

Corporate Governance Manual for State PSUs



Department of Public Enterprises
Government of Orissa

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PREFACE

In pursuance to the commitment in the White Paper on Public Enterprises Reform, various State Owned Public Sector Undertakings (PSUs) were identified for closure, privatization, assets sale and restructuring under Orissa Public Enterprises Reform Programme (OPERP). Owing to the PE Reform Programme undertaken by the State Government, there has been a significant reduction in the accumulated losses of the PSUs over the years. In order to ensure sustainable growth of the State Owned Public Sector Undertakings along with strengthening of the framework within which they operate, it is important that the PSUs which are continuing under State Ownership are well governed. Apart from the financial parameters of performance which are important in themselves, the quality of the goods and services offered by the State PSUs need to contribute to the development of the State. Hence as a sequel to the OPERP, the Department of Public Enterprises has developed a Corporate Governance Manual for the State Public Sector Undertakings which has been approved by the Cabinet on 13th November 2009 for its implementation.

This manual has been developed by the Administrative Staff College of India (ASCI), Hyderabad as a part of Orissa Public Enterprise Reform Programme keeping in view the 'Guidelines on Corporate Governance for Central Public Sector Enterprises'

(CPSEs), Government of India and also the national and international best practices. The said manual has been finalized after many rounds of consultations with the senior officials and the Chief Executives of the State PSUs, and Secretaries of the concerned Administrative Departments.

The Corporate Governance Manual shall be applicable to all Public Sector Undertakings registered under the Companies Act 1956, in which the Government of Orissa holds 51% or more of the share capital including Statutory Corporations. The guidelines in the manual are also applicable to Industrial Infrastructure Development Corporation of Orissa Limited (IDCO).

It is expected that the effective implementation of Corporate Governance Manual in the State Public Sector Undertakings will help to further accelerate the Public Enterprises Reform process.

Department of Public Enterprises

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PREAMBLE

1. Introduction

Corporate governance is the system by which companies are directed and managed. It elucidates the processes for setting up and achieving the objectives of the organization, maximizing performance and optimizing risk. Good corporate governance practices enable organizations to create value, improve accountability and develop internal controls to safeguard the integrity of their business processes.

Given the special role of the State Public Sector Undertakings (PSUs) in achieving the developmental and infrastructure goals, proper systems of governance assume importance. The need to improve accountability in the PSUs, while ensuring that they meet the stated objectives, has given impetus to the adoption of good governance practices.

2. Objectives

This manual for corporate governance in PSUs provides a set of guidelines to strengthen their structure and systems, in addition to increasing mutual trust among these enterprises and their stakeholders.

The objectives of the manual are to:

- Ensure that appropriate governance mechanisms are in place and bring about clarity in the reporting relationships of the PSU to the respective Administrative Departments and the Public Enterprises (PE) Department;
- Define the roles and responsibilities of the Board and its Committees;

- Facilitate the Directors and the management in fulfilling their responsibilities in achieving the objectives of the PSUs;
- Improve accountability in reporting;
- Enhance awareness among the employees about the importance of good governance;
- Improve compliance with statutory and regulatory requirements;
- Ensure transparent and business oriented decision-making;
- Increase stakeholder confidence and improve their willingness to engage with the PSUs;

The rationale underlying development of the guidelines is explained in Annexure 1.

This manual should serve as a reference guide for the PSU Boards, senior management, Administrative Departments, employees and the PE Department for their continued compliance with good governance practices.

3. Overview of the Governance Issues

The key governance issues that are addressed in the manual relate to the following:

3.1 Improved clarity in the interface between Government Departments and the PSU Boards

Achieving improved clarity in the relationship between the PSU Board, its Administrative Department and the PE Department is fundamental to the corporate governance structure.

The Administrative Department should clearly state its expectations and envisaged relationship with the PSU, in order to ensure that there is no actual or perceived conflict of interest and that PSUs achieve their stated objectives. Accordingly, an

integral part of the governance structure would be the definition of the roles of Administrative Department, the PE Department and the PSU Board.

The relationship of Administrative Department with its PSU would be governed by:

- a strong interest in the financial performance of the PSU;
- reporting and accountability requirements for appropriate oversight;
- remedial action where the PSU's strategic direction deviates from that mandated by the Administrative Department;

A key objective of institutionalizing corporate governance is granting autonomy to the PSU in the conduct of its business, whereas the Administrative Department shall only exercise policy control.

3.2 Building Efficient and Effective Boards

Building competent Boards is an essential pre-requisite for granting full autonomy to the PSU. A competent Board would have the right balance of domain expertise, industry experience and independence. The Administrative Department shall ensure that the PSU Boards have a proper balance of skills, experience and independence so that full autonomy can be granted.

The Board should be competent to challenge the managerial decisions and provide guidance on strategy development and its execution. Consequently, the manual provides detailed guidelines for building, managing and evaluating PSU Boards.

3.3 Reporting and Disclosures

An important component of the governance mechanism is the reporting system for the two-way flow of information from the Management to the Boards and the Boards to the Administrative Department. In addition, the reporting system should be

designed to meet the information needs of all the stakeholders to achieve better accountability and improve the PSU's access to funds. This Manual seeks to specify the minimum required standards of disclosure for achieving this.

3.4 Risk Management

All business decisions are accompanied by an element of uncertainty that expose the PSU to risks. This manual provides guidance on the processes for the identification, assessment, management and reporting of these risks to the Board.

3.5 Performance Enhancement

Good governance coupled with a sustainable business model would always lead to improved performance. The guidelines in this manual are developed such that the overall performance of the enterprise in both financial and non-financial terms can be enhanced.

3.6 Performance linked Incentives

Performance linked incentives would have to be introduced to motivate the employees to achieve the expected level of performance. The manual provides guidance in developing such a system.

3.7 Protection of Stakeholder Interests

Good governance requires that legitimate interests of all stakeholders are considered in managerial decision making. Evaluating the impact of managerial decisions on stakeholder interests is becoming increasingly complex as it involves the balancing of conflicting interests. The manual covers the mechanisms for addressing this aspect also.

4. Philosophy

The philosophy of this manual is to develop guidelines that would facilitate achievement of the PSU objectives. The emphasis

is on devolved authority and increased accountability in achieving the results. The manual seeks to safeguard the integrity of business processes through appropriate oversight of internal controls.

Accordingly, the emphasis is on the following:

- Explicit focus on outputs and outcomes;
- Improved corporate performance;
- Better stakeholder focus;
- Development of a system for evaluation and incentivisation of compliance with good governance practices;

In developing the guidelines in the manual, special attention has been paid to the accountability considerations of the State Legislature and the ministers in the Government. The guidelines have been drafted such that requirements of transparency in public accountability are met, while retaining the ethical standards and values that underpin public service.

5. Applicability of the guidelines

The guidelines will apply to all Statutory Corporations, including PSUs registered under the Companies Act 1956, in which the Government of Orissa holds 51% or more of the share capital. The guidelines are also applicable to Orissa Industrial Infrastructure Development Corporation (IDCO).

6. Subsidiary Companies

- 6.1** At least one Independent Director on the Board of Directors of the holding company shall be a Director on the Board of Directors of a subsidiary company.
- 6.2** The Audit Committee of the holding company shall also review the financial statements of the subsidiary company.

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

7. Implementation

The ultimate success in ensuring conformance with the guidelines depends upon developing a culture based on ethical values and behavior. This is a precondition for granting greater flexibility and autonomy to the PSUs for achieving the desired results. The prime responsibility for conformance with the guidelines for good governance therefore, lies within the PSUs, and more specifically the senior management needs to set the agenda in this direction.

1. Government Departments – PSU Board Interface

1.1 Setting up the Mandate

- 1.1.1 The Secretary (Administrative Department), in consultation with the Chief Secretary, Secretary (PE Department), representatives from the Finance and Planning & Coordination Department shall develop the mandate for each PSU.
- 1.1.2 The mandate shall be developed within the contours defined by the statute, if any, under which the PSU has been incorporated, or its original objectives as defined in its Articles and Memorandum of Association. The mandate shall be developed after due consideration of the currently prevailing environment.
- 1.1.3 The Secretary (Administrative Department) shall ensure that the concerns of the State Government in protecting the legitimate interests of the stakeholders are articulated and fully reflected in the mandate given to the Board.
- 1.1.4 The Secretary (PE Department) shall be responsible for checking the relevance of the mandate across the PSUs in the State. The Secretary (PE Department) shall also ensure that there is no unproductive overlap among the enterprises.
- 1.1.5 The Secretary (Administrative Department) should clearly specify in the mandate, any developmental obligations that the PSU may have to undertake. This will require the necessary authorization from the Government.

1.2 Execution of the Mandate

- 1.2.1. The PSU Board has complete responsibility and accountability for achieving the mandate. It shall provide strategic direction to the PSU, while granting autonomy

and flexibility to the Senior Management for running the enterprise.

- 1.2.2. The Secretary (Administrative Department) shall monitor the extent to which the PSUs achieve the objectives set out in the mandate, commensurate with the support provided by the Government through the Administrative Department.
- 1.2.3. The Board shall carry out its mandate by exercising proper care and diligence in its decision-making processes. It shall always govern such that the PSU works towards achieving a reasonable return on its assets.
- 1.2.4. The Secretary (Administrative Department) shall ensure that the PSUs function as independent and separate legal entities with accountability for results.
- 1.2.5. In view of the complex nature of the relationship between Administrative Department and the PSU Boards, all directions with respect to the Board's functioning and the day-to-day management of the PSU shall be within clearly defined limits and in writing.

