Corporate Governance

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Genesis of Corporate Governance for CPSEs

Nov 1992	Inclusion of Non-official directors on the Board of Directors
November, 2001	Inclusion of independent directors on the Board of Directors.
June 2007	Introduced the guidelines on Corporate Governance for CPSEs. - Voluntary
May 2010	Reissued guidelines on Corporate Governance for CPSEs. - Mandatory

Background of proper governance of the PSUs in India.

- Excessive government interference,
- Government should control and monitor PSUs without interfering in their day-today management..
- Although Indian PSUs have certain unique characteristics, but it should work under transparent corporate governance structure.
- Further CPSEs are expected to expand international operations and become global giants, for which effective Corporate Governance is formulated. Proper implementation of these guidelines would protect the interest of shareholders and relevant stakeholders.
- The public sector utilities with important social responsibilities to fulfill other than make profits also come under the scanner because they use the taxpayers' money for their operations.

Memorandum of Understanding (MOU)

- It covers annual plan/budget for the enterprises.
- Central Public Sector Enterprises (CPSEs) is to undertake, regular performance evaluation to assess their efficacy towards fulfilment of core objectives for which these have been constituted.
- It takes in to account the past performance of the CPSE.
- The grading /outcome of the performance evaluation process under the revised MoU system (**MOU Guidelines for the year 2021-22 and onwards, issued by, Govt of India, Ministry of heavy Industries, Department of Public Enterprises, Dated 16th February 2021)** would be reflection of CPSE“s performance as per its audited Books of Accounts, both for listed and non-listed companies.
- This is significant in view of the linkage in Performance Related Pay (PRP) with the performance through MoU framework.

The High-Powered Committee (HPC) for formulation of MOU

Apex body under MoU system for laying policy guidelines. HPC' comprises the Cabinet Secretary as Chairman with following members:

i CEO (NITI Aayog)
ii Finance Secretary
iii Secretary (Expenditure)
iv Secretary (Statistics & Programme Implementation)
v Chairman (Public Enterprises Selection Board)
vi Chief Economic Advisor (Department of Economic Affairs)
Vii Chairman (Tariff Commission)
viii Secretary (Public Enterprises)

MOU Guidelines for the year 2021-22 and onwards

Memorandum of Understanding (MoU) detailed in these guidelines is a self-governing dashboard based online system

- ensuring transparency
- It consider the past performance of the CPSE.
- its vision plan and sectoral benchmarks based on peer comparison during target setting.
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- Both for listed and non-listed companies.
- This is significant in view of the linkage in Performance Related Pay (PRP)

MOU rating

- The ranking of CPSEs will be based on their final MoU
- The number of Excellent CPSEs will be limited to top 25 subject to the proviso that the CPSE has 90 or above score.
- If more than 25 CPSEs score 90 or above score,
- only the top 25 will be given the excellent rating. The MoU rating of CPSEs will be assigned as given in following Table

MoU Score	**MoU Rating**
Top 25 and Score ≥ 90	Excellent
Score ≥ 70	Very Good
Score ≥ 50	Good
Score ≥33	Fair
Score <33	Poor

Exemption from MOU

CPSEs under liquidation / Liquidator has already been appointed / Administrative Ministry would provide the list of such CPSEs.

CPSEs which are

- not in operation or
- having no employees or
- on any other ground on the recommendation of administrative Ministry / with approval of Inter Ministerial Committee or High Powered Committee.

CPSEs not signing of MoU: The CPSEs which have not been given exemption and do not sign MoU shall be given rating as 'poor'

Over view of Governance for PSUs

The guidelines on Corporate Governance for listed and unlisted PSUEs are being dealt under the following headings.

