelines were voluntary in nature. These guidelines were implemented for an experimental period of one year. On the basis of the experience gained during this period, it was decided to modify and reissue the DPE guidelines in May, 2010. These guidelines have been made mandatory and applicable to all CPSEs.

The guidelines issued by DPE covered the areas of composition of Board of Directors, composition and functions of Board committees like Audit Committee, Remuneration committee, details on subsidiary companies, disclosures, reports and the schedules for implementation. All references to DPE guidelines in this chapter refer to the DPE guidelines issued in May, 2010 which are mandatory to all CPSEs.

3.1.3 Provisions of the Companies Act, 1956 with regard to Corporate Governance

The Companies Act, 1956 does not have any direct provisions regarding Corporate Governance but different provisions of the Companies Act, 1956 prescribe certain practices that go in building a robust corporate governance structure. Some such provisions of the Companies Act, 1956 are indicated below:

- 134 • Section 217 (2AA) made applicable with effect from December, 2000 provides for Directors' Responsibility Statement as part of the Board's Report indicating that the applicable Accounting Standards have been followed in the preparation of the accounts and reporting the material departures there from, that the companies follow their accounting policies consistently and that all the accounting records are maintained as per the requirements of the Companies Act, 1956.
- 177 • Section 292A made applicable with effect from December, 2000 provides for the constitution of Audit Committee as a Committee of the Board in every public limited company having a paid up capital of not less than ₹ 5 crore. The terms of reference of the Audit Committee include all matters related to financial reporting process, internal control and risk management system of the company, overseeing the audit process and performing other duties and responsibilities as assigned by the Board.
- 184 • Section 299 of the Act requires every director of a company to make disclosure, at the Board meeting, of the nature of his concern or interest in a contract or arrangement (present or proposed) entered by or on behalf of the company. The company is also required to record such transactions in the Register of Contract under section 301 of the Act.

3.1.4 SEBI guidelines on Corporate Governance

The Securities and Exchange Board of India (SEBI) vide its circular dated 21 February 2000 introduced a new clause 49 in the Listing agreement. Clause 49 of the Listing Agreement was amended in October 2004 and the revised clause was made effective from 1 January 2006. Clause 49 of the listing agreement provides for the composition of the Board of Directors, the remuneration of the non – executive directors, composition and functions of the Audit Committee, role of the Board of Directors and Audit Committee of a holding company vis- a- vis the subsidiary company, Disclosures and Compliance reports etc.

3.1.5 Audit review on compliance of the Corporate Governance provisions

- As on 31 March 2012, there were 481 Central Government Public Sector Enterprises (CPSEs) under the audit jurisdiction of the Comptroller and Auditor General of India. These included 338 government companies, 137 deemed government companies and 06 statutory corporations. Majority of these CPSEs, including Maharatnas, Navratnas and Miniratnas are earning profit and have improved their financial performance over the years. In the context of the policy of the government to grant more autonomy to the CPSEs, Corporate Governance has become even more important. Under the Maharatna Scheme, CPSEs are expected to expand international operations and become global giants, for which effective Corporate Governance is imperative.
- Audit covered 36 government companies (Annexure XIII) belonging to Ministry of Heavy Industries & Public Enterprises to review their adherence with the Corporate Governance

requirements. The period of one year ended March 2012 was covered in the review. The findings of the review are presented in the following paragraphs.

3.2 Board of Directors

3.2.1 Government Nominee Directors

The DPE guidelines stipulate that Government Directors should not exceed one-sixth of the actual strength of the Board of Directors and it is preferable to have only one representative on the Board. However, in no case, they should exceed two. In the following companies, there were more than 2 Government Directors:

Sl. No.	Name of the CPSE
1	NEPA Limited
2	Rajasthan Electronics & Instruments Limited
3	Sambhar Salts Limited
4	Tungabhadra Steel Products Limited

In respect of following Companies, there were no Government Nominee Directors on the Board.

Sl. No.	Name of the CPSE
1	Hooghly Printing Company Limited
2	Yule Electricals Limited
3	Yule Engineering Limited

3.2.2 Independent Directors

The Board is the most significant instrument of Corporate Governance. The presence of independent representatives on the Board, capable of challenging the decisions of the management, is widely considered as a means of protecting the interests of shareholders and other stakeholders. In terms of Clause 49 (I) (A) (ii) of listing agreement and the DPE guidelines, where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors. The nominee directors are not considered as independent directors.

The composition of the Board of Directors of the reviewed companies revealed that the following companies did not have the required number of independent directors on their Board:

Sl. No.	Name of the CPSE	Required	Actual
1	Bharat Heavy Electricals Limited	7	6
2	Braith Waite Burn and Jessop Construction Company Limited	2	1
3	Bridge and Roof Company Limited	3	1
4	Cement Corporation of India Limited	4	3
5	Engineering Projects India Limited	3	1
6	Hindustan Cables Limited	2	1
7	Hindustan Salts Limited	3	1

8	Instrumentation Limited	4	1
9	NEPA Limited	3	1
10	Rajasthan Electronics & Instruments Limited	2	1
11	Sambhar Salts Limited	4	1
12	Tungabhadra Steel Products Limited	3	1
13	Tyre Corporation of India Limited	2	1

In respect of following CPSEs, there were no independent directors on the Board.

Sj. No.	CPSEs - no independent directors
1	Andrew Yule & Company Limited
2	Bharat Bhari Udyog Nigam Limited
3	Bharat Heavy Plates and Vessels Limited
4	Bharat Pumps & Compressors Limited
5	Heavy Engineering Corporation Limited
6	Hindustan Newsprint Limited
7	Hindustan Paper Corporation Limited
8	Hindustan Photo film Manufacturing Company Limited
9	HMT (MT) Limited
10	HMT Chinar Watches Limited
11	HMT International Limited
12	HMT Limited
13	HMT Watches Limited
14	Hooghly Printing Company Limited
15	Jagadishpur Paper Mills Limited.
16	Nagaland Pulp and Paper Company Limited
17	National Bicycle Corporation of India Limited
18	Richardson & Cruddas (1972) Limited
19	Scooters India Limited
20	Yule Electricals Limited
21	Yule Engineering Limited

3.2.3 Non-executive Directors on the Board

Clause 49 (l) (A) (i) of listing agreement and para 3.1 and 3.2 of DPE guidelines stipulate that the Board of Directors of the company shall have an optimum combination of executive and non-executive directors/functional and non – functional directors with not less than fifty *per cent* of

the Board of Directors comprising non-executive directors. In the following companies, the non – executive directors constituted less than *fifty per cent* of the total Board strength.

Sl. No.	Name of the CPSE	Required	Actual
1	Andrew Yule & Company Limited	3	2
2	Bharat Heavy Plates and Vessels Limited	3	2
3	Bridge and Roof Company Limited	3	2
4	Heavy Engineering Corporation Limited	3	2
5	Hindustan News Print Limited	2	1
6	Hindustan Paper Corporation Limited	3	1
7	Hindustan Photo Film Manufacturing Company Limited	2	1
8	HMT (MT) Limited	2	1
9	HMT Bearings Limited	2	1
10	Instrumentation Limited	4	3
11	Scoters India Limited	2	1

3.2.4 Information on activities and affairs of the company

DPE guidelines and clause 49 of the listing agreement have prescribed the minimum information about the activities and affairs of the company that should be furnished to the Board. Such information includes annual operating plans, budgets, quarterly results, minutes of audit committee, information on recruitment and remuneration of senior level officers just below Board level, details of joint venture, foreign exchange etc. In respect of the following companies, the required information was not furnished to the Board.

Sl. No.	Name of the PSU	Minimum Information not furnished
1	Bharat Heavy Plates and Vessels Limited	<ul style="list-style-type: none"> Minutes of meetings of Audit Committee and other committees of the Board.
2	Cement Corporation of India Limited	<ul style="list-style-type: none"> Minutes of meetings of Audit Committee and other committees of the Board.
3	Heavy Engineering Corporation Limited	<ul style="list-style-type: none"> Quarterly results for the Company and its operating divisions or business segments. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
4	Hindustan Paper Corporation Limited	<ul style="list-style-type: none"> Transactions that involve substantial payment towards goodwill, brand or intellectual property, sale of material nature of investments, subsidiaries, assets, which is not in normal course of business.
5	HMT (MT) Limited	<ul style="list-style-type: none"> Capital budgets and any updates.

6	HMT Chinar Watches Limited	<ul style="list-style-type: none"> Annual operating plans and budgets and any updates.
7	HMT Limited	<ul style="list-style-type: none"> Capital budgets and any updates. Quarterly details of foreign exchange exposures and steps taken by management to limit the risks of adverse exchange rate movement, if material
8	National Bicycle Corporation of India Limited	<ul style="list-style-type: none"> Annual operating plans and budgets and any updates, capital Budgets and any updates. Quarterly results for the company and its operating divisions of business segments.
9	Rajasthan Electronics & Instruments Limited	<ul style="list-style-type: none"> Minutes of meetings of Audit Committee and other committees of the Board.

3.2.5 Risk Management

Enterprise risk management helps management in managing the risk and avoiding damage to the entity's reputation and associated consequences. Considering the significance of risk management in the scheme of corporate management strategies, its oversight should be one of the main responsibilities of the Board/Management. DPE Guidelines emphasize that the Board should ensure the integration and alignment of the risk management system with the corporate and operational objectives and also that risk management is undertaken as a part of normal business practice and not as a separate task at set times. In respect of the following companies, risk policy is yet to be evolved.

Sl. No	Name of the CPSE
1	Andrew Yule & Company Limited
2	Bharat Bhari Udyog Nigam Limited
3	Bharat Heavy Plates and Vessels Limited
4	Bharat Pumps & Compressors Limited
5	Braith Wait Burn and Jessop Construction Company Limited
6	Cement Corporation of India Limited
7	Engineering Projects India Limited
8	Heavy Engineering Corporation Limited
9	Hindustan News Print Limited
10	Hindustan Paper Corporation Limited
11	Hindustan Salts Limited
12	HMT Chinar Watches Limited
13	Hooghly Printing Company Limited
14	Instrumentation Limited
15	Jagadishpur Paper Mills Limited
16	Nagaland Pulp and Paper Company Limited
17	National Bicycle Corporation of India Limited
18	NEPA Limited
19	Rajasthan Electronics & Instruments Limited
20	Richardson & Cruddas (1972) Limited
21	Sambhar Salts Limited
22	Triveni Structurals Limited

23	Tungabhadra Steel Products Limited
24	Yule Electricals Limited
25	Yule Engineering Limited

3.2.6 Filling the posts of directors – functional, non-functional, independent

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. In respect of following companies there was delay of 6 months or more in filling the posts of directors-functional, non-functional, independent etc as on 31 March 2012.

Sl. No.	Name of the CPSEs	Name of the post	No of months
1	Bharat Bhari Udyog Nigam Limited	Director (Finance)	7
2	Bharat Heavy Plates and Vessels Limited	Independent Directors - 2	24
3	Bharat Pumps & Compressors Limited	Independent Director - 2	7
4	Cement Corporation of India Limited	Director (Finance)	16
5	Engineering projects India Limited	Independent Directors-2	16
6	Heavy Engineering Corporation Limited	Director (Marketing)	17
7	Hindustan Cables Limited	C&MD	21
8	Hindustan Newsprint Limited	Independent Directors -2 Director (Finance)	33 15
9	Hindustan Photo Films Manufacturing Company Limited	Independent Director	7
10	Hindustan Salts Limited	Nominee Director	6
11	NEPA Limited	Director (Finance)	125
12	Richardson & Cruddas (1972) Limited	Director	45
13	Sambhar Salts Limited	Nominee Directors-2	6
14	Triveni Structural Limited	Govt Nominee	99
15	Tyre Corporation India Limited	Director (Finance)	15

3.3. Audit Committee

3.3.1 Clause 49 (II) (A) of listing agreement and Chapter 4 of DPE guidelines stipulate that there shall be an Audit committee with a minimum of three directors as members of which two-thirds shall be Independent Directors. In respect of the following companies, there was no audit committee:

Sl. No	Name of the CPSE
1	Andrew Yule & Company Limited
2	Heavy Engineering Corporation Limited

3	Hindustan News Print Limited
4	Hindustan Paper Corporation Limited (Not functional from 16.10.2011)
5	HMT (MT) Limited
6	HMT Bearings Limited
7	HMT Chinar Watches Limited
8	HMT Limited
9	HMT Watches Limited
10	Hooghly Printing Company Limited
11	Instrumentation Limited
12	Jagdishpur Paper Mills Limited
13	Nagaland Pulp and Paper Company Limited
14	National Bicycle Corporation of India Limited.
15	Richardson & Cruddas (1972) Limited
16	Scooters India Limited
17	Triveni Structurals Limited
18	Yule Electrical Limited
19	Yule Engineering Limited

3.3.2 Composition of Audit Committee

In respect of the following companies, two-thirds of the members of the Audit Committee were not Independent Directors as required.

Sl.No.	CPSEs - with insufficient independent directors
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps & Compressors Limited
4	Bridge & Roof Company Limited
5	Engineering Projects India Limited
6	Hindustan Photo Films Manufacturing Company Limited
7	Hindustan Salts Limited
8	NEPA Limited
9	Rajasthan Electronics & Instruments Limited
10	Sambhar Salts Limited
11	Tungabhadra Steel Products Limited

3.3.3 Chairman of the Audit Committee

As per the listing agreement and DPE guidelines, the Chairman of the Audit committee shall be an independent director. In the following cases, the Chairman of the Audit committee was not an independent director.

