

Chapter II
**Corporate Governance
and Planning**

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During the period 2014-21, GoM did not appoint seven out of 15 members to the Board of MIDC. The Board of MIDC took important decisions having financial implications overriding the extant rules/policy in cases of land allotment, levy of lease premium/transfer charges/extension charges and sub-letting charges in favour of private parties. Relaxation in rules/policies on a case to case basis, lacked transparency and brought in arbitrariness in decision making and governance-causing loss to public exchequer.

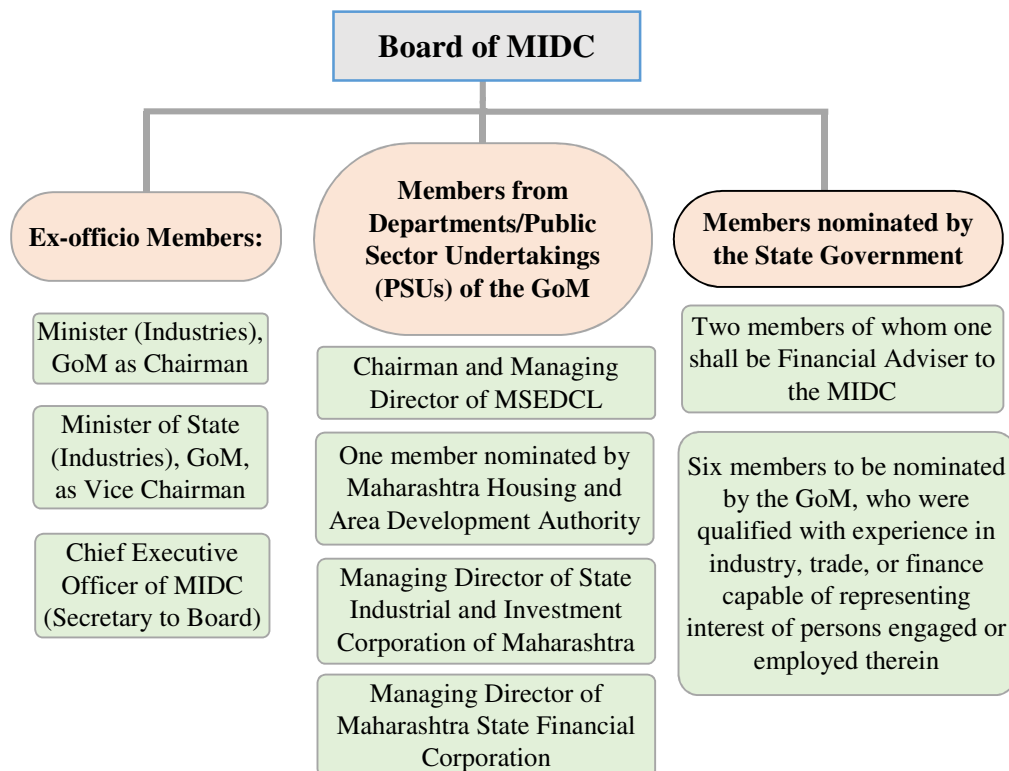
MIDC did not formulate any programme/plan for achievement of targets set in the State Industrial Policy (SIP). MIDC also did not have a perspective plan for land acquisition, development and allotment activities in Industrial Areas (IAs) detailing physical targets to be achieved. Land acquisition and industrial development activities of MIDC, thus, did not emerge out of a systematic and comprehensive plan. In the absence of any physical targets, there was no benchmark to assess performance of MIDC.

2.1 Corporate Governance

As per Section 3(2) the MID Act, MIDC shall be a body corporate with perpetual succession. As per Section 4 of the MID Act, MIDC shall consist of 15 members (herein referred to as Board²) as depicted in the **Chart 2.1**.

² As per MID Act, Board is not defined, however, meetings of the Members are being referred as meetings of the Board by MIDC.

Chart 2.1: Composition of Board of MIDC



Audit observed lack of effective corporate governance in the following areas:

Non-appointment of members

2.1.1 During the period 2014-21, the Board comprised of only eight³ members. Other seven members (six members to be nominated by GoM and one member as a Financial Advisor of MIDC) were not appointed to the Board. It is pertinent to note that Section 9 of the MID Act stipulated that any vacancy of a member of the MIDC shall be filled as early as practicable, which was, thus, not ensured.

GoM stated (December 2021) that action for appointment of members of MIDC would be taken as per provisions of the MID Act.

Recommendation No. 1: GoM may ensure that vacancies of Board members of MIDC are filled up without delay.

