

CHAPTER–III
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 the holding of meetings of the Board of Directors, appointment of independent directors and women directors on the Board, and their presence in meetings of the Board of Directors and the committees formed thereunder.

Introduction

3.1 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 on four pillars, namely transparency, full disclosure, independent monitoring, and fairness to all. Adherence to corporate governance principles brings accountability and transparency to business and enhances the confidence of stakeholders.

Provisions of the Companies Act, 2013 regarding Corporate Governance

3.2 The Companies Act, 2013 was enacted on 29 August 2013, replacing the Companies Act, 1956. In addition, the Ministry of Corporate Affairs, Government of India, also notified (31 March 2014) the Companies Rules, 2014 on Appointment and Qualification of Directors, and Meetings of the Board and its Powers. The Companies Act, 2013, together with the Companies Rules, 2014, provides a robust framework for corporate governance. The requirements, *inter alia*, provide for:

- Mandatory appointment of at least one-third of the total number of directors as independent directors on the board of every listed public company, and such other minimum number in the 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 independent directors, along with the duties and guidelines for professional conduct [Section 149(6) and (8) and Schedule IV of the Companies Act, 2013, read with Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014].
- Mandatory appointment of at least one woman director on the board of such class or classes of companies as may be prescribed under Section 149(1) of the Companies Act, 2013.
- Mandatory establishment of certain committees like the Audit Committee, Nomination and Remuneration Committee, and Stakeholders Relationship Committee under Sections 177(1), 178(1), and 178(5) of the Companies Act, 2013.
- Holding a minimum of four meetings of the Board of Directors every year, in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board under Section 173(1) of the Companies Act, 2013.

SEBI guidelines on Corporate Governance

3.3 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 under the audit jurisdiction of the CAG in Uttar Pradesh is listed on any stock exchange, hence, SEBI guidelines¹ on corporate governance are not applicable to them.

Audit findings

3.4 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 66 functional SPSEs² (47 Government Companies and 19 Government Controlled Other Companies) during the year 2022-23 was reviewed. The audit findings are discussed in the succeeding paragraphs.

Composition of the Board of Directors

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

Independent Directors on the Board

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

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that public companies having: (i) paid-up share capital of ten crore rupees or more; or (ii) turnover of one hundred crore rupees or more; or (iii) in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees, are required to have at least two directors as independent directors. A company that ceases to fulfil any of the aforesaid three conditions

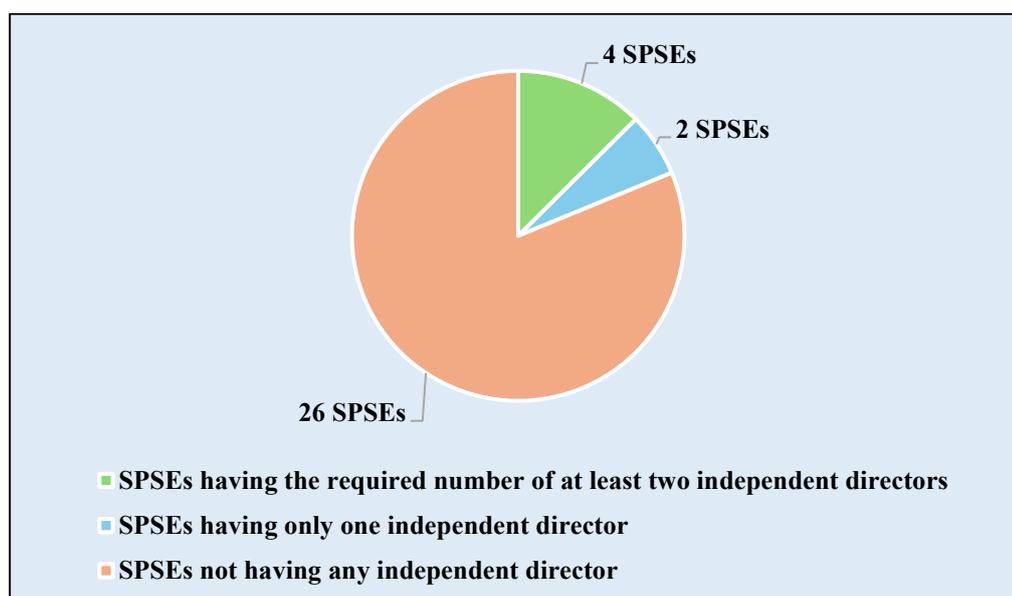
¹ Subsequent to the enactment of the Companies Act, 2013, Securities and Exchange Board of India (SEBI) amended (April and September 2014) Clause 49 of the Listing Agreement to align it with the corporate governance provisions specified in the Companies Act, 2013.