Sl. No.	CPSEs-Chairman of the Audit Committee was not an Independent director
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps & Compressors Limited
4	Hindustan Photo Films Manufacturing Company Limited
5	Hindustan Salts Limited
6	NEPA Limited

7	Sambhar Salts Limited
8	Tungabhadra Steel Products Limited

- 3.3.4 Clause 49 II (A)(iv) of Listing Agreement and DPE guidelines require that the Chairman of the Audit Committee should be present at Annual General Meeting (AGM) to answer shareholder queries. However, the Chairman of the Audit Committee of the following CPSEs did not attend the AGM held during 2011-12:

Sl. No	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps & Compressors Limited
4	Bridge and Roof Company (India) Limited
5	Hindustan Salts Limited
6	NEPA Limited
7	Sambhar Salts Limited

- 3.3.5 There should be a system of periodical review of the terms of reference of Audit Committee to ensure that work of the committee is aligned with the business needs. In respect of following companies there was no system to review the terms of reference of Audit Committee:

Sl. No.	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Pumps & Compressors Limited
3	Cement Corporation of India Limited
4	Hindustan Salts Limited
5	Rajasthan Electronics & Instruments Limited (REIL)
6	Sambhar Salts Limited

- 3.3.6 It is a good practice to issue appointment letters to the members of Audit Committee which clearly sets out their appointment and purpose, commitment required, remuneration, appraisal, support and training that they will receive, expected conduct, duration of appointment and how often it may be renewed and termination conditions. In the following companies there was no system of issue of appointment letters to the members of Audit Committee.

Sl. No.	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy plates and Vessels Limited
3	Bharat pumps & Compressors Limited
4	Braith Wait Burn and Jessop Construction Company Limited
5	Bridge & Roof Co (India) Limited
6	Cement Corporation of India Limited
7	Engineering Projects India Limited
8	Hindustan Photo Films Manufacturing Company Limited

9	Hindustan Salts Limited
10	NEPA Limited
11	Rajasthan Electronics & Instruments Limited
12	Sambhar Salts Limited
13	Tungabhadra Steel products Limited

3.3.7 Meetings of Audit committee

Clause 49 II (B) of Listing Agreement and Chapter 4 of DPE guidelines (para 4.4) require that the Audit Committee should meet at least four times in a year. During review, it was noticed that in respect of following companies, there were less than four meetings in the year 2011-12.

Sl. No.	CPSEs-less than required number of meetings of Audit Committee	Number of meetings held
1	Bharat Bhari Udyog Nigam Limited	1
2	Bharat Pumps & Compressors Limited	1
3	Cement Corporation of India Limited	3
4	Engineering Projects India Limited	2
5	Hindustan Cables Limited	1
6	NEPA Limited	3
7	Tungabhadra Steel products Limited	1
8	Tyre Corporation of India Limited	0

3.3.8 One of the recommendations of Blue Ribbon committee^{*} was that the Audit Committee should meet the Statutory Auditors of the Company once in a year without the presence of the Finance Officers/Management of the Company. This good practice was being followed by the following Companies.

Sl. No.	CPSEs-Implemented the recommendations of the Blue Ribbon Committee
1	Bridge and Roof Company (India) Limited
2	Hindustan Cables Limited

3.3.9 It is also the responsibility of the Audit committee to hold discussion with internal auditors on any significant findings and follow up there on. It was observed that, in the following companies, the audit committee has not conducted any discussion with internal auditors.

Sl.No.	Name of the CPSE
1	Bharat Pumps & Compressors Limited
2	Cement Corporation of India Limited
3	Hindustan Photo Films Manufacturing Company Limited
4	Rajasthan Electronics & Instruments Limited

^{*} A Committee formed in 1998 in the United States which published a report on improving the effectiveness of Corporate Audit Committees.

3.3.10 Whistle Blower Mechanism

(a) Clause 49 II (D) 12 of the Listing Agreement and Para 4.2.12 of DPE guidelines require the Audit Committee to review the functioning of the 'Whistle Blower Mechanism' in case the same exists in the company. The Listing Agreement contemplates that the company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimisation of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization. In the following companies, there was no whistle blower mechanism:

Sl. No	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Electricals Limited
3	Bharat Heavy Plates and Vessels Limited
4	Bharat Pumps & Compressors Limited
5	Braith Wait Burn and Jessop Construction Company Limited
6	Cement Corporation of India Limited
7	NEPA Limited
8	Tungabhadra Steel Products Limited

(b) In following companies, though whistle blower mechanism existed, the Audit committee did not review it:

Sl. No	Name of the CPSE
1	Rajasthan Electronics & Instruments Limited

(c) As a corollary to the responsibility of Audit Committee to ensure protection to the whistle blowers, as discussed in the earlier paragraphs, there should also be a system of review of the anti-fraud and anti – corruption policies and procedures by the Audit Committee to ensure that they were in place and operating effectively. In the following companies, there were no anti – fraud and anti- corruption policies:

Sl. No	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Pumps & Compressors Limited
3	Braith Wait Burn and Jessop Construction Company Limited
4	Cement Corporation of India Limited
5	Hindustan Paper Corporation Limited
6	NEPA Limited
7	Tungabhadra Steel products Limited

3.3.11 Discussion with Statutory Auditors

Clause 49 (II) (D) and para 4.2.10 of DPE guidelines provide that Audit Committee should hold discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern. In respect of the following Companies, the audit committee did not hold any such discussion:

Sl. No.	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps and Compressors Limited
4	Cement Corporation of India Limited
5	Engineering Projects India Limited
6	Hindustan Photo Films Manufacturing Company Limited
7	Hindustan Salts Limited
8	Rajasthan Electronics & Instruments Limited
9	Sambhar Salts Limited

3.3.12 Preparation of Annual Reports

During review it is noticed that there was no system of preparing of annual reports on the working of audit committee in the following companies.

Sl. No.	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps & Compressors Limited
4	Braith Wait Burn and Jessop Construction Company Limited
5	Cement Corporation of India Limited
6	Engineering Projects India Limited
7	Hindustan Photo Films Manufacturing Company Limited
8	NEPA Limited
9	Rajasthan Electronics & Instruments Limited
10	Tungabhadra Steel Products Limited

3.3.13 System of regular reports to the Board

Audit committee oversees the work of statutory Auditors, Internal Audit and hence are in a position to advise the Board in its strategic decisions from the view of finance and compliance of laws, regulations etc. Regular reporting by the audit committee to the Board will help the Board identify the deficiencies and take immediate corrective action. Hence there should be a system of regular reporting to the Board in the form of reports. In majority of the companies under review as shown below, there is no system of preparation of regular reports. Only minutes of the meeting of the Audit Committee were presented to the Board. However, the findings, observations and recommendations of the Audit Committee in the form of a report would provide a better understanding and enable the Board to obtain a better view.

Sl. No.	Name of the CPSE
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy Plates and Vessels Limited
3	Bharat Pumps & Compressors Limited

4	Cement Corporation of India Limited
5	Hindustan Photo Films Manufacturing Company Limited
6	Hindustan Salts Limited
7	Rajasthan Electronics & Instruments Limited
8	Sambhar Salts Limited
9	Tungabhadra Steel products Limited

3.4 Code of Conduct for all Board Members

Clause I (D) of the listing agreement and Para 3.4 of DPE guidelines stipulate that the Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be circulated and also posted on the website of the company. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by its Chief Executive. In the following cases, model code of business conduct and ethics was not circulated:

Sl. No.	CPSEs-model code of business conduct and ethics not circulated
1	Andrew Yule & Company Limited
2	Braith Wait Burn and Jessop Construction Company Limited
3	Cement Corporation of India Limited
4	Heavy Engineering Corporation Limited
5	HMT International Limited
6	HMT Chinar Watches Limited
7	HMT Watches Limited
8	Hooghly Printing Company Limited
9	Instrumentation Limited
10	Jagadishpur Paper Mills Limited
11	Nagaland Pulp and Paper Company Limited
12	NEPA Limited
13	Tungabhadra Steel products Limited
14	Yule Electricals Limited
15	Yule Engineering Limited

3.5 Secretarial Audit

In the following companies, there was no secretarial audit:

Sl. No.	CPSEs-system of secretarial audit not noticed
1	Bharat Bhari Udyog Nigam Limited
2	Bharat Heavy plates and Vessels Limited
3	Bharat Pumps & Compressors Limited
4	Bridge and Roof Company Limited
5	Cement Corporation of India Limited
6	Heavy Engineering Corporation Limited

7	Hindustan Cables Limited
8	Hindustan Paper Corporation Limited
9	Hindustan Photo Films Manufacturing Company Limited
10	Hindustan Salts Limited
11	HMT Chinara Watches Limited
12	Hooghly Printing Company Limited
13	Instrumentation Limited
14	Jagdishpur Paper Mills Limited
15	Nagaland Pulp & Paper company Limited
16	NEPA Limited
17	Rajasthan Electronics & Instruments Limited
18	Sambhar Salts Limited
19	Scooters India Limited
20	Tyre Corporation of India Limited
21	Yule Electricals Limited
22	Yule Engineering Limited

3.6 Conclusion

DPE guidelines on corporate governance though mandatory are not being complied with by some of the CPSEs. Adequate representation of independent directors on the Boards, functioning of and reporting by the Audit Committees etc, were not found in conformity with guidelines of DPE.

3.7 Recommendations

The following recommendations are made to improve the quality of corporate governance in CPSEs:

- GOI may ensure induction of the requisite number of independent directors on the Board of CPSEs;
- Compliance of DPE guidelines may be monitored by the Administrative Ministries of the CPSEs.

SECURITIES AND EXCHANGE BOARD OF INDIA
SECONDARY MARKET DEPARTMENT
Mittal Court, A Wing, Gr. Floor,
224, Nariman Point, Mumbai 400 021

SMD-II/POLICY/CIR - 08 /2000
February 04, 2000

To,

Presidents/Executive Directors/Managing Directors
Of Stock Exchanges.

Dear Sir/Madam,

Sub : Amendments to the Listing Agreement

The SEBI Board in its meeting held on January 25, 2000 considered the recommendations of the Accounting Standards Committee relating to continuous disclosure requirements of the listed companies and has decided to make the following amendments to the listing agreement.

1. Amendment to Clause 32 (Cash Flow Statement)

Stock Exchanges were advised to amend Clause 32 of the Listing Agreement, vide our circular no. SMD-I(N)/JJ/2331/95 dated June 26, 1995, to provide that listed companies shall give a Cash Flow statement in the Annual Report and the following addition was made to the Clause 32 : "The company will also give a Cash Flow Statement along with the Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Annexure attached hereto". With a view to harmonise the disclosure requirements under the Listing Agreement and the Accounting Standard issued by Institute of Chartered Accountants of India (ICAI), it has been decided that the Cash Flow Statement being disclosed in terms of Listing Agreement shall henceforth be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by ICAI and the relevant portion of the Clause 32 shall be amended as follows : "The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3".

2. Amendment to Clause 41 (Unaudited Financial Quarterly Results)

Certain additional disclosures shall be made in the unaudited financial quarterly results of the companies and the half yearly results shall be subjected to a Limited Review by the Auditors with effect from half year ending on March 31, 2000. It has also been decided that :

1. companies may be permitted to consider unaudited quarterly results in the meeting of a Sub-Committee of the Board of Directors consisting of not less than one-third of the total number of Directors
2. the notice period required for intimation to the stock exchanges of Board or its Sub-Committee meetings for consideration of financial results shall be reduced from 15 days to 7 days.
3. companies shall be required to announce the financial results after the Market Hours on the date of the Board Meeting or meeting of a Sub-Committee of Board of Directors.

Accordingly, Clause 41 of the Listing Agreement shall be amended as per the Annexure.

1. Amendment to Clause 19 (Declaration of Dividend/Rights and Bonus etc.)

Clause 19 of the Listing Agreement shall be amended to give effect to the following decisions of the Board :

1. Prior intimation about the Board Meeting at which declaration of dividend is due to be considered must be made at least 7 days in advance.
2. The company shall give notice simultaneously to the stock exchanges in case the proposal for declaration of bonus is communicated to the Board of Directors of the company as part of the agenda papers.
3. No prior intimation is required about the Board Meeting in case the declaration of Bonus by the company is not on the agenda of the Board Meeting.

1. Amendment to Clauses 20 and 22 (Announcements after the Board Meetings)

Under Clauses 20 and 22 of the Listing Agreement companies are required to intimate to the stock exchange, immediately after the meeting of Board of Directors, regarding the decisions taken in respect of declaration of dividend or rights or bonus etc.. In order to avoid excessive volatility in stock prices due to announcement regarding dividend, rights etc., during the Market Hours, it has been decided that such announcement shall be made immediately on the date of the Board Meeting only after the close of the Market Hours. Clauses 20 and 22 of the Listing Agreement shall be amended, accordingly. Disclosure on the Web Site of the Exchanges.

It has also been decided that information furnished by the companies under continuous disclosure requirements, as specified in the Listing Agreement, shall be published on the web site of the exchange instantly and stock exchanges are advised to make immediate arrangement for display of the information furnished by the companies instantly on the web site.

Yours faithfully,

M D PATEL
EXECUTIVE DIRECTOR
SECONDARY MARKET DEPARTMENT –II

Encl: as above

ANNEXURE

CLAUSE 41 OF LISTING AGREEMENT:

Company agrees that it will furnish unaudited financial results on a quarterly basis with effect from the Quarter ending on March 31, 2000 in the following pro-forma within one month from the end of quarter (Quarter means 3 months only) to the Stock Exchange and will make an announcement to the stock exchanges where the company is listed, immediately after the market hours on the date of the Board Meeting or Meeting of a Sub Committee of Board of Directors (consisting of not less than one third of the Directors), in which the unaudited financial results are placed and also within 48 hours of the conclusion of the Board or its sub committee Meeting in at least one English daily newspaper circulating in the whole or substantially the whole of India and in one newspaper published in the language of the region, where the registered office of the Company is situated. The Board of Directors or its Sub Committee should take on record the unaudited quarterly results which shall be signed by the Managing Director/Director. The company shall inform the Stock Exchange where its securities are listed about the date of the board Meeting at least 7 days in advance and shall also issue immediately a press release in at least one national newspaper and one regional language newspaper about the date of aforesaid Board or its Sub Committee Meeting.

