

**PUBLIC ACCOUNTS COMMITTEE
(1975-76)**

(FIFTH LOK SABHA)

HUNDRED AND EIGHTY-THIRD REPORT

NEW SERVICE/NEW INSTRUMENT OF SERVICE

MINISTRY OF FINANCE

(Department of Economic Affairs)



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 1975/Agrahayana, 1897 (S)

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PAC (5TH LOK SABHA) ON NEW SERVICE/
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4	2 from below	'necessary for'	'necessary to augment the total provi- sion for'
22	3-10 from below	In column 2 against the said lines, <u>insert</u> 'All cases'.	
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*PART II

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*Not printed. (One cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).

PUBLIC ACCOUNTS COMMITTEE
(1975-76)

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Shri H. G. Paranjpe—Chief Financial Committee Officer.

Shri N. Sunder Rajan—Senior Financial Committee Officer.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, having been authorised by the Committee, do present on their behalf this Hundred and Eighty-Third Report on New Service/New Instrument of Service.

2. On the basis of the recommendations made by the Public Accounts Committee in their 50th Report (4th Lok Sabha) on the Action Taken by Government on the recommendations contained in the 11th Report (4th Lok Sabha) of the Committee on New Service/New Instrument of Service, the Government had taken some decisions and the Ministry of Finance had issued a circular O.M. in July 1970, to all Ministries/Departments enclosing therewith a statement indicating the limits to be observed in deciding whether a case related to New Service/New Instrument of Service and for determining whether it be submitted to Parliament for prior approval or reported to Parliament under Article 115 of the Constitution of India. A doubt had, subsequently arisen whether, the setting up of a new Government Company, within the meaning of Section 617 of the Companies Act, 1956, being a subsidiary of an existing Government Company, but not involving expenditure from the Consolidated Fund of India, would require prior approval of Parliament. The doubt arose in connection with the setting up of the SAIL International Limited which had been registered on 10th June 1974, as a wholly-owned subsidiary of Steel Authority of India Limited which is a Government Company. The setting up of the subsidiary company was brought *post facto* to the notice of Parliament along with the next batch of Supplementary Demands for Grants of the Central Government laid before Parliament on 23rd August, 1974. The Office of the Comptroller & Auditor General had expressed the view that this procedure was at variance with the instructions issued by the Ministry in July, 1970 in pursuance of the earlier recommendations of the Public Accounts Committee.

The Ministry of Finance (Department of Economic Affairs) in their note dated 23rd July, 1975 submitted to the Committee, sought the approval of the Public Accounts Committee to the adoption of the procedure followed by them in the present case to all such cases. The Committee considered the note submitted by the Department at their sitting held on 27th August, 1975 and decided to examine the

representative of the Ministry of Finance (Department of Economic Affairs), who accordingly appeared before the Committee on 26th September, 1975.

3. The Report was considered and finalised by the Committee at their sitting held on the 11th December, 1975.

4. The Minutes* of the sittings held on 27th August, 26th September and 11th December, 1975 form Part II of the Report.

5. The Committee would like to express their thanks to the officers of the Ministry of Finance for the co-operation extended by them in furnishing information desired by the Committee.

6. A statement showing the summary of the main conclusions/ recommendations of the Committee is appended to the Report—Appendix IV. For sake of facility, the recommendations of the Committee have been printed in thick type in the body of the Report.

7. The Committee would like to place on record their appreciation of the assistance rendered to them by the Comptroller & Auditor General of India in the examination of the matter.

NEW DELHI;
December, 16, 1975.

Agrahayana 25, 1897 (S).

H. N. MUKERJEE,
Chairman,
Public Accounts Committee.

REPORT

1.1. Article 112 of the Constitution of India provides—

- “(1) The President shall in respect of every financial year cause to be laid before both Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the ‘annual financial statement’.
- (2) The estimates of expenditure embodied in the annual financial statement shall show separately—
- (a) The sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and
- (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.”

1.2. In terms of Article 115(1) (a) of the Constitution, ‘when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the Annual Financial Statement for that year’, another statement showing the estimated amount of that expenditure should be laid before both the Houses of Parliament and necessary appropriation law got enacted in terms of Article 115(2). The term ‘New Service’ has not been defined in the Constitution.

1.3. In 1967-68, the Public Accounts Committee considered the question of prescribing guidelines for determining items of expenditure, from the Consolidated Fund of India, which would constitute expenditure on ‘New Service’ attracting the provisions of Article 115(1) (a) of the Constitution. In their 11th Report (4th Lok Sabha), the Committee *inter-alia* specified the items of expenditure that would constitute ‘New Service/New Instrument of Service’ requiring Parliament’s approval.

The replies furnished by the Government to the recommendations of the Committee were duly considered by the Public Accounts Committee and have been dealt with in their Action Taken Report on the subject, viz., the 50th Report (4th Lok Sabha).

As a result, the following picture finally emerged in respect of the limits to be observed in deciding cases relating to New Service/ New Instrument of Service:—

NEW SERVICE/NEW INSTRUMENT OF SERVICE-LIMITS TO BE OBSERVED IN DECIDING CASES RELATING TO

A. CASES FOR LIMITS BEYOND WHICH PRIOR APPROVAL OF PARLIAMENT IS REQUIRED

Nature of transactions	Limits beyond which prior approval of Parliament is required.
1	2

1. Public Sector Undertakings/Departmental Undertakings

- | | | | | | | | | | | | |
|--|--|--|--------------|-------------------|--------------|--|--------------|--|---------------|-----------------------|---------------|
| (i) Setting up of new Government Companies, splitting up of an existing company, amalgamation of two or more Government Companies and taking up of a new activity by an existing Government Company or a departmental undertaking. | All cases. | | | | | | | | | | |
| (ii) Additional investments in an existing Departmental Undertaking. | Rs. 1 crore | | | | | | | | | | |
| (iii) Additional investment in or loans to an existing Government Company. | <table border="0"> <tr> <td data-bbox="611 1051 826 1095"><i>Paid up Capital of the existing Company</i></td> <td data-bbox="919 1051 974 1075"><i>Limit</i></td> </tr> <tr> <td data-bbox="611 1095 826 1119">Up to Rs. 1 crore</td> <td data-bbox="863 1095 992 1119">Rs. 20 lakhs</td> </tr> <tr> <td data-bbox="611 1119 826 1164">Above Rs. 1 crore and upto Rs. 25 crores</td> <td data-bbox="863 1143