² Six functional SPSEs are Statutory Corporations and therefore, provisions of the Companies Act, 2013, and related rules do not apply to them.

for three consecutive years is not required to appoint independent directors until such time as it meets any of these 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 independent directors.

Out of the 66 functional SPSEs (excluding six statutory corporations), 32 SPSEs³, 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 the latest audited financial statements. These SPSEs were, therefore, required to have at least two independent directors⁴ on their Board of Directors during the year 2022-23. The status of independent directors in these SPSEs during the year 2022-23 is depicted in **Chart 3.1**.

Chart 3.1 Status of independent directors on the Boards of SPSEs



Source: Compiled based on information provided by the SPSEs

From **Chart 3.1**, it can be seen that during the year 2022-23, out of the 32 SPSEs that were required to have at least two independent directors on their Boards, 26 SPSEs (81 *per cent*) did not have any independent directors on their Boards and two SPSEs (6 *per cent*) had only one independent director on their Boards. Thus, only four SPSEs (13 *per cent*) had complied with the requirement of having at least two independent directors on their Boards.

Woman Director on the Board

3.7 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 Board of Directors 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 rupees or more; or
 - b. turnover of three hundred crore rupees or more.

³ Based on the latest audited financial statements submitted by the SPSEs to this office up to 30 September 2023 for supplementary audit.

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 independent directors.

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

Out of the 66 functional SPSEs, 31 SPSEs, as detailed in **Appendix 3.1**, satisfied the aforesaid criteria of either paid-up share capital or turnover as on the last date of their latest audited financial statements. These SPSEs were, therefore, required to have at least one woman director on their Board of Directors during the year 2022-23. Of these 31 SPSEs, only 16 SPSEs had at least one woman director on their Board of Directors throughout the year 2022-23. Further, 10 SPSEs had no woman director on their Board of Directors throughout the year 2022-23, and five SPSEs had at least one woman director for only a part of the year 2022-23, as detailed in **Table 3.1**.

Table 3.1: Details of SPSEs not having at least one woman director on their Board during the whole/partial period of 2022-23

Sl. No.	Name of the SPSE
SPSEs that had no woman director throughout the year 2022-23	
1.	Uttar Pradesh Jal Vidyut Nigam Limited
2.	Jawaharpur Vidyut Utpadan Nigam Limited
3.	U.P. Scheduled Castes Finance and Development Corporation Limited
4.	Uttar Pradesh Rajya Chini Evam Ganna Vikas Nigam Limited
5.	Moradabad Smart City Limited
6.	Lucknow Smart City Limited
7.	Uttar Pradesh State Agro Industrial Corporation Limited
8.	Uttar Pradesh State Bridge Corporation Limited
9.	Uttar Pradesh Small Industries Corporation Limited
10.	Uttar Pradesh Development Systems Corporation Limited
SPSEs that had at least one woman director for only a part of the year 2022-23	
11.	Uttar Pradesh Power Transmission Corporation Limited
12.	Uttar Pradesh Power Corporation Limited
13.	Dakshinanchal Vidyut Vitran Nigam Limited
14.	The Pradeshiya Industrial and Investment Corporation of UP Limited
15.	Prayagraj Smart City Limited

Source: Compiled based on information provided by the SPSEs

Thus, 15 SPSEs (48 per cent) had not complied with the provisions regarding the appointment of at least one woman director on their Board of Directors.

Meetings of the Board of Directors

3.8 Section 173(1) of the Companies Act, 2013 provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum 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.

Out of the 66 SPSEs, 35 SPSEs, as given in **Appendix 3.1**, did not conduct the requisite four meetings of their Board of Directors during the year 2022-23. Out of these 35 SPSEs, nine SPSEs held only one meeting of their Board of Directors during the year 2022-23, and 12 SPSEs did not hold any meetings.

Further, out of the 31 SPSEs, that had conducted the requisite number of meetings of the Board of Directors during the year 2022-23, in the case of five SPSEs, the intervening period between two meetings of the Board of Directors exceeded the prescribed time limit of 120 days, as detailed in **Table 3.2**.

