

REPORT OF
AD HOC GROUP OF EXPERTS
ON
EMPOWERMENT OF
CENTRAL PUBLIC SECTOR ENTERPRISES



Department of Public Enterprises
Ministry of Heavy Industries & Public Enterprises
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CONTENTS

Foreword	
Executive Summary	1 – 4
Chapter 1: Introduction	5 – 6
Chapter 2: Ownership Issues and Powers of CPSEs	7 – 17
Chapter 3: Audit of Government Companies	18 – 20
Chapter 4: Article 12 of the Constitution of India	21 – 22
Chapter 5: Parliamentary Accountability	23 – 24
Chapter 6: Vigilance Management in Public Sector Enterprises	25 – 29
Annexures	



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FOREWORD

The Ministry of Heavy Industries and Public Enterprises had constituted an Adhoc Group of Experts to consider issues relating to autonomy, delegation of financial powers, etc. of Central Public Sector Enterprises vide DPE Notification No.18(24)/2003-GM dated 11.11.2004. The Group held several meetings and discussed the relevant issues with various stakeholders including the Chief Executives of Navratna PSEs. The present Report has emerged out of these extensive deliberations.

I take this opportunity to extend my sincere thanks to the Convener and all the Members of the Group for their valued suggestions and contributions. I also express my deep appreciation to the assistance rendered by the Department of Public Enterprises in making this Report.

Arjun Sengupta
(Arjun Sengupta)

EXECUTIVE SUMMARY

Ownership issues and Powers of CPSEs

1. For effective governance of Central Public Sector Enterprises (CPSEs), their ownership functions, the powers and operational procedures of the Board of Directors and their responsibilities together with suitable checks and balances for exercising control over the Management should be properly designed and implemented.

(Para 2.1)

2. The Ad-hoc Group of Experts (AGE) recommends that any decision to reduce Government share holding to a level less than 51% in case of Category I CPSEs i.e. Navratna, Miniratnas and consistently profit making CPSEs, should be taken only with the consent of the Parliament. The Board of Directors should have all the powers to raise equity capital from the market so long as the Government's share of the overall equity remains above 51%. However, in case of Category II CPSEs i.e., other than those mentioned above, Government should have full flexibility of owning or disinvesting their shares.

(Para 2.3, Para 2.16)

3. The AGE recommends that governance of CPSEs, especially the Navratnas and Miniratnas and other profit making companies, should continue to be supervised by the three tier system, namely, the Ministry concerned representing the Government, the Board of Directors and the Management, with the role, powers and functions of each of them clearly defined and codified.

(Para 2.5)

4. The AGE recommends that an institutional arrangement is required in order to ensure harmonious relations and interactions among the three tiers and to provide for the redressal of grievances of the stakeholders. To fulfill this requirement, the establishment of six overarching Supervisory Bodies, each consisting of ten members (three Ministers, five independent distinguished experts of the relevant sector and Secretary of the Ministry / Department and CMD concerned) is considered essential. The AGE has suggested the setting up of such Supervisory Bodies for six different sectors.

(Para 2.5)

5. The Supervisory Body should not give any direct instructions to the CPSEs. The Body should give its views only on matters referred to it.

(Para 2.6)

6. The Ministry should effectively perform the role of the sole/major shareholder as well as owners of the company. The Ministry should consult other Ministries, including Finance and other relevant Departments and, where necessary, obtain the approval of

the Cabinet. It should assist the implementation of the projects of CPSE in its charge in line with Government Policy.

(Para 2.9)

7. Adverse actions like reprimand, suspension, premature termination, denial of extension of tenure, supersession of the recommendations of PESB, etc. must be referred to the Supervisory Body and the ACC should take its views into account before taking any decision on such matters. Appointments to Board level positions in CPSEs may be made for the period until superannuation instead of fixed tenures.

(Para 2.10)

8. The Ministry should not give instruction directly or indirectly to the Management. It should be the responsibility of the concerned Board of Directors. The views of the Ministry should be communicated to the Board through Government Directors.

(Para 2.11)

9. If the Ministry considers it necessary to issue mandatory instruction to a CPSE, the same must be given in the form of a Presidential Directive. The issuance of such Presidential Directives should have the approval of the Cabinet.

(Para 2.12)

10. The Ministry should not normally review the functioning of the company more than twice a year. Such reviews should be based on the reports of the relevant Board of Directors and selected major performance indicators. Since the profitability of CPSEs is influenced by several factors such as the administered price mechanism and fluctuations in international price of the commodities, the Group recommends that the Ministries concerned should develop CPSE-specific criteria to determine their overall performance, independent of profitability.

(Para 2.13)

11. There should be a negative list of areas which must be kept away from the intervention of the Government (except for respective jurisdiction of CAG and CVC).

(Para 2.14)

12. The current restrictions regarding capital expenditures, joint ventures, etc. need to be done away with. Such decisions should be left entirely to the Board of Directors. However, if that is not possible at one stroke, as the first step towards this desirable goal, enhanced powers should be given to Navratna / Miniratna and other profit making companies in respect of Capital expenditure, setting up of Joint Ventures (JVs) / Subsidiaries, subsequent investment in JVs. JVs between Navratnas, merger and acquisition, appointment of Directors in subsidiaries and JVs etc. The Chief Executive of CPSE concerned should be a member of Search Committee for selection of non-official Directors.

(Para 2.15)

13. There should be detailed procedural guidelines including limits of financial expenditure on foreign travel of Chief Executives and Board Members, formulated by the Board of Directors of the CPSEs concerned and no reference to the Government for approval should be necessary unless deviation from such guidelines is intended.

(Para 2.17)

14. The Board of Directors should be fully responsible for the supervision and control over the Management of the company.

(Para 2.18)

15. Subject to statutory requirements, Government policy and regulatory guidelines issued by the RBI, the Board of Directors should have full powers of pursuing new lines of business, deciding on suitable Acquisitions and Mergers, setting up Subsidiaries and exiting from any line of business, as also of making Capital expenditure up to the levels indicated in Para 2.15, without any prior clearance from the Government.

(Para 2.19)

16. No more than two officers should be nominated as Board Members by the Government on the Board of Directors of Navratna, Miniratna or other profit making CPSEs. The performance of Government Directors must be suitably reflected in their personal CRs. An appraisal system for performance review of Independent Directors should be formulated.

(Para 2.20)

17. The Chief Executives and the Functional Directors should also be entitled to performance linked bonus / incentive within the permissible limit of 5% of distributable profit. The Compensation Committee of the Board as constituted under the 'Listing Agreement' should have the authority to decide on the quantum of such performance-linked incentives on the basis of individual's performance and contribution during the year under review. Such bonus / incentive would, however, be governed by the limits prescribed in the Companies Act.

(Para 2.21)

18. The Chief Executive should be entirely responsible for the day-to-day management and operation of the company under the overall supervision of the Board of Directors.

(Para 2.22)

19. The Management should be free to exercise all powers explicitly delegated by the Board of Directors. It should function under the supervision of the Chief Executive and Functional Directors on the Board.

(Para 2.23)

20. The Management should be responsible for implementation of the decisions of the Board of Directors, and compliance of all statutory requirements as well as policy guidelines.

