

Chapter-3
Corporate Governance

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This Chapter deals with adherence to Corporate Governance principles by Government Companies and Government Controlled Other Companies including issues related to holding of meetings of the Board of Directors (BoD), appointment of independent directors and women directors in the BoD and their presence in meetings of the BoD and committees formed thereunder.

3.1 Introduction

Corporate Governance is an internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders by directing and controlling management activities. The Corporate Governance framework of an organisation depends upon four pillars namely transparency, full disclosure, independent monitoring and fairness to all. Adherence to Corporate Governance principles brings accountability and transparency in business, and enhances confidence of the stakeholders.

3.1.1 Provisions in the Companies Act, 2013 regarding Corporate Governance

The Companies Act, 2013¹ provides a formal structure for corporate governance by enhancing disclosures, reporting and transparency through enhanced as well as new compliance norms. In addition, the Ministry of Corporate Affairs had also notified (31 March 2014) Companies Rules, 2014 on Management and Administration, Appointment and Qualification of Directors, Meetings of Board and its powers, and Accounts. The Companies Act, 2013 together with the Companies Rules, 2014 provide a robust framework for corporate governance. The requirements, *inter alia* provided as under:

- Mandatory appointment of at least one-third of the total number of directors as Independent Directors (IDs) on the board of every listed public company and such other minimum number in case of any class or classes of public companies as the Central Government may prescribe under section 149 (4) of the Companies Act, 2013.
- Qualifications for IDs along with the duties and guidelines for professional conduct (Sections 149 (6) & (8) and Schedule IV read with Rule 5 of the Companies (Appointment and Qualification of Directors), Rules, 2014).
- Mandatory appointment of a woman director on the board of listed companies [Section 149 (1)] and such other class of companies as per Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014.
- Mandatory establishment of certain committees like Audit Committee [Section 177(1)], Nomination and Remuneration Committee [Section 178(1)].

¹ The Companies Act, 2013 was enacted on 29 August 2013 replacing the Companies Act, 1956.

- Holding of a minimum of four meetings of BoD every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board [Section 173(1)].

3.1.2 SEBI guidelines on Corporate Governance

SEBI notified (2 September 2015) the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which came into effect from 1 December 2015 repealing the earlier provisions.

No Government Company or Government Controlled Other Company (GCOC) under the audit jurisdiction of the CAG in Uttarakhand is listed on any stock exchange, hence, SEBI guidelines² on Corporate Governance are not applicable thereto.

3.2 Audit findings

Compliance with the provisions of the Companies Act, 2013, Companies (Appointment and Qualification of Directors) Rules, 2014, and Companies (Meetings of Board and its Powers) Rules, 2014 regarding Corporate Governance by 19 functional State Public Sector Enterprises (SPSEs³) (18 Government Companies and one Government Controlled Other Company) during the year 2022-23 was reviewed. The audit findings are discussed in the succeeding paragraphs.

3.3 Composition of Board of Directors

As per Section 2 (10) of the Companies Act, 2013, 'BoD' or 'Board', in relation to a company, means the collective body of the directors of the company. Deficiencies in the composition of the BoD are discussed in the succeeding paragraphs.

3.3.1 Independent Directors in the Board

The presence of independent representatives on the Board, capable of taking an independent view on the decisions of the management, is widely considered as a means of protecting the interests of shareholders and other stakeholders. As per Section 149 (6) of the Companies Act, 2013 an ID in relation to a company, means a director other than a managing director or a whole-time director or a nominee director and is a person of integrity and possesses relevant expertise and experience. It further provides that the ID shall neither be a promoter himself nor shall be related to the promoters/directors of the company or its holding, subsidiary or associate company. The ID himself or his relatives shall not have any pecuniary relationship/ transaction (other than remuneration of ID) with the company, or its subsidiary, or its holding or associate company beyond the monetary limits and during the prescribed period. The ID himself or his relatives shall not hold key managerial position or any other prescribed relationship *viz.*, employee, auditors, companies' secretaries, *etc.*, with the company or its holding, subsidiary or associate company during the prescribed timeframe.