Table 3.2: Details of Board meetings where the intervening period between two consecutive meetings exceeded the prescribed time limit of 120 days

Sl. No.	Name of the SPSE	Date of meeting	Date of next meeting	Intervening period (in days)
1.	Uttar Pradesh State Tourism Development Corporation Limited	18.07.2022	21.12.2022	156
2.	Bareilly Smart City Limited	07.11.2022	21.03.2023	134
3.	U.P. Projects Corporation Limited	03.10.2022	27.02.2023	147
4.	Uttar Pradesh Rajya Chini Evam Ganna Vikas Nigam Limited	24.09.2022	21.03.2023	178
5.	Uttar Pradesh State Sugar Corporation Limited	24.09.2022	21.03.2023	178

Source: Compiled based on information provided by the SPSEs

Section 173(3) of the Companies Act, 2013 provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company, and such notice shall be sent by hand delivery, or by post, or by electronic means.

A review of the dates of notices and meetings revealed that seven SPSEs conducted 15 meetings of their Board of Directors by serving notice of shorter period, as detailed in **Table 3.3**.

Table 3.3: Details of Board meetings held after serving notice of shorter period

Sl. No.	Name of the SPSE	Date of notice	Date of Board meeting
1.	The Pradeshiya Industrial and Investment Corporation of UP Limited	27.09.2022	30.09.2022
		20.01.2023	25.01.2023
2.	DMIC Integrated Industrial Township Greater Noida Limited	26.05.2022	31.05.2022
		19.09.2022	22.09.2022
		28.10.2022	28.10.2022
		21.02.2023	23.02.2023
3.	Purvanchal Vidyut Vitran Nigam Limited	28.01.2023	02.02.2023
4.	Aligarh Smart City Limited	28.10.2022	01.11.2022
5.	Bareilly Smart City Limited	07.04.2022	13.04.2022
6.	Saharanpur Smart City Limited	18.08.2022	23.08.2022
		13.02.2023	20.02.2023
7.	Agra Smart City Limited	18.06.2022	22.06.2022
		11.08.2022	17.08.2022
		27.08.2022	29.08.2022
		21.11.2022	23.11.2022

Source: Compiled based on information provided by the SPSEs

Committees of the Board of Directors

3.9 A Board Committee is a small working group constituted by the Board of Directors, comprising selected board members, to support the Board's work. Board Committees are generally constituted to handle areas requiring specialised expertise.

The Companies Act, 2013 mandates companies to form various Board Committees such as the Audit Committee, Nomination and Remuneration Committee, Corporate Social Responsibility (CSR) Committee, Stakeholders Relationship Committee, etc.

Audit examined the constitution and functioning of these committees in the SPSEs. The findings are discussed in the succeeding paragraphs.

Audit Committee

3.10 The Audit Committee is one of the main pillars of the Corporate Governance mechanism in any company. It aims to enhance confidence in the integrity of the company's financial reporting, internal control processes and procedures, and risk management systems. Audit noticed several deficiencies in the formation and functioning of the Audit Committee, which are discussed in the succeeding paragraphs.

(i) Constitution of the Audit Committee

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 Board of Directors 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 Audit Committee:

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

Out of the 66 SPSEs, 32 SPSEs, as given in **Appendix 3.1**, were required to have an Audit Committee during the year 2022-23. Of these 32 SPSEs, 21 SPSEs had an Audit Committee, while 11 SPSEs, as given in **Table 3.4**, did not have an Audit Committee during the year 2022-23.

Table 3.4: SPSEs not having Audit Committee during the year 2022-23

Sl. No.	Name of the SPSE
1.	Uttar Pradesh Alp Sankhyak Vittiya Evam Vikas Nigam Limited
2.	U.P. Scheduled Castes Finance and Development Corporation Limited
3.	Uttar Pradesh State Agro Industrial Corporation Limited
4.	Uttar Pradesh State Tourism Development Corporation Limited
5.	Uttar Pradesh State Spinning Company Limited
6.	Prayagraj Smart City Limited
7.	Moradabad Smart City Limited
8.	Kanpur Smart City Limited
9.	Uttar Pradesh Small Industries Corporation Limited
10.	Uttar Pradesh Food and Essential Commodities Corporation Limited
11.	Uttar Pradesh State Construction and Infrastructure Development Corporation Limited

Source: Compiled based on information provided by the SPSEs

Further, audit observed that though Uttar Pradesh Pichhara Varg Evam Vitta Vikas Nigam Limited had constituted an Audit Committee, no meeting of the Audit Committee was conducted during the year 2022-23.

(ii) Composition of the Audit Committee

Section 177(2) of the Companies Act, 2013 provides that the Audit Committee shall consist of a minimum of three directors, with independent directors forming a majority. Further, the majority of the members of the Audit Committee, including its Chairperson, shall be persons with the ability to read and understand financial statements.