(Para 2.24)

Audit of Government Companies

21. The AGE has made various suggestions for streamlining of the present system of test / supplementary / transaction audit of CPSEs in order to save time and to avoid duplications.

(Para 3.4)

Article 12 of the Constitution and CPSEs

22. The AGE has suggested that the issue relating to amendment of Article 12 of the Constitution could be revisited by the Policy makers at an appropriate time.

(Para 4.5)

Parliamentary Accountability

23. The AGE has made some suggestions in regard to Parliamentary accountability of CPSEs in order to enable them to focus on their business and to avoid disclosure of commercially sensitive information.

(Para 5.5)

Vigilance Management in CPSEs

24. The AGE, after taking into account suggestions made by Arvind Pande Committee, has made several recommendations in regard to Vigilance related issues concerning CPSEs.

(Para 6.12)

REPORT OF AD HOC GROUP OF EXPERTS

ON EMPOWERMENT OF CENTRAL PUBLIC SECTOR ENTERPRISES

Chapter 1: INTRODUCTION

1.1	<p>The last couple of decades have witnessed an accelerated pace of political and economic integration across the world and the increasing interdependence between economies of different countries. This phenomenon, which is broadly called ‘globalisation’, has been reinforced in the last decade by an increasing impact of the multilateral trade regime ushered in by the formation of the World Trade Organization in 1994.</p> <p>Another phenomenon that has assumed tremendous significance is the technological revolution, including information technology, that is sweeping the world forcefully in an all pervasive manner. Any failure to respond to this can only lead to obsolescence, in the total sense of the term. Technology, information and ideas are no longer confined within the boundaries of a sovereign state. All the above mentioned factors have also caused institutional changes, including modifications in the policy, industrial organization and administration of laws and regulations that govern the behaviour of economic agents.</p>
1.2	<p>The response of India to this changing world environment has resulted in far-reaching economic reforms initiated more comprehensively since the beginning of the 1990s. Fiscal and monetary policies, trade and export-import policies, industrial policies, etc. have all been aligned with the new reforms and initiatives.</p>
1.3	<p>With increasing competition from the domestic private sector as well as foreign companies in the wake of liberalization and</p>

globalisation, the need to empower Central Public Sector Enterprises (CPSEs) with greater financial and operational powers was realized in order to enable them to effectively face increasing levels of competition. To delegate these powers, the concept of Navratna and Miniratna was introduced in July and October 1997. The powers delegated were related to incurring Capital expenditure, formation of Joint Ventures/ Subsidiaries / strategic alliances, implementation of HRD policies including VRS etc. Later, certain powers for incurring Capital expenditure were also delegated to other profit making CPSEs. The professionalization of Boards of Directors was made a precondition to ensure that the enhanced powers were used prudently. Professionals were inducted in the Boards of Directors of these CPSEs and audit committees were also set up. These measures have helped in more objective and quicker decision-making by the Boards of Directors of CPSEs, with the independent Directors bringing in fresh thinking. The National Common Minimum Programme of the UPA Government has mandated devolution of full managerial and commercial autonomy to successful and profit making CPSEs operating in a competitive environment. Such measures are expected to motivate the Management and the employees of the Navratna and Miniratna CPSEs to perform better. These would also motivate other CPSEs to improve their performance in order to achieve the coveted status of being either a Navratna or Miniratna.

1.4 The first delegation of powers to Navratnas/Miniratnas in 1997 has certainly contributed to the improved performance of some of those Enterprises. But the fast changing world economic environment and the mandate of the National Common Minimum Programme now call for some bold and new thinking, and not mere incrementalism in empowerment. The last decade or so has witnessed perceptible performance improvements in a number of companies, whether it be GE or Motorola elsewhere in the world or Bajaj Auto, Infosys or Wipro at home. The managements of these companies did not believe in incrementalism of performance; and the quantum leaps in their performance have been the result of fully accountable but fully empowered management teams. Repeating / inducing such success in the CPSEs will require more than incremental empowerment. In a deregulated, fast changing and competitive economy, and with gradual dismantling of tariff barriers as envisaged in the non-agricultural market access negotiations in WTO, a company which is not adaptive and not growing fast enough will

definitely cease to exist. The rigour of these new challenges is equally matched by unprecedented opportunities in the new world order which are such that a determined management can take its company to new levels of success much more quickly and effectively than in the past. Such opportunities can, however, be exploited fully by CPSEs only if certain specific areas are addressed in respect of autonomy accompanied by accountability. They are:

Ø Issues of ownership by the Government and delegation of administrative and financial powers to CPSEs

Ø Audit of Government companies

Ø Constitutional Issues

Ø Parliamentary Accountability

Ø Vigilance Issues

Chapter 2: OWNERSHIP ISSUES AND POWERS OF CPSEs

2.1 The question of the autonomy of CPSEs essentially relates to the issues of ownership, control and management. Ownership is usually associated with the overall control of the enterprise for the long-term value creation of the company and achieving its medium and long-term objectives. The shareholders who are the owners seldom get involved in controlling the day-to-day operations of the company. For that, the companies have their Board of Directors, who are responsible for reviewing and overseeing the effectiveness of operations and management at periodic intervals. The Management, in turn, is in the charge of the Chief Executive of the company assisted by other functional Directors. In order to ensure effective governance of the company, it is necessary to properly design and implement the ownership functions, the powers and operational procedures of the Board of Directors and the responsibilities together with suitable checks and balances for exercising control over the Management.

2.2 For maintaining the overall control of the company, it is not necessary that the owner should own 100% of the shares. A majority of shareholding is in most cases sufficient for all purposes and even a minority shareholding in a widely held

	<p>company may often let the owners have basic control of the company operations, necessary to ensure the maintenance and improvement of the value of the assets of the company, as well as implementation of the programmes for realizing its basic objectives.</p>
2.3	<p>The National Common Minimum Programme (NCMP) of the UPA Government affirms commitment to a strong and effective public sector. To facilitate better commercial functioning of the successful and profit-making CPSEs which are operating in a competitive environment, the NCMP has pledged to devolve full managerial and commercial autonomy. It is also mentioned in the NCMP that generally profit-making CPSEs will not be privatized.</p> <p>The Ad-hoc Group of Experts (AGE), therefore, felt that the Government, as the principal owner of the CPSEs, should have complete flexibility of owning or disinvesting its shares to obtain the maximum value for their assets through sale and purchase or disinvestment and reinvestment of the shares. The Group was of the view that this issue has to be dealt with differentially by dividing the CPSEs in two categories: Navratnas, Miniratnas and other consistently profit-making CPSEs (those CPSEs which have been making profits for the past three consecutive years and have a positive net worth) in Category I and the other CPSEs in Category II.</p> <p>In keeping with the letter and spirit of the NCMP, the Group was of the view that a decision, if any, to privatize a Category I CPSE by reducing Government shareholding to a level less than 51% in it should be taken only with the consent of the Parliament, as the ultimate representative of the people. However, in case of other CPSEs (Category II), the Government should have full flexibility of owning or disinvesting their shares. The Board of Directors of both categories of CPSEs should also have the power to raise equity capital from the market, so long as the Government's share of the overall equity remains above 51%.</p>
2.4	<p>The Ministry in charge of the company should recognize the fact that they are not the owners of the company but are only exercising the functions of ownership as a custodian on behalf of the Government and the public at large. The Group felt that the current system of the Ministry being in overall charge of a CPSE, facilitating its functions and looking after its interests has been quite useful and should therefore be continued, subject to certain suggestions which have been</p>

made in the subsequent paragraphs. However, it must be ensured that the Ministry takes into account not only the interest of the Government as a whole but also of the non-governmental shareholders, who are equally interested in safeguarding the value of their asset. This is particularly important as many of the CPSEs are now listed in the stock markets, with their shares held by members of the public at large as well as financial/non-financial institutions. Furthermore, it also must be ensured that the Government in discharging the functions of ownership does not get involved in controlling the details of operations and the day-to-day management of the company. Finally, as far as the listed CPSEs are concerned, the Government should also facilitate the fulfillment of the provisions of Clause 49 of listing agreement, in conformity with the guidelines of the market regulator, SEBI.

