

CHAPTER III

Corporate Governance

3.1 Introduction

3.1.1 Provisions as contained in the Companies Act, 2013

The Companies Act, 2013 was enacted on 29 August 2013 replacing the Companies Act, 1956. 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 provide a robust framework for corporate governance. The requirements, *inter alia* provide for:

- Qualifications for Independent Directors 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 one 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 Corporate Social Responsibility Committee¹ [Section (135)], Audit Committee [Section 177(1)], Nomination and Remuneration Committee [Section 178(1)] and Stakeholders Relationship Committee [Section 178(5)].
- Holding of a minimum of four meetings of Board of Directors 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

Subsequent to the enactment of 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. 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.

¹ Separately dealt with in Chapter IV of this report.

3.1.3 Bureau of Public enterprise (BPE) guidelines on Corporate Governance for Tamil Nadu Public Sector Undertakings

As per Section 292 A of the erstwhile Companies Act, 1956, every Public Company whose paid up capital was not less than ₹five crore should constitute an Audit Committee which shall consist of not less than three directors other than Managing or whole time directors. BPE, Government of Tamil Nadu, issued (9 May 2012) instructions that the Companies whose paid up capital was lesser than the then prescribed limit of ₹five crore also to constitute Audit Committee under section 292 A of Companies Act, 1956 even though there were no mandatory provisions in the Companies Act. Thus, the intention of the State Government was that all PSUs irrespective of their Paid up Capital should constitute an Audit Committee. However, Companies Act, 2013 which replaced Companies Act, 1956 vide section 177 stipulated that all listed companies and such other class or classes of companies as may be prescribed shall constitute an Audit Committee with a minimum of three directors as members with Independent Directors forming a majority. Further, as per Rule 6 of the Companies (Meetings of Board and its powers) Rules, 2014, prescribed the following class of companies shall also constitute an Audit Committee: (i) Public Companies having paid up share capital of ₹ten crore or more, or (ii) Public Companies having turnover of ₹one hundred crore or more, or (iii) Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹fifty crore.

BPE also issued (August and December 2014) instructions to PSUs to comply with the provisions relating to appointment of Independent Directors and Woman Director.

Compliance to the above provisions of Companies Act, 2013, BPE guidelines, Companies (Appointment and Qualification of Directors), Rules, 2014, Companies (Meetings of Board and its powers) Rules, 2014 by the selected PSUs was reviewed. In addition to the above, compliance to SEBI guidelines by the lone listed State PSU was also reviewed.

3.1.4 Review of compliance by selected² PSUs of the Corporate Governance provisions

As on 31 March 2020, there were 71 working PSUs (including one listed PSU) and one Statutory Corporation in Tamil Nadu under the audit jurisdiction of the CAG of India. In the context of the policy of the Government to grant more autonomy to the PSUs, corporate governance has assumed importance.

3.2 Board of Directors – Meetings and its composition

3.2.1 Meetings of Board of Directors

As per Section 173(1), the companies should hold a minimum of four meetings

² Excludes five non-working PSUs viz., Tamil Nadu State Construction Corporation Limited, Tamil Nadu Police Transport Corporation Limited, Tamil Nadu Poultry Development Corporation Limited, Southern Structurals Limited and Tamil Nadu Goods Transport Corporation Limited.

of Board of Directors every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board. Ministry of Corporate Affairs, Government of India issued circular dated 24 March 2020 extending the gap between two consecutive meetings of the Board from 120 days to 180 days *i.e.*, for two quarters from April 2020 to September 2020 as a special measure in view of COVID-19 outbreak. As this relaxation is not applicable for 2019-20, Audit observed that ten³ PSUs did not conduct the required number of four meetings during the year 2019-20.

3.2.2 Independent Directors

The Board is the most significant instrument of corporate governance. 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. In terms of section 149 (4) of the Companies Act, 2013, where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and, in case he is an executive director, at least half of the Board should comprise independent directors. As per Clause 49 (II) (B) (1), ‘independent director’ shall mean a non-executive director, other than a nominee director of the company. Further, as per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following class or classes of companies shall have at least two directors as independent directors:

- (i) The Public Companies having paid up share capital of ₹ ten crore or more, or
- (ii) The Public Companies having turnover of ₹one hundred crore or more, or
- (iii) The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding ₹fifty crore.