An analysis of the Audit Committees constituted in the 21 SPSEs revealed that only in the case of three SPSEs⁵, the composition of the Audit Committee was in accordance with the provisions of the Companies Act, 2013. In the remaining 18 SPSEs, the composition of the Audit Committee was not as per the provisions of the Companies Act, 2013, as detailed in **Table 3.5**.

Table 3.5: Details of SPSEs not complying with the provisions of the Companies Act, 2013 regarding the composition of the Audit Committee

Sl. No.	Name of the SPSE	Remarks
1.	Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited	No independent director in the Audit Committee
2.	Uttar Pradesh Jal Vidyut Nigam Limited	No independent director in the Audit Committee
3.	Uttar Pradesh Power Transmission Corporation Limited	No independent director in the Audit Committee
4.	Uttar Pradesh Power Corporation Limited	No independent director in the Audit Committee
5.	Uttar Pradesh Pichhra Varg Vitta Evam Vikas Nigam Limited	No independent director in the Audit Committee
6.	Uttar Pradesh State Bridge Corporation Limited	No independent director in the Audit Committee
7.	Uttar Pradesh State Sugar Corporation Limited	No independent director in the Audit Committee
8.	Uttar Pradesh State Handloom Corporation Limited	No independent director in the Audit Committee
9.	The Pradeshiya Industrial and Investment Corporation of UP Limited	No majority of independent directors in the Audit Committee
10.	Uttar Pradesh Electronics Corporation Limited	No independent director in the Audit Committee
11.	Uttar Pradesh Medical Supplies Corporation Limited	No majority of independent directors in the Audit Committee
12.	Lucknow Smart City Limited	No independent director in the Audit Committee
13.	Uttar Pradesh Rajkiya Nirman Nigam Limited	No independent director in the Audit Committee
14.	Uttar Pradesh Development Systems Corporation Limited	No independent director in the Audit Committee
15.	U.P. Projects Corporation Limited	No independent director in the Audit Committee
16.	Uttar Pradesh Purva Sainik Kalyan Nigam Limited	No independent director in the Audit Committee
17.	Uttar Pradesh Police Avas Nigam Limited	No independent director in the Audit Committee
18.	Uttar Pradesh Beej Vikas Nigam Limited	No independent director in the Audit Committee

Source: Compiled based on information provided by the SPSEs

Nomination and Remuneration Committee

3.11 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 Board of Directors of every listed public company, and the following classes of companies, shall constitute a Nomination and Remuneration Committee (NRC) consisting of three or more non-executive directors, out of which not less than one-half shall be independent directors:

⁵ DMIC Integrated Industrial Township Greater Noida Limited, Agra Smart City Limited, and Varanasi Smart City Limited.

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

Out of the 66 SPSEs, 32 SPSEs, as given in **Appendix 3.1**, were required to have an NRC during the year 2022-23. Of these 32 SPSEs, only four SPSEs⁶ had constituted an NRC during the year 2022-23. The remaining 28 SPSEs, as given in **Table 3.6**, did not have an NRC during the year 2022-23.

Table 3.6: SPSEs that did not constitute a Nomination and Remuneration Committee during the year 2022-23

Sl. No.	Name of the SPSE
1.	Uttar Pradesh Jal Vidyut Nigam Limited
2.	Uttar Pradesh Power Transmission Corporation Limited
3.	Uttar Pradesh Power Corporation Limited
4.	Uttar Pradesh Alp Sankhyak Vittiya Evam Vikas Nigam Limited
5.	Uttar Pradesh Pichhra Varg Vitta Evam Vikas Nigam Limited
6.	U.P. Scheduled Castes Finance and Development Corporation Limited
7.	Uttar Pradesh State Agro Industrial Corporation Limited
8.	Uttar Pradesh State Bridge Corporation Limited
9.	Uttar Pradesh State Sugar Corporation Limited
10.	Uttar Pradesh State Tourism Development Corporation Limited
11.	Uttar Pradesh State Spinning Company Limited
12.	Uttar Pradesh State Handloom Corporation Limited
13.	The Pradeshiya Industrial and Investment Corporation of UP Limited
14.	Uttar Pradesh Electronics Corporation Limited
15.	Uttar Pradesh Medical Supplies Corporation Limited
16.	Prayagraj Smart City Limited
17.	Moradabad Smart City Limited
18.	Kanpur Smart City Limited
19.	Lucknow Smart City Limited
20.	Uttar Pradesh Rajkiya Nirman Nigam Limited
21.	Uttar Pradesh Small Industries Corporation Limited
22.	Uttar Pradesh Beej Vikas Nigam Limited
23.	Uttar Pradesh Development Systems Corporation Limited
24.	U.P. Projects Corporation Limited
25.	Uttar Pradesh Purva Sainik Kalyan Nigam Limited
26.	Uttar Pradesh Police Avas Nigam Limited
27.	Uttar Pradesh State Construction and Infrastructure Development Corporation Limited
28.	Uttar Pradesh Food and Essential Commodities Corporation Limited