2.5 The Group considered several models of ownership of companies and an arms-length relationship of government with the Board of Directors and the Management and came to the view that the governance of CPSEs, and especially the Navratnas and Miniratnas and other profit making companies should continue to be supervised by the three tier system, namely, the Ministry concerned representing the Government, the Board of Directors, and the Management, with the role, powers and functions of each of them clearly defined and codified. After studying the working of all the three tiers involved, the Group was strongly of the view that an institutional arrangement is required in order to ensure harmonious relations and interactions among the three tiers and to provide for the redressal of grievances of the stakeholders. To fulfill this requirement, the Group recommends the establishment of six overarching sectoral Supervisory Bodies, consisting of ten members each, with the following composition:

Permanent Members:

- Minister of Finance
- Minister in charge of DPE – Convener
- Five independent distinguished experts of the relevant sector

Agenda Specific Members:

- Minister of Administrative Ministry of the concerned CPSE

- Secretary of Administrative Ministry of the concerned CPSE
- Chief Executive of the concerned CPSE

The five independent expert members representing diverse, professional and non-political interests from the relevant sector should be nominated for a fixed term by the Prime Minister.

Separate Supervisory Bodies should be set up for the sectors indicated below. These six sectors have been suggested to ensure that these bodies are not ministry-specific but cover a broad and diverse group of CPSEs.

- Energy
- Manufacturing
- Infrastructure
- Trading & Services
- Food & Agriculture
- Social Sector

The Role of the Supervisory Body

2.6 The Supervisory Body will undertake the following responsibilities:

Ø To take an overview of the conformity of corporate strategy to the Vision and the Mission of the CPSE

Ø To periodically review interactions between the administrative Ministry and the CPSE

Ø To be the arbiter of ethics; in particular, to review all allegations against the members of the Board of Directors and make appropriate recommendation to the concerned authority.

Ø To recommend continuation / separation of Functional Directors in case of difference between recommendations of the Public Enterprises Selection Board (PESB) and the Ministry concerned.

Ø To monitor redressal of stakeholder grievances

Ø To consider any other issue to promote independent,

	<p>efficient and cohesive functioning of the concerned Board of Directors</p> <p>The Supervisory Body should not give any direct instructions to the CPSEs. It should give its views only on matters referred to it. The Supervisory Body would also provide a formal grievance redressal system for the Board Members of CPSEs.</p>
2.7	<p>There are some issues related to Vigilance. Details of the same along with the suggested role of Supervisory Body in the resolution of such issues are dealt with in Chapter-6 under the heading ‘Vigilance Management in Public Sector Enterprises’.</p>
2.8	<p>In all other matters, whenever there is a difference of views between the Ministry and the Management, the advice of the Supervisory Body must be sought prior to deciding any course of action by the Government.</p>
<p>The Role of the Ministry:</p>	
2.9	<p>The Ministry should effectively perform the role of the shareholders and owners of the company. The Ministry should consult other ministries, including finance and other relevant departments and, where necessary, obtain the approval of the cabinet. It should facilitate the implementation of the projects of the company in conformity with overall Government policy.</p>
2.10	<p>The Ministry, in exercising the function of ownership, is responsible for the appointment of the Chief Executive as well as the Functional Directors of the company. It should follow the established guidelines with regard to these appointments, based on the recommendation of PESB. Although the Ministries have the power to recommend the termination of their services to the PESB, in the case of appointment and termination (except in case of Schedule ‘C’ & ‘D’ CPSEs where the Ministry concerned is competent for such approvals if the same are in line with the PESB recommendations), the decisions of the Ministry concerned must continue to be subject to the approval of the Appointments Committee of the Cabinet. In the case of adverse actions like reprimand, suspension, premature termination, denial of extension of tenure, superseding the recommendations of PESB, etc., the case should be referred</p>

	<p>to the new Supervisory Body and ACC should take its views into account before taking any decision. It is further suggested that considering the benefits of continuity in leadership positions, the appointments to the Board level positions in CPSEs may be made for the period up to superannuation instead of shorter fixed tenure. In any case, the current system has a provision for premature termination in case of non-performance.</p>
2.11	<p>The views of the Ministry should be communicated for consideration by the Board of Directors through the Government Directors, who would take up these matters at the meetings of the Board of Directors. The Ministry should not give instruction directly or indirectly to the management. That should be the prerogative of the Board of Directors.</p>
2.12	<p>The Government Director(s) should interact with the companies only as Members of the Board, where decisions in general should continue to be taken by a consensus or a majority. If the Government Director(s) feel that the Board of Directors has not appropriately taken into account the views of the Ministry on a given subject, they ought to refer the matter back to the Ministry, which after consulting the Supervisory Body, can instruct the Board of Directors and the Management to follow its directions. But such instructions must be given in the form of Presidential Directives. The issuance of such Presidential Directives should have the approval of the Cabinet.</p>
2.13	<p>The Ministry should not normally review the functioning of a CPSE more than twice a year. Such review should be based on reports of the Board of Directors and selected major performance indicators. These indicators, numbering not more than five, may be chosen from among the indicators agreed upon in the MoUs and considered appropriate by the Cabinet Secretariat and other agencies. The Ministry should be able to assess the performance of the company in terms of these indicators and also consider the fulfillment and non-fulfillment of the obligations of both the management of the company and of the Government departments concerned as spelt out in the MoUs. A special review may, however, take place in addition to the half-yearly session, if the concerned Ministry wishes to take stock of any issue of outstanding importance referred by it to a CPSE.</p> <p>Since the profitability of CPSEs is influenced by several factors such as the administered price mechanism and fluctuations in international price of the commodities, the</p>

	<p>Group recommends that the Ministries concerned should develop CPSE-specific criteria to determine their overall performance, independent of profitability.</p>
2.14	<p>The Group felt that to increase the autonomy of the CPSEs the Government must accept the difference between ownership and management and ensure that CPSEs are run by the Boards of Directors and not by the owner. The procedures of governance suggested above should ensure such autonomy. However, in order to make the whole relationship clear and transparent, the Group recommends that there should be a negative list of areas which must be kept away from the intervention of the Government (except for respective jurisdiction of CAG and CVC). That list should, inter alia, include:</p> <ul style="list-style-type: none"> Ø Decisions relating to Pricing / Distribution policy Ø Decisions on Exports / Imports Ø Appointment of dealers and agents Ø Appointment / promotion / transfer / suspension of below Board level employees Ø Award of Contracts and procurement decisions Ø Selection of Consultants and Joint Venture partners Ø Issuance of directive or guideline restricting the authority of the Board of Directors [empowerment once provided to the Board of Directors should not be diluted without the approval of the authority which had originally sanctioned it]. Ø Insistence on CPSEs furnishing information considered commercially sensitive by the Board of Directors in answers to questions raised in the Parliament and its Committees. Ø Issuance of instructions for intervening in any manner in the business or administrative decisions of the CPSEs. Ø Withholding of implementation of recommendations of PESB in respect of tenure extensions of Board Members Ø Non observance of SEBI stipulations for listed companies regarding appointment of non-official Directors.

