

Chapter III

Corporate Governance

Chapter - III

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3.1 Introduction

Provisions as contained in the Companies Act, 2013

3.1.1 The Companies Act, 2013 (The Act) was enacted on 29 August 2013 replacing the Companies Act, 1956. In addition, in the year 2014, the Ministry of Corporate Affairs (MCA) has also notified various Rules⁴⁵ (as amended from time to time) on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its powers and Accounts.

The Act, along with the Rules, provides a robust framework for corporate governance. Subject to fulfilment of specified criteria, the requirement *inter-alia* provides for:

- Having minimum number of directors on Board;
- Mandatory appointment of independent directors on Company's Board, their training, and their participation in meetings;
- Mandatory appointment of women director on Company's Board;
- Mandatory establishment of Board Sub Committees like Audit Committee, Nomination and Remuneration Committee, etc;
- Minimum number of meetings to be held every year and timeline thereon; and
- Management and administration of matters like maintenance of registers, filing of annual returns, etc.

MCA has been issuing orders/circulars amending the rules from time to time (June 2015 / July 2017 / Jan 2019 etc.) and has been exempting Government Companies from applicability of certain provisions of the Act or as modified.

SEBI guidelines on Corporate Governance

3.1.2 After enactment of the Act, Securities and Exchange Board of India (SEBI) revised the Clause 49 of the listing agreement containing the provisions of Corporate Governance. The compliance to these provisions was mandatory for listed entities vide its circulars dated 17 April 2014 and 15 September 2014.

On 02 September 2015, SEBI also notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and further issued a uniform listing agreement format (February 2023) for all types of securities which required the

⁴⁵ (i) Companies (Management and Administration) Rules, 2014, (ii) Companies (Appointment & Qualification of Directors) Rules, 2014, (iii) Companies (Meetings of Board and its powers) Rules, 2014 (iv) Companies (Accounts) Rules, 2014 etc.

listed entity to comply with the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

DPE guidelines on Corporate Governance

3.1.3 As per the recommendations (Feb 2021) of the Cabinet Sub Committee, Government of Karnataka has abolished (May 2022) the Department of Public Enterprises (DPE) and all those matters handled by DPE were either aligned to or merged with Finance Department. Consequent to merger, no comprehensive guidelines have been issued by Finance Department on Corporate Governance until March 2023 except for a circular issued in January 2023 regarding fixation of timeline for finalisation of accounts and holding annual general meeting by September every year.

Review of compliance by selected SPSEs of the Corporate Governance provisions

3.1.4 As of 31 March 2023, there were 127 SPSEs in Karnataka under the audit jurisdiction of the CAG, consisting of six Statutory Corporations and 121 Government / Government Controlled Companies (including fourteen inactive companies) with The Mysore Paper Mills Limited, being the only Company listed on Stock Exchange. Of these, **26 unlisted** Government⁴⁶ / Government Controlled Companies⁴⁷ (**Appendix - 9**) under the administrative control of various departments were selected⁴⁸ for review of compliance with the Corporate Governance provisions based on the fulfilment of at least one criteria applicable in relation to constitution of Board/Committees and establishment of internal audit mechanism, as indicated in **Table No. 3.1** below:

Table No. 3.1: Statement of applicable criteria for compliance

Sl. No.	Category	Paid Up Capital	Outstanding Loans	Turnover
1	Independent Directors	₹ 10 Cr and above	₹ 50 Cr and above	₹ 100 Cr and above
2	Audit Committee			
3	Nomination and Remuneration Committee			
4	Women Directors	₹ 100 Cr and above	---	₹ 300 Cr and above
5	Internal Audit	₹ 50 Cr and above	₹ 100 Cr and above	₹ 200 Cr and above

Source: Data compiled by Audit

Audit findings on compliance with Corporate Governance provisions are stated in succeeding paragraphs.

⁴⁶ Includes two SPSEs (DUBCDCL and KRIDL) registered as Private Limited Companies.

⁴⁷ Registered as non-government Companies.

⁴⁸ Companies whose financial statements for the year 2021-22 have been certified as at end of review period September 2023.

3.2 Matters relating to incorporation of the company

Memorandum and Articles of Association (MOA/AOA)

Adoption of specified formats

3.2.1 Section 4 (6) and Section 5 (6) of the Act states that the memorandum and articles of association of a company shall be in formats specified in Table A and Table F respectively in Schedule I to the Act as applicable to Company limited by shares.