1.3. Review of Mandate

The Secretary (Administrative Department) shall review the mandate once in five years or more frequently, if necessary. The procedure for review of the mandate will be the same as that indicated above for setting it up.

1.4 Vision and Mission Statements

Vision statement is a guiding force that determines the philosophy of the business of the PSU. It would state the *raison d'être* of the PSU.

- 1.4.1 It shall be the responsibility of the PSU Board to evolve the Vision and Mission Statements based on the mandate

given by the Secretary (Administrative Department). A copy of this should be forwarded to the PE Department.

- 1.4.2 The Board can seek the advice of an external consultant in drafting these Statements. The Board shall ensure that the requirements of the mandate are fully articulated in these statements.
- 1.4.3 The Secretary (Administrative Department) shall approve these statements and check their conformance with the mandate. The checks shall consider protection of stakeholder interests and fulfillment of developmental obligations.
- 1.4.4 The Secretary (PE Department) shall be responsible for checking the conformance of these statements to the policy guidelines applicable to the PSUs.

1.5 Corporate Plan

The Corporate Plan is a three-year plan with annual operating and financial plans. It provides a detailed description of how the PSU intends to deliver on its long-term goals and objectives. It also incorporates the requirements of the mandate in terms of commercial and developmental goals and objectives.

An integral component of the Corporate Plan would be the proposed corporate strategy for achieving the goals and objectives. The strategy would be formulated after considering the business opportunities in the environment. Based on the Corporate Plan, a budget would be prepared that would integrate the resource requirements with the achievement of financial and non-financial targets.

The performance indicators that will be used to evaluate performance will also be specified in the Corporate Plan. The key performance indicators will also include a set of measures for stakeholder evaluation of the success achieved in providing an efficient and economical public service.

The Corporate Plan shall have the following components:

- Asset Management Plan;
- Human Resources Plan;
- Information Management and Technology Plan;

The **Asset Management Plan** (AM) describes how the assets contribute to the achievement of the objectives. The purpose of the AM Plan is to ensure that the assets are properly identified, procured, managed and maintained. The AM Plan would comprise of: Capital Investment Plan, Maintenance Plan and Disposal Plan. The Capital Investment Plan would identify all major capital items to be purchased, and replaced. The capital expenditures that can be approved by the Board and those that require the PAC approval shall be separately identified and the necessary approvals are obtained. In approving capital expenditures, the Board shall ensure that the return on capital is more than the minimum required rate of return that is consistent with the PSU's financial targets.

The **Human Resources** (HR) Plan describe show the human resources will be deployed for achieving the performance targets of the PSU. It would specifically map the competencies of the employees against the requirements of the business.

The **Information Management & Technology** (ITM) Plan describes how the PSU uses the information technology in managing various functions and operations and improving service delivery.

1.5.1 The Managing Director (MD) shall be responsible for ensuring that the Corporate Plan is approved by the Board before being submitted to the Secretary (Administrative Department). At the review meeting of the Corporate Plan, the Board can invite relevant industry experts or market research agencies to better understand the competitive dynamics of the industry of the PSU. This would enable the Board to evaluate the assumptions and

validate the authenticity of the forecasts. The Board can also invite experts to share best practices in similar PSUs in other states, similar Central PSUs.

- 1.5.2 The MD shall submit the approved Corporate Plan to the Secretary (Administrative Department) by January for the three-year period commencing April. Subsequently, annual rolling plans would be submitted in January every year based on the financial targets and the resource requirements.
- 1.5.3 Once the Corporate Plan is approved, the Board shall delegate the day-to-day management of the PSU to the senior management. The senior management shall ensure that the Corporate Plan is implemented in letter and spirit as approved by the Board.
- 1.5.4 The Secretary (Administrative Department) shall oversee the extent to which the Board guides the Senior Management in achieving the objectives and specific performance targets. There shall be quarterly review meetings of the Board to assess the achievement against the targets and develop action plans for contingencies if needed.

1.6 Memorandum of Understanding

- 1.6.1 A Memorandum of Understanding (MoU) shall be signed between the Administrative Department of the State Government and the PSU Board. It shall be the responsibility of the Secretary (Administrative Department) to ensure that the MoU is developed and executed. (Guidelines for developing enterprise specific MoUs is given in Annexure 2)
- 1.6.2 The MD in consultation with the Board shall develop a set of key performance indicators based on the Corporate Plan for signing of the MoU with the Secretary (Administrative Department). The MD shall also specify

the targets against each performance criteria for the PSU and the support required from the Government to achieve these targets. Based on this a composite MoU score will be developed, that will be used to evaluate the performance of the PSU.

- 1.6.3 The MoU will form the basis for empowering the Board of Directors with the authority and autonomy to access the resources that are necessary for the achievement of the objectives. The MoU would also provide justification for release of funds from the Administrative Departments.

A copy of the MoU agreement shall be forwarded to the PE Department. The PE Department shall analyze the MoU parameters across different state PSUs and suggest methods for improvement in performance. The PE Department shall constantly endeavor to make the MoU system more effective by developing better methods of evaluation of performance. The PE Department shall also formulate guidelines for granting enhanced operational and financial powers to performing PSUs.

2. Board Structure & Composition

2.1. Responsibilities of the Board

Implementation of good corporate governance practices starts with the Board, as it is the apex governance mechanism that is directly responsible for the management of the PSU. It is extremely important that competent and strong Boards, comprising functional and independent directors are appointed for all PSUs. To achieve this, the eligibility criteria and the selection procedure should ensure that persons with the required experience and competencies are appointed. The Secretary (PE Department) shall define the responsibilities of the Board. (Description of the responsibilities of the Board is given at Annexure 3.) The Secretary (PE Department) shall also define the roles and responsibilities of the Chairperson and the Managing Director (MD) separately, while ensuring that no single individual has unquestioned decision-making powers. There should be a clearly communicated and accepted division of responsibilities through the separation of the positions of Chairperson and Managing Director to the extent possible. (Responsibilities of the Chairperson is given in Annexure 4 and the MD is given in Annexure 5.)

2.2. Eligibility Criteria for Selection of Directors

- 2.2.1. The Secretary (PE Department) shall formulate the eligibility criteria for the selection and appointment of Functional and Independent Directors.
- 2.2.2 The Functional Directors would, in addition to their Board duties, also perform management functions, hence the eligibility criteria should formulated such that they have

the requisite domain expertise, academic background and functional skills. The emphasis should be on a proven track record of performance, experience and qualifications.

- 2.2.3 The main responsibility of the Independent Directors is to provide an independent and broader perspective hence the eligibility criteria shall be formulated such that individuals of requisite caliber and credibility with special expertise and knowledge in the areas of strategy, finance and law are selected.
- 2.2.4 The integrity of the Directors would be the most important eligibility criteria as there is a critical need of integrity among those who are responsible for guiding decision-making and also formulation of the strategy of the PSUs.
- 2.2.5 An individual can hold no more than three directorships in State PSUs. This is to ensure that the Directors can devote sufficient time to their directorial functions. The Directors shall be permitted to accept directorships in other enterprises, subject to the limit prescribed under Section 275 of the Companies Act 1956, which is fifteen.
- 2.2.6 The Independent Directors shall also be required to fulfill the criteria of independence. They shall not have any pecuniary relationship or any other interest with the concerned PSUs, which could materially interfere in the exercise of their independent judgment. (Definition of Independent Director is given in Annexure 6).
- 2.2.7 The age requirements of the Directors, and specifically the Chairman, shall provide for a minimum level of experience and maturity required of the position.
- 2.2.8 The eligibility criteria shall be documented and made available in public domain through the website of PE

Department. This is to ensure fairness and transparency in the process of selection and to attract the best talent.

- 2.2.9 The Secretary (PE Department) shall be responsible for creating and maintaining a repository of potential directors that can be accessed when necessary.

2.3 Director Selection Procedure

- 2.3.1 The selection of Functional and Independent Directors shall be made by the Public Enterprise Selection Board (PESB) and approved by the Chief Minister. The PESB shall consist of professionals and Secretaries of State Department. It may also co-opt experts in the field of relevance if such expertise is not available within the PESB. The recruitment of Functional Directors including the MD shall be through open advertisement or through professional recruitment firms selected through open advertisement.
- 2.3.2 The Secretary (PE Department) shall be the nodal agency for implementation of the selection procedure for both Functional and Independent Directors.
- 2.3.3 The Secretary (PE Department) shall ensure that the procedure for the selection is documented. In particular, the competencies of the selected candidate to fulfill the responsibilities required of the position shall form part of the documentation, in order to ensure fairness and transparency.
- 2.3.4 Any member of the public or a stakeholder can forward nominations for the position of Director to the Secretary (PE Department). The PE Department shall introduce a procedure for the receipt of such nominations.