2.15

In regard to the investments of the company and the ceilings that currently exist for Joint Ventures and other Capital expenditures for the Navratna and Miniratna companies, the Group is of the view that these decisions should be left entirely to the Board of Directors and owners should only review the implementation of these decisions in light of the MOU-related performance indicators mentioned above. In case, there is any difficulty in implementing this recommendation immediately, it is suggested that the same could be executed in two steps.

As the first step, the Group recommends the delegation of authority to the Board of Directors of the Navratna, Miniratna and other profit-making CPSEs be raised as mentioned hereunder:

A. Investments for Capital Expenditure:

- **For Navratnas:**
 - **The Board of Directors to continue to enjoy the powers to approve investments in their own projects without any limits.**
 - **For Miniratnas-I:**

The delegation may be increased from the existing Rs. 300 cr. to Rs. 500 cr. or an amount equivalent to their net worth, whichever is less.

- **For Miniratnas-II:**

The delegation may be increased from the existing Rs. 150 cr. to Rs. 250 cr. or an amount equivalent to 50% of their net worth, whichever is less.

- **For other Profit-making CPSEs:**

The delegation may be increased to Rs. 150 cr. or an amount equivalent to 50% of their net worth, whichever is less.

B. Investments in Joint Ventures and Subsidiaries:

- **For Navratnas:**

Keeping in view the increasingly large size of infrastructure projects and in order to achieve

better economies of scale, Navratna delegation to invest equity in Joint Venture Companies / Subsidiaries needs to be enhanced from Rs. 200 crore (up to a maximum of 5% of Net Worth) in one project to at least Rs.1000 crore or 15% of Net Worth, whichever is less, in one Joint Venture / Subsidiary. Further, the present overall ceiling of equity investment up to 15% of Net-worth in all Joint Ventures/Subsidiaries put together also needs to be increased to at least 30% of the Net Worth.

○ **For Miniratnas-I:**

Miniratna-I delegation to invest equity in Joint Venture Companies / Subsidiaries needs to be enhanced to Rs. 500 crore or 15% of Net Worth, whichever is less, in one Joint Venture / Subsidiary. Further, the overall ceiling of equity investment in all Joint Ventures/Subsidiaries put together also needs to be increased to at least 30% of Net Worth.

○ **For Miniratnas-II:**

Miniratna-II delegation to invest equity in Joint Venture Companies / Subsidiaries needs to be enhanced to Rs. 250 crore or 15% of Net Worth, whichever is less, in one Joint Venture / Subsidiary. Further, the overall ceiling of equity investment in all Joint Ventures/Subsidiaries put together also needs to be increased to at least 30% of Net Worth.

○ **For other Profit-making CPSEs:**

These CPSEs may be delegated the powers to invest equity in Joint Venture Companies / Subsidiaries up to Rs. 100 crore or 15% of Net Worth, whichever is less, in one Joint Venture / Subsidiary. Further, the overall ceiling of equity investment in all Joint Ventures/Subsidiaries should be 30% of Net Worth.

However, if the Board of Directors feels it necessary to exceed the levels of investment limits recommended above in a given case, it may refer the matter to the Ministry for an appropriate decision in cases deserving of special consideration on individual merit.

C. Creation and Disinvestment of Subsidiaries:

The Board of Directors may be empowered to create Subsidiaries for existing/new activities with equity investments within the overall limits specified for creating Subsidiaries. The Board of Directors may be further empowered to transfer assets to such subsidiaries from the parent company. The Board of Directors may also be empowered to float fresh equity and divest their shareholding in such Subsidiaries complying with SEBI guidelines. However, in case any existing fixed assets of the holding company have been transferred to a Subsidiary, then such subsidiary may not be allowed to transfer these assets to anyone other than the parent CPSE. Also, disinvestment in such a subsidiary company to an extent of more than 50%, if proposed at a later date by the holding CPSE, would require the approval of the Government.

D. Subsequent investments in Successful JVs:

The above mentioned limits may be applicable only for initial investments in these joint ventures. In case the JV Company is operating successfully for a defined period, say two years, any further investment in such successful and profitable Joint Ventures may not have any limitations prescribed.

E. JVs between Navratnas:

While there is no restriction on Capital investment that a Navratna company can make in its own projects/ventures, there is a restriction on the amount of investment it can make when two or more Navratna CPSEs take up a project / venture together. It would therefore be in the fitness of things that Navratna CPSEs should have powers to make equity investments without any limit in Joint Ventures with

other Navratna CPSE(s).

F. Mergers and Acquisitions:

As per existing Delegation of Powers, Navratna and Miniratna companies can enter into Joint Venture arrangements within the parameters laid down in the respective circulars. However, for equity participation in existing companies or acquiring stake in existing/new companies or for deciding on mergers and acquisitions for promoting further business, prior approval of Government is required. The powers to decide on mergers, acquisitions and acquiring minority or majority stakes in existing or new companies should be delegated to the Boards of Directors of Navratna and Miniratna CPSEs where such decisions are necessary to facilitate business promotion within ceilings as proposed for Joint Ventures.

G. Investment Approvals where Budgetary Support is involved:

At present the Navratnas, Miniratnas and other profit making CPSEs are not permitted to avail of Budgetary Support even for expansion, diversification or other developmental purposes without losing their Navratna/Miniratna status. The Group recommends that these restrictions may be relaxed so that Budgetary Support to implement planned developmental activities should not result in disqualifying the CPSEs from retaining their Navratna/Miniratna status.

H. Investment Approval for Projects involving Government Guarantees:

The Boards of Directors of Navratna, Miniratna and other profit making CPSEs should be given powers to approve Capital expenditure without the requirement of seeking PIB / CCEA approvals even in case of projects involving government guarantees, as funding by multilateral agencies invariably involves government guarantee. However, this should be subject to ceilings, if any, prescribed for investment delegations.

I. Appointment of Functional Directors in Subsidiaries and JVs by the Board of Directors of the Holding Company:

CPSEs have been entering new business fields to add value to their core business. Sometimes they choose to do so through a JV or a Subsidiary with the intention to bring in the required technological/managerial expertise as well as to protect the parent balance sheet from the business risks of the new venture. Such new ventures can succeed only when they work in a seamless manner with the parent organization to leverage the parent's strength. Also, complete accountability of the management of the Joint Venture/Subsidiary to the parent organization is absolutely essential for the new venture to progress and add value to the core business of the parent organization. Company law provides for the placement of Functional Directors in the subsidiaries by the holding company. However, Government of India (Transaction of Business) Rules, 1961 provide for the appointment of Functional Directors by the Government. The Group recommends that full-time Board level appointments in Joint Ventures/Subsidiaries may be made by the Board of Directors of the holding Company in line with provisions of Section 255, 256 and 257 of the Companies Act for partly owned Government companies.