Seven SPSEs (BESCOM, KSDL, KSMCL, HGML, KRDCCL, KNNL and KFCSC) had complied with the statutory provisions by altering their MOA/AOA to adopt specified format. The following instances of non-compliance / inadequate compliance were noticed in MOA/AOA of the remaining 14 SPSEs:

- Consequent to enactment of the Act, MOA / AOA of 12 existing SPSEs⁴⁹ were not amended to incorporate changes required or to adopt the applicable forms (Form A and Form F) specified in the first schedule to the Act.
- One SPSE (MSIL) altered only the AOA during October 2019 and did not carry out necessary changes required to alter references to provisions of the old Act in MOA.
- One SPSE (KSIIDC) did not alter its AOA to adopt Form F.

Disclosure of alterations made in MOA / AOA

3.2.2 Section 15 (1) of the Act stipulates that every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

Two instances of inadequate compliance with relevant provisions were noticed:

- The reference to the resolution of alteration made (April 2022) to Article 6 of AOA was erroneously noted under Article 8 instead of Article 6 by one SPSE (DUBCDCL).
- In another instance, the reference to the special resolution, passed (Sept 2019) for alteration of all clauses of AOA was noted in the copy of MOA instead of the copy of AOA by one SPSE (BESCOM).

Disclosures relating to registered office of the company

3.2.3 Section 12 (3) (a) of the Act stipulates that every Company shall paint or affix its name, and the address of its registered office, and keep the same painted

⁴⁹ KPCL, KPTCL, HESCOM, MESCOM, CESC, GESCOM, KBJNL, CNNL, KEONICS, KRIDL, DUBCDCL and RPCL.

or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters.

Eight SPSEs (KPTCL, BESCO, HESCO, DUBCDCL, KSMCL, KBJNL, CNNL and VJNL) have failed to affix or display such boards, as the boards did not contain the address of their registered offices.

3.2.4 Section 12 (3) (c) of the Act states that every Company shall get its name, address of its registered office and the Corporate Identity Number (CIN) along with telephone number, fax number, if any, e-mail, and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications.

Verification of letterheads obtained from SPSEs with reference to the above requirements revealed following deficiencies:

- One SPSE (KFCSCCL) has a website but the same was not mentioned in the letterhead.
- Contact details like email address and / or telephone numbers were not disclosed in letterheads of four SPSEs (RPCL, KSMCL, KNNL and KEONICS).
- Letterheads of three SPSEs (DUBCDCL, KRIDL and KFCSCCL) did not mention corporate identification number (CIN).

3.3 Composition of Board

Board of Directors, the collective body of the directors of the company, is the most significant instrument of corporate governance. The Board of Directors of a company is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do, subject to the provisions in the Act, or in the memorandum or articles, or in any regulations including regulations made by the company in general meeting (Section-179 of the Act).

Stipulated minimum number of directors

3.3.1 Section 149 (1) (a) of the Act stipulates that every company shall have a Board of Directors consisting of a minimum of three directors in case of a public company and a minimum of two directors in case of a private company. Maximum limit of 15 directors stipulated under the provision of Section 149 (1) (b) of the Act is not applicable⁵⁰ to Government Companies.

All 26 SPSEs have complied with the requirements by having a minimum of two or three directors on their Boards.

⁵⁰ As per the notification dated 05.06.2015 issued by MCA.

Independent Directors

3.3.2 Rule 4 (1)⁵¹ of Companies (Appointment & Qualification of Directors) Rules, 2014 read with Section 149 (4) of the Act requires every Public Company having (i) paid-up share capital of ₹ ten crore or more or (ii) turnover of ₹ one hundred crore or more or (iii) an aggregate outstanding loan, debentures and deposits exceeding ₹ fifty crore to have a minimum of two independent directors on its Board. Rule 4 (1) also states that if composition of the Audit Committee of such Company requires more number of independent directors, same shall be applicable.

As per section 149 (12) of the Act, an independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. The Ministry of Corporate affairs has clarified (vide circular dated 2 March 2020) that ordinarily a whole time director and a key managerial person associated with the day to day functioning of the company would be liable for the defaults committed by the company and in view of the express provisions of Section 149(12) of the Act, independent Directors should not be arrayed in any criminal or civil proceedings, under the Act unless the above mentioned criteria is met.

As per Rule 4(2) certain class of unlisted public companies (joint ventures, wholly owned subsidiaries and dormant companies as defined under Section 455 of the Act) are not covered⁵² by Rule 4 (1) and need not appoint independent directors.

The administrative Department appointed 44 independent directors on the boards of the 16 SPSEs. Two SPSEs (DUBCDCL and KRIDL) are not covered by Rule 4 (1) having registered as a private limited company. One SPSE (RPCL), a joint venture company, has complied with Rule 4 (1) by having two independent directors as composition of its Audit Committee required appointment of independent directors.

Eight SPSEs (KSMCL, HGML, KSIIDC, KRDL, BSCL-Belagavi, KEONICS, KFCSCCL and CBIC-Tumkur) did not have independent directors on their Boards. One SPSE (KSDL) had only one independent director on Board and did not comply with requirement of minimum number of two independent directors on its Board.