The representation of independent directors in the Board of the unlisted PSUs has been examined with reference to Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 and BPE guidelines of August/ December 2014 and it was observed that the Board of Directors in seven PSUs listed in **Table 3.1** did not comprise the required number of two independent directors.

³ Guindy Industrial Estate Infrastructure Upgradation Company, Tamil Nadu Industrial Explosives Limited, Pallavan Transport Consultancy Services Limited, Arasu Cable TV Corporation Limited, TN Fibrenet Corporation Limited, Tamil Nadu Industrial Development Corporation Limited, Tamil Nadu Backward Classes Economic Development Corporation Limited, Tamil Nadu Skill Development Corporation Limited, Arasu Rubber Corporation Limited and Tamil Nadu Corporation for Development of Women Limited.

Table 3.1

PSUs which did not have prescribed number of Independent Directors

Sl. No.	Name of the PSU	Total No. of Directors	Required No. of Independent Directors	Actual No. of Independent Directors	Shortfall in No. of Independent directors
1	Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)	10	2	--	2
2	Tamil Nadu Transmission Corporation Limited (TANTRANSCO)	11	2	--	2
3	TNEB Limited	9	2	--	2
4	Tamil Nadu Medical Services Corporation Limited	9	2	--	2
5	Tamil Nadu Backward Classes Economic Development Corporation Limited	8	2	1	1
6	Tamil Nadu Fisheries Development Corporation Limited	5	2	--	2
7	Tamil Nadu Forest Plantation Corporation Limited	7	2	--	2

Source: Details received from the PSUs

It may be seen from the above table that there was not even a single independent director in the Board in respect of six PSUs. Consequently, the provisions of the Companies Act, 2013 and Companies (Appointment and Qualification of Directors) Rules, 2014 with respect to appointment of independent Directors have not been complied with by these seven PSUs. Government replied (September 2021) that the requirement of appointment of Independent Directors is not applicable to TANGEDCO and TANTRANSCO as these are subsidiaries of TNEB Limited. However, it is pertinent to mention that the Statutory Auditors of TANGEDCO have repeatedly commented about non-appointment of Independent Director in TANGEDCO's Board for which its replied that the proposal to appoint Independent Director is under consideration of the Government. Audit further observed that the holding Company of TANGEDCO and TANTRANSCO viz., TNEB Limited had also not appointed any Independent Directors in its Board. Thus, non-appointment of Independent Director is in contravention of the provisions of Sec.149 of the Companies Act, 2013.

3.2.3 Woman Director in the Board

Section 149 (1) of the Companies Act, 2013, stipulate that the Board of Directors of the company shall have at least one woman Director in its Board. Further, as per Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 the following class of companies shall appoint 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,

Audit observed that three PSUs⁴ did not appoint woman director in their Board though they were required to comply with the above stipulation as per the guidelines issued by BPE during August/ December 2014.

3.3 Appointment and functioning of Independent Directors

3.3.1 Declaration of status

Section 149 (7) of the Companies Act, 2013, stipulate that the Independent Director shall make a declaration that he meets the status of Independent Director. However, the Directors did not declare their independent status in five PSUs viz., Tamil Nadu Minerals Limited, Metropolitan Transport Corporation Limited, Tamil Nadu State Transport Corporation (Madurai) Limited, Poompuhar Shipping Corporation and Tamil Nadu Backward Classes Economic Development Corporation Limited.

3.3.2 Training of Independent Directors

Schedule IV of Companies Act, 2013 - Para (III) (1) – Duties of Independent Directors and Clause 49 (II) (B) (7) (a) & (b) and Regulations 25 (7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulate that the company shall 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. However, it was observed that 26 PSUs detailed in **Appendix-XVI** did not conduct any training to the Independent Directors who were on the Board during the year 2019-20.