Source: Compiled based on information provided by the SPSEs

Further, out of the four SPSEs that had constituted an NRC, the composition of the NRC in one SPSE, viz., Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited was not as per the requirements of the Companies Act, 2013.

Corporate Social Responsibility Committee

3.12 Section 135(1) of the Companies Act, 2013 provides that every company having a net worth of ₹ 500 crore or more, or a turnover of ₹ 1,000 crore or more, or a net profit of ₹ five crore or more during the immediately preceding

⁶ Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited, Agra Smart City Limited, Varanasi Smart City Limited, and DMIC Integrated Industrial Township Greater Noida Limited.

financial year shall constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. It further provides that where a company is not required to appoint an independent director, it shall have in its CSR Committee two or more directors.

Further, Section 135(9) of the Companies Act, 2013 provides that where the amount to be spent by a company in pursuance of its CSR policy does not exceed ₹ 50 lakh, the requirement to constitute a CSR Committee shall not apply, and the functions of such Committee, in such cases, shall be discharged by the Board of Directors of such company.

Out of the 66 functional SPSEs, six SPSEs were required to constitute a CSR Committee. All six SPSEs had constituted the CSR Committee during the year 2022-23. In addition to these six SPSEs, three other SPSEs had also constituted a CSR Committee despite not being mandated to do so. All nine SPSEs had at least three directors in their CSR Committees. However, seven of these SPSEs⁷ did not comply with the requirement of having an independent director in their CSR Committees during the year 2022-23.

Stakeholders Relationship Committee

3.13 Section 178(5) of the Companies Act, 2013 provides that the Board of Directors of a company which consists of more than one thousand shareholders, debenture holders, deposit-holders, and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee, consisting of a Chairperson who shall be a non-executive director and such other members as may be decided by the Board. Further, Section 178(6) of the Companies Act, 2013 provides that the Shareholders Relationship Committee shall consider and resolve the grievances of the security holders of the company.

Out of the 66 SPSEs, only one SPSE, *viz.*, Uttar Pradesh Power Corporation Limited, was required to have a Stakeholders Relationship Committee during the year 2022-23, as it had more than one thousand debenture holders. However, Uttar Pradesh Power Corporation Limited did not constitute the Stakeholders Relationship Committee during the year 2022-23.

Vigil Mechanism

3.14 Section 177(9) of the Companies Act, 2013, read with Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances:

- (a) companies which accept deposits from the public;
- (b) companies that have borrowed money from banks and public financial institutions in excess of ₹ 50 crore.

It further provides that the companies that are required to constitute an Audit Committee shall oversee the vigil mechanism through the Audit Committee.

⁷ One SPSE, *viz.*, Uttar Pradesh Medical Supplies Corporation Limited had appointed an independent director (who remained up to 21 March 2023) in its CSR Committee, and one SPSE, *viz.*, Jawaharpur Vidyut Utpadan Nigam Limited, was not required to appoint an independent director as it was a subsidiary of Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited.

Out of the 66 SPSEs, 12 SPSEs were required to establish a vigil mechanism for their directors and employees during the year 2022-23, as they had borrowed money from banks and public financial institutions in excess of ₹ 50 crore. Except for two SPSEs⁸, all the remaining SPSEs had an Audit Committee during the year 2022-23 to oversee the vigil mechanism.

Appointment and functioning of Independent Directors

3.15 Audit noticed several deficiencies in the appointment and functioning of independent directors, which are discussed in the succeeding paragraphs.

Issuance of a formal letter of appointment and approval at the meeting of shareholders

3.16 As per Schedule IV of the Companies Act, 2013, the appointment of Independent Directors shall be approved at a meeting of the shareholders. Further, the appointment of Independent Directors shall be formalised through a letter of appointment, which shall set out the term of appointment and other prescribed conditions.