The unaudited results should not substantially differ from the audited results of the company; If the sum total of the First, Second, Third and Fourth quarterly unaudited results in respect of any item given in the same pro-forma varies by 20 per cent when compared with the audited results for the full year the company shall explain the reasons to the Stock Exchanges.

In addition, the Company shall prepare the half yearly results in the same pro-forma with effect from half year ending on March 31, 2000 and the same shall be approved by the Board of Directors and subjected to a "Limited Review" by the Auditors of the Company and a copy of the Review Report shall be submitted to the Stock Exchanges within 2 months after the close of the half year . For the purpose of this Review half year shall be construed as consisting of the first two quarters of the Company's Financial Year. If the sum total of First and Second quarterly un-audited results in respect of any item given in the same pro-forma format varies by 20% or more from the respective half yearly results as determined after the "Limited Review" by the Auditors, the Company shall send a statement (approved by the Board of Directors) explaining the reasons to the Stock Exchanges along with Review Report

In respect of results for the last quarter of the financial year, if the company intimates in advance to the stock exchange/s that it will publish audited results within a period of 3 months from the end of the last quarter of the financial year, in such a case unaudited results for the last quarter need not be published/given to the stock exchange/s.

The quarterly results shall be prepared on the basis of accrual accounting policy and in accordance with uniform accounting practices adopted for all the periods on quarterly basis.

UNAUDITED FINANCIAL RESULTS FOR THE THREE MONTHS ENDED

(Rs. In Lakhs)

	(1)	(2)	(3)	(4)	(5)
	3 MONTHS ENDED	Corresponding 3 Months in the Previous year.	Year To date Figures for current period	Year to date Figures for the Previous year	Previous Accounting Year.
1. Net Sales/Income from Operations					
2. Other Income					
3. Total Expenditure					
1. Increase/decrease in stock in trade					
2. Consumption of raw materials					
3. Staff cost					
4. Other expenditure					

(Any item exceeding 10% of the total expenditure to be shown separately).

1. Interest
2. Depreciation
3. Profit (+)/Loss(-) before tax (1+2-3-4-5)
4. Provision for taxation
5. Net Profit (+)/Loss (-) (6-7)
6. Paid-up equity share capital
7. Reserves excluding revaluation reserves (as per balance sheet) of previous accounting year to be given in column (5)
8. Basic and diluted EPS for the period, for the year to date and for the previous year (not to be annualised)

Notes :

1. Any event or transaction that is material to an understanding of the results for the quarter including completion of expansion and diversification programmes, strikes, lock-outs, change in management, change in capital structure etc, shall be disclosed. Similar material event or transactions subsequent to the end of the quarter, the effect whereof is not reflected in the results for the quarter shall also be disclosed.
2. All material non-recurring/abnormal income/gain and expenditure/loss and effect of all changes in accounting practices affecting the profits materially must be disclosed separately.
3. In case of companies whose revenues are subject to material seasonal variations, they shall disclose the seasonal nature of their activities and may also supplement their unaudited financial results with information for 12 month periods ended at the interim date (last day of the quarter) for the current and preceding years on a rolling basis.
4. Company shall give the following information in respect of dividend paid or recommended for the year including interim dividends declared :
 1. Amount of Dividend distributed or proposed distinguishing between different classes of shares and Dividend per share also indicating nominal value per share.
 2. Where Dividend is paid or proposed pro-rata for shares allotted during the year, the date of allotment, number of shares allotted pro-rata amount of dividend per share and the aggregate amount of dividend paid or proposed on

pro-rata basis.

- 1 The effect of changes in composition of the company during the quarter, including business combinations, acquisitions or disposal of subsidiaries and long term investments, restructuring and discontinuing operations shall be disclosed.
1. If there is any qualifications by the Auditors, in respect of the Audited Accounts of the previous accounting year which has a material impact on the profit disclosed in such accounts, then the company shall disclose the same along with the unaudited quarterly results and give explanation as to how such qualifications has been addressed in the unaudited financial results.
2. If the company is yet to commence commercial production, then instead of the quarterly results, the company should give particulars of the status of the project, its implementation and the expected date of commissioning of the project.
3. The un-audited results sent to Stock Exchange/s and published in newspapers should be based on the same set of accounting policies as those followed in the previous year. In case, there are changes in the accounting policies, the results of previous year will be recast as per the present accounting policies, to make it comparable with current year results.
4. If the period of the Financial Year is more than 12 months and not exceeding 15 months there will be 5 Quarters and is more than 15 months but not exceeding 18 months there will be 6 Quarters and the financial results will be intimated to the Exchange and published in the News papers accordingly. Half yearly results which are required to be subjected to the "Limited Review" by the Auditors shall be prepared for the first two quarters where the Financial Year does not exceed 15 months and for the first two quarters and also separately for the third and fourth quarters where the Financial Year exceeds 15 months.

Parag Basu

*Deputy General Manager
Corporation Finance Department
Division of Issues and Listing-II*

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Fax: +91 22 2204 5633. Email: paragb@sebi.gov.in

SEBI/CFD/DIL/CG/1/2004/12/10
October 29, 2004

**The Managing Director/Executive Director/Administrator
of all the Stock Exchanges**

Dear Sir/Madam,

Sub: Corporate Governance in listed Companies – Clause 49 of the Listing Agreement

1. **All Stock Exchanges are hereby directed to amend the Listing Agreement by replacing the existing Clause 49 of the listing agreement (issued vide circulars dated 21st February, 2000, 9th March 2000, 12th September 2000, 22nd January, 2001, 16th March 2001 and 31st December 2001) with the revised Clause 49 given in Annexure I through ID to this circular. SEBI Circular no. SEBI/MRD/SE/31/2003/26/08 dated August 26, 2003 (which has been since deferred) is hereby withdrawn. The revised Clause 49 also specifies the reporting requirements for a company.**
2. Please note that this is a master circular which supersedes all other earlier circulars issued by SEBI on Clause 49 of the Listing Agreement.
3. The provisions of the revised Clause 49 shall be implemented as per the schedule of implementation given below:
 - a) For entities seeking listing for the first time, at the time of seeking in-principle approval for such listing.
 - b) For existing listed entities which were required to comply with Clause 49 which is being revised i.e. those having a paid up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more at any time in the history of the company, **by April 1, 2005.**

Companies complying with the provisions of the existing Clause 49 at present (issued vide circulars dated 21st February, 2000, 9th March 2000, 12th September 2000, 22nd January, 2001 16th March 2001 and 31st December 2001) shall continue to do so till the revised Clause 49 of the Listing Agreement is complied with or till **March 31, 2005**, whichever is earlier.

4. The companies which are required to comply with the requirements of the revised Clause 49 shall submit a quarterly compliance report to the stock exchanges as per sub Clause VI (ii), of the revised Clause 49, within 15 days from the end of every quarter. The first such report would be submitted for the quarter ending **June 30, 2005**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

5. The revised Clause 49 shall apply to all the listed companies, in accordance with the schedule of implementation given above. However, for other listed entities which are not companies, but body corporate (e.g. private and public sector banks, financial institutions, insurance companies etc.) incorporated under other statutes, the revised Clause 49 will apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant regulatory authorities. The revised Clause 49 is not applicable to Mutual Funds.
6. The Stock Exchanges shall ensure that all provisions of the revised Clause 49 have been complied with by a company seeking listing for the first time, before granting the in-principle approval for such listing. For this purpose, it will be considered satisfactory compliance if such a company has set up its Board and constituted committees such as Audit Committee, Shareholders/ Investors Grievances Committee etc. in accordance with the revised clause before seeking in-principle approval for listing.
7. The Stock Exchanges shall set up a separate monitoring cell with identified personnel to monitor the compliance with the provisions of the revised Clause 49 on corporate governance. The cell, after receiving the quarterly compliance reports from the companies which are required to comply with the requirements of the revised Clause 49, shall submit a consolidated compliance report to SEBI within 60 days from the end of each quarter.

Yours faithfully,

Parag Basu

Encl: Annexure I, I A, I B, I C & I D

Clause 49 - Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

(A) Composition of Board

- (i) The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors.
- (ii) Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.
- (iii) For the purpose of the sub-clause (ii), the expression 'independent director' shall mean a non-executive director of the company who:
 - a. apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;
 - b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;
 - c. has not been an executive of the company in the immediately preceding three financial years;
 - d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:
 - i) the statutory audit firm or the internal audit firm that is associated with the company, and
 - ii) the legal firm(s) and consulting firm(s) that have a material association with the company.
 - e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director; and
 - f. is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

Explanation

For the purposes of the sub-clause (iii):

- a. Associate shall mean a company which is an "associate" as defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.
- b. "Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

c. "Relative" shall mean "relative" as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956..

(iv) Nominee directors appointed by an institution which has invested in or lent to the company shall be deemed to be independent directors.

Explanation:

"Institution" for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a "corresponding new bank" as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts]."

(B) Non executive directors' compensation and disclosures

All fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, including independent directors, in any financial year and in aggregate.

(C) Other provisions as to Board and Committees

- (i) The board shall meet at least four times a year, with a maximum time gap of three months between any two meetings. The minimum information to be made available to the board is given in **Annexure- I A**.
- (ii) A director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore it should be a mandatory annual requirement for every director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

Explanation:

1. For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 25 of the Companies Act shall be excluded.

2. For the purpose of reckoning the limit under this sub-clause, Chairmanship/ membership of the Audit Committee and the Shareholders' Grievance Committee alone shall be considered.

- (iii) The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

(D) Code of Conduct

- (i) The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
- (ii) All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

Explanation: For this purpose, the term “senior management” shall mean personnel of the company who are members of its core management team excluding Board of Directors.. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

II Audit Committee

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

- (i) The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
- (ii) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation 1: The term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation 2: A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- (iii) The Chairman of the Audit Committee shall be an independent director;
- (iv) The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
- (v) The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
- (vi) The Company Secretary shall act as the secretary to the committee.

(B) Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

(C) Powers of Audit Committee

The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

(D) Role of Audit Committee

The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
 - a. Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (2AA) of section 217 of the Companies Act, 1956
 - b. Changes, if any, in accounting policies and practices and reasons for the same
 - c. Major accounting entries involving estimates based on the exercise of judgment by management
 - d. Significant adjustments made in the financial statements arising out of audit findings
 - e. Compliance with listing and other legal requirements relating to financial statements
 - f. Disclosure of any related party transactions
 - g. Qualifications in the draft audit report.
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval
6. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
7. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
8. Discussion with internal auditors any significant findings and follow up there on.

9. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
10. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
11. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.
12. To review the functioning of the Whistle Blower mechanism, in case the same is existing.
13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Explanation (i): The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, Related Party Transactions, issued by The Institute of Chartered Accountants of India.

Explanation (ii): If the company has set up an audit committee pursuant to provision of the Companies Act, the said audit committee shall have such additional functions / features as is contained in this clause.

(E) Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee

III. Subsidiary Companies

- i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.
- ii. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.
- iii. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

Explanation 1: The term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the

listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation 2: The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation 3: Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

IV. Disclosures

(A) Basis of related party transactions

- (i) A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.
- (ii) Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee.
- (iii) Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same..

(B) Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

(C) Board Disclosures – Risk management

The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.

(D) Proceeds from public issues, rights issues, preferential issues etc.

When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than

those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

(E) Remuneration of Directors

- (i) All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.
- (ii) Further the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
 - (a) All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
 - (b) Details of fixed component and performance linked incentives, along with the performance criteria.
 - (c) Service contracts, notice period, severance fees.
 - (d) Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.
- (iii) The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report.
- (iv) The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.
- (v) Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director

(F) Management

- (i) As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:
 - i. Industry structure and developments.
 - ii. Opportunities and Threats.
 - iii. Segment-wise or product-wise performance.
 - iv. Outlook
 - v. Risks and concerns.
 - vi. Internal control systems and their adequacy.
 - vii. Discussion on financial performance with respect to operational performance.

viii. Material developments in Human Resources / Industrial Relations front, including number of people employed.

- (ii) Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.

(G) Shareholders

- (i) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:
- (a) A brief resume of the director;
 - (b) Nature of his expertise in specific functional areas;
 - (c) Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and
 - (d) Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above
- (ii) Quarterly results and presentations made by the company to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.
- (iii) A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as 'Shareholders/Investors Grievance Committee'.
- (iv) To expedite the process of share transfers, the Board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

V. CEO/CFO certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

- (a) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :

- (i) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - (ii) these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- (b) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
- (c) They accept responsibility for establishing and maintaining internal controls and that they have evaluated the effectiveness of the internal control systems of the company and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- (d) They have indicated to the auditors and the Audit committee
- (i) significant changes in internal control during the year;
 - (ii) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - (iii) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system

VI. Report on Corporate Governance

- (i) There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in **Annexure- I C** and list of non-mandatory requirements is given in **Annexure – I D**.
- (ii) The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in **Annexure I B**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company

VII. Compliance

- (1) The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.
- (2) The non-mandatory requirements given in **Annexure – I D** may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

Information to be placed before Board of Directors

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

Format of Quarterly Compliance Report on Corporate Governance

Name of the Company:

Quarter ending on:

Particulars	Clause of Listing agreement	Compliance Status Yes/No	Remarks
I. Board of Directors	49 I		
(A)Composition of Board	49(IA)		
(B)Non-executive Directors' compensation & disclosures	49 (IB)		
(C)Other provisions as to Board and Committees	49 (IC)		
(D)Code of Conduct	49 (ID)		
II. Audit Committee	49 (II)		
(A)Qualified & Independent Audit Committee	49 (IIA)		
(B)Meeting of Audit Committee	49 (IIB)		
(C)Powers of Audit Committee	49 (IIC)		
(D)Role of Audit Committee	49 II(D)		
(E)Review of Information by Audit Committee	49 (IIE)		
III. Subsidiary Companies	49 (III)		
IV. Disclosures	49 (IV)		
(A)Basis of related party transactions	49 (IV A)		
(B)Board Disclosures	49 (IV B)		
(C)Proceeds from public issues, rights issues, preferential issues etc.	49 (IV C)		
(D)Remuneration of Directors	49 (IV D)		
(E)Management	49 (IV E)		
(F)Shareholders	49 (IV F)		
V.CEO/CFO Certification	49 (V)		
VI. Report on Corporate Governance	49 (VI)		
VII. Compliance	49 (VII)		

Note:

- 1) The details under each head shall be provided to incorporate all the information required as per the provisions of the Clause 49 of the Listing Agreement.
- 2) In the column No.3, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the Clause 49 I of the Listing Agreement, "Yes" may be indicated. Similarly, in case the company has no related party transactions, the words "N.A." may be indicated against 49 (IV A).