³ Chairman, Vice-Chairman, CEO of MIDC; Principal Secretary (Industries), GoM; Chairman and Managing Director of Maharashtra State Electricity Distribution Company Limited, nominated member of Maharashtra Housing and Area Development Authority and Managing Directors of State Industrial and Investment Corporation of Maharashtra Limited and Maharashtra State Financial Corporation.

Decisions of MIDC overriding laid down policies and Regulations

2.1.2 As per section 64 (1) of the MID Act, 1961, the MIDC may, with the previous approval of the State Government, make Regulations consistent with this Act and Rules made thereunder, to carry out purposes of this Act. Accordingly, MIDC with previous approval (January 1975) of GoM, framed MIDC Disposal of Land Regulations, 1975 (MIDC DLR) in exercise of powers granted under section 64 (1) of the Act, which were applicable to all lands transferred to or placed at disposal of MIDC by State Government. Further, as per Regulation 35 of MIDC DLR, MIDC may delegate any of its powers under these regulations to the CEO or any other officer for efficient working and for the purpose of achieving the objects of the Act.

As per provisions of MIDC DLR, MIDC was empowered to allot plots (Regulation 8 and 12) and grant permission for transfer/subletting (Regulation 29) to an allottee on recovery premium/charges as fixed by MIDC from time to time. Further, MIDC was entitled to resume possession of plot in case of contravention of any terms and condition of agreement to Lease by an allottee (Regulation 17). In this regard, MIDC had issued various policy circulars, whereby powers were delegated to the CEO/Joint CEO/Deputy CEO/Regional Officers (including committees constituted under their chairmanship) for allotment of land and granting permission of transfer/subletting/time limit extension to an allottee subject to fulfilment of laid down conditions and levy/recovery of prescribed premium/charges.

Audit, however, observed that the Board of MIDC as well as Chairman, MIDC and CEO took important decisions having financial implications-overriding the extant rules/policy in cases of land allotment, levy of lease premium/transfer charges/extension charges and sub-letting charges which led to undue benefit to various private parties. Relaxation in rules/policies on a case-to-case basis, lacked transparency and brought in arbitrariness in decision making and governance-causing loss to public exchequer as discussed *infra* in paragraphs 4.2.5, 4.2.7, 4.2.9, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.2.1, 5.2.2.1, 5.2.2.2, 5.2.3 and 5.2.4.

2.1.3 The statutory mandate of MID Act and MID DLR has to be followed by MIDC while making allotment of land. As per Regulation 10 of MIDC DLR, on receipt of any application for allotment of land, the CEO shall make such enquiries as he deems necessary and place it before the Land Allotment Committees (LCs) with his recommendations and LCs may either sanction or reject such application.

The MIDC DLR does not mention any provision regarding composition/constitution (members, chairman *etc*) of LCs. MIDC issued policy circulars whereby LCs were constituted at Head Office and Regional Office level and composition (members/chairman) of LCs were laid down. The LCs at Head Office and Regional Office level, under the chairmanship of Joint Chief Executive Officers/ Deputy Chief Executive Officers and Regional Officers respectively, were granted powers of land allotment depending upon extent of area of the plot to be allotted.

The LCs were thus empowered to allot available plots considering prevailing policies, viability of projects, projected investment and employment, availability of land *etc.*

Audit observed that land allotment in five cases⁴ were placed before the LCs in accordance with the directions of the Chairman MIDC; while 100 cases⁵ were on directions/approval of the Board, as discussed *infra*. Thus, land allotments in these 105 cases vitiated the laid down procedures and authority granted to LCs under Regulation 10 of MIDC DLR.

MIDC stated (December 2021) that;

- As per clause 15(a) of the MID Act, the MIDC shall have the power to acquire and hold such property, both movable and immovable as the MIDC may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by the MIDC on such conditions as may be deemed proper by the MIDC. As per clause 15(k), the MIDC has the power to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and carrying into effect the purpose of this Act. In essence, the Board of Directors (BoDs) is the MIDC as per Sections 2(d), Section (3) and Section (4) with full authority under Sections 14 and 15 for allotment of property or undertaking any activity which it deems fit for fulfilling its duties as per the Act. Although, some power is delegated to administration, it doesn't preclude the MIDC from allotment of land to any investor or to decide matters placed before it to serve the purpose of the Act.
- The policy framework is put in place so that delegated powers of the MIDC are exercised in an efficient and systematic manner. However, as the industrial ecosystem is essentially complex in nature in which all situations cannot be reflected in policies, thus necessitating customised solutions. MIDC has to act in a collective wisdom to respond to emerging scenario to the investors to give customised solution to maintain the momentum of business in the State. To create this balance, MIDC does take decisions from time to time to relax such conditions in the policies of priority allotment/auction policy/expansion policy/time extension policy, *etc.* based on local needs and demands and to maintain inclusive development. It is this proactive decision making, which has put the State at forefront in the industrial scenario in India. In the light of above discussion, Board decision making needs to be seen and to be considered.