Out of the six SPSEs that had independent directors on their Board of Directors during the year 2022-23, three SPSEs⁹ had not obtained approval for such appointment in a meeting of the shareholders. Further, one SPSE, viz., Kanpur Smart City Limited, had also not issued a formal letter containing the terms and conditions of appointment to the appointed independent directors.

Attending meetings of the Board and Board Committees

3.17 Schedule IV [Para (III)(3)] of the Companies Act, 2013 provides that independent directors should strive to attend all meetings of the Board of Directors and of the Board Committees of which they are members.

The status of participation of independent directors in meetings of the Board of Directors and the Board Committees, in respect of the six SPSEs that had independent directors on their Boards during the year 2022-23, is discussed below:

A. Meetings of the Board of Directors

The status of attendance of independent directors in meetings of the Board of Directors held during the year 2022-23 is given in **Table 3.7**.

Table 3.7: Status of attendance of independent directors in meetings of the Board

Sl. No.	Name of the SPSE	No. of independent directors	No. of Board meetings held during the year 2022-23	No. of meetings wherein all independent directors were present	Percentage of meetings attended by all independent directors
1.	The Pradeshiya Industrial and Investment Corporation of UP Limited	1	3	2	67
2.	DMIC Integrated Industrial Township Greater Noida Limited	2	5	4	80

⁸ Uttar Pradesh Alp Sankhyak Vittiya Evam Vikas Nigam Limited and Uttar Pradesh Food and Essential Commodities Corporation Limited.

⁹ Uttar Pradesh Medical Supplies Corporation Limited, Kanpur Smart City Limited, and DMIC Integrated Industrial Township Greater Noida Limited.

Sl. No.	Name of the SPSE	No. of independent directors	No. of Board meetings held during the year 2022-23	No. of meetings wherein all independent directors were present	Percentage of meetings attended by all independent directors
3.	Uttar Pradesh Medical Supplies Corporation Limited	1	4	3	75
4.	Kanpur Smart City Limited	2	2	1	50
5.	Varanasi Smart City Limited	2	5	4	80
6.	Agra Smart City Limited	2	5	3	60
Total			24	17	

Source: Compiled based on information provided by the SPSEs

From **Table 3.7**, it can be seen that independent directors attended only 17 meetings (71 per cent) out of 24 meetings of the Board of Directors held during the year 2022-23.

B. Meetings of Board Committees

(i) Audit Committee:

Out of the 21 SPSEs that had constituted an Audit Committee, five SPSEs had independent directors as members of their Audit Committee, as discussed in **Paragraph 3.10**. The independent directors attended all the meetings of the Audit Committees held during 2022-23, as detailed in **Table 3.8**.

Table 3.8: Status of attendance of independent directors in meetings of the Audit Committee

Sl. No.	Name of SPSEs	Date of meeting	No. of independent directors in the Audit Committee	No. of independent directors who attended the meeting
1.	The Pradeshiya Industrial and Investment Corporation of UP Limited	19.01.2023	1	1
2.	DMIC Integrated Industrial Township Greater Noida Limited	13.04.2022	2	2
		16.09.2022	2	2
		17.02.2023	2	2
		15.03.2023	2	2
3.	Uttar Pradesh Medical Supplies Corporation Limited	19.05.2022	1	1
		07.10.2022	1	1
		16.03.2023	1	1
4.	Varanasi Smart City Limited	25.06.2022	2	2
		23.08.2022	2	2
		07.10.2022	2	2
		20.01.2023	2	2
5.	Agra Smart City Limited	28.04.2022	2	2
		07.06.2022	2	2
		30.07.2022	2	2
		31.03.2023	2	2

Source: Compiled based on information provided by the SPSEs

(ii) Corporate Social Responsibility Committee:

Nine SPSEs had constituted CSR Committees during the year 2022-23. However, only one SPSE, viz., Uttar Pradesh Medical Supplies Corporation Limited, had independent director(s) as members of its CSR Committee. Another SPSE, viz., Jawaharpur Vidyut Utpadan Nigam Limited was not required to appoint independent directors as it was a subsidiary of Uttar

Pradesh Rajya Vidyut Utpadan Nigam Limited. The independent director(s) attended all meetings of the CSR Committee held during the year 2022-23.

Attending general meetings of the Company

3.18 Schedule IV [Para (III)(5)] of the Companies Act, 2013 provides that independent directors shall strive to attend the General Meetings of the Company.