3) In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the AGM/EGM, it might be indicated in the "Remarks" column as – "will be complied with at the AGM". Similarly, in respect of matters which can be complied with only where the situation arises, for example, "Report on Corporate Governance" is to be a part of Annual Report only, the words "will be complied in the next Annual Report" may be indicated.

Suggested List of Items to Be Included In the Report on Corporate Governance in the Annual Report of Companies

1. A brief statement on company's philosophy on code of governance.
2. Board of Directors:
 - i. Composition and category of directors, for example, promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as lender or as equity investor.
 - ii. Attendance of each director at the Board meetings and the last AGM.
 - iii. Number of other Boards or Board Committees in which he/she is a member or Chairperson
 - iv. Number of Board meetings held, dates on which held.
3. Audit Committee:
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Meetings and attendance during the year
4. Remuneration Committee:
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Attendance during the year
 - iv. Remuneration policy
 - v. Details of remuneration to all the directors, as per format in main report.
5. Shareholders Committee:
 - i. Name of non-executive director heading the committee
 - ii. Name and designation of compliance officer
 - iii. Number of shareholders' complaints received so far
 - iv. Number not solved to the satisfaction of shareholders
 - v. Number of pending complaints
6. General Body meetings:
 - i. Location and time, where last three AGMs held.
 - ii. Whether any special resolutions passed in the previous 3 AGMs
 - iii. Whether any special resolution passed last year through postal ballot – details of voting pattern
 - iv. Person who conducted the postal ballot exercise
 - v. Whether any special resolution is proposed to be conducted through postal ballot
 - vi. Procedure for postal ballot

7. Disclosures:

- i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
- ii. Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
- iii. Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
- iv. Details of compliance with mandatory requirements and adoption of the non-mandatory requirements of this clause

8. Means of communication.

- i. Quarterly results
- ii. Newspapers wherein results normally published
- iii. Any website, where displayed
- iv. Whether it also displays official news releases; and
- v. The presentations made to institutional investors or to the analysts.

9. General Shareholder information:

- i. AGM : Date, time and venue
- ii. Financial year
- iii. Date of Book closure
- iv. Dividend Payment Date
- v. Listing on Stock Exchanges
- vi. Stock Code
- vii. Market Price Data : High., Low during each month in last financial year
- viii. Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
- ix. Registrar and Transfer Agents
- x. Share Transfer System
- xi. Distribution of shareholding
- xii. Dematerialization of shares and liquidity
- xiii. Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
- xiv. Plant Locations
- xv. Address for correspondence

Non-Mandatory Requirements

(1) The Board

A non-executive Chairman may be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.

Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company.

(2) Remuneration Committee

- i. The board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.
- ii. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors may comprise of at least three directors, all of whom should be non-executive directors, the Chairman of committee being an independent director.
- iii. All the members of the remuneration committee could be present at the meeting.
- iv. The Chairman of the remuneration committee could be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

(3) Shareholder Rights

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

(4) Audit qualifications

Company may move towards a regime of unqualified financial statements.

(5) Training of Board Members

A company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

(6) Mechanism for evaluating non-executive Board Members

The performance evaluation of non-executive directors could be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated; and Peer Group evaluation could be the mechanism to determine whether to extend / continue the terms of appointment of non-executive directors.

(7) Whistle Blower Policy

The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the

company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

MOST IMMEDIATE

No. 18(8)/2005-GM
Government of India
Ministry of Heavy Industries and Public Enterprises
Department of Public Enterprises
Block No.14, CGO Complex,
Lodi Road, New Delhi - 110003
Dated, the 14th May, 2010

OFFICE MEMORANDUM

Subject: Guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs)

The undersigned is directed to state that the Guidelines on Corporate Governance for CPSEs were issued in June, 2007 for an experimental phase of one year. The CPSEs have implemented these Guidelines, which were voluntary in nature, for the full year 2008-09.

2. The Government has reviewed the above matter and in light of experiences gained and also the need to adopt good corporate governance practices in CPSEs, decided to continue these Guidelines on a mandatory basis with minor modifications.

3. The revised Guidelines on Corporate Governance for CPSEs are available on DPE website (url - <http://dpe.nic.in/newsite/gcgcps2010.pdf>).

4. All administrative Ministries/Departments are requested to take note of the above and issue suitable directions to all CPSEs under their respective administrative jurisdiction to comply with the revised Guidelines on Corporate Governance on a mandatory basis and also to submit quarterly progress reports with regard to compliance in the prescribed format within 15 days from the close of each quarter.

5. The Administrative Ministries are also requested to consolidate the information obtained from the CPSEs and furnish a comprehensive report to the Department of Public Enterprises by 31st May of every financial year on the status of compliance of Corporate Governance Guidelines.

6. This issues with the approval of Minister of Heavy Industries & Public Enterprises.

(Rakesh Sarwal)
Joint Secretary to the Government of India
Tel: 2436-3411

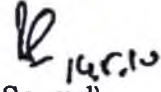
To,

Secretaries of all administrative Ministries/Departments

Copy to :- Chief Executives of all CPSEs

Copy also to :-

- (i) Secretary, Department of Personnel & Training, North Block, New Delhi.
- (ii) Secretary, Ministry of Corporate Affairs, Shastri Bhavan, New Delhi.
- (iii) Secretary, Department of Expenditure, North Block, New Delhi.
- (iv) Secretary, Planning Commission, Yojna Bhavan, New Delhi.
- (v) Prime Minister's Office (Ms. Pallavi Jain, Director), South Block, New Delhi.
- (vi) Shri K.L. Sharma, Director (Cabinet), Rashtrapati Bhavan, New Delhi - w.r.t. Cabinet Secretariat communication no./ 14/CM/2010(i) dated 29.3.2010.
- (vii) PS to Minister (HI & PE)
- (viii) PS to MOS (HI & PE)
- (ix) PS to Secretary (PE)
- (x) PS to Secretary (BRPSE)
- (xi) PS to AS & FA (HI & PE)
- (xii) PS to Adviser (PE)



(Rakesh Sarwal)

Joint Secretary to the Government of India

**Guidelines on
Corporate Governance
for Central Public Sector Enterprises
2010**



**Government of India
Ministry of Heavy Industries and Public
Enterprises
Department of Public Enterprises
Block 14, CGO Complex, Lodi Road,
New Delhi - 110 003**

Website: www.dpe.nic.in

May 2010

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CHAPTER 1 - INTRODUCTION

1.1 Corporate Governance involves a set of relationships between a company's management, its Board, its shareholders and other stakeholders. Corporate Governance provides a principled process and structure through which the objectives of the company, the means of attaining the objectives and systems of monitoring performance are also set. Corporate Governance is a set of accepted principles by management of the inalienable rights of the shareholders as a true owner of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, ethical business conduct, transparency and makes a distinction between personal and corporate funds in the management of a company.

1.2 There are about 250 Central Public Sector Enterprises (CPSEs). Majority of these CPSEs, including Maharatnas, Navratnas and Miniratnas, are earning profit and have improved their financial performance over the years. In the context of the policy of the government to grant more autonomy to the CPSEs and encourage them to access the capital markets for their fund requirement, Corporate Governance has become even more important. Under the recently introduced Maharatna Scheme, CPSEs are expected to expand international operations and become global giants, for which effective Corporate Governance is imperative.

1.3 These guidelines on Corporate Governance are formulated with the objective that the CPSEs follow the guidelines in their functioning. Proper implementation of these guidelines would protect the interest of shareholders and relevant stakeholders.

1.4 The Department of Public Enterprises (DPE) had issued guidelines on composition of Board of Directors of Central Public Sector Enterprises (CPSEs) in 1992 (Annex-I). According to these guidelines at least one-third of the Directors on the Board of a CPSE should be non-official Directors. The Maharatna, Navratna and Miniratna schemes provide that exercise of the enhanced powers delegated to these CPSEs is subject to the condition that their Boards are professionalised by inducting adequate number of non-official Directors, with minimum of four in case of Maharatna, Navratnas and minimum of three in case of Miniratnas. The schemes for Maharatna, Navratna and Miniratna CPSEs also provide for setting up of Audit Committees.

1.5 In November 2001, DPE issued further guidelines on the composition of Board of Directors of listed CPSEs (**Annex-II**). It provided that the number of Independent Directors should be at least one-third of the Board if the Chairman is non-executive, and not less than 50% if the Board has an executive Chairman. Relevant extracts of Clause 49 of the Listing Agreement with Stock Exchanges issued by Securities and Exchange Board of India (SEBI) forms part of the said guidelines.

1.6 To bring in more transparency and accountability in the functioning of CPSEs, the Government in June, 2007 introduced, for an experimental period of one year, the Guidelines on Corporate Governance for CPSEs. These Guidelines were of voluntary nature. Since the issue of these guidelines, the CPSEs have had the opportunity to implement them for the whole of the financial year 2008-09. These Guidelines have been modified and improved upon based on the experience gained during the experimental period of one year. The Government have felt the need for continuing the adoption of good Corporate Governance Guidelines by CPSEs for ensuring higher level of transparency and decided to make these Guidelines mandatory and applicable to all CPSEs.

1.7 Apart from these instructions of DPE, the CPSEs are governed by the Companies Act, 1956 and regulations of various authorities like Comptroller and Auditor General of India (C&AG), Central Vigilance Commission (CVC), Administrative Ministries, other nodal Ministries, etc. The Right to Information Act 2005 is also applicable to the CPSEs. The CPSEs fall under the definition of 'State' as provided in Article 12 of the Constitution of India. Further, some principles of Corporate Governance are already in vogue in public sector because (a) the Chairman, Managing Director and Directors are appointed independently through a prescribed procedure; (b) Statutory auditors are appointed independently by the C&AG; (c) Arbitrary actions, if any, of the Management can be challenged through writ petitions; (d) Remuneration of Directors, employees, etc. are determined on the basis of recommendations of Pay Committees constituted for this purpose; etc.

CHAPTER 2 - APPLICABILITY OF GUIDELINES

2.1 For the purpose of evolving Guidelines on Corporate Governance, CPSEs have been categorised into two groups, namely, (i) those listed on the Stock Exchanges; (ii) those not listed on the Stock Exchanges.

CPSEs listed on Stock Exchanges:

2.2 In so far as listed CPSEs are concerned, they have to follow the SEBI Guidelines on Corporate Governance. In addition, they shall follow those provisions in these Guidelines which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines.

Non-listed CPSEs:

2.3 Each CPSE should strive to institutionalize good Corporate Governance practices broadly in conformity with the SEBI Guidelines. The listing of the non-listed CPSEs on the stock exchanges may also be considered within a reasonable time frame to be set by the Administrative Ministry concerned in consultation with the CPSEs concerned. The non-listed CPSEs shall follow the Guidelines on Corporate Governance given in the subsequent chapters, which are mandatory.

2.4 The guidelines on Corporate Governance for listed and unlisted CPSEs are being dealt in the succeeding chapters under the following headings.

- Board of Directors
- Audit Committee
- Remuneration Committee
- Subsidiary Companies
- Disclosures
- Report, Compliance and Schedule of Implementation

CHAPTER 3 - BOARD OF DIRECTORS

3.1 Composition of Board

3.1.1 The Board of Directors of the company shall have an optimum combination of Functional, Nominee and Independent Directors.

3.1.2 The number of Functional Directors (including CMD/MD) should not exceed 50% of the actual strength of the Board.

3.1.3 The number of Nominee Directors appointed by Government/other CPSEs shall be restricted to a maximum of two.

3.1.4 In case of a CPSE listed on the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman, the number of Independent Directors shall be at least 50% of Board Members; and in case of all other CPSEs (i.e. listed on Stock Exchange but without an Executive Chairman, or not listed CPSEs), at least one-third of the Board Members should be Independent Directors. The expression 'Independent Director' shall mean a part-time Director of the company who:

- (a) apart from receiving Director's remuneration, does not have any material pecuniary relationship or transaction with the company, its Directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the Director;
- (b) is not related to persons occupying management positions at the Board level or at one level below the Board;
- (c) has not been a senior executive or managerial personnel of the company in the immediately preceding three financial years;
- (d) Is not a partner or an executive, or was not a partner or an executive during the preceding three years, of any of the following:
 - i) the statutory audit firm or the internal audit firm or tax audit firm or energy audit firm or management audit firm or risk audit firm or insurance audit firm that is associated with the company, and
 - ii) the panel advocate(s) or legal firm(s) or consultant(s) and consulting firm(s) or expert(s) that have a material association with the company.

- (e) is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director;
- (f) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares.

Explanation

For the purposes of the sub-clause 3.1.4:

(i) "Associate" shall mean a company which is an "associate" as defined in Accounting Standard 23 (AS-23), "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.

(ii) "Senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads.