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

Main characteristics for Corporate Governance

- Composition the Board of Directors
- Composition and function of Audit Committee
- Audit Committee, its composition, and role
- Role of Board of Directors and Audit committee
- Disclosures and compliance report etc.
- Provision relating to Subsidiary Companies
- Disclosure to Audit committee, Board and the Shareholders
- CEO/CFO certification
- Quarterly report on corporate governance
- Annual compliance certificate
- Whistle-blower policy

Sec 134 – Director's Responsibility Statement	Sec 177 – Audit Committee	Sec 184 - Manner and periodicity of the meeting
• Applicable Accounting Standards • Adopted consistent accounting policies. • Companies follow their accounting policies consistently • Accounts have been prepared on a going concern basis. • The organization has complied all applicable laws • Listed Company laid down internal financial controls to be followed and the same is adequate.	• Consist of minimum three directors. • Independent Directors forming a majority. • Majority members must have ability to read and understand financial statements • Recommend for appointment, remuneration and terms of appointment of auditors of the company. • Examination of the financial statement and the auditors' report thereon. • Approval or any subsequent modification of transactions with related parties.	• Every director shall made disclosure of his concerns or interest in any company, body corporate, firms and parties to the contract, in the 1st BOD. • Concerned director should not participate in the meeting taking the decision in such cases. • The contract or agreement entered in to by the company without disclosure shall be voidable at the option of the company. • Contract or arrangement entered/ to be entered into between two companies where any of the directors / more, together holds more than two per cent. of the paid-up share capital in the other company.

Composition of Board of Directors

Functional	**The number of Functional Directors (including CMD/MD) should not exceed 50% of the actual strength of the Board.**	
Nominee	**The number of Nominee Directors appointed by Government/other CPSEs shall be restricted to a maximum of two.**	
Independent	**listed on the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman**	**At least 50% of Board Members**
	listed on Stock Exchange but without an Executive Chairman, / or not listed CPSEs	**at least one-third of the Board Members should be Independent Directors.**

- Minimum three directors - Public company,
- Two directors - Private company, and
- One director - One Person Company;
- Maximum of fifteen directors:
- Company may appoint more than fifteen directors after passing a special resolution:
- ***The new Companies Act 2013 made it compulsory for all publicly listed firms to have at least one woman director in their Board***

Board :-

The Board shall meet at least

- Once in every three months and
- At least four such meetings shall be held every year.
- Time gap between any two meetings should not be more than three months.

The roles and the division of responsibilities between the Board and the Management is necessary to enable the Board to effectively perform its role.

A Board must define : -

The roles and responsibilities of the Board and individual Directors.

The Board of each CPSE must articulate its Corporate Governance objectives and approach to satisfy the expectations of its majority shareholders and other stakeholders.

Code of Conduct

- The Board shall lay down a code of conduct for all Board members and senior management.
- The code of conduct shall be circulated and also posted on the website of the company.
- Compliance with the code on an annual basis.
- The Annual Report of the company shall contain a declaration to this effect signed by its Chief executive.
- Guidelines and policies with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed.
- There shall be no extravagance in expenditure by Board members and senior management personnel

Senior management - members of its core management team excluding Board of Directors.

Training of Directors

The company undertakes training program for its new Board members (Functional, Government Nominee and Independent) on the basis of

- Business model of the company
- Risk profile of the business of company,
- Responsibility of respective Directors and the manner in which such responsibilities are to be discharged.
- Training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

Risk Management

- Over view of the same is one of the main responsibilities of the Board/Management.
- DPE Guidelines emphasize that the Board should ensure the integration and alignment of the risk management system with the corporate and operational objectives
- Helps management in achieving CPSE's performance and profitability targets.
- Effective reporting and compliance with laws and regulations,
- avoid damage to the entity‟s reputation and associated consequences.
- The Board should ensure the integration and alignment of the risk management system with the corporate and operational objectives
- Risk management is undertaken as a part of normal business practice and not as a separate task at set times.

Audit Committee

Constitute of Audit Committee	**All listed Companies** **all public companies with a paid up capital of Rs.10 Crores or more;** **all public companies having turnover of Rs.100 Crores or more;** **all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more**
Composition	**Minimum 3 directors** with **independent directors forming a majority**
Frequency of Committee Meeting	At least four times in a year Gap of meeting should not be more than 120 days between two meetings.
Quorum of meeting	Either two members or one third of the members of the audit committee whichever is greater.

The majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

- The Audit Committee may invite such of the executives, as it considers appropriate
- The Finance Director, Head of Internal Audit and a representative of the Statutory Auditor may be specifically invited in the Audit Committee as may be decided by the Chairman of the Audit Committee.

