



Regional Training Institute

*Centre of excellence in 'Corporate Governance and Finance'
and 'Audit of Municipal Corporations'*
(Indian Audit and Accounts Department)

**Audit of Corporate Governance-
Supervisory and regulatory framework
A case study
With reference to a standalone
compliance audit report**

*C-2, G N Block, Behind Asian Heart Institute
Bandra-Kurla Complex, Mumbai – 400051
Phone: 022-26521902 Fax: 022-26522627*

Audit of Corporate Governance-
Supervisory and regulatory framework
A case study
With reference to a standalone
compliance audit report

From Principal Director's desk

Regional Training Institute, Mumbai was designated as knowledge centre for Corporate Governance, Finance, IPSAS and Commercial Audit from April 2015. In pursuit of excellence in our assigned areas of Knowledge Centre activities, we attempt to bring out series of interesting cases in Corporate Governance, Corporate Finance and Commercial Audit. In preparing the case study, an effort is made to recreate the principles guiding an audit observation by simulating the thinking process which would result in such observations.

The Case Study "Audit of Corporate Governance- Supervisory and regulatory framework" has been prepared based on CAG's Standalone Compliance Audit Report No. 45 of 2015 on National Skill Development Fund and National Skill Development Corporation for the year ended 31 March 2014. The report issued by DGA (ESM) is a Union Government (Commercial) report relating to the Ministries of Finance and Skill Development and Entrepreneurship. I hope that the readers would benefit from this. Suggestions, if any, are welcome and would help us in future designing of case studies.

RTI, Mumbai
31 March 2016


Abdul Rauf
Principal Director
31/3/2016

CONTENTS

Sr. No.	Topics	Page No.
1.	Background	1-15
2.	Audit Criteria- Applicable norms	15
3.	Sources of Audit observations - Audit evidence and Audit methodology	15-16
4.	Type of Audit findings	16
5.	Audit Conclusion-Cause and Effect	16
6.	Arrangement of the case study	16
7.	Audit of Corporate Governance-Supervisory and regulatory framework with reference to CAG's Standalone Compliance Audit Report No. 45 of 2015 on National Skill Development Fund and National Skill Development Corporation for the year ended 31 March 2014	16-22
8.	Conclusion	22-23
9.	List of Key Documents (KDs)	24
10.	KDs 1 to 34	25-166

1. Background

1.1 Department of Public Enterprises (DPE) Guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs) describes Corporate Governance as 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 and transparency and makes a distinction between personal and corporate funds in the management of a company.

Corporate Governance, in a broader perspective, implies responsible and responsive administration of company affairs. It covers ethical management. It is a mechanism by which a company ensures that all its activities result in balanced optimum welfare of all stakeholders, rather than benefitting selected individual(s) or group(s) forming part of stakeholders. In a democratic country, the principal stakeholder in the public sector would be the taxpayer, i.e.: - the citizen who trusts that his money will be held and used by the executive government on his behalf. The Citizens' trust in the government is not blind faith, but is protected by the mechanism of independent audit (by CAG) and by presenting Audit reports to the Legislature elected by citizens.

1.2 Corporate Governance, being connected to ethical management, would pre-suppose sincerity of intent and purpose and voluntary commitment to transparency and accountability. This is the hallmark of a responsible and responsive approach.

1.3 It may not be correct to state that organisations in the public sector do not require robust Corporate Governance, simply because of implicit government control or because the government is automatically expected to concern itself with welfare of all as part of its functioning. In fact, it is even more important that the management of a public sector entity conducts itself in a manner that is ethical, responsible and responsive to the reasonable expectations of all stakeholders. Hence, PSUs are subject to even more rigorous set of controls on corporate governance, such as through DPE guidelines, Reserve Bank of India (RBI) regulations, CAG audit and resultant legislative and public scrutiny.

1.4 Being public sector auditors, we recognise the framework of law in India. Being a democracy and a State concerned with the welfare of citizens, India has adopted Rule of Law. Our supreme law is the Constitution of India, from which all citizens of India draw their rights and all arms of the Government draw their authority. While granting such rights and authority, the Constitution also lays down duties, responsibilities and limits of authority in various contexts. The mechanism by which such duties, responsibilities and limits are enforced and monitored is laid down in the Constitution. When there is a breach of the Constitution by the executive government, these can be questioned by the judiciary (Courts) as well as by independent audit, i.e.: - the CAG. Similarly, if the executive government breaches a law enacted within the framework of the Constitution by a competent Legislature, the CAG can raise audit observations to bring these to the notice of the Legislature.

1.5 A disturbing trend is the emergence of a disguised public sector. Entities are being kept out of the purview of public sector regulatory and supervisory mechanism, including Audit of CAG, legislative scrutiny, DPE guidelines, etc. even when:

- (a) they are controlled directly or indirectly by the government,
- (b) they are substantially funded directly or indirectly by the government,
- (c) they carry out functions which are expected to be the preserve of the government,
- (d) they become an instrument of the government in guiding public, economic, fiscal or social policy or practise,
- (e) they handle 'outsourced' government functions, or
- (f) their governing bodies are usually expected to follow suggestions of the government with the same seriousness as a mandatory directive.

This is sometimes done by designing shareholding pattern in a manner which makes it a "non-government" entity or by adopting a mechanism of enabling government funding through a complex web of multiple entities. This is a governance issue as the true stakeholders in such entities (i.e.: - the citizens in a democracy) are not kept informed through the mechanism of elected Legislature (the Parliament, State Legislature, their various committees like PAC/ CoPU, etc.) of how their wealth (i.e.: - the Consolidated Fund/ taxpayers' money) is being used by the executive government. Any mechanism fitted to deflect accountability requirement would be a cause of concern while auditing performance on governance parameters.

Section 2 (27) of the Companies Act, 2013 states: "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

This is of much relevance in determining which entities are government 'controlled'.

1.6 The debates prior to the Companies legislation of 1956 are relevant in this context. There was a proposal to exclude government companies from the purview of CAG's audit. The strong stand taken by the then Comptroller and Auditor General resulted in the concrete assertion of the principle that the CAG has a Constitutional mandate to audit government companies. The corporate form of a government-controlled entity does not take away its public sector character. Thus, it should be subject to the audit mechanism which government departments are subject to. This was a principle of 'governance' and of placing 'substance over form'. These ideas were recognised even before such terms came into general use. It was based on the same principle that deemed government companies (under Section 619B of Companies Act, 1956) and now, companies directly or indirectly owned or controlled by the Government [under Section 143(5) and (7) with Companies (Removal of Difficulties) Seventh Order, 2014] were brought under CAG's audit mandate.

1.7 While the Companies Act recognises the mandate of CAG to audit such companies, Acts establishing Statutory Corporations do not uniformly contain such provisions enabling CAG Audit. For example, the Life Insurance Corporation of India (LIC) is not audited by CAG, since the LIC Act does not contain an enabling provision for CAG's audit. The entire capital of Rs.100 crore invested in LIC is provided by the Central Government under Section 5 of the LIC Act, 1956 after due appropriation by Parliament by law for the purpose. In fact, the total assets under the control of LIC as on 31 March 2015 amounted to nearly Rs.20 lakh crore. This can be compared to the revenue receipts (major taxes) of the Union Government for 2014-15, which was about Rs.12 lakh crore.

Section 21 of the LIC Act, 1956 dictates that the "Corporation to be guided by the directions of Central Government.—In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final." In any case even a suggestion by the Government would have the force of a mandatory directive, since the entire shareholding is with the Government. Thus, decision making powers indirectly vest with the executive government without Parliamentary scrutiny, especially over the regularity and propriety effect or the economy, efficiency and effectiveness of such decisions.

While it is the Parliament which passes laws enabling the powers of CAG in respect of audit of statutory corporations, the drafting of the legislation is often made by the Ministry concerned. Hence, re-asserting the principle of substance over form through correspondence with concerned Ministries and submissions to Parliamentary Committees, as was done on the matter of government companies, would be the means to protect the mandate of CAG (as intended by the Constitution of India) in such cases. Thus, organisations which, in effect, play a public sector role would rightly come under CAG's audit and consequently, be subject to legislative and public scrutiny.

1.8 There is also a situation, where through delegated legislation (orders issued by the executive government under authority of an Act of Parliament/ State Legislature) or executive orders, certain authorities are authorised to collect tolls, taxes or mandatory fees. Here too, there is a disguised public sector function.

Two examples are given below:

(i) The collection of tolls on roads should be authorised by State Legislature, since legislation on roads is a State Subject as per Entry 13 of List II of Schedule VII of the Constitution and since Article 265 of the Constitution stipulates that no tax shall be levied or collected except by authority of law. The legislature may authorise the state government or any other person to collect and retain the toll as per state government notification. But, the licensee for collecting toll may even be a private sector contractor. In such cases, naturally, the substance of the transactions suggests that the entire toll proceeds collected partakes the nature of a tax levied by the government. Even if part or whole of the same is assigned to or retained by the contractor, this would partake the nature of an expenditure of the government. Hence, collection and assignment/ retention of revenue by private contractor would be a part of the

disguised public sector functions, which should again be subject to Legislative scrutiny over the propriety, economy, efficiency and effectiveness of the notifications issued, annual revenue accounting (on gross basis), annual budgetary sanction for assignment and CAG audit.

Para 3.23.15 of Manual of Standing Orders (Audit), 2nd Edition (2002) states:

" All orders relating to grant of land, assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right of water power, or any easement or privilege in respect of any such concession or which in any way involve relinquishment of revenue come within the purview of Audit as they have important financial implications..... The audit of these sanctions is conducted from the point of view of regularity as well as propriety."

The trend of disguising a public sector function as a private sector transaction would be detected and checked if the essence of this paragraph is considered.

(ii) Agencies such as NSDL are authorised to issue PAN cards for which a 'fee' is charged. PAN card is nothing but a compulsory part of the mechanism to assess taxes. Hence, 'fees' for issue of PAN card is a mandatory fee which is akin to a tax. Holding of PAN is a requirement imposed by law. Hence, issue of PAN is a 'State' function and not a service. Similarly, 'filing fees' are levied by NSDL, which was authorised for accepting electronically filed TDS returns. A mandatory fee for meeting the requirement of tax law, partakes the nature of a tax. This, under Article 265 of the Constitution would require authority of law. Here too, any income or assignment of the income should be subject to Legislative scrutiny, revenue accounting (on gross basis), budgetary sanction and CAG audit. It could be argued that an act of meeting a legal (tax) obligation is not equivalent to availing of a 'service', nor can a mandatory levy required by law be treated as a 'fee'.

This would be an example of:

- (a) Public sector function disguised as private sector transaction,
- (b) A legal requirement disguised as a service and
- (c) A tax disguised as a fee.

1.9 There are also instances where government functions such as part of the work relating to assessment of taxes are given to other entities.

An example is the proposed handing over of access to electronic records relating to Goods and Service Tax returns to a Company called GSTN. The Company declares itself a non-government company and is not subject to CAG audit, though 49 *per cent* (very near to 51 *per cent*) of its shares are held by central and state governments and 51 *per cent* by entities like LIC Housing Finance Ltd. (single largest shareholding in which is with LIC-40.313 *per cent*). A housing finance company may not have much to do with assessment of Goods and Service Tax. Yet, it has contributed to shares of GSTN. GSTN goes out of public sector supervision or regulation, though most of the money invested in it is directly or indirectly taxpayer's money and the work done is also basically connected with government revenue.

Audit of grants to some of these entities have been covered under CAG's Audit through Section 14 of CAG's (DPC) Act, 1971. A full fledged audit under Section 19 (1) cannot be taken up if such companies, which are well and truly owned or controlled directly or indirectly by the government, disguise themselves as 'non-government' companies.

1.10 Regulations 116 and 117 of Regulations on Audit and Accounts, 2007 clearly impose responsibility on Ministry and Company concerned to intimate CAG within a month, on formation of, or on change of status into a Government company or deemed government company. According to Ministry of Corporate Affairs General Circular No.33/2014 dated 31 July 2014, when such companies are incorporated, where CAG's powers relating to appointment of auditors apply, it will primarily be the responsibility of the company concerned to intimate to the CAG immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government, so that such Government may also send a suitable request to the CAG. Hence, as a part of audit of corporate governance, it would be necessary to see if such companies controlled by the government and the Ministry concerned have informed CAG that such company/ entity has been formed or government 'control' has been acquired. To adhere to the law in letter and spirit, the intimation should be timely and should require CAG audit.

1.11 The DPE guidelines for CPSEs recognise the role of regulations issued by CAG and also clearly declare that CPSEs fall under the definition of "State" as provided in Article 12 of the Constitution of India. This makes it binding for them to respect Fundamental Rights of citizens.

Manual of Standing Orders (Audit), 2nd Edition (2002) Para 2.1.3 states:

".... audit aims to:

.....

(c) watch that various authorities of the State set up by, or under, the Constitution act in regard to all financial matters in accordance with the Constitution and the laws of Parliament and appropriate Legislatures and the rules and orders issued thereunder.

The right of independent criticism is inherent in the auditorial function."

Nowadays, citizens' data (e.g. : - Aadhaar, tax returns and tax data) are maintained in an electronic form. On many occasions, the designing of formats, the collection or retention of data relating to citizens, taxpayers, etc. are outsourced. Some personal data like spelling of a name in a particular format, e-mail, mobile number, etc. is collected by such agencies as mandatory data or existence of these are taken for granted. If such data is called for by 'State', **relevant** data can be safely provided, while insistence on **personal** data (spelling name in a particular manner such as: name and initials/ name and expanded initials/ first name, middle name and surname/ first name, middle name, surname and mother's name; e-mail/ mobile number) with their financial implications (expenses incurred by a person on filing of affidavits/ gazette notifications, etc. for proving his identity due to discrepancy in spellings of his name, only because different agencies have different software/rules, which require

entering name in different manner/ charges for maintaining e-mail, mobile, etc. which is mandated by tax/ citizenship records, etc.) can be commented upon in Audit or challenged in a Court of Law as such insistence may be against the Constitution. The forced use of particular naming patterns, mobiles and e-mail to comply with preparation of taxation or citizenship records may lead to litigation on infringement of fundamental rights. It indicates the compulsory conversion of one's lifestyle to one based on distinct naming patterns, use of mobiles and e-mail. Insistence on mobile and e-mail would also lead to needless loss of foreign exchange as most electronic items like computers and mobile handsets or parts thereof are sourced from outside India.

But requiring submission of such data to entities who are not considered 'State', but are nevertheless authorised by the government, may result in breach of fundamental rights.

When other entities are allowed to carry out 'State' functions, it would only be just to expect them also to respect fundamental rights of citizens. This can be ensured through scrutiny by Parliament, for which CAG's Audit too plays a major role. Hence too, the disguised public sector needs to be identified.

The subject of what is meant by 'State' is often a subject of much litigation and there are guiding principles in this regard (as given below) issued by Supreme Court in cases like Rajasthan Electricity Board v. Mohan Lal, Sukhdev v. Bhagat Ram, R.D. Shetty vs. International Airport Authority of India and Ajay Hasia Vs. Khalid Mujib.

- (1) If entire share capital is held by the government or State financial assistance meets almost entire expenditure of the entity.
- (2) If an entity has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law.
One can argue that this applies to the situation where: If we do not quote PAN issued by NSDL/ UTIISL, etc., many transactions cannot be carried out or taxes would be deducted at higher rates.
- (3) If it is as instrumentality or agency of Government, i.e. : - It has:
 - (a) Monopoly status which is the State conferred or State protected; e.g. : - to NSDL, GSTN.
 - (b) Deep and pervasive State control- e.g. : - Referred by revenue department to get tax or TDS returns/ to issue PAN on its behalf.
 - (c) Functions of the corporation of public importance and closely related to governmental functions. – e.g. : - functions connected with assessment of revenue.

The Auditor can adopt some of the common principles given in such judgements and his own common sense and professional judgement to determine the matter while drafting audit observations.

1.12 Two of the basic tenets of Company Law comprise recognition of the principles of **limited liability** and **separate legal status**. The purpose of these is to ensure that the identity

of a Company is kept distinct from that of its shareholders. The liabilities of a Company are not the personal liabilities of shareholders. If a Company falls into debt, only the capital invested in it by the shareholders can be attached to meet these debts. Shareholders cannot be asked to pay up from their personal funds to meet Company's debts. **Thus, the liability of a Company is limited. Separate legal status** means that the Company is designated as an artificial person, as soon as it is formed. It has an identity separate from its shareholders. It ensures that legal cases by or against companies are not mixed with litigation by or against its shareholders. This again, grants immunity to shareholders from the Company's obligations and legal hassles. The intention was to encourage people to invest capital in a Company form of business, without fear of unlimited personal liabilities and obligation.

At the same time, law recognises the fact that this may lead to misuse by shareholders for intentionally evading their obligations by transacting through Companies, as a mask or as a bogus entity or false identity. In such cases, Courts choose to 'pierce the corporate veil'; i.e. : - They disregard the principles of limited liability and separate legal status. They identify the real persons who are involved in the transactions and hold them liable. In other words, a corporate identity cannot hide responsibility for matters not connected to legitimate business losses or obligations. By a logical extension of the principle, the ethical, welfare and constitutional obligations of a State cannot be disregarded merely because it chooses to carry out some or all of its activities through a Company. Then, the fact that a Company is authorised to carry out 'State' (i.e. : - Central/ State or local government) functions like revenue administration, issue of licenses and official documents, collection of tolls for infrastructure/ transport, etc. should automatically bring it under the ambit of 'State' to the extent it carries out such functions. This is in harmony with the 'instrumentality' or 'agency' principle described above.

1.13 The Companies Act, 2013 has increased emphasis on Consolidated Financial Statements of group companies. This is to ensure that the financial parameters of a group of entities, being holding companies, subsidiaries, associates, joint ventures, controlled special purpose entities and all other forms of controlled and controlling entities are assessed as a single entity rather than as a distinct entities. The same logic would apply for assessing performance of the public sector, as inclusive of the government and its controlled entities, rather than omitting some entities, merely because of their separate legal identity.

1.14 The Government have brought out draft guiding principles on Place of Effective Management (PoEM) for reckoning whether a Company is a resident or non-resident company for tax purposes. It states that the PoEM concept is one of substance over form. It suggests that if a board has *de facto* delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person **including a shareholder** and does nothing more than **routinely ratifying the decisions that have been made**, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

Thus, the government recognises the concept of substance over form in identifying the real power in an entity. Extending the same logic, one can identify the real public sector character of an entity.

1.15 Thus, genuine Corporate Governance in the public sector would require true recognition of an entity's public sector character and subjecting all such entities/ their transactions to legislative scrutiny through CAG audit and through supervisory/ regulatory mechanism for public sector. Hence, audit of Corporate Governance in the public sector would extend to ensuring that there is no attempt to escape legitimate legislative scrutiny.

1.16 An analysis of the shareholding pattern of some companies, which are not subject to CAG audit would reveal a disturbing trend of a greatly empowered, but disguised, public sector. An example of government funding/ control through a complex web of multiple entities is given below (NSDL).

As on 31-03-2014

Shareholders	Percentage	Cumulative	Remarks
Canara Bank	1.25	1.25	Public Sector Bank
Dena Bank	1.563	2.813	Public Sector Bank
Union Bank of India	2.812	5.625	Public Sector Bank
Oriental Bank of Commerce	3.125	8.75	Public Sector Bank
State Bank of India	5	13.75	Public Sector Bank
IDBI Bank Ltd.	30	43.75	Bank with majority government shareholding
Administator of SUUTI-DRF	6.83	50.58	Authorised by Central Government under Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002

Note that the shareholding of public sector controlled entities in NSDL is very close to 51 *per cent*. In fact, if we consider the definition of 'control' in the Companies Act, 2013, even beyond shareholding, the power of the Government to control the management or policy decisions of a Company, directly or indirectly, in any other manner would make the Company a 'government controlled' entity. By this definition, a much larger number of companies not hitherto covered under Legislative scrutiny would get covered.

Entities like NSDL and GSTN which are assigned tax-related work would also be inferred as being part of the public sector, to the extent they are assigned work relating to issue of numbers to assesseees or filing of returns relating to revenue.

Thus, scope of audit scrutiny for determining government control would include a study of:

- nature and scope of operations of entities authorised by government departments to carry out outsourced tasks; and
- the terms of agreements to see if they allow exertion of indirect or direct control.

1.17 Thus, there could be two types of disguised public sector entity-one in which majority of the funding is by government, while control is given away to private sector through shareholding arrangements or other articles or agreements; and another in which government

holds an indirect, low or nil stake, while empowering the entity with 'State' powers. Parliamentary scrutiny through CAG audit would be essential in both these cases to enforce accountability on the part of executive government.

1.18 CAG's Standalone Audit Report No. 45 of 2015 (Compliance Audit) on National Skill Development Fund and National Skill Development Corporation for the year ended March 2014 is a welcome step in this direction. It recognises the public sector character which National Skill Development Corporation (NSDC) (a Company) had sought to disguise. It narrates how NSDC was kept out of the purview of government norms and guidelines, though it was mainly funded and controlled by government. The report clearly states that NSDC was kept out of Parliamentary oversight.

As an original report, it could set a trend in detecting more such cases where entities, which are effectively in the realm of public sector or 'State' functions, were sought to be kept out of Legislative and CAG scrutiny. These would be an indicator of Management's attitudes towards corporate governance as also those of the Ministry (executive government) towards Parliamentary scrutiny.

2. Audit Criteria - Applicable norms

2.1 The report talks about operations in two entities created by the government, namely:

- (a) National Skill Development Corporation (NSDC), a not for profit company with 49 *per cent* shares held by government and 51 *per cent* by private sector; and
- (b) National Skill Development Fund (NSDF), a Trust fully owned by the Government of India under the Indian Trusts Act, 1882 to act as a receptacle of funds for NSDC from various sources.

2.2 The audit criteria considered in the report were Cabinet decisions, Investment Management Agreement, RBI's regulatory framework for Non-Banking Financial Companies (NBFCs) and the audit mandate of CAG.

2.3 Common sense, governance and propriety criteria suggest the need to introduce measures for transparency and accountability rather than to cloak public sector operations with legal or technical complexities. This is the crux of the report.

3. Sources of Audit observations - Audit evidence and Audit methodology

Audit evidence

3.1 The sources of evidence were:

- (i) Shareholding pattern of NSDC and funding pattern of NSDF.
- (ii) Articles of Association of NSDC,
- (iii) NSDF Trust Deed,
- (iv) The agenda and minutes of Trust meetings,

- (v) The agenda and minutes of board meetings, which gives a list of directors who have attended, their views and decisions taken,
- (vi) Particulars of NSDC's non-equity sources of funds,
- (vii) Bid papers relating to appointment of agency for regulation of NSDC,
- (viii) List of entities financed by NSDC, amount and nature of assistance (loan/grant/equity),
- (ix) Files relating to proposals and decision making on financial assistance,
- (x) Directors have to declare from time to time their directorships in other companies. This would also be a source of evidence for tracing transactions to directorship in other companies,
- (xi) Annual reports and other documents attached to proposals of entities assisted would reveal networks of related companies such as associates, joint ventures, subsidiaries and such other companies in an overall group,
- (xii) Correspondence of NSDC with Ministry for relieving them from RBI regulations,
- (xiii) Correspondence at Ministry with RBI on the matter,
- (xiv) Bid documents for appointment of private agency as regulator,
- (xv) Ministry's records relating to formation and governance of NSDC and NSDF,
- (xvi) Annual accounts of NSDC and NSDF,
- (xvii) Vouchers regarding funding of NSDC and NSDF.

Audit Methodology

3.2 The report cites a number of documents as mentioned in the audit criteria and audit evidence.

3.3 The fact that the entities were established with a view to dispense with provisions of CAG, DPE procedures and government norms on hiring professionals and consultants was highlighted.

3.4 This was contrasted with the fact that in effect the funding was mostly from government.

3.5 The following facts were detected and commented upon.

- (a) There was less than an arm's length distance in the board of trustees of NSDF and board of directors of NSDC;
- (b) Greater powers were vested in non-government directors; and
- (c) Appointment of a company related to one of the beneficiaries of NSDC's funding as regulator.

3.6 As detailed in Para 1.17, there could be two types of disguised public sector entity. In this case, NSDF is an example of an entity significantly funded by the government, but government has renounced control. Government has made a minority investment in NSDC's capital and it has framed articles of association to ensure dominance of private sector, while the fact is that, NSDC is substantially funded by the government indirectly through NSDF.

4. Type of Audit findings

Audit findings were:

(i) Though the funding was almost entirely from public sector, decisions by directors from the private sector were given more importance.

The report clearly brought out this anomaly.

(ii) The role of CAG and thereby Parliamentary scrutiny were diminished.

The need for effective Parliamentary supervision was clearly brought out in the report.

5. Audit Conclusion-Cause and Effect

The cause is diagnosed as an indirect method of funding and one-sided articles and agreements. The effect is that the taxpayer who has funded the entities does not have a say and his money is not accounted for through CAG and legislative scrutiny.

6. Arrangement of the case study

The audit observations therein are discussed as follows. The important observations are given in bold font, the sources of audit evidence in italics and the remarks forming learning points forming part of the case study are given in normal font.

7. Audit of Corporate Governance-Supervisory and regulatory framework with reference to CAG's Standalone Compliance Audit Report No. 45 of 2015 on National Skill Development Fund and National Skill Development Corporation for the year ended 31 March 2014

7.1 The report begins with an introduction to the two entities, their funding, functions and governing Ministries.

National Skill Development Fund (NSDF) and National Skill Development Corporation (NSDC) were created after approval of the Union Cabinet to stimulate and coordinate private sector initiative in the skill development sector. NSDC was formed (31 July 2008) as a “not for profit” public company with limited liability under Section 25 of the Companies Act, 1956 with an equity capital of Rs.10 crore, of which 51 *per cent* (Rs.5.10 crore) and 49 *per cent* (Rs.4.90 crore) were subscribed by the private sector and Government of India respectively. It was conceived as a Public Private Partnership (PPP) in the skill development sector. NSDF was incorporated (23 December 2008) as a trust, under the Indian Trusts Act, 1882, by the Department of Economic Affairs (DEA), Ministry of Finance, to act as the receptacle of funds from Government sources, bilateral/ multilateral and other agencies. NSDF received Rs.3,300.74 crore, as on 31 March 2015, from the government sources.

NSDF was to examine the Annual Work Plan of NSDC and sanction funds against the work plan. Since inception, NSDC had received funds of Rs.2,362.90 crore upto

31 March 2015 from NSDF for execution of schemes and programmes for skill development.

Government of India vide notification dated 31 July 2014 transferred the work of NSDF and NSDC from DEA to the Ministry of Skill Development, Entrepreneurship, Youth Affairs & Sports and subsequently to a newly created Ministry of Skill Development and Entrepreneurship (MSDE).

Audit Evidence

The documents in the Ministry and the documents in connection with incorporation of the Trust and the Company would be the evidence of these facts.

Learning points: The narrative gives a clear idea of the structure, purpose, inter-relationship and governing Ministry of the two entities.

7.2 The report explained the fact that the audit of NSDC could not be taken up in the normal course of audit under the Companies Act, 2013, as government investment in its equity was less than 51 *per cent*. Audit had to be taken up under Section 14 of the CAG's (DPC) Act, 1971, by recognising it as an entity substantially financed by government grants.

NSDC is not a government company as defined under the Companies Act, 2013, since the Government of India holds only 49 *per cent* of equity capital in it. Therefore, it is not under the CAG's audit purview in a normal course. However, during the transaction audit of Department of Economic Affairs, Ministry of Finance for the year 2013-14, it was observed that grants to the tune of Rs.2,811.98 crore had been disbursed by the Ministry and other Government sources to NSDF during the period 2008-09 to 2013-14. NSDF had been further disbursing grants, from time to time, to NSDC for schemes and programmes of skill development. CAG has a mandate under Section 14 of CAG's (DPC) Act, 1971 to audit any body or authority that is substantially financed by grants or loans from the Consolidated Fund of India. Therefore, CAG conducted audit of NSDC under Section 14 of the C&AG's (DPC) Act, 1971.

Learning points: The fact that there has been substantial funding by the government is highlighted here and contrasted with the fact that the audit of the Company could not be taken up in the normal course due to the design of the shareholding structure alone. It is an indicator that direct Parliamentary scrutiny and CAG audit have been pre-empted by adopting an indirect method of funding the Company.

7.3 The scope of audit done in NSDF and NSDC was described.

Audit at NSDF was carried out to check the formation, functioning and supervisory and monitoring mechanism. Audit at NSDC was conducted to check the function of providing financial assistance and monitoring of the funded projects/partners.

Learning points: The Audit for NSDF was taken up in the Ministries concerned and then at NSDF and NSDC as well. Thus, it was a multi-pronged audit.

7.4 The report then moved on to the audit observations.

7.5 NSDC was conceived to be “private sector led” with Government shareholding of less than 51 *per cent* to prevent it from converting into a Government company so as to dispense with CAG audit, guidelines of Department of Public Enterprises and other Government norms and guidelines. It was designed as a Public Private Partnership with funding and participation from both the Government and Private Sectors. However, NSDC had been working with taxpayer’s money only since its inception in 2008. There was 99.78 *per cent* financial stake of the Government in NSDC with 49 *per cent* equity ownership.