(iii) "Relative" shall mean "relative" as defined in Section 2(41) and Section 6 read with Schedule IA of the Companies Act, 1956 (Extract from the Companies Act is at Annex III).

3.1.5 Nominee Directors appointed by an institution which has invested in or lent to the company shall be deemed to be Independent Directors.

Explanation:

"Institution" for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a "corresponding new bank" as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts]."

3.2 Part-time Directors' compensation and disclosures

All fees/compensation, if any, paid to part-time Directors, including Independent Directors, shall be fixed by the Board of Directors subject to the provisions in the DPE guidelines and the Companies Act, 1956.

3.3 Other provisions as to Board and Committees

3.3.1 **Number of Board meetings:-** The Board shall meet at least once in every three months and at least four such meetings shall be held every year. Further, the time gap between any two meetings should not be more than three months.

The minimum information to be made available to the Board is given in Annex-IV.

3.3.2 A Director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a Director. Furthermore it should be a mandatory annual requirement for every Director to inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

Explanation:

- a. For the purpose of considering the limit of the committees on which a Director can serve, all public limited companies, whether listed or not, shall be included.
- b. For the purpose of reckoning the limit under this sub-clause, Chairmanship/membership of the Audit Committee and the Shareholders' Grievance Committee alone shall be considered.

3.3.3 **Compliance of Laws to be reviewed:-** The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

3.4 Code of Conduct

3.4.1 The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be circulated and also posted on the website of the company.

3.4.2 All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by its Chief Executive.

3.4.3 Guidelines and policies evolved by the Central Government with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed.

3.4.4 There shall be no extravagance in expenditure on the part of Board members and senior management personnel. CPSEs executives shall be accountable for their performance in conformity with established norms of

conduct.

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team, excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads.

3.4.5 Any external/internal changes made from time to time, due to addition of or amendment to laws/regulatory rules, applicable to CPSEs, need to be dealt with carefully by the respective Boards/senior management personnel.

3.4.6 A suggested list of items to be included in the code of conduct is given at **Annex-V**. Further, to assist the CPSEs in the formulation of the code, a model Code of Business Conduct and Ethics for Board Members and Senior Management is given at **Annex-VI**.

3.5 Functional Role Clarity between Board of Directors and Management

A clear definition of the roles and the division of responsibilities between the Board and the Management is necessary to enable the Board to effectively perform its role. The Board should have a formal statement of Board Charter which clearly defines the roles and responsibilities of the Board and individual Directors. The Board of each CPSE may be encouraged to articulate its Corporate Governance objectives and approach (within the broad parameters of these guidelines and the general perception of business risk) to satisfy the expectations of its majority shareholders and other stakeholders.

3.6 Risk Management

Enterprise risk management helps management in achieving CPSE's performance and profitability targets. It helps to ensure effective reporting and compliance with laws and regulations, and helps avoid damage to the entity's reputation and associated consequences. Considering the significance of risk management in the scheme of corporate management strategies, its oversight should be one of the main responsibilities of the Board/Management. The Board should ensure the integration and alignment of the risk management system with the corporate and operational objectives and also that risk management is undertaken as a part of normal business practice and not as a separate task at set times.

3.7 Training of Directors

The company concerned shall undertake training programme for its new Board members (Functional, Government, Nominee and Independent) in the business model of the company including risk profile of the business of company, responsibility of respective Directors and the manner in which such responsibilities are to be discharged. They shall also be imparted training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

CHAPTER 4 - AUDIT COMMITTEE

4.1 Qualified and Independent Audit Committee

A qualified and independent Audit Committee shall be set up, giving the terms of reference.

4.1.1 The Audit Committee shall have minimum three Directors as members. Two-thirds of the members of audit committee shall be Independent Directors.

4.1.2 The Chairman of the Audit Committee shall be an Independent Director.

4.1.3 All members of Audit Committee shall have knowledge of financial matters of Company, and at least one member shall have good knowledge of accounting and related financial management expertise.

Explanation 1: The term "knowledge of financial matters of Company" means the ability to read and understand basic financial procedures and statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation 2: A member will be considered to have accounting and related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

4.1.4 The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries; provided that in case the Chairman is unable to attend due to unavoidable reasons, he may nominate any member of the Audit Committee.

4.1.5 The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the Committee. The Audit Committee may also meet without the presence of any executives of the company. The Finance Director, Head of Internal Audit and a representative of the Statutory Auditor may be specifically invited to be present as invitees for the meetings of the Audit Committee as may be decided by the Chairman of the Audit Committee.

4.1.6 The Company Secretary shall act as the Secretary to the Audit Committee.

4.2 Role of Audit Committee: The role of the Audit Committee shall include the following:

4.2.1 Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.

4.2.2 Recommending to the Board the fixation of audit fees.

4.2.3 Approval of payment to statutory auditors for any other services rendered by the statutory auditors.

4.2.4 Reviewing, with the management, the annual financial statements before submission to the Board for approval, with particular reference to:

- a. Matters required to be included in the Directors' Responsibility Statement to be included in the Board's report in terms of clause (2AA) of section 217 of the Companies Act, 1956;
- b. Changes, if any, in accounting policies and practices and reasons for the same;
- c. Major accounting entries involving estimates based on the exercise of judgment by management;
- d. Significant adjustments made in the financial statements arising out of audit findings;
- e. Compliance with legal requirements relating to financial statements;
- f. Disclosure of any related party transactions; and
- g. Qualifications in the draft audit report.

4.2.5 Reviewing, with the management, the quarterly financial statements before submission to the Board for approval.

4.2.6 Reviewing, with the management, performance of internal auditors and adequacy of the internal control systems.

4.2.7 Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure, coverage and frequency of internal audit.

4.2.8 Discussion with internal auditors and/or auditors any significant findings and follow up there on.

4.2.9 Reviewing the findings of any internal investigations by the internal auditors/auditors/agencies into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board.

4.2.10 Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.

4.2.11 To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

4.2.12 To review the functioning of the Whistle Blower Mechanism.

4.2.13 To review the follow up action on the audit observations of the C&AG audit.

4.2.14 To review the follow up action taken on the recommendations of Committee on Public Undertakings (COPU) of the Parliament.

4.2.15 Provide an open avenue of communication between the independent auditor, internal auditor and the Board of Directors

4.2.16 Review all related party transactions in the company. For this purpose, the Audit Committee may designate a member who shall be responsible for reviewing related party transactions.

Explanation: The term "related party transactions" shall have the same meaning as contained in the Accounting Standard 18, issued by the Institute of Chartered Accountants of India.

4.2.17 Review with the independent auditor the co-ordination of audit efforts to assure completeness of coverage, reduction of redundant efforts, and the effective use of all audit resources.

4.2.18 Consider and review the following with the independent auditor and

the management:

- The adequacy of internal controls including computerized information system controls and security, and
- Related findings and recommendations of the independent auditor and internal auditor, together with the management responses.

4.2.19 Consider and review the following with the management, internal auditor and the independent auditor:

- Significant findings during the year, including the status of previous audit recommendations
- Any difficulties encountered during audit work including any restrictions on the scope of activities or access to required information,

Explanation: If the company has set up an Audit Committee pursuant to provision of the Companies Act, the said Audit Committee shall have such additional functions/features as contained in these guidelines.

4.2.20 Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

4.3 Powers of Audit Committee

Commensurate with its role, the Audit Committee should be invested by the Board of Directors with sufficient powers, which should include the following:

- (i) To investigate any activity within its terms of reference.
- (ii) To seek information on and from any employee.
- (iii) To obtain outside legal or other professional advice, subject to the approval of the Board of Directors.
- (iv) To secure attendance of outsiders with relevant expertise, if it considers necessary.
- (v) To protect whistle blowers.

4.4 Meeting of Audit Committee

The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the Audit Committee whichever is greater, but a minimum of two independent members must be present.

4.5 Review of information by Audit Committee

The Audit Committee shall review the following information:

- (i) Management discussion and analysis of financial condition and results of operations;
- (ii) Statement of related party transactions submitted by management;
- (iii) Management letters / letters of internal control weaknesses issued by the statutory auditors;
- (iv) Internal audit reports relating to internal control weaknesses;
- (v) The appointment and removal of the Chief Internal Auditor shall be placed before the Audit Committee; and
- (vi) Certification/declaration of financial statements by the Chief Executive/Chief Finance Officer.

CHAPTER 5 - REMUNERATION COMMITTEE

5.1 Each CPSE shall constitute a Remuneration Committee comprising of at least three Directors, all of whom should be part-time Directors (i.e Nominee Directors or Independent Directors). The Committee should be headed by an Independent Director. CPSE will not be eligible for Performance Related Pay unless the Independent Directors are on its Board. Remuneration Committee will decide the annual bonus/variable pay pool and policy for its distribution across the executives and non unionized supervisors, within the prescribed limits.

CHAPTER 6 - SUBSIDIARY COMPANIES

6.1 At least one Independent Director on the Board of Directors of the holding company shall be a Director on the Board of Directors of its subsidiary company.

6.2 The Audit Committee of the holding company shall also review the financial statements of its subsidiary company.

6.3 The minutes of the Board meetings of the subsidiary company shall be placed at the Board meeting of the holding company. The management should periodically bring to the attention of the Board of Directors of the holding company, a statement of all significant transactions and arrangements entered into by its subsidiary company.

Explanation: For the purpose of these guidelines, only those subsidiaries whose turnover or net worth is not less than 20% of the turnover or net worth respectively of the Holding company in the immediate preceding accounting year may be treated as subsidiary companies.

CHAPTER 7 - DISCLOSURES

7.1 Transactions

7.1.1 A statement in summary form of transactions with related parties in the normal and ordinary course of business shall be placed periodically before the Audit Committee.

7.1.2 Details of material individual transactions with related parties, which are not in the normal and ordinary course of business, shall be placed before the Audit Committee.

7.1.3 Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the Audit Committee, together with Management's justification for the same.

7.2 Accounting Standards

7.2.1 Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation in the Corporate Governance Report as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

7.2.2 The Companies Act, 1956 as well as many other statutes require that financial statements of an enterprise should give a true and fair view of its financial position and working results. That requirement is implicit even in the absence of a specific detailed provision to this effect. However, what constitutes a true and fair view has not been defined either in the Companies Act, 1956 or in any other statute. The Accounting Standards as well as other transactions of the Institute of Chartered Accountants of India on accounting matters seek to prescribe the accounting principles and the methods of applying these principles in preparation and presentation of financial statements so that they give a true and fair view.

7.2.3 Consolidated financial statements present financial information about the parent company, its subsidiaries, its associates and joint ventures as an economic entity to show the economic resources controlled by the group, the obligation of the group and the results the group achieved with its resources,

which is not determinable from individual financial statements of parent, subsidiaries, associates and joint ventures. All CPSEs shall prepare consolidated financial statements as per Accounting Standards, namely, AS21, AS23 and AS27 issued by the Institute of Chartered Accountants of India (ICAI) in relation to the Consolidation of Financial Statements.

7.2.4 Many CPSEs provide groups of products and services or operate in geographical areas that are subject to differing rates of profitability, opportunities for growth, future prospects, and risks which may not be determinable from the aggregated data. Reporting of segment information is widely regarded as necessary for meeting the needs of users of financial statements. Hence, all CPSEs are required to publish segment wise profit and loss as per Accounting Standard 17 "Segment Reporting" issued by ICAI.

7.3 Board Disclosures – Risk management

7.3.1 The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. Procedure will be laid down for internal risk management also.

7.3.2 The Board should implement policies and procedures which should include:

- (a) staff responsibilities in relation to fraud prevention and identification
- (b) responsibility of fraud investigation once a fraud has been identified
- (c) process of reporting on fraud related matters to management
- (d) reporting and recording processes to be followed to record allegations of fraud
- (e) requirements of training to be conducted on fraud prevention and identification.

7.4 Remuneration of Directors

7.4.1 All pecuniary relationship or transactions of the part-time Directors vis-à-vis the company shall be disclosed in the Annual Report.

7.4.2 Further the following disclosures on the remuneration of Directors shall be made in the section on the Corporate Governance of the Annual Report.

- a. All elements of remuneration package of all the directors i.e. salary,

- benefits, bonuses, stock options, pension, etc.
- b. Details of fixed component and performance linked incentives, along with the performance criteria.
- c. Service contracts, notice period, severance fees.
- d. Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.

7.5 Management

7.5.1 As part of the Directors' Report or as an addition thereto, a Management Discussion and Analysis Report should form part of the Annual Report. This Management Discussion and Analysis should include discussion on the following matters within the limits set by the company's competitive position:

- i. Industry structure and developments
- ii. Strength and weakness
- iii. Opportunities and Threats
- iv. Segment-wise or product-wise performance
- v. Outlook
- vi. Risks and concerns
- vii. Internal control systems and their adequacy
- viii. Discussion on financial performance with respect to operational performance
- ix. Material developments in Human Resources, Industrial Relations front, including number of people employed.
- x. Environmental Protection and Conservation, Technological conservation, Renewable energy developments, Foreign Exchange conservation
- xi. Corporate social responsibility

7.5.2 Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company (e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives, etc.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads.

CHAPTER 8 - REPORT, COMPLIANCE AND SCHEDULE OF IMPLEMENTATION

8.1 Report on Corporate Governance

There shall be a separate section on Corporate Governance in each Annual Report of company, with details of compliance on Corporate Governance. The suggested list of items to be included in the report on Corporate Governance is in Annex-VII.

8.2 Compliance

8.2.1 The company shall obtain a certificate from either the auditors or practicing Company Secretary regarding compliance of conditions of Corporate Governance as stipulated in these Guidelines and Annexes. The aforesaid certificate with the Directors' Report, which is sent annually to all the shareholders of the company, should also be included in the Annual Report.