MIDC further stated (August 2022) that the policy decisions and all other decisions taken are as per the policy in its meeting upholding the objective of securing orderly establishment of industrial areas and industries in the State of Maharashtra. After thorough discussion of all agenda, resolutions get passed unanimously, as such transparency gets maintained and the areas/situation wherein industries face problems and need solution get addressed in the meetings of the Corporation. It was further stated that verdicts pronounced by

⁴ Refer para 4.2.2.

⁵ Refer para 4.2.1, 4.2.3, 4.2.4, 4.2.5, 5.1.2 and 6.4.2.

the courts of Law are binding on MIDC and the Supreme Court of India and Bombay High Court have upheld policy/ decisions taken by the MIDC.

Reply is not tenable for reasons stated below:

- As per Section 2(d) of the MID Act, Corporation means MIDC established under Section 3. Section 4 merely laid down composition of its members. As per Section 66 of MID Act, all members, officers and servants of the MIDC shall, when acting or purporting to act in pursuance of any of the provisions of this Act, be deemed to be public servants⁶. Thus, contention of the management that 'the BoD is the MIDC' is not correct considering that its members are deemed as public servants and not MIDC *per se*. It is also pertinent to note that MID Act has not defined the term 'Board' nor laid down powers of members of the MIDC.
- Powers granted to MIDC under Section 15 of the MID Act must be strictly exercised in accordance with express provisions of Act, Rules/Regulations and laid down policies without any deviations/discrimination. Contention of MIDC regarding relaxation of policies in certain cases depending on prevailing circumstances/situations was against the mandate of Article 14 (equality before law) of the Constitution of India. Further, Regulations specifically empowered CEO/LCs to take decisions of land allotment and not to the Board.
- Decisions of MIDC which were in deviation from extant policies/statutory provisions and hence lacked transparency have been noticed during Audit as referred above. As such, contention of MIDC that decisions of MIDC were as per the policies and transparent, was factually incorrect.
- In this regard, Supreme Court of India and High Courts through various judgements have laid down principles for exercise of power by the State/ Statutory Authorities like MIDC as well as Board in disposal of public property. As such, contention of MIDC regarding courts upholding various decisions was also factually incorrect. Some relevant court judgments in this regard are discussed below:
 - In two cases of land allotment by MIDC, the Bombay High Court held (February 2014⁷/June 2016⁸) that allotments made in violation of prevailing policies/procedures of MIDC were illegal/unlawful. The Bombay High Court while taking a serious view (February 2014) on Board's decision by overruling the views of the management had observed that 'MIDC must strictly abide by its policy and circulars issued and in force so also the mandate of Article 14 of the Constitution of India and act fairly, reasonably and in a non-arbitrary and non-discriminatory'.
 - Earlier, in another case⁹, the Bombay High Court had granted (February 2010) an order whereby a decision/resolution of MIDC Board related to allotment of land was quashed and set aside on the grounds of being arbitrary, unreasonable and against principles of natural justice and fair play. It was

⁶ Public servant within the meaning of Section 21 of Indian Penal Code.

⁷ Real Team Systems Private Limited *versus* the State of Maharashtra (Chikalthana IA).

⁸ Somnath Gangadhar Karale *versus* the State of Maharashtra (Nagapur-Ahmednagar IA).

⁹ Patni Computers System Limited *versus* MIDC.

further observed that being an instrument of the State, it must have its actions judged on the criteria of being fair, bona-fide and unbiased.

Recommendation No. 2: MIDC may ensure strict implementation of regulations and laid down policies in land allotment and recovery of charges.

2.2 Planning

The GoM had formulated a State Industrial Policy (SIP), 2013, which was valid for the period up to March 2019. Subsequently, new SIP, 2019 was declared (March 2019) by the GoM, which was valid for a period of five years (April 2019 to March 2024).

Lack of system to correlate/monitor achievement of State Industrial Policies

2.2.1 The SIP, 2013, *inter alia*, focused more attention on less developed regions of the State to bring them on par with mainstream industrial development, initiatives to encourage employment intensive industries, optimal utilisation of land for industrial development and strengthening of industrial infrastructure *etc.* Further, specific targets¹⁰ were set under SIP, 2013 for manufacturing sector growth, job creation and investment in the State. MIDC was directed to make efforts to acquire additional land, where 75 per cent plots have been allotted in the existing IAs. Audit, however, observed that MIDC had neither formulated any programme/plan for achievement of targets set in the SIP nor devised any system for monitoring/reporting progress and to review gaps in identified focus areas.

