

CHAPTER II **PERSONNEL POLICIES**

(b) Composition of Board of Directors

12. DPE/Guidelines/II(b)/12

EARC Report on Government and Public Enterprises: Top Management and the Boards—recommendations regarding three years term with rotational retirement for part-time non-official Directors.

In BPE's OM of even member dated the 3rd January, 1985 on the subject mentioned above, the administrative Ministries/Departments were requested to advise the public enterprises under their administrative control to amend the Memorandum and Articles of Association of the enterprise concerned so as to incorporate a provision for a spell of three years at a time with rotational retirement in respect of part-time non-official Directors. Subsequently some Ministries/ Departments and enterprises have sought clarifications in the matter. These are clarified as under:

(i) Three Year Tenure:

Presently there is no uniformity in regard to the tenure of part-time non-official Directors and in a large number of enterprises the tenure is one year. A tenure of one year is too short a period for a Director to acquaint himself with the affairs of the enterprise before his directorship expires. The decision to give a three-year spell to part-time non-official Directors was taken in this background. Accordingly, the tenure of part-time non-official Directors may be for a period not exceeding three years commencing from the date of their appointment provided that they shall retire on the conclusion of the Third Annual General Meeting during their tenure notwithstanding the fact that the said Third Annual General Meeting is held before or after completion of precise three year tenure referred to above. This shall be without prejudice to the right of the President to terminate the directorship of the person concerned at any time. The retiring Directors shall be eligible for reappointment. The three-year tenure is applicable to part-time non-official Directors only and not to whole-time functional Directors and part-time official Directors.

If the existing Articles of Association do not provide any specific tenure for part-time non-official Directors and the tenure is to be decided by the Central Government in each case, then there is no need to amend the Articles of Association. The three-year tenure needs to be considered and ensured by the administrative Ministries/Departments by giving a spell of three years at the time of appointment of all such Directors.

(ii) Rotational retirement

Rotational retirement is necessary to ensure a degree of continuity of the Board, which is not possible if all the part-time non-official Directors were to retire simultaneously. The concept of rotational retirement is explained in Sections 255, 256 and 257 of the Companies Act, 1956. But in accordance with the Notification No. G.S.R. 906 dated 30.7.1981 (copy enclosed) these Sections are not applicable to companies in which the entire paid up share capital is held by the Government. Hence for the purpose of rotational retirement the public enterprises would fall in two categories, namely, (i) enterprises where the entire paid up share capital is held by the Government (including State Governments) and (ii) the entire paid up capital is not held by the Government. In the latter case, rotational retirement could be implemented in the manner described in Sections 255, 256 and 257 of the Companies Act, 1956. In the cases covered under (i) above, rotational retirement can be ensured by phasing the tenure of existing non-official part-time Directors in such a manner that 1/3rd of them would retire in the first year and another 1/3rd in the second year and the balance in the third year. Having done this all further appointments would be for a period of three years. There is no need to amend the Articles of Association for this purpose.

The Ministry of Agriculture and Rural Development, etc. are requested to note the above clarifications for their guidance.

ENCLOSURE

NOTIFICATION NO: G.S.R. 906 DATED 30.7.1981

"In pursuance of Notification No. G.S.R. 234 dated the 31st January, 1978 and in exercise of the powers conferred by Clause (a) of sub-section (1) of Section 620 of the Companies Act, 1956 (1 of 1956) the Central Government has directed that sections 255, 256 and 257 shall not apply to: (a) a Government company in which the entire paid up share capital is held by the Central Government or by any State Government or partly by the Central Government and partly by one or more State Governments; and (b) a subsidiary of a Government company, referred to in clause (a) above, in which the entire paid up share capital is held by that Government company."

(DPE No. 18(6)/84-GM dated 21st May, 1986)