Women Directors

3.3.3 Rule 3 of Companies (Appointment & Qualification of Directors) Rules, 2014 read with Section 149 (1) of the Act requires every Company having a paid-up share capital of one hundred crore or more or turnover of three hundred crore or more to have at least one woman director on its Board.

One SPSE, KRDL did not have (March 2023) a woman director on their board.

⁵¹ Rule 4 was amended and renumbered as Rule 4 (1) vide notification dated 05.07.2017.

⁵² MCA General Circular 09/2017 dated 05.09.2017.

Director Identification Number

3.3.4 Every director shall have a distinctive Director Identification Number (DIN) allotted by the Central Government to comply with the provisions of Section 154 of the Act.

During the financial year 2022-23, DIN was not obtained for two directors of KRIDL.

Number of directorships

3.3.5 Section 165 (1) of the Act stipulates that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Two SPSEs (CESC and DUBCDCL) have stated that one director on their Board, is a director in more than ten public companies.

3.4 Appointment and functioning of Independent Directors***Issuance of formal letter of appointment and code of conduct***

3.4.1 Schedule IV Para (IV) (4) of the Act states that the appointment of independent directors shall be formalised through a letter of appointment which *inter-alia* sets out the terms of appointment, the duties, code of business ethics and remuneration, periodic fees, *etc.* Further, Schedule IV Para (IV)(6) of the Act stipulates that the terms and conditions of appointment of independent directors shall also be posted on the company's website.

The appointment of Independent directors on Boards of Government companies were made by the State Government and letters of appointment issued by the Government merely mentioned the status of appointment. The terms and conditions of appointment of independent directors were not posted on official website of SPSEs.

Declaration by Independent Directors

3.4.2 Section 149 (7) of the Act requires every independent director to give a declaration that he meets the criteria of independence as provided in sub-section (6) at the first meeting of the Board in which he participates as a director and thereafter, at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director.

It was stated by an SPSE (BESCOM) that an independent director did provide the declaration during the financial year 2022-23.

Appointment of Government Officers as Independent Directors

3.4.3 The purpose of appointing independent directors is to have check on the affairs of the company independent of the promoters and management.

24 independent directors in nine SPSEs⁵³ out of 44 independent directors appointed by Administrative Departments on the Boards of 16 SPSEs were officers on full time employment in Government of Karnataka (GoK) / Government Companies which is against the provisions and spirit of the Act on such matters.

On observing such instances, Finance Department, GoK has directed (September 2023⁵⁴) all Administrative Departments for immediate action for withdrawal of such nominations and appointment of new independent directors in compliance with the provisions of the Act.

Training of Independent Directors

3.4.4 One of the duties spelt out in Schedule IV Para (III) (1) of the Act is that the independent directors shall undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company. Accordingly, every company is required to provide suitable training to independent directors to familiarize them with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company etc.

Only two SPSEs (KSDL and BSCL-Bengaluru) have imparted training to independent directors.

Attending meeting of Board of Directors and Board Committees

3.4.5 Schedule IV Para (III) (3) of the Act stipulates that independent directors shall strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member.

Out of the 44 independent directors in 16 SPSEs, 24 independent directors in 15 SPSEs attended all the Board meetings and 20 independent directors in 12 SPSEs recorded an absenteeism ranging from 14 *per cent to 100 per cent* in Board meetings held during their tenure in financial year 2022-23 (Details in *Appendix - 10*).

Attending General Meetings of the company

3.4.6 Schedule IV Para (III) (5) of the Act stipulates that independent directors should strive to attend the Annual General Meetings (AGM) of the Company⁵⁵.

⁵³ KPCL(3), KPTCL(4), BESCO (3), HESCO (2), MESCOM (2), CESC (3), GESCOM (4), KSDL (1) and MSIL (2).

⁵⁴ Circular No FD 91 INV 2023 dated 12.09.2023.

⁵⁵ The provisions are not applicable to three independent directors in three SPSEs (KPCL, KPTCL and CESC) as they were appointed after the AGM was held during the year. Similarly, AGM of one SPSE (CNL) for financial year 2021-22, which had three independent directors, scheduled to be held during December 2022 stood adjourned until September 2023.

Out of 38 independent directors, 28 directors in 15 SPSEs attended the AGM and ten directors in eight SPSEs failed to attend the AGMs held during the financial year 2022-23 (Details in *Appendix - II*).

Resignation or removal of Independent Directors

3.4.7 As per Schedule IV Para (VI) (2) of the Act, an independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within three months from the date of such resignation or removal, as the case may be.

No instances of resignation were noticed as directors were appointed and removed / replaced by Government of Karnataka by Notification. Actions have been taken for new appointments, wherever independent directors were replaced in the Company.