The SIP, 2019 stipulated 12 issues for implementation with regards to MIDC as shown below:

<ul style="list-style-type: none"> Promote setting up of flatted galas for the micro and small enterprises under Special Purpose Vehicle model; 	<ul style="list-style-type: none"> Considering the upcoming futuristic Industry 4.0 and hi-tech projects such as air taxi, drone, driverless vehicles, <i>etc.</i> necessary industrial infrastructure shall be planned; 	<ul style="list-style-type: none"> Creation of land bank across the State based on demand assessment considering the future industrial land requirement to facilitate ₹ 10 lakh crore of investment; 	<ul style="list-style-type: none"> Land owned by State Government or State Government organisation if required by MIDC for planned development will be made available at no cost;
<ul style="list-style-type: none"> Reserve minimum 500 acre industrial area for development of warehousing and logistics facilities in the State); 	<ul style="list-style-type: none"> Setup a dedicated Biotechnology Parks at suitable locations in the state (Aurangabad, Nagpur, Nashik and Pune among others); 	<ul style="list-style-type: none"> In new MIDC industrial estates, 20 per cent area shall be reserved for Small and Medium Enterprises (MSMEs) with reservations for entrepreneurs from SC/ST category, Ex-servicemen, women and industrial units of women's Savings Groups, for which modifications will be made in the Land Allocation Rules of MIDC; 	<ul style="list-style-type: none"> Develop State of the art Exhibition cum Convention Center at the appropriate location in the State;

¹⁰ To achieve manufacturing sector growth rate of 12-13 per cent per annum and share of 28 per cent of State GDP, create new jobs for two million persons and attract investment of ₹ 5 lakh crore.

<ul style="list-style-type: none"> • For units that are closed for a continuous period of more than 5 years and have a minimum of 20,000 sqm contiguous land in MIDC areas shall be allowed to develop such land for setting up industrial cluster; 	<ul style="list-style-type: none"> • In order to promote walk to work concept and decongest the cities, satellite offices shall be developed in the State for which MIDC shall be the planning authority; 	<ul style="list-style-type: none"> • 'Excluding Urban Local Bodies Area', MIDC shall be declared the Special Planning Authority (only for permission purposes and no infrastructure support shall be provided by MIDC in such areas) for industrial land above 10 acre for multiple industrial units with single developer for a contiguous land of more than 10 acre and for all the Industrial clusters approved under Government of India and State Government schemes; and 	<ul style="list-style-type: none"> • MIDC shall be the planning authority for these private industrial estates with focus on MSMEs.
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Audit observed that MIDC had implemented (August 2019) only two of the 12 issues of SIP, 2019 which were relating to reserving land for development of warehousing and logistics facilities in the State and reservation of plots for Micro, MSMEs entrepreneurs.

MIDC in its reply (August 2022) while elaborating on action taken in respect of only one issue (development of warehousing and logistics facilities) stated that observation of the audit is noted and suitable proposal for preparation for policy will be submitted before Board for taking suitable decision.

Absence of Perspective Plan

2.2.2 MIDC manual provided for preparing a Perspective Plan (PP) covering a five-year plan period of the State Plan. Further, depending upon potential of various locations in the developing parts of the State, Annual Plan (AP) was to be worked out for acquisition and development of land at various locations. The SIP, 2019 declared (March 2019) by the GoM also provided that MIDC would continue to be the dedicated agency for developing industrial infrastructure. Further, it shall plan and develop new industrial estates and prepare PP in order to promote systematic and regionally balanced industrial development across the State in the next five to 10 years, including initiatives to promote green industrialization in these areas.

Audit observed that during the audit period MIDC did not prepare a Perspective Plan for land acquisition, development and allotment activities and to upgrade infrastructure facilities in IAs detailing physical targets to be achieved. Land acquisition and industrial development activities of MIDC, thus, did not emerge out of a systematic and comprehensive plan. In the absence of any physical targets, there was no benchmark to assess the performance of MIDC.

MIDC stated (December 2021) that it was in the process of preparing a perspective five-year plan for systematic and regionally balanced industrial development across the State.

Recommendation No. 3: MIDC may prepare Perspective Plan and Annual Plan as per the SIP, quantifying physical targets to be achieved.