Power of the Audit Committee /Role of Audit Committee

- To review the comments on internal control systems, & financial statement before submission to the Board.
- To discuss any related issues with the internal and statutory auditors and management of the company.
- To obtain professional advice from external sources.
- To have full access to information contained in the records of the company.

- Para no 4.2. - Review with the management, performance of internal auditors and adequacy of the internal control systems.
- Para 4.2.7 - Review the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure, coverage and frequency of internal audit.
- Para 4.2.8 - Discuss with internal auditors/ and or auditors any significant findings and follow up there on.
- Para 4.2.9 - Review the findings of any internal investigations by the internal auditors/auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board.
- Para 4.2.15 - Provide an open avenue of communication between the independent auditor, internal auditor and the Board of Directors

Review of information by Audit Committee

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

Remuneration of Directors

- All pecuniary relationship or transactions of the part-time Directors/remuneration of Directors shall be made in the section on the Corporate Governance of the Annual Report.
- All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension, etc.
- Details of fixed component and performance linked incentives, along with the performance criteria.
- Service contracts, notice period, severance fees.
- Stock option details, if any

Report , Compliance on Corporate Governance

- The company shall obtain a certificate from either the auditors or practicing Company Secretary regarding compliance of conditions of Corporate Governance as stipulated in these Guidelines and Annexes.

- The aforesaid certificate with the Directors‟ Report, which is sent annually to all the shareholders of the company, should also be included in the Annual Report.

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

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

Schedule of implementation

These Guidelines on Corporate Governance are now mandatory.

- The CPSEs shall submit quarterly progress reports, within 15 days from the close of each quarter, to respective Administrative Ministries/ Departments.
- The Administrative Ministries will consolidate the information obtained from the CPSEs and furnish a comprehensive report to the DPE by 31st May of every financial year on the status of compliance of Corporate Governance Guidelines during the previous financial year by the CPSEs under their jurisdiction.
- DPE will, from time to time, make suitable modifications to these Guidelines in order to bring them in line with prevailing laws, regulations, acts, etc., DPE may also issue clarifications to the concerned Administrative Ministries/CPSEs on issues relating to the implementation of these Guidelines.

Information on activities and affairs of the company

DPE guidelines have prescribed the minimum information about the activities and affairs of the company that should be furnished to the Board.

Such information includes

- Annual operating plans, budgets, quarterly results,
- Minutes of audit committee, information on recruitment and remuneration of senior level officers just below Board level,
- Details of joint venture, foreign exchange etc.

CEO/CFO Certification as per Regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

As per regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, before the Financial Results are placed before the Board, the Chief Executive Officer wherein the Chief Financial Officer of the Company has to certify that

- the financial results do not contain any false or misleading statements/figures and
- do not omit any material fact, which may make the statements or figures contained therein misleading.
- Similar certificate is to sent by respective Divisions duly signed by Concerned Director and Finance head of the Division addressed to Chairman and Director (Finance).
- Divisions may please ensure that this Certificate, along with the checklist as finalized for current financial year, is sent along with the Accounts to Corporate Finance.

Internal Financial Controls (IFC)

Statutory auditors to report on the internal control over financial reporting (ICOFR) as on the reporting date.

- To establish the operating effectiveness of internal financial control,
- various Risk Control Matrix (RCM)/Checklist, which has also been rolled out in third quarter of current year.
- The Annual Certificate for Compliance of IFC for independent evaluation and verification. The Internal Audit may submit their report to comment upon the IFC compliance for the Company, which needs to be appraised to Audit Committee/ Statutory Auditors.

The following two points are to be certified, as required U/S 134 (5) of Companies Act, 2013:

- The directors, in the case of listed Company, had laid down internal financial controls to be followed by the Company and that such internal financial controls are adequate and were operating effectively.

- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Management Discussion and Analysis Report

As part of Director’s report / or additional disclosure on following matters :

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

Whistle Blower Mechanism Para 4.2.12 of DPE guidelines

Audit Committee to review the functioning of the 'Whistle Blower Mechanism' in case the same exists in the company.

The company may establish a mechanism for employees to report to the management concerns about unethical behavior, actual or suspected fraud or violation of the company's code of conduct or ethics policy.

This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

Thank you