3.3.3 Meetings of Board of Directors and Board committees

Schedule IV (III) (3) of the Companies Act, 2013 states that Independent Directors should strive to attend all the meetings of Board of Directors and Board Committees of which he/she was a member. Some of the Independent Directors, however, did not attend the Board meetings. The number of such Independent Directors who did not even attend seventy five *per cent* of meetings is indicated in **Appendix-XVII**.

3.3.4 Attending General Meetings of the Company

Schedule IV (III) (5) of the Companies Act, 2013 states that Independent Directors shall strive to attend the Annual General Meetings (AGM) of the Company. The 15 PSUs where Independent Directors did not attend the general meetings of the Company is given in **Appendix-XVIII**.

3.3.5 Meeting of Independent Directors

3.3.5.1 Schedule IV (VII) (1) of the Companies Act, 2013, Regulation 49 II B (6) (a) of Listing Agreement and Regulation 25 (3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 require that Independent Directors shall meet at least once in a financial year, without the attendance of non-independent Directors and members of management. It was

⁴ Tamil Nadu Generation and Distribution Corporation Limited, TNEB Limited and Arasu Cable TV Corporation Limited.

noticed that separate meeting of independent directors was not conducted in respect of 20 PSUs detailed in **Appendix-XIX**. However, Ministry of Corporate Affairs, Government of India issued circular dated 24 March 2020 stating that non-conduct of such meeting would not be treated as violation in view of Covid outbreak.

3.3.5.2 Schedule IV (VII) (2) of the Companies Act, 2013 provides that all the Independent Directors strive to attend such separate meeting of Independent Directors. However, in Tamil Nadu Small Industries Development Corporation Limited, none of the independent directors attended such separate meetings.

3.4 Filling up the post of Key Managerial Personnel

3.4.1 It was observed that in ten PSUs (Tamil Nadu Cements Corporation Limited, Tamil Nadu Minerals Limited, State Express Transport Corporation Limited, Metropolitan Transport Corporation Limited, Tamil Nadu State Transport Corporations, Villupuram, Salem, Coimbatore, Kumbakonam, Madurai and Tirunelveli), vacancies of whole time Key Managerial Personnel⁵ were not filled within the period of six months prescribed in Section 203 (4) of the Companies Act, 2013. It is pertinent to mention that BPE, Finance Department, GoTN has also directed PSUs for strict compliance to the provisions of Companies Act, 2013 and Companies Rules, 2014 with respect to appointment of whole time key managerial personnel.

3.5 Audit Committee

3.5.1 Composition of Audit Committee

Section 177 (1) and (2) of the Companies Act, 2013, stipulate that there shall be an Audit Committee with a minimum of three directors as members with Independent Directors forming a majority. However, no Audit Committee was constituted in respect of six PSUs viz., Tamil Nadu Backward Classes Economic Development Corporation Limited (TABCEDCO), Tamil Nadu Medical Services Corporation (TNMSC), Tamil Nadu Fisheries Development corporation (TNFDC), Tamil Nadu Skill Development Corporation Limited, Tamil Nadu Minorities Economic Development Corporation Limited and Tamil Nadu Rural Housing and Infrastructure Development Corporation Limited (TNRHIDC). While TABCEDCO stated that the Audit Committee is yet to be constituted, TNMSC and TNRHIDC stated constitution of Audit Committee was not applicable to it. The statement of TNMSC and TNRHIDC are not acceptable since they have borrowings exceeding ₹ 50 crore and hence, they have to constitute an Audit Committee.

It was observed that Tamil Nadu Adi-draavidar Housing and Development Corporation Limited though constituted audit committee, did not meet even once during the year.

⁵ As per Section 2(51) of the Companies Act, 2013, Key Managerial Personnel, in relation to a company, means (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed

Further, majority of the Audit Committee members were not Independent Directors as per the requirements of Section 177 of the Companies Act, 2013 in respect of seven PSUs detailed in **Appendix-XX**.

Government in its reply stated (September 2021) that the Chief Executive Officers of respective state PSUs are being addressed for taking appropriate action to comply with the audit observations with respect to formation of audit committee and related issues.