Out of the six SPSEs that had independent directors on their Board of Directors during the year 2022-23, in the case of four SPSEs, all independent directors attended the Annual General Meetings (AGMs) held during the year 2022-23. The status of attendance of independent directors in AGMs held during the year 2022-23 is given in **Table 3.9**.

Table 3.9: Status of attendance of independent directors in Annual General Meetings

Sl. No.	Name of the SPSE	Date of AGM	No. of independent directors on the Board of Directors	No. of independent directors who attended the AGM
1.	The Pradeshiya Industrial and Investment Corporation of UP Limited	29.08.2023	1	1
2.	DMIC Integrated Industrial Township Greater Noida Limited	03.10.2023	2	2
3.	Uttar Pradesh Medical Supplies Corporation Limited	01.10.2022	1	1
4.	Kanpur Smart City Limited	27.12.2022	2	0
5.	Varanasi Smart City Limited	30.09.2022	2	1
6.	Agra Smart City Limited	20.12.2022	2	2

Source: Compiled based on information provided by the SPSEs

From **Table 3.9**, it can be seen that one independent director of Varanasi Smart City Limited and both the independent directors of Kanpur Smart City Limited had not attended the AGMs held during the year 2022-23.

Holding of separate meetings of the independent directors

3.19 Schedule IV [Para (VII)(1)] of the Companies Act, 2013 provides that the independent directors of a company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. Further, all the independent directors of the company shall strive to be present at such a meeting. The meeting shall – (a) review the performance of non-independent directors 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, which is necessary for the Board to effectively and reasonably perform their duties.

Out of the six SPSEs that had independent directors on their Board of Directors during the year 2022-23, four SPSEs had more than one independent director. The independent directors of these four SPSEs were required to conduct at least one meeting during the year 2022-23 without the attendance of non-independent directors and members of management. The status of separate meetings held by the independent directors of these four SPSEs during the year 2022-23 is given in **Table 3.10**.

Table 3.10: Status of separate meetings held by independent directors

Sl. No.	Name of the SPSE	No. of meetings held during 2022-23	No. of independent directors on the Board of Directors
1.	DMIC Integrated Industrial Township Greater Noida Limited	1	2
2.	Kanpur Smart City Limited	0	2
3.	Varanasi Smart City Limited	1	2
4.	Agra Smart City Limited	0	2

Source: Compiled based on information provided by the SPSEs

Out of these four SPSEs, the independent directors of two SPSEs did not conduct the aforesaid meeting during the year 2022-23. In the absence of a separate meeting of the independent directors, the performance of non-independent directors, the Chairperson of the company, and the Board as a whole remained unreviewed. Further, the quality, quantity, and timeliness of the flow of information between the company management and the Board could also not be assessed.

Appointment of Key Managerial Personnel

3.20 Section 203(1) of the Companies Act, 2013, read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, provides that every listed company and every other public company having a paid-up share capital of ₹ 10 crore or more shall have the following whole-time Key Managerial Personnel (KMP):

- (i) Managing Director (MD), or Chief Executive Officer (CEO), or Manager, and in their absence, a whole-time Director;
- (ii) Company Secretary (CS); and
- (iii) Chief Financial Officer (CFO).

Further, Section 203(4) of the Companies Act, 2013 provides that if the office of any whole-time KMP is vacated, the resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Out of the 66 SPSEs, 36 SPSEs, as given in **Appendix 3.1**, were required to appoint whole-time KMPs, as the paid-up capital of these SPSEs was ₹ 10 crore or more as per their latest finalised financial statements. Of these 36 SPSEs, 21 SPSEs had appointed whole-time KMPs during the year 2022-23. The remaining 15 SPSEs had not appointed the requisite KMPs, as detailed in **Table 3.11**.

Table 3.11: Status of appointment of key managerial personnel

Sl. No.	Name of the SPSE	Status of deficiencies in the appointment of KMPs
1.	Uttar Pradesh State Handloom Corporation Limited	CFO not appointed
2.	Uttar Pradesh State Spinning Company Limited	No KMP appointed
3.	Uttar Pradesh Rajya Chini Evam Ganna Vikas Nigam Limited	CS not appointed
4.	Uttar Pradesh State Sugar Corporation Limited	CS not appointed
5.	Prayagraj Smart City Limited	CS was appointed from 28.01.2023
6.	Agra Smart City Limited	CS was appointed from 07.11.2022