Audit Evidence

The Cabinet note is the evidence in this regard.

Learning points: The intent to avoid public sector supervision is clear in the formation stage itself.

7.6 NSDF was created to act as a receptacle for financial contributions by Government/Government entities, multilateral and bilateral and private sector. However, since inception, NSDF received funds from Government sources only. NSDF received funds from Government of India only. It received Rs.3,300.74 crore from Government sources between 2008 and 2015.

Audit Evidence

The Cabinet note and details of sources of funding for NSDF as per annual reports, read with payment vouchers in Ministry would comprise the evidence in this regard.

Learning points: The funding of NSDF has been narrated as a point of fact.

7.7 As per Audit analysis, out of Rs.2,368 crore funds received by NSDC (Rs.10 crore as equity and Rs.2,358 crore from NSDF) since inception, Rs.2,362.90 crore had been provided from Government sources (Rs.4.90 crore as equity and Rs.2,358 crore from NSDF) which amounted to 99.78 *per cent* of the resources with NSDC as on 31 March 2015.

Audit Evidence

The sources of funds of NSDC as per annual reports read with payment vouchers in Ministry and NSDF would clearly indicate this trail.

Learning points: The observation drives home the point that while equity shareholding is often the means of control and criteria for determining mandate for audit by CAG, cases of substantial government funding in non-equity forms also exist. Such investment tactics disguise the investment and make it appear as if it is not an investment in a public sector entity.

7.8 However, Government's ownership rights were not commensurate with the Government's financial exposure in NSDC. NSDC was also kept out of the parliamentary oversight over its functioning. Though, NSDC had been functioning largely with the taxpayer's money, no efforts were made by the Government for a concomitant increase in the ownership rights and representation on the board of directors of NSDC. In fact, with a small initial equity contribution of Rs.5.10 crore, the private sector continued to control NSDC, which was largely a Government funded organisation. Further, this ownership structure resulted in absence of any obligation on the part of NSDC to submit Annual Reports etc. to the Parliament for legislative scrutiny, despite the fact that the Consolidated Fund of India remained the majority source of funding for NSDC through the NSDF.

The design of keeping NSDC out of the Parliament's oversight was conceived for a scenario where NSDF would get contributions from all the resources. However, in the prevailing situation where a PPP, whose 49 per cent of equity was held by the GoI but which had been operating largely with taxpayer's money for more than five years, created for a public purpose identified as a policy priority of the Government, the need for effective parliamentary oversight over its functioning cannot be overstated.

Learning points: As public sector auditors, we have to see through the mask of technicalities and multiple entities to determine where the taxpayers money stands invested or finally spent. The manner in which the investment or expense is presented is of no significance. Secondly, the observation reveals that even an entity in the public sector may be rendered invisible to Parliamentary scrutiny just by altering the design of the funding thereof. The report detects this and comments on the cause and effect of this phenomenon. It also clearly spells out the need for Parliamentary supervision in such cases.

7.9 NSDF being the monitor, supervisor and regulator of NSDC, inclusion of its Chairman in the board of trustees of NSDF resulted in absence of arm's length relationship between the entity supervised i.e. NSDC and the supervisor i.e. NSDF. Also, since Government funds were routed through NSDF to NSDC, the inter-linkage of keeping Chairman, NSDC on the NSDF Board was avoidable.

Audit Evidence

The Cabinet approval, Investment Management Agreement and policy framework for allotment of funds by NSDF to NSDC would be the audit criteria against which compliance could be watched. The composition of board of directors of NSDC and board of trustees of NSDF would be the most relevant evidence in this regard.

Learning points: One of the parameters of good governance, as also of propriety, is to keep an arm's length in official transactions, so that no conflicts of interest are allowed to arise. One of the reasons why the trust and the company are to be kept separate is to ensure that no conflict of interest develops. The trust funds of NSDF should be used in the best judgement

of its trustees and not subject to any influence from its beneficiary, NSDC. The management structure of NSDF could not achieve this aim.

7.10 Analysis of the management structure and composition at NSDC revealed that though Government of India was the single largest shareholder in NSDC and major contributor to NSDC's finances, its role in decision making had been limited due to minority representation on the board of directors. There were instances when important issues raised by the Government nominees on NSDC board, who were already in minority, were not given required attention. It was also recorded in the DEA file noting that “A perusal of the minutes indicated that Government nominees on the board are the ones who appear to be raising objections, however, these were generally overruled.”

Audit Evidence

Articles of association, list of directors, minutes of the meetings of the Board and notings in the Ministry on these would be the proof in this regard.

Learning points: The government has effectively renounced its right to control NSDC by appointing only 4 government nominees in a Board of 15 members, that too when 99.78 per cent of NSDC's funds are received from the government. It has resulted in abandonment of taxpayer's rights in a public sector unit through its articles of association, rather than on account of shareholding pattern or corporate governance norms. The company is a 'private company' and hence is not subject to stringent provisions relating to independent directors. The need for so many private sector directors does not appear to be justified.

7.11 Though the Cabinet approval and the trust deed of NSDF prescribed a supervisory role of NSDF over NSDC, the detailed contours and modalities of exercising this role were not clearly defined. NSDF was ineffective in its supervisory role. Further, there were several instances when NSDC also effectively denied the supervisory role to NSDF. NSDC kept dictating the terms governing its relationship with NSDF.

Audit Evidence

The meetings of Board of trustees of NSDF, the board of directors of NSDC and clauses in Investment Management Agreement as also the documents showing manner in which NSDF actually monitored the working of NSDC are relevant evidence in this regard.

Learning points: This is another indicator. As NSDC was floated with a totally free hand to private sector directors, the government regulation was almost totally blanked out, despite substantial funding by the government. This deprives the citizen of his rights to the Constitutional mechanism of CAG audit and Parliamentary scrutiny, over use of his funds by the executive government.

7.12 Activities of NSDC of providing loans to entities were covered under the definition of Non-Banking Financial Company (NBFC). RBI is the regulator of NBFC sector in

India. DEA persuaded RBI (June 2010) to exempt NSDC from its regulation on the premise that this work was performed by NSDF. However, no regulatory oversight was provided by NSDF. This regulatory role was outsourced to a private agency in November 2014. Carrying out the task of micro-prudential regulation was an important regulatory function which inherently included enforcement mechanism. Appointment of a private agency for carrying out this regulatory task, on the lines of the one performed by RBI, after taking it out of RBI's domain lacked justification.

Audit Evidence

Correspondence with RBI and documents on appointment of private sector regulator would be the evidence.

Learning points: Not only was the supervision by owners neglected, but also exemption was secured from the national regulator of NBFCs on an assurance that NSDF would monitor NSDC's operations. The assurance was not kept and ultimately, the monitoring was handed over to a private sector entity.

7.13 A private agency, IL&FS Trust Company Limited, was appointed (November 2014) to do micro prudential regulation of NSDC. It had an apparent conflict of interest, as it was part of a business group whose subsidiary company was disbursed Rs.89.97 crore (Rs.8.38 crore as equity, Rs.34.10 crore as grant and Rs.47.49 crore as loan).

Audit Evidence

Bid documents for appointment of regulator, correlated with annual reports of beneficiaries showing group companies

Learning points: Monitoring was handed over to a private sector entity, which had a conflict of interest. NSDC appointed as its regulator a Company, which belonged to a group that had taken loans and grants from NSDC. This indicates lack of commitment to any kind of regulation on the part of NSDC, which is an indicator of poor internal controls and poor control environment.

7.14 The report went on to point out many irregularities in grant of funds to beneficiaries. The fact that there were poor controls naturally indicates chances of numerous irregularities.

8. Conclusion

The report has well and truly looked beyond the corporate veil to reveal abject evasion of public sector supervisory and corporate governance requirements. While this case came to light during scrutiny of grants and audit of the Ministry/ Departments concerned, there could be a number of such entities which may not have come under scrutiny, due to equally complex funding designs or management structures. It indicates the need for greater commitment towards transparency and accountability towards legislature and towards

citizens. Cases of hidden public sector entities which are out of any kind of Parliamentary/ legislative/ regulatory supervision over their finances and operations indicate that safeguards need to be introduced to ensure that Constitutional requirements of Legislature's supervision over the executive government are met in letter and spirit. Hence, such reports would assist the Legislature in enforcing greater control over the executive on the operations and finances of such entities.

Sl. No.9**List of Key Documents**

Sl. No.	Particulars	Page Number
1.	Website of CAG showing Compliance Audit Report No. 45 of 2015 – Union Commercial	25-26
2.	Extracts from DPE Guidelines for CPSEs (May 2010)	27-29
3.	Extracts from Companies Act, 2013	31-35
4.	Extracts from "The CAG- A Thematic History 1990-2007 Vol.I" on cag.gov.in	37-38
5.	Companies (Removal of Difficulties) Seventh Order, 2014	39-40
6.	Extracts from LIC Act, 1956	41-43
7.	Extracts from LIC (Amendment) Act, 2011	45
8.	Extracts from LIC's 58th Annual Report (31.03.2015)	47-50
9.	Extract from Union Government Finance Account 2014-15	51
10.	Extracts from The Constitution of India	53-56
11.	Extracts from Bid Document for Road project	57-60
12.	Extracts from Maharashtra Motor Vehicles Tax Act	61-66
13.	Extracts from MSO (Audit) - 2002	67-69
14.	Application for PAN	71-72
15.	Extracts from GSTN website	73-75
16.	Extracts from GSTN Annual Accounts 2014-15	77-78
17.	Extracts from LIC Housing Finance Ltd. Directors' Report 2014-15	79-82
18.	Extracts from Regulations on Audit and Accounts, 2007	83-84
19.	MCA's General Circular No.33/2014 dated 31 July 2014	85-86
20.	Income Tax Department's Press Release dated 4 July 2014	87-88
21.	Instructions for applying for PAN card	89-91
22.	Sample DGS&D contracts showing percentage of domestic value addition and make in India compliance of computers made in India	93-96
23.	EXIM Bank's Occasional Paper No.171 (March 2015)	97-99
24.	Extracts from Supreme Court judgements	103-108
25.	Rules relating to PAN	109-111
26.	Section 206AA of Income Tax Act, 1961	113
27.	Draft Guiding Principles of POEM	115-118
28.	Extracts from NSDL Annual Report 2013-14	119-121
29.	Statement of Shareholding pattern of NSDL	123-128
30.	Letter relating to IDBI Ltd.	129
31.	Extracts from website of IDBI Ltd.	131-132
32.	Extracts from accounts of SUUTI-DRF-2014-15	133-134
33.	Extracts from UTI (Transfer of Undertaking and Repeal) Act, 2002	135-136
34.	Extracts from Compliance Audit Report No. 45 of 2015 on National Skill Development Fund and National Skill Development Corporation for the year ended 31 March 2014.	137-166

Comptroller and Auditor General of India

Supreme Audit Institution of India



100-1
25

Report No. 45 of 2015 - Compliance Audit on National Skill Development Fund and National Skill Development Corporation for the year ended March 2014, Union Government Ministry of Finance and Ministry of Skill Development and Entrepreneurship

Date on which Report

Tabled: 18th Dec, 2015

Government Type: Union

Union Department Type: Commercial

Report Type: Compliance

Download Audit Report File: [Report No. 45 of 2015 - Union Commercial Full Report](#) (1.47MB)

[Index](#) (0.18MB)

[Preface](#) (0.12MB)

[Executive Summary](#) (0.22MB)

[Chapter 1 - Introduction](#) (0.9MB)

[Chapter 2 - Governing Structure](#) (0.9MB)

[Chapter 3 - Supervisory Role of NSDF](#) (0.9MB)

[Chapter 4 - Functioning of NSDC](#) (0.9MB)

[Chapter 5 - Accounting and Financial Management](#) (0.9MB)

[Chapter 6 - Conclusion](#) (0.9MB)

[Annexures](#) (0.11MB)

Overview

Introduction

National Skill Development Fund (NSDF) and National Skill Development Corporation (NSDC) were created after approval of the Union Cabinet to stimulate and coordinate private sector initiative in the skill development sector. NSDC was formed (31 July 2008) as a "not for profit" public company with limited liability under Section 25 of the Companies Act, 1956 with an equity capital of Rs. 10 crore, of

26 which 51 per cent (Rs. 5.10 crore) and 49 per cent (Rs. 4.90 crore) were subscribed by the private sector and Government of India respectively. It was conceived as a Public Private Partnership (PPP) in the skill development sector. NSDF was incorporated (23 December 2008) as a trust, under the Indian Trusts Act, 1882, by the Department of Economic Affairs (DEA), Ministry of Finance, to act as the receptacle of funds from Government sources, bilateral/ multilateral and other agencies. NSDF received Rs. 3,300.74 crore, as on 31 March 2015, from the government sources.

NSDF was to examine the Annual Work Plan of NSDC and sanction funds against the work plan. Since inception, NSDC had received funds of Rs. 2,362.90 crore upto 31 March 2015 from NSDF for execution of schemes and programmes for skill development.

Government of India vide notification dated 31 July 2014 transferred the work of NSDF and NSDC from DEA to the Ministry of Skill Development, Entrepreneurship, Youth Affairs & Sports and subsequently to a newly created Ministry of Skill Development and Entrepreneurship (MSDE).

Give your feedback

© Content Owned by Comptroller and Auditor General of India.

KP-2
27

**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**

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.

30

C

Extracts from Companion Vol, 2013.

31
KOP-3

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—13

REGISTERED NO. DL—(N)04/0007/2003—13



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 27] नई दिल्ली, शुक्रवार, अगस्त 30, 2013/भाद्रपद 8, 1935 (शक)
No. 27] NEW DELHI, FRIDAY, AUGUST 30, 2013/BHADRAPADA 8, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 30th August, 2013/Bhadrapada 8, 1935 (Saka).

The following Act of Parliament received the assent of the President on the 29th August, 2013, and is hereby published for general information:—

THE COMPANIES ACT, 2013

(No. 18 of 2013)

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this

Short title,
extent,
commence-
ment and
application.

(24) "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act; 56 of 1980.

(25) "company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980; 56 of 1980.

(26) "contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(28) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959; 23 of 1959.

(29) "court" means—

(i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

(31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) "depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; 22 of 1996.

(33) "derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(34) "director" means a director appointed to the Board of a company;

6 of 2009.

Explanation.—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(8) Any casual vacancy in the office of an auditor shall—

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—

(a) he is not disqualified for re-appointment;

(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and

(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

140. (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

Removal,
resignation of
auditor and
giving of
special
notice.

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;

(j) such other matters as may be prescribed.

(4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.

(5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(b) comment upon or supplement such audit report:

Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

56 of 1971.

(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

(9) Every auditor shall comply with the auditing standards.

(10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

38 of 1949.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

(5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company 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 five lakh rupees or with both.

Financial statement.

129. (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;

4 of 1938.
41 of 1999.

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;

10 of 1949.

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;

36 of 2003.

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

(2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

(3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed:

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

Extrac Rem-

WP-h

37

The CAG - A Thematic History 1950-2017 Vol. 2
on Emp. Gov. in

7

Commercial Audit

The audit of Government Companies and Corporations, which were set up mostly after Independence, had raised a number of issues concerning the audit jurisdiction of the C&AG for these entities. Initially, when State owned companies were set up, C&AG's audit was provided in their Articles of Association. When the Government embarked on a massive industrialization drive by setting up Government owned enterprises in varied areas, in fulfillment of its role envisaged in Industrial Policy Resolution, 1948, it took recourse to two forms—a large number of state enterprises were set up as Private Limited Companies or as Statutory Corporations. The setting up of a number of companies in early fifties as Private Limited Company without any specific status was considered contrary to the Constitution by the first C&AG, V. Narahari Rao (1948–1954). In his famous deposition before the Public Accounts Committee in December 1952, Narhari Rao expressed the opinion that the 'Formation of Private Companies under the Indian Companies Act for the management of Government industrial undertakings from the Consolidated Fund was a fraud on the Companies Act and also on the Constitution, because money could not be taken away from the Consolidated Fund for the establishment and transformation of certain concerns into Private Companies in the name of the President and Secretary to the Government. Conversion of a Government concern into a Private Company solely by executive action was unconstitutional.'¹ After an acrimonious debate and fight with the Ministry of Finance but backed by the support of the Public Accounts Committee, the audit by C&AG of these Companies was provided when, in December 1953 Finance Minister informed the House (Lok Sabha)

about Government's intention to bring before Parliament proposals for legislation which would cover Industrial Undertakings of Government and also to provide for audit of C&AG compulsory for them and presentation of his reports to Parliament in usual manner for scrutiny by the PAC. Eventually, when the Indian Companies Act, 1956 was promulgated, it contained provisions for the audit of Government Companies by the C&AG under Section 619. The provision for audit of deemed Government Companies was brought under a new Section 619 (B) by an amendment in 1974 on the suggestion of PAC.

Having secured the audit of Government Companies and Statutory Corporations, the biggest challenge was to create a team of professional auditors to carry out the duties of auditing them. R.K. Chandrasekharan² in his book has detailed the manner in which the commercial audit was built, brick by brick first by V. Narahari Rao (1948–1954) and later by A.K. Chanda (1954–1960) and subsequently during the tenure of A.K. Roy (1960–1966), Audit Report (Commercial) started coming out. A major expansion of the Commercial Audit Wing was done during the tenure of S. Ranganathan (1966–1972) when, on the basis of Administrative Reforms Commission's (ARC) recommendations, several new commercial audit offices were set up. These were called offices of Member, Audit Board and Director of Commercial Audit. The Audit Board mechanism was also introduced on the basis of ARC Report. An Audit Board was constituted only when a comprehensive appraisal of any PSU was undertaken to guide and supervise that appraisal. It consisted of 5 persons including the Chairman viz. Dy. Comptroller and Auditor General (Comml.)³ who was common to all such Boards. Of the members, one was the concerned Director of Commercial Audit who was the Principal Audit Officer of the PSU concerned and one more Director of Commercial Audit was co-opted; besides, there were two technical experts nominated as members of the Audit Board by the Ministry/Department relevant to the PSU concerned. The Audit Board mechanism, however, has undergone a comprehensive and qualitative change recently as discussed elsewhere in this Chapter. In effect, 9 new offices were created between 1970 and 1978. During the tenure of A. Baksi (1972–1978), 7 new offices of MAB and Director, Commercial Audit⁴ were created. As on March 1991, there were 12 offices of Pr. Directors, Commercial Audit with 14 branch offices. In March 2005, there were 12 Pr. Director offices, 15 branch offices and 120 Resident Audit Offices (RAOs). RAOs are meant

अतः, केन्द्रीय सरकार कंपनी अधिनियम, 2013 की धारा 470 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त कठिनाइयों को दूर करने के लिए निम्नलिखित आदेश करती है, अर्थात्:—

1. संक्षिप्त नाम और प्रारंभ—

(1) इस आदेश का नाम कंपनी (कठिनाइयों को दूर करना) सातवां आदेश, 2014 है।

(2) यह आदेश राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगा।

2. कंपनी अधिनियम, 2013 की धारा 143 की उप-धारा (5) में “सरकारी कंपनी के मामले में” शब्दों से शुरू होने वाले और शब्दों “तथा संपरीक्षा के लिए अपेक्षित” पर खत्म होने वाले भाग के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

“केन्द्रीय सरकार द्वारा या किसी राज्य सरकार अथवा सरकारों द्वारा या केन्द्रीय सरकार द्वारा भागतः और एक या अधिक राज्य सरकारों द्वारा भागतः प्रत्यक्ष या अप्रत्यक्ष रूप से धारित या नियंत्रित किसी सरकारी कंपनी या किसी अन्य कंपनी के मामले में भारत का नियंत्रक-महालेखापरीक्षक धारा 139 की उप-धारा (5) अथवा उप-धारा (7) के अधीन संपरीक्षक की नियुक्ति करेगा और ऐसे संपरीक्षक को उस रीति के प्रति निदेश देगा जिसमें कंपनी की लेखाओं को संपरीक्षित किया जानाअपेक्षित है।”

[फा. सं. 1/33/2013-सीएल-V]

अमरदीप सिंह भाटिया, संयुक्त सचिव

MINISTRY OF CORPORATE AFFAIRS

ORDER

New Delhi, the 4th September, 2014

S.O. 2226(E).—Whereas the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) received the assent of the President on the 29th August, 2013 and section 143 of the Act, which provides for the powers and duties of the auditors and auditing standards, came into force with effect from 1st April, 2014;

And whereas sub-sections (5) and (7) of section 139 of the said Act provide for power of the Comptroller and Auditor-General of India to appoint an auditor duly qualified to be appointed as an auditor in a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

And whereas sub-section (5) of Section 143 of the said Act which provides for power of the Comptroller and Auditor-General of India to conduct supplementary audit does not specifically cover companies ‘owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments’;

And whereas difficulties have arisen in implementation of the provisions of sub-section (5) of section 143 for companies referred to in sub-sections (5) and (7) of section 139 of the said Act;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013, the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely :—

1. Short title and commencement.—

(1) This order may be called the Companies (Removal of Difficulties) Seventh Order, 2014.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In section 143 of the Companies Act, 2013 in sub-section (5), for the portion beginning with the words "In the case of a Government company" and ending with the words "required to be audited and", the following shall be substituted, namely :—

"In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the accounts of the company are required to be audited and".

[F. No. 1/33/2013-CL.-V]

AMARDEEP SINGH BHATIA, Jt. Secy.

(4) Every Tribunal shall have power to regulate its own procedure and decide all matters within its competence, and may review any of its decisions in the event of there being a mistake on the face of the record or correct any arithmetic or clerical error therein.

CHAPTER V : MANAGEMENT

18. Offices, branches and agencies.--

- (1) The central office of the Corporation shall be at such place as the Central Government may, by notification in the Official Gazette, specify.
- (2) The Corporation shall establish a zonal office at each of the following places, namely, Bombay, Calcutta, Delhi, Kanpur and Madras, and, subject to the previous approval of the Central Government, may establish such other zonal offices as it thinks fit.
- (3) The territorial limits of each zone shall be such as may be specified by the Corporation.
- (4) There may be established as many divisional offices and branches in each zone as the Zonal Manager thinks fit.

19. Committees of the Corporation.--

- (1) The Corporation may entrust the general superintendence and direction of its affairs and business to an Executive Committee consisting of not more than five of its members and the Executive Committee may exercise all powers and do all such acts and things as may be delegated to it by the Corporation.
- (2) The Corporation may also constitute an Investment Committee for the purpose of advising it in matters relating to the investment of its funds, and the Investment Committee shall consist of not more than [eight members of whom not less than four] shall be members of the Corporation and the remaining members shall be persons (whether members of the Corporation or not) who have special knowledge and experience in financial matters, particularly, matters relating to investment of funds.
- (3) The Corporation may constitute such other Committees as it may think fit for the purpose of discharging such of its functions as may be delegated to them.

20. Managing Directors.—

The Corporation may appoint one or more persons to be the Managing Director or Directors of the Corporation, and every Managing Director shall be a whole-time officer of the Corporation and shall exercise such powers and perform such duties as may be entrusted or delegated to him by the Executive Committee or the Corporation.

21. Corporation to be guided by the directions of Central Government.-

In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest the decision of the Central Government thereon shall be final.

22. Zonal Managers.—

- (1) The Corporation may entrust the superintendence and direction of the affairs and business of a zonal office to a person whether a member or not, who shall be known as the Zonal Manager and the Zonal Manager shall perform all such functions of the Corporation as may be delegated to him with respect to the area within the jurisdiction of the Zonal office.
- (2) The Corporation may constitute for each zone a Board consisting of such number of persons as it thinks fit to appoint thereto for the purpose of advising the Zonal Manager in respect of such matters as are referred to it under the regulations made by the Corporation.

1. Substituted for the words "seven members of whom not less than three" by the Public Financial Institutions Laws (Amendment) Act, 1975, w.e.f. 16.02.1976

42
Extracts from LIC Act, 1956 191 1476

(3) The Corporation shall constitute in the prescribed manner for each zonal office an Employees and Agents Relations Committee consisting of such number of persons as it thinks fit and every such Committee shall consist of representatives of the Corporation and of its employees and agents, so however, that the number of representatives of the employees of the employees and agents on the Committee shall not be less than the number of representatives of the Corporation and shall be duty of the Committee to advise the Zonal Manager on matters which relate to the welfare of the employees and agents of the Corporation or which are likely to promote and secure amity and good relations between them and the Corporation.

23. Staff of the Corporation.—

- (1) For the purpose of enabling it to discharge its functions under this Act, the Corporation may employ such number of persons as it thinks fit.
- (2) Every person employed by the Corporation or whose services have been transferred to the Corporation under this Act, shall be liable to serve anywhere in India.

CHAPTER VI : FINANCE, ACCOUNTS AND AUDIT

24. Funds of the Corporation.—

The Corporation shall have its own fund and all receipts of the Corporation shall be credited thereto and all payments of the Corporation shall be made therefrom.

25. Audit.—

- (1) The accounts of the Corporation shall be audited by auditors duly qualified to act as auditors of companies under the law for the time being in force relating to companies, and the auditors shall be appointed by the Corporation with the previous approval of the Central Government and shall receive such remuneration from the Corporation as the Central Government may fix.
- (2) Every auditor in the performance of his duties shall have at all reasonable times access to the books, accounts and other documents of the Corporation.
- (3) The auditors shall submit their report to the Corporation and shall also forward a copy of their report to the Central Government.

26. Actuarial valuations.—The Corporation shall, once at least in every two years, cause an investigation to be made by actuaries into the financial conditions of the [life insurance business of the Corporation, including a valuation of the liabilities of the Corporation in respect thereto], and submit the report of the actuaries to the Central Government.

27. Annual report of activities of Corporation.—

The Corporation shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed a report giving an account of its activities during the previous financial year, and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Corporation in the next financial year.

1. Substituted by the Life Insurance Corporation (Amendment) Act, 1965.

28. ¹Surplus from life insurance business how to be utilized.--

If as a result of any investigation undertaken by the Corporation under section 26 any surplus emerges, ninety-five per cent of such surplus or such higher percentage thereof as the Central Government may approve shall be allocated to or reserved for the life insurance policy-holders of the Corporation and after meeting the liabilities of the Corporation, if any, which may arise under section 9, the remainder shall be paid to the Central Government or, if that Government so directs, be utilised for such purposes and in such manner as that Government may determine.]

[28A. ²Profits from any business (other than life insurance business) how to be

utilized.-- If for any financial year profits accrue from any business (other than life insurance business) carried on by the Corporation, then, after making provision for reserves and other matters for which provision is necessary or expedient, the balance of such profits shall be paid to the Central Government.]

29. Reports to be laid before Parliament.--

The Central Government shall cause the report of the auditors under section 25, the report of the actuaries under section 26 and the report giving an account of the activities of the Corporation under section 27 to be laid before both Houses of Parliament as soon as may be after each such report is received by the Central Government.

CHAPTER VII : MISCELLANEOUS

30. Corporation to have exclusive privilege of carrying on life insurance business.—

Except to the extent otherwise expressly provided in this Act, on and from the appointed day the Corporation shall have the exclusive privilege of carrying on life insurance business in India; and on and from the said day any certificate to registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect in so far as it authorises him to carry on life insurance business in India.

30A. ³Exclusive privilege of Corporation to cease.—

Notwithstanding anything contained in this Act, the exclusive privilege of carrying on life insurance business in India by the Corporation shall cease on and from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and the Corporation shall, thereafter, carry on life insurance business in India in accordance with the provisions of the Insurance Act, 1938.

31. Exception in the case of insurance business in respect of persons residing outside India.—

(1) Notwithstanding anything contained in section 30 or in the Insurance Act, the Central Government may, by order, permit person who has made an application in that behalf, to carry on life insurance business in India, in respect of the lives of persons ordinarily resident outside India, subject to such restrictions and conditions as may be specified in the order and any such order shall be deemed to have effect as if it were a certificate of registrations issued by the Controller to such person under section 3 of the Insurance Act in respect of that class of business.

1. Substituted by the Life Insurance Corporation (Amendment) Act, 1965
 2. Inserted, *ibid*
 3. Inserted by the Insurance Regulatory and Development Authority Act, 1999.

h

C



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 8] नई दिल्ली, शुक्रवार, जनवरी 13, 2012/ पौष 23, 1933 (शक)
No. 8] NEW DELHI, FRIDAY, JANUARY 13, 2012/ PAUSA 23, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, 13th January, 2012/Pausa 23, 1933 (Saka)

The following Act of Parliament received the assent of the President on the 12th January, 2012, and is hereby published for general information:—

THE LIFE INSURANCE CORPORATION (AMENDMENT) ACT, 2011

(No. 8 of 2012).

[12th January, 2012.]

An Act further to amend the Life Insurance Corporation Act, 1956.

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Life Insurance Corporation (Amendment) Act, 2011.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

31 of 1956.

2. In the Life Insurance Corporation Act, 1956 (hereinafter referred to as the principal Act), for section 5, the following section shall be substituted, namely:—

Substitution of
new section
for section 5.

“5. (1) The paid-up equity capital of the Corporation shall be one hundred crore of rupees provided by the Central Government after due appropriation made by Parliament by law for the purpose.

Capital of
Corporation.