As discussed in *Paragraph 3.1.1*, every listed company is required to have at least one-third of the total number of directors as IDs. Further, Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 provide that public

² Subsequent to the enactment of the Companies Act, 2013, Securities and Exchange Board of India (SEBI) amended (April and September 2014) Clause 49 of the Listing Agreement to align it with the Corporate Governance provisions specified in the Companies Act, 2013.

³ Four functional SPSEs are Statutory Corporations and therefore, provisions of the Companies Act, 2013, and related rules do not apply to them.

companies having (i) paid-up share capital of ₹ ten crore or more; or (ii) turnover of ₹ one hundred crore or more; or (iii) have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹ fifty crore are required to have at least two directors as IDs. A company which ceases to fulfil any of the aforesaid three conditions for three consecutive years is not required to appoint IDs until such time as it meets any of such conditions. Further, three classes of unlisted public companies viz., a joint venture or a wholly owned subsidiary or a dormant company are also not required to appoint IDs.

Out of 19 working SPSEs, 12 SPSEs as detailed in **Appendix-3.1** satisfied the aforesaid criteria of either paid-up share capital or turnover or outstanding loans, debentures and deposits as on the last date of latest audited financial statements. Out of these 12 SPSEs, eight SPSEs did not have required number of at least two IDs⁴ in their BoD during the year 2022-23, the status of the same is given in the **Table-3.1** below:

Table-3.1: Status of SPSEs not having required number of IDs in their Board

Sl. No.	Name of Companies	No. of IDs on the Board during 2022-23
1	Power Transmission Corporation of Uttarakhand Limited	01 (up to 7 October 2022)
2	Kishau Corporation Limited	Nil
3	Uttarakhand Bahuuddeshiya Vitta Evam Vikas Nigam Limited	Nil
4	Kumaon Mandal Vikas Nigam Limited	Nil
5	Doiwala Sugar Company Limited	Nil
6	Kichha Sugar Company Limited	Nil
7	Bridge, Ropeway, Tunnel and other Infrastructure Development Corporation of Uttarakhand Limited	Nil
8	Garhwal Mandal Vikas Nigam Limited	Nil

Source: Compiled on the basis of information provided by SPSEs.

As can be seen from above Table, eight SPSEs did not comply with the provisions related to having required number of IDs in their Board. Out of these, seven SPSEs did not have even a single ID in their Board. Further, in respect of Power Transmission Corporation of Uttarakhand Limited, there was only one ID during the year 2022-23 (up to 07 October 2022), thereafter, there was no ID in the remaining period of the year 2022-23.

3.3.2 Woman Director in the Board

Section 149 (1) of the Companies Act, 2013 read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the BoD of the following class of companies shall have at least one-woman director:

- i. every listed company;
- ii. every other public company having –
 - a. paid-up share capital of ₹ one hundred crore or more; or
 - b. turnover of ₹ three hundred crore or more.

Further, any intermittent vacancy of a woman director was to be filled up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

⁴ Since, none of the SPSEs was listed on any stock exchange, no SPSE was required to appoint one-third of its total number of directors as IDs.

Though none of the SPSEs in Uttarakhand were listed in any Stock Exchange of India, four working⁵ SPSEs were meeting the conditions for having a woman director in their Board. Out of these, one company *i.e.* Uttarakhand Purv Sainik Kalyan Nigam Limited, however, did not have a woman director in its Board.

3.4 Meetings of the Board of Directors

Section 173 (1) of the Companies Act, 2013 provides that every company shall hold the first meeting of the BoD within thirty days of the date of its incorporation and thereafter hold minimum four meetings of its BoD every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Out of the 19 working SPSEs (including the only GCOC *i.e.* Uttarakhand Seeds & Tarai Development Corporation) mentioned in **Appendix-3.1**, eight SPSEs did not conduct the required number of meetings of BoD during the year 2022-23, as given in **Table-3.2**.

Table-3.2: Companies having shortfall in the number of meetings of the Board

Sl. No.	Companies which conducted less than required number of four meetings of the BoD.	No. of BoD meetings during 2022-23
1	Uttarakhand Bahuuddeshiya Vitta Evam Vikas Nigam Limited	02
2	State Infrastructure and Industrial Development Corporation of Uttarakhand Limited	02
3	Bridge, Ropeway, Tunnel and Other Infrastructure Development Corporation of Uttarakhand Limited	02
4	Uttarakhand Alpsankhyak Kalyan Tatha Wakf Vikas Nigam	02
5	Uttarakhand Seeds & Tarai Development Corporation Limited	01
6	Kishau Corporation Limited	01
7	SIIDCUL Plastic Park Limited	01
8	Eco-tourism Development Corporation of Uttarakhand Limited	Nil

As can be seen from above Table, eight SPSEs have not complied with the requirement of holding minimum of four meetings of BoD and of these, one SPSE *i.e.* Eco-Tourism Development Corporation of Uttarakhand Limited had not conducted even a single Board meeting during 2022-23.

Further, out of the 11 SPSEs, which had conducted the requisite number of meetings of the BoD during the year 2022-23, in case of four SPSEs, the intervening period between two meetings of the BoD was more than the prescribed time limit of 120 days as detailed in **Table-3.3**.

Table-3.3: Intervening period in holding of two consecutive meetings of BoD

Sl. No.	Name of SPSEs	Date of meeting	Date of next meeting	Intervening period (in days)
1.	Doiwala Sugar Company Limited	23.05.2022	27.09.2022	127
2.	Uttarakhand Metro Rail, Urban Infrastructure & Building Construction Corporation Limited	01.09.2022	25.01.2023	146
3.	Kumaon Mandal Vikas Nigam Limited	01.08.2022	04.01.2023	156
4.	Uttarakhand Alpsankhyak Kalyan Tatha Wakf Vikas Nigam	28.09.2022	28.03.2023	181

Source: Compiled based on the information provided by SPSEs.

⁵ Uttarakhand Power Corporation Limited, UJVN Limited, Power Transmission Corporation of Uttarakhand limited, Uttarakhand Purv Sainik Kalyan Nigam Limited.

3.5 Appointment and Functioning of Independent Directors

3.5.1 Declaration of meeting the criteria of independence

Section 149 (7) of the Companies Act, 2013 requires that every ID shall 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 ID, give a declaration that he meets the criteria of independence.

In this regard, out of five SPSEs, which were required to obtain declaration from the IDs regarding their independence, three SPSEs, as per **Table-3.4** below, did not obtain the same.

Table-3.4: SPSEs that did not obtain declaration from the IDs.

Sl. No.	Name of Companies
1.	UJVN Limited
2.	State Infrastructure and Industrial Development Corporation of Uttarakhand Limited
3.	Uttarakhand Purv Sainik kalyan Nigam Limited

As can be seen from above Table, IDs of three SPSEs have not made declarations as required under the Companies Act, 2013. Seven SPSEs did not have any IDs in their Board. Thus, the requirement of declaration of status of IDs was not fulfilled by these SPSEs.

3.5.2 Holding of separate meeting of Independent Directors

Schedule IV [Para (VII) (1)] of the Companies Act, 2013 provides that the IDs of the company shall hold at least one meeting in a year, without the attendance of non- IDs and members of management. Further, all the IDs of the company shall strive to be present at such meeting. The meeting shall – (a) review the performance of non- IDs and the Board as a whole; (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors; and (c) 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.

Out of the five SPSEs which had IDs in their BoD during the year 2022-23, four SPSEs had more than one ID. The IDs of these four SPSEs were required to conduct at least one meeting during the year 2022-23 without the attendance of non- IDs and members of management. The status of separate meeting held by the IDs of four SPSEs during the year 2022-23 is given in **Table-3.5**.

Table-3.5: Separate meeting held by IDs

Sl. No.	Name of SPSEs	No. of separate meeting held during 2022-23	No. of IDs in the BoD
1.	Uttarakhand Power Corporation Limited	01	04
2.	UJVN Limited	01	04
3.	Uttarakhand Purv Sainik Kalyan Nigam Limited	Nil	02
4.	State Infrastructure and Industrial Development Corporation of Uttarakhand Limited	Nil	02

Source: Compiled based on the information provided by SPSEs.

Out of these four SPSEs, IDs of two SPSEs had not conducted the aforesaid meeting during the year 2022-23. The objective of having separate meetings of the IDs is to review the performance of non-IDs, chairperson of the company and the Board. However, the same remained unreviewed. Further, the quality, quantity and timeliness of flow of information between the company management and the Board could also not be assessed.

3.6 Committees of the Board of Directors

A Board Committee is a small working group identified by the BoD, consisting of board members, for the purpose of supporting the Board's work. Board Committees are generally formed to perform some expertise work. The Companies Act, 2013 requires the companies to form various Board Committees such as Audit Committee (AC), Nomination and Remuneration Committee (NRC), Corporate Social Responsibility Committee, Stakeholders Relationship Committee, etc. Audit analysed formation and working of AC and NRC. The audit findings are discussed in the succeeding paragraphs.

3.6.1 Audit Committee

Audit Committee is one of the main pillars of the Corporate Governance mechanism in any company. The AC aims at enhancing the confidence in the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems.

Section 177 (1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the BoD of every listed public company and the following classes of companies (except a joint venture, a wholly owned subsidiary and a dormant company) shall constitute an AC:

- (i) all public companies with a paid-up capital of ₹ ten crore or more;
- (ii) all public companies having turnover of ₹ one hundred crore or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ fifty crore or more.

Out of the 19 SPSEs, 12 SPSEs, as given in **Appendix-3.1**, were required to have an AC during the year 2022-23. Of these 12 SPSEs, six SPSEs had an AC and six SPSEs, as given in **Table-3.6**, did not have an AC during the year 2022-23.

Table-3.6: SPSEs not having AC during the year 2022-23

Sl. No.	Name of the SPSEs
1.	Kishau Corporation Limited
2.	Bridge, Ropeway, Tunnel and Other Infrastructure Development Corporation of Uttarakhand Limited
3.	Kichha Sugar Company Limited
4.	Kumaon Mandal Vikas Nigam Limited
5.	Garhwal Mandal Vikas Nigam Limited
6.	Uttarakhand Bahuudeshiya Vitta Evam Vikas Nigam Limited

Source: Compiled on the basis of information provided by SPSEs.

Further, audit observed that in respect of one SPSE *i.e.* State infrastructure and Industrial Development Corporation of Uttarakhand Limited, no meeting of AC was conducted during 2020-21, 2021-22 and 2022-23.

3.6.2 Nomination and Remuneration Committee

Section 178 (1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the BoD of every listed public company and the following classes of companies shall constitute a NRC consisting of three or more non-executive directors out of which not less than one-half shall be IDs:

- (i) all public companies with a paid-up capital of ₹ ten crore or more;
- (ii) all public companies having turnover of ₹ one hundred crore or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding ₹ fifty crore or more.

Out of the 19 SPSEs, 12 SPSEs, as given in **Appendix-3.1**, were required to have a NRC during the year 2022-23. Of these 12 SPSEs, only three SPSEs⁶ had an NRC during the year 2022-23. The remaining nine SPSEs, as given in **Table-3.7**, did not have an NRC during the year 2022-23.

Table-3.7: SPSEs not having a NRC during the year 2022-23

Sl. No.	Name of the SPSEs
1.	Kishau Corporation Limited
2.	Bridge, Ropeway, Tunnel and Other Infrastructure Development Corporation of Uttarakhand Limited
3.	Doiwala Sugar Company Limited
4.	Kichha Sugar Company Limited
5.	Uttarakhand Purv Sainik Kalyan Nigam Limited
6.	Kumaon Mandal Vikas Nigam Limited
7.	Garhwal Mandal Vikas Nigam Limited
8.	State Infrastructure and Industrial Development Corporation of Uttarakhand Limited
9.	Uttarakhand Bahuudeshiya Vitta Evam Vikas Nigam Limited

Source: Compiled on the basis of information provided by SPSE.

Further, though three SPSEs were having NRC during the year 2022-23, no meeting of NRC took place during the said period.

3.7 Internal Audit Framework

The Framework Governing Internal Audits issued (November 2018) by the Institute of Chartered Accountants of India defines internal audit as follows:

'Internal audit provides an independent assurance on the effectiveness of internal controls and risk management processes to enhance governance and achieve organisational objectives.'

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

3.7.1 Internal Audit in SPSEs

Section 138(1) of the Companies Act, 2013 read with Rule 13 of Companies (Accounts) Rules⁷, 2014, provides that the following class of companies shall be required to appoint

⁶ Uttarakhand Power Corporation Limited, Power Transmission Corporation of Uttarakhand Limited and UJVN Limited.

⁷ As amended from time to time.

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:

- (a) every listed company;
- (b) every unlisted public company having –
 - (i) paid up share capital of ₹ fifty crore or more; or
 - (ii) turnover of ₹ two hundred crore or more during the preceding financial year;
or
 - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ one hundred crore or more; or
 - (iv) outstanding deposits of ₹ twenty-five crore or more at any point of time during the preceding financial year.
- (c) every private company having –
 - (i) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

Out of 19 SPSEs, seven SPSEs (*Appendix-3.2*) fulfilled the above-criteria for appointment of internal auditor. Out of these, five SPSE⁸ had appointed internal auditors, however, two SPSEs namely Garhwal Mandal Vikas Nigam Limited and State Infrastructure and Industrial Development Corporation of Uttarakhand Limited did not appoint the internal auditors.

3.8 Conclusion

The functioning of Corporate Governance framework in the SPSEs suffered a number of deficiencies as outlined below:

- Out of 12 working SPSEs, where Independent Directors were required to be appointed, seven SPSEs did not appoint Independent Directors whereas in one SPSE, required number of Independent Directors were not appointed. Further, separate meeting of Independent Directors was not conducted by two SPSEs wherein more than one Independent Directors were in the Board.
- Out of four working SPSEs, where Woman Director was required to be appointed, one SPSE did not have Woman Director throughout the year 2022-23.
- One SPSE did not hold any Board meetings during 2022-23, while three SPSEs conducted only one Board meeting and four SPSEs conducted only two Board meeting during 2022-23, against the requirement of minimum four meetings annually. Further, the intervening period between two meetings of the BoD in four

⁸ Uttarakhand Power Corporation Limited, Power Transmission Corporation of Uttarakhand Limited, UJVN Limited, Kichha Sugar Company Limited and Uttarakhand Purv Sainik Kalyan Nigam Limited.

SPSEs ranged between 127 days and 181 days against the prescribed timeline of 120 days.

- Out of 12 SPSEs, which were required to have an Audit committee six SPSEs did not constitute AC and in respect of one SPSE, no meeting of Audit committee was held during 2020-21 to 2022-23.
- Out of 12 SPSEs, which were required to have a Nomination and Remuneration Committee, nine SPSEs did not constitute Nomination and Remuneration Committee.
- Out of seven SPSEs, which were required to appoint Internal Auditors, two SPSEs did not appoint Internal Auditors.

3.9 Recommendation

Government of Uttarakhand may direct the SPSEs to ensure compliance with the provisions of Companies Act, 2013 for bringing out effectiveness in the functioning of Corporate Governance framework in the SPSEs.