Sl. No.	Name of the SPSE	Status of deficiencies in the appointment of KMPs
7.	Madhyanchal Vidyut Vitran Nigam Limited	CS not appointed CFO was appointed from 22.12.2022
8.	Uttar Pradesh Medical Supplies Corporation Limited	CS was appointed from 31.01.2023
9.	Uttar Pradesh State Tourism Development Corporation Limited	CS not appointed
10.	Uttar Pradesh State Agro Industrial Corporation Limited	CS not appointed
11.	Jawaharpur Vidyut Utpadan Nigam Limited	CFO not appointed
12.	Kanpur Electricity Supply Company Limited	CFO was appointed from 22.12.2022
13.	Uttar Pradesh State Bridge Corporation Limited	CS not appointed
14.	Bareilly Smart City Limited	CFO not appointed
15.	Uttar Pradesh Waqf Vikas Nigam Limited	CS not appointed

Source: Compiled based on information provided by the SPSEs

Internal Audit Framework

3.21 The Framework Governing Internal Audits, issued (November 2018) by the Institute of Chartered Accountants of India (ICAI), 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.

Internal audit in SPSEs

3.22 Section 138(1) of the Companies Act, 2013, read with Rule 13 of Companies (Accounts) Rules, 2014¹⁰, provides that the following classes of companies 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:

- (a) every listed company;
- (b) every unlisted public company having –
 - (i) paid up share capital of ₹ 50 crore or more; or
 - (ii) turnover of ₹ 200 crore or more during the preceding financial year; or
 - (iii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more; or
 - (iv) outstanding deposits of ₹ 25 crore or more at any point of time during the preceding financial year.
- (c) every private company having –
 - (i) turnover of ₹ 200 crore or more during the preceding financial year; or

¹⁰ As amended from time to time.

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding ₹ 100 crore or more at any point of time during the preceding financial year.

Audit observed that 38 SPSEs, as given in **Appendix 3.2**, were required to appoint an internal auditor for the year 2022-23. Of these 38 SPSEs, eight SPSEs did not appoint an internal auditor for the year 2022-23. In the remaining 30 SPSEs, where internal auditors were appointed, internal audit in 28 SPSEs was conducted by Chartered Accountant/Cost Accountant firms, and in two SPSEs¹¹ by the internal audit wing of the respective SPSE.

Conclusion

The functioning of the Corporate Governance framework in the SPSEs exhibited several deficiencies, as detailed below:

- **Out of 32 SPSEs where independent directors were required to be appointed, 26 SPSEs did not appoint any independent directors, and in two SPSEs, the required number of independent directors was not appointed. Among the six SPSEs that had appointed independent directors, their attendance in Board meetings ranged between 50 and 80 per cent.**
- **Of the 31 SPSEs that were required to have at least one woman director on their Boards, 16 SPSEs had at least one woman director on their Board of Directors during the year 2022-23, whereas five SPSEs had a woman director for a part of the year and 10 SPSEs had no woman director on their Board of Directors throughout the year.**
- **In two SPSEs where more than one independent director was appointed, the mandatory separate meeting of independent directors was not conducted.**
- **Of the 36 SPSEs that were required to appoint whole-time Key Managerial Personnel (KMPs), 21 SPSEs had appointed whole-time KMPs during the year 2022-23.**
- **Of the 66 SPSEs (excluding statutory corporations), 35 SPSEs did not hold the requisite four Board meetings during 2022-23. Out of these 35 SPSEs, 12 SPSEs did not hold any Board meetings during 2022-23, and nine SPSEs conducted only one Board meeting during 2022-23. Further, in five SPSEs, the interval between two consecutive Board meetings ranged between 134 and 178 days, exceeding the prescribed limit of 120 days.**
- **Of the 32 SPSEs required to have an Audit Committee, 21 SPSEs constituted Audit Committee during the year 2022-23. Of these 21 SPSEs, the composition of the Audit Committee in 18 SPSEs was not as per the provisions of the Companies Act, 2013.**
- **The Nomination and Remuneration Committee (NRC) was not constituted in 28 SPSEs, and in one SPSE, the composition of the NRC was not in accordance with the provisions of the Companies Act, 2013.**

¹¹ Uttar Pradesh State Bridge Corporation Limited and U.P. Scheduled Castes Finance and Development Corporation Limited.

- **Of the 38 SPSEs required to appoint an internal auditor for the year 2022-23, 30 SPSEs appointed an internal auditor for the year 2022-23, as required under the Companies Act, 2013.**

Recommendation

The Government of Uttar Pradesh may direct the SPSEs to comply with the provisions of the Companies Act, 2013, to ensure effectiveness in the functioning of the Corporate Governance framework in the SPSEs.