

F.No. 18(7)/2013-GM  
Government of India  
Ministry of Heavy Industries and Public Enterprises  
Department of Public Enterprises

Block No.14, CGO Complex,  
Lodi Road, New Delhi-110003  
Dated the 16<sup>th</sup> January, 2019

### OFFICE MEMORANDUM

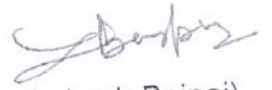
Subject: Appointment of non-official (Independent) Directors on the Boards of CPSEs

The undersigned is directed to enclose a copy of Ministry of Corporate Affairs notification dated 5<sup>th</sup> July, 2017 which deals with the matter of appointment of non-official (Independent) Directors on the Boards of certain class of unlisted public companies, viz. joint venture, wholly owned subsidiary and dormant company as defined under Section 455 of Companies Act, 2013 and Ministry of Corporate Affairs' subsequent clarifications on this matter issued vide their O.M. No. 1/22/2013-CL-V(part) dated 19<sup>th</sup> September, 2018 and 28<sup>th</sup> December, 2018 for information and further necessary action.

2. It is clarified that there would be no bar on appointment of non-official Director(s) on the Board of a particular subsidiary of a CPSE, as mentioned above, in case the concerned administrative Ministry/Department so desires.

3. All Ministries/Departments are requested to take note of the above provisions for information and further necessary action.

Encl : As stated



(Lokesh Bajpai)  
Director  
Tel : 2436-0218

To Secretaries of all administrative Ministries/Departments (by name)

Copy to :-

- (i) Prime Minister's Office, (Ms. Nandini Paliwal, Director), South Block, New Delhi.
- (ii) Cabinet Secretariat, (Ms. Richa Gaharwar, Director), Rashtrapati Bhavan, New Delhi.
- (iii) Department of Personnel & Training, (Ms. Sagarika Patnaik, Director-ACC), North Block, New Delhi.
- (iv) Ministry of Corporate Affairs

Copy also to :-

- (i) PS to Hon'ble Minister (HI & PE)
- (ii) PS to Hon'ble Minister of State (HI & PE)
- (iii) PPS to Secretary (PE)
- (iv) PPS to SS & FA (HI & PE)
- ✓ (v) NIC, DPE - with a request to upload on DPE website

**MINISTRY OF CORPORATE AFFAIRS  
NOTIFICATION**

New Delhi, the 5th July, 2017

**G.S.R. 839(E).**—In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 168 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.


(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely:—

“(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:—

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act.”.

3. In the principal rules, in the Annexure, for Form DIR-5, the following Form shall be substituted, namely:—

<b>FORM DIR-5</b> [Pursuant to section 153 of the Companies Act, 2013 and rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014]	 सत्यमेव जयते	<b>Application for surrender of Director Identification Number</b>
Form language <input type="checkbox"/> English <input type="checkbox"/> Hindi		
Refer the instruction kit for filing the form.		
1. *Name of the DIN holder	<input type="text"/> <input type="text"/> <input type="text"/>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <b>Photograph of the DIN holder</b> </div>
2. *Father's name	<input type="text"/> <input type="text"/> <input type="text"/>	
3. *Reason for surrender of DIN	<input type="radio"/> Having multiple DINs <input type="radio"/> DIN was obtained in a wrongful manner or by fraudulent means <input type="radio"/> Death of the concerned individual <input type="radio"/> Concerned individual is declared as a person of unsound mind by a competent court <input type="radio"/> Concerned individual has been adjudicated as insolvent <input type="radio"/> Concerned individual is/was not associated with any company/LLP	
4. *Whether DIN holder is retaining any DIN <input type="checkbox"/> Yes <input type="checkbox"/> No	<div style="border: 1px solid black; padding: 2px 10px;">Pre-fill</div>	

No. 1/22/2013-CL-V(Part)  
Government of India  
Ministry of Corporate Affairs

1531  
5th Floor, 'A' Wing, Shastri Bhawan,  
New Delhi:-110001  
Dated: 19th September, 2018

OFFICE MEMORANDUM


**Subject:- Appointment of Independent Directors on the Boards of subsidiaries/joint venture of companies-regarding**

The undersigned is directed to refer to the Department of Public Enterprises' OM no. 18(7)/2013-GM dated the 27<sup>th</sup> March, 2018 and subsequent reminder dated 11<sup>th</sup> July, 2018 on the captioned subject seeking clarification on notification no. G.S.R. 839 (E) dated the 5<sup>th</sup> July, 2017 issued by this Ministry. In this regard, it is stated that vide such notification, this Ministry has implemented the recommendations made by the Companies Law Committee (CLC) in Para 11.1 of its report which reads as under:-

*"Appointment of Independent Directors*

*11.1 Section 149(4) of the Act, read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes appointment of independent directors in various classes of companies. The Committee noted in case of joint venture companies, wholly-owned subsidiaries, and dormant companies that fall within the purview of Section 455 of the Companies Act, 2013, there does not appear to be sufficient justifiable grounds to prescribe for independent directors, who were primarily there to protect the interests of dispersed minority shareholders. The Committee, therefore, recommended for an amendment to be affected in the Rules, to exclude such companies from the requirement of appointing an independent director."*

2. It may also be noted that the said notification dated 5.7.2017 has only exempted the wholly owned subsidiaries of "unlisted public companies" and not all subsidiaries.
3. This issues with the approval of the competent authority.

  
(N. K. Dua)  
Joint Director  
Tel No: 23382260

To  
[Shri B. N. Mishra, Director, (Admin)]  
Ministry of Heavy Industries and Public Enterprises,  
Department of Public Enterprises,  
Room No. 521, Block No. 14,  
C.G.O Complex, Lodi Road, New Delhi-110003.

No. 1/22/2013-CL-V(Part)  
Government of India  
Ministry of Corporate Affairs


5th Floor, 'A' Wing, Shastri Bhawan,  
New Delhi:-110001  
Dated: 28<sup>th</sup> December, 2018

OFFICE MEMORANDUM

**Subject: - Appointment of non-offical (Independent Directors) on the Boards of subsidiaries of Central Public Sector Enterprises (CPSEs)-regarding**

The undersigned is directed to refer to the Department of Public Enterprises (DPE)'s OM no. 18(7)/2013-GM dated the 4<sup>th</sup> December, 2018 on the captioned subject seeking comments/ views of this Ministry on a draft circular proposed to be issued to all Ministries/Departments by DPE.

2. In this regard, it is stated that this Ministry would like to re-iterate its stance communicated vide OM no. 1/22/2013-CL-V-(part) dated 19.09.2018 and state that Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, only exempts wholly owned subsidiaries (not all subsidiaries per se) from the requirement of appointing Independent Directors mandatorily. It does not affect any voluntary action.
3. This issues with the approval of the competent authority.

  
(Pranay Chaturvedi)  
Deputy Director  
Tel: 233860605

To

[Shri Kailash Bhandari, Deputy Director]  
Ministry of Heavy Industries and Public Enterprises,  
Department of Public Enterprises,  
Block No. 14, C.G.O Complex, Lodi Road,  
New Delhi-110003.