8.2.2 Chairman's speech in Annual General Meeting (AGM) should also carry a section on compliance with Corporate Governance guidelines/norms and should form part of the Annual Reports of the concerned CPSE.

8.2.3 The grading of CPSEs may be done by DPE on the basis of the compliance with Corporate Governance guidelines/norms.

8.3 Schedule of implementation

These Guidelines on Corporate Governance are now mandatory. The CPSEs shall submit quarterly progress reports, within 15 days from the close of each quarter, in the format (Annex VIII) to respective Administrative Ministries/ Departments. The Administrative Ministries will consolidate the information obtained from the CPSEs and furnish a comprehensive report to the DPE by 31st May of every financial year on the status of compliance of Corporate Governance Guidelines during the previous financial year by the CPSEs under their jurisdiction.

8.4 DPE will, from time to time, make suitable modifications to these Guidelines in order to bring them in line with prevailing laws, regulations, acts, etc., DPE may also issue clarifications to the concerned Administrative Ministries/CPSEs on issues relating to the implementation of these Guidelines.

GUIDELINES ON COMPOSITION OF BOARD OF DIRECTORS OF CPSEs

I. Composition of Board of Directors of Public Sector Enterprises.

The question of Composition of the Board of Directors of PSEs has been considered from time to time and various guidelines have been issued in this regard by the Bureau of Public Enterprises. The Members of the Board of PSEs generally consist of the following three categories:-

i. Functional Directors:- These are full time operational Directors responsible for day to day functioning of the enterprise. The Economic Administrative Reform Commission (EARC) had recommended that each Board should have an adequate number of Functional Directors on it. This was considered by the Govt. and the Bureau of Public Enterprises had issued guidelines in 1984 that the posts of Director (Finance) and Director (Personnel) be created in all Schedule 'A' and Schedule 'B' enterprises and on a selective basis in Schedule 'C' Companies. Apart from these two functions, the enterprises could have representation at Board level for other disciplines such as production, marketing, project, planning etc. It is, however, observed that these guidelines are not being followed by the Administrative Ministries while constituting the Boards of PSEs. While in some cases the Boards are functioning without a single Functional Director, in others there is preponderance of such Directors.

ii. Government Directors:- These are appointed by the Administrative Ministries and are generally the officers dealing with the concerned enterprise. In most cases there are two such Directors on a Board; the Joint Secretary or Additional Secretary dealing with particular enterprise and the Financial Adviser of the Ministry. The question of representation of Government Directors on the Boards of PSEs was examined by the Arjun Sengupta Committee and following its recommendation, the Bureau of Public Enterprises have issued guidelines in 1986 that the Administrative Ministry concerned should not have more than one nominee Director on the Board of a PSE. In case of PSEs engaged in trading or dealing with important and exclusive items the number of Government Directors could be two. It is, however, noticed that in actual practice the number of Government Directors on the Boards of PSEs continues to be large.

iii. Non-Official Directors:- The induction of Non-Official Directors on the Boards of PSEs has been considered essential by various Committees and Commissions in order to make the Boards more professional. They are to be drawn from the public men, technocrats, management experts and consultants, and professional managers in industry and trade with a high degree of proven ability. The Bureau of Public Enterprises have issued guidelines in 1983 that the number of such Directors on a Board should be one-third of its total strength.

This input is considered *very* important as it plays a complementary role in providing professional and managerial advice to the Board. It has, however, been the experience that the vacancies of these Directors are not filled up to stipulated levels in many enterprises by the Ministries.

2. The Department of Public Enterprises has recently considered the question of professionalization of the Boards of PSEs in pursuance of the New Industrial policy Statement made in the parliament on 24th July, 1991 and it has been decided that the composition of the Boards of Directors in PSEs should be broadly on following lines:-

(A) Functional Directors:

Every Board should have some full time Functional Directors. The number of such Directors on a Board should not exceed 50% of the actual strength of the Board.

- i. In cases where the number of Functional Directors on the Board is more than the 50% of its actual strength (not sanctioned strength), Administrative Ministries will immediately undertake a review of the strength of the Board in consultation with Department of Public Enterprises and PESB.
- ii. On such Boards where the posts of Functional Directors do not exist, Administrative Ministries will take immediate steps to create such posts in accordance with the prescribed guidelines.

(B) Government Directors:

The number of the Government Directors on the Board of Directors of an enterprise should not exceed one-sixth of the actual strength of the Board.

- i. It will be preferable to have only one Government Director from the concerned Administrative Ministry on each Board. The choice of the nominee Director would vest with the Secretary of the concerned Department.
- ii. In case of PSEs where it is considered essential to give representation on the Boards to other concerned Government agencies/Ministries/State Governments, only one representation from the Group could also be appointed on the Board as part-time Government Director.
- iii. The number of Government Directors on a Board should in no case exceed two.

(C) Non official Directors

- i. The number of Non-Official Part-time Directors on a Board should be at least one-third of its actual strength. Wherever there is under representation of such Directors on the Board the concerned Ministries should take immediate steps to fill up the vacancies to stipulated level.
- ii. A Panel of suitable persons who could be considered for appointment as Non-Official Part-Time Director on the Boards of PSEs will be maintained centrally by Department of Public Enterprises. This Panel

will be prepared in consultation with PESB and the Secretary of the concerned Administrative Ministry.

(DPE O.M. No. 18 (6)/91-GM dated 16th March, 1992.)

II. Composition of Board of Directors of Public Sector Enterprises.

Reference is invited to this Department's O.M. of even number dated the 16th March, 1992 on the above mentioned subject. In para 2 (B) (ii) of the said O.M., it was, inter-alia, mentioned that the choice of the Nominee Director would vest with the Secretary of the concerned Department. The matter was reconsidered in this Department and it has now been decided that the choice of the Nominee Director would vest with the administrative Ministry of the concerned Department.

(DPE O.M. No. 18 (6)/91-DPE (GM) dated 13th November, 1995)

III. Age of retirement of part-time Chairmen and criteria for appointment of part-time non-official Directors in Central PSUs.

The question of prescribing age of retirement for part-time Chairmen of Central Public Sector Enterprises as also laying down requisite criteria for appointment of part-time nonofficial Directors on the Boards of PSUs were under consideration of the Government.

2. Government have now decided that the age of retirement of part-time Chairmen of public enterprises should be 62 years.

3. As regards the selection and appointment of part-time non-official Directors, the following criteria will come into force forthwith:

- (a) Qualification: Minimum qualification for part-time non-official Directors would be graduate degree from a recognized university.
- (b) Experience: Not less than 10 years at the level of Joint Secretary and above in the Government; CMD/MD in Corporate Sector/PSU; Professor level in an Academic Institution or professionals of repute like eminent Chartered Accountants/Cost Accountants at the level of Directors of Institutes/Heads of Department.

In selecting academics at the level of Professors, these academics should be in fields relevant to the company's area of operation, e.g. management, finance, marketing, technology, human resources, or law, as Professors of some other disciplines may have little to contribute.

- (c) Age: The age band should be between 45-65 years (minimum/maximum limit). This could however, be relaxed for eminent professionals, for reasons to be recorded, being limited to 70 years.

4. It has also been decided that the above criteria should be applied for Navratna/Miniratna enterprises in such a way as to ensure that they could be globally competitive and have a level playing field with the Corporates.

(DPE O.M. No. 18(10)/2003-GM-GL-55 dated 11th March, 2004)

IV Criteria for appointment of non-official (Independent) Directors in Central PSEs.

The undersigned is directed to refer to this Department's O.M. of even number dated 11th March, 2004 wherein the criteria for appointment of part-time non-official Directors in Central PSEs were laid down.

2. The criterion relating to 'Experience' has been reviewed by the Government and para 3(b) of the above referred OM has been modified as under:-

“(b) Experience: Not less than 10 years at the level of Joint Secretary and above in the Government; CMD/MD in Corporate Sector/PSE; Professor level in an Academic Institution or professionals of repute like eminent Chartered Accountants/ Cost Accountants at the level of Directors of Institutes/ Heads of Department; persons of eminence with proven track record from Industry, Business or Agriculture.”

3. All the administrative Ministries/Departments are requested to take note of the above modifications in the criteria for appointment of non-official (Independent) Directors for guidance and compliance.

(DPE O.M. No. 18(10)/2003-GM-GL-75 dated 10th November, 2005)

V. Turning selected Public Sector Enterprises into Global Giants - Operational and Administrative modalities - Restructuring of the Boards.

The Common Minimum Programme of the Government states, inter-alia, that Government will identify public sector enterprises that have comparative advantages and support them in their drive to become global giants. In pursuance of these objectives, the government have decided to grant enhanced autonomy and delegation of powers to nine selected public sector enterprises, namely BHEL, BPCL, HPCL, IOC, IPCL, NTPC, ONGC, SAIL and VSNL.

2. The exercise of the enhanced autonomy and authority shall be exercisable only after the Boards have been restructured, as indicated below. It must be ensured that each of these PSEs inducts in the first instance at least four non-official part-time Directors of an impeccable stature and background.

This number should be more for those PSEs which have a very large number of Functional Directors. It should also be ensured that within six months, the number of non-official part-time Directors in increased to reach at least 1/3rd of the total strength of the Board.

3. The above is in partial modification to the general guidelines issued by the Department of Public Enterprises vide OM No.18(6)/91-GM dated 16th March, 1992.

4. While selection of full-time Directors and part-time Government nominees Directors would continue to be done as per the existing procedures, for selection of the non-official part time Directors in these companies, a Search committee comprising Chairman-PESB, Secretary-DPE, Secretary of the Administrative Ministry and an eminent person (s) to be nominated by Industry Minister has been set up.

(DPE OM No.DPE/11(2)/97-Fin. dated 22nd July, 1997)

**COMPOSITION OF BOARD OF DIRECTORS OF
LISTED CENTRAL PUBLIC SECTOR ENTERPRISES**

According to the existing policy, as contained in this Department's O.M. No. 18(6)/91-GM dated 16.3.1992, the Board of Directors of Public Sector Undertakings should consist of (i) Full time Functional Directors whose number should not exceed 50% of the actual strength of the Board; (ii) Government Directors whose number should not exceed one-sixth of the actual strength of the Board subject to the condition that in no case the number should exceed two; and (iii) Non-official part-time Directors whose number should be at least one-third of the actual strength of the Board.

2. The Securities & Exchange Board of India (SEBI) has issued guidelines regarding Listing Agreements with Stock Exchanges, which include a new Clause 49 on Corporate Governance, an extract of which is enclosed (Annexure-I). It provides that in the cases of companies with non-Executive Chairmen at least one-third of the Board should comprise Independent Directors and in the cases of companies with Executive Chairmen at least half of the Board should comprise Independent Directors. The definition of Independent Directors is also given under the Clause 49. The SEBI has clarified that in the case of Public Sector Undertakings the Government nominee Directors cannot be considered as Independent Directors for the purpose of constitution of Board of Directors. The SEBI has, however, subsequently agreed that the nominees of Financial Institutions would be treated as Independent Directors for listed public sector companies. A schedule of implementation is also enclosed (Annexure-II).

3. As all listed companies including PSUs have to comply with the SEBI guidelines, there may be a need to reconstitute the Boards of Directors of some of the listed PSUs so that the requisite number of Independent Directors is inducted in order to avoid de-listing.

4. All the administrative Ministries/Departments are, therefore, requested to take appropriate action, if not already taken, to reconstitute the Board of Directors of listed PSEs in accordance with the SEBI guidelines within the time schedule prescribed. In case there is a need to increase the maximum number of Directors permissible under the Articles of Association, the respective PSEs may be advised to take steps to amend the relevant Article suitably.

(DPE O.M. No. 18(6)/2000-GM dated 26th November, 2001)

**ANNEXURE-I of O.M. dated 26.11.2001 - Clause 49: Corporate Governance -
Board of Directors**

A. The company agrees that the board of directors of the company shall have an optimum combination of executive and non-executive directors with

not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend whether the Chairman is executive or nonexecutive. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors.

Explanation: For the purpose of this clause the expression 'independent directors' means directors who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgement of the board may affect independence of judgement of the director. Except in the case of government companies, institutional directors on the boards of companies should be considered as independent directors whether the institution is an investing institution or a lending institution.

- B. The company agrees that all pecuniary relationship or transactions of the non-executive directors vis-à-vis the company should be disclosed in the Annual Report.

ANNEXURE-II of O.M. dated 26.11.2001 -

Schedule of Implementation

The above amendments to the listing agreement have to be implemented as per schedule of implementation given below:

- By all entities seeking listing for the first time, at the time of listing.
- Within financial year 2000-2001, but not later than March 31, 2001 by all entities, which are included either in Group 'A' of the BSE or in S&P CNX Nifty index as on January 1, 2000. However to comply with the recommendations, these companies may have to begin the process of implementation as early as possible.
- Within financial year 2001-2002, but not later than March 31, 2002 by all the entities which are presently listed, with paid up share capital of Rs.10/- crore and above, or networth of Rs.25 crore or more any time in the history of the company.
- Within financial year 2002-2003, but not later than March 31, 2003 by all other entities, which are presently listed, with paid up share capital of Rs.3 crore and above.
- As regards the non-mandatory requirement given in Annexure-3, they shall be implemented as per the discretion of the company. However, the disclosures of the adoption/non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

EXTRACTS FROM THE COMPANIES ACT, 1956

Section 2 (41) "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others;

Section 6 - Meaning of "relative"

A person shall be deemed to be a relative of another, if, and only if, -

- (a) they are members of a Hindu undivided family; or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in Schedule IA.]

[SCHEDULE IA) [See section 6(c)]

List of Relatives

1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's Son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial nonpayment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations Front like signing of wage agreement, implementation of Voluntary Retirement Scheme, etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as nonpayment of dividend, delay in share transfer, etc.