J. Chief Executive to be Member in the Search Committee for Independent Directors:

The guidelines of DPE and SEBI require CPSEs to have some Independent Directors on their Board of Directors. With the market becoming more complicated, performance and survival of the CPSEs require the wise counsel and directions by eminent persons with good stature in the industry and the market. To identify and induct such eminent persons, there is a need to adhere strictly to the prescribed qualification requirements without any dilution. Also, Search Committees formed to identify Independent Directors should include the Chief Executive of the concerned CPSE as a Member.

The Group further recommends that the restrictions

	<p>contained in the interim delegation by way of the first step towards autonomy of successful CPSEs as described above, should be removed as the next and final step within a period of three years from now, whereafter investment decisions should be entirely left to the Board of Directors.</p>
2.16	<p>The Board of Directors already have the full authority to raise short-term or long-term loans from the market without any prior approval from the Government, subject to existing rules and procedures laid down by regulatory authorities like the RBI or SEBI. In the same manner, the Board of Directors should have the power to raise equity capital from the market, so long as the Government's share of the overall equity remains above 51 per cent. Raising such equity may require enhancement of the authorized capital, for which Government permission would be necessary. It may be stipulated that such permission for expanding the authorized capital would be given in a time-bound manner provided the Government's shareholding does not fall below 51 per cent. At the time of granting such approval, the Government may decide to extinguish a part of its shareholding at the price which the company shares command in the market. If the Government does extinguish some shares in this manner it would amount to disinvestment in a transparent market-determined way. But if the Government does not extinguish any share, the proportion of the Government's shareholding would come down without giving up the ownership or control over the company.</p>
2.17	<p>Finally, there are certain issues like foreign travel of the Chief Executive and the Functional Directors, which are currently referred to the Ministry for approval. The Group felt that there should be detailed procedural guidelines including limits of financial expenditure in this regard formulated by the Board of Directors of the CPSE concerned, and accordingly recommends that no reference to the Government for approval should be necessary unless deviation from guidelines approved by the Board is intended.</p>
	<p>The Role of the Board of Directors</p>
2.18	<p>The Board of Directors should be fully responsible for the control and supervision of the Management of the company. It should be responsible for placement and promotion of senior personnel, formulation of company's policy for</p>

	creation/ abolition/ up-gradation of posts, rewards and incentives for meritorious performance and out-of-turn promotions, and on all matters relating to human resource development.
2.19	The Board of Directors, subject to statutory requirements, Government policy and regulatory guidelines issued by RBI, should have the powers to pursue new lines of business, make suitable acquisitions of companies, set up JVs/ Subsidiaries and exit a line of business, and to make Capital expenditure up to levels as indicated in Para 2.15 without prior approval of the Government.
2.20	No more than two officers should be nominated as Board Members by the Government on the Board of Directors for Navratna, Miniratna or other profit- making CPSEs. The performance of Government Directors on Board of Directors of CPSEs must be suitably reflected in their Confidential Reports. Furthermore, it is suggested that a suitable appraisal system for performance review of non-official Independent Directors may also be developed.
2.21	Existing DPE guideline for CPSEs permits 5% of distributable profit to be allocated to employees as performance-linked bonus / incentive. Functional Directors of CPSEs serve on contract / covenant and their compensation is governed by the terms and conditions of the appointment. However, keeping in mind the significance of the role played by the leadership (the Chief Executive and the Functional Directors) in the success of the organization, the Group is of the view that the Chief Executive and the Functional Directors should also be entitled to performance linked bonus / incentive within the permissible limit of 5% of distributable profit. The Group recommends that the Compensation Committee of the Board as constituted under the 'Listing Agreement' may decide the quantum of such performance linked incentives, on the basis of the individual's performance and contributions during the year under review. The Compensation Committee may also devise CPSE-specific norms for determination of such incentives. Such bonus / incentives would, however, be governed by the limits prescribed in the Companies Act.
	<u>The Role of the Management</u>
2.22	The Chief Executive should be entirely responsible for the

	day-to-day management and operation of the company under the overall supervision of the Board of Directors. The appointment of the Chief Executive should be made strictly in accordance with the procedures laid down for this purpose.
2.23	The Management should be free to exercise all powers explicitly delegated by the Board of Directors. It should function under the supervision of the Chief Executive and Functional Directors on the Board.
2.24	It should be responsible for implementation of the decisions of the Board of Directors and compliance of all statutory requirements as well as policy guidelines.

Chapter 3: AUDIT OF GOVERNMENT COMPANIES

3.1	Pursuant to Section 19(1) of Comptroller and Auditor-General's (C&AG) Duties, Powers and Conditions of Service Act, 1971, audit of the accounts of Government companies is conducted by the Comptroller and Auditor- General in accordance with the provisions of the Companies Act, 1956. Under Section 619 of the Companies Act, 1956, the Auditor (Chartered Accountant) of a Government Company is appointed or re-appointed by C&AG. It is further stipulated that C&AG shall have the power to (a) direct the auditor to conduct the audit in a specified manner, (b) give instructions on any matter relating to the performance of his functions, (c) conduct himself a supplementary or test audit of the company's accounts and (d) comment upon or supplement the audit report in such manner as he (C&AG) thinks fit. The comments of C&AG are to be placed before AGM along with Auditor's Report.
3.2	As regards the present status of audit in CPSEs, C&AG appoints the statutory auditor of Government Company. The statutory auditor audits the account of the CPSEs in accordance with the provisions of Companies Act and other applicable statutes. C&AG has issued directions to statutory auditors of Government Companies requiring them to furnish to C&AG a detailed report covering various items specified in the questionnaire, in addition to the normal auditor's report under Companies Act, 1956, within three weeks from the date of signing their Auditors' Report. After the receipt of certified

accounts and Auditor's Report, C&AG conducts supplementary or test audit based on which the comments of C&AG upon the report of Statutory Auditors or a supplementary report by him may be issued. These comments form part and parcel of Auditor's Report. C&AG also does a transaction/propriety audit in addition to supplementary/test audit. In some CPSEs there are resident audit parties who conduct concurrent audit. Under such audit, the propriety of the transaction is also subjected to scrutiny. The authority of such audit is not specified as far as Companies Act, 1956 is concerned.

3.3 **CONCERNS OF CPSEs**

Test/Supplementary Audit

The basic concern of CPSEs regarding test/supplementary audit of C&AG is that it leads to delay in finalization of audit of accounts resulting in non-compliance of directives of SEBI regarding publication of audited results and quarterly results.

Since statutory audit is conducted by statutory auditor appointed by the C&AG in the manner directed by him, it is felt that the test/supplementary audit is duplication of audit work already done by statutory auditor.

Transaction/Test Audit

The main focus of such audit is to bring to light the mistakes made in the past. On account of the benefit of hindsight, circumstances/ compulsions under which such business decisions were taken tend to get glossed over or ignored by the auditor.