Separate meetings of Independent Directors

3.4.8 Schedule IV Para (VII) (1) of the Act stipulates that, every financial year, the independent directors of the company shall hold at least one meeting, without the attendance of non-independent directors and members of management to assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties. Further, sub paragraph (2) states that all the independent directors of the company shall strive to be present at such meeting.

Independent directors of only one SPSE (CESC) held a separate meeting during the financial year 2022-23. In one SPSE (KSDL), there was no necessity to hold a meeting as there was only one independent director on Board.

3.5 Meetings of the Board

Holding Stipulated minimum number of Board Meetings

3.5.1 Section 173 (1) of the Act stipulates that every Company shall hold a minimum number of four meetings of its Board of Directors every year, in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Three SPSEs (DSCL, KEONICS and KFCSCCL) failed to comply with the requirements as only three Board meetings were held during the year.

In six SPSEs, Board meetings were held with a gap of more than 120 days as indicated in **Table No. 3.2** below:

Table No. 3.2: Details of Board meetings held with a gap of more than 120 days

Sl. No.	Company name	Date of previous meeting	Date of next meeting	Intervening gap in days	Remarks
1	Karnataka Road Development Corporation Limited	137 / 11.03.2022	139 / 29.08.2022	171	One meeting scheduled in July 2022 was not held due to lack of quorum
2	Krishna Bhagya Jala Nigam Limited	134 / 04.07.2022	135 / 28.11.2022	147	No reason given
3	Karnataka Neeravari Nigam Limited	99 / 04.07.2022	100 / 17.12.2022	166	No reason given
4	Cauvery Neeravari Nigama Limited	77 / 05.07.2022	78 / 30.12.2022	178	No reason given
5	Karnataka State Electronics Development Corporation Limited	204 / 21.10.2022	xxx	161	205 th Meeting not held till March 2023
6	Karnataka Food and Civil Supplies Corporation Limited	305/ 13.01.2022	306 /02.08.2022	201	No reason given

Source: Data compiled by Audit

Issue of notice for holding a Board meeting

3.5.2 As per Section 173 (3) of the Act, a meeting of the Board is required to be called by giving not less than seven days' notice in writing sent by hand delivery or by post or by electronic means. A meeting can be called at shorter notice, if at least one independent director is present. In the absence of independent director, the board decisions are final only on ratification by an independent director.

Audit analysis of 134 board meetings held by 26 SPSEs during the year revealed that:

- Only two SPSEs (DSCL and KEONICS) have held all their six (three each) board meetings by giving more than seven days prior notice.
- 77 board meetings out of remaining 128 meetings held by 24 SPSEs were with less than seven days prior notice and seven SPSEs (referred to in **Para 3.3.2**) of those 24 SPSEs did not have independent directors on their board to comply with the requirements.

Quorum in Board of Directors

3.5.3 As per Section 174 (1) of the Act, the quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher.

One SPSE (KRDCL) stated that its 138th Board meeting scheduled in July 2022 could not be held due to lack of quorum.

Vacation of office of Director due to absence in Board Meetings

3.5.4 As per Section 167 (1) (b) of the Act, the office of a director shall become vacant in case a director absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board.

Five directors in five SPSEs remained absent in all the board meetings held during the financial year 2022-23 as shown in **Table 3.3** below:

Table No. 3.3: Details of directors absent in all Board meetings

Sl. No.	Company name	No of Board meetings held during the year	No of Directors absent in all meetings
1	Karnataka Rural Infrastructure Development Limited	5	1
2	Karnataka Road Development Corporation Limited	4	1
3	Krishna Bhagya Jala Nigam Limited	5	1
4	Cauvery Neeravari Nigama Limited	5	1
5	Bengaluru Smart City Limited	4	1

Source: Data compiled by Audit

No action appears to have been taken on those directors (December 2023) as the list of directors furnished to audit indicates the status as “till date”. This implied that they continued to be on Board despite being absent from all the Board meetings held during the year.

Information to be placed before the Board

3.5.5 Part A of Schedule II to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with Regulation 17 (7) specifies the minimum information (on 15 matters) to be placed before the board of directors of listed companies.

An analysis of response from SPSEs to the checklist on corporate governance revealed that matters related to annual operating plans and budgets, capital budgets, proceedings of Board, sub-committees, recruitment and remuneration of senior officers below Board level, material default in financial obligations to and by the company are generally placed before the Board.

3.6 Committees of the Board

Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Section 177 (1) and Section 178 (1) of the Act requires Board of Directors of every Public Company having (i) paid-up share capital of ten crore or more or (ii) turnover of one hundred crore or more or (iii) an aggregate outstanding loan, debentures and deposits exceeding fifty crore to constitute an Audit Committee and a Nomination and Remuneration Committee (NRC) of the Board.