3.5.2 Evaluation of Internal Control Systems

Section 177 (4) (vii) of Companies Act, 2013, Clause 49 (III) (D) (11) Listing Agreement and Part C (A) (11) of schedule II to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulate that the Audit Committee should evaluate internal financial control systems and risk management systems. However, the Audit Committee did not evaluate the internal financial control systems in respect of eleven PSUs detailed in **Table 3.2**

Table 3.2
PSUs in which the Audit Committee did not evaluate the Internal
Financial control systems during 2019-20.

Sl. No.	Name of the PSU	Date on which Audit Committee meetings were conducted
1	Tamil Nadu Minerals Limited	30 July 2019, 12 February 2020 and 18 March 2020.
2	Tamil Nadu Industrial Investment Corporation Limited	27 June 2019, 26 August 2019, 22 January 2020 and 12 March 2020
3	Electronics Corporation of Tamil Nadu Limited	19 June 2019, 19 September 2019 and 27 February 2020.
4	Tamil Nadu Cements Corporation Limited	30 May 2019, 21 September 2019 and 20 December 2019
5	Tamil Nadu Industrial Explosives Limited	04 December 2019
6	State Express Transport Corporation Limited	10 September 2019, 07 November 2019 and 28 February 2020
7	Tamil Nadu State Transport Corporation (Coimbatore) Limited	03 July 2019, 27 September 2019, 05 November 2019 and 03 March 2020
8	Tamil Nadu State Transport Corporation (Kumbakonam) Limited	27 June 2019, 05 September 2019, 12 November 2019 and 22 February 2020
9	Tamil Nadu State Transport Corporation (Salem) Limited	26 June 2019, 25 September 2019, 05 November 2019 and 03 March 2020
10	Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited	25 March 2019, 24 July 2019, 21 February 2020 and 21 October 2020
11	Tamil Nadu Civil Supplies Corporation	18 September 2019, 29 November 2019 and 09 March 2020

Source: Details received from the PSUs

3.5.3 Monitoring of the Auditor's Performance

Section 177 (4) (ii) of Companies Act, 2013, stipulate that the Audit Committee shall review and monitor the auditor's independence and performance, and effectiveness of audit process. In 15 PSUs (**Appendix-XXI**), the auditor's performance was not reviewed by the Audit Committee.

3.5.4 Review of Information/Documents by Audit Committee

3.5.4.1 All the PSUs are subject to the audit of CAG of India as per the statutory mandate. Section 143 (6) of the Companies Act, 2013, authorises CAG to carry out supplementary audit of accounts of Government Companies. Further, Section 177 (4) (iii) of the Companies Act, 2013 provides that Audit Committee shall examine the financial statements and Auditors' Report thereon. Thus, in case of PSUs, it is the responsibility of the Audit Committee to review the findings of CAG including management letters issued by CAG. However, the Audit Committee did not review CAG's findings and management letters of CAG in respect of six PSUs viz., Tamil Nadu Minerals Limited, Tamil Nadu Industrial Investment Corporation Limited, Electronics Corporation of Tamil Nadu Limited, Tamil Nadu Transport Development Finance Corporation Limited, State Express Transport Corporation Limited and Tamil Nadu Ex-servicemen's Corporation Limited.

Section 177 (4) of Companies Act 2013, stipulate that the Audit Committee shall mandatorily review the information relating to (i) management discussion and analysis of financial condition and results of operations, (ii) statement of significant related party transactions (as defined by the Audit Committee) submitted by management, (iii) management letters/letters of internal control weaknesses issued by the statutory auditors and (iv) internal audit reports relating to internal control weaknesses. However, it was observed that Audit Committee did not review the above items in respect of 14 PSUs indicated in **Appendix-XXII**.

3.5.4.2 Discussion with Statutory Auditors

Section 177 (5) of the Companies Act, 2013, Clause 49 (III) (D) (16) of Listing Agreement and Part C (A) (16) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 provide that the Audit Committee should hold discussions with the statutory auditors before the audit commences on the nature and scope of audit to ascertain the areas of concern. The Audit committee of 16 PSUs indicated in **Appendix-XXIII** did not hold any such discussion.