Such audit highlights only isolated deficiencies of CPSEs which damage their corporate image in the public to the detriment of their commercial interests.

Such audit also leads to a defensive attitude on the part of corporate executives leading to delay in decisions which may not be in the best commercial interests of the Company.

3.4 The requirement of transaction audit is perhaps borrowed from the system of audit in government. CPSEs, being commercial entities, have their own system of internal audit which requires compliance in conformity with standards laid down by the

Institute of Chartered Accountants of India, disclosure guidelines of SEBI (for listed companies) and compliance to the observations of Audit Committees and Statutory Audit.

Keeping in view the above statutory requirements and concerns of CPSEs, the Group makes the following suggestions which may be considered for implementation.

Test/Supplementary Audit :

Ø C&AG may consider issuance of revised guidelines to statutory auditors and rely mainly on their report.

Ø Test/supplementary audit may be resorted to only in exceptional cases rather than as a routine exercise.

Ø Appointment of Statutory Auditors may be made at the earliest in the beginning of financial year.

Ø Appointment of Branch auditors may be dispensed with. Only those firms of Chartered Accountants which are capable of making Head Office as well as Branch Office audit may be considered for appointment.

Ø C&AG may also consider giving suitable directions for consultations with Statutory Auditors at appropriate levels to minimize the need for supplementary audit.

Ø C&AG may consider making its audit concurrent with the audit by statutory auditors so as to complete it along with the audit by the statutory auditors. Normally statutory auditors conduct their audit in two phases i.e. one up to December which is completed before end of the year and next phase after year end. C & AG may also like to adopt similar practice

Transaction/Test Audit:

After considerable deliberation, the Group was of the view that only malafide intentional mistakes, frauds, gross negligence or willful ignorance of advice/suggestions should form part of Audit Observation. However, bonafide errors of judgment may be mentioned by the audit only as suggestions for improvement of performance in future. Overall performance should be the guiding criterion rather than review of individual commercial decision. Otherwise the Executives will be apprehensive of making commercial judgements and decisions, which will be detrimental to the commercial interest

of CPSEs.

Chapter 4: ARTICLE 12 OF THE CONSTITUTION AND CPSEs

4.1 Some judicial pronouncements have declared public enterprises to be an extension or arm of the State under Article 12 of the Constitution. Under Article 12, 'State', unless the context otherwise requires, includes the Government and Parliament of India and the Governments and Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Although Article 12, in so many words, does not provide that CPSEs fall within the definition of the 'State', they still are deemed as being included in the category 'other authorities' and therefore, covered under the definition of 'State' as pronounced by different Courts including the Apex Court.

4.2 In the competitive environment in the wake of liberalization/globalization, this situation undermines the entrepreneurial and commercial functioning of public enterprises and puts them at a disadvantageous position vis-à-vis their private sector counterparts and competitors. This negation of the essential distinction between government per se and public enterprise – a distinction conceived by Parliament and embodied in the Industrial Policy Resolution of 1956 – has led to a situation where any aggrieved employee or contractor can move the court against the Management of public enterprises calling in question individual actions or decisions in the same way as against the State. This would seem to imply that government enterprises can function only as government departments and in accordance with the modalities, procedures and styles similar to government administration. This impedes decision-making in CPSEs, particularly in the competitive environment in the wake of liberalization/globalization. Indeed, it is precisely because business cannot be run efficiently in the normal governmental style and in accordance with government procedures that public enterprises have been organized in the corporate form.

4.3 It was brought to the notice of the Group that the matter was considered by the Committee of Secretaries in 1987 and, based on its decision, the same was referred to the Ministry of Law suggesting that the possibility of inserting an explanation below the Article 12 may be examined. The suggested insertion was as under: “A statutory corporation, a company formed and registered under the Companies Act, 1956 or a society under the Societies Registration Act shall not be considered as ‘State’ for the purpose of this Article”.

4.4 The Ministry of Law placed the issue before the Law Commission which looked into various possibilities but could not find a solution. In its 145th Report submitted in 1992, the Law Commission concluded as follows:

Such an amendment would not be a proper or necessary measure to be adopted for dealing with the difficulties that may be experienced by public sector undertakings in the matter of award of contracts, rejection of tenders, service matters and the like arising out of the present applicability of Article 12 to such undertakings.

Having regard to the Preamble and total philosophy of the Constitution, even if such an amendment is made, some of the problems experienced by the public sector undertakings would still survive under the ordinary law.

In particular, judicial intervention in the form of injunctions issued under the ordinary law cannot be ruled out, even after the suggested amendment.

It is highly doubtful whether, in the light of the theory of non-amenability of the basic features of the Constitution as at present recognized, such an amendment will pass muster on the Constitution level.

4.5 While taking note of the deliberations on the subject in the past, one should still consider the dynamic changes that are taking place in the business and economic environment on account of globalization. Global competition is cutting into the margins and market shares of Indian corporates, including CPSEs, facilitated by crumbling tariff barriers. The far-reaching mandatory legal implications of Article 12 inhibit the functioning of CPSEs as commercial entities like similar companies in the private sector. In consideration of the

foregoing position, the Group recommends that this issue could be revisited by the policy makers at an appropriate time in future.

Chapter 5: PARLIAMENTARY ACCOUNTABILITY

5.1 In India, Government Companies are governed by the provisions of Indian Companies Act 1956. Under Section 620 of the Act, the Central Government has a right to exempt partly or wholly the application of any provision of the Act to the government companies except Section 618, 619 (A). The audit and accountability to Parliament is prescribed under sections 619 and 619(A) of the Companies Act which relate to audit and admission of annual report.

5.2 Public enterprises are accountable to the people through their elected representatives. Parliament exercises surveillance of a general nature over them and makes major legislative decisions about the policies relating to public enterprises. Parliament also authorizes budgetary allocations for investment and other needs of public enterprises where required. The property, assets, powers and functions of public enterprises emerge directly or indirectly from one or another legislation passed by the Parliament. Public enterprises, while enjoying autonomy in financial matters, are ultimately accountable to Parliament for investments made in them from the Consolidated Fund of India.

5.3 Currently, Parliament exercises control over the CPSEs in the following manner:

Ø Members of the Parliament can ask questions to the concerned Minister on the working of public enterprises under his charge.

Ø Members of Parliament can discuss the affair of the public enterprises when the House takes up demands for grants for discussion and vote.

Ø Parliament can examine the working of selected enterprises through its committees.

Ø Parliament receives every year a comprehensive appraisal of the working of selected public enterprises done by the Audit Board.

Ø Public enterprises are required to present to Parliament their annual report together with a copy of the audit report made by the C&AG of India.

Ø Oral Evidence of CPSEs before Parliamentary Committees is also required to be given from time to time.

5.4 The Chief Executives of Navratna CPSEs were given an opportunity to express their views before the Group. Their views are summarized below:

Ø Accountability to Parliament may be deemed as complied with through Annual Reports.

Ø Questions on sensitive operational matters need to be avoided in the interest of business confidentiality and competitiveness of CPSEs.

Ø Screening Committee may be set up for Parliament Questions so as to avoid submission of voluminous data and sensitive business information.

Ø Instead of various Parliamentary Committees, there should be only one Committee which should cover all aspects.