**SUGGESTED LIST OF ITEMS TO BE
INCLUDED IN THE CODE OF CONDUCT**

The Board of Directors of the company will formulate the code of conduct for the Directors and senior Management Personnel and while doing so the code of conduct would, inter alia, include the following:

1. Act in the best interests of, and fulfill their fiduciary obligations to the Company
2. Act honestly, fairly, ethically and with integrity;
3. Conduct themselves in a professional, courteous and respectful manner and not take improper advantage of the position of Director;
4. Act in a socially responsible manner, within the applicable laws, rules and regulations, customs and traditions of the countries in which the Company operates.
5. Comply with communication and other policies of the Company;
6. Act in good faith, responsibly, with due care, competence and diligence, without allowing their independent judgment to be subordinated;
7. Not to use the Company's property or position for personal gain;
8. Not to use any information or opportunity received by them in their capacity as Directors in a manner that would be detrimental to the Company's interests;
9. Act in a manner to enhance and maintain the reputation of the Company;
10. Disclose any personal interest that they may have regarding any matters that may come before the Board and abstain from discussion, voting or otherwise influencing a decision on any matter in which the concerned Director has or may have such an interest;
11. Abstain from discussion, voting or otherwise influencing a decision on any matters that may come before the board in which they may have a conflict or potential conflict of interest;
12. Respect the confidentiality of information relating to the affairs of the Company acquired in the course of their service as Directors, except when authorized or legally required to disclose such information;
13. Not to use confidential information acquired in the course of their service as Directors for their personal advantage or for the advantage of any other entity;
14. Help create and maintain a culture of high ethical standards and commitment to compliance;
15. Keep the Board informed in an appropriate and timely manner any information in the knowledge of the member which is related to the decision making or is otherwise critical for the company.
16. Treat the other members of the Board and other persons connected with the Company with respect, dignity, fairness and courtesy.

MODEL CODE OF BUSINESS CONDUCT AND ETHICS FOR BOARD MEMBERS AND SENIOR MANAGEMENT

1.0 Introduction

- 1.1 This Code shall be called "The Code of Business Conduct & Ethics for Board Members and Senior Management" of.....(hereinafter referred to as "the Company")
- 1.2 The purpose of this Code is to enhance ethical and transparent process in managing the affairs of the Company.
- 1.3 This Code for Board Members and Senior Management has been framed specially in compliance of the provisions of Clause 49 of the Listing Agreement with Stock Exchanges and as per the Guidelines of DPE.
- 1.4 It shall come into force with effect from the(year and month).

2.0 Definitions and Interpretations:

- 2.1 The term "Board Members" shall mean Directors on the Board of Directors of the Company
- 2.2 The term "Whole-time Directors" or "Functional Directors" shall be the Directors on the Board of Directors of the Company who are in whole-time employment of the company.
- 2.3 The term "Part-time Directors" shall mean Directors on the Board of Directors of the Company who are not in whole time employment of the Company.
- 2.4 The term "Relative" shall have the same meaning as defined in Section 6 of the Companies Act, 1956.
- 2.5 The term "Senior Management" shall mean personnel of the Company who are members of its core management team excluding Board of Directors and would comprise all members of management one level below the Whole time Directors, including all functional heads.
- 2.6 The term "the Company" shall mean(name of the Company)

Note: In this Code, words importing the masculine gender shall include feminine gender and words importing singular shall include the plural or vice-versa.

3.0 Applicability

- 3.1 This code shall be applicable to the following personnel:
 - a) All Whole-time Directors including the Chairman & Managing Director of the Company.

- b) All Part-time Directors including Independent Directors under the provisions of law.
 - c) Senior Management
- 3.2 The Whole-time Directors and Senior Management should continue to comply with other applicable/to be applicable policies, rules and procedures of the Company.

4.0 Contents of Code

Part I General Moral Imperatives

Part II Specific Professional Responsibilities

Part III Specific Additional Provisions for Board Members and Senior Management

This code is intended to serve as a basis for ethical decision making in the conduct of professional work. It may also serve as a basis for judging the merit of a formal complaint pertaining to violation of professional ethical standards.

It is understood that some words and phrases in the code of ethics and conduct document are subject to varying interpretations. In case of any conflict, the decision of the Board shall be final.

PART - I

5.0 General Moral Imperatives

5.1 Contribute to society and human well being

5.1.1 This principle concerning the quality of life of all people, affirms an obligation to protect fundamental human rights and to respect the diversity of all cultures. We must attempt to ensure that the products of our efforts will be used in socially responsible ways, will meet social needs and will avoid harmful effects to health and welfare of others. In addition to a safe social environment, human well being includes a safe natural environment.

5.1.2 Therefore, all Board Members and Senior Management who are accountable for the design, development, manufacture and promotion of company's products, must be alert to, and make others aware of, both a legal and a moral responsibility for the safety and the protection of human life and environment.

5.2 Be honest and trustworthy & practice integrity

5.2.1 Integrity and honesty are essential components of trust. Without trust an organization cannot function effectively.

5.2.2 All Board Members and Senior Management are expected to act in accordance with highest standards of personal and professional integrity, honesty and ethical conduct, while conducting business of the Public Enterprise.

5.3 Be fair and take action not to discriminate

5.3.1 The values of equality, tolerance, respect for others, and the principles of equity & justice govern this imperative. Discrimination, on the basis of race, sex, religion, caste, age, disability, national origins or other such factors, is an explicit violation of this Code.

5.4 Honour confidentiality

5.4.1 The principle of honesty extends to issues of confidentiality of information. The ethical concern is to respect all obligations of confidentiality to all stakeholders unless discharged from such obligations by requirements of the law or other principles of this Code.

5.4.2 All Board Members and Senior Management, therefore, shall maintain the confidentiality of all confidential unpublished information about business and affairs of the CPSE.

5.5 Pledge & Practice

5.5.1 To strive continuously to bring about integrity and transparency in all spheres of the activities.

5.5.2 Work unstintingly for eradication of corruption in all spheres of life.

5.5.3 Remain vigilant and work towards growth and reputation of the Company.

5.5.4 Bring pride to the organization and provide value-based services to Company's stakeholders.

5.5.5 Do duty conscientiously and without fear or favour.

PART II

6.0 Specific Professional Responsibilities

6.1 Live the Vision, Mission and Values of CPSE – each day

Live the Vision, Mission and Values of(name of CPSE) each day. For quick reference they are as under:

Vision

[Incorporate here vision of the CPSE – for example - A World-class Engineering Enterprise committed to enhancing Stakeholder Value]

Mission

[Incorporate here the mission of the CPSE – for example To be an Indian Multinational Engineering Enterprise providing total business solutions through quality products, systems and services in the fields of and other potential areas]

Values

- Zeal to excel and zest for change
- Integrity and fairness in all matters
- Respect for dignity and potential of individuals
- Strict adherence to commitments
- Ensure speed of response
- Foster learning, creativity and team-work
- Loyalty and pride in the CPSE

6.1 **Strive to achieve the highest quality, effectiveness and dignity in both the processes and products of professional work:** - Excellence is perhaps the most important obligation of a professional. Everyone, therefore, should strive to achieve the highest quality, effectiveness and dignity in their professional work.

6.2 **Acquire and maintain professional competence:** Excellence depends on individuals who take responsibility for acquiring and maintaining professional competence. All are, therefore, expected to participate in setting standards for appropriate levels of competence, and strive to achieve those standards.

6.4 **Compliance with Laws:-** The Board Members and Senior Management of the CPSE shall comply with all the applicable provisions of existing local, state, national, and international laws. They should also follow and obey the policies, procedures, rules and regulations relating to business of the CPSE.

- 6.5 **Accept and provide appropriate professional review:** Quality professional work depends on professional review and comments. Whenever appropriate, individual members should seek and utilize peer review as well as provide critical review of the work of theirs.
- 6.6 **Manage personnel and resources to enhance the quality of working life:-** Organizational leaders are responsible for ensuring that a conducive working and business environment is created for fellow employees to enable them delivering their best. The Board Members and Senior Management would be responsible for ensuring human dignity of all employees, would encourage and support the professional development of the employees of the CPSE by providing them all necessary assistance and cooperation, thus enhancing the quality of working.
- 6.7 **Be upright and avoid any inducements:-** The Board Members and Senior Management shall not, directly or indirectly through their family and other connections, solicit any personal fee, commission or other form of remuneration arising out of transactions involving Company. This includes gifts or other benefits of significant value, which might be extended at times, to influence business for the organization or awarding a contract to an agency, etc.
- 6.8 **Observe Corporate Discipline:-** The flow of communication within the CPSE is not rigid and people are free to express themselves at all levels. Though there is a free exchange of opinions in the process of arriving at a decision, but after the debate is over and a policy consensus has been established, all are expected to adhere and abide by it, even when in certain instances one may not agree with it individually. In some cases policies act as a guide to action, in others they are designed to put a constraint on action. All must learn to recognize the difference and appreciate why they need to observe them.
- 6.9 **Conduct in a manner that reflects credit to the Company:-** All are expected to conduct themselves, both on and off duty, in a manner that reflects credit to the Company. The sum total of their personal attitude and behaviour has a bearing on the standing of Company and the way in which it is perceived within the organization and by the public at large.
- 6.10 **Be accountable to Company's stakeholders:-** All of those whom we serve, be it our Customers, without whom the Company will not be in business, the Shareholders, who have an important stake in its business, the Employees, who have a vested interest in making it all happen, the Vendors, who support the Company to deliver in time and Society to which Company is responsible for its actions – are stakeholders of the Company. All, therefore, must keep in mind at all times that they are

accountable to Company's stakeholders.

- 6.11 **Prevention of Insider Trading:-** The Board Members and Senior Management shall comply with the code of Internal Procedures and conduct for prevention of Insider Trading in dealing with Securities of the Company.
- 6.12 **Identify, mitigate and manage business risks:-** It is everybody's responsibility to follow the Risk Management Framework of the Company to identify the business risks that surround function or area of operation of the Company and to assist in the company-wide process of managing such risks, so that Company may achieve its wider business objectives.
- 6.13 **Protect properties of the Company:-** The Board Members and Senior Management shall protect the assets including physical assets, information and intellectual rights of the Company and shall not use the same for personal gains.

PART - III

7.0 Specific Additional Provisions for Board Members and Senior Management

7.1 **As Board Members and Senior Management:** They shall undertake to actively participate in the meetings of the Board and Committees on which they serve.

7.2 As Board Members

7.2.1 Undertake to inform the Chairman and Managing Director/ Company Secretary of the Company of any changes in their other Board positions, relationship with other business and other events/ circumstances / conditions that may interfere with their ability to perform Board/ Board Committee duties or may impact the judgement of the Board as to whether they meet the independence requirements of Listing Agreement with Stock Exchanges and the Guidelines of DPE.

7.2.2 Undertake that without prior approval of the disinterested members of the Board, they will avoid apparent conflict of interest. Conflict of interest may exist when they have personal interest that may have a potential conflict with the interest of the Company. Illustrative cases can be:

Related Party Transactions: Entering into any transactions or relationship with Company or its subsidiaries in which they have a financial or other personal interest (either directly or indirectly such as through a family member or relation or other person or other organization with which they are associated).

Outside Directorship: Accepting Directorship on the Board of any other Company that competes with the business of the Company.

Consultancy/Business/Employment: Engaging in any activity (be it in the nature of providing consultancy service, carrying on business, accepting employment) which is likely to interfere or conflict with their duties/ responsibilities towards Company. They should not invest or associate themselves in any other manner with any supplier, service provider or customer of the company.

Use of Official position for personal gains: Should not use their official position for personal gains.

7.3 Compliance with the Code of Business Conduct and Ethics

7.3.1 All Members of the Board and Senior Management of Company shall uphold and promote the principles of this code.

The future of the organization depends on both technical and ethical excellence. Not only it is important for Board Members and Senior Management to adhere to the principles expressed in this Code, each of them should also encourage and support adherence by others.

7.3.2 Treat violations of this code as inconsistent association with the organization

Adherence of professionals to a code of ethics is largely and generally a voluntary matter. However, if any of Board Members and Senior Management does not follow this Code, the matter would be reviewed by the Board and its decision shall be final. The Company reserves the right to take appropriate action against the defaulter.

7.3 Miscellaneous Points

7.4.1 Continual updation of Code

This Code is subject to continuous review and updation in line with any changes in law, changes in Company's philosophy, vision, business plans or otherwise as may be deemed necessary by the Board and all such amendments / modifications shall take effect prospectively from the date stated therein.

7.4.2 Where to seek clarifications

Any member of Board or Senior Management requiring any clarification regarding this code of conduct may contact Director (HR)/ Company Secretary/ any officer specifically designated by the Board of Directors.

**ACKNOWLEDGEMENT OF RECEIPT OF
CODE OF BUSINESS CONDUCT AND ETHICS FOR
BOARD MEMBERS AND SENIOR MANAGEMENT**

I have received and read the code of Business Conduct and Ethics for Board Members and Senior Management of (name of the Company) I understand the standards and policies contained in the said Code of Business Conduct and Ethics and understand that there may be additional policies or laws specific to my job. I further agree to comply with the said Code of Business Conduct and Ethics.

If I have questions concerning the meaning or application of the said Code of Business Conduct and Ethics, any policies of the CPSE or the legal and regulatory requirements applicable to my job, I know I can consult Director or Company Secretary concerned the CPSE knowing that my questions or reports will be maintained in confidence.

Further, I undertake to provide following Affirmation on an Annual basis to the Company within 30 days from the end of 31st March every year.