2.4 Size of the Board

- 2.4.1 The Secretary (Administrative Department) shall determine the size of the Board after consultation with the Secretary (PE Department). The Secretary (Administrative Department) shall consider the scope and nature of business before deciding on the number of directors. The Secretary (Administrative Department) shall ensure that the requirements under Section 252 of the Companies Act 1956 are fulfilled, which stipulate a minimum Board size of three. The size of the Board should normally not exceed twelve. In case it needs to be expanded beyond twelve, prior approval of the PE Department shall be obtained. If the PSU Board has more than twelve Directors when this notification is made, approval of PE Department needs to be taken.
- 2.4.2 The Secretary (Administrative Department) shall ensure that the Board has a balance of representatives of the Administrative Department, PE Department, functional directors and independent directors. The Secretary (Administrative Department) shall ensure that at least one third of the Directors are Independent.
- 2.4.3 The Secretary (Administrative Department) shall ensure that at least one independent director has knowledge of financial matters and chairs the Audit Committee. (Knowledge of financial matters means the ability to read and understand the basic financial statements - balance sheet, profit & loss account and the cash flow statement.)

2.5 Directors' Tenure

The Directors' terms of office/service contracts shall be approved by the PE Department. It shall be for a maximum period of three years for both functional and independent Directors.

2.6 Re-appointment of Directors

2.6.1 Subject to the Directors' performance and their skills continuing to be relevant to the business, they may be re-appointed for a second term of three years.

2.6.2 Appointment of all Directors shall be renewed after the PESB has conducted an independent assessment of the performance of the Director and evaluated his/her contribution to the Board.

2.7 Termination of Appointment of Directors

On expiry of the period of appointment as recommended above or such other shorter period as the case may be, a Director's term of office shall cease.

2.8 Resignation of Directors

2.8.1 Directors can resign at any time during their tenure subject to a notice period of three months. In such an eventuality, the PESB shall conduct an exit interview with the Director to assess the reasons for the resignation.

2.8.2 On cessation of the term of office, the resigning Director must immediately return to the Company Secretary, all confidential information and other documents, which were in his/her possession.

2.9 Disqualification/Vacation/Termination of Directors

2.9.1 Any individual who holds the position of Director in a PSU may be disqualified from such position on any one of the following grounds:

- unsound mind
- insolvency

- misconduct requiring or justifying removal from the office of trust, or
- cognizable criminal act, for example, theft, fraud and forgery.

The office of Director shall terminate immediately upon any disqualification, irrespective of whether the term of office has expired or not. (Adapted from Section 274 (1) of the Companies Act 1956.)

2.9.2 The Office of Director shall become vacant if the Director does not attend three consecutive meetings of the Board or from all meetings of the Board for a continuous period of three months without obtaining leave of absence from the Board. (Section 283 of the Companies Act 1956).

3. Directors' Orientation and Training

3.1. Information to be given to Directors on Induction

On appointment, the Company Secretary shall provide the Directors with the following information:

- schedule of matters reserved for Board decisions;
- procedures for obtaining information on latest laws and regulations;
- procedures to be followed when decisions are required between Board meetings;
- schedule detailing the composition of all Board Committees and their terms of reference;
- statement explaining the Directors' responsibilities in relation to the preparation of the accounts, the system of internal control procedures and for reporting on the business;
- statement informing the Directors that they have access to the advice and services of the Company Secretary;
- procedure for obtaining the advice of an external expert;
- code of ethics/conduct for Directors;
- specific information on the PSU such as product brochures, existing business tie-ups, etc;

3.2. Information to be furnished by the Directors

On appointment to the PSU Board, every Director shall furnish to the Company Secretary the following information, within a period of seven days:

- Details required for obtaining the Director Identification Number (DIN);

- Details relating to present employment and all other business interests including professional memberships, which could involve a conflict of interest or could materially influence the independence of judgment of the Director;
- Any interests of a Director's family member of which he/she could be expected to be reasonably aware, or a person or body connected with the Director, which could involve a conflict of interest or could materially influence the independence of judgment of the Director;
- Changes in the interim should be notified to the Company Secretary as soon as possible;
- If a Director has a doubt as to the disclosure of an interest of his/her own or of a connected person, the Chairperson can be consulted;

Details of the above interests shall be kept by the Company Secretary in a special confidential register and shall be updated on an annual basis. Only the Chairperson, Company Secretary and the Managing Director shall have access to this register.

3.3. Familiarization of Directors

On induction, all Directors shall be required to visit the plant/factory and some of the business units to understand the business of the PSU better. The Directors will also be exposed to the business model and risk profile of the PSU on a continuous basis.

3.4. Training Programmes for Directors

The Directors shall attend training programmes as described in Annexure 7, whenever possible/required.

4. Directors' Remuneration

4.1. Sitting Fees for Independent Directors

- 4.1.1 The sitting fees for the Independent Directors shall be decided by Secretary (Administrative Department) within a maximum ceiling of Rs 10,000 per sitting.
- 4.1.2 The sitting fees will be decided based on the profits and the financial position of the PSU.
- 4.1.3 The sitting fees will be informed to the PE Department.

4.2. Performance Linked Incentive Scheme

The MDs of all profit making PSUs shall develop a performance linked incentive scheme for implementation concurrently with the MoU. The scheme shall be approved by the PSU Board, Secretary (Administrative Department) and the Secretary (PE Department). (Components of a performance linked incentive scheme are given in Annexure 8).

4.3. Disclosure of the remuneration paid to the Directors

Full and clear disclosures of the Directors' total emoluments and that of the Chairman, including pension contributions, shall be made in the Annual Report. The performance-related remuneration shall also be appropriately disclosed.

5. Code of Ethics for Directors

5.1 Developing a Code of Ethics

The Board shall develop a code of ethics for all Directors and senior management of the PSU. It shall be developed such that all the stakeholders are involved in building and maintaining a culture of honesty and integrity. It should be sufficiently detailed so as to give clear guidance on the expected behavior of the Directors and the senior management of the PSU. (A sample Code of Ethics is given in Annexure 9.)

Senior Management shall mean the personnel of the PSU who are members of the core management team, one level below the Board and heads of functional departments.

5.1.1 All Directors and senior management shall affirm written compliance with the code on an annual basis. (Clause 49 1(D) of the listing agreement and DPE guidelines).

5.1.2 The Code of Ethics shall be posted on the website of the PSU.

Any Director/Senior Manager who violates the code of ethics shall be subject to disciplinary action, which may include increment freeze, suspension from service or vacation of office.

6. Board Processes

6.1. Frequency of Board Meetings

- 6.1.1 The MD shall ensure that a meeting of the Board of Directors is held at least once in every three months and a minimum of four meetings is held in a year. It is desirable, however to hold six to eight meetings in a year and the maximum gap between two meetings shall not be more than four months. (Section 285 of the Companies Act 1956 and DPE guidelines).
- 6.1.2 Notice of every meeting of the Board of Directors shall be given in writing to each Director at his/her usual address in India at least three working days in advance of the meeting. (Adapted from Section 286 of the Companies Act 1956).
- 6.1.3 The notice, as far as possible, should be accompanied by an agenda for the meeting and details of all items that are scheduled to be discussed. Information relevant for understanding the contextual background of the agenda items should be comprehensive and concise. (Adapted from Section 286 of the Companies Act 1956).
- 6.1.4 The Directors shall devote sufficient time to understand the issues underlying managerial decisions making and attend the meetings. Since the Board meetings are forums for decision-making on major issues, sufficient time should be allocated for the discussions, prior to arriving at the decisions. The Directors shall participate and actively contribute to the decision-making process.
- 6.1.5 Fifty percent of the Board strength shall constitute the quorum. If the quorum is not present in the meeting, the meeting shall be deferred and another date for the

meeting shall be fixed by the Chairman. If the quorum is not present in the subsequent meeting also, then the Chairman has the discretion of continuing with the meeting despite the shortfall in attendance. If the PSU Chairman is not present in any of the meetings, the Board shall elect one of the members present to chair the meeting.

6.2 Attendance at Board Meetings

6.2.1 Every Director should attend at least 75% of the total number of Board meetings in a year. According to Section 283 of the Companies Act 1956, a Director ceases to hold office in case he/she does not attend a minimum of three meetings in a year, without obtaining leave of absence.

The Independent Directors shall attend at least 75% of the Board meetings in a financial year, failing which the Independent Director is liable to lose his/ her Directorship.

6.3 Agenda for the Board Meetings

6.3.1 The MD and the Company Secretary shall ensure that the Board is provided with reliable information, which would enable the Directors to satisfactorily discharge their duties. In case a Director is not satisfied with the reliability or the sufficiency of information provided, this shall be recorded in the minutes of the Board meeting.

6.3.2 The notice for the meeting must state the business to be conducted (Agenda). The agenda should include review of actions taken in conjunction with the resolutions passed during the previous meeting.

6.3.3 A Quarterly Performance Review must be conducted at every Board meeting to assess the extent of achievement of the agreed targets in the MoU.