The above provisions were not applicable to two SPSEs (DUBCDCL and KRIDL), which are registered as private limited companies.

Audit Committee

Composition of Audit Committee

3.6.1 Section 177 (2) of the Act stipulates that the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. Further, majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

All 24 SPSEs had constituted Audit Committees wherein majority of members were persons with ability to read and understand the financial statements. However, Audit noticed the following:

- In One SPSE (BSCL-Belagavi), the Audit committee had only two directors.
- Eight SPSEs referred to in **Para 3.3.2**, did not have independent directors on their Boards to form part of Audit Committees.
- Further, independent directors did not form majority in the Audit Committees of four SPSEs (MESCOM, KSDL, CNNL, and BSCL-Bengaluru).
- One SPSE (KFCSCCL) did not disclose the composition of Audit Committee in the Board's Report prepared and placed before Annual General Meeting held during the year 2022-23 to comply with Section 177 (8) of the Act.

Terms of reference of Audit Committee

3.6.2 Section 177 (4) of the Act states that every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall *inter-alia* include certain matters, such as recommendation for appointment, remuneration and terms of appointment of auditors, reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process, evaluation of internal financial controls and risk management systems etc. Wherever the Board has not accepted any recommendation of the Audit Committee, the same shall be disclosed in Board's Report along with the reasons therefor as per Section 177 (8) of the Act.

Six SPSEs (KSDL, KSMCL, KSIIDC, KRDCCL, KEONICS and KFCSCCL) have not framed the terms of reference but claimed to have considered applicable matters specified under Section 177 (4) of the Act. One SPSE (GESCOM) stated that evaluation of internal financial controls and risk management systems have not been undertaken pending implementation of ERP.

All SPSEs stated that there were no instances of non-acceptance of Audit Committee recommendations by the Board.

Whistle Blower mechanism

3.6.3 (a) Rule 7 (1) of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Section 177 (9) of the Act stipulates that (i) all Listed Companies, or (ii) Companies accepting deposits from public or (iii) Companies which have borrowed money from Banks and Public Financial Institutions in excess of ₹50 Crore shall establish a vigil mechanism for directors and employees to report genuine concerns or grievances.

Eleven SPSEs⁵⁶, with borrowings in excess of ₹ 50 crore, were required to establish a whistle blower mechanism. Audit found that only one SPSE (CNNL) did not comply with the requirements.

(b) Rule 7 (4) of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Section 177 (10) of the Act required such vigil mechanisms to provide adequate safeguards against victimisation of employees and directors, who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.

Further, the details of establishment of vigil mechanism are required to be disclosed by every company on its website as well as in the Board's report.

Except one SPSE (RPCL), which does not have a website, all other SPSEs have complied with the requirements.

Nomination and Remuneration Committee

Composition of Nomination and Remuneration Committee (NRC)

3.6.4 Section 178 (1) of the Act stipulates that NRC shall consist of three or more non-executive directors out of which not less than one-half shall be independent directors.

Ten SPSEs⁵⁷ did not constitute the NRC, of which two SPSEs (KSDL and CNNL) stated that constitution of NRC is not applicable to government companies which is incorrect as exemption notification provides only partial exemption to Government companies- except with regard to appointment of 'senior management' and other employees.

Out of remaining 14 SPSEs who have constituted NRC, it was observed that:

- With only two members in the committee, NRC of one SPSE (BSCL-Belagavi) did not have the required minimum number of three non-executive directors. One SPSE (HESCOM) had only two non-executive directors in the committee.

⁵⁶ KPCL, RPCL, KPTCL, BESCOM, HESCOM, MESCOM, CESC, GESCOM, KBJNL, KNNL and CNNL.

⁵⁷ KSDL, KSMCL, HGML, MSIL, KSIIDC, KRDC, CNNL, KEONICS, KFCSC and KPTCL (constituted in September 2023).

- Two SPSEs (BSCL- Belagavi and CBIC-Tumkur) did not have independent directors on their Boards and one SPSE (BSCL-Bangalore) did not have independent directors in the committee. Hence, these three SPSEs were partially compliant of Section 178 (1) of the Act.

Attendance of Chairperson or any member of the Committee in Annual General Meeting

3.6.5 The Chairperson of the NRC or, in his absence, any other member of the committee authorised by him in this behalf is required to attend the general meetings of the company as per the provisions of Section 178 (7) of the Act.

Chairman or a member of the NRC of all 14 SPSEs attended the Annual General Meeting held during financial year 2022-23.

Recommendation of remuneration policy to the Board

3.6.6 As per Section 178 (3) of the Act, to the extent applicable⁵⁸ to Government companies, NRC shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the key managerial personnel and other employees.