46

C

अनुसूची
SCHEDULE
5- शेयर पूँजी : 31.03.2015
5- SHARE CAPITAL : 31.03.2015

 (रुपये लाखों में)
 (₹ in lac)

विवरण Particulars	गैर-संबद्ध व्यवसाय Non-linked Business	संबद्ध व्यवसाय Linked Business	कुल चालू वर्ष Total Current Year	कुल पिछले वर्ष Total Previous Year
अभिदत्त पूँजी (जीवन बीमा निगम अधिनियम, 1956 के खण्ड 5 के तहत केन्द्रीय सरकार द्वारा प्रदत्त) Subscribed Capital (Provided by the Central Government in terms of Section 5 of the Life Insurance Corporation Act, 1956)	10000.00	0.00	10000.00	10000.00
कुल TOTAL	10000.00	0.00	10000.00	10000.00
शेयर पूँजी SHARE CAPITAL				
भारत में In India	10000.00	0.00	10000.00	10000.00
भारत के बाहर Out of India	0.00	0.00	0.00	0.00
कुल Total	10000.00	0.00	10000.00	10000.00

58

C

विवरण Particulars	अनुसूची Schedule	गैर-संबद्ध व्यवसाय Non-Linked Business		संबद्ध व्यवसाय Linked Business		कुल Total	
		भारत में In India	भारत के बाहर Out of India	भारत में In India	भारत के बाहर Out of India	चालू वर्ष Current Year	पिछले वर्ष Previous Year
चालू दायित्व CURRENT LIABILITIES	13	563297.55	2562.46	0.00	0.00	565860.01	(147133.42)
प्रावधान PROVISIONS	14	1674345.50	265.29	0.00	0.00	1674610.79	1657732.12
उप-योग (ख) Sub-Total (B)		2237643.05	2827.75	0.00	0.00	2240470.80	1510598.70
शुद्ध चालू परिसम्पत्तियाँ (ग) = (क - ख) NET CURRENT ASSETS (C) = (A - B)		11508290.28	(10954.41)	458.31	0.00	11497794.18	13577202.94
विविध व्यय (जो बड़े खाते में न डाले गए हों या समायोजित न हुए हों) MISCELLANEOUS EXPENDITURE (to the extent not written off or adjusted)	15	0.00	0.00	0.00	0.00	0.00	0.00
लाभ-हानि लेखा में नामें शेष (शेयरधारकों का खाता) DEBIT BALANCE IN PROFIT & LOSS ACCOUNT (Shareholders' Account)		0.00	0.00	0.00	0.00	0.00	0.00
कुल TOTAL		189447963.44	285898.27	9469747.54	4242.54	199207851.79	172445755.91

महत्वपूर्ण लेखनीतियाँ तथा लेखा सम्बन्धी टिप्पणियाँ 15क
 Significant Accounting Policies & Notes to Accounts 15A
 हमारी उस तारीखवाली रिपोर्ट के अनुसार
 As per our report of even date

अनुसूचियाँ 1 से 15 क तक के लिए हस्ताक्षर
 Signatures to Schedules 1 to 15A

जी. डी. आप्टे एण्ड कं. के लिए
 For G.D. Apte & Co.
 F.R.N. / 100515W
 सी. एम. दिक्षित (पार्टनर)
 C.M. Dixit (Partner)
 स.क्र./M.No. 17532
 दास गुप्ता एण्ड असो. के लिए
 For Dass Gupta & Assoc.
 F.R.N. / 000112N
 नरेश कुमार (पार्टनर)
 Naresh Kumar (Partner)
 स.क्र./M.No. 082069
 ओ. पी. टोटला एण्ड कं. के लिए
 For O. P. Totla & Co.
 F.R.N. / 000734C
 एस. आर. टोटला (पार्टनर)
 S. R. Totla (Partner)
 स.क्र./M.No. 071774
 पी. बी. विजयाराघवन एण्ड कं. के लिए
 For P.B. Vijayaraghavan & Co.
 F.R.N. / 004721S
 पी. बी. सन्थानाकृष्णन (पार्टनर)
 P.B. Santhanakrishnan (Partner)
 स.क्र./M.No. 20309
 एम.के.पी.एस. एण्ड असो. के लिए
 For MKPS & Associates
 F.R.N. / 302014E
 नरेंद्र खंडाल (पार्टनर)
 Narendra Khandal (Partner)
 स.क्र./M.No. 065025

वी. शंकर एय्यर एण्ड कं. के लिए
 For V. Sankar Aiyar & Co.
 F.R.N. / 109208W
 अरविंद मोहन (पार्टनर)
 Arvind Mohan (Partner)
 स.क्र./M.No. 124082
 बी. सी. जैन एण्ड कं. के लिए
 For B. C. Jain & Co.
 F.R.N. / 01099C
 श्याम जी गुप्ता (पार्टनर)
 Shyam Ji Gupta (Partner)
 स.क्र./M.No. 416155
 चतुर्वेदी एण्ड कं. के लिए
 For Chaturvedi & Co.
 F.R.N. / 302137E
 एस. सी. चतुर्वेदी (पार्टनर)
 S. C. Chaturvedi (Partner)
 स.क्र./M.No. 12705
 बी. गुप्ता एण्ड कं. के लिए
 For B. Gupta & Co.
 F.R.N. / 000933C
 एस. पी. सिन्हा (पार्टनर)
 S. P. Sinha (Partner)
 स.क्र./M.No. 014854
 एम. आनंदम एण्ड कं. के लिए
 For M. Anandam & Co.
 F.R.N. / 000125S
 एस. वेन्कटेश्वरलु (पार्टनर)
 S. Venkateswarlu (Partner)
 स.क्र./M.No. 022790

एस. के. रॉय
 S. K. Roy

अध्यक्ष
 Chairman

एस. बी. मायनाक
 S. B. Mainak

प्रबंध निदेशक
 Managing Director

वी. के. शर्मा
 V. K. Sharma

निगम के सदस्य
 Members of the
 Corporation

ए. के. रॉय
 A. K. Roy

वी. चंद्रशेखरन
 V. Chandrasekaran

कार्यकारी निदेशक (वि.एव. ले)
 Executive Director (F&A)

पी. के. अरोड़ा
 P. K. Arora

नियुक्त बीमांकक
 Appointed Actuary

सनदी लेखाकार

CHARTERED ACCOUNTANTS

मुंबई : 09 जून, 2015
 Mumbai : 09 June, 2015

फार्म ए-बीएस FORM A-BS

बीमाकर्ता का नाम - भारतीय जीवन बीमा निगम
पंजीकरण की संख्या 512 तथा तारीख 01/01/2001

Name of the Insurer: Life Insurance Corporation of India
Registration No. 512 Dated: 01.01.2001

31 मार्च 2015 तक कुल व्यवसाय से संबंधित तुलन-पत्र

(रुपये लाखों में)

BALANCE SHEET AS AT 31ST MARCH, 2015 IN RESPECT OF TOTAL BUSINESS

(₹ in lac)

विवरण Particulars	अनुसूची Schedule	गैर-संबद्ध व्यवसाय Non-Linked Business		संबद्ध व्यवसाय Linked Business		कुल Total	
		भारत में In India	भारत के बाहर Out of India	भारत में In India	भारत के बाहर Out of India	चालू वर्ष Current Year	पिछले वर्ष Previous Year
निधियों का स्रोत / SOURCES OF FUNDS							
शेयरधारकों की निधियाँ:							
SHAREHOLDERS' FUNDS:							
शेयर पूँजी SHARE CAPITAL	5	10000.00	0.00	0.00	0.00	10000.00	10000.00
आरक्षितनिधि एवं अधिशेष RESERVES AND SURPLUS	6	25064.03	20007.11	0.00	0.00	45071.14	43000.37
जमा/(नामों) सही मूल्य परिवर्तन लेखा CREDIT/(DEBIT) FAIR VALUE CHANGE ACCOUNT		0.00	1183.28	0.00	0.00	1183.28	859.16
उप-योग							
Sub-Total		35064.03	21190.39	0.00	0.00	56254.42	53859.53
उधारी BORROWINGS	7	0.00	0.00	0.00	0.00	0.00	0.00
पॉलिसीधारकों की निधियाँ:							
POLICYHOLDERS' FUNDS:							
जमा/(नामों) सही मूल्य परिवर्तन लेखा CREDIT/(DEBIT) FAIR VALUE CHANGE ACCOUNT		15589204.54	11200.56	266460.10	0.00	15866865.20	10819114.00
पॉलिसी दायित्व POLICY LIABILITIES		173004628.30	230006.09	2175041.24	170.88	175409846.51	152921155.97
बंद पॉलिसियों के लिये निधि							
FUNDS FOR DISCONTINUED POLICIES							
प्रिमियम भुगतान ना करने के कारण रोक देना Discontinued on account of non payment of premium		0.00	0.00	1979.99	0.00	1979.99	3529.17
अन्य / Others		0.00	0.00	20662.06	0.00	20662.06	5621.34
बिमा आरक्षितनिधि INSURANCE RESERVES	6A	819066.57	23501.23	0.00	27.01	842594.81	861133.54
संबद्ध दायित्वों के लिए प्रावधान PROVISION FOR LINKED LIABILITIES		0.00	0.00	7005603.65	4044.65	7009648.30	7781211.11
उप-योग							
Sub-Total		189412899.41	264707.88	9469747.04	4242.54	199151596.87	172391765.13
भविष्य विनियोजनों के लिए निधियाँ FUNDS FOR FUTURE APPROPRIATIONS		0.00	0.00	0.50	0.00	0.50	131.25
कुल		189447963.44	285898.27	9469747.54	4242.54	199207851.79	172445755.91
निधियों का प्रयोग							
APPLICATION OF FUNDS							
निवेश							
INVESTMENTS							
शेयरधारकों के Shareholders'	8	20870.39	29750.10	0.00	0.00	50620.49	50808.12
पॉलिसीधारकों के Policyholders'	8A	167523288.81	250856.58	0.00	0.00	167774145.39	138987238.72
संबद्ध दायित्व रक्षित करने के लिए परिसम्पत्तियाँ ASSETS HELD TO COVER LINKED LIABILITIES	8B	0.00	0.00	9461610.64	4242.54	9465853.18	9898812.54
ऋण / LOANS	9	10081577.65	13542.94	7678.59	0.00	10102799.18	9624963.66
अचल परिसम्पत्तियाँ FIXED ASSETS	10	313936.31	2703.06	0.00	0.00	316639.37	306729.93
चालू परिसम्पत्तियाँ CURRENT ASSETS							
रोकड़ एवं बैंक में अतिशेष Cash and Bank Balances	11	6426921.69	10627.40	0.00	0.00	6437549.09	8100300.40
अग्रिम एवं अन्य परिसम्पत्तियाँ Advances and Other Assets	12	7292812.67	7444.91	458.31	0.00	7300715.89	6987501.24
अंतर कार्यालय शेष Inter-Office Balances		26198.97	(26198.97)	0.00	0.00	0.00	0.00
उप-योग (क) / Sub-Total (A)		13745933.33	(8126.66)	458.31	0.00	13738264.98	15087801.64

वित्त लेखे, संघ सरकार
FINANCE ACCOUNTS, UNION GOVERNMENT

संख्या 1—लेन-देनों का सारांश — जारी
 No. 1—SUMMARY OF TRANSACTIONS — *contd.*

अनुबंध
Annexure

वर्ष 2014-2015 के दौरान राज्यों को समनुदेशित कर और शुल्क
TAXES AND DUTIES ASSIGNED TO STATES DURING 2014-2015

(करोड़ रुपयों में)
 (In crores of rupees)

	सकल प्राप्तियां Gross Receipts	राज्यों को समनुदेशित Assigned to States	निवल प्राप्तियां Net Receipts
0020—निगम कर 0020—Corporation Tax	428924.74	118235.02	310689.72
0021—निगम कर से भिन्न आय पर कर 0021—Taxes on Income other than Corporation Tax	258374.44	84431.14	173943.30
0028—आय और व्यय पर अन्य कर 0028—Other Taxes on Income and Expenditure	10.86	2.86	8.00
0032—धन पर कर 0032—Taxes on Wealth	1085.50	319.19	766.31
0037—सीमा शुल्क 0037—Customs	188016.18	54758.54	133257.64
0038—संघ उत्पाद शुल्क 0038—Union Excise Duties	189038.48	30920.38	158118.10
0044—सेवा कर 0044—Service Tax	167969.42	49141.40	118828.02
0045—वस्तुओं और सेवाओं पर अन्य कर और शुल्क 0045—Other Taxes and Duties on Commodities and Services	1190.75	—0.08	1190.83
जोड़ TOTAL	1234610.37	337808.45	896801.92

52

C

PART III

FUNDAMENTAL RIGHTS

General

Definition.

12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Laws inconsistent with or in derogation of the fundamental rights.

13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

¹[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

Right to Equality

Equality before law.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I.—FINANCE

General

Interpretation.

¹[264. In this Part, "Finance Commission" means a Finance Commission constituted under article 280.]

Taxes not to be imposed save by authority of law.

265. No tax shall be levied or collected except by authority of law.

Consolidated Funds and public accounts of India and of the States.

266. (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

¹Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for art. 264.

(Seventh Schedule)

87. Estate duty in respect of property other than agricultural land.
88. Duties in respect of succession to property other than agricultural land.
89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
 - ¹[92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.]
 - ²[92B. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.]
 - *[92C. Taxes on services.]
93. Offences against laws with respect to any of the matters in this List.
94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.
95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
96. Fees in respect of any of the matters in this List, but not including fees taken in any court.
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including ³[the use of any naval, military or air force or any other armed force of the Union or of any other force subject to

¹Ins. by the Constitution (Sixth Amendment) Act, 1956, s. 2.

²Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, s. 5.

^{*}Ins. by the Constitution (Eighty-eighth Amendment) Act, 2003, s. 4 (which is yet not in force, date to be notified later on).

³Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 57, for certain words (w.e.f. 3-1-1977).

(Seventh Schedule)

the control of the Union or of any contingent or unit thereof] in aid of the civil power).

¹[2. Police (including railway and village police) subject to the provisions of entry 2A of List I.]

3. ²***Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

3* * * * *

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those ⁴[declared by or under law made by Parliament] to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

¹Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 57, for entry 2 (w.e.f. 3-1-1977).

²Certain words omitted by s. 57, *ibid.* (w.e.f. 3-1-1977).

³Entry 11 omitted by s. 57, *ibid.* (w.e.f. 3-1-1977).

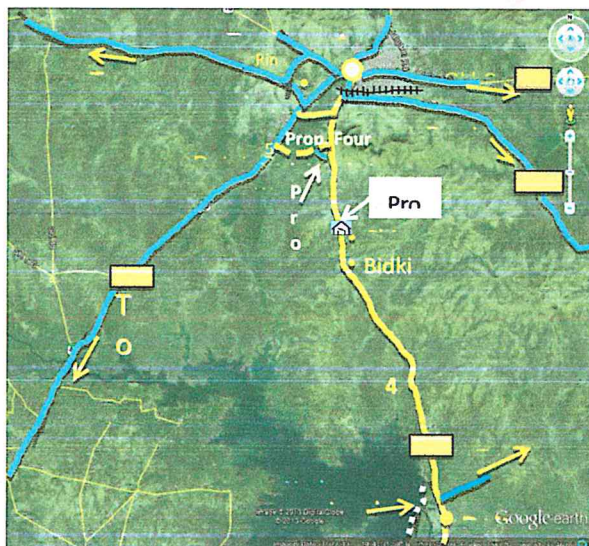
⁴Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 27, for "declared by Parliament by law".



Government of Maharashtra

World Bank Project Division, Aurangabad

Name of the Project: Four laning from of Aurangabad – Paithan road SH-30 Km 326/780 to Km 372/635 (Length 45.855 km) & Two lane paved shoulders of Walmi Walunj pipe line road km 0/00 to 5/200 (Length – 5.20 km) Total length 51.055 km on Design, Build, Finance, Operate & Transfer basis (DBFOT) in the State of Maharashtra



BID DOCUMENT

VOLUME 1- REQUEST FOR PROPOSAL

_(Under Public Private Partnership)

World Bank Project Division, Aurangabad

ARTICLE 27

TOLL

27.1 Collection and appropriation of Toll

27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Toll from the Users in accordance with this Agreement, and the Applicable Law as per Government of Maharashtra Notification issued by Public Works Department, Mantralaya, Mumbai Notification No. Kha Kshe Sa - 2002 / Case No. 279 (II), Road - 9 dated 30/07/2009 (the "Toll Rules") provided that for ease of payment and collection, such Toll shall be rounded off to the nearest 5 (five) rupees in accordance with the Toll Rules; provided further that the Concessionaire may determine and collect Toll at such lower rates as it may by public notice to the Users, specify in respect of all or any category of Users or vehicles.

27.1.2 The Parties acknowledge that a notification for levy and collection of Toll has been issued by the Government under Section 20 of the Bombay Motor Vehicle Tax Act, 1958 and subsequent amendments thereto and the Toll Rules there under (the "Toll Notification") and a copy of thereof is set forth in Schedule-R

27.1.3 The Concessionaire acknowledges and agrees that upon payment of Toll, any User shall be entitled to use the Project Highway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.1.4 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Toll shall be entitled to use the Project Highway without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that Exempted Vehicles are not liable to payment of Toll.

27.2 Revision of Toll

27.2.1 The Parties hereto acknowledge and agree that the Toll shall be revised subject to and in accordance with the provisions of the Toll Rules

27.3 Exemption for Local Users

The Concessionaire shall not collect any Toll from Local User for non-commercial use of the Project Highway, and shall issue a pass in respect thereof for commuting on a section of the Project Highway as specified in such pass and for crossing the Toll Plaza specified therein. For carrying out the provision of this Clause 27.3, the Concessionaire shall provide a monthly pass to Local user as per the Toll Rules; provided further that no passes will required or Toll collected from a vehicle that uses part of the Project Highway and does not cross a Toll Plaza.

Annex – 1
(Schedule – R)
TOLL POLICY

Government of Maharashtra
 Public Works Department
 Govt. Resolution No Kha Kshe Sa -2008/ CaseNo.122, Road -9
 Mantralaya, Mumbai – 400032
 Date: 30th July 2009.

Ref:

1. Govt Resolution, Public Works Department, NO Kha Kshe Sa – 2002/ Case No 279/ Road 9 dt 9th January 2003.
2. Govt Resolution, Public Works Department, NO Kha Kshe Sa – 2002/ Case No 279/ Road 9 dt 29th May 2003.

Preamble: Govt of Maharashtra has issued a resolution on 9th January 2003 regarding toll policy. However because of changing situations slight modification in the said resolution were under consideration. Accordingly following decisions have been taken superseding the resolution dt 9th January 2003 and. dt 29th May 2003.

Govt Resolution: Regarding proposed works/ projects under privatisation and concession in toll tax. Govt has taken following decision.

- 1) Toll is not to be levied on projects completed under state plan .However ongoing toll levy on projects is to be closed in stages during next two years in stages with Government prior permission.

The Toll policy and toll concession on road and bridge projects completed under privatisation, the following decision is taken

- 2) Generally following types of projects are to be considered for toll tax.
 - I) New construction of road/ bridge (of any length) and bypass road.
 - II) Widening/ strengthening or improvement of existing roads to two Lane, Two lanes with necessary bridges, subways, cross drainage Works, flyovers and tunnels. Road.
 - III) Improvement to minimum 35 km length of two lane paved shoulders or two lane asphalted road surface.
 - IV) Integrated road project of net work of various standards. (Cluster approach).
 - V) Railway / Road over bridges.
 - VI) Integrated road development projects in city area.

Page 211

Four-laning of Aurangabad Paithan road SH-30 from km 326.700 to km 372.600 & Two-laning with paved shoulders of Walmi Walunj road from km 0.00 to km 5.200 on DBFOT basis.

- 60
- 3) Toll rates are based on project cost , accordingly
- A) All projects are grouped in three different categories (schedule A)
- Category 1- project cost up to Rs 40.00 crores.
- Category 2- project cost more than Rs 40.00 crores up to Rs 100.00 crores.
- Category 3- project cost more than Rs 100.00 crores up to 400.00 crores.
- B) for project more than Rs 400.00 crores Integrated road development programme in city area as well as projects implemented through MSRDC in city area for other work the toll rates to be decided separately.
- C) Types of vehicles are categories in five category in lieu of pervious Two categories. The toll rates for five different category as fixed as per schedules A.
- D) Toll rates are fixed as per schedules B
- 4) a) For the projects where toll levy is going on and balance concession period is more than 3 years or projects work is in progress , the revised toll policy is applicable as prior permission from Government
- b) For projects newly sanctioned and at tender stage the revised toll rates are applicable. The cash flow and concession period and toll rates to be worked out accordingly and incorporate in tenders.
- 5) Concern Chief Engineers will have the authority to fix the location of toll plaza.
- 6) The distance between two toll plaza on one road shall not be less than 35- 40 km.

The said Government Resolution is issued in coagulation with planning Department vide unofficial reference no 8161 / Pra.sa /planning dt 08.06.2009 and Finance Department vide unofficial reference no 88/09 /vya – 11 dt 25.03.2009

These toll rates are approved by Cabinet infrastructure development committee meeting dated 17.06.2009

Said Resolution is available on Maharashtra Government web site.(www.maharashtra.gov.in) with complete code of 20090817124014001

By order and in the name of the Government of Maharashtra.

Sd/-
(M.N.Dekate)
Deputy Secretary
Government of Maharashtra



GOVERNMENT OF MAHARASHTRA
LAW AND JUDICIARY DEPARTMENT

BOMBAY ACT NO. LXV OF 1958.

THE MAHARASHTRA MOTOR VEHICLES TAX ACT.

(As modified upto 2012)

PRINTED IN INDIA BY THE MANAGER, GOVERNMENT PRESS AND STATIONERY
STORES, KOLHAPUR AND PUBLISHED BY THE DIRECTOR, GOVERNMENT
PRINTING, STATIONERY AND PUBLICATIONS, MAHARASHTRA STATE,
MUMBAI-400 004.

[Price : Rs. 00.00]

62

C

¹[²(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass on any person convicted of any offence under this Act a sentence of fine as provided in clause (iii) of sub-section (1), in excess of his powers under section 29 of the said Code.]

17. Whoever contravenes any of the provisions of this Act, if no other penalty is elsewhere provided therein for such a contravention, shall, on conviction, be ³[punished with fine which shall, except for special reasons to be recorded, not be less than fifty rupees and which may extend to two hundred rupees, and in the event of such person having been previously convicted of the same offence, with fine which shall not be less than one hundred rupees and which may extend to four hundred rupees]. Other penalties.

18. (1) The prescribed Officer may ⁴* * * after the institution of proceedings for any offence punishable under clause (a) of sub-section (1) of section 16, accept from any person charged with such offence by way of composition thereof such sum of money as may be prescribed, provided that the sum is paid within the prescribed time. Compo- unding of offences.

(2) On payment by such person of such sum together with the amount of ⁵[tax and interest] (if any), due, such person, if in custody, shall be set at liberty, and if any proceedings in any Criminal Court have been instituted against such person in respect of the offence the composition shall be deemed to amount to an acquittal, and no further criminal proceedings shall be taken against such person in respect of such offence.

19. No Court inferior to that of a ⁶[Metropolitan Magistrate or a Judicial Magistrate of the First Class] shall try an offence punishable under this Act. Trial of offences.

Bom. II of 1868. Hyd. Act. No. 11 of 1314- F. XII of 1878. 20. (1) Except as provided in, the Bombay Ferries and Inland Vessels Act, 1868, ⁷* * * or the Hyderabad Ferries Act, or the Northern India Ferries Act, 1878 ⁸[and subject to the provisions of sub-sections (1A), (1B), (1C) and (1D) on and after the commencement of this Act, no tolls shall be levied and collected— Bar to levy tolls, etc. on motor vehicles.

(a) on any vehicle, animal or person by the State Government or by any local board,

(b) on any motor vehicle, by any other local authority :

⁹* * * * *

1 Sub-section (4) was inserted by Mah. 14 of 1987, s. 8(d).
2 Sub-section (4) was renumbered as sub-section (5) by Mah. 2 of 1998 s. 10 (b).
3 These words were substituted by Mah. 43 of 1969, s. 10.
4 The words "either before or" were deleted by Mah. 22 of 1979, s. 16(a).
5 These words were substituted for the word "tax", ibid., s. 16(b).
6 The words were substituted for the words "Presidency Magistrate or a Magistrate of the first class" by Mah. 14 of 1987, s. 9.
7 The words "or that Act as applied to the Kutch area of the State of Bombay" were omitted by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.
8 These words, figures, brackets and letters were inserted by Mah. 13 of 1987, s. 2(a)(i).
9 This proviso was deleted, ibid., s. 2(a)(ii).

¹[²(1-A) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-sections (1-B), (1-C) and (1-D), the State Government may levy and collect tolls on motor vehicles and trailers drawn by such vehicles,—

(i) passing over any bridge or through any tunnel including an approach road thereto or any section of road or any by-pass described hereunder in clauses (a) and (b), or

(ii) passing over or through any portion or a part of any of such bridges or tunnels including the approach roads thereto or sections of roads or by-passes, the cluster of which is situated in a well defined zone and declared by the State Government under the said clause (a) as one single entity,

including the motor vehicles and trailers drawn by such vehicles benefiting directly or indirectly by the augmentation of the facilities in the use of such bridges, tunnels or approach roads thereto or any sections of roads or any by-passes, although while enjoying benefit of such augmentation of facilities, such vehicles may not be required to pass over or through the entire cluster of such single entity,—

(a) toll may be levied and collected in respect of a bridge or tunnel including an approach road thereto or any section of road or any by-pass or a cluster of such bridges or tunnels including approach roads thereto or sections of roads or by-passes situated in a well defined zone and declared by the State Government, by a notification in the *Official Gazette*, as one single entity, which is newly constructed, reconstructed, improved or repaired as the case may be, after the commencement of the Bombay Motor Vehicles Tax (Amendment) Act, 1987, at the expense of the State Government or at the expense of any person or body or association of individuals whether incorporated or not or at the expenses of both, that is to say, the State Government and any such person or body or association ³[or by private entrepreneur or an agent appointed by the State Government or the State Public Enterprise authorised by the State Government in this behalf, by entering into an agreement with such entrepreneur or agent under the Build, Operate and Transfer (B.O.T.) Projects,] and the total capital outlay of which construction, reconstruction, improvement or repairs, as the case may be, is not less than ten lakhs of rupees; or

Mah.
XIII
of
1987.

(b) in respect of a bridge or tunnel including approach road thereto or section of road or by-pass which, in the opinion of the State Government, is of special service to the public.

Explanation.—For the purposes of this section, the expression “Capital Outlay” shall include the anticipated cost of certain essential on goings or imminent works like improvements, strengthening, widening, structural repairs, maintenance, management, operation, reasonable returns and interest on such outlay at such rates as the State Government may fix until the full amount of such outlay is recovered.]

¹ Sub-sections (1-A), (1-B), (1-C) and (1-D) were inserted by Mah. 13 of 1987, s. 2 (b).

² Sub-section (1-A) was substituted by Mah. 7 of 2000, s. 2(1).

³ These words were inserted by Mah. 17 of 2001, s. 2(a).

(1-B)¹[(A)] The toll levied under sub-section (1-A) shall be levied at such rate and for such period as the State Government may, from time to time, by notification in the *Official Gazette*, declare.

¹[(B) the State Government shall, while determining the rate of toll and the period for which such toll shall be levied, have regard to the total capital outlay, the likely collection of toll, the expenses of collection of toll, and the terms and conditions of the agreement, if any, entered into with the private person, body or association of persons (incorporated or not), or agent or entrepreneur by the Government or, as the case may be, the State Public Enterprise, relating to the period of collection and retention of the amount of toll by such person, body, agent or entrepreneur, stipulated in the agreement, including grant of reasonable reward in cash or in any other form as an incentive for the early completion of the project, than the period for completion stipulated in the agreement :

Provided that, the person or body or association of individuals (whether incorporated or not) or the private entrepreneur or agent with whom the Government or the State Public Enterprise has entered into an agreement under the B.O.T. Project or otherwise, for the construction, re-construction, improvement or repairs, etc., of any road, by-pass, bridge, tunnel, R.O.B., R.U.B., including any approach road thereto or any by-pass, etc., as provided in sub-section (1-A), shall be deemed to be the agent entitled to collect and retain the whole or part of the amount of such toll for the services and benefits rendered by such person, as the State Government may, by notification in the *Official Gazette*, specify, having regard to the provisions of clause (B).]

(1-C) The State Government may itself or through its agent collect the toll levied under sub-section (1-B) and, where such collection is made through agent, such agent or his servants ²[or his sub-agents] shall be deemed to be persons empowered to collect tolls under this Act :

3 * * * *

(1-D) Where any additional bridge or tunnel, being the bridge or tunnel on or below the same stream, river or creek or road or rail-track including any approach road thereto is constructed as augmentation of the facility of the use of the existing bridge, tunnel or road, as the case may be, then the network of such bridges or tunnels including approach roads thereto shall be deemed to be one single entity for the purpose of levy of toll, so however, that not more than the capital outlay of such additional bridge or tunnel including any approach road thereto and the expenses of collection of toll shall be recovered, ⁴[having regard to the provisions made in clause (B) of sub-section (1-B).]

⁵[(1-E) The State Government may, by notification in the *Official Gazette*, in the public interest, exempt any vehicle or class of vehicles from levy of toll under this section.]