- 6.3.4 The Chairperson of the Board of Directors shall ensure that the Board Meetings are conducted in a manner, which secures the effective participation of both functional and independent Directors. The Chairman shall facilitate all Directors in making an effective contribution and maintain the balance of views in the Board meetings. The Chairman shall ensure that each item of business included in the agenda is fully discussed and accompanied by a full explanation of the effects, before passing the resolution.
- 6.3.5 All Directors shall have access to the advice and services of the Company Secretary in the matters of the PSU. The Company Secretary is responsible to the Board for ensuring compliance with the legal and regulatory requirements.
- 6.3.6 The Chairman shall also ensure that all the Directors accept full share of responsibilities of governance.
- 6.3.7 The Chairman shall allocate sufficient time during regular Board Meetings for discussion about the impact of key external developments on the business of the PSU.
- 6.3.8 There should be a schedule of matters specifically reserved for the Board to take decisions that would ensure that it has full autonomy for decision-making. The list below is indicative of issues that shall be mandatory placed before the Board for decision-making:
- Significant acquisitions, disposals and retirement of assets;
 - Major investments and capital projects;
 - Delegated authority levels;
 - Risk management policies;
 - Approval of terms of major contracts;

- Sanctioned strength of manpower and any changes in the same;
- Policy on determination of remuneration of directors and employees
- Approval of annual budgets and corporate plans;
- Procurement Policy;
- Customer Credit Policy;

6.3.9 Undecided issues can be postponed for discussion during the next meeting. If the Board cannot take decision on an issue over three consecutive meetings, it shall be reported to the Secretary (Administrative Department) by the Chairman.

6.3.10 The Board shall lay down formal procedures whereby Directors, in the furtherance of their duties, may take independent professional advice, if necessary, at a reasonable expense chargeable to the PSU.

6.3.11 The proceedings at the Board meetings shall be recorded and circulated. The Company Secretary shall record the resolutions passed during Board meetings in sufficient detail such that the spirit in which decision taken is fully reflected.

6.3.12 The Directors shall review the minutes of the Board meetings and ensure that each item of discussion included in the agenda is recorded in sufficient detail.

6.4 Information to be placed before the Board

6.4.1 The following information shall mandatorily be placed at Board Meetings, the list is indicative and not exhaustive:

- a. Annual Operating Plans and Budgets;

- b. Capital Budgets;
- c. Terms of major contracts awarded;
- d. Quarterly Results of the PSU;
- e. Minutes of meetings of the Audit and Human Resources Committee of the Board;
- f. Recruitment and remuneration of senior officers just below the Board level;
- g. Appointment and removal of Chief Financial Officer and Company Secretary;
- h. Show-cause, demand, prosecution and penalty notices;
- i. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problem;
- j. Any material default in financial obligation or substantial non-payment of statutory dues;
- k. Any issue, which involves possible product liability claims of substantial nature, including any judgment or order, which may have passed strictures on the conduct of the PSU;
- l. Significant labour issues and the proposed measures for resolution of disputes;
- m. Wage Agreements, Implementation of Voluntary Retirement Schemes etc;
- n. Sale/Disposal/Retirement of assets, which are material in nature and not in the normal course of business;
- o. Non-compliance of any regulatory or statutory requirement;

7. Constitution of Board Committees

The Board of Directors shall constitute various committees given below by passing resolutions to that effect. Each committee shall comprise of at least three and a maximum of four members and not less than two members shall be Independent Directors.

7.1 Audit Committee

Audit Committee has an important mandate of safeguarding the integrity of the business processes of the PSU, through oversight of internal controls.

7.1.1 The Board shall constitute an Audit Committee comprising minimum three members, as per Section 292 A of the Companies Act 1956 and DPE Guidelines. The Board shall ensure that at least two members of the Audit Committee have the requisite knowledge of accounting and/or financial management. In addition, at least one member shall have a good understanding of the business of the enterprise.

Audit Committee shall select a chairperson who is an independent Director, and who is not the Chairperson of the Board. The Director Finance and Head Internal Audit shall be permanent invitees to the meetings of this Committee.

7.1.2 Audit Committee shall be primarily responsible for overseeing of internal controls and the financial reporting process.

7.1.3 Audit Committee shall be provided with written terms of reference that clearly define its responsibilities. (Terms of reference and powers of the Audit Committee are given in Annexure 10).

7.1.4 The PSUs shall disclose in their annual reports, whether or not the Audit Committee has adopted formal terms of

reference, and if so, whether the Committee is satisfied with its responsibilities for the year, in compliance with its terms of reference. (Section 292 A of the Companies Act 1956)

- 7.1.5 Audit Committee shall meet at least three times a year. One meeting shall be held before finalization of accounts of the PSU and one in each half of the financial year. It is desirable to hold at least six meetings in a year.
- 7.1.6 Audit Committee can obtain external professional advice and, if necessary, invite specialists with relevant experience to attend its meetings. (Section 292 A of the Companies Act 1956)
- 7.1.7 Audit Committee shall have a discussion with the external auditors, at least once a year, without the presence of functional directors or the employees of the PSU, to discuss any issue of concern that needs to be addressed.
- 7.1.8 Audit Committee shall periodically consult with the internal auditors regarding the operation of the internal audit function, with particular reference to the staffing of the function, internal audit work schedules and compliance with the requirements set out in this document.
- 7.1.9 The Head of the Finance Department of the PSU shall ensure that accurate books and records are maintained and that financial statements and other statutory reports are prepared in time. The Audit Committee shall monitor the progress in meeting statutory deadlines and conformance with acceptable accounting standards.
- 7.1.10 Audit Committee will be responsible for ensuring that the observations made by the CAG, the statutory auditors and the internal auditors are discussed and reported to the Board along with the action taken report.

7.2 Human Resources Committee

- 7.2.1 The Board shall constitute a Human Resources (HR) Committee comprising of a minimum of three and a maximum of four independent Directors, chaired by the Managing Director.
- 7.2.2 The mandate of the HR Committee shall be primarily to develop the talent base required for the effective functioning of the PSU.
- 7.2.3 HR Committee shall approve the remuneration of the functional directors and the senior management of the PSU.
- 7.2.4 HR Committee shall also design the performance linked incentive scheme for all employees, based on the achievement of financial and non-financial targets. The prevalent industry trends in remuneration shall also be considered while approving the scheme.
- 7.2.5 The responsibilities of the Committee would be to:
- Assess any gap between the existing and desired skills and capabilities, and develop improvement plans;
 - Approve the remuneration structure with fixed component and performance based variable component;
 - Ensure performance evaluation in line with the accepted goals and key performance indicators;
 - Supervise capacity building initiatives for all executives;
 - Approve training programs for Directors and senior management;
 - Approve succession plan for the PSU;
- 7.2.6 HR Committee can seek expert advice, if necessary, and invite experts with relevant experience to attend its meetings.

8. Vigilance Administration

8.1 Appointment of Chief Vigilance Officer

The MD shall appoint a Chief Vigilance Officer (CVO) in exclusive charge of all aspects of vigilance. The CVO would report to the MD. The functions of the CVO can be broadly categorized as - preventive and punitive vigilance. The detection of corruption and other malpractices and punishment of officials found guilty of indulging in such malpractices constitutes “punitive vigilance”.

The activities under “preventive vigilance” include:

- Ongoing examination of the existing procedures to eliminate or minimize opportunities for corruption and malpractices;
- Planning and enforcement of regular inspections including surprise visits;
- Preparation and maintenance of lists of officers of doubtful integrity and suspect officers and maintaining surveillance over such officers;
- Blacklisting of unscrupulous suppliers, contractors and vendors;
- Conducting scrutiny of property statements of employees annually to check for possible disproportionate acquisition of assets;
- Reviewing the existing arrangements and resources for vigilance work;

8.2 Customer Grievance Redressal Mechanism

A formalized, well-publicized, accessible and simple-to-use system of recording customer grievances shall be developed and

maintained by all PSUs. This should be supported by a transparent system of addressing such complaints.

8.3 Customer Consultation and Evaluation

The PSU shall develop a structured system for consultation with and participation of the customer in the development, delivery and review of products/services. The PSU shall provide a choice to the customer in respect of payment methods, location of contact points, working hours and delivery times, wherever feasible. Effective use of available technology should be made to ensure maximum access and improved quality of service.

8.4 Whistle Blower Policy

The Board of Directors shall be responsible for formulation and implementation of a whistle blower policy. A whistle blower is an employee of the PSU who becomes aware of any material legal non-compliance or violation of ethical standards and alerts the management. It is mandatory for the whistle blower to disclose his/her identity as the vigilance procedures prohibit investigation into anonymous complaints.

The components of the whistle blower policy are given below.

8.4.1 Appointment of a Compliance Officer

The MD shall appoint a compliance officer who will be responsible for implementing the whistle blower policy. The compliance officer shall be the nodal officer for the receipt, retention and processing of questions/integrity concerns/complaints arising out of legal and ethical violations, reported by the employees. The CVO can also function as the compliance officer.

8.4.2 Procedure for Reporting/Receipt of concerns/complaints

The procedure for reporting integrity concerns shall be documented and approved by the Board. The procedure

shall be communicated to all employees through a circular and displayed prominently on all the notice boards in English and Oriya. It may also be put up on the website.

All concerns/questions reported under the whistle blower policy shall be received by the Compliance officer.

8.4.3 Processing/Resolution of Complaints

The Compliance officer will send all concerns/complaints relating to accounting and internal controls to the Chair of the Audit Committee. All complaints/concerns received by the Chair of the Audit Committee will be investigated and resolved by the Audit Committee. In case the Chair of the Audit Committee is of the view that the issue raised has important implications, it may refer it to the full Board for resolution.

In all other cases, the Compliance Officer shall conduct the investigation and submit a report to the MD. The compliance officer shall have powers to recommend disciplinary action.

To facilitate the investigation and resolution procedures, external advice can be sought by the Compliance officer and the Audit Committee.

The Board shall ensure that immediate corrective action is taken based on the results of the investigation. The concerned whistle blower shall also be informed. The whistle blower's interests shall be protected at all times during the investigation. This will inculcate a culture of trust and create an environment that encourages employees to report on integrity concerns without fear of retribution.

8.4.4 Reporting of Status on Concerns/Questions

The status of all outstanding concerns/questions received by the Compliance officer shall be reported to the Chair of the Audit Committee on a quarterly basis.

The status of concerns received and resolved can be reported to the Board at the discretion of the Audit Committee.

8.4.5 Protection to the Whistle Blower

The mechanism for ensuring protection to the whistle blower shall also be clearly stated so that the employees can report on the integrity concerns with full confidentiality and without fear of retaliation. In fact, retaliation against employees who raise integrity concerns shall be prohibited and constitute as grounds for strict disciplinary action.

On the contrary, if it is proved that an employee has failed to report known or suspected instances of legal or ethical violations, disciplinary action shall be taken against such employees.

9. Risk Management

9.1. Risk Management Processes

Risk arises out of the occurrence of uncertain events, which impact the achievement of the objectives of the PSU. Thus, risk has both an upside and a downside. Risk assessment involves identifying such potential events and assessing their likelihood of occurrence and magnitude of impact. Risk management requires a proactive response in determining cost of covering the risk exposure and deciding whether to the cover the risk or not.

9.1.1 The Board shall ensure that a strong risk management framework is in place that enables effective monitoring of the business processes to identify, assess, measure and manage the risks, on a continuous basis.

9.1.2 The Board shall ensure that the risks emanating from natural calamities are identified and appropriate insurance cover is obtained.

9.1.3 The Board shall also ensure that the PSU develops effective reporting systems to inform the Board about the risk exposures and risk management mechanisms. The risk management measures shall be clearly specified along with well-defined ownerships of risks and clear reporting responsibilities.

9.1.4 The Board shall also keep the Secretary (Administrative Department) informed of risk exposures and risk management measures currently being employed by the PSU.

9.1.5 The Annual Report shall also include a separate statement from the Board that the PSU has appropriate risk assessment and management policies in place.

10. Internal Control

Internal control is a process effected by the management with oversight by the Board, designed to provide reasonable assurance on the achievement of the following objectives:

- Effectiveness and efficiency of operations;
- Safeguarding the integrity of business processes;
- Management of risks;
- Reliability of financial reporting;
- Compliance with applicable laws and regulations.

10.1 Monitoring of Internal Controls

10.1.1 The Board shall be responsible for setting the tone on the importance of internal controls and ensuring that it has proper oversight of the controls that are built into the processes, policies and procedures.

10.1.2 The senior management shall be responsible for developing mechanisms for identifying and correcting control weaknesses before they materially affect the achievement of the PSU's objectives.

10.1.3 The Audit Committee through the internal audit function shall be responsible for monitoring of controls performed directly by senior management and controls designed to prevent or detect senior management's override of controls. The senior management shall be responsible for monitoring controls performed below the senior management level.

10.1.4 The MD shall ensure that procedures are in place to report identified internal control weaknesses to the process

owner, and to at least one level of management above the process owner. Reporting at least to these two levels gives reasonable assurance that the information necessary to correct the control weakness reaches the responsible persons.

- 10.1.5 The MD shall report any significant control weaknesses to the Audit Committee of the Board.
- 10.1.6 The Board shall annually review the effectiveness of the system of internal control. The Board shall be responsible for evaluating the effectiveness of the monitoring procedures implemented by the management.
- 10.1.7 The Board shall review reports of the external auditor and the CAG and any identified control weaknesses shall be immediate addressed.
- 10.1.8 Any information about the weaknesses in internal control that can result in material losses is required to be reported by the Board to the Secretary (Administrative Department). This report shall contain a brief description of the potential loss, action taken or intended to be taken to correct the weaknesses. If no action is taken, an explanation of why no action is considered necessary shall be given.

10.2 Internal Controls - Business Processes

Effective internal controls enable organizations to safeguard the integrity of their business processes and enhance the reliability of the information used for decision-making. Since procurement and disposal are major areas where the risks are higher, the controls in these processes shall be reported to the Board as given below.

10.2.1 Procurement Policy

The MD of each PSU shall ensure that the procurement policy is formulated and approved by the Board after which it shall be duly notified. The policy should be transparent, well documented and strictly followed. The policy should ensure that a competitive tendering process is followed and vendor due diligence is conducted before awarding the contracts.

If the competitive tendering process takes place and the lowest bid is not accepted, then Board approval shall be required. For reasons of transparency, such approval together with the reason why a lower bid was not accepted shall be noted in the minutes of the Board meeting. Similarly all contracts awarded on a nomination basis require Board approval and shall noted in the minutes of the Board meeting.

The policy for purchase of items from other PSUs and the purchase preference policy of the Government shall be strictly enforced. Any initiatives taken to advance certain policies of the Government shall be disclosed to the Board. Any deviations from the notified policy shall be ratified by the Board and recorded in the minutes of the Board meeting.

The procurement policy shall expressly prohibit procurement from any Director of the PSU or their relatives. The definition of relative is defined in Section 2(41) and Section 6 read with Schedule IA of the Companies Act 1956.

10.2.2 Disposal of Assets and Access to Infrastructure by Third Parties

The MD of each PSU shall ensure that a disposal policy is formulated and approved by the Board after which it

should be duly notified. The disposal policy should be transparent, well documented and strictly followed. Any deviation from the notified policy should be ratified by the Board and recorded in the minutes of the Board meeting. The disposal method used should be both transparent and likely to achieve a fair market-related price. The anticipated value may be determined either by a reserve price recorded in advance or by a formal certification by the Managing Director or alternatively, a Director who is also a member of the Board Audit Committee.

The disposal of assets of the PSU or the granting of access to its property or infrastructure shall be through a competitive tendering process. If the competitive tendering process takes place and the highest bid is not accepted, then Board approval shall be required. For reasons of transparency, such approval together with the reason why a lower bid was accepted should be noted in the minutes of the Board meeting. Details of disposals of all assets or grants of access to property or infrastructure shall be reported to the Board.

The policy should expressly prohibit the disposal of assets to any of the Directors of the PSU or their relatives. The definition of relative is defined in Section 2(41) and Section 6 read with Schedule IA of the Companies Act 1956.

10.3 Internal Controls – Internal Audit Function

- 10.3.1 The Board shall provide the internal audit function with sufficient authority to perform its function. All operational areas and levels within the PSU shall come under the purview of internal audit.
- 10.3.2 The internal audit function shall be the conscience keeper of the PSU and act as a watchdog on behalf of management.

- 10.3.3 The internal audit function shall conduct periodic testing of the effectiveness of internal controls and report its findings directly to the Audit Committee.
- 10.3.4 The internal audit function shall be responsible to report on the following
- prompt posting of accounting entries;
 - maintenance of basic accounting records;
 - adequate provisioning of all liabilities;
 - contracts being administered in accordance with the clauses; provisions in the agreements;
 - conformance with internal procedures and guidelines.
- 10.3.5 Further, the internal audit function shall coordinate with the external auditors so that the audit activities can become complementary and the effectiveness of the audit is enhanced.
- 10.3.6 The internal audit function shall carry out its activities in a manner that is consistent with the Standards for the Professional Practice of Internal Auditors. In order to demonstrate that due professional care has been taken in performing its activities, comprehensive records of activity showing that the work has been performed in accordance with accepted standards of best practice are to be maintained.
- 10.3.7 The head of the internal audit function shall have requisite seniority within the organization. The head of internal audit shall report functionally to the Audit Committee. The internal audit function shall be adequately resourced with the necessary staff. In order to ensure objectivity and independence, internal audit staff shall be free from all operating responsibility. The internal audit staff shall have the necessary skills, including the ability to deal with non-financial aspects.

10.3.8 In case the PSU does not have sufficient resources to conduct the internal audit, it can appoint external experts to undertake this function. The appointment of the external experts shall be through a competitive process. The objectivity and independence of the external experts shall be the main eligibility criteria for selection.

10.4. Internal Controls – Legal Compliance

The Company Secretary shall be the nodal agency for ensuring compliance with legal and regulatory requirements. The responsibilities of the Company Secretary are given in Annexure-11.

10.5. Reporting on Internal Controls

The Board shall submit a report, annually, to the Secretary (Administrative Department) giving a detailed description of the identified weaknesses in the internal controls covering:

- control weaknesses identified in the internal audit reports;
- control weaknesses identified by the CAG.

11. Reporting & Disclosures

11.1 Reporting to the Administrative Department

The MD shall furnish to the Administrative Department and the PE Department interim reports on the financial performance of the PSU on a quarterly basis. This shall not be later than one month from the end of quarter.

The interim reports shall present a balanced and comprehensible assessment of financial position of the PSU. It shall include matters of significant interest and concern to the Administrative Department.

12. Monitoring of Compliance

12.1 Corporate Governance Compliance Report

12.1.1 The MD shall submit a Corporate Governance (CG) Compliance Report to the Administrative Department and PE Department on an annual basis.

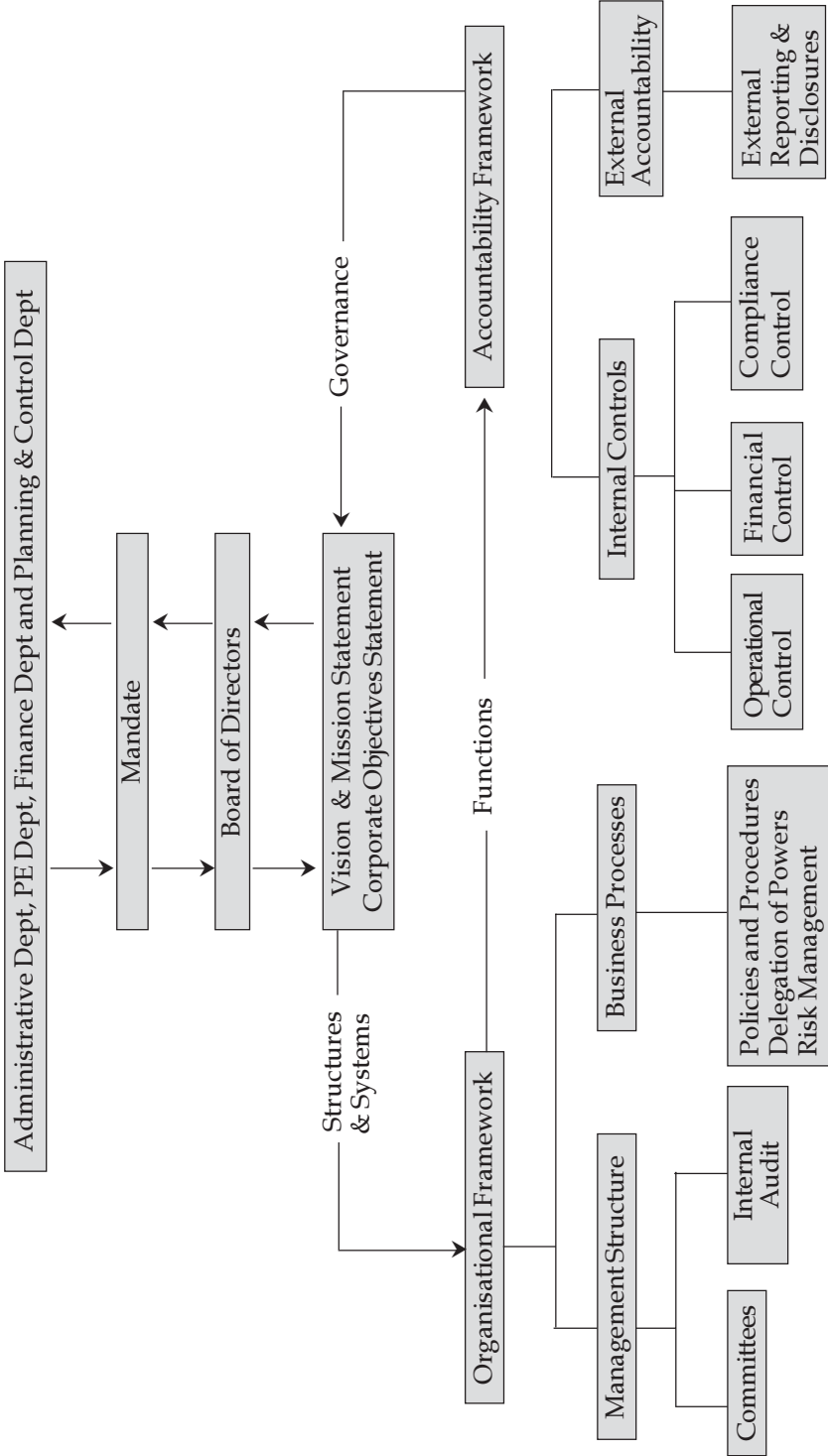
12.1.2 The Secretary (PE Department) shall develop a format for the CG Compliance Report. (Suggested format of CG Compliance Report is given in Annexure 12).

12.2 Incentivising Compliance

The PE Department shall develop a rating model to evaluate the compliance of the PSUs with the guidelines in the manual. Based on the ratings assigned to the PSUs, the three top-rated PSUs shall be felicitated with a memento and a cash award of Rs 5 lakhs by the Chief Minister at an annual function. This would be exemplary and is expected to set the context for achieving better compliance levels within the PSUs. Over a period of time, a rating methodology can be developed to categorize the PSUs into A, B and C categories, based on which proportionately greater operational and financial autonomy can be granted.

Framework for Developing the Guidelines

Annexure 1



Guidelines for developing Enterprise Specific MoUs
**Memorandum of Understanding for (Year) between
(Name of PSU) and (Name of Administrative Department)**

These guidelines have been developed based on an analysis of the existing MoUs and are intended to give broad directions in developing enterprise specific MoUs.

Signing of the MoU

The MoU has to be signed by the MD of the PSU and the Secretary (Administrative Department) before 31st March every year. The MoU negotiation meetings will be held in January/February.

The MoUs are generally drawn up in five parts as follows:

PART I

This part would describe in detail the vision, mission and objectives of the enterprise based on mandate given by the Administrative Department.

The above information is to be provided under the following heads:

1. Mandate given by the Administrative Department
2. Mission & Vision
 - 2.1. Overall Goals & Objectives – (to be listed according to the priorities)
 - 2.2. Developmental Objectives
 - 2.3. Commercial Objectives

PART II

Exercise of Autonomy and Delegation of Financial Powers

This part would detail the powers delegated to the Board by the Secretary (Administrative Department) for achieving the MoU targets. Specific areas for delegation of powers can be identified.

PART III

Performance Evaluation Criteria and Targets

This part specifies the obligations of the PSU in terms of developing a set of criteria for evaluating performance. These performance criteria will have to be developed in accordance with the goals and objectives specified in Part I above. The criteria should be measurable and targets have to be specified against which performance can be measured. The performance criteria will be developed such that an assessment can be made of the effective utilization of the resources and the efficiency with which the business is being conducted.

For each performance criteria, figures for the current year, the year of the MoU, and also the year following the MoU, will be given.

An indicative list of performance criteria is given below:

1. Static Parameters
 - 1.1. Financial Performance Indicators
 - 1.1.1. Cash Flow
 - 1.1.2. Sales Growth
 - 1.1.3. Profit Growth
 - 1.1.4. Gross Margins
 - 1.1.5. Return on Capital Employed
 - 1.1.6. Value Added per Employee
2. Dynamic Parameters
 - 2.1. Human Resource Development

2.2. Capacity Utilization

2.3. Project Implementation Status

3. General Measures

3.1. Timely Submission of Annual Report

3.2. Timely Submission of MoU

3.3. Introduction of IT in the business processes

3.4. Number of Questions Answered (State Legislature)

3.5. Number of Training Programmes Conducted

3.6. Suggestion Schemes introduced

Performance Criteria - Determining Values

For each of the performance criteria selected above, targets will be determined. These targets will be developed through a negotiated process and mutually agreed upon between the MD and the Secretary (Administrative Department). The performance will be evaluated based on achievement of the targets.

Performance Criteria - Assigning Weights

The performance criteria are assigned individual weights based on their importance in the mandate. Based on the weights assigned to each performance criteria and the extent of achievement of the targets, a composite score will be worked out on a 5-point scale. This composite score will form the basis for the evaluating the performance of the PSU.

PART IV

Commitments/Assistance from the State Govt

This part indicates the assistance expected by the PSU from the Government, under the following broad heads: (Some PSUs could also seek assistance that is specific to them).

1. Commitments/Assistance from the Administrative Department
 - 1.1. Financial Assistance both for working capital and capital expenditures
 - 1.2. Government Guarantees
2. Specific assistance in terms of requirements of infrastructure etc.

PART V

Action Plan for Implementing the MoU

The PSU will clearly indicate the procedure for review of the MoU and the action plan for its implementation.

Evaluation of the MoU

The performance of the MoU signing PSUs will be evaluated with reference to their MoU targets in May-June based on provisional results and in October-November based on audited results. The performance of each PSU will be evaluated and graded based on the composite scores achieved.

Responsibilities of the Board

1. The primary responsibility of the Board is to provide advice and counsel to the Managing Director and the senior management of the PSU. In providing this, the Directors should exercise their business judgment to act in what they reasonably believe to be in the best interests of the PSU and its stakeholders.
2. The Board shall craft the vision and mission statements of the PSU and guide the formulation of corporate strategy, in accordance with the vision.
3. The Board shall take the lead in identifying new business opportunities and business initiatives for the PSU.
4. The Board shall ensure that business processes are computerized to the extent possible and take the lead in implementing IT initiatives for improving the reporting system within the PSU.
5. The Board shall ensure that a talent base is developed and the required action is taken to build competencies in the staff.
6. The Board shall ensure that the key performance criteria, as given in the MoU are achieved.
7. The Board shall ensure that a performance linked incentive scheme is developed and implemented.
8. The Board shall also oversee and periodically review the system for safeguarding the assets of the PSU and ensure that proper internal controls and checks are present.
9. The Board shall balance its responsibilities of strategy formulation, oversight and monitoring functions.

10. The Board shall ensure that the applicable laws, regulations, Government policies and codes of ethics are fully complied with.
11. The Board shall monitor the process of disclosure and communication and exercise objective judgment on the affairs of the PSU, independent of management.
12. The Board shall ensure that it has access to accurate, relevant and timely information on the PSU. The Board shall ensure that the financial statements present a true and fair view of the affairs of the PSU. In addition, it shall ensure that accounting policies are consistently followed. The Board shall ensure that reasonable and prudent judgments and estimates have been used in preparation of the financial statements, and that applicable accounting standards have been followed.
13. The Board shall act on a fully informed basis, in good faith, with diligence, skill and care and in the best interest of the PSU. It shall take decisions such that the interests of all stakeholders are balanced. (stakeholders include employees, creditors, customers, suppliers and the local community)
14. The Board shall develop a clear definition of the levels of materiality in order to determine the scope of delegation of authority and ensure that it reserves specific powers and authority for itself. Delegated authority must be in writing and reviewed on a regular basis.
15. The Board shall ensure that there are appropriate induction, orientation and training programmes offered to new and existing Directors.
16. The Board shall always maintain the highest standards of integrity and also ensure that the employees of the PSUs also maintain the highest standards of integrity.
17. The Board shall also achieve a balance between conforming to corporate governance principles and the performance of the PSU.
18. The Board shall ensure that the PSU conducts its activities are so as to minimize any divergence of interests between the PSU and the Administrative Department.

Responsibilities of the Chairperson

The Chairperson is the head of the Board with the following responsibilities:

- ensuring that all the Board members are fully involved and informed of the implications on the issue on which a decision has to be taken;
- ensuring that the functional Directors fulfill their management responsibilities and participate fully in the governance of the PSU;
- ensuring that the independent directors exercise independent judgment and act objectively;
- ensuring that all relevant matters are placed on the agenda and prioritized properly;
- working closely with the Company Secretary in ensuring the Board members fully understand the nature and extent of their responsibilities as directors in order to ensure the effective governance of the PSU;
- ensuring that the Board minutes correctly record the proceedings of the discussions and the spirit of the decisions.

Responsibilities of the Managing Director

The Managing Director is responsible for the day-to-day management and the responsibilities include:

- Providing leadership to the Management;
- Implementing and reporting to the Board on the PSU's strategy;
- Monitoring the performance of the PSU with respect to the MoU objectives;
- Providing all such information to the Board as is necessary to enable them to assess the performance of the PSU;
- Maintaining good relationships with the stakeholders;
- Developing signing authority levels;
- Overseeing the development and the conduct of training programs and capacity building initiatives;
- Developing a succession plan to ensure continuity in leadership;
- Developing policies and guidelines for operations with the various line managers and place it to the Board for approval;
- Ensuring the documentation and the circulation of approved rules, policies and guidelines.

Definition of Independent Directors

“Independent Director” shall mean a part-time, non executive director of the PSU who

- a) apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the PSU, its directors, its senior management or its holding company, its subsidiaries and associate companies which may affect the independence of the Director.
- b) is not related to nor any of his/her relatives is related to persons occupying management positions at the Board level or at one level below the Board.
- c) is not related to nor any of his/her relatives is affiliated to any charitable/not for profit organization that receives funding from the PSU, its Directors, its senior management or its holding or subsidiary PSU.
- d) has not been a senior executive or managerial personnel of the PSU in the immediately preceding three financial years.
- e) Neither himself nor any of his/her relatives is a partner or part of the senior management during the preceding one year of any one of the following:
 1. The statutory audit firm or the internal audit firm or tax audit firm or energy audit firm or management audit firm or risk audit firm or insurance audit firm that is associated with the PSU, its holding and subsidiary companies

2. The legal firm and consulting firm that have a material association with the PSU, its holding and subsidiary companies.
- f) Neither himself nor any of his/her relatives is a supplier, service provider, customer or a lessor or lessee of the PSU.
- g) For the above purpose,
1. A relative shall mean the husband, wife, brother or sister or one immediate lineal ascendant and all lineal descendents of that individual whether by blood, marriage or adoption.
 2. “Senior Management” shall mean personnel of the PSU who are members of the core management team excluding Board of Directors, one level below the Board.

Directors' Training Modules

1. Objectives

- To understand the role of the Board in strategy formulation, execution and evaluation;
- To analyze the impact of external developments and changes in the business environment on strategy formulation and execution;
- To synthesize knowledge to create a broader vision for guiding managerial decision making;
- To understand the inter-relationships between the functional business areas;
- To understand the special issues in managing PSUs;
- To enhance awareness of the legal and regulatory compliances;
- To benchmark against best practices in corporate governance.

2. Training Modules

2.1 Strategy Formulation & Execution

This module is designed to improve the Board's oversight of the corporate strategy formulation and implementation processes. The module provides a comprehensive coverage of the role of the Board in strategy development, execution and evaluation. The mechanisms for identifying changes in the environment that can impact the strategy development and implementation are covered in the module. The performance measurement system

for monitoring strategy and linking it with performance incentives will form part of the module. The procedures for identifying early warning signals that are symptoms of corporate failures will also be covered in this module.

2.2 Corporate Governance and Compliance

This module will provide a comprehensive coverage of the responsibilities and liabilities of Directors in performing their functions. The mechanisms for achieving better compliance with the legal and regulatory requirements including reporting and disclosure requirements will be covered.

2.3 Boardroom Dynamics

This module will cover the challenges facing Boards today in setting the policies for its structure and operations. These include Board size, Committee structures, Board processes, Board evaluation, and Directors' remuneration policies.

2.4 Enhancing Financial Integrity

The module on Enhancing Financial Integrity is designed to strengthen the ability of the Director to evaluate the financial impact of managerial decisions.

The module will cover three primary areas:

- understanding and interpreting the financial statements, including questions a Director should ask in understanding the company's true financial position;
- evaluating capital investment decisions;
- analyzing the financial impact of the strategic choices that need to be evaluated by the Board.

2.5 Effective Board Committees

This training module seeks to provide the necessary inputs for effective functioning of Directors on Board Committees.

Audit Committee – Performance Enhancement

Under this component, the training inputs that are necessary to enhance performance of the Committee members will be addressed. The duties of the members of the Audit Committee and their responsibilities will be discussed in detail. The critical issues and latest concepts in accounting and disclosure requirements will also be covered. This module will provide a comprehensive overview of the financial knowledge that is required to interact with senior management and external auditors. The module will also feature a session on internal controls, as it is relevant for safeguarding the integrity of the business processes.

HR Committee - Performance Enhancement.

Since Boards also need to be involved in the creating, developing and nurturing the talent base of the PSUs, the Directors need to be trained in all aspects of Human Resources Management. An integral part of the module will be the design of performance incentives. This module will examine innovations in the design of compensation plans, the role of compensation consultants etc.

2.6 Directors' Legal Duties and Liabilities

This module will cover the specific legal responsibilities and the standard of care a Director is required to exercise in fulfilling his/her duties. This session will also cover the case law on the legal liabilities of the independent directors for failing to exercise due diligence and care in fulfilling their duties. This module will also discuss practical techniques that Directors can employ to protect themselves from personal liabilities.

Components of a performance linked incentive scheme

Introduction

A performance linked incentive scheme constitutes an essential complement of the MoU system. The evaluation of the performance of the PSUs coupled with a system of performance-linked incentives would contribute to motivating the employees to achieve sustained improvement in performance. The performance incentives are one-time payments and do not form part of salary.

The performance-linked incentives do not impose additional financial burden on the PSU as they are paid from the incremental profits generated. The most important requirement in the design of the performance linked incentive scheme is that the employees should be rewarded commensurate with their contribution to the success of the PSU. The following are the components of a performance linked incentive scheme.

Objectives of the Scheme

The objectives of the scheme should be clearly specified in terms of achievement of a targeted level of performance. The achievement of a pre-determined composite score that has been mutually agreed by the MD and the Secretary (Administrative Department) shall form the basis for disbursement of the incentive.

Coverage of the Scheme

The performance linked incentive schemes can initially be introduced in those PSUs that have made profits in the year before the MoU and the year of the MoU.

Applicability of the Scheme

The scheme shall be made applicable to all regular employees of the PSU. It will not be applicable to casual or daily rated employees and apprentices under the Apprentices Act and Trainees.

Factors for Incentive Payment

At the beginning of every year, the composite score based on MoU parameters would be the basis for the payout under the scheme. The incentive payment, expressed as a percentage of the present basic of each employee, would vary with the level of performance and the hierarchical levels. The quantum of incentives is determined on the achievement of a composite MoU score based on a set of mutually agreed pre-determined criteria. The payouts under the scheme would vary depending upon the level of performance as given below:

Threshold - The minimum level of performance necessary to qualify for incentive payment. This is usually determined at 10%-15% below the targeted MoU score. At this achievement level, the PSU would generate incremental profits but below the expected level.

On-target - This would be the achievement of the targeted MoU score, a level of performance at which the PSU would generate the desired level of profits.

Ceiling - This would be the maximum level of achievement and would be about 25%-30% above the targeted MoU score. The ceiling should be determined such that the maximum payout for each employee should not exceed 100% of the basic salary.

The amount of incentive would be a percentage of the current basic of the employee, determined by the percentage of achievement of the MoU score and percentage of achievement of Key Performance Indicators (KPIs) at the individual level. The Key Performance Indicators (KPIs) are the performance targets for the employees that are linked to the achievement of the composite MoU score. The KPIs would be determined by the employee's immediate superior and will

be assigned numerical weights totaling 100% so that an overall performance measure can be computed. The process of determining the KPIs and setting the targets for each KPI is the most important part of the scheme.

Design of the scheme

The scheme has to be designed such that it links the composite MoU score to the profits of the PSU through performance-linked incentives. Thus, the performance linked incentive scheme enables the employees to share in the profits of the PSU in proportion to their personal contribution.

Code of Ethics for Directors and Senior Management

This is a suggested framework for a code of conduct for all Directors and senior management of PSUs. The code shall be approved by the Board.

The Company Secretary has an obligation to ensure that the Directors are informed about their responsibilities under the Code and that they are familiar with its requirements in the exercise of their functions as Directors.

Directors and senior management should be informed that it is primarily their responsibility to ensure that all their activities, whether covered specifically or otherwise in this document, are governed by ethical considerations.

Since it is not feasible to have a code of practice, which will specifically provide for all situations, which may arise, this is indicative and not exhaustive. Subsequent revisions will have to be made depending upon the situations that arise.

Objectives

The objectives of the Code are:

- To develop a set of ethical principles;
- To promote and maintain the confidence and trust of the stakeholders;
- To prevent development or acceptance of unethical practices;
- To safeguard integrity of the business processes.

Applicability of the Code

This Code of Conduct sets ethical standards for the Directors and Senior Management. It commits the PSU to conduct its business in accordance with applicable laws and regulations, with the highest standards of business ethics. This Code is intended to provide guidance in dealing with ethical issues, provide mechanisms to report unethical conduct, and to contribute to creating a culture of honesty and integrity. It is expected that the Directors follow the highest standards of ethical conduct in the interest of all stakeholders.

Legal Compliance

Directors of PSUs incorporated under the Companies Act 1956, have duties under this Act to act in conformance with the applicable provisions of this Act. The Directors are also required to ensure compliance with all statutory obligations and if they become aware of non-compliance with any such obligation, they should immediately bring this to the attention of the Board. Directors shall also ensure compliance with relevant statutory provisions of the Right to Information Act. Directors shall seek the advice and services of the Company Secretary for ensuring that Board procedures are followed and that applicable rules and regulations are complied with.

General Principles of Conduct - Integrity

Disclosure of Interests

Directors shall acknowledge the responsibility to be loyal to the PSU and be fully committed in all its business activities. Directors and their relatives must not have any interests in the contracts being awarded by the PSUs.

Directors shall not serve on the Board or as an employee of a competitor. Directors must inform the Company Secretary whenever any changes occur in their outside directorships.

The acceptance of positions by Directors, following employment and/or engagement by the PSU can give rise to the potential for

conflicts of interest and to confidentiality concerns. The Directors shall take necessary permissions before accepting such positions.

Acceptance of Gifts

Directors shall not be involved in the giving or the receiving of corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgment on business decisions.

Misuse of Company Assets

Directors shall not use the PSU's resources or time for personal gain, or for the benefit of persons / organizations unconnected with the PSU or for the benefit of competitors.

Business Competition

Directors shall uphold the commitment to compete in the market ethically and honestly. Directors shall not acquire information or business secrets by improper means. Directors shall follow fair and nondiscriminatory business practices.

Supplier Due Diligence

Directors must ensure that procedures are in place for the fair and competitive procurement of goods/services. Directors shall ensure compliance with the procurement policy and purchasing procedure, including prescribed levels of authority for sanctioning expenditures. Directors shall ensure that procedures for undertaking supplier due diligence are in place. This is to ensure that suppliers are also following ethical business practices.

Conduct at Board Meetings

Directors shall use their reasonable endeavours to attend all Board meetings. Excessive influence on Board decision-making by individual members shall be avoided, and all Board members should get an opportunity to fully contribute to Board deliberations. The independent Directors should bring an independent judgment on

issues of strategy, performance, resources, key appointments, and standards of conduct.

Directors should dedicate sufficient time, energy and attention to ensure diligent performance of his/her duties including preparing for meetings by reviewing in advance any material distributed and making reasonable enquiries. They must act in the best interest of and fulfill their fiduciary obligations to PSU's stakeholders.

Directors must treat each other with courtesy. Where a decision is not unanimous, a dissenting Director may disclose the fact that he/she dissented.

A Director shall absent himself/herself when the Board is deliberating or deciding on matters in which he/she or a person or body connected with the Director has an interest. In such cases a separate record (to which the Director would not have access) shall be maintained. The Chairperson of the Board shall determine whether the matter relates to the interests of a Director or a person or body connected with that Director, and this decision would be final.

A Director should not engage in conduct likely to bring discredit upon the PSU and be independent in judgment, and take all reasonable steps to be satisfied as to the soundness of the decisions taken by the Board. They must recognize that their primary responsibility is to the PSU's stakeholders.

In addition, the Directors shall ensure compliance with employment equality, commitment to fairness in business dealings and abstain from discriminatory practices.

Reporting & Disclosures

Directors shall ensure that the financial accounts/reports accurately reflect the performance of the PSU and are not misleading or contain material misstatements. Further, the Directors shall also ensure that a balanced and understandable assessment of the financial position

of the PSU is made in presenting its annual report and accounts. The Directors shall be responsible for the financial statements.

General Principles of Conduct - Information

The Directors shall follow prior consultation procedures with third parties where, it is proposed to release sensitive information in the public interest.

General Principles of Conduct - Obligations

Safeguarding the Integrity of Processes

The Directors shall review annually the effectiveness of the system of internal controls, including financial, operational and compliance controls. Directors shall also ensure that proper internal controls exist for detection of fraud.

Safety and Environmental Concerns

The Directors shall place the highest priority on promoting and preserving the health and safety of the employees. They shall also ensure that the community concerns are fully addressed and that the operations of the PSU do not have any detrimental impact on the environment.

Circulation of the Code

The Directors also have a responsibility of circulation of this Code to the senior management. The Directors shall review the Code of Business Conduct as appropriate.

Compliance with the Code

The Directors and senior management shall affirm the compliance with the code on an annual basis in the format given below:

**Code of Conduct for Board of Directors
Annual Compliance Report**

I, do hereby solemnly Affirm that to the best of my knowledge and belief, I have fully complied with the provisions of the Code of Conduct for Board Members during the Financial Year ended 31st March.

Signature.....

Name

Designation

Date Place

(To be submitted on or before 30th April every year.)

Terms of Reference & Powers of the Audit Committee

(As adapted from clause 49 of the listing agreement and section 292A of the Companies Act, 1956)

Terms of Reference of the Audit Committee

- To recommend the appointment/removal of external auditors, fixation of audit fee and also approval for payment of any other services.
- To review with the Management the annual financial statements before submission to the Board focusing primarily on:
 - Changes in accounting policies and practices;
 - Major accounting entries based on exercise of judgment by management
 - Qualifications in draft audit report.
 - Significant adjustments arising out of audit
 - Compliance with Accounting Standards and legal requirements concerning financial statements;
 - Any related party transaction that may have potential conflict with interest of the PSU;
- To review with the management, performance of Statutory and Internal Auditors the adequacy of Internal Controls;
- To review the adequacy of the internal audit function, 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;

- To discuss with the internal auditors regarding any significant findings and follow up thereon;
- To review the PSU's risk management policies;
- To review the findings of the internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board;
- To discuss with external auditors, before the audit commences, nature and scope of audit, as also post audit discussion to ascertain any area of concern;
- To review the functioning of the Whistle Blower Mechanism;
- To review Management letters/letters of internal control weaknesses issued by the Statutory Auditors;
- To review the Internal Audit reports;
- To review the CAG reports and take corrective action;
- To review the appointment, removal and terms of remuneration of the internal auditor (when it is outsourced).

Powers of the Audit Committee

The Audit Committee shall have the following powers

- To investigate any activity within its terms of reference.
- To seek information from any employee
- To seek external legal or other professional advice
- To secure attendance of external experts at its meetings.
- To have an oversight of the financial reporting process to ensure that the financial information being generated is accurate and credible.

Responsibilities of the Company Secretary

The Company Secretary is appointed by the Managing Director. The primary responsibility of the Company Secretary is to ensure that the Board functions effectively. The other responsibilities include-

1. Providing individual directors with detailed guidance and assistance on the nature and extent of their duties and responsibilities and, more importantly, how such duties and responsibilities should be properly discharged in the best interests of the PSU.
2. Assist the directors in fulfillment of formalities at the time of induction
3. Assist the Board in its oversight function with respect to legal compliances.
4. Provide a central source of guidance and advice to the Board on matters of business ethics and good governance.

The Secretarial work relating to Board meetings would be as follows:

- Fixing the date and venue.
- Issuing notice and agenda to the Directors.
- Maintaining register of attendance of Directors.
- Inviting specialists on the request of Chairman.
- Ensuring quorum.
- Presently minutes of the previous meeting.
- Making notes of the proceedings at the meeting.
- Drafting of the minutes of the meeting.
- Ensuring legal and regulatory compliances.

Format of Corporate Governance compliance Report for (YEAR)

Particulars	Compliance STATUS (Yes/ No)	Reasons for Non Compliance
I. Mandate for the Board		
a) Vision/Mission Statement		
b) Corporate Plan		
II. Board of Directors		
a) Board Size		
b) Induction of Independent Directors		
c) Code of Conduct		
d) Director Training & Orientation		
e) Director Remuneration – determination and disclosures		
III. Board Meetings		
a) Board Meetings – Frequency		
b) Board Meeting - Director Attendance		
c) Board Meetings – Notice		
IV. Board Committees		
a) Constitution of Audit Committee		
b) Constitution of Human Resources Committee		
c) Number of meetings held of the above Committees		
V. Reporting & Disclosures		
a) Quarterly financial statements placed before Board		
b) Reporting on internal controls to the Board		