Ø Obligations should be the same for public and private sector in the interest of level playing field.

Ø Independent body should be created to exercise all ownership rights of the Government.

Ø Parliament should focus mainly on the review of performance of CPSEs.

5.5 On the basis of the above cited presentations and discussions, the Group would suggest the following for the consideration of appropriate authorities:

Ø Day to day affairs of CPSEs may not be taken up in the Parliament

Ø Conduct of Chief Executive and Functional Directors may not be discussed in the Parliament as there are other fora

available for this purpose.

Ø It is essential to distinguish between accountability to Parliament and involvement of the Government in day to day functioning, personnel related matters etc. of CPSEs.

Ø Control points and occasions could be few, effective and concerned with major aspects of public enterprise policy. Their focus should be on enabling the enterprises to fulfill the norms of accountability expected of them.

Ø Profitability and working could be tested from time to time by the Parliament in enterprises where production and expansion are taking place since it involves government expenditure.

Ø Appropriate competent authorities in the Government and the Parliament may therefore like to consider setting up of a screening committee to screen Parliament questions from the angle mentioned above as well as the need for confidentiality of business decisions.

Chapter 6: VIGILANCE MANAGEMENT IN PUBLIC SECTOR ENTERPRISES

6.1 The Central Vigilance Commission (CVC) was set up by the Government of India by its Resolution dated 11.2.1964 in pursuance of the recommendations of the Santhanam Committee. The Commission acts as the apex body for exercising general superintendence and control over vigilance matters with a view to ensuring probity in public administration. It is vested with the authority of initiating investigations/enquiries into cases involving corruption, malpractices and lack of integrity. The CVC possesses statutory status by virtue of the Central Vigilance Commission Bill passed by the Parliament which received assent of the President on 11th September, 2003. The aim of the Act is to provide for the constitution of CVC to inquire into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants including those of public enterprises.

6.2	<p>Section 8(1)(h) of the Act provides that the Commission shall exercise superintendence over the administration of various Ministries of the Central Government or Corporations established by or under any Central Act, Government Companies, Societies and Local Authorities owned or controlled by the Government. Executives on the Board of Directors of CPSEs and two levels below the Board of Directors fall within the purview of CVC, as important decision making in most of the CPSEs is limited to two levels below the Board level. The Commission tenders appropriate advice to the concerned disciplinary authorities in all matters of corruption, malpractices, misconduct, lack of integrity etc.</p>
6.3	<p><i>Special Chapter on Vigilance Management in CPSEs:</i>CVC in consultation with the Department of Personnel and Training (DoPT) and some other bodies had issued a Special Chapter on Vigilance Management in CPSEs and the role and functioning of CVC. It covers the entire gamut of vigilance principles and procedures to regulate vigilance management in CPSEs to deal with any complaints of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of malpractices on the part of public servants.</p>
<p>PRESENT VIGILANCE SET UP IN CPSEs:</p>	
6.4	<p>A study was conducted by Department of AR & PG on vigilance set-up in respect of CPSEs. It prescribed a Model Vigilance Structure at different levels (Corporate/Unit/Regional) in CPSEs to deal with investigations, disciplinary proceedings, anti-corruption work and preventive vigilance with adequate personnel to carry out all necessary functions to prevent possibilities of corruption. Guidelines have been issued to the CPSEs for necessary compliance as per the size of the organization. Under Section 8(1)(h) of the Act Central Vigilance Commission has issued instructions to the CPSEs to encourage a culture of honesty, greater transparency in administration, speedy departmental inquiries, transparent decision-making on NITs etc.</p>
6.5	<p><i>Appointment of Chief Vigilance Officers:</i>To provide for adequate vigilance apparatus in CPSEs, appointment of Chief Vigilance Officer (CVO) with concurrence of Central</p>

	<p>Vigilance Commission has to be made along with a number of vigilance officers with desired manpower requirements of skilled and trained vigilance personnel. The CVO acts as a link with the CVC and CPSEs. He functions as the principal vigilance aide to the Chief Executive and as the focal point in respect of the entire work relating to vigilance. The role of the Chief Vigilance Officer is both preventive and punitive.</p>
6.6	<p>CPSEs having full-time posts of CVOs fill up such posts as per the procedure prescribed for appointments under the Central Staffing Scheme. DoPT requests the Cadre Controlling Authority of various organized services to offer officers of proven integrity for these posts. The names so received are forwarded along with bio-data of the officers concerned and their ACR dossiers to the Commission for approval. The DoPT maintains a panel of names approved by the Commission, which are operative for a period of one year. The Commission then prepares a panel of names and recommends it to the administrative Ministry/Department concerned for making appointment.</p> <p>In case of CPSEs which do not have full-time posts of CVOs, one of the officers from a panel of three senior officers forwarded to CVC by the PSE is selected by the Commission as the CVO.</p>
6.7	<p><i>Examinations/Investigations of Complaint against Board Level Appointees:</i> CVC has issued necessary instructions in the matter of dealing with complaints against the Board Level Appointees. If the CVO of an administrative Ministry asks for a factual report against a Board level appointee from the CVO of the PSE, the latter sends the same to the CVO of the Ministry, after endorsing a copy of the report to the CMD to keep him informed of the development. However, if the CMD himself is the subject matter of the investigation, the CVO of the PSE need not endorse a copy of the report to him. In such cases it is the responsibility of the CVO of the Ministry to obtain the version of CMD at the appropriate time. The CVO of the Ministry has to make a reference to the CVC after collecting all the relevant facts and following the prescribed procedure.</p>
6.8	<p><i>Investigations by the CBI-Constitution of Central Advisory Board:</i>The special chapter on Vigilance Management issued</p>

	<p>by CVC provides as under:</p> <p>Considering the complexities involved in commercial decisions of the PSE, the CBI may find it worthwhile to obtain the benefit of expert advice from various disciplines before registration of PE/RC. A Central Advisory Board may be constituted to assist CBI for this purpose. Appointments on the Board may be made from the panel of names approved by the CVC. The Board should give its considered opinion within one month from the date of reference before registration of PE/RC, failing which the CBI would be competent to decide the matter without advice. Advice of the Board should not be binding on the CBI.</p>
6.9	<p><i>Strengthening of Vigilance Machinery in CPSEs:</i>CVC has been issuing necessary instructions to strengthen vigilance set-up in the CPSEs. The CVOs of the level of Joint Secretaries to the Govt. of India and above in the Schedule 'A' and 'B' Companies have been given status equivalent to that of a Functional Director with other facilities and perquisites available to the Functional Directors in these companies. CVC has also recommended creation of the post of CVO at the level of Functional Director in Schedule 'A' companies, which has hitherto been acted upon only in the Navratna CPSEs.</p>
	<p>CONCERNS/SUGGESTIONS OF CHIEF EXECUTIVES OF CPSEs:</p>
6.10	<p>The current business environment calls for speedy decision making amid a welter of factors and changes induced by globalization, liberalization, technology changes and continuously increasing competition. Public Sector Enterprises are being evaluated as commercial entities and are expected to take business decisions in a dynamic scenario. There is need to empower these CPSEs by providing mechanisms which would enable speedier decision making in a changing business environment with all the inherent risks.</p>
6.11	<p>During the discussions with Chief Executives of some of the Navratna central public sector enterprises, certain points relating to vigilance administration in CPSEs were brought to</p>

the notice of the Ad-hoc Expert Group. Views were expressed to the effect that the role of CBI/ CVC should be restricted and CPSE executives may be protected against misconceived and unnecessary vigilance action based on lack of full appreciation of business related decisions. It was suggested that necessary measures may be recommended in this regard so that executives in CPSEs do not shy away from taking business decisions on account of fear of vigilance action. This is particularly significant for improving the commercial functioning of CPSEs in the competitive environment in the wake of liberalization/globalization.