1 The existing sub-section (1-B) was re-lettered as clause (A) thereof and after clause (A) as so re-lettered, clause (B) was added by Mah. 17 of 2001, s. 2(b).

2 These words were inserted by Mah. 7 of 2000, s. 2(2).

3 This provisos below sub-section (1-C) were deleted; by Mah. 17 of 2001, s. 2(c).

4 These words, brackets, letters and figure were inserted, *ibid*; s. 2(d).

5 Sub-section (1-E) was added by Mah. 7 of 2000, s. 2(3).

(2) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of '[sub-sections (1), (1-A), (1-B), (1-C) and (1-D)] and this sub-section, no local authority shall, after the commencement of this Act impose or increase any taxes on motor vehicles :

Provided that—

(a) any taxes, other than tolls, on motor vehicles which immediately before the commencement of this Act were being lawfully levied by any local authority, may continue to be levied and collected until provision to the contrary is made by the State Legislature by law ;

(b) nothing in this sub-section shall affect the power of any local authority to impose, increase or recover in respect of motor vehicles a tax falling under entry 52 in List II in the Seventh Schedule to the Constitution.

Modification
of leases.

21. (1) Where, before the commencement of this Act, the collection of tolls has been leased to any person under any law (other than the Bombay Ferries and Inland Vessels Act, 1868,^{2*} * or the Hyderabad Ferries Act, or the Northern India Ferries Act, 1878), for the time being in force and the lease relates wholly or in part to any period subsequent to the commencement of this Act, the amount which the lessee has contracted to pay to the local authority concerned or to the State Government shall be reduced by the amount of the loss suffered by him in consequence of this Act having come into force.

Bom. II
of
1868.
Hyd.
Act
No.
II of
1314, F.
XII of
1878.

(2) If the lessee and the local authority are unable to agree as to the amount of such loss, or if any other dispute arises between them has to the effect of the Act, and the contract of lease, such dispute shall be decided by the Collector of the district, and any such dispute arising between the State Government and their lessee shall be decided by such authority as may be prescribed. The decision of the Collector or, as the case may be, of the prescribed authority, shall be final.

1 These words, brackets, figures and letters were substituted for the word, brackets and figure "sub-section (1)" by Mah. 13 of 1987, s. 2(c).

2 The words "or that Act as applied to the Kutch area of State of Bombay" were omitted by Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

67
100-B

SECTION-II
General Principles and Practices of Audit
Chapter-1
General Principles and Practices

Introduction

2.1.1 This Section deals with the general principles and practices to be observed in regard to audit of expenditure, receipts, stores and stock, commercial accounts, non-commercial autonomous bodies and non-Government institutions. The directions provided in this Section or in the subsequent Sections are by no means exhaustive, nor is it the intention that they should be taken as limiting the scope of audit rigidly to the lines indicated therein. It is of considerable importance that the audit checks prescribed should be observed in spirit and not merely in the letter. While these directions are primarily intended to be applied in relation to the accounts of the Union, of the States or of the Union territories they apply *mutatis mutandis* to the accounts of other authorities, the audit of which is undertaken by or on behalf of the Comptroller and Auditor General.

Auditing Standards

2.1.2 Auditing Standards prescribe the norms of principles and practices the auditors are expected to follow in the conduct of audit. These are separately published and periodically updated. The Auditor must exercise due care and concern in complying with the Auditing Standards.

Audit Objectives and Scope

2.1.3 The broad objectives of audit are:

- (i) to provide an unbiased, impartial and objective assessment of the reliability and fair presentation of the financial activities and financial position of the Government in their accounts;
- (ii) to provide an assessment of the due observance of the laws, rules, procedures and systems in keeping with the financial interests of and propriety in the functioning of the Government; and
- (iii) to provide an assessment of the achievement of economy, efficiency and effectiveness (value for money) in the implementation of the mandated activities of the Government.

In the process, audit aims to:

- (a) safeguard the financial interests of the taxpayer;
- (b) assist the Parliament or State/Union Territory Legislature in exercising financial control over the Executive; and
- (c) watch that various authorities of the State set up by, or under, the Constitution act in regard to all financial matters in accordance with the

68

Constitution and the laws of Parliament and appropriate Legislatures and the rules and orders issued thereunder.

The right of independent criticism is inherent in the auditorial function.

2.1.4 In pursuance of the statutory responsibilities entrusted to the Comptroller and Auditor General, he is the sole authority to decide the nature and extent of audit to be conducted by him or on his behalf. Accordingly, in regard to certain financial transactions of a secret nature, the Comptroller and Auditor General has agreed to modify the scope of audit to the extent prescribed in each case.

2.1.5 It is the function of the Executive Government to make financial rules and orders and put in place an adequate internal control mechanism that will guard against misuse of public funds. It is the duty of audit not only to verify that the administrative departments properly apply these internal controls but also to point out weaknesses, if any, as may be noticed in the functioning of the control mechanisms.

2.1.6 The Executive Government and not the Indian Audit and Accounts department is responsible for enforcing economy in the expenditure of public moneys. It is, however, the duty of Audit to bring to notice wastefulness in public administration and infructuous expenditure and any such criticism may be included in the Audit Reports.

Audit Approach

Right of Access to Information

2.1.7 In the course of scrutiny of accounts and transactions of Government, Audit is entitled to make such queries and observations and to call for all records, statements, returns and explanations as it may consider relevant and necessary in the interest of proper discharge of its duties. All such queries and observations shall be couched in courteous and impersonal language.

2.1.8 Under Sub-section (2) of Section 18 of the Act, it is the statutory obligation of the person in-charge of the office or the department, the accounts of which are to be inspected/audited by the functionaries of the Comptroller and Auditor General, to afford all facilities for the inspection/audit and comply with requests for information in as complete a form as possible and with all reasonable expedition. In the eventuality of non-production of vital records, the audit should be called off and the matter should be reported by the Accountant General to the Chief Secretary in the State or to the Secretary to the Government of India in the Centre, as the case may be.

2.1.9 In case the problem is not resolved even after this is brought to the notice of the Chief executive concerned, an omnibus draft paragraph on all such problems that arise during the year should be considered for inclusion in the Audit Report for bringing to the notice of the Legislature through the Public Accounts Committee or the Committee on Public Undertakings the failure of the executives to discharge their statutory obligation.

Audit Evidence

2.1.10 The principal source of evidence for audit conclusions will be the records of the auditee organisation. It is the primary duty of audit to ensure that the audit conclusions drawn about the organisation and various projects and programmes, activities,

69

Grants of land, assignment of revenue and other concessions involving relinquishment of revenue

3.23.15 All orders relating to grant of land, assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right of water power, or any easement or privilege in respect of any such concession or which in any way involve relinquishment of revenue come within the purview of Audit as they have important financial implications. Audit may assume that departments cannot sanction, without prior consultation with the Finance Ministry/Department, concessions of this nature other than those that may be in accord with any general delegations made by the latter. For the proper discharge of its duty by Audit in regard to these concessions, all sanctions accorded to such grants, assignments, etc. are required to be communicated to it by the Government concerned for scrutiny. The audit of these sanctions is conducted from the point of view of regularity as well as propriety.

Certification of expenditure on Plan schemes

3.23.16 The Government of India releases each year assistance in the form of grants and/or loans to various States and Union Territory Governments for different Central and centrally sponsored schemes in accordance with the pattern specified in the sanctions relating to these schemes. While the entire expenditure on certain schemes is borne by the Central Government, expenditure on others is shared between the Central Government and the State or Union Territory Government, as the case may be. The assistance in respect of State Plan schemes takes the form of Block Grants and loans that are related to the total outlay allotted for the State Plan as a whole by the Planning Commission without linkage with the individual schemes except to the extent of certain earmarked categories like power, major irrigation schemes, elementary education, rural water supply, minimum needs programme and some schemes in the agriculture and allied sectors. Besides the Plan assistance, the State and Union Territory Governments also receive assistance in the form of loans and/or grants from different Ministries of the Government of India for meeting certain items of non-Plan expenditure, such as those intended for mitigating the impact of natural calamities, rehabilitation of refugees, provision of fertilizer loans, loans under the National Loan Scholarship Scheme, etc.

3.23.17 Except in respect of certain some Non-Plan schemes, the assistance is released in advance by the Government of India based on the claims submitted forward by the State or Union Territory Government concerned, subject to its final adjustment in due course based on the actual expenditure. According to the procedure prescribed by the Ministry of Finance for finalising the assistance relating to Plan Schemes, the final claims are to be preferred, in the prescribed proforma, by the State and Union Territory Governments on the basis of audited figures of expenditure.

3.23.18 After the accounts of the year are closed, the Accountant General (A&E) will prepare Statements of Expenditure for the grants in question, indicating therein the items placed under objection by him, and furnish these to the Accountant General (Audit) for audit and certification. The Central Audit Support Section in the office of the Accountant General (Audit) should audit the statements received from the A&E office and forward certified copies of the statements to the Ministry of Finance, the administrative ministries concerned, and the State/Union Territory Government concerned, indicating therein the amounts placed under objection by both the A&E office and the Audit officer. The

10

5

KD-14 71

Income Tax PAN Services Unit



In case of PAN applications from non-individuals, Seal and/or Stamp is not required on PAN application Form 49A or 49AA or Form for Change or Correction

Online Application for New PAN (Form 49A) Guidelines

(हिंदी भाषा में दिशा निर्देशों के लिए यहाँ क्लिक करें)

- An applicant will fill Form 49A online and submit the form.
- If there are any errors, rectify them and re-submit the form.
- A confirmation screen with all the data filled by the applicant will be displayed.
- The applicant may either edit or confirm the same.
- On confirmation, an acknowledgement will be displayed. The acknowledgement will contain a unique 15-digit acknowledgement number.
- The applicant is requested to save and print this acknowledgement.**
- 'Individual' applicants should affix two recent colour photographs with white background (size 3.5 cm x 2.5 cm) in the space provided in the acknowledgement. The photographs should not be stapled or clipped to the acknowledgement. The clarity of image on PAN card will depend on the quality and clarity of photograph affixed on the acknowledgement.
- Signature / Left Thumb Impression should only be **within the box** provided in the acknowledgement. The signature should not be on the photograph affixed on right side of the form. In case of non-individual PAN applicants, the acknowledgement receipt shall be signed by the authorized signatory (Karta in case of HUF, Director in case of Company, Partner in case of Partnership Firm / LLP, Trustee in case of Trust and Authorized signatory in remaining categories). **The signature should not be on photograph. If there is any mark on photograph such that it hinders the clear visibility of the face of the applicant, the application will not be accepted.**
Signature / Left hand thumb impression should be provided across the photo affixed on the left side of the form in such a manner that portion of signature/impression is on photo as well as on acknowledgement.
- Thumb impression, if used, should be attested by a Magistrate or a Notary Public or a Gazetted Officer under official seal and stamp.
- AADHAAR**
In case Aadhaar number of Individual applicant is entered in the application form, then proof of Aadhaar along with supporting documents is to be submitted to NSDL e-Gov.
If copy of Aadhaar is selected as Proof of Identity/Address/date of birth, then it is mandatory to enter Aadhaar number.
In case applicant is 'MINOR', Aadhaar of minor should be mentioned in the application form. (i.e. Do not mention Representative Assessee's Aadhaar number) Aadhaar number (if provided) would be authenticated using applicant's details as mentioned in application form.
- If communication Address is within India
 - The fee for processing PAN application is ₹ 107.00 [(Application fee ₹ 93.00 + 14.50% service tax).
 - Payment can be made either by
 - Demand Draft
 - Credit Card / Debit Card
 - Net Banking
- If any of addresses i.e. office address or residential address is a foreign address, the payment can be made only by way of **Credit Card / Debit card and Demand Draft payable at Mumbai.**
- If communication Address is outside India
 - The fee for processing PAN application is ₹ 989.00 [(Application fee ₹ 93.00 + Dispatch Charges ₹ 771.00) + 14.50% service tax].
 - Payment can be made only by way of **Credit Card / Debit card and Demand Draft payable at Mumbai.**
 - At present the facility for dispatch of PAN cards outside India is available for a select list of countries. Applicants from other countries may contact NSDL at the contact details given in point (u) below.
This point is not applicable if applicant is providing the representative assessee details in the point no.14 of application form
- Demand draft should be drawn in favour of 'NSDL - PAN'.
- Demand draft shall be payable at Mumbai and the acknowledgement number should be mentioned on the reverse of the demand draft.
- Credit card / Debit card / Net banking payment**

Persons authorized to make Credit card / Debit card / Net banking payment are as below:

Category of Applicant	Payment by Credit Card / Debit Card / Net Banking can be made by / for
Individual	Self, immediate family members (parents, spouse, children)
HUF	Karta of the HUF
Company	Any Director of the Company
Partnership Firm / Limited Liability Partnership	Any Partner of the Firm / Limited Liability Partnership
Association of Person(s) / Body of Individuals / Trust / Artificial Juridical Person / Local Authority	Authorized Signatory covered under section 140 of Income Tax Act, 1961

Applicants making online payment using credit card / debit card will be charged an additional charge of upto 2% (plus applicable taxes) of application fee by the bank providing gateway facility. Additionally, the conversion/exchange rates may also be levied by the card issuing bank, as per prevailing rates.

Applicants making payment through Net Banking facility will be charged an additional surcharge of ₹ 4.00 + service tax for payment gateway facility.

On successful credit card / debit card / net banking payment acknowledgement will be displayed. Applicant shall save and print the acknowledgement and send to NSDL as mentioned in point (q) & (r) below. To check status of online payment or to regenerate Acknowledgment receipt, please click [here](#) and fill details accordingly.

- 72
- (p) The acknowledgement duly signed, affixed with photograph (in case of 'Individuals') alongwith Demand Draft, if any, and proof of identity (name in the application should be same as in the proof of identity), proof of address (Individuals, HUFs, Body of Individuals, Association of Persons & Artificial Juridical Person should provide proof of address of residence stated in the application) and proof of date of birth (applicable for Individuals & Karta of HUF) as specified in the application form is to be sent to NSDL at 'Income Tax PAN Services Unit, NSDL e-Governance Infrastructure Limited, 5th floor, Mantri Sterling, Plot No. 341, Survey No. 997/8, Model Colony, Near Deep Bungalow Chowk, Pune - 411016'.
- (q) Super scribe the envelope with 'APPLICATION FOR PAN— N-Acknowledgement Number' (e.g. 'APPLICATION FOR PAN— N-881010100000097').
- (r) Your acknowledgement, Demand Draft, if any, and proofs, should reach NSDL within 15 days from the date of online application.
- (s) Applications received with demand draft as mode of payment shall be processed only on receipt of relevant proofs and realization of payment.
- (t) For more information
- Call PAN/TDS Call Centre at 020 - 27218080; Fax: 020 - 27218081
 - e-mail us at: tininfo@nsdl.co.in <mailto:tininfo@nsdl.co.in>
 - SMS NSDL PAN <space> Acknowledgement No. & send to 57575 to obtain application status.
 - Write to: INCOME TAX PAN SERVICES UNIT (Managed by NSDL e-Governance Infrastructure Limited), 5th floor, Mantri Sterling, Plot No. 341, Survey No. 997/8, Model Colony, Near Deep Bungalow Chowk, Pune - 411016

Click here for detailed [Instructions for filling form49A.](#)

Click here for detailed [Instructions for documents to be submitted.](#)

(हिंदी भाषा में निर्देशों के लिए यहाँ क्लिक करें)

Apply for a new PAN Card

-- Category of Applicant --

Apply for a new PAN Card(for DSC user)

-- Category of Applicant --

© Copyright 2010 | NSDL e-Governance Infrastructure Limited (NSDL)

hp 15
73

GSTN

NSDL

GSTN - Goods

PM

www.gstn.org Organization Profile.html

Apps


Suggested Si...

INCOME TAX

BEMS

EATING

Other book



Goods And Services Tax Network

Home

About Us

Committees

Gallery

RTI

Tenders/RFP

Careers

Downloads

In the News

Contact Us

Welcome to GSTN

Goods and Services Tax Network (GSTN) is a Section 25 (not for profit), non-Government, private limited company. It was incorporated on March 28, 2013. The Government of India holds 24.5% equity in GSTN and all States of the Indian Union, including NCT of Delhi and Puducherry, and the Empowered Committee of State Finance Ministers (EC), together hold another 24.5%. Balance 51% equity is with non-Government financial institutions. The Company has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST). The Authorised Capital of the company is Rs. 10,00,00,000 (Rupees ten crore only).

Shareholders

Central Government	24.5%
State Governments & UTs & EC Collectively	24.5%
LIC Housing Finance Ltd	11%
ICICI Bank Ltd	10%
HDFC Ltd	10%
HDFC Bank Ltd	10%
NSE Strategic Investment Corporation Ltd	10%

Start

corp.govcasee...

Document1 - ...

GSTN - Go...

EN

ABOUT GSTN

nh

Goods and Services Tax Network (GSTN) is a Section 25 (not for profit), non-Government, private limited company. It was incorporated on March 28, 2013. The Government of India holds 24.5% equity in GSTN and all States of the Indian Union, including NCT of Delhi and Puducherry, and the Empowered Committee of State Finance Ministers (EC), together hold another 24.5%. Balance 51% equity is with non-Government financial institutions. The Company has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).

The Authorised Capital of the company is Rs. 10,00,00,000 (Rupees ten crore only).

GSTN website 75

VISION, MISSION & VALUES

Vision

To become a trusted National Information Utility (NIU) which provides reliable, efficient and robust IT Backbone for the smooth functioning of the Goods & Services Tax regimen enabling economic agents to leverage the entire nation as One Market with minimal Indirect Tax compliance cost.

Mission

- Provide common and shared IT infrastructure and services to the Central and State Governments, Tax Payers and other stakeholders for implementation of the Goods & Services Tax (GST).
- Provide common Registration, Return and Payment services to the Tax payers.
- Partner with other agencies for creating an efficient and user-friendly GST Eco-system.
- Encourage and collaborate with GST Suvidha Providers (GSPs) to roll out GST Applications for providing simplified services to the stakeholders.
- Carry out research, study best practises and provide Training and Consultancy to the Tax authorities and other stakeholders.
- Provide efficient Backend Services to the Tax Departments of the Central and State Governments on request.
- Develop Tax Payer Profiling Utility (TPU) for Central and State Tax Administration.
- Assist Tax authorities in improving Tax compliance and transparency of Tax Administration system.
- Deliver any other services of relevance to the Central and State Governments and other stakeholders on request.

76



107-16 GSTN Annual M/s
22/6-15. A

- iii. **RTI Act:** - The Company has replied to total 9 RTI applications and 2 first appeals received so far under RTI Act. One second Appeal has been filed with the higher authorities, which is yet to come up for hearing.
- iv. **PF Registration:-** The company got registered under Employee's Provident Fund Act, 1952 in the month of July 2015.
- v. **Policy on Sexual Harassment at Workplace :---**The Board of directors of the Company has also laid down a policy on prevention of sexual harassment at workplace. During the year under review, no cases were filed or complaint received pursuant to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- vi. **Green Initiative :---** Pursuant to Circulars No. 17/2011 dated April 21, 2011 and 18/2011 dated April 29, 2011 issued by the Ministry of Corporate Affairs, MCA has undertaken a "Green Initiative in Corporate Governance", by allowing paperless compliance including service of notices/documents by companies to their shareholders/members through electronic mode. Our organisation aims of Going Green to minimize our impact on environment. For this, we use emails to converse with our members/ Directors and within the organisation (between departments) to the maximum extent, instead of using papers/Print outs. Electronic copies of Annual Report for the period 2014-15 and Notice of the 2nd Annual General Meeting are sent to all the members through e- mail registered with the company.
- vii. **Penalties/ Punishment :--** There was no penalty/ punishment/ compounding fee imposed on the Company/ Directors/ any other officer of the Company during the year under review.

6. DEPOSITS

The Company has not accepted any Deposits from the Public and there is no outstanding Deposits pursuant to Chapter V of the Companies Act, 2013.

7. AUDITORS

The members are informed that pursuant to the provisions of Section 139 read with the Companies (Audit and Auditors) Rules, 2014, M/sKhandelwal Jain & Co., Chartered Accountants (FRN: 105049W) were appointed as statutory auditors for a term of 5 years in the last Annual General Meeting, subject to ratification by members in every AGM.

18

C

DIRECTORS' REPORT



IV. Share Holding Pattern

i) Category-wise Share Holding

Category of Shareholders	No. of Shares Held at the beginning of the year 01/04/2014				No. of Shares Held at the end of the year 31/03/2015				% Change During The Year
	Demat	Physical	Total	% of Total Shares	Demat	Physical	Total	% of Total Shares	
A. Promoter's									
(1). Indian									
(a). Individual	0	0	0	0	0	0	0	0	0
(b). Central Govt.	0	0	0	0	0	0	0	0	0
(c). State Govt(S).	0	0	0	0	0	0	0	0	0
(d). Bodies Corp.	0	0	0	0	0	0	0	0	0
(e). Banks/FI	203442495	0	203442495	40.313	203442495	0	203442495	40.313	0
(f). Any Other	0	0	0	0	0	0	0	0	0
Sub-Total (A) (1):-	203442495	0	203442495	40.313	203442495	0	203442495	40.313	0
(2). Foreign									
(a). Individual NRI	0	0	0	0	0	0	0	0	0
(b). Other - Individual	0	0	0	0	0	0	0	0	0
(c). Bodies Corp.	0	0	0	0	0	0	0	0	0
(d). Banks / FI	0	0	0	0	0	0	0	0	0
(e). Any Other	0	0	0	0	0	0	0	0	0
Sub-Total (A) (2):-	0	0	0	0	0	0	0	0	0
Total Shareholding of Promoter (A) = (A)(1)+(A)(2)	203442495	0	203442495	40.313	203442495	0	203442495	40.313	0.00
(B) Public Shareholding									
1. Institutions									
(a). Mutual Funds	21192637	12000	21204637	4.202	20267445	12000	20279445	4.018	-0.184
(b). Banks / FI	1025263	11000	1036263	0.205	1232259	11000	1243259	0.246	0.041
(c). Central Govt.	0	0	0	0	0	0	0	0	0
(d). State Govt.(s)	1950243	7500	1957743	0.388	1173738	7500	1181238	0.234	-0.154
(e). Venture Capital Funds	180122	0	180122	0.036	246600	0	246600	0.049	0.013
(f). Insurance Companies	10626608	0	10626608	2.106	8158992	0	8158992	1.617	-0.489
(g). FIs	188489403	25000	188514403	37.355	183074138	25000	183099138	36.281	-1.074
(h). Foreign Venture Capital Funds	0	0	0	0	0	0	0	0	0.000
(i). Others (Specify)	0	0	0	0	0	0	0	0	0.000

DIRECTORS' REPORT

Sub-Total (B)(1):-	223464276	55500	223519776	44.292	214153172	55500	214208672	42.445	-1.847
2. Non-Institutions									
(a). Bodies Corp.									
(i). Indian	16521522	90500	16612022	3.292	23208194	90500	23298694	4.617	1.325
(ii). Overseas	0	0	0	0	0	0	0	0	0
(b). Individuals									
(i) Individual Shareholders Holding Nominal Share Capital Upto Rs.1 Lakh	42140041	5564323	47704364	9.453	34245191	5232848	39478039	7.823	-1.63
(ii) Individual Shareholders Holding Nominal Share Capital In Excess of Rs.1 Lakh	4730995	0	4730995	0.937	5073966	0	5073966	1.005	0.068
(c). Other (Specify)									
Non Resident Indians	2103171	1000	2104171	0.417	2101930	1000	2102930	0.417	0
Overseas Corporate Bodies	951918	0	951918	0.189	13533211	0	13533211	2.682	2.493
Foreign Nationals	0	0	0	0	0	0	0	0	0
Clearing Members	2864181	0	2864181	0.568	1779207	0	1779207	0.353	-0.215
Trusts	0	0	0	0	0	0	0	0	0
Foreign Bodies - D R	0	0	0	0	0	0	0	0	0
Sub-Total (B)(2):-	69311828	5655823	74967651	14.856	79941699	5324348	85266047	16.897	2.041
Total Public Shareholding (B)=(B)(1)+(B)(2)	292776104	5711323	298487427	59.148	294094871	5379848	299474719	59.342	-0.19
C. Shares Held By Custodian For Gdrs & Adrs	2733078	0	2733078	0.542	1745786	0	1745786	0.346	-0.196

81

DIRECTORS' REPORT



Grand Total (A+B+C)	498951677	5711323	504663000	100.00	499283152	5379848	504663000	100.00	0.00
------------------------	-----------	---------	-----------	--------	-----------	---------	-----------	--------	------

(ii) Shareholding of Promoters

Sr. No.	Shareholder's Name	Shareholding at the beginning of the year 01/04/2014			Share holding at the end of the Year 31/03/2015			% change in share holding during the year
		No. of Shares	% of total Shares of the Company	% of Shares Pledged / encumbered to total shares	No. of Shares	% of total Shares of the Company	% of Shares Pledged / encumbered to total shares	
1	Life Insurance Corporation of India	203442495	40.313	Nil	203442495	40.313	Nil	Nil

(iii) Change in Promoters' Shareholding (Please specify, if there is no change)

Sr. No.		Shareholding at the beginning of the year		Cumulative Share holding at the end of the Year	
		No. of shares	% of total Shares of the company	No. of Shares	% of total Shares of the company
	At the beginning of the year	203442475	40.313	203442475	40.313
	Date wise increase / decrease in promoters Shareholding during the year specifying the reason for increase / decrease (e.g. allotment/transfer/bonus/sweat equity etc)	No Change	No Change	No Change	No Change
	At the end of the year	203442475	40.313	203442475	40.313

(iv) Shareholding Pattern of top ten Shareholders (other than Directors, Promoters and Holders of GDRs and ADRs):

Sr. No.	Name	No. of Shares at the beginning (01-04-2014) / end of the year (31-03-2015)	% of total Shares of the company	Date	Increase / Decrease in share-holding	Reason	No. of Shares	% of total Shares of the company
1	FID Funds (Mauritius) Limited	5341462	1.058	01-04-2014				
				11-04-2014	380428	Purchase	5721890	1.134
	-Closing Balance			31-03-2015	-	-	5721890	1.134
2	HSBC Global Investment Funds A/C HS	15141769	3.000	01-04-2014				
				04-04-2014	-323378	Sale	14818391	2.936
				25-04-2014	-340365	Sale	14478026	2.869
				23-05-2014	-36655	Sale	14441371	2.862
				30-05-2014	-449041	Sale	13992330	2.773
				04-07-2014	-124984	Sale	13867346	2.748

Extract from Regulations on
B/LT & Accounts, 2007.

18/18 83

CHAPTER 9

Audit of Government Companies

(a) Mandate

113. Mandate of the C&AG in regard to audit of Government companies

As per Section 19 of the Act, the duties and powers of the Comptroller and Auditor General in relation to the audit of accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956.

(b) General Provisions

114. Application of ICAI standards for public sector enterprises

The accounting standards and standard audit practices issued by the Institute of Chartered Accountants of India (ICAI) should be kept in view while carrying out the audit of Government companies or deemed Government companies.

115. Supply of copies of agenda notes and minutes of meetings of the board and other committees

Every company that is subject to audit by the Comptroller and Auditor General shall send copies of the agenda notes and minutes of the meetings of its board of directors, board level committees and the audit committee, if formed, to the Accountant General (Audit).

116. Intimation of formation and closure of a Government company or a deemed Government company by the Government

The administrative ministry/department concerned shall intimate the Comptroller and Auditor General in writing about the formation of a new Government company or a deemed Government company and forward a copy of its certificate of incorporation within one month of its incorporation. The administrative ministry/department concerned shall also intimate to the Comptroller and Auditor General if a Government company or a deemed Government company ceases to be so, within one month of such an occurrence. The administrative ministry/department shall also intimate to the Comptroller and Auditor General about a company becoming a Government company or a deemed Government company within one month of such an occurrence.

117. Intimation by Government company or deemed Government company of its formation

A Government company or a deemed Government company shall also intimate to the Comptroller and Auditor General about its formation along with the shareholding

84

pattern, details of the management and a copy of the memorandum of association and articles of association within one month of its incorporation. Similarly, in the case of an existing company, the intimation about becoming a Government company or a deemed Government company under the Companies Act, 1956 and other details and documents shall be sent by the company within one month of such an occurrence.

(c) Appointment of Statutory Auditor

118. Appointment of statutory auditor

The statutory auditor of a Government company or a deemed Government company shall be appointed by the Comptroller and Auditor General from amongst persons qualified to act as auditors under the Companies Act, 1956. The Comptroller and Auditor General shall appoint the statutory auditor for a financial year through a process of selection as may be prescribed and thereafter, subject to the following Regulation, re-appoint him on year to year basis unless special circumstances warrant appointment for a longer period. The total period of appointment including the initial appointment should not ordinarily exceed four financial years. The appointment shall be subject to such terms and conditions as may be prescribed from time to time by the Comptroller and Auditor General.

119. Re-appointment of statutory auditor subject to satisfactory performance

The re-appointment of a statutory auditor shall be subject to satisfactory performance of the audit assignment in earlier year(s) assessed in terms of the criteria prescribed by the Comptroller and Auditor General including the extent of compliance of directions issued to him by the Comptroller and Auditor General relating to the audit.