AFFIRMATION

(By Board Members/ Senior Management of the Company on Annual basis by 30th April of every year)

I,.....(name),.....(designation), having read and understood the Code of Business Conduct and Ethics for Board Members and Senior Management, hereby solemnly affirm that I have complied with and has not violated any of the provisions of the Code during the year ended 31st March

Signature

Name _____

Designation _____

Place: Employment Number _____

Telephone No. _____

Date:

**SUGGESTED LIST OF ITEMS TO BE INCLUDED IN
THE REPORT ON CORPORATE GOVERNANCE IN
THE ANNUAL REPORT OF COMPANIES**

1. A brief statement on company's philosophy on Guidelines on Corporate Governance.
2. **Board of Directors:**
 - i. Composition and category of directors, for example, promoter, executive, non-executive, independent nonexecutive, nominee director.
 - ii. Attendance of each director at the Board meetings and the last AGM.
 - iii. Number of other Boards or Board Committees in which he/she is a member or Chairperson
 - iv. Number of Board meetings held, dates on which held.
 - v. In case of appointment of new Director/re-appointment of a Director following information may be provided:
 - a. brief resume of Director
 - b. nature of his expertise in specific functional areas; and
 - c. names of companies in which the person holds the Directorship and the membership of committees of the Board.
3. **Audit Committee:**
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Meetings and attendance during the year
4. **Remuneration Committee:**
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Meetings and attendance during the year
 - iv. Remuneration policy/Details of remuneration to all the Directors
5. **General Body meetings:**
 - i. Date, Time and Venue of the last three AGMs
 - ii. Whether any special resolutions passed in the previous three AGMs
 - iii. AGM of the current year: Date, Time and Venue
6. **Disclosures:**
 - i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.
 - ii. Details of non-compliance by the company, penalties, strictures imposed on the company by any statutory authority, on any matter related to any guidelines issued by Government, during the last three years.
 - iii. Whistle Blower policy and affirmation that no personnel has been denied access to the Audit Committee.

- iv. Details of compliance with the requirements of these guidelines
- v. Details of Presidential Directives issued by the Central Government and their compliance during the year and also in the last three years.
- vi. Items of expenditure debited in books of accounts, which are not for the purposes of the business.
- vii. Expenses incurred which are personal in nature and incurred for the Board of Directors and Top Management.
- viii. Details of Administrative and office expenses as a percentage of total expenses vis-a-vis financial expenses and reasons for increase.

7. Means of communication:

- i. Quarterly results
- ii. Newspapers wherein results normally published
- iii. Any website, where displayed
- iv. Whether it also displays official news releases;

8. Audit qualifications:

Company may move towards a regime of unqualified financial statements.

9. Training of Board Members:

A company may train its Board members (Functional, Government Nominee and Independent) in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

10. Whistle Blower Policy:

The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud, or violation of the company's General guidelines on conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

ANNEX-VIII

Format of Quarterly Compliance Report by CPSEs to nodal Administrative Ministries/Departments under Para 8.3 of DPE's Guidelines on Corporate Governance for CPSEs

Name of the CPSE:

Administrative Ministry/Department:

Whether listed or unlisted:

Quarter ending on:

S. No.	Activity	CG Guidelines Clause ¹	Status of compliance with the CG guidelines (Yes/No/NA)	Remarks
1	2	3	4	5
I	Board of Directors			
1.	Composition of Board	3.1		
2.	Non-official Directors	3.1		
3.	Part-time directors compensation and disclosures	3.2		
4.	Number of Board meetings	3.3.1		
5.	Review of compliance of laws	3.3.3		
6.	Code of Conduct	3.4		
7.	Risk management	3.6		
8.	Training for new Board members	3.7		
II	Audit Committee			
9.	Constitution of Audit Committee	4.1		
10.	Audit Committee assigned due role	4.2		
11.	Audit Committee vested adequate powers	4.3		
12.	Meetings of Audit Committee	4.4		
13.	Review of information by Audit Committee	4.5		
III	Remuneration Committee			
14.	Constitution of remuneration Committee	5.1		

¹ Refers to the relevant provision in the Guidelines on Corporate Governance issued by DPE

IV	Subsidiary Companies			
15.	Board of subsidiary companies	6.1		
16.	Review of financial statements of subsidiary by Audit Committee	6.2		
17.	Review of performance of subsidiary by Board	6.3		
V	Disclosures			
18.	Transactions	7.1		
19.	Accounting Standards	7.2.1		
20.	Consolidated financial statements	7.2.3		
21.	Segment-wise profit and loss statement	7.2.4		
22.	Board Disclosures - Risk management	7.3		
23.	Remuneration of directors	7.4		
24.	Management Discussion and Analysis	7.5		
25.	Disclosures by Senior management.	7.5.2		
VI	Report and Compliance			
26.	Report on Corporate Governance	8.1		
27.	Compliance Certificate	8.2.1		
28.	Chairman' speech in AGM and annual report	8.2.2		
29.	Holding of AGM, Adoption of audited accounts and filing of adopted accounts with the Registrar of Companies within the stipulated time@			
30.	Timely submission of Compliance report	8.3		

@ Information in respect of this item should be furnished at the end of the relevant quarter of the relevant year.

(Name and Signature of the Chief Executive)

Date:-

Section 134: Financial statement, Board's report, etc [Corresponding Sections 215, 216, 217]

134. (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—
- (a) the extract of the annual return as provided under sub-section (3) of section 92;
 - (b) number of meetings of the Board;
 - (c) Directors' Responsibility Statement;
 - (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
 - (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
 - (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in Practice in his secretarial audit report;
 - (g) particulars of loans, guarantees or investments under section 186;
 - (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
 - (i) the state of the company's affairs;
 - (j) the amounts, if any, which it proposes to carry to any reserves;
 - (k) the amount, if any, which it recommends should be paid by way of dividend;
 - (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
 - (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
 - (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
 - (o) the details about the policy developed and implemented by the company on corporate social

responsibility initiatives taken during the year;

- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
 - (q) such other matters as may be prescribed.
- (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- (5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—
- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 - (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
 - (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
 - (d) the directors had prepared the annual accounts on a going concern basis; and
 - (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively;
- Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;
- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- (6) The Board’s report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
- (7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—
- (a) any notes annexed to or forming part of such financial statement
 - (b) the auditor’s report; and
 - (c) the Board’s report referred to in sub-section (3).

- (8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Notes on Clauses

Clause 134.—This clause corresponds to sections 215, 216 and 217 of the Companies Act, 1956 and seeks to provide that the financial statement including consolidated financial statements should be approved by the Board of Directors before they are signed and submitted to auditors for their report. The auditor's report is to be attached to every financial statement. A report by the Board of Directors containing details on the matters specified including directors responsibility statement shall be attached to every financial statement laid before company. The Board's report and every annexure has to be duly signed. A signed copy of every financial statement shall be circulated, issued or published along with all notes or documents, the auditor's report and Board's report. The clause also provides for penal provisions for the company and every officer of the company in case of any contravention.

What's New, Modified and Dropped

New

- In case of One Person Company, Director Report it should be signed by one director only.
- Every Board of Directors' Report, except in case of One Person Company, shall include the following additional information:
 - i. The extract of the Annual Return as prescribed under section 92.
 - ii. number of meetings of the Board,
 - iii. declaration by Independent Directors where they are required to be appointed under sub-section (6) of section 149,
 - iv. in case of a Company which are required to constitute Nomination and Remuneration Committee, Company's policy on Directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a Director and other matters provided under sub-section (3) of section 178 i.e. Nomination and Remuneration Committee and Stakeholders Relationship Committee;
 - v. explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the Company Secretary in his Secretarial Audit Report
 - vi. particulars of loans, guarantees or investments under section 186;
 - vii. particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in a prescribed form;
 - viii. material changes and commitments, if any, affecting the financial position of the Company which have occurred between the end of the financial year of the Company to which the financial statements relates and the date of the Report;
 - ix. a statement indicating development and implementation of a risk management policy for the Company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

- x. the details about the policy developed and implemented by the Company on Corporate Social Responsibility initiatives taken during the year;
 - xi. in case of a listed Company and every other Public Company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
 - xii. such other matters as may be prescribed
- In respect of one Person Company, the Board of Director's Report shall contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his Report.
 - The Directors Responsibility Statement shall also include the following additional statement
 - i. the Directors, in the case of a listed Company, had laid down internal financial controls to be followed by the Company and that such internal financial controls have been complied with.
 Explanation.—For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the Company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.
 - ii. the Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
 - In the case of One Person Company, the financial statements, including consolidated financial statements shall be signed only by one Director, for submission to the Auditor for his Report thereon.

Modified

- As per the Act, now the financial statements, including consolidated financial statements, shall be required to be signed by following persons:
 - i. by the Chairperson of the Company, where he is authorised by the Board or
 - ii. by two Directors out of which one shall be Managing Director, if any, and Chief Executive Officer, if any, if he is a director in the Company, and
 - iii. Chief Financial Officer and Company Secretary of the Company, if appointed
- The punishment for contravention of provisions related to signing of financial statements and Boards Report has been increased. If a company contravenes the provisions of this section, then it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty five lakhs rupees and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both

Dropped

- In the Act, no distinction has been made between a Company and Banking Company for the purpose of signing of the Balance Sheet.
- The extant provisions under the Companies Act, 1956 which allow only one of the Directors to sign the financial statements, with explanations and reasons for non compliance with the provisions of signing of financial statements by minimum two Directors has been dispensed with.

- Following disclosures as provided under the Companies Act, 1956 are no longer required to be disclosed in Directors Report:
 - i. Reasons for the failure of the completing of the buy back in the time period specified in the Act.
 - ii. Details of employees, who are in receipt of remuneration, which is not less than the prescribed rate of remuneration

Section 177: Audit Committee [Corresponding Section 292A]

177. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
- (2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:
Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
- (3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
- (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,—
- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (iv) approval or any subsequent modification of transactions of the company with related parties;
 - (v) scrutiny of inter-corporate loans and investments;
 - (vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - (vii) evaluation of internal financial controls and risk management systems;
 - (viii) monitoring the end use of funds raised through public offers and related matters.
- (5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- (6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
- (7) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
- (8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
- (9) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.

- (10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases:

Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Notes on Clauses

Clause 177. — This clause contains some provisions of section 292A of the Companies Act, 1956 and seeks to provide the requirement and manner of constituting audit committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority and majority of members must have ability to read and understand, financial statement. The clause further provides the functions of audit committee. The clause also provides for the establishment of vigil mechanism in every listed and prescribed class of companies. The establishment of such mechanism shall be disclosed at the website of the company and in the Board's report of the company.

What's New, Modified and Dropped

Modified

- Every Listed Company and such other Company as may be prescribed shall form Audit Committee.
- Composition of Audit Committee has been changed. It shall now comprise of minimum 3 directors with majority of the Independent Directors along with the majority of members of committee shall be person with ability to read and understand financial statements.
- Transitional period of 1 year has been provided to from the date of commencement of the Act, Companies to constitute their audit committee as per the new constitution norms.
- Audit committee shall along with such matter as may be referred by Board, be responsible for the following:
 - i. The recommendation for appointment, remuneration and terms of appointment of Auditors of the Company,
 - ii. Review and monitor the Auditor's independence and performance, and effectiveness of Audit process,
 - iii. Examination of the financial statement and the auditors' report thereon,
 - iv. Approval or any subsequent Modified of transactions of the company with related parties,
 - v. Scrutiny of inter-corporate loans and investments;
 - vi. Valuation of undertakings or assets of the Company, wherever it is necessary,
 - vii. Valuation of internal financial controls and risk management systems
 - viii. Monitoring the end use of funds raised through public offers and related matters.
- Auditor of Company along with Key Managerial Personnel shall be present in Audit committee meeting, when it will consider Auditor's Report and shall also have a right to be heard.
- Now the Act prescribes for establishment of vigil mechanism in the prescribed manner by every listed Company or such class or classes of Companies, as may be prescribed, to enable their directors and employees to report genuine concerns.

- The vigil mechanism as aforesaid shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

Dropped

- The eligibility criteria for having an audit committee has been dispensed with from the section and same will be provided under the Rules.
- Requirement of mandatory review of half yearly financial statement by Audit committee has been dispensed with.
- The Act doesn't prescribe the manner in which the chairman of committee shall be elected.
- The requirement that chairman of audit committee shall attend the annual general meeting of the company has been dispensed with.

Section 184: Disclosure of interest by Director [Corresponding Sections 299,300]

184. (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.
- (4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.
- (5) Nothing in this section—
- (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
- (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

Notes on Clauses

Clause 184.— This clause corresponds to section 299 of the Companies Act, 1956 and seeks to provide the manner and periodicity in which every director shall make disclosures of his concern or interest in any company or body corporate, firms, or other association of individuals. It also seeks to provide that every director of a company who is concerned or interested in a contract or arrangement shall disclose the nature of his concern or interest at the meeting of the Board and shall not participate in such meeting. The clause further provides that a contract or arrangement entered into by the company without disclosure or with participation by a director who is concerned or interested shall be voidable at the option of the company. This clause further provides for provision for director of the company in case of any contravention.

What's New, Modified and DroppedModified

- Every Director of a Company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
 - i. with a Body Corporate in which such Director, or such Directors in association with any other Director, holds more than two percent shareholding of that body corporate, or is a Promoter, Manager, Chief Executive Officer of that Body Corporate; or
 - ii. With a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:
- In case of Private Company also, an interested Director cannot vote or take part in the discussion relating to any matter in which he is interested.
- A contract or arrangement entered into by the company without disclosure or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the Company.

Modified

- Notice of interest under this section by Directors shall have to be given at the Board Meeting, as opposed to Companies Act, 1956, where it can also be brought up and read at the Board meeting.
- The punishment in case any Director who fails to give the mandatory disclosure of interest as required under this section has been increased Wherein the defaulter shall be liable to imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.

Dropped

- The condition whereby general notice of interest is given by Directors and in case the same needs to be renewed, a fresh notice is required to be given in the last month of the financial year in which it would otherwise expired, has been dispensed with.

Section 185: Loan to Directors, etc [Corresponding Sections 295,296]

185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person: