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**Guidelines  
on  
Corporate Governance  
for  
State Level Public Sector Enterprises  
of  
ASSAM**



**Government of Assam  
Department of Public Enterprises  
Block-C, 3<sup>rd</sup> Floor, Dispur, Guwahati-6**

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## INTRODUCTION

The State Level Public Enterprises (SLPEs) were created to exploit natural resources of the state, to produce goods & services, to implement development scheme with the objectives for revenue generation, employment generation etc. and to fulfil social objectives.

There are 38 SLPEs of which 6 enterprises are under service sector, 5 under trade sector, 4 under welfare sector, 11 under promotional sector, 10 under production sector and 2 under construction sector. Twenty nine of these SLPEs were registered under Companies Act, 1956, 3 under Co-operative Societies Act, 1949 and remaining 6 enterprises were under their specific Statutory Acts.

To take corrective measures for better performance of the SLPEs and for proper financial management, some of the measures were already taken by the State Govt. such as selection of top level executives in the SLPEs through Public Enterprise Selection Board (PESB), approval of proposal for investment of fund in the SLPEs for an amount of more than 2.00 crore through Public Investment Board (PIB), introduction of MOU system in the SLPEs and procedure to be followed for selection of directors in the BOD etc.

The SLPEs are governed by the Companies Act, 1956, Co-operative Societies Act, 1949 & Statutory Acts, Administrative Ministries, RTI Act 2005 etc.

Department of Public Enterprises, Govt. of Assam in November, 2011 issued guidelines on the composition of Board of Directors (BODs), holding of BOD meetings and function of BODs.

Now with the objectives of commitment to values, ethics business conduct for ensuring higher level of transparency, Govt. felt the necessity for issue of Good Corporate Governance guidelines and decided to make these guidelines mandatory and applicable to all SLPEs.

**CHAPTER—I**  
**CORPORATE GOVERNANCE**

1.1 Corporate Governance refers to the Structure & Process for the direction and control of the Corporate bodies. It is a set of relationships between a company's management, its Board, its shareholders and other stakeholders. Corporate Governance provide guidelines for both listed and non listed companies regarding accountability at each level through which objectives of the company, means of attaining objectives, system of monitoring performance can be obtained. Through Corporate Governance the shareholders of the company as true owner of the company can have their inalienable rights and may play their own role as trustees. Corporate Governance principles & guidelines are equally effective in Statutory Corporation also.

Four key elements of Good Corporate Governance are :

- (i) Good Board Practices, Structure and Composition.
  - (ii) Appropriate Control Environment & Processes.
  - (iii) Strong Regime of disclosure & transparency.
  - (iv) Strong Commitment to Corporate Governance Reforms.
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## CHAPTER--2

### APPLICABILITY OF GUIDELINES

- 2.1 The SLPEs listed on Stock Exchanges have to follow the SEBI Guidelines on Corporate Governance. In addition, they shall follow those provisions of Guidelines of Corporate Governance which do not exist in the SEBI Guidelines.
- 2.2 Each SLPEs should strive to institutionalize good Corporate Governance practices broadly in conformity with SEBI Guidelines. The non-listed SLPEs shall follow the Guidelines on Corporate Governance given in the subsequent chapters, which are mandatory.
- 2.3 The guidelines on Corporate Governance for listed and unlisted SLPEs are given under following heads in subsequent chapter.
  - Board of Directors
  - Audit Committee
  - Remuneration Committee
  - Subsidiary Companies
  - Disclosures
  - Report, Compliance and Schedule of Implementation

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## CHAPTER 3

### BOARD OF DIRECTORS

#### 3.1 Composition of Board:

- 3.1.1. The Board of Directors / Board of Management / Managing Committee shall have an optimum combination of functional, nominee and independent directors.
- 3.1.2. The number of functional directors (including CMD / MD) should not exceed 50% of the actual strength of the Board / Committee.
- 3.1.3. The number of nominee directors appointed by the Government / other PSUs shall be restricted to a maximum of two.
- 3.1.4. In case of PSUs listed in the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman, the number of independent directors shall be at least 50% of Board members and in case of other PSUs at least one-third (1/3) of the Board members should be independent directors. The expression 'independent director' shall mean a part time director of a company who:
  - a) apart from receiving the Director's remuneration does not have any material & pecuniary relationship or transaction with the company, its Directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the Director;
  - b) is not related to persons occupying management position at the board level or at the one level below the Board,
  - c) has not been a senior executive or managerial personnel of the company in the immediately three financial year,
  - d) is not a partner or an executive during the preceding three years of any of the following:
    - i) the statutory audit firm or the internal audit firm or tax audit firm or energy audit firm or risk audit firm or insurance audit firm that is associated with the company.
    - ii) the panel advocate (s) or legal firm (s) or consulting firm (s) or expert (s) that have a material association with the company.
    - iii) is not a material supplier, service provider or customer or a lesser or lessee of the company which may affect the independence of the director.
    - iv) is not a substantial shareholder of the company i.e. owning 2 percent (%) or more of the block of the voting shares.

### 3.2 Part time Director's compensation and disclosures:

All fees / compensation, if any, paid to the part time directors including independent directors shall be fixed by the Administrative Departments / Board of Directors subject to the provisions of the guidelines issued by the Public Enterprises Department, Govt. of Assam and the provisions of the Act under which it was registered and the internal rules & regulations of the PSUs.

### 3.3 Other provisions as to Board and Committees

3.3.1 **No. of Board Meetings:** The Board / Committee shall meet at least once in three calendar months and at least 4 such meetings shall be held every year. Further, the time gap between any two meetings should be not more than three months. If there is no constituted Board in existence, the Board should be constituted immediately.

3.3.2 A Director shall not be a member in more than 10 committees or act as Chairman of more than five committees across all companies in which he is a Director.

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

### 3.4 Code of Conduct

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

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

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

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

**Directors.** The Board of each SLPE may be encouraged to articulate its Corporate Governance objectives and approach (within the broad parameters of these guidelines and the general perception of business risk) to satisfy the expectations of its majority shareholders and other stakeholders.

### **3.5 Functional Role Clarity between Board of Directors and Management**

The Board should have a formal statement of Board Charter which clearly defines the roles and responsibilities of the Board and individual Directors.

### **3.6 Risk Management**

Enterprise risk management helps management in achieving SLPE's performance and profitability targets. It helps to ensure effective reporting and compliance with laws and regulations and help avoid damage to the entity's reputation and associated consequences. The Board should therefore ensure the integration and alignment of the risk management system with the corporate and operational objectives and also that risk management is undertaken as a part of normal business practice and not as a separate task at set times.

### **3.7 Training of Directors**

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

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## CHAPTER 4

### AUDIT COMMITTEE

#### 4.1 Qualified and Independent Audit Committee

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

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

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

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

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

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

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

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

4.2.1 Oversight of the Company's financial reporting process and the disclosure of its financial information to ensure that the financial Statement is correct.

4.2.2 Recommending to the Board the fixation of audit fees.

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

4.2.4 Reviewing, with the management, the annual financial statements before submission to the Board for approval.



- 4.2.5 Reviewing, with the management, the quarterly financial statements before submission to the Board for approval.
- 4.2.6 Reviewing, with the management, performance of internal auditors and adequacy of the internal control systems.
- 4.2.7 Reviewing the findings of any internal investigations by the internal auditors/auditors/agencies into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board.
- 4.2.8 Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
- 4.2.9 To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.
- 4.2.10 To review the functioning of the Whistle Blower Mechanism.
- 4.2.11 To review the follow up action on the audit observations of the C&AG Audit.
- 4.2.12 To review the follow up action taken on the recommendations of Committee on Public Undertakings (COPU) of the Assembly.
- 4.2.13 Review all related party transactions in the company. For this purpose, the Audit Committee may designate a member who shall be responsible for reviewing related party transactions.

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

### 4.3 Powers of Audit Committee

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

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

#### 4.4 Meeting of Audit Committee

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

#### 4.5 Review of information by Audit Committee

The Audit Committee shall review the following information:

- (i) Management discussion and analysis of financial condition and results of operations;
  - (ii) Statement of related party transactions submitted by management;
  - (iii) Management letters / letters of internal control weaknesses issued by the statutory auditors;
  - (iv) Internal audit reports relating to internal control weaknesses;
  - (v) The appointment and removal of the Chief Internal Auditor shall be placed before the Audit Committee; and
  - (vi) Certification/ declaration of financial statements by the Chief Executive/ Chief Finance Officer.
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## CHAPTER 5

### REMUNERATION COMMITTEE

- 5.1 Each SLPE shall constitute a Remuneration Committee comprising of at least three Directors, all of whom should be part-time Directors (i.e Nominee Directors or Independent Directors). The Committee should be headed by an Independent Director. SLPE will not be eligible for Performance Related Pay unless the Independent Directors are on its Board. Remuneration Committee will decide the annual bonus/variable pay pool and policy for its distribution across the executives and non unionized supervisors, within the prescribed limits.
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## CHAPTER 6

### SUBSIDIARY COMPANIES

- 6.1 At least one Independent Director on the Board of Directors of the holding company shall be a Director on the Board of Directors of its subsidiary company.
- 6.2 The Audit Committee of the holding company shall also review the financial statements of its subsidiary company.
- 6.3 The minutes of the Board meetings of the subsidiary company shall be placed at the Board meeting of the holding company. The management should periodically bring to the attention of the Board of Directors of the holding company, a statement of all significant transactions and arrangements entered into by its subsidiary company.

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

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## CHAPTER 7

### DISCLOSURES

#### 7.1 Transactions

- 7.1.1 A statement in summary form of transactions with related parties in the normal and ordinary course of business shall be placed periodically before the Audit Committee.
- 7.1.2 Details of material individual transactions with related parties, which are not in the normal and ordinary course of business, shall be placed before the Audit Committee.
- 7.1.3 Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit Committee, together with Management's justification for the same.

#### 7.2 Accounting Standards

- 7.2.1 Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation in the Corporate Governance Report as to why it believes such alternative treatment is more representative of the true and fair in view of the underlying business transaction.
- 7.2.2 All SLPEs shall prepare consolidated financial statements as per Accounting Standards, namely, AS21, AS23 and AS27 issued by the Institute of Chartered Accountants of India (ICAI) in relation to the Consolidation of Financial Statements to give true and fair view of its financial position and working result.
- 7.2.3 All SLPEs are required to publish segment wise profit and loss as per Accounting Standard 17 "Segment Reporting" for which is necessary for meeting the needs of users of financial statements.

#### 7.3 Board Disclosures --Risk management

- 7.3.1 The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.
- 7.3.2 The Board should implement policies and procedures which should include:
- (a) Staff responsibilities in relation to fraud prevention and identification
  - (b) Responsibility of fraud investigation once a fraud has been identified

- (c) Process of reporting on fraud related matters to management
- (d) Reporting and recording processes to be followed to record allegations of fraud
- (e) Requirements of training to be conducted on fraud prevention and identification.

#### 7.4 Remuneration of Directors

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

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

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

#### 7.5 Management

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

- i. Industry structure and developments
- ii. Strength and weakness
- iii. Opportunities and Threats
- iv. Segment<sup>2</sup>wise or product-wise performance
- v. Outlook
- vi. Risks and concerns
- vii. Internal control systems and their adequacy
- viii. Discussion on financial performance with respect to operational performance
- ix. Material developments in Human Resources, Industrial Relations front, including number of people employed.
- x. Environmental Protection and Conservation, Technological conservation, Renewable energy developments, Foreign Exchange conservation.
- xi. Corporate social responsibility.

7.5.2 Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the company

## CHAPTER 8

### REPORT, COMPLIANCE AND SCHEDULE OF IMPLEMENTATION

#### 8.1 Report on Corporate Governance

There shall be a separate section on Corporate Governance in each Annual Report of company, with details of compliance on Corporate Governance.

#### 8.2 Compliance

8.2.1 The company shall obtain a certificate from either the auditors or practicing Company Secretary regarding compliance of conditions of Corporate Governance as stipulated in the guideline .

8.2.2 Chairman's speech in Annual General Meeting should carry out a section on compliance of Corporate Governance guidelines/ norms.

#### 8.3 Schedule of implementation

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

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

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