120. Communication of acceptance by statutory auditor

The statutory auditor shall send acceptance of the audit assignment in writing to the Comptroller and Auditor General within three weeks of the date of issue of communication of appointment, failing which the offer of appointment is liable to be cancelled without any notice.

121. Termination of appointment before expiry of normal tenure

The Comptroller and Auditor General may terminate the appointment of a statutory auditor before the expiry of the normal tenure of appointment for reasonable and sufficient grounds after following the due administrative process, including giving an opportunity to the statutory auditor to make representation against the premature termination of appointment.

122. Debar from further appointment in case of serious irregularities

In case serious irregularities are noticed in the discharge of professional duties by the statutory auditor, the Comptroller and Auditor General may, if considered necessary, on the recommendation of a committee appointed by him and after giving due

100-19 85

General Circular No. 33/2014

F. No.1/33/13-CL-V
Government of India
Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi
Dated: **31st July, 2014**

To

All Regional Directors,
All Registrars of Companies.

Subject: Clarification with regard to applicability of provisions of section 139(5) and 139(7) of the Companies Act, 2013

Sir,

Doubts have been raised about applicability of sections 139(5) and 139(7) of the Companies Act, 2013 (New Act), which deal with appointment of auditors by Comptroller and Auditor General of India (C&AG), to 'deemed Government Companies' referred to in section 619B of the Companies Act 1956 (Old Act) i.e. companies where ownership or control lies with two or more Government companies or corporations etc in the manner detailed in section 619B ibid. Stakeholders have pointed out that the New Act does not contain specific provisions about 'deemed Government companies' on the lines of section 619B of the Old Act. Clarification has been sought whether, under the new Act, such deemed Government companies would be subject to audit by the C&AG in the same manner as Government Companies.

2. The above issue has been examined and it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act.

3. Further, it has also been observed that the words "*any other company owned or controlled, directly or indirectly by the Central Government and partly by one or more State Governments*" appearing in sub-sections (5) and (7) of section 139 of the New Act are to be read with the definition of 'control' in section 2(27) of the New Act. Thus documents like articles of association and shareholders agreements etc envisaging control under section 2(27) are to be

46
taken into account while deciding whether an individual company, other than those referred in paragraph 1-2 above, is covered under section 139(5)/139(7) of the New Act.

4. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.

5. This issues with the approval of the competent authority.

Yours faithfully,


(KMS Narayanan)

Assistant Director (Policy)

Copy to:-

1. e-Governance Section and web contents Officer to place this circular on the Ministry website
2. Guard File

Press Release

Update and Validate Taxpayer Email ID and Mobile Number for their e-filing account

04th July, 2014

A valid Email ID and Mobile Number has to be registered/ updated on the e-filing website of the Income Tax Department so that direct communication with taxpayer can be possible. For details, taxpayers can logon to: [https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Update Contact Details.pdf](https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Update%20Contact%20Details.pdf)

The Department will send separate One Time Passwords (OTP) also referred as PIN on the mobile and email provided by the taxpayer. The OTPs have to be entered by the taxpayer after logging into their e-filing account to authenticate the same. The OTPs will remain valid for 24 hours within which the taxpayer has to complete the process. For 'Foreign/ NRI' taxpayers, the OTP validation of the email ID would be sufficient.

Validation of email and mobile numbers has been introduced to facilitate taxpayers as in many cases incorrect emails and mobile numbers have been provided and taxpayers did not receive important communication from the Department. Further, it has been observed that in many cases taxpayers are not able to reset their password since the new temporary password from the Department may be sent to their registered email which may be different from the taxpayer's personal email, e.g. email of their intermediary.

This is a one-time process to validate the mobile number and email ID. However, whenever the taxpayer changes the Mobile Number or email ID in their Profile, the process will be repeated to ensure that the particulars provided are correct. Further, this validation will ensure that Department can send an OTP for resetting the password used for Login in case the taxpayer has forgotten the password.

One mobile number or email ID can be used for a maximum of 10 user accounts as the Primary Contact- Mobile Number and Email ID in e-Filing. This is to ensure that family members and related business concerns (not exceeding 10 separate users) not having personal email or mobile can be covered under a common email or mobile, but in general taxpayers should have their own unique email ID and Mobile registered with the Department.

The taxpayer can enter any other person's email or mobile number in addition, as a Secondary Contact (without any restriction on the number of user accounts linked as a Secondary Contact). Using "**Profile Settings → My Profile**" the taxpayer can select to include the Secondary Contact to also receive emails, alerts etc.

88

It is advised that the emails and SMS from the Income tax Department may be included in the 'safe list' or 'white list' to prevent the communications from the Department from being blocked or rejected or sent to Spam folder. Taxpayers are also advised not to share their user-id and password of their e-filing account with others to prevent un-authorized access. Taxpayers can reset their password using the 'Forgot Password?' link while logging in to their e-filing account and by providing the necessary details.

The Department requests the cooperation of all taxpayers for completing this validation process at the earliest for a smooth and convenient return filing process.

(Rekha Shukla)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT

59

INSTRUCTIONS FOR FILLING FORM 49A

- (a) Form to be filled legibly in **BLOCK LETTERS** and preferably in **BLACK INK**. **Form should be filled in English only**
- (b) Each box, wherever provided, should contain only one character (alphabet /number / punctuation sign) leaving a blank box after each word.
- (c) 'Individual' applicants should affix two recent colour photographs with white background (size 3.5 cm x 2.5 cm) in the space provided on the form. The photographs should not be stapled or clipped to the form. The clarity of image on PAN card will depend on the quality and clarity of photograph affixed on the form.
- (d) Signature / Left hand thumb impression should be provided across the photo affixed on the left side of the form in such a manner that portion of signature/impression is on photo as well as on form.
- (e) Signature /Left hand thumb impression should be **within the box** provided on the right side of the form. The signature should not be on the photograph affixed on right side of the form. If there is any mark on this photograph such that it hinders the clear visibility of the face of the applicant, the application will not be accepted.
- (f) Thumb impression, if used, should be attested by a Magistrate or a Notary Public or a Gazetted Officer under official seal and stamp.
- (g) AO code (Area Code, AO Type, Range Code and AO Number) of the Jurisdictional Assessing Officer must be filled up by the applicant. These details can be obtained from the Income Tax Office or PAN Centre or websites of PAN Service Providers on **www.utiitsl.com** or **www.tin-nsdl.com**.

(h) Guidelines for filling the Form 49A:

[illegible]

Abbreviation of
the full name to
be printed on the
PAN card

		<p>Can be written as in 'Name to be printed on the PAN Card' column as</p> <p>SATYAM VENKAT M. K. RAO or S. V. M. K. RAO or SATYAM V. M. K. RAO</p> <p>For non individual applicants, this should be same as last name field in item no. 1 above.</p>																
3	Have you ever been known by any other name?	If applicant selects 'Yes', then it is mandatory to provide details of the other name. Instructions in Item No. 1 with respect to name apply here. Title should be similar to the title mentioned in Item No. 1.																
4	Gender	This field is mandatory for Individuals. Field should be left blank in case of other applicants.																
5	Date of Birth/Incorporation/ Agreement /Partnership or Trust Deed/Formation of Body of Individuals/ Association of Persons	<p>Date cannot be a future date. Date: 2nd August 1975 should be written as:</p> <table border="1"> <tr> <td>D</td><td>D</td><td>M</td><td>M</td><td>Y</td><td>Y</td><td>Y</td><td>Y</td></tr> <tr> <td>0</td><td>2</td><td>0</td><td>8</td><td>1</td><td>9</td><td>7</td><td>5</td></tr> </table> <p>Relevant date for different categories of applicants is:</p> <p>Individual: Actual Date of Birth; Company: Date of Incorporation; Association of Persons: Date of formation/creation; Trusts: Date of creation of Trust Deed; Partnership Firms: Date of Partnership Deed; LLPs: Date of Incorporation/Registration; HUFs: Date of creation of HUF and for ancestral HUF date can be 01-01-0001 where the date of creation is not available.</p>	D	D	M	M	Y	Y	Y	Y	0	2	0	8	1	9	7	5
D	D	M	M	Y	Y	Y	Y											
0	2	0	8	1	9	7	5											
6	Father's Name	Applicable to Individuals only. Instructions in Item No.1 with respect to name apply here. Married woman applicant should give father's name and not husband's name.																
7	Address – Residence and office	<p>R - Residence Address: For Individuals, HUF, AOP, BOI or AJP, residential address is mandatory. Other applicants should leave this field blank.</p> <p>O - Office Address: (1) Name of Office and address to be mentioned in case of individuals having source of income as salary or Business/profession[Item No.13]. (2) In case of Firm, LLP, Company, Local Authority and Trust, name of office and complete address of office is mandatory.</p> <p>For all categories of applicants, it is necessary to mention complete address and the details of Town/City/District, State/Union Territory, and PINCODE are mandatory.</p> <p>In case, a foreign address is provided then it is mandatory to provide Country Name along with ZIP Code of the country.</p>																
8	Address for communication	Individuals/HUFs/AOP/BOI/AJP may indicate either 'Residence' or 'Office' and other applicants should necessarily indicate 'Office' as the Address for Communication. All communication will be sent at the address indicated in this field.																
9	Telephone Number and E-mail ID	<p>(1) Telephone number should include country code (ISD code) and STD code or Mobile No. should include Country code (ISD Code).</p> <p>For example :</p> <p>(i) Telephone number 23555705 of Delhi should be written as</p> <table border="1"> <tr> <td>Country code</td> <td>STD Code</td> <td>Telephone Number / Mobile number</td> </tr> <tr> <td>91</td> <td>11</td> <td>23555705</td> </tr> </table> <p>Where '91' is the country code of India and 11 is the STD Code of Delhi.</p>	Country code	STD Code	Telephone Number / Mobile number	91	11	23555705										
Country code	STD Code	Telephone Number / Mobile number																
91	11	23555705																

92

5

SCHEDULE - A

40-22
93

1. Rate Contract No.: - Computers/IT-1/RC-71090000/1215/81/01542/4543
Dated 17-MAR-15 For the Supply of Computers, Desktop and Peripherals

2. Advance Rate Contract No.: - Nil
Dated

3.(a) Name and Full Address of the Firm :-

KBS COMPUTERS PVT LTD
KBS House Plot no EL 118 MIDC Mahape Navi Mumbai
400710
NAVI MUMBAI
MAHARASHTRA - 400710
Tel. No. - 9820808480, 912261356060
Fax -
Email - manish@kbsindia.com

(b) Name and Full Address of Manufacturer :-

KBS COMPUTERS PVT LTD
BS HOUSE, PLOT NO EL 118, MIDC, MAHAPE
NAVI MUMBAI 400710

(c) Brand: KBS

4. Validity of Rate Contract: 17-MAR-15 To 25-MAR-16

5. Description of Item, Specification, Unit, Rate

Item Model No. No.	Store Description	ED	ED%	CST/VAT	CST/VAT%	Unit Service Tax	Rate (in Rs)
29	ATTITUDE - Desktop Computer (with preloaded OPERATING SYSTEM)			Configuration: Intel Core i3,Operating System: Microsoft Windows 8,Chipset: H8 Series	NOS.		31266 Rs. THIRTY-ONE THOUSAND TWO HUNDRED SIXTY-SIX ONLY
		Incl	12.36	Excl.	5		
Min.Order Qty(in unit):- 1		Lead Time(in days):- 30		Rate of Supply(monthly):-2000			
From Date FY1:	01-APR-14	DeitY DVA(%) FY 1:	30	Bidder DVA (%) FY1:		1.5	PMA: N
From Date FY2:	01-APR-15	DeitY DVA(%) FY 2:	35	Bidder DVA (%) FY2:		1.5	PMA: N
Country of Origin:		India					
30	ATTITUDE - Desktop Computer (with preloaded OPERATING			Configuration: Intel Core i3,Operating System: Microsoft Windows 8,Chipset: Q8 Series	NOS.		38766 Rs.

gh

7

SCHEDULE - A

95

1. Rate Contract No.: - Computers/IT-1/RC-71090000/1215/81/06643/4546
Dated 24-MAR-15 For the Supply of Computers, Desktop and Peripherals

2. Advance Rate Contract No.: - Nil
Dated

3.(a) Name and Full Address of the Firm :-

DATAMINI TECHNOLOGIES (INDIA) LTD
UNIT NO 101/ 104, SDF IV, SEEPZ, ANDHERI-EAST.
MUMBAI - 400096
Contact Person - Sayeed Khan - 09833117082,
sayeed@datamini.co.in
Praful Pawaskar - 09870700089,
MUMBAI
MAHARASHTRA - 400096
Tel. No. - 0987070008, 9102240428888
Fax -
Email - praful_pawaskar@datamini.co.in

(b) Name and Full Address of Manufacturer :-

Datamini Technologies (India) Limited,
Amita Complex, Unit No.2, VAL Village,
Anjur Phata, Dapoda Rd, Dist. Thane, Bhiwandi
421302

(c) Brand: Datamini

4. Validity of Rate Contract: 24-MAR-15 To 31-MAR-16

5. Description of Item, Specification, Unit, Rate

Item Model No. No.	Store Description	ED	ED%	CST/VAT	CST/VAT%	Unit Service Tax	Rate (in Rs)
29	Datamini Festiva MG-H.C-i3	Desktop Computer (with preloaded OPERATING SYSTEM)	Configuration: Intel Core i3,Operating System: NOS. Microsoft Windows 8,Chipset: H8 Series			NOS.	31266 Rs. THIRTY-ONE THOUSAND TWO HUNDRED SIXTY-SIX ONLY
		Incl	12.36	Excl.	5		
Min.Order Qty(in unit):- 1		Lead Time(in days):-30		Rate of Supply(monthly):-2000			
From Date FY1:	01-APR-14	DeitY DVA(%) FY 1:	30	Bidder DVA (%) FY1:		2	PMA: N
From Date FY2:	01-APR-15	DeitY DVA(%) FY 2:	35	Bidder DVA (%) FY2:		2	PMA: N

96
Country of Origin: India

30	Datamini Festiva MG- Q.C-i3	Desktop Computer (with preloaded OPERATING SYSTEM)	Configuration: Intel Core i3, Operating System: NOS. Microsoft Windows 8, Chipset: Q8 Series	38766 Rs. THIRTY- EIGHT THOUSAN D SEVEN HUNDRED SIXTY-SIX ONLY
----	-----------------------------------	--	---	--

Incl 12.36 Excl. 5

Min.Order Qty(in unit):- 1 Lead Time(in days):-30 Rate of Supply(monthly):-2000

From Date FY1: 01-APR-14 DeitY DVA(%) FY 1: 30 Bidder DVA (%) FY1: 2 PMA: N

From Date FY2: 01-APR-15 DeitY DVA(%) FY 2: 35 Bidder DVA (%) FY2: 2 PMA: N

Country of Origin: India

31	Datamini Festiva MG- H.C-i3	Desktop Computer (with preloaded OPERATING SYSTEM)	Configuration: Intel Core i3, Operating System: NOS. Linux, Chipset: H8 Series	30166 Rs. THIRTY THOUSAN D ONE HUNDRED SIXTY-SIX ONLY
----	-----------------------------------	--	---	--

Incl 12.36 Excl. 5

Min.Order Qty(in unit):- 1 Lead Time(in days):-30 Rate of Supply(monthly):-2000

From Date FY1: 01-APR-14 DeitY DVA(%) FY 1: 30 Bidder DVA (%) FY1: 2 PMA: N

From Date FY2: 01-APR-15 DeitY DVA(%) FY 2: 35 Bidder DVA (%) FY2: 2 PMA: N

Country of Origin: India

32	Datamini Festiva MG- Q.C-i3	Desktop Computer (with preloaded OPERATING SYSTEM)	Configuration: Intel Core i3, Operating System: NOS. Linux, Chipset: Q8 Series	35266 Rs. THIRTY- FIVE THOUSAN D TWO HUNDRED SIXTY-SIX ONLY
----	-----------------------------------	--	---	---

Incl 12.36 Excl. 5

Min.Order Qty(in unit):- 1 Lead Time(in days):-30 Rate of Supply(monthly):-2000

From Date FY1: 01-APR-14 DeitY DVA(%) FY 1: 30 Bidder DVA (%) FY1: 2 PMA: N

From Date FY2: 01-APR-15 DeitY DVA(%) FY 2: 35 Bidder DVA (%) FY2: 2 PMA: N

Country of Origin: India

33	Datamini Festiva MG- H.C-i5	Desktop Computer (with preloaded OPERATING SYSTEM)	Configuration: Intel Core i5, Operating System: NOS. Microsoft Windows 8, Chipset: H8 Series	38266 Rs. THIRTY- EIGHT THOUSAN D TWO HUNDRED SIXTY-SIX
----	-----------------------------------	--	---	--

EXIM Bank's

Occasional Paper No. 171 (March 2015)

100-23

97

Table 20: Import of Phones, Fax Machines and Routers by India (Value in US\$ mn)

HS Code	Description	2008-09	2013-14	CAGR %
851711	Line telephone sets with cordless handsets	39.1	40.5	0.7
851712	Telephones for cellular networks mobile telephones or for other wireless	3718.8	5926.6	9.8
851718	Telephone sets excluding line telephone sets with cordless handsets	35.6	39.9	2.3
851761	Base stations of apparatus for the transmission or reception of voice	471.2	52.3	-35.6
851762	Machines for the reception, conversion and transmission or regeneration	1642.6	1445.7	-2.5
851769	Apparatus for the transmission or reception of voice, images or other data	792.6	767.4	-0.6
Total		6699.8	8272.4	4.3
Note: Categories in bold are those where market seeking investment can be attracted (Value of Imports greater than US\$ 10 million and CAGR greater than 5%)				

Source: DGCI&S, EXIM Bank Analysis

2014, respectively. Although market seeking is cited as a major investment motive in this category as well (57.7 percent), FDI in this area seems to be also driven significantly by efficiency seeking motives. In comparison to the industry wide average, motive of domestic market growth potential has been stated by fewer players in this sub-category. Efficiency seeking motives are more pronounced in this category as 19.2 percent of companies have attributed lower costs as a motive, as compared to the industry-wide average of 7.9 percent (Exhibit 37). Cost of production in China has risen significantly from 2006 onwards and the gap between the cost of production in China and India has widened (Exhibit 38). Hence, there is

scope for attracting investments on account of efficiency seeking motives from China.

India's imports of computer and storage devices witnessed a significant upsurge with imports witnessing a CAGR of 14.2 percent during 2008-09 and 2013-14. Portable digital computers <10kg (HS code: 847130) was the largest item of import within this category from India, and was also the one to have recorded the highest CAGR of 27.4 percent during the five year period. Three products at HS-6 digit level have been identified where investment can be attracted on account of market seeking motives (Table 21).

Exhibit 26: China's Share in India's Trade Deficit of Electronic Goods (2013-14)

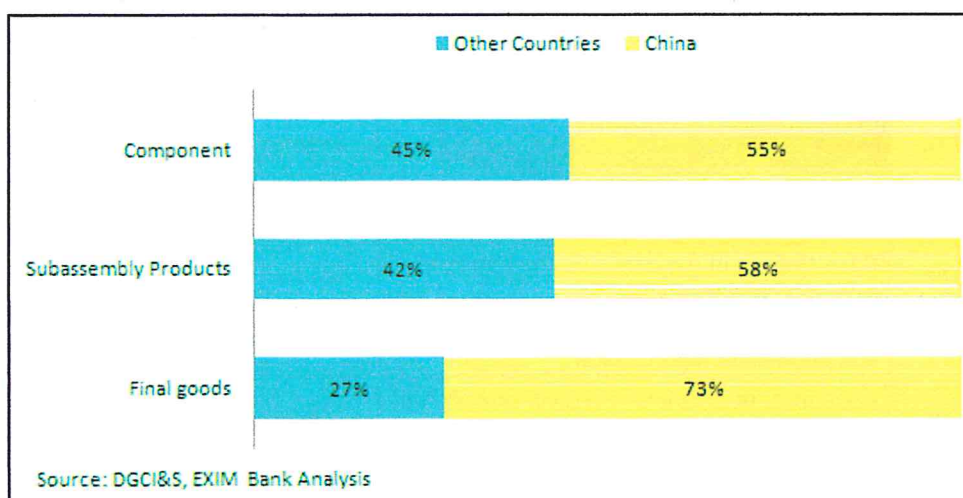


Table 9: Balance of India's Trade with China in Final Electronic Categories (Value in US\$ mn)

Category	2008-09	2012-13
Analytical Instruments	63.80	-92.41
Cameras and projectors	-113.5	-310.46
Clocks & Watches	0.08	-1.34
Computer and storage devices	-642.41	-2751.86
Medical devices	223.42	-76.01
Office equipment	-9.28	-27.43
Others	-37.00	-73.12
Phones, Fax Machines, & Routers	-1502.31	-5703.35
Radar & Radio Navigation Equipment	3.54	-3.95
Radio & TV Transmission	13.07	-4.04
Radios & Alarm Clocks	-83.67	-47.12
Sound & Video Recording Devices	125.37	-378.82
Sound projection	-99.30	-289.94
Television & Monitors	-304.50	-729.01

Source: DGCI&S, EXIM Bank Analysis

WP-24
99

*Extracts from Judgement of
Supreme Court of India in
R. D. Shetty vs. International Airport Authority of India.*

today be deemed indispensable. It may be noted that besides the so called traditional functions, the modern State operates a multitude of public enterprises and discharges a host of other public functions. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. This is precisely what was pointed out by Mathew, J., in *Sukhdev v. Bhagatram* (supra) where the learned Judge said that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions."

This was one of the principal tests applied by the United States Supreme Court in *Marsh v. Alabama*(3) for holding that a corporation which owned a Company town was subject to the same constitutional limitations as the State. This case involved the prosecution of Marsh, a member of the Jehovah's witnesses sect, under a state trespass statute for refusing to leave the side walk of the company town where she was distributing her religious pamphlets. She was fined \$ 5/- and aggrieved by her conviction she carried the matter right upto the Supreme Court contending successfully that by reason of the action of the corporation her religious liberty had been denied. The Supreme Court held that administration of private property such as a town, though privately carried on, was, nevertheless, in the nature of a public function and that the private rights of the corporation must, therefore, be exercised within constitutional limitations and the conviction for trespass was reversed. The dominant theme of the majority opinion written by Mr. Justice Black was that the property of the corporation used as a town not recognisably different from other towns, lost its identification as purely private property. It was said that a town may

(1) 326 U.S. 572.

(2) 304 U.S. 405, 426, 427.

(3) 326 U.S. 501: 19 L. ed. 265.

be privately owned and managed but that does not necessarily allow the corporation to treat it as if it was wholly in the private sector and the exercise of constitutionally protected rights on the public street of a company town could not be denied by the owner. "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation". Mr. Justice Frankfurter, concurring, reduced the case to simpler terms. He found in the realm of civil liberties the need to treat a town, private or not, as a town. The function exercised by the corporation was in the nature of municipal function and it was, therefore, subject to the constitutional limitations placed upon State action.

We find that the same test of public or governmental character of the function was applied by the Supreme Court of the United States in *Evans v. Newton* (supra) and *Smith v. Allwright*.(1) But the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non-governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. (Mathew, J. *Sukhdev v. Bhagatram* (supra) at p. 652). But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference.

(1) 321 U. S. 649.

It will thus be seen that there are several factors which may have to be considered in determining whether a corporation is an agency or instrumentality of Government. We have referred to some of these factors and they may be summarised as under: whether there is any financial assistance given by the State, and if so, what is the magnitude of such assistance whether there is any other form of assistance, given by the State, and if so, whether it is of the usual kind or it is extraordinary, whether there is any control of the management and policies of the corporation by the State and what is the nature and extent of such control, whether the corporation enjoys State conferred or State protected monopoly status and whether the functions carried out by the corporation are public functions closely related to governmental functions. This particularisation of relevant factors is however not exhaustive and by its very nature it cannot be, because with increasing assumption of

100

new tasks, growing complexities of management and administration and the necessity of continuing adjustment in relations between the corporation and Government calling for flexibility, adapt ability and innovative skills, it is not possible to make an exhaustive enumeration of the tests which would invariably and in all cases provide an unfailing answer to the question whether a corporation is governmental instrumentality or agency. Moreover even amongst these factors which we have described, no one single factor will yield a satisfactory answer to the question and the court will have to consider the cumulative effect of these various factors and arrive at its decision on the basis of a particularised inquiry into the facts and circumstances of each case. "the dispositive question in any state action case," as pointed out by Douglas, J., in *Jackson v. Metropolitan Edison Company* (supra) "is not whether any single fact or relationship presents a sufficient degree of state involvement, but rather whether the aggregate of all relevant factors compels a finding of state responsibility." It is not enough to examine seriatim each of the factors upon which a corporation is claimed to be an instrumentality or agency of Government and to dismiss each individually as being insufficient to support a finding of that effect. It is the aggregate or cumulative affect of all the relevant factors that is controlling. G Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweetwill, but its action must be in conformity with some principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in *E. P. Rayappa v. State of Tamil Nadu*(1) and *Maneka Gandhi v. Union of India*(2) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals v. State of West Bengal* (supra) where the learned Chief Justice pointed out that "the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting.... A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.... It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the (1) [1974] 2 S. C. R. 348.

(2) 1978] 2 S. C. R. 621.

goods." It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

It is interesting to find that this rule was recognised and applied by a Constitution Bench of this Court in a case of sale of kendu leaves by the Government of Orissa in *Rashbihari Panda v. State of Orissa*.(1) The trade of kendu leaves in the State of Orissa was regulated by the Orissa Kendu Leaves (Control of Trade) Act, 1961 and this Act created a monopoly in favour of the State so far as purchase of kendu leaves from growers and pluckers was concerned. Section 10 of the Act authorised the Government to sell or otherwise dispose of kendu leaves purchased in such manner as the Government might direct. The Government first evolved a scheme under which it offered to renew the Licences of those traders who in its view had worked satisfactorily in the previous year and had regularly paid the amount due from them. The scheme was challenged and realising that it might be struck down, the Government withdrew the scheme and instead, decided to invite tenders for advance purchase of kendu leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. This method of sale of kendu leaves was also challenged by filing a writ petition on the ground inter alia that it was violative of Articles 14 and 19(1)(g) and this challenge, though negatived by the High Court, was upheld by this Court in appeal. The Court pointed out that the original scheme of offering to enter into contracts with the old licences and to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade and the new scheme under

Government to act arbitrarily in accepting a tender or that under the guise or pretext of such a condition, the Government may enter into a contract with any person it likes, arbitrarily and without reason. In fact the Court pointed out at the end of the judgment that the act of the Government was not "shown to be vitiated by such arbitrariness as should call for interference by the Court", recognising clearly that if the rejection of the tender of the 1st respondent were arbitrary, the Court would have been justified in striking it down as invalid.

Now this rule, flowing as it does from [Article 14](#), applies to every State action and since "State" is defined in [Article 12](#) to include not only the Government of India and the Government of each of the States, but also "all local or other authorities within the territory of India or under the control of the Government of India", it must apply to action of "other authorities" and they must be held subject to the same constitutional limitation as the Government. But the question arises what are the "other authorities" contemplated by [Article 12](#) which fall within the definition of 'State'? on this ques-

(1) [1974] 3 S. C. R. 64.

tion considerable light is thrown by the decision of this Court in [Rajasthan Electricity Board v. Mohan Lal](#)(1). That was a case in which this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression "other authorities" in [Art. 12](#). Bhargava, J., delivering the judgment of the majority pointed out that the expression "other authorities" in [Art. 12](#) would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions the disobedience of which would be punishable as a criminal offence, that would be an indication that that authority is 'State'. Shah, J., who delivered a separate judgment, agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression "other authorities". He said that authorities, constitutional or statutory, would fall within the expression "other authorities" only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the meaning of the expression "other authorities", if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequence or it has the sovereign power to make rules and regulations having the force of law. This test was followed by Ray, C.J., in [Sukhdev v. Bhagat Ram](#) (supra). Mathew, J., however, in the same case, propounded a broader test, namely, whether the statutory corporation or other body or authority, claimed to fall within the definition of 'State', is as instrumentality or agency of Government: if it is, it would fall within the meaning of the expression 'other authorities' and would be 'State'. Whilst accepting the test laid down in [Rajasthan Electricity Board v. Mohan Lal](#)(supra), and followed by Ray, C. J., in [Sukhdev v. Bhagat Ram](#) (supra), we would, for reasons already discussed, prefer to adopt the test of Governmental instrumentality or agency as one more test and perhaps a more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of 'State'. If a statutory corporation, body or other authority is an instrumentality or agency of Government, it would be an 'authority' and therefore 'State' within the meaning of that expression in [Article 12](#).

It is necessary at this stage to refer to a few decisions of this Court which seem to bear on this point and which require a little (1) [1967] 3 S C, R 377 11-904 SCI/79 explanation. The first is the decision in [Praga Tools Corporation v. C. A. Imanuel](#)(1). This was a case in which some of the workmen sought a writ of mandamus against Praga Tools Corporation which was a company with 56 per cent of its share capital held by the Central Government, 32 per cent by the Andhra Pradesh Government and 12 per cent by private individuals. The Court held that a writ of mandamus did not lie, because Praga Tools Corporation "being a non statutory body and one incorporated under the [Companies Act](#), there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty." (emphasis supplied). It is difficult to see how this decision can be of any help in deciding the present issue before us. This was not a case where Praga Tools Corporation claimed to be an instrumentality of government or an 'authority' within the meaning of [Article 12](#). The only question was whether a writ of mandamus could lie and it was held that since there was no duty imposed on Praga Tool Corporation by statute, no writ of mandamus could issue against it.

The second decision to which we must refer is that in [Heavy Engineering Mazdoor Union v. State of Bihar](#)(2). The question which arose in this case was whether a reference of an industrial dispute between the Heavy Engineering Corporation Limited (hereinafter referred to as the 'Corporation') and the Union made by the State of Bihar under [section 10](#) of the Industrial Disputes Act, 1947 was valid. The argument of the Union was that the industry in question was "carried on under the authority of the Central Government" and the reference could, therefore, be made only by the Central Government. The Court held that the words "under the authority" mean "pursuant to the authority, such as where an agent or a servant acts under of pursuant to the authority of his principal or master" and on this view, the Court addressed itself to the question whether the Corporation could be said to be carrying on business pursuant to the authority of the Central Government. The answer to this question was obviously 'no' because the Corporation was carrying on business in virtue of the authority derived from its memorandum and articles of association and not by reason of any authority granted by the Central Government. The Corporation, in carrying

102

Excerpts from Judgment of
Supreme Court of India in
Arya Hosiya vs. Khulid Nigib.

103

petitioners. The petitioners filed before us a chart showing by way of comparison the marks obtained by the petitioners on the one hand and some of the successful candidates on the other at the qualifying examination, in the written test and at the viva voce examination-

nation. This chart shows beyond doubt that the successful candidates whose marks are given in the chart had obtained fairly low marks at the qualifying examination as also in the written test, but they had been able to score over the petitioners only on account of very high marks obtained by them at the viva voce examination. The petitioners feeling aggrieved by this mode of selection filed the present writ petitions challenging the validity of the admissions made to the college on various grounds. Some of these grounds stand concluded by the recent decision of this Court in *Miss Nishi Maghu v. State of Jammu & Kashmir & Ors.* and they were therefore not pressed before us. Of the other grounds, only one was canvassed before us and we shall examine it in some detail.

But before we proceed to consider the merits of this ground of challenge, we must dispose of a preliminary objection raised on behalf of the respondents against the maintainability of the writ petition. The respondents contended that the college is run by society which is not a corporation created by a statute but is a society registered under the Jammu & Kashmir Societies Registration Act, 1898 and it is therefore not an 'authority' within the meaning of Art. 12 of the Constitution and no writ petition can be maintained against it, nor can any complaint be made that it has acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution. Now it is obvious that the only ground on which the validity of the admissions to the college can be assailed is that the society adopted an arbitrary procedure for selecting candidates for admission to the college and this resulted in denial of equality to the petitioners in the matter of admission violative of Art. 14 of the Constitution. It would appear that prima facie protection against infraction of Art. 14 is available only against the State and complaint of arbitrariness and denial of equality can therefore be sustained against the society only if the society can be shown to be State for the purpose of Art. 14. Now 'State' is defined in Art. 12 to include inter alia the Government of India and the Government of each of the States and all local or other authorities within the territory of India or under the control of the Government of India and the question therefore is whether the Society can be said to be 'State' within the meaning of this definition. Obviously the Society cannot be equated with the Government of India or the Government of any State nor can it be said to be a local authority and therefore, it must come within the expression "other authorities" if it is to fall within the definition of 'State'. That immediately leads us to a consideration of the question as to what are the "other authorities" contemplated in the definition of 'State' in Art. 13.

While considering this question it is necessary to bear in mind that an authority falling within the expression "other authorities" is, by reason of its inclusion within the definition of 'State' in Article 12, subject to the same constitutional limitations as the Government and is equally bound by the basic obligation to obey the constitutional mandate of the Fundamental Rights enshrined in Part III of the Constitution. We must therefore give such an interpretation to the expression "other authorities" as will not stultify the operation and reach of the fundamental rights by enabling the Government to its obligation in relation to the Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions. In the early days when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the welfare State, it began to be increasingly felt that the frame work of civil service was not sufficient to handle the new tasks which were often specialised and highly technical in character and which called for flexibility of approach and quick decision making. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the corporation came into being as the third arm of the Government and over the years it has been increasingly utilised by the Government for setting, up and running public enterprises and carrying out other public functions. Today with increasing assumption by the Government of commercial ventures and economic projects, the corporation has become an effective legal contrivance in the hands of the Government for carrying out its activities, for it is found that this legal facility of corporate instrument provides considerable flexibility and elasticity and facilitates proper and efficient management with professional skills and on business principles and it is blissfully free from "departmental rigidity, slow motion procedure and hierarchy of officers". The Government in many of its commercial ventures and public enterprises is resorting to more and more frequently to this resourceful legal contrivance of a corporation because it has many practical advantages and at the same time does not involve the slightest diminution in its ownership and control of the undertaking. In such cases "the true owner is the State, the real operator is the State and the effective controller is the State and accountability for its actions to the community and to Parliament is of the State." It is undoubtedly true that the

104

corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality. It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the Government or through the corporate personality of which the Government is acting, so as to subject the Government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights. The constitutional philosophy of a democratic socialist republic requires the Government to undertake a multitude of socioeconomic operations and the Government, having regard to the practical advantages of functioning through the legal device of a corporation, embarks on myriad commercial and economic activities by resorting to the instrumentality or agency of a corporation, but this contrivance of carrying on such activities through a corporation cannot exonerate the Government from implicit obedience to the Fundamental Rights. To use the corporate methodology is not to liberate the Government from its basic obligation to respect the Fundamental Rights and not to over-ride them. The mantle of a corporation may be adopted in order to free the Government from the inevitable constraints of red-tapism and slow motion but by doing so, the Government cannot be allowed to play truant with the basic human rights. Otherwise it would be the easiest thing for the government to assign to a plurality of corporations almost every State business such as Post and Telegraph, TV and Radio, Rail Road and Telephones-in short every economic activity-and there by cheat the people of India out of the Fundamental Rights guaranteed to them. That would be a mockery of the Constitution and nothing short of treachery and breach of faith with the people of India, because, though apparently the corporation will be carrying out these functions, it will in truth and reality be the Government which will be controlling the corporation and carrying out these functions through the instrumentality or agency of the corporation. We cannot by a process of judicial construction allow the Fundamental Rights to be rendered futile and meaningless and thereby wipe out Chapter III from the Constitution. That would be contrary to the constitutional faith of the post- Menaka Gandhi era. It is the Fundamental Rights which along with the Directive Principles constitute the life force of the Constitution and they must be quickened into effective action by meaningful and purposive interpretation. If a corporation is found to be a mere agency or surrogate of the Government, "in fact owned by the Government, in truth controlled by the government and in effect an incarnation of the government," the court must not allow the enforcement of Fundamental Rights to be frustrated by taking the view that it is not the government and therefore not subject to the constitutional limitations. We are clearly of the view that where a corporation is an instrumentality or agency of the government, it must be held to be an 'authority' within the meaning of Art. 12 and hence subject to the same basic obligation to obey the Fundamental Rights as the government.

We may point out that this very question as to when a corporation can be regarded as an 'authority' within the meaning of Art. 12 arose for consideration before this Court in *R. D. Shetty v. The International Airport Authority of India & Ores*. There, in a unanimous judgment of three Judges delivered by one of us (Bhagwati, J) this Court pointed out:

"So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated 6th April, 1948 where it was stated inter alia that "management of State enterprises will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this." It was in pursuance of the policy envisaged in this and sub-sequent resolutions on Industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily these functions could have been carried out by Government departmentally through its service personnel but the instrumentality or agency of the corporation was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would

The court however proceeded to point out with reference to the last functional test:

"..... the decisions show that even this test of public or governmental character of the function is not easy of application and does not invariably lead to the correct inference because the range of governmental activity is broad and varied and merely because an activity may be such as may legitimately be carried on by Government, it does not mean that a corporation, which is otherwise a private entity, would be an instrumentality or agency of Government by reason of carrying on such activity. In fact, it is difficult to distinguish between governmental functions and non- governmental functions. Perhaps the distinction between governmental and non-governmental functions is not valid any more in a social welfare State where the laissez faire is an outmoded concept and Herbert Spencer's social statics has no place. The contrast is rather between governmental activities which are private and private activities which are governmental. [Mathew, J. Sukhdev v. Bhagatram (supra) at p. 652]. But the public nature of the function, if impregnated with governmental character or "tied or entwined with Government" or fortified by some other additional factor, may render the corporation an instrumentality or agency of Government. Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference."

These observations of the court in the International Airport Authority's case (supra) have our full approval.

The tests for determining as to when a corporation can be said to be a instrumentality or agency of Government may now be called out from the judgment in the International Airport Authority's case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority's case as follows (1) "One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government." (2) "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character."

(3) "It may also be a relevant factor.....whether the corporation enjoys monopoly status which is the State conferred or State protected."

(4) "Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government."

(6) "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government." If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case, be an 'authority' and, therefore, 'State' within the meaning of the expression in [Article 12](#).

We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this court in the U. P. Warehousing Corporation v. Vijay Narain and the observations made by the learned Judge in that case strongly reinforced the view we are taking particularly in the matrix of our constitutional system.

We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government Company or a company formed under the [Companies Act, 1956](#) or it may be a society registered under the [Societies Registration Act, 1860](#) or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of [Article 12](#) if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be

106

from the membership of the Society by the State Government with the approval of the Central Government. The Board of Governors, which is in charge of general superintendence, direction and control of the affairs of Society and of its income and property is also largely controlled by nominees of the State and the Central Governments. It will thus be seen that the State Government and by reason of the provision for approval, the Central Government also, have full control of the working of the Society and it would not be incorrect to say that the Society is merely a projection of the State and the Central Governments and to use the words of Ray, C.J. in Sukhdev Singh's case (supra), the voice is that of the State and the Central Governments and the hands are also of the State and the Central Governments. We must, therefore, hold that the Society is an instrumentality or agency of the State and the Central Governments and it is an 'authority' within the meaning of Art. 12.

If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa v. State of Tamil Nadu* that this Court laid bare a new dimension of Article 14 and pointed out that Article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said :

"The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbled, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in *Maneka Gandhi v. Union of India* where this Court again speaking through one of us (Bhagwati, J.) observed :

"Now the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

This was again reiterated by this Court in *International Airport Authority's case* (supra) at page 1042 of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not para-phrasing of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the

108

concept of reasonableness and non- arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

We may now turn to the merits of the controversy between the parties. Though several contentions were urged in the writ petitions, challenging the validity of the admissions made to the college, they were not all pressed before us and the principal contention that was advanced was that the society acted arbitrarily in the matter of granting of admissions, first by ignoring the marks obtained by the candidates at the qualifying examination; secondly by relying on viva voce examination as a test for determining comparative merit of the candidates; thirdly by allocating as many as 50 marks for the viva voce examination as against 100 marks allocated for the written test and lastly, by holding superficial interviews lasting only 2 or 3 minutes on an average and asking questions which had no relevance to assessment of the suitability of the candidates with reference to the four factors required to be considered at the viva voce examination. Now so far as the challenge on the first count is concerned, we do not think it is at all well-founded. It is difficult to appreciate how a procedure for admission which does not take into account the marks obtained at the qualifying examination, but prefers to test the comparative merit of the candidates by insisting on an entrance examination can ever be said to be arbitrary. It has been pointed out in the counter affidavit filed by H. L. Chowdhury on behalf of the college that there are two universities on two different dates and the examination by the Board of Secondary Education for Jammu is also held on a different date than the examination by the Board of Secondary Education for Kashmir and the results of these examinations are not always declared before the admissions to the college can be decided. The College being the only institution for education in engineering courses in the State of Jammu & Kashmir has to cater to the needs of both the regions and it has, therefore, found it necessary and expedient to regulate admissions by holding an entrance test, so that the admission process may not be held up on account of late declaration of results of the qualifying examination in either of the two regions. The entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities, because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. We would not, therefore, regard the procedure adopted by the society as arbitrary merely because it refused to take into account the marks obtained by the candidates at the qualifying examination, but chose to regulate the admissions by relying on the entrance test.

The second ground of challenge questioned the validity of viva voce examination as a permissible test for selection of candidates for admission to a college. The contention of the petitioners under this ground of challenge was that viva voce examination does not afford a proper criterion for assessment of the suitability of the candidates for admission and it is a highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as predilections and prejudices of the interviewers, his attitudes and approaches, his pre-conceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of Art. 14. Now this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. We may quote the following passage from the book on "Public Administration in Theory and Practice" by M. P. Sharma which voices a far and balanced criticism of the oral interview method :

"The oral test of the interview has been much criticised on the ground of its subjectivity and uncertainty. Different interviewers have their own notions of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificial and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole life time to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at it's best, the common sort of interview reveals but the superficial aspects of the candidate's personality like appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc. go largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes a serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition.

NO-25 109

Press Information Bureau

Government of India

Ministry of Finance

15-December-2015 19:59 IST

Rules regarding quoting of PAN for specified transactions amended

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of transactions from third parties in a non-intrusive manner, the Income-tax Rules require quoting of Permanent Account Number (PAN) where the transactions exceed a specified limit. Persons who do not hold PAN are required to fill a form and furnish any one of the specified documents to establish their identity.

One of the recommendations of the Special Investigation Team (SIT) on Black Money was that quoting of PAN should be made mandatory for all sales and purchases of goods and services where the payment exceeds Rs.1 lakh. Accepting this recommendation, the Finance Minister made an announcement to this effect in his Budget Speech. The Government has since received numerous representations from various quarters regarding the burden of compliance this proposal would entail. Considering the representations, it has been decided that quoting of PAN will be required for transactions of an amount exceeding Rs.2 lakh regardless of the mode of payment.

To bring a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value, the Government has also enhanced the monetary limits of certain transactions which require quoting of PAN. The monetary limits have now been raised to Rs. 10 lakh from Rs. 5 lakh for sale or purchase of immovable property, to Rs.50,000 from Rs. 25,000 in the case of hotel or restaurant bills paid at any one time, and to Rs. 1 lakh from Rs. 50,000 for purchase or sale of shares of an unlisted company. In keeping with the Government's thrust on financial inclusion, opening of a no-frills bank account such as a Jan Dhan Account will not require PAN. Other than that, the requirement of PAN applies to opening of all bank accounts including in co-operative banks.

The changes to the Rules will take effect from 1st January, 2016.

The above changes in the rules are expected to be useful in widening the tax net by non-intrusive methods. They are also expected to help in curbing black money and move towards a cashless economy.

A chart highlighting the key changes to Rule 114B of the Income-tax Act is attached.

Sl.	NATURE OF TRANSACTION	MANDATORY QUOTING OF PAN (RULE 114B)	
		Existing requirement	New requirement
1.	Immovable property	Sale/ purchase valued at Rs.5 lakh or more	i. Sale/ purchase exceeding Rs.10 lakh; ii. Properties valued by Stamp Valuation authority at amount exceeding Rs.10 lakh will also need PAN.
2.	Motor vehicle (other than two wheeler)	All sales/purchases	No change
3.	Time deposit	Time deposit exceeding Rs.50,000/- with a banking company	i. Deposits with Co-op banks, Post Office, Nidhi, NBFC companies will also need PAN; ii. Deposits aggregating to more than Rs.5 lakh during the year will also need PAN
4.	Deposit with Post Office Savings Bank	Exceeding Rs.50,000/-	Discontinued
5.	Sale or purchase of securities	Contract for sale/purchase of a value exceeding Rs.1	No change

		lakh	
5.	Opening an account (other than time deposit) with a banking company.	All new accounts.	i. Basic Savings Bank Deposit Account excluded (no PAN requirement for opening these accounts); ii. Co-operative banks also to comply
7.	Installation of telephone/ cellphone connections	All instances	Discontinued
3.	Hotel/restaurant bill(s)	Exceeding Rs.25,000/- at any one time (by any mode of payment)	Cash payment exceeding Rs.50,000/-
9.	Cash purchase of bank drafts/ pay orders/ banker's cheques	Amount aggregating to Rs.50,000/- or more during any one day	Exceeding Rs.50,000/- on any one day.
10.	Cash deposit with banking company	Cash aggregating to Rs.50,000/- or more during any one day	Cash deposit exceeding Rs.50,000/- in a day.
1.	Foreign travel	Cash payment in connection with foreign travel of an amount exceeding Rs.25,000/- at any one time (including fare, payment to travel agent, purchase of forex)	Cash payment in connection with foreign travel or purchase of foreign currency of an amount exceeding Rs.50,000/- at any one time (including fare, payment to travel agent)
2.	Credit card	Application to banking company/ any other company/institution for credit card	No change. Co-operative banks also to comply.
3.	Mutual fund units	Payment of Rs.50,000/- or more for purchase	Payment exceeding Rs.50,000/- for purchase.
4.	Shares of company	Payment of Rs.50,000/- or more to a company for acquiring its shares	i. Opening a demat account; ii. Purchase or sale of shares of an unlisted company for an amount exceeding Rs.1 lakh per transaction.
5.	Debentures/ bonds	Payment of Rs.50,000/- or more to a company/ institution for acquiring its debentures/ bonds	Payment exceeding Rs.50,000/-.
6.	RBI bonds	Payment of Rs.50,000/- or more to RBI for acquiring its bonds	Payment exceeding Rs.50,000/-.
7.	Life insurance premium	Payment of Rs.50,000/- or more in a year as premium to an insurer	Payment exceeding Rs.50,000/- in a year.
8.	Purchase of jewellery/bullion	Payment of Rs.5 lakh or more at any one time or against a bill	Deleted and merged with next item in this table
9.	Purchases or sales of goods or services	No requirement	Purchase/ sale of any goods or services exceeding Rs.2 lakh per transaction.

20.	Cash cards/ prepaid instruments issued under Payment & Settlement Act	No requirement	Cash payment aggregating to more than Rs.50,000 in a year.
-----	---	----------------	---

DSM

11h.

C

10-27
115

F. No. 142/11/2015-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Dated: 23rd December, 2015

Subject: - Draft Guiding Principles for determination of Place of Effective Management (POEM) of a Company.

Section 6(3) of the Income-tax Act, 1961, prior to its amendment by the Finance Act, 2015, provided that a company is said to be resident in India in any previous year, if it is an Indian company or if during that year, the control and management of its affairs is situated wholly in India. This allowed tax avoidance opportunities for companies to artificially escape the residential status under these provisions by shifting insignificant or isolated events related with control and management outside India. To address these concerns, the existing provisions of section 6(3) of the Income-tax Act, 1961 were amended vide Finance Act, 2015, with effect from 1st April, 2016 to provide that a company is said to be resident in India in any previous year, if-

- (i) it is an Indian company; or
- (ii) its place of effective management in that year is in India .

2. For the purposes of this clause, "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.

3. 'Place of effective management' (PoEM) is an internationally recognised test for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognize the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation.

4. The Explanatory Memorandum to the Finance Bill, 2015 has stated that a set of guiding principles to be followed in the determination of PoEM would be issued for the benefit of the taxpayers as well as the tax administration. Accordingly the guiding principles on the following lines are proposed to be issued.

5. For the purposes of these guidelines, -

- (a) A company shall be said to be engaged in "active business outside India" if the passive income is not more than 50% of its total income and ,-

116

- (i) less than 50% of its total assets are situated in India; and
- (ii) less than 50% of total number of employees are situated in India or are resident in India; and
- (iii) the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure ;

(b) "Head Office" of a company would be the place where the company's senior management and their direct support staff are located or, if they are located at more than one location, the place where they are primarily or predominantly located. A company's head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets;

(c) "Passive income" of a company shall be aggregate of , -

- (i) income from the transactions where both the purchase and sale of goods is from / to its associated enterprises; and
- (ii) income by way of royalty, dividend, capital gains, interest or rental income;

(d) "Senior Management" in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and for ensuring or overseeing the execution and implementation of those strategies on a regular and on-going basis. While designation may vary, these persons may include:

- (i) Managing Director or Chief Executive Officer;
- (ii) Financial Director or Chief Financial Officer;
- (iii) Chief Operating Officer; and
- (iv) The heads of various divisions or departments (for example, Chief Information or Technology Officer, Director for Sales or Marketing).

6. Any determination of the PoEM will depend upon the facts and circumstances of a given case. The PoEM concept is one of substance over form. It may be noted that an entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since "residence" is to be determined for each year, POEM will also be required to be determined on year to year basis. The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in active business outside India.

7. The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.

held in a location distinct from the place where head office of the company is located or such location is unconnected with the place where the predominant activity of the company is being carried out.

If a board has *de facto* delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person including a shareholder and does nothing more than routinely ratifying the decisions that have been made, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

(b) A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

The delegation of authority may be either *de jure* (by means of a formal resolution or Shareholder Agreement) or *de facto* (based upon the actual conduct of the board and the executive committee).

(c) The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company:-

- If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters then that location is the place where head office is located.
- If the company is more decentralized (for example where various members of senior management may operate, from time to time, at offices located in the various countries) then the company's head office would be the location where these senior managers,-

(i) are primarily or predominantly based; or

(ii) normally return to following travel to other locations; or

118

REV 28
1/9

Auditors

Deloitte Haskins & Sells, Chartered Accountants, Auditors of the Company, were re-appointed as auditors of the Company and hold office till the forthcoming Annual General Meeting of the Company. The Company has received a certificate from the Auditors to the effect that their re-appointment, if made, would be within the limits prescribed under Section 139 (1) of the Companies Act, 2013. You are requested to consider their re-appointment.

Public Deposits

The Company has not accepted any fixed deposit under Section 58A of the Companies Act, 1956 [corresponding Sections 73, 74, 75 & 76 of the Companies Act, 2013] from the public.



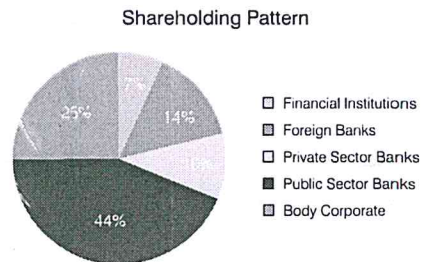
100

C

4. Shareholding Pattern

Shareholding Pattern as on March 31, 2014 is as follows:

Sr. No	Category	Percentage of Shareholding
1.	Public Sector Banks #	43.75
2.	Private Sector Banks	10
3.	Foreign Banks	14.37
4.	Body Corporate *	25.05
5.	Financial Institution *	6.83
	Total	100



* Sponsor/ Promoter

includes shareholding of IDBI Bank Ltd. (30%) which is also a Sponsor/ Promoter

5. General Body Meetings

As the Company was incorporated on April 27, 2012, the first Annual General Meeting of your Company was held on July 25, 2013. During the year under review, one Extra-Ordinary General Meeting was held on April 22, 2013. One special resolution was passed by the shareholders at the aforesaid meetings, for appointment of Mr. G.V. Nageswara Rao as Managing Director & CEO of NSDL for a period of five years w.e.f. July 1, 2013.

6. General Shareholder Information

• Company Registration details:

The Company is registered with the Registrar of Companies, Mumbai, State of Maharashtra, India. The Corporate Identity Number (CIN) allotted to the Company by the Ministry of Corporate Affairs (MCA) is U74120MH2012PLC230380.

• Financial year: 1st April to 31st March

• Record date for dividend payment: Date of AGM

• Listing on stock exchange :

The Company is not listed in any of the stock exchanges in India or abroad.

• Statement showing shareholding pattern as on 31st March, 2014:

Sr. No	Category	Percentage of Shareholding
1.	Sponsors/ Promoters	61.88
2.	Participants	38.12
	Total	100

• Name and designation of the Compliance officer:

Mr. S. Ganesh, Senior Vice President

• Branch offices

The Company's branch offices are located at New Delhi, Kolkata, Chennai and Ahmedabad.

New Delhi	Kolkata	Chennai	Ahmedabad
409/410, Ashoka Estate Bldg., 4th Floor, Barakhamba Road, Connaught Place, New Delhi – 110 001	5th Floor, "The Millenium", Flat No. 5W, 235/2A, Acharya Jagdish Chandra Bose Road, Kolkata – 700 020	6A, 6th Floor, Kences Tower, # 1 Ramkrishna Street, North Usman Road, T. Nagar, Chennai – 600 017	Unit No. 407, 4th Floor, 3rd Eye One Commercial Complex Co-op. Soc. Ltd., C.G. Road, Ahmedabad – 380 006

102

RD25
123

(I)(a) Statement showing Shareholding Pattern

Name of the Company: NATIONAL SECURITIES DEPOSITORY LIMITED			
Scrip Code, Name of the scrip, class of security: EQUITY			
Partly paid-up shares:-	No. of partly paid-up shares	As a % of total no. of partly paid-up Shares	As a % of total no. of shares of the company
Held by promoter/promoter group	-	-	-
Held by public	-	-	-
Total	-	-	-
Outstanding convertible securities:-	No. of outstanding Securities	As a % of total no. of outstanding convertible securities	As a % of total no. of shares of the company, assuming full conversion of the convertible Securities
Held by promoter/promoter group	-	-	-
Held by public	-	-	-
Total	-	-	-
Warrants:-	No. of warrants	As a % of total no. of warrants	As a % of total no. of shares of the company, assuming full conversion of Warrants
Held by promoter/promoter group	-	-	-
Held by public	-	-	-
Total	-	-	-

3.	Administrator of the Specified Undertaking of the Unit Trust of India- DRF	27,32,000	6.830								6.830
TOTAL		2,47,50,000	61.875	-	-	-	-	-	-	-	61.875

(*) The term “encumbrance” has the same meaning as assigned to it in regulation 28(3) of the SAST Regulations, 2011.

(I)(c)(i) Statement showing holding of securities (including shares, warrants, convertible securities) of persons belonging to the category "Public" and holding more than 1% of the total number of shares

Sr. No.	Name of the shareholder	Number of shares held	Shares as a percentage of total number of shares {i.e., Grand Total (A)+(B)+(C) indicated in Statement at para (I)(a) above}	Details of warrants		Details of convertible securities		Total shares (including underlying shares assuming full conversion of warrants and convertible securities) as a % of diluted share capital
				Number of warrants held	As a % total number of warrants of the same class	Number of convertible securities held	% w.r.t total number of convertible securities of the same class	
1.	Canara Bank	5,00,000	1.250	-	-	-	-	1.250
2.	Dena Bank	6,25,000	1.563	-	-	-	-	1.563
3.	Union Bank of India	11,25,000	2.812	-	-	-	-	2.812
4.	Oriental Bank of Commerce	12,50,000	3.125	-	-	-	-	3.125
5.	Standard Chartered Bank	12,50,000	3.125	-	-	-	-	3.125
6.	Citibank N.A.	12,50,000	3.125	-	-	-	-	3.125
7.	The Hongkong and Shanghai	12,50,000	3.125	-	-	-	-	3.125

128

	Banking Corporation Limited							
8.	Axis Bank Limited	20,00,000	5.000	-	-	-	-	5.000
9.	Deutsche Bank A.G.	20,00,000	5.000	-	-	-	-	5.000
10.	HDFC Bank Limited	20,00,000	5.000	-	-	-	-	5.000
11.	State Bank of India	20,00,000	5.000	-	-	-	-	5.000
TOTAL		1,52,50,000	38.125	-	-	-	-	38.125

KD-30 129 24/1/08
CFO By 23/1/08
CCM (Secy to Govt.)
CM (Secy to Govt.)

F.No. 7/96/2005-BOA
Govt. of India
Ministry of Finance
Department of Financial Services

Jeevan Deep Building, Sansad Marg
New Delhi, dated the 31st December, 2007

To

The Secretaries of all Ministries/Departments of the Govt. of India

Discussed with CMO
we may implem. it
to branches etc.
24/1/08

Subject: Treating IDBI Ltd. on par with Nationalized Banks/State bank of India by Government Departments/Public Sector Undertakings/Other entities for the purpose of deposits/bonds/investments and Government business.

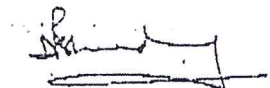
Sir,

I am directed to inform that Industrial Development Bank India Ltd has been incorporated under the Companies Act, 1956 as a Ltd. company registered with the Registrar of Companies, Maharashtra, Mumbai vide Certificate of incorporation dated 27th September, 2004. In terms of the Articles of Association of the IDBI Ltd., the Central Government being a shareholder of the company shall at all times maintain not less than 51% of the Issued Capital of the company. Considering the shareholding pattern, IDBI Ltd. has been categorized under a New Sub-Group "Other Public Sector Banks."

2. Accordingly, it has been decided that IDBI Ltd. may be treated on par with Nationalized Banks/State bank of India by Govt. Departments/Public Sector Undertakings/other entities for all purposes, including deposits/bonds/investments/guarantees etc. and Government business.

3. It is requested that contents of this letter may kindly be noted and also brought to the notice of all the Public Sector Undertakings/Other entities under the administrative control of your Ministry/Department.

Yours faithfully,



(D.P. Bhardwaj)

Under Secretary to the Govt. of India

Ph: 23748707

Copy forwarded for information to Shri O.V. Bundellu, Deputy Managing Director, IDBI Bank Ltd. Head Office Mumbai with reference to his D.O. No. 835/DRD/2007-08 dated December 13, 2007.



A- A A

PERSONAL CORPORATE MSME AGRI NRI CUSTOMER CARE

Home About Us Investor IDBI Group CSR Careers Contact Us Search हिन्दी

PRODUCTS INVESTMENTS APPLY NOW PAY ONLINE

Personal Login

Home / About Us / Glorious History

About Us

Vision & Mission

Bank's Profile

Glorious History

Statute

Management

Letters of Appointment to Independent Directors

New Generation Government owned Bank

General Code of Conduct & Ethics

Code for Independent Directors

Press Release

- > Domestic Interest Rates
- > NRI Interest Rate
- > Service Charges

Glorious History

Information on the Constitution of IDBI Bank

Industrial Development Bank of India

Industrial Development bank of India (IDBI) was constituted under Industrial Development bank of India Act, 1964 as a Development Financial Institution and came into being as on July 01, 1964 vide GoI notification dated June 22, 1964. It was regarded as a Public Financial Institution in terms of the provisions of Section 4A of the Companies Act, 1956. It continued to serve as a DFI for 40 years till the year 2004 when it was transformed into a Bank.

Industrial Development Bank of India Limited

In response to the felt need and on commercial prudence, it was decided to transform IDBI into a Bank. For the purpose, Industrial Development bank (transfer of undertaking and Repeal) Act, 2003 [Repeal Act] was passed repealing the Industrial Development Bank of India Act, 1964. In terms of the provisions of the Repeal Act, a new company under the name of Industrial Development Bank of India Limited (IDBI Ltd.) was incorporated as a Govt. Company under the Companies Act, 1956 on September 27, 2004. Thereafter, the undertaking of IDBI was transferred to and vested in IDBI Ltd. with effect from the effective date of October 01, 2004. In terms of the provisions of the Repeal Act, IDBI Ltd. has been functioning as a Bank in addition to its earlier role of a Financial Institution.

Merger of IDBI Bank Ltd. with IDBI Ltd.

Towards achieving the faster inorganic growth of the Bank, IDBI Bank Ltd., a wholly owned subsidiary of IDBI Ltd. was amalgamated with IDBI Ltd. in terms of the provisions of Section 44A of the Banking Regulation Act, 1949 providing for voluntary amalgamation of two banking companies. The merger became effective from April 02, 2005.

Merger of United Western bank with IDBI Ltd.

The United Western bank Ltd. (UWB), a Satara based private sector bank was placed under moratorium by RBI. Upon IDBI Ltd. showing interest to take over the said bank towards its further inorganic growth, RBI and Govt. of India amalgamated UWB with IDBI Ltd. in terms of the provisions of Section 45 of the Banking Regulation Act, 1949. The merger came into effect on October 03, 2006.

Change of name of IDBI Ltd. to IDBI Bank Ltd.

In order that the name of the Bank truly reflects the functions it is carrying on, the name of the Bank was changed to IDBI Bank Limited and the new name became effective from May 07, 2008 upon issue of the Fresh Certificate of Incorporation by Registrar of Companies, Maharashtra. The Bank has been accordingly functioning in its present name of IDBI Bank Limited.

Home | Top

Service Charges : Domestic Interest Rates : NRI Interest Rate

Disclaimer : webmaster : Site Map : RBI : RTGS : FAQ



Policies - Privacy : Hyperlink : Copyright : Screen Reader Access

Revision in Loyalty Points

Cash at POS Facility

Home Loans Eligibility Calculator

Auto Loan Eligibility Calculator

Personal Loan Eligibility Calculator

Term Deposit Calculator

Easy Access: Retail Loan Stmt. & Interest Certificates

India Remit

CIN of IDBI Bank - L65190MH2004GOI148838

© 2013 IDBI Bank Ltd. All rights reserved.



A- A A+

132



Home About Us Investor IDBI Group CSR Careers Contact Us Search हिन्दी

PRODUCTS INVESTMENTS APPLY NOW PAY ONLINE

Personal Login

HOME / ABOUT US / Bank's Profile

About Us

Vision & Mission

Bank's Profile

Glorious History

Statute

Management

Letters of Appointment to Independent
Directors

New Generation Government owned Bank

General Code of Conduct & Ethics

Code for Independent Directors

Press Release

- Domestic Interest Rates
- NRI Interest Rate
- Service Charges

Bank's Profile

IDBI Bank Ltd. is today one of India's largest commercial Banks. For over 40 years, IDBI Bank has essayed a key nation-building role, first as the apex Development Financial Institution (DFI) (July 1, 1964 to September 30, 2004) in the realm of industry and thereafter as a full-service commercial Bank (October 1, 2004 onwards). As a DFI, the erstwhile IDBI stretched its canvas beyond mere project financing to cover an array of services that contributed towards balanced geographical spread of industries, development of identified backward areas, emergence of a new spirit of enterprise and evolution of a deep and vibrant capital market. On October 1, 2004, the erstwhile IDBI Bank converted into a Banking company (as Industrial Development Bank of India Limited) to undertake the entire gamut of Banking activities while continuing to play its secular DFI role. Post the mergers of the erstwhile IDBI Bank with its parent company (IDBI Ltd.) on April 2, 2005 (appointed date: October 1, 2004) and the subsequent merger of the erstwhile United Western Bank Ltd. with IDBI Bank on October 3, 2006, the tech-savvy, new generation Bank with majority Government shareholding today touches the lives of millions of Indians through an array of corporate, retail, SME and Agri products and services.

Headquartered in Mumbai, IDBI Bank today rides on the back of a robust business strategy, a highly competent and dedicated workforce and a state-of-the-art information technology platform, to structure and deliver personalised and innovative Banking services and customised financial solutions to its clients across various delivery channels.

As an Universal Bank, IDBI Bank, besides its core banking and project finance domain, has an established presence in associated financial sector businesses like Capital Market, Investment Banking and Mutual Fund Business. Going forward, IDBI Bank is strongly committed to work towards emerging as the 'Bank of choice' and 'the most valued financial conglomerate', besides generating wealth and value to all its stakeholders.

Home | Top

Service Charges : Domestic Interest Rates : NRI Interest Rate

Disclaimer : webmaster : Site Map : RBI : RTGS : FAQ



Policies : Privacy : Hyperlink : Copyright : Screen Reader Access

[Revision in Loyalty Points](#)
[Cash at POS Facility](#)
[Home Loans Eligibility Calculator](#)
[Auto Loan Eligibility Calculator](#)
[Personal Loan Eligibility Calculator](#)
[Term Deposit Calculator](#)
[Easy Access: Retail Loan Stmt. & Interest Certificates](#)
[India Remit](#)

CIN of IDBI Bank - L6519QMH2004GOI148838

© 2013 IDBI Bank Ltd. All rights reserved.

- Software, Computers & Motor Vehicles 33.33%
- Leasehold land and premises are amortised equally over the period of lease.
- iii. Building improvements in leased premises are depreciated at 33.33% in case the lease period exceeds eight years. However, in case the lease period does not exceed eight years, the same is amortised over the period of lease and in case the lease is not renewed within the period of eight years, the balance unamortised amount is charged in the last year of lease.
- iv. Fixed assets, which are installed and put to use, pending final settlement of liabilities are stated on an estimated basis. On final settlement depreciation is adjusted, from the date the asset is put to use.
- v. On sale of Fixed Assets, the profit / loss arrived at after reducing the written down value of cost and appreciation of fixed asset on revaluation has been accounted in the Revenue account. The balance outstanding in revaluation reserve for assets sold has been transferred to General Reserve.

J. Reserve funds:

In accordance with the provisions of Section 25 B (1) of the erstwhile Unit Trust of India Act, 1963 the following funds had been created, which, though belonging to the SUUTI, are accounted under the Unit Scheme 1964 Bonds as a matter of administrative convenience.

Development Reserve Fund (DRF) :**A. Constitution:**

The Fund was set up for developmental, research, promotional and any other activities of the Trust. The fund provides guarantee in respect of return/capital under certain schemes.

The Fund is built up by: -

i. Contributions from

- schemes launched from 1st July, 1994 onwards, as per the respective scheme provisions.
- for all other schemes, at the rates approved by the Board of Trustees of erstwhile UTI.

B. Operation:

- i. Income and expenses of the fund are accounted for on accrual basis.
- ii. Investments are stated as per policy stated in E above.
- iii. The fund mainly invest in the equity shares of companies promoted/co-promoted by the Trust.
- iv. Two Years after closure of a scheme, at the end of the accounting year the residual assets are valued on the basis of market price, if available, otherwise as per the approved rates. The value so arrived at is adjusted against liabilities/provisions and the resultant net surplus/deficit is transferred to DRF. In case of pooled schemes this practice is followed two years after closure of the last scheme. Any claims in future against these schemes are charged to DRF.

C. The balances of Post redemption schemes where strategic equity is held on behalf of Government Of India, are shown under DRF, duly matched assets and liabilities.

D. Other Funds:-

Currently we are having two Funds namely Asset Reconstruction Fund and Staff Welfare Fund, established through contribution from the Development Reserve Fund.

ADMINISTRATOR OF THE SPECIFIED UNDERTAKING OF THE UNIT TRUST OF INDIA**BALANCE SHEET AS AT 31ST MARCH, 2015**

	UNIT SCHEME 64 BONDS		ARS BONDS	
	31.03.2015	31.03.2014	31.03.2015	31.03.2014
LIABILITIES				
CAPITAL..... 'A'				
RESERVES AND SURPLUS..... 'B'	-	-	-	-
CURRENT LIABILITIES AND PROVISIONS 'C'	4,01,894.15	3,26,500.69	(1,30,672.34)	(1,30,331.84)
SIZE OF DEVELOPMENT RESERVE FUND	60,312.87	61,335.79	1,83,627.33	1,95,240.31
CURRENT LIABILITIES AND PROVISIONS OF DRF	77,903.38	2,25,057.01	-	-
LIABILITIES OF POST REDEMPTION SCHEMES UNDER DRF	2,16,024.84	38,914.10	-	-
	1,30,162.82	1,13,652.37	-	-

	UNIT SCHEME 64 BONDS		ARS BONDS	
	31.03.2015	31.03.2014	31.03.2015	31.03.2014
DEVELOPMENT RESERVE FUND..... 'D'	4,24,091.04	3,77,623.48	-	-
SIZE OF OTHER FUNDS	1,61,488.40	1,45,125.82	-	-
CURRENT LIABILITIES AND PROVISIONS OF OTHER FUNDS	76,457.90	79,500.08	-	-
OTHER FUNDS..... 'E'	2,37,946.30	2,24,625.90	-	-
TOTAL LIABILITIES	11,24,244.36	9,90,085.86	52,954.99	64,908.47
ASSETS				
INVESTMENTS..... 'F'	3,52,220.75	3,52,483.51	50,231.12	62,343.39
DEPOSITS 'G'	4,473.19	11,014.03	-	-
CURRENT ASSETS..... 'H'	1,01,160.08	19,712.72	2,723.87	2,565.08
FIXED ASSETS..... 'I'	4,353.00	4,626.22	-	-
ASSETS OF DEVELOPMENT RESERVE FUND	2,93,928.22	2,63,971.11	-	-
ASSETS OF POST REDEMPTION SCHEMES UNDER DRF	1,30,162.82	1,13,652.37	-	-
TOTAL ASSETS OF DEVELOPMENT RESERVE FUND..... 'J'	4,24,091.04	3,77,623.48	-	-
ASSETS OF OTHER FUNDS..... 'K'	2,37,946.30	2,24,625.90	-	-
TOTAL ASSETS	11,24,244.36	9,90,085.86	52,954.99	64,908.47
NOTES TO ACCOUNTS..... 'M'				

Notes to Accounts 'M'

Statement of Significant Accounting Policies forms an integral part of the Accounts.

As per our attached report of even date

For and on behalf of

ASHOK BHARTIA & CO.

Chartered Accountants

ASHOK BHARTIA
PARTNER

IMTAIYAZUR RAHMAN
CHIEF FINANCE OFFICER

K. N. PRITHVIRAJ
Advisor

B. BABU RAO
Chief Executive Officer

Mumbai

Dated : 7th May, 2015

KQ-33 135

UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2002

[58 OF 2002]

An Act to provide for the transfer and vesting of the undertaking (excluding the specified undertaking) of the Unit Trust of India to the specified company to be formed and registered under the Companies Act, 1956, and the transfer and vesting of the specified undertaking of the Unit Trust of India in the Administrator and for matters connected therewith or incidental thereto and also to repeal the Unit Trust of India Act, 1963. BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER I PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.
- (2) It shall be deemed to have come into force on the 29th day of October, 2002.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “Administrator” means a person or a body of persons appointed as Administrator under section 7;
- (b) “appointed day” means such date as the Central Government may, by notification in the Official Gazette, appoint under section 4;
- (c) “bank” shall have the meaning assigned to it in clause (d) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);
- (d) “Development Bank” means the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (e) “financial institution” shall have the meaning assigned to it in clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);
- (f) “Life Insurance Corporation of India” means the Life Insurance Corporation of India established under sub-section (1) of section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);
- (g) “Schedule” means Schedules I and II to this Act;
- (h) “specified company” means a company to be formed and registered under the Companies Act, 1956 (1 of 1956) and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of transfer and vesting of the undertaking;
- (i) “specified undertaking” includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund specified in the Schedule I;
- (j) “State Bank” means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);
- (k) “Trust” means the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963);
- (l) “undertaking” includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and plans specified in the Schedule II;

136

(m) "unit" means a unit issued under a unit scheme made under section 21 of the Unit Trust of India Act, 1963 (52 of 1963).

CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKING OF TRUST IN THE SPECIFIED COMPANY AND TRANSFER AND VESTING OF THE SPECIFIED UNDERTAKING OF TRUST IN THE ADMINISTRATOR

Transfer of initial capital.

3. (1) On the appointed day, the initial capital of the Trust, contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions under sections 4 and 4A of the Unit Trust of India Act, 1963 (52 of 1963), as it stood immediately before the commencement of this Act, shall stand transferred to, and vest in, the Central Government.

(2) The initial capital contributed by the Development Bank, the Life Insurance Corporation, the State Bank and the subsidiary banks and other institutions shall be refunded, by the Central Government, to such extent as may be determined by it, having regard to the book value, the assets and liabilities of the Trust.

Undertaking of Trust to vest in specified company and specified undertaking of Trust to vest in Administrator.

4. (1) On such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in,—

(a) the specified company, the undertaking (excluding the specified undertaking) of the Trust for such consideration and on such terms and conditions as may be mutually agreed upon between the Central Government and the subscribers to the capital of the specified company;

(b) the Administrator, the specified undertaking of the Trust.

(2) The decision of the Central Government, as to whether any business, assets, liabilities or properties represent or relate to the undertaking or specified undertaking, shall be final: **Provided** that any business, asset or property which is not represented or related to the undertaking or specified undertaking, shall vest in the Central Government.

General effect of vesting of undertaking or specified undertaking in specified company or Administrator.

5. (1) The undertaking of the Trust which is transferred to, and which vest in, the specified company or the specified undertaking of the Trust, which is transferred to, and vest in, the Administrator, as the case may be, under section 4, shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to industrial concerns, tenancies, leases and book-debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Trust in relation to the undertaking or the specified undertaking, as the case may be, within or without India, all books of account, registers, records and documents relating



सत्यमेव जयते

**Report of the
Comptroller and Auditor General of India
on**

**National Skill Development Fund and
National Skill Development Corporation**



**Union Government
Ministry of Finance
and
Ministry of Skill Development and Entrepreneurship
No. 45 of 2015
(Compliance Audit)**

Executive Summary

1. Introduction

National Skill Development Fund (NSDF) and National Skill Development Corporation (NSDC) were created after approval of the Union Cabinet to stimulate and coordinate private sector initiative in the skill development sector. NSDC was formed (31 July 2008) as a “not for profit” public company with limited liability under Section 25 of the Companies Act, 1956 with an equity capital of ₹ 10 crore, of which 51 *per cent* (₹ 5.10 crore) and 49 *per cent* (₹ 4.90 crore) were subscribed by the private sector and Government of India respectively. It was conceived as a Public Private Partnership (PPP) in the skill development sector. NSDF was incorporated (23 December 2008) as a trust, under the Indian Trusts Act, 1882, by the Department of Economic Affairs (DEA), Ministry of Finance, to act as the receptacle of funds from Government sources, bilateral/ multilateral and other agencies. NSDF received ₹ 3,300.74 crore, as on 31 March 2015, from the government sources.

NSDF was to examine the Annual Work Plan of NSDC and sanction funds against the work plan. Since inception, NSDC had received funds of ₹ 2,362.90 crore upto 31 March 2015 from NSDF for execution of schemes and programmes for skill development.

Government of India vide notification dated 31 July 2014 transferred the work of NSDF and NSDC from DEA to the Ministry of Skill Development, Entrepreneurship, Youth Affairs & Sports and subsequently to a newly created Ministry of Skill Development and Entrepreneurship (MSDE).

130

2. Significant Audit Findings

- NSDF was created to act as a receptacle for financial contributions by Government/Government entities, multilateral and bilateral and private sector. However, since inception, NSDF received funds from Government sources only.

(Para 2.1)

- NSDC was conceived to be “private sector led” with Government shareholding of less than 51 *per cent* to prevent it from converting into a Government company so as to dispense with CAG audit, guidelines of Department of Public Enterprises and other Government norms and guidelines. It was designed as a Public Private Partnership with funding and participation from both the Government and Private Sectors. However, NSDC had been working with taxpayer’s money only since its inception in 2008. There was 99.78 *per cent* financial stake of the Government in NSDC with 49 *per cent* equity ownership. However, Government’s ownership rights were not commensurate with the Government’s financial exposure in NSDC. NSDC was also kept out of the parliamentary oversight over its functioning.

(Para 2.1)

- Though the Government was the single largest shareholder in NSDC and was the sole contributor in NSDC’s finances, its role in decision making had been limited due to minority representation on the board of directors of NSDC.

(Para 2.2.2.1)

- Status of NSDC was changed from a public limited company to a private limited company in 2011, which further weakened the governance mechanism of NSDC.

(Para 2.2.2.3)

112

C

- Though the Cabinet approval and the trust deed of NSDF prescribed a supervisory role of NSDF over NSDC, the detailed contours and modalities of exercising this role were not clearly defined. NSDF was ineffective in its supervisory role. Further, there were several instances when NSDC also effectively denied the supervisory role to NSDF.

(Para 3.1.1)

- Annual work plan and budgetary requirements were important tools by which NSDF was to exercise its supervisory control over NSDC and funds were to be released after their due scrutiny and approval. There were delays in submission of these documents and when they were submitted, review of the projects was not undertaken properly by NSDF.

(Para 3.1.2)

- Activities of NSDC of providing loans to entities were covered under the definition of Non-Banking Financial Company (NBFC). RBI is the regulator of NBFC sector in India. DEA persuaded RBI to exempt NSDC from its regulation on the premise that this work was performed by NSDF. However, no regulatory oversight was provided by NSDF. This regulatory role was outsourced to a private agency in November 2014. Carrying out the task of micro-prudential regulation was an important regulatory function which inherently included enforcement mechanism. Appointment of a private agency for carrying out this regulatory task, on the lines of the one performed by RBI, after taking it out of RBI's domain lacked justification.

A private agency, IL&FS Trust Company Limited, was appointed (November 2014) to do micro prudential regulation of NSDC. It had an apparent conflict of interest, as it was part of a business group whose subsidiary company was sanctioned with funding of ₹ 159 crore by NSDC in 2010-11 and disbursed ₹ 89.97 crore upto March 2015. Further, the appointment process was also irregular with restrictive pre-qualification criteria and infirmities in the bid evaluation process.

(Para 3.2)

133

Q

Chapter-I : Introduction

1.1 Overview

Skill is the ability to perform a productive task at a certain level of competence. With an objective of enhancing the skill training capacity in the country, Union Cabinet approved the formation of National Skill Development Corporation (NSDC) (May 2008) to stimulate and coordinate private sector initiative in the skill development sector and National Skill Development Fund (NSDF) (November 2008) for attracting contributions from various Government sources, and other donors/contributors to enhance, stimulate and develop skills by various sector specific programmes.

In pursuance of the Cabinet decision, NSDC was incorporated as a '*not for profit*' company, on 31 July 2008, under Section 25 of Companies Act, 1956 as a public limited company by Department of Economic Affairs, Ministry of Finance (DEA) with equity capital of ₹ 10 crore¹. It was conceived as a *Public-Private Partnership (PPP)* in skill development sector. NSDF was incorporated on 23 December 2008, as a trust fully owned by the Government of India, under the Indian Trusts Act, 1882, by DEA to act as the receptacle of funds for NSDC from Government sources, bilateral/multilateral and other agencies with initial corpus of ₹ 995.10 crore received from the Government of India. The position of funds received by NSDF from Government sources and funds disbursed (including equity) to NSDC was as follows:

Table 1: Position of funds received by NSDF and made available to NSDC
(₹ in crore)

Year	Funds received in NSDF from Government Sources	Funds made available to NSDC
2008-09	998.10	203
2009-10	Nil	Nil
2010-11	Nil	Nil
2011-12	502.28	104.95
2012-13	Nil	290.90
2013-14	1,311.60	1,073.99
2014-15	488.76	690.06
Total	3,300.74	2,362.90 ²

¹ ₹ 5.10 crore subscribed by private sector and ₹ 4.90 crore subscribed by Government of India.

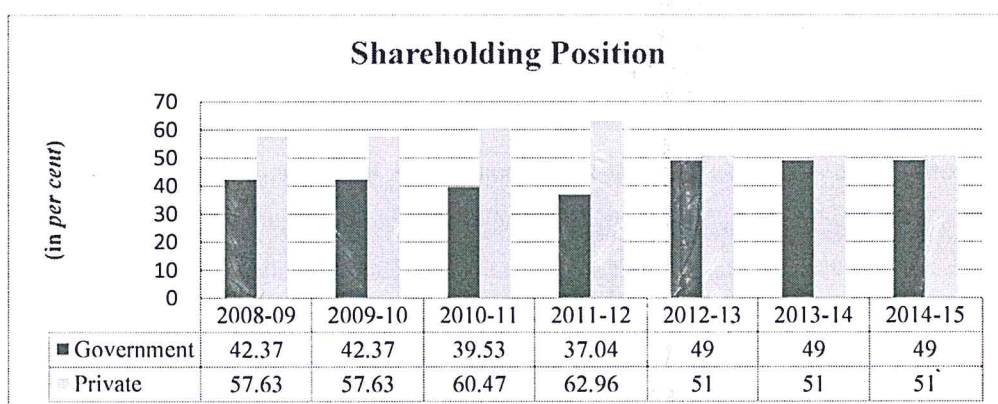
² Fund disbursement of ₹ 2,358 crore and Equity contribution of ₹ 4.90 crore.

1.1.1 Investment Management Agreement (IMA)

As per the Cabinet Approval (November 2008), NSDF was to enter into an 'Investment Management Agreement (IMA)' with NSDC, whereby NSDF was required to make available funds from its corpus for utilisation by NSDC in such schemes and programmes for skill development as per the policy framework agreed between NSDC and NSDF. The IMA was entered on 27 March 2009. The tenure of this agreement was three years, which was further extended upto March 2017.

1.1.2 Shareholding Pattern of NSDC

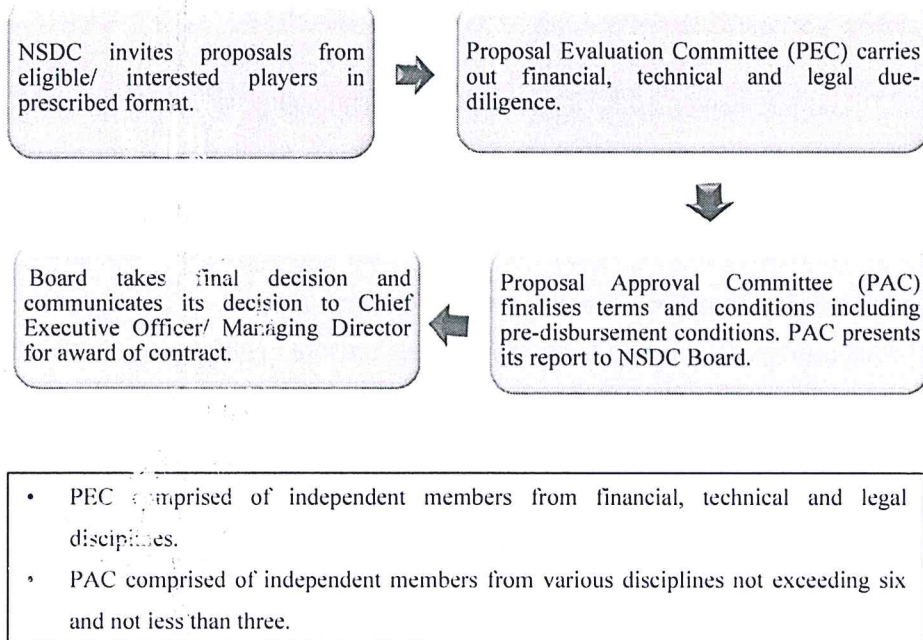
Authorised Share Capital of NSDC was ₹ 10 crore divided into one crore equity shares of ₹ 10 each. Details of shareholding position of NSDC are as follows:



Details of shareholders, as on 31 March 2015, is given in **Annexure-I**.

1.1.3 Process for disbursement of loans and grants

NSDC processed and approved proposals from eligible and interested players for equity/grant/loan support. The prescribed process of disbursement of loans and grants by NSDC is given on next page:



1.2 Audit Process

NSDC is not a government company as defined under the Companies Act, 2013, since the Government of India holds only 49 *per cent* of equity capital in it. Therefore, it is not under the CAG's audit purview in a normal course. However, during the transaction audit of Department of Economic Affairs, Ministry of Finance for the year 2013-14, it was observed that grants to the tune of ₹ 2,811.98 crore had been disbursed by the Ministry and other Government sources to NSDF during the period 2008-09 to 2013-14. NSDF had been further disbursing grants, from time to time, to NSDC for schemes and programmes of skill development. CAG has a mandate under Section 14 of CAG's (DPC) Act, 1971 to audit any body or authority that is substantially financed by grants or loans from the Consolidated Fund of India. Therefore, CAG conducted audit of NSDC under Section 14 of the C&AG's (DPC) Act, 1971.

Audit for NSDF was taken up at DEA as it was managing NSDF and was the administrative department till July 2014. It was noticed that relevant records had been transferred by DEA to the newly created Ministry of Skill Development and Entrepreneurship (MSDE) along with transfer of work. Thereafter the relevant records were examined at MSDE. The period covered under audit was 2008-09 to 2013-14. The status was further updated wherever necessary.

Audit at NSDF was carried out to check the formation, functioning and supervisory and monitoring mechanism. Audit at NSDC was conducted to check the function of providing financial assistance and monitoring of the funded projects/partners.

At NSDC, it was noticed that NSDC had approved 156 proposals and signed 124 agreements for providing financial assistance by way of loan/grant/equity participation upto March 2014. Out of 124 agreements, NSDC had provided assistance in 107 cases. Out of these, 31 cases were selected for scrutiny by audit (three relating to grants, 10 relating to grant and/or equity in addition to loan, 14 relating to loans and four cases of default in repayment of loan to NSDC). Details of sample cases selected for audit scrutiny are given in **Annexure-II**.

After completion of audit, Inspection Reports (IRs) on NSDF and NSDC were issued (16 March 2015) to the Secretary, DEA with a copy to Secretary, MSDE. Inspection Report on NSDC was also issued to NSDC. DEA did not reply to audit but forwarded the report to the newly created MSDE for reply. Based on the replies received (May 2015) from MSDE and NSDC, a Draft Long Paragraph was issued to DEA and MSDE on 17 August 2015 for their final comments. DEA again sent (25 August 2015) a reply stating that the work and records had been transferred to MSDE and reply would be furnished by MSDE. The final Reply of MSDE was received on 7 October 2015 incorporating reply of NSDC. These replies have been suitably incorporated in the report.

1.3 Acknowledgment

Audit wishes to acknowledge the co-operation received from Department of Economic Affairs (Ministry of Finance), Ministry of Skill Development and Entrepreneurship (MSDE) and National Skill Development Corporation (NSDC) during the audit process.

Chapter-II : Governing Structure

2.1 Issues in Equity Structure and Funding

One of the key principles for formation of NSDC was that it should be “private sector led” and it was stated in the Cabinet note that this principle would imply that the shareholding of Government of India (GoI) in the equity capital of NSDC should be kept at less than 51 *per cent* so as to prevent NSDC from being converted into a Government Company, as defined under Section 617 of the Companies Act, 1956, with the following implications:

- Government over-sight through appointment of auditors by the Comptroller and Auditor General of India would be dispensed with.
- NSDC would also not be subject to procurement guidelines, expenditure guidelines etc. issued by the Department of Public Enterprises.
- In hiring of professionals, consultants etc. the company would not be subject to Government norms and guidelines.

Audit scrutiny of the records relating to formation of NSDC and afterwards revealed that initially, the Cabinet approval was taken in May 2008 for contribution by the Government as upfront equity of ₹ 1,000 crore, while restricting the GoI equity below 50 *per cent*, with a higher contribution from the private sector. However, later on DEA proposed that mobilisation of more than ₹ 1,000 crore from private sources was neither feasible nor practical as adequate passage of time was necessary for the Corporation to implement its programme and generate confidence in its ability to work with viable business models. Hence, the total equity capital was reduced to ₹ 10 crore in the final Cabinet approval (November 2008). Accordingly, the authorised share capital of NSDC was kept at ₹ 10 crore, of which 51 *per cent* was subscribed by private sector (₹ 5.10 crore) and 49 *per cent* (₹ 4.90 crore) by GoI. This converted NSDC as a low capital base entity.

As per the Cabinet approval of May 2008, it was planned that ₹ 15,000 crore would be obtained from Government, public and private sector, bilateral and multilateral sources for the promotion of skill development. Thereafter, though NSDF was created to act as a receptacle for financial contributions by Government/Government entities,

multilateral and bilateral and private sector, NSDF received funds from Government of India only. It received ₹ 3,300.74 crore from Government sources between 2008 and 2015. Audit observed that no contribution from private/bilateral or multilateral sources was received by NSDF even after five years since its formation. As per Audit analysis, out of ₹ 2,368 crore funds received by NSDC (₹ 10 crore as equity and ₹ 2,358 crore from NSDF) since inception, ₹ 2,362.90 crore had been provided from Government sources (₹ 4.90 crore as equity and ₹ 2,358 crore from NSDF) which amounted to 99.78 *per cent* of the resources with NSDC as on 31 March 2015.

Though, NSDC had been functioning largely with the taxpayer's money, no efforts were made by the Government for a concomitant increase in the ownership rights and representation on the board of directors of NSDC as discussed later in paragraph 2.2.2.1. In fact, with a small initial equity contribution of ₹ 5.10 crore, the private sector continued to control NSDC, which was largely a Government funded organisation. Further, this ownership structure resulted in absence of any obligation on the part of NSDC to submit Annual Reports etc. to the Parliament for legislative scrutiny, despite the fact that the Consolidated Fund of India remained the majority source of funding for NSDC through the NSDF.

It was noticed that in NSDF meeting (8 June 2012), during discussion on the issue of funding of NSDC, it was stated by one representative from DEA that NSDC had completed three years of operations and should now critically review its functioning pattern to explore alternate means of funding in order to utilise the grant funds more optimally. Audit observed that although the DEA had raised this issue, but DEA and NSDF themselves were required to take action for attracting private/bilateral or multilateral sources, as conceived by the Union Cabinet.

MSDE, in its reply (April 2015) agreed with the audit observation, that there should be contribution from non-government sectors as well towards skill development. It also stated that, since inception it had been vigorously engaged with private sector and Central Public Sector Undertakings (CPSUs) to contribute to the corpus. In January 2015, the Ministry had signed Memorandums of Understanding with Power Grid Corporation of India Limited and NTPC Limited for contribution of ₹ 13 crore to NSDF for their Skill training projects. Ministry was also in consultation with nodal

Ministries for various other measures under Income Tax Act, Corporate Social Responsibility and Foreign Contribution Regulation Act etc.

Scrutiny of MSDE reply revealed that contributions from other sources as stated by the MSDE were limited to two CPSUs for their own skill development project only and contributions from private sector, bilateral and multilateral sources were absent. Reply of the Ministry needs to be viewed in light of the fact that the design of keeping NSDC out of the Parliament's oversight was conceived for a scenario where NSDF would get contributions from all the resources. However, in the prevailing situation where a PPP, whose 49 *per cent* of equity was held by the GoI but which had been operating largely with taxpayer's money for more than five years, created for a public purpose identified as a policy priority of the Government, the need for effective parliamentary oversight over its functioning cannot be overstated.

MSDE further stated (October 2015) that the matter would be referred to NSDC for detailed deliberation and developing plan for active participation of industry in skill development activities particularly those relating to NSDC. It further stated that MSDE has also initiated dialogue with Industry to solicit their active participation in skill development.

2.2 Issues in Management Structure

2.2.1 Management Structure of NSDF

A Board of Trustees consisting of three members viz. Secretary, Department of Economic Affairs (DEA), Secretary, Planning Commission and Chairman, NSDC had been managing NSDF.

Audit scrutiny of the records pertaining to formation of NSDF and NSDC revealed that initially it was proposed (September 2008) to not to associate outside representatives including the Chairperson of the NSDC, with the Trust. Nevertheless, the Chairman, NSDC was made (December 2008) a member of the board of trustees of NSDF.

NSDF being the monitor, supervisor and regulator of NSDC, inclusion of its Chairman in the board of trustees of NSDF resulted in absence of arm's length

relationship between the entity supervised i.e. NSDC and the supervisor i.e. NSDF. Also, since Government funds were routed through NSDF to NSDC, the inter-linkage of keeping Chairman, NSDC on the NSDF Board was avoidable.

MSDE while accepting the audit observation, stated (October 2015) that the arm's length relationship between NSDF and NSDC is under examination in the Ministry and composition of NSDF, if deemed necessary, would be reviewed with the approval of the Cabinet.

2.2.2 Management Structure of NSDC

2.2.2.1 Structure and Composition of Board of Directors

NSDC was managed by a Board of Directors. As per Articles of Association (AoA) of NSDC, the GoI could appoint upto six out of upto 15 directors on the Board. The shareholders from the private sector had to appoint not more than nine Directors. The Government appointed directors were to be, as far as possible, as under:

- Secretary, Ministry of Small and Medium Enterprise (MSME), Secretary, Ministry of Labour (MoL) and Additional Secretary (EA), Department of Economic Affairs (DEA),
- One representative of the State Government (on rotation basis),
- One representative representing acknowledged and recognised skill training institutions, and,
- One person from amongst private persons who has long experience as chairperson or chief executive of a large business organisation and is widely recognised as distinguished business leader.

Further, since inception, one Government nominee was a member of the Project Approval Committee (PAC) of NSDC comprising of independent members from various disciplines, which carried out due diligence process for the project proposals.

Analysis of the management structure and composition at NSDC revealed that:

- Though GoI was the single largest shareholder in NSDC, its role in decision-making had been limited due to minority representation on the board of directors.

- Though the private sector was already well represented as it could have upto nine directors out of fifteen directors, two of the Government nominees were also planned to be individuals from Non-Government sectors.
- Chairman, NSDC was always appointed from among the Government nominees from the private sector.
- One slot of Government Director representing the State Government was kept vacant till March 2015.
- Gol's role was further diluted in NSDC by withdrawing the only Government representative in the Project Approval Committee (PAC) in July 2013.

Thus, Government continued to have limited say in the decision-making process of the affairs of NSDC which was largely financed through its own budgetary support. Further, there were instances when important issues raised by the Government nominees on NSDC board, who were already in minority, were not given required attention (**Annexure-III**). It was also recorded in the DEA file noting (16 February 2012) that *"A perusal of the minutes indicated that Government nominees on the board are the ones who appear to be raising objections, however, these were generally overruled."*

MSDE, in its reply, stated (October 2015) that the issue would be examined by the Government and appropriate action would be initiated after taking all points into account and the desirability of Government nominee in PAC would also be decided.

2.2.2.2 Appointment of Directors in NSDC Board by the Government

Government appointed two directors from non-Government sector on NSDC board. Audit observed that no transparent procedure was prescribed for selection/nomination of the directors from the non-Government sector on the NSDC board. Further, the terms and conditions of appointment for Chairman NSDC were issued by the DEA only in April 2013 i.e. more than four years after the appointment of the first Chairman of NSDC.

MSDE in its reply (October 2015) stated that the Government would formulate the terms and conditions including procedure for selection/nominations of Government Directors/Chairman of NSDC Board.

2.2.2.3 Change of NSDC from Public to Private Limited Company

In pursuance of Cabinet decision, NSDC was established (July 2008) as a public limited company under the Companies Act, 1956. In 2010, NSDC requested that the categorisation of NSDC may be changed from a public limited company to a private limited company. It was deliberated in DEA and was brought out in a note that there were additional flexibilities available to a private limited company as compared to a public limited company:

- a) There was no restriction on payment of remuneration to managerial personnel and an increase in the said remuneration did not require any approval from Central Government and/or its agencies,
- b) Restrictions as regards inter-corporate loans and interest thereupon did not apply,
- c) Managing Directors could be appointed for tenures exceeding five years,
- d) Private company was not obliged to constitute audit committee,
- e) Private Company can issue shares to persons other than the existing shareholders without needing approval of the existing shareholders.

Audit could neither find any recorded justification for the need of these flexibilities, nor could it find any deliberations on constraints, if any, being faced by NSDC due to non-availability of these flexibilities. In addition, such conversion provided additional privileges to NSDC such as:

- no restrictions on the powers of the board of directors;
- non-applicability of prohibition against participation in board meetings by interested directors;
- no need for appointment of independent directors;
- no need for constitution of nomination and remunerations committees of the board etc.;

In Audit opinion, this change further weakened the overall governance framework at NSDC.

NSDC was converted into a private limited company in June 2011. From the records made available to Audit, it could not find any approval from the Cabinet for this change from public limited company to private company. This was

Chapter-III : Supervisory Role of NSDF

3.1 Supervisory role of NSDF over NSDC

As per the Cabinet approval (November 2008), Board of Trustees of NSDF was to examine and sanction proposed annual work plan submitted by NSDC together with the amount to be released to NSDC against the work plan. NSDF was also to play a supervisory role over functioning of NSDC, which was enshrined in the NSDF trust deed also. However, modalities of performance of the supervisory role were not clearly defined. On the contrary, at various instances, NSDC did not agree on the supervisory role of NSDF. Details are as follows:

3.1.1 Review of NSDC's activities

An Investment Management Agreement (IMA) was entered into between NSDF and NSDC in March 2009. IMA was the only contractual document entered into between NSDF and NSDC and it governed the release and utilisation of funds from NSDF to NSDC. However, no provision for supervisory role of NSDF over NSDC functions was included in the IMA.

It was observed that in a NSDF trust meeting held on 8 June 2012, on the issue of review of work plan of NSDC, Chairman, NSDC stated that, *"it was not the role of NSDF to review the working of NSDC, as it was only a pass-through vehicle. By proposing to undertake a review of the activities of NSDC, the NSDF was interfering in the operations of NSDC."*

During the 31st Board meeting of NSDC (6 July 2012), following amendments to the provision of IMA was proposed by the DEA, *"Provided that trust shall review the activities of NSDC from time to time to fulfil the objectives of Trust as contained in clause 2.4 of Deed of Public Trust"*. However, all the board members from private sector were against inclusion of this provision. The Chairman, who was a Government nominee but from the private sector, also opposed its inclusion. One Government nominee stated that *"it was not the intention of Government to interfere in day to day functioning of the Company.....but as NSDC is entirely dependent on Government funds for its activities, accountability demands that there should be review by NSDF."*

But, finally the board did not approve inclusion of this clause in IMA citing autonomy of NSDC.

These events clearly brought out that responsibility of NSDF for monitoring the activities of NSDC was not even institutionalised in the IMA and NSDC kept dictating the terms governing its relationship with NSDF.

MSDE in its reply (April 2015) stated that at present, there was no conflict on the overseeing role of NSDF and relationship between NSDF and NSDC.

Reply of MSDE about absence of conflict was not borne out by the facts as detailed in the preceding paragraphs.

3.1.2 Release of Funds by NSDF

The Board of Trustees of NSDF was supposed to examine the proposed work plan of NSDC in accordance with the IMA and sanction such amount out of its corpus as it may, find proper and justifiable. Details of fund provided by NSDF to NSDC and its status were as follows:

Table 2: Status of Funds at NSDC

(₹ in crore)

Year	Opening Balance	Funds Received	Interest earned	Total funds available	Funds utilised ³	Closing balance	Per cent utilisation
2008-09	---	200.00	-----	200.00	0.25	199.75	0.12
2009-10	199.75	----	4.40	204.15	11.53	192.62	5.65
2010-11	192.62	----	9.55	202.17	59.59	142.58	29.47
2011-12	142.58	104.95	12.57	260.10	147.61	112.49	56.75
2012-13	112.49	289.00	21.04	422.52	154.11	268.41	36.47
2013-14	268.41	1,073.99	52.16	1,394.56	376.90	1,017.66	27.03
2014-15	1,017.66	690.06	122.82	1,830.54	1,011.30	819.24	55.25
Total	--	2,358.00	222.54	--	1,761.29	--	68.25
		2,580.54					

Audit noticed from the scrutiny of NSDF board meeting minutes and correspondence with NSDC that there were delays in submission of work plan by NSDC.

³ Utilisation includes operating and admin expenses, Grants in Aid paid, Loan disbursed to Institutions, Long term investments made, Monetary awards, NSDC FLDG Funds.

Audit query for providing details of year wise budget requirements/proposals submitted by NSDC remained unanswered from NSDF. From the records made available to audit, it could not be ascertained whether the Board of Trustees examined the work plans, which were submitted. In fact, it was noticed from records of the Ministry that till February 2013, no review of any project was undertaken by NSDF due to paucity of time and requisite manpower. It was also noticed that in February 2013, for the first time the details of two projects were submitted to NSDF on a sample basis for approval of format.

NSDC utilised only 68.25 *per cent* of the total funds received from NSDF since inception upto 2014-15. As can be seen from table no. 2 above, NSDF released grants to NSDC during the year 2011-15 without adjusting the balances lying with NSDC and without analysing the future requirement of funds. In fact, release of ₹ 690.06 crore by NSDF in 2014-15 was unwarranted as NSDC already had a large unspent balance of ₹ 1,017.66 crore in the beginning of 2014-15. NSDF could have insisted on utilisation of previous balance before releasing further funds to NSDC.

MSDE stated (April 2015) that the inefficiency in funding mechanism pointed out by Audit have been noted to make systematic improvements. NSDF has appointed IL&FS Trust as Monitoring Agent appointed for monitoring NSDC's activity. MSDE stated (October 2015) that NSDC would be further directed to submit annual work plans in proper format to the Ministry/NSDF and their performance would be reviewed periodically.

Appointment of a third party monitor by NSDF does not address the need for review of work plan of NSDC and release of funds accordingly.

3.2 Regulatory oversight over NSDC

3.2.1 Applicability of NBFC Regulations

Reserve Bank of India (RBI) is the regulator of Non-Banking Financial Companies (NBFC)⁴ in India. The regulatory and supervisory objectives of regulation of NBFCs are to ensure that these companies function as a part of the financial system of the

⁴ Non-banking financial companies (NBFCs) are financial institutions that provide banking services in the nature of providing loans, accepting deposits etc but do not hold a banking license.

country within the policy framework, in such manner that their existence and functioning do not lead to systematic aberration. The regulatory framework laid down by RBI had prescribed various prudential norms to be followed by NBFCs, which dealt with systemic risks. These prudential norms provided for requirement of maintaining minimum Capital to Risk Weighted Assets Ratio, norms for classification of assets as Non-Performing Assets (NPA), provisioning requirements for assets, credit/investment concentration norms, adoption of good corporate governance practices etc. among others. The regulatory framework also prescribed various returns and disclosures tools. These were important parts of accountability mechanism in ensuring the robustness of functioning of the NBFC. These returns and disclosures tools help the regulator to check whether the prescribed prudence norms were being followed.

NSDC is covered under the definition of NBFC due to its activities relating to disbursing of loans. The legal counsel of NSDC also advised (December 2009) that the activities of disbursing funds through loans and equity participation would squarely fall within the definition of NBFC activities and therefore required registration under RBI Act before disbursement of funds. Nevertheless, NSDC requested (February 2010) DEA to facilitate in getting a provisional exemption from the appropriate authority, pending final approval of exemption from RBI from registration formalities and other compliances. DEA accepted NSDC's contention and informed (February 2010) RBI that regulatory oversight to NSDC was being provided through the Board of Trustees of NSDF, headed by Secretary, DEA and additional regulatory oversight by the RBI, therefore, did not appear necessary.

On DEA's persuasion, RBI agreed and informed (June 2010) DEA about exempting NSDC in view of the fact that NSDC had been registered as a non-profit Company under Section 25 of the Companies Act, 1956 and regulatory oversight was being provided through the Board of Trustees of NSDF. Audit was unable to find merit in DEA's decision to take NSDC out of RBI's prudential supervision. RBI is the apex regulator of NBFCs and its regulatory supervision would have instilled discipline and helped NSDC in its financing activities.

It was apparent from the conditions that the exemption was granted on the assumption that regulatory oversight would be provided through the Board of Trustees of NSDF.

3.2.2 Regulatory oversight role by NSDF

Audit noticed that though the exemption from RBI was taken for the regulatory supervision by NSDF, no corresponding system was created in NSDF to provide the regulatory oversight. Audit examination of the regulatory oversight role played by NSDF revealed the following:

- DEA requested (June/July 2013) RBI well after three years of getting exemption from RBI, to suggest the framework/guidelines for oversight by NSDF over NSDC in line with the RBI norms for non-deposit taking NBFCs.
- RBI informed (December 2013) that as on 31 March 2013 the asset size of NSDC was ₹ 548 crore and under the extant regulations, NBFCs with assets size of ₹ 100 crore and above were termed as systemically important NBFCs and were subject to regulations relating to prudential norms. RBI also emphasized upon the fact that it was important that there was data availability on the company, in terms of its size, leverage, financials and others in light of the concerns on shadow banking in the wake of 2008 economic crisis and the attempts at both national and international levels, in bringing shadow banks under surveillance.
- DEA decided (March 2014) that there was need for a regulatory entity like a trustee company to be given the mandate for independent monitoring of the projects funded by the NSDC and for appropriate micro-prudential regulatory oversight of NSDC. Accordingly, IL&FS Trust Company Limited was appointed (November 2014) for monitoring the activities of NSDC and providing micro-prudential regulation.

Analysis of these events clearly demonstrate that since its inception and especially since getting the exemption from RBI in June 2010, there had been no prudential regulatory oversight by NSDF over the functioning of NSDC despite having activities similar to an NBFC. Despite DEA's assurance to RBI that NSDF would be the regulator, DEA initiated enquiries about the details of NBFC framework/guidelines applicable to NSDC only in June 2013. Further, though pointed out by RBI in December 2013 that NSDC met the criteria of systemically important NBFCs bringing out the concerns on shadow banking in the wake of 2008 economic crisis, no concrete action over its supervision were taken till November 2014. Reply of MSDE

(April 2015) confirmed absence of this regulation over NSDC for more than five years since its inception.

3.2.3 Appointment of Monitor and Micro Prudential Regulator

Audit analysed the documents related to appointment of IL&FS Trust Company Limited as the monitor and micro-prudential regulator for NSDC. It was noticed that Expression of Interest (EoI) was called from interested parties in July 2014 by DEA. Pre-bid meeting was organised in August 2014 in which two organisations participated and sought clarifications. Only one bid, from IL&FS Trust Company Limited, was finally received till the last date (5 September 2014) for submission of bids. Technical bid was opened by the technical committee constituted for this purpose and the bid was found by the committee to be qualifying. Thereafter the financial bid was opened and negotiations was carried out with the bidder. Contract was awarded to IL&FS Trust Company Limited in November 2014 by the Department of Skill Development and Entrepreneurship. The assignment of IL&FS Trust Company Limited commenced from 1 December 2014.

Audit analysis of the appointment process revealed the following:

- i. A pre-qualification criteria *"Bidder should have experience of at least three projects involving project management/monitoring for a Central Government department or State Government or World Bank each for more than ₹ five crore"* was proposed on file. However, this criteria was revised to *"Bidder should have experience of fund administration/trusteeship involving administration of funds up to ₹ 5,000 crore with minimum number of funds being administered being 50"*. This change was not commensurate with the size of the entity to be regulated i.e. NSDC, whose total funds under disposal were ₹ 1,677.94 crore in five years since inception. Further, the criteria of *"minimum number of funds being administered being 50"* also did not correspond to the scope of work as NSDC was not engaged in fund management activities and its funds were invested in term deposits and other banks accounts. This coupled with the fact that only one bidder submitted its bid indicated that the pre-qualification criteria was made highly restrictive.
- ii. A Technical Evaluation Criteria was laid down which was a scaled formula having maximum score of 100, made of individual scores for eight different sub-criteria. It was observed that the parameters of experience of administering SEBI registered pooling funds (investment funds/venture capital funds) and existing systems and procedures for operational management of pooled funds were

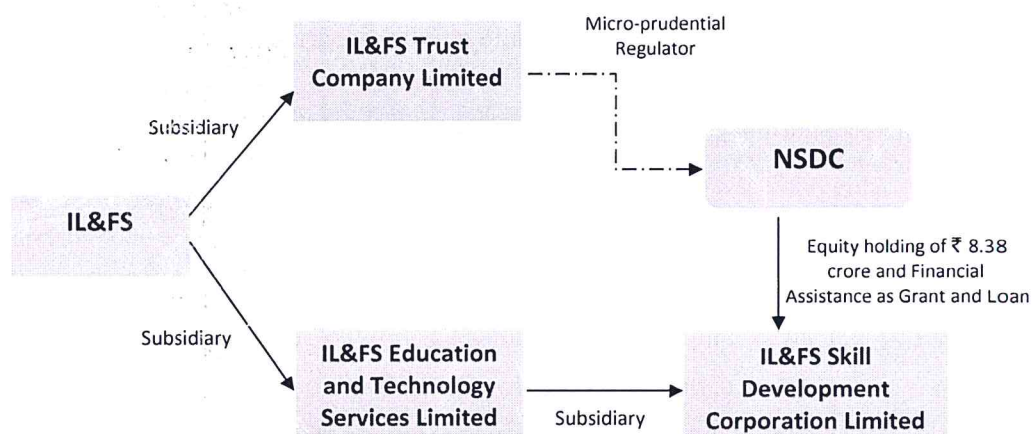
assigned individual scores of 25 each, whereas important parameters of experience in handling diversified trusteeship products in fiduciary space, enforcement of third party fiduciary space and presence of qualified team of legal and financial experts were assigned individual scores of five each only, which were very significant for the envisaged role of micro-prudential regulation.

- iii. A nominee from NSDC, which itself was going to be monitored and regulated by the agency, was appointed as a member of the technical evaluation committee, which involved conflict of interest.
- iv. Only one bid was received after EOI was invited by DEA. The technical committee initially recommended that the entire bidding process should be carried out again as only one bid was received. Thereafter the matter was deliberated in DEA and a provision of Manual of policies & procedures for purchase of goods issued by Department of Expenditure in 2006 was referred to stated, *"if after scrutiny it is found that all such aspects were fully taken care of and in spite of that the purchaser ends up with one responsive tender only, then the contract may be placed on the tenderer, provided the quoted price is reasonable"*. Thereafter, the technical committee opened the bid and carried out further steps. In audit opinion, accepting the single bid was not proper in view of the following :
 - Rule 169 of the General Financial Rules 2005 (GFR 2005), under the chapter on procurement of services, prescribed that number of short listed candidates should not be less than three.
 - Clause 11.7.4 of the manual quoted above and used in this case, first provided that *"A situation may also arise where, after analysing the tenders, the purchase organisation ends up with one responsive tenderer. In such situations, the purchase organisation is first to check whether, while floating/issuing the tender enquiry, all necessary requirements like standard tender enquiry conditions, industry friendly specification, wide publicity, sufficient time for formulation of tenders, etc. were fulfilled. If not, the tender is to be re-issued/re-floated after rectifying the deficiencies. However, if after scrutiny it is found that all such aspects were fully taken care of and in spite of that the purchaser ends up with one responsive tender only, then contract may be placed on that tenderer provided the quoted price is reasonable."* In this case, DEA did not end up to the situation of one responsive tender after analysing all the tenders received and rather only one tender was received.

- Rule 167 of the GFR 2005 prescribed that Ministry proposing to engage consultants should estimate reasonable expenditure for the same by ascertaining prevalent market conditions and consulting other organisations engaged in similar activities. This was not carried out before inviting the bids.
 - NSDF carried out negotiations with the bidder and the work was finally awarded at ₹ 1.65 crore per annum whereas the initial financial bid was of ₹ 4.25 crore per annum. This reduction was achieved by excluding '*design, development and implementation*' of analytical tools and '*cost after contract period was over*', from the items of Financial Proposal. This removal of two out of three items from the financial proposal was clearly done at a later stage, during negotiations with the only bidder.
- v. Absence of conflict of interest was an important pre-qualification criteria which stated that a self-declaration was to be furnished by the bidder. In this respect, it was observed that IL&FS Trust Company Limited was part of the IL&FS group. Scrutiny of the list of NSDC funded partners revealed that another group company of the same group i.e. IL&FS Skill Development Corporation Limited (ISDC) was sanctioned with funding of ₹ 159 crore in 2010-11 and disbursed ₹ 89.97 crore upto March 2015 (₹ 8.38 crore as equity, ₹ 34.10 crore as grant and ₹ 47.49 crore as loan). ISDC was a subsidiary of IL&FS Education and Technology Services Limited (IETS) and also a joint venture between IETS, IL&FS Cluster Development Initiative Limited (ICDI) and NSDC. The possibility of conflict of interest was brought to the notice of the technical committee. Despite that, IL&FS Trust Company Limited was declared as technically qualified by the technical committee on the ground that members in the two board of directors were not same, shareholders of the two were different and IL&FS Trust Company Limited had filed a declaration that they did not have any conflict of interest due to any existing or forthcoming association with NSDC.

The contention of the technical committee needs to be viewed in light of the fact that ISDC was a subsidiary company of IETS, which itself was a subsidiary company of Infrastructure Leasing and Financial Services Limited (IL&FS). IL&FS Trust Company Limited was also a subsidiary company of IL&FS.

The organisational linkages have been indicated in the chart below:



As per Section 2 (87) of the Companies Act, 2013, subsidiary company of a subsidiary company is also termed as subsidiary company of the holding company. Therefore, relying on the submitted fact of absence of same directors and shareholders on both companies without further examination by the technical committee led to compromise with a very critical criterion of absence of conflict of interest.

In view of the above, appointment of IL&FS Trust Company Limited (November 2014) as a third party monitor and micro-prudential regulator was not regular. Further, carrying out the task of micro-prudential regulation was an important regulatory function which inherently included enforcement mechanism. Appointment of a private agency for carrying out this regulatory task, on the lines of the one performed by RBI, after taking it out of RBI's purview lacked justification.

MSDE stated (October 2015) that the Ministry has not contracted out the regulatory function but has appointed IL&FS Trust Company for professional advice since there is no in-house professional expertise within NSDF. The monitoring agencies would merely submit its report to the NSDF who in turn would provide oversight. The term of IL&FS Trust as monitoring agent of NSDF is ending in November 2015. The observations of audit would be given due consideration while initiating the process for deciding renewed/fresh appointment of monitoring agent.

Reply of the Ministry may be viewed in the light of the fact that the RFP document specifically listed various monitoring functions and the letter of award dated 28 November 2014 clearly stated that *"NSDF proposes to appoint IL&FS Trust Company Limited as an independent monitoring agency for NSDC's activities and for performing micro-prudential oversight on its functioning"*.

Sl. No.	Name of the Project /Partner	Date of approval of project by NSDC Board	Date of first disbursement	Disbursement upto 2013-14 (in crore)	Type of assistance	Percentage achievement of training targets				Placement Targets	Percentage achievement of placement targets			
						2010-11	2011-12	2012-13	2013-14		2010-11	2011-12	2012-13	2013-14
11	Globsyn Skill Development Private Limited	02.12.2010	31.03.2011	7.63	Loan + Equity	----	27	45	21	85	----	38	14	12
12	Gram Tarang Employability Training Services Private Limited	22.02.2010	03.05.2010	10.00	Loan	53	150	104	63	75	64	82	81	72
13	Gram Tarang Employability Training Services Private Limited-2	29.03.2012	12.02.2014	10.80	Loan	----	----	----	----	75	----	----	----	----
14	Gras Education and Training Services Private Limited	14.09.2010	20.12.2010	17	Loan*	----	8	16	277	70	----	41	47	35
15	IL&FS Skills Development Corporation Limited	14.09.2010	17.02.2011	85.89	Loan+ Grant+ Equity	----	60	70	126	70	----	76	87	89

The percentage of funded partners not achieving their training targets ranged from 57 *per cent* to 83 *per cent* during 2010-11 to 2013-14. Audit selected a sample of 31 cases of projects/partners for detailed scrutiny. It was noticed that training targets were not achieved by 18 projects/partners and placement targets were not achieved by 16 out of these 31 selected projects/partners upto 31 March 2014. There were cases of failures in repayments of loan amount also.

There were instances of lack of proper due diligence in considering the proposals for financial assistance. Training targets proposed in the financial assistance proposals were not questioned during processing the cases for approval. Similarly the monitoring and control systems put in place at NSDC were weak and their implementation was also inadequate. Number of site visits carried out by the monitoring consultants were low and NSDC itself started site visits only in 2013-14, there too, lacunae were noticed in the way the site visit reports were submitted. Important issues relating to functioning and performance of partners were raised in the management audit reports. However, most of these reports were closed on mere assurance given by the funded partners.

All these issues are significant due to the fact that taxpayer's money was the major source of funding of NSDC since its inception. Government needs to relook at the design and operation of NSDF and NSDC in order to ensure achievement of the skill development goals.



(ANAND MOHAN BAJAJ)
Director General of Audit
(Economic and Service Ministries)

Dated: 13 November 2015
Place: New Delhi

Countersigned



(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

Dated: 13 November 2015
Place: New Delhi