3.6 Other Committees

3.6.1 Nomination and Remuneration Committee

Section 178 (1) of the Companies Act, 2013 and Rule 6 of the Companies (Meetings of Board and its Powers) Rules, 2014 stipulate that each PSU shall constitute a Nomination and Remuneration Committee comprising of at least three Directors, all of whom should be non-executive Directors and at least half of them shall be Independent Directors. Chairman of the Committee shall be an Independent Director. However, no Nomination and Remuneration Committee was constituted in respect of 28 PSUs listed in **Appendix-XXIV**.

3.6.2 Whistle Blower Mechanism

Section 177 (9) of the Companies Act, 2013 and Rule 7 of the Companies (Meeting of Board and its Powers) Rules, 2014 stipulate that the listed

companies and such other class of companies *i.e.*, companies which receives deposits from public and which have borrowed from Banks and Public Financial Institutions in excess of ₹50 crore shall constitute a vigil mechanism and that the Audit Committee shall review the functioning of the Whistle Blower Mechanism. In respect of 20 PSUs which were required to comply with the provisions, five⁶ PSUs had established vigil mechanism and 14 PSUs had not established the vigil mechanism and one⁷ PSU had given assurance to establish the same after getting approval of the Board. (*vide* **Appendix-XXV**)

3.6.3 Compliance Reports

Regulation 27 (2) (a) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 stipulate that every company has to submit a quarterly compliance report to the stock exchanges within 15 days from the end of every quarter. Tamil Nadu Newsprint and Papers Limited, the lone listed company, had submitted quarterly compliance report to the stock exchanges.

3.7 Conclusion

During 2019-20, out of the 71 working PSUs (including one PSU listed in the stock exchange), ten PSUs did not conduct the mandatory requirement of four meetings of the Board of Directors. The Board of Directors in seven PSUs did not comprise the required number of independent directors. The stipulation to appoint at least one woman director in the Board of Directors was not met in three PSUs. The Directors of five PSUs did not declare their independent status. During 2019-20, no trainings were conducted to the Independent Directors in 26 PSUs. The Independent Directors did not attend even seventy five *per cent* of the Board meetings in 19 PSUs and Board committee meetings in 11 PSUs. In 15 PSUs, the Independent Directors did not attend the general meetings of the Company. No separate meeting of Independent Directors was conducted in respect of 20 PSUs. In one PSU, the Independent Directors did not attend the separate meeting of the Independent Directors. The post of Key Managerial Personnel was not filled up within the time prescribed in ten PSUs. No Audit Committee was constituted in six PSUs. Further, in respect of seven PSUs majority of the members of the Audit Committee were not independent directors. The Audit Committee did not evaluate the internal financial control systems in respect of 11 PSUs. In 15 PSUs, the Audit Committee did not review and monitor the auditor's performance and effectiveness of audit process. Audit Committee did not review the findings of CAG and examine the management letters issued by CAG in respect of six PSUs. Audit Committee did not discuss the nature and scope of audit with the statutory auditors before commencement and after completion of audit to focus on the areas of concern in respect of 16 PSUs. Nomination and Remuneration Committee was not constituted by 28 PSUs.

⁶ Tamil Nadu Newsprint and Papers Limited, Tamil Nadu Industrial Investment Corporation Limited, Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited, TIDEL Park Coimbatore Limited and Tamil Nadu Power Finance and Infrastructure Development Corporation Limited.

⁷ Tamil Nadu Road Development Company Limited.

Government replied (September 2021) that the Chief Executive Officers of all State Public Sector Undertakings have been requested to comply with the observations pointed out by audit with respect to the Corporate Governance.

3.8 Recommendations

Government of Tamil Nadu may impress upon the respective administrative Departments to ensure strict compliance of its Finance (BPE) Circulars / SEBI guidelines and relevant provisions of Companies Act, 2013 for achieving the objectives of Corporate Governance. Board of Directors of PSUs should also ensure compliance with Finance (BPE) Circulars / SEBI guidelines and relevant provisions of Companies Act, 2013. Audit further recommends that even the PSUs which are not required to comply with the various provisions of Companies Act, 2013 on Corporate Governance may also voluntarily comply with the same for good and transparent governance of the PSUs.