NRCs at seven SPSEs (KPCL, BESCOM, HESCOM, MESCOM, CESC, GESCOM and CBIC-Tumkur) did not formulate any criteria or recommend a remuneration policy, as required.

3.7 Annual General Meeting

(a) Section 96 (1) of the Act stipulates that each year every company shall hold a general meeting and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next meeting.

All 26 SPSEs have held the AGM during the financial year 2022-23 within a gap of fifteen months from the date of previous Meeting.

(b) Section 96 (2) of the Act states that every Annual General Meeting shall be held during business hours either at the registered office of the company or at a place where the registered office of the company is situated.

Twenty-two SPSEs have held the AGM during business hours either at their registered office or a place where registered office is located. However, four SPSEs (CESC, KBJNL, CNNL and DSCL) held their AGM at a place (Bangalore) other than where registered office is located.

⁵⁸ Exemptions / exceptions notified in MCA Notification dated 05.06.2015.

3.8 Management and Administration

Maintenance of Register of Members

3.8.1 Rule 3 (1) of Companies (Management and Administration) Rules, 2014 read with Section 88 (a) of the Act, stipulates that every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT.1. Further, Rule 8 (1) requires that the entries in the registers maintained, and index included therein shall be authenticated by the company secretary of the company or by any other person authorised by the Board for the purpose, and the date of the board resolution authorising the same shall be mentioned.

Seven SPSEs (DUBCDCL, KSMCL, HGML, KRDCCL, CNNL, KEONICS, and CBIC-Tumkur) did not maintain the register of members. One SPSE (KFCSCCL) did not furnish the register for verification stating that same had been misplaced.

Register of Directors and Key Management Personnel

3.8.2 Section 170 (1) of the Act stipulates that every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel containing the particulars stated in Rule 17 of Companies (Appointment & Qualification of Directors) Rules, 2014, the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

Provisions of Section 170 were not applicable to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.

Maintenance of register of directors and Key Management Personnel was not mandatory for 22 SPSEs as their share capital were held by State Government or State/ Central Governments. Out of remaining four SPSEs (RPCL, HGML, MSIL and KRDCCL), two SPSEs *i.e.*, HGML and KRDCCL have not maintained the register of directors and KMP.

3.9 Annual Returns

Filing of Annual Returns (Form MGT-7)

3.9.1 Provisions of Section 92 (1) of the Act / Rule 11 (1) of Companies (Management and Administration) Rules, 2014 requires every Company to prepare and file an Annual Returns containing various particulars related to the Company, specified therein as they stood on the close of the financial year in Form MGT 7.

All 26 SPSEs have filed the annual returns in Form MGT 7 for the relevant financial years (one SPSE for FY 2020-21 and remaining for FY 2021-22) for which AGMs were held during 2022-23.

Certification of Annual Returns (Form MGT 8)

3.9.2 The annual returns, filed by a company having paid-up share capital of ten crore rupees or more or turnover of fifty crore rupees or more, shall be certified by a Company Secretary in practice and the certificate shall be in Form MGT 8 {Rule 11 (2)}.

All 26 SPSEs, irrespective of applicability, have filed Form MGT 8.

Adherence to timeline for filing Annual Returns

3.9.3 Section 92 (4) stipulates that every company shall file with the Registrar of Companies (RoC) a copy of the annual return, within sixty days from the date on which the annual general meeting is held.

Ten SPSEs did not comply with prescribed timeline as returns were filed after a period ranging from 64 days to 283 days as indicated in **Table No. 3.4** below:

Table No. 3.4: Delay in filing annual returns after holding AGM

Sl. No.	Company name	Date of AGM	Date of filing annual returns	No of days taken	Delay in days
1	Bangalore Electricity Supply Company Limited	22-09-2022	02-12-2022	71	11
2	D Devaraj Urs Backward Classes Development Corporation Limited	13-09-2022	19-12-2022	97	37
3	Karnataka State Minerals Corporation Limited	27-03-2023	02-06-2023	67	07
4	The Hutti Gold Mines Company Limited	29-09-2022	08-02-2023	132	72
5	Karnataka Neeravari Nigam Limited	21-01-2023	25-07-2023	185	125
6	Vishveswaraya Jala Nigam Limited	05-12-2022	14-09-2023	283	223
7	Belagavi Smart City Limited	26-12-2022	28-02-2023	64	04
8	CBIC Tumakuru Industrial Township Limited	29-12-2022	03-03-2023	64	04
9	Cauvery Neeravari Nigama Limited	30-09-2023	08-01-2024	100	40
10	Karnataka Food and Civil Supplies Corporation Limited	31-12-2022	02-09-2023	245	185

Source: Data compiled by Audit

Disclosure on filing of Annual Returns

3.9.4 Rule 12 (1) read with Section 92 (3) of the Act requires every company to attach the extract of annual returns with Board’s Report in Form No. MGT 9. The provision is not applicable⁵⁹, if the Company discloses a weblink to such annual return in the Board’s Report.