6.12 CVC had constituted a Committee under the Chairmanship of Shri Arvind Pande, ex-Chairman, SAIL to study the vigilance administration in the Public Sector Enterprises and to recommend measures to strengthen it. The Committee has since submitted its report to the Commission and the recommendations made therein are under consideration of the Commission in consultation with concerned Ministries/ Departments for a final decision on the report. Some of the recommendations of Arvind Pande Committee are relevant to the issues raised by the Chief Executives of some Navratna CPSEs before the Expert Group. Keeping the committees recommendations in mind, the Group recommends the following:

Ø The CVC and the CPSEs need to adopt an approach of capacity building that can integrate better with the modern day requirements of risk management, security management, and financial controls and compliance. This effort will add discernible value to the competitiveness of the enterprise apart from promoting probity, and integrity amongst public officials and supporting, synergizing and fostering corporate governance

Ø The coverage of CVC's jurisdiction should be restricted to executives of E-8, E-9 levels and Functional Directors (including the Chief Executive) of all companies. This ensures parity going by the pay scales of Schedule-D companies' directors and the E-8. However, the CVC may consider making specific exemptions in the case of select *Navratnas*, which have in place internal systems, controls, and procedures that would demonstrably meet the

preset standards evolved by the CVC. In case of such exceptions, the CVC's jurisdiction could be limited to the Director level only. However, it is recommended that this empowerment should be earned by the respective organizations by meeting quality standards and subject to withdrawal of the privilege should their systems fall short of the standards in future.

Ø Anonymous and pseudonymous complaints forwarded by Hon'ble MPs or MLAs should be verified by the concerned CVOs or official. Where the complainant is identifiable, it could be suggested to the MP or MLA concerned to obtain the complainant's signature and name, failing which the case may be proceeded with as if the Hon'ble MP or MLA is the complainant.

Ø The CVC may consider issuing guidelines specifically allowing CPSEs to initiate proceedings under the relevant sections of the IPC and the CrPC in all cases wherein complaints have delayed strategic decisions and are ultimately found to be unfounded, malicious and false.

Ø The process of vigilance clearance may be simplified in the case of PSE officials aspiring for Board appointments. The CVO concerned should be empowered to verify the records, make enquiries, and furnish the assessment without countrywide scrutiny through various CBI offices. It is also recommended that a period of 5 years should be the periodicity of reverification, unless there is good reason to do so at a shorter interval.

Ø Prior approval of the Government in the concerned Ministry is required for launching criminal prosecution against officers above a designated rank working with the Ministry. The employees of PSEs who are equivalent in rank to that level should be treated on par with the latter as CPSEs are treated as Government and its employees as public servants.

Ø Furthermore, the vigilance cases against Board members of CPSEs need to be referred to the 'Advisory Board' of CVC (similar to the one constituted for the Banking sector) as envisaged in para 3.3.29 of Pande Committee Report to

	<p>determine whether a given decision was bona fide or mala fide. The decision of the Advisory Board should be binding on the investigating agency.</p> <p>Ø If as a result of the inquiry it is proposed to launch prosecution, then the sanctions / permissions for initiating prosecution or suspension of the Board level incumbents should be granted after fully consulting the Supervisory Body. The recommendation of the Supervisory Body should normally be accepted by the prosecuting agencies, unless there are strong reasons for a contrary view.</p>
	<p>Ø The CVOs should be trained more frequently and intensively, and should be adequately equipped with knowledge of management audit, decision making processes, domain issues of particular industries, financial analysis and transaction, risk management, control systems, coordination abilities etc.</p>
	<p>Ø The vigilance set up of Subsidiaries of CPSEs should be under the vigilance administration of the holding company and need not have direct interface with the CVC.</p>
	<p>Ø Decision on suspension of Board level officials by the Ministry must be taken after obtaining the concurrence of the Supervisory Body. In case of other officials below Board-level concurrence of the sub-committee of the Board must be obtained.</p>

Arjun Sengupta

(DR. ARJUN SENGUPTA)
CHAIRMAN

Anwarul Hoda

(ANWARUL HODA)

Nitish Sengupta

(DR. NITISH SENGUPTA)

Moosa Raza

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(PRIYADARSHI THAKUR)

No. 18(24)/2003-GM
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No.14, CGO Complex,
Lodhi Road, New Delhi 110003.

Dated the 11th November, 2004

Subject: Constitution of an Ad-hoc Group of experts to consider issues relating to autonomy, delegation of financial powers, etc. of Central Public Sector Undertakings.

It has been decided to set up an Ad-hoc Group of experts to consider issues like autonomy, greater delegation of financial powers, corporate governance, R&D, technological upgradation, effective functioning in a competitive environment, etc. related to the Central Public Sector Undertakings in the context of the mandate under the National Common Minimum Programme.

2. The composition of the Group is as under:-

- | | | | |
|--------|--|---|----------|
| (i) | Dr. Arjun Sengupta | - | Chairman |
| (ii) | Shri Anwarul Hoda, Member, Planning Commission | | |
| (iii) | Dr. Adarsh Kishore, Secretary to Government,
Department of Public Enterprises | - | Convenor |
| (iv) | Dr. Nitish Sengupta | | |
| (v) | Shri Moosa Raza | | |
| (vi) | Shri Prabir Sengupta | | |
| (vii) | Shri Subir Raha, CMD, ONGC Ltd. | | |
| (viii) | Shri C.P. Jain, CMD, NTPC Ltd. and Chairman, SCOPE | | |
| (ix) | Shri A.K. Rath, Joint Secretary, DPE | | |

3. Detailed Terms of Reference of the Group shall be notified separately.

4. The Ad-hoc Group will submit its recommendations to the Government within one month's time.


(G.S. Bothyal) -
Director
Tel.24360218

To
Members of the Group

Copy to PS to Secretary (PE)

18(24)/2003-GM
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Block No.14, CGO Complex,
Lodhi Road, New Delhi 110003.

Dated the 25 February, 2005

Subject: Constitution of an Ad-hoc Group of Experts to consider issues relating to autonomy, delegation of financial powers, etc. of Central Public Sector Undertakings.

In continuation to this Department's Notification of even number dated 11th November, 2004 on the subject mentioned above, it has now been decided that Shri Priyadarshi Thakur, Secretary, Department of Public Enterprises will be a Member of the Ad-hoc Group of Experts. Dr. Adarsh Kishore, former Secretary, Department of Public Enterprises and presently OSD (Expenditure), Ministry of Finance would continue to be the Convener of the Group.

This issues with the approval of the competent authority.


(K.D. Tripathi)
Joint Secretary to the Govt. of India
Tel: 24360204

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