The status of compliance to above disclosure requirements is given in **Table No. 3.5** below:

⁵⁹ As proviso added to Sec 92 (3) through amendment vide MCA Notification dated 28 August 2020.

Table No. 3.5: Disclosure on Annual Returns filed by SPSEs

Sl. No.	Nature of Disclosure	No of SPSEs	Name of SPSE
1	Abridged version of MGT 9 attached to Directors Report.	05	KPTCL, HESCOM, KSMCL, CNNL, BSCL-Belagavi.
2	Annual returns in Form MGT 7 uploaded to website.	11	BESCOM, GESCOM, KSDL, HGML, MSIL, KSIIDC, KRIDL, KRDC, KBJNL, KNNL, VJNL.
3	Both Form MGT 9 attached and Form MGT 7 uploaded.	03	KPCL, MESCOM, CESC.
4	Compliance not verifiable due to lack of disclosure / accessibility.	05	DUBCDCL, DSCL, BSCL-Bengaluru, KEONICS, KFCSC.
5	No website to upload annual returns in Form MGT 7 and abridge version in MGT 9 not attached to Directors Report.	02	RPCL, CBIC-Tumkur.

Source: Data compiled by Audit

Verification of disclosures on websites / in Directors' Report revealed the following instances of inadequate disclosures:

- Four SPSEs (DUBCDCL, KEONICS, KFCSC and BSCL-Bengaluru) have neither uploaded the annual reports nor the annual returns on their websites.
- Among SPSEs who have uploaded Form MGT 7 on their websites, only three SPSEs (MESCOM, MSIL and KRIDL) have disclosed proper weblink for access. The remaining SPSEs have disclosed only their website address which constitutes only partial compliance with disclosure requirement and also does not facilitate easy access to annual returns.
- Directors' Report of one SPSE (HESCOM) stated that abridged version of annual return in Form MGT 9 has been attached though Company is exempted vide MCA notification dated 28.08.2020. The disclosure is incorrect to the extent that exemption from attachment in Form MGT 9 is applicable only if the Company discloses weblink for annual return in Form MGT 7.
- In the Directors' Reports of four SPSEs (KSDL, HGML, VJNL, and DSCL), it was stated that annual return in Form MGT 7 has been uploaded on website address disclosed. However, Audit did not find their annual returns on their websites.
- One SPSE (KSIIDC) has uploaded the annual return on its website without disclosing the weblink in its Directors' Report.
- The website on which one SPSE (KNNL) had stated to have uploaded the annual return in Form MGT 7 was not functional and annual return was not found on Company's new website.
- One SPSE (RPCL) stated in its Directors' Report that Annual Return in MGT 7 is not applicable as the company does not have a website and has not attached abridged version in Form MGT 9 to Directors' Report.

Another SPSE (CBIC-Tumkur) did not have a website to make relevant disclosure. The Company also did not attach abridged version in Form MGT 9 in its Directors’ Report.

3.10 Mechanism to ensure compliance of applicable laws

As per Section 134 (5) (f) of the Act, the Directors’ Responsibility Statement referred to in Section 134 (3) (c) shall state that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Reporting to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company, is the responsibility of the Company Secretary as stipulated in Section 205 (1) (a) of the Act.

Appointment of Company Secretary

3.10.1 Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 read with Section 203 (1) of the Act, provides that every listed company and every other public company having a paid-up share capital of rupees ten crore or more shall have whole-time key managerial personnel, one of which is a Company Secretary.

Five SPSEs were not required to have a whole time Company Secretary, *i.e.*, two SPSEs (KRIDL and DUBCDCL) being registered as private limited companies and three SPSEs (KSMCL, HGML and KFCSCCL) for not having paid up share capital of rupees ten crore and above.

Out of remaining 21 SPSEs, seven SPSEs did not have a Company Secretary appointed on permanent basis⁶⁰ as indicated in **Table No. 3.6** below:

Table No. 3.6: List of SPSEs not having a Company Secretary on permanent basis

Sl. No.	Company name	Present status	Response from Company
1	Karnataka State Industrial Infrastructure and Development Corporation Limited	Others - On retainership basis	Pending approval of Cadre & Recruitment Rules of the Company, by the Government, a Company Secretary has been appointed on contractual basis for a period of one year in Oct 2023.
2	Karnataka State Electronics Development Corporation Limited		Company is in the process of appointing a permanent Company Secretary as suitable candidates were not available for appointment in response to advertisement published on 13.01.2020.
3	Karnataka Soaps and Detergents Limited	Others - Contract	Company called for appointment of Company Secretary four times but could not find suitable candidates
4	Karnataka Road Development Corporation Limited		No reasons provided
5	Karnataka Neeravari Nigam Limited		No reasons provided

⁶⁰ For the purpose of analysis, meaning of ‘whole time’ is taken as person in whole time employment with the Company as in definition of whole time director under section 2 (94) is considered.

Sl. No.	Company name	Present status	Response from Company
6	Cauvery Neeravari Nigama Limited		Company Secretary appointment contract gets renewed yearly which is duly signed by the Managing Director
7	Belagavi Smart City Limited		No reasons provided

Source: Data compiled by Audit

Non-compliance of applicable laws

3.10.2 The analysis of disclosures in Directors Report as well as response from SPSEs to the checklist on corporate governance to Audit revealed that two SPSEs (DUBCDCL and KBJNL) have not made a list of laws applicable to the Company to ensure compliance and seven SPSEs (HESCOM, MESCOM, DUBCDCL, KSMCL, KRDCCL, CNNL and KEONICS) have admitted to non-compliance of applicable laws.

Reporting about the compliance / non-compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company has not been made by Company Secretaries of nine SPSEs (KPTCL, DUBCDCL, KSMCL, HGML, KRDCCL, CNNL, VJNL, KEONICS and KFCSCCL) as stipulated in Section 205 (1) (a) of the Act.

3.11 Internal Audit Framework

Role of internal audit

3.11.1 The Standards on Internal Audit issued by Institute of Chartered Accountants of India defines⁶¹ internal audit as an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system.”

Thus, the role of internal audit is to provide independent assurance that an organisation's risk management, governance and internal control processes are operating effectively.

Legal framework and applicability

3.11.2 Section 138(1) of the Act, 2013 read with Rule 13 (1) (b) of Companies (Accounts) Rules, 2014, stipulates that every unlisted public company having paid up share capital of fifty crore rupees or more; or turnover of two hundred crore rupees or more during the preceding financial year; or outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more; or outstanding deposits of twenty-five crore rupees or more at any point of time during the preceding financial year shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

⁶¹ Extract from booklet on internal audit issued by ICAI.

All 26 SPSEs, including two SPSE (DUBCDCL and KRIDL) registered as private limited companies, have met at least one of applicable criteria for appointment of an internal auditor.

Internal audit system

3.11.3 As per the proviso to the Rule, for the purposes of Rule 13 (1) of Companies (Accounts) Rules, 2014, an internal auditor may or may not be an employee of the company.

One SPSE (KPCL) has an in-house internal audit wing but has also engaged external agencies for its thermal and hydel units. Seven SPSEs (KPTCL, BESCOM, HESCOM, MESCOM, CESC, GESCOM and HGML) have an in-house internal audit wing. The remaining 18 SPSEs have engaged external agencies for conducting internal audit of their transactions.

3.12 Scope, functioning, periodicity and methodology

Formulation and scope and methodology of internal audit

3.12.1 Section 138 (2) of the Act, 2013 provides that the Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board. Rule 13 (2) of Companies (Accounts) Rules, 2014 states that the Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

- One SPSE (KEONICS) has not complied with the above requirements.
- Five SPSEs (BESCOM, HESCOM, MESCOM, CESC and GESCOM), the electricity distribution companies under energy department, are following an outdated Karnataka Electricity Board (KEB) manual, which was formulated in September 1997, prior to their incorporation by unbundling of erstwhile Karnataka Electricity Board.

Frequency of audit and reporting of audit findings

3.12.2 The Companies (Accounts) Rules, 2014, as amended from time to time, has not prescribed, so far (Feb 2024), any specific rules for the manner and the intervals in which the internal audit shall be conducted and reported. All 26 SPSEs have conducted internal audit on monthly, quarterly, half-yearly or annually as approved by the respective managements.

Audit Committee or Board of Directors in Four SPSEs (BESCOM, DUBCDCL, KRIDL and KFCSCCL) have not reviewed the performance of internal auditors or internal audit findings.

Recommendations:

- 6. The Finance Department, which is presently entrusted with dealing in all those matters handled by erstwhile Department of Public Enterprises (DPE), should prepare and issue guidelines on Corporate Governance (similar to guidelines framed by Central DPE) duly considering applicable provisions of the Act, rules, and regulations.*
- 7. The Finance Department, in co-ordination with respective administrative ministries/departments, should monitor compliance to applicable provisions, rules and regulations on Corporate Governance by all State Public Sector Enterprises (SPSEs).*
- 8. Government must ensure that Audit Committees discuss with the Statutory Auditors, the areas of concerns in the companies and suggest additional areas which require further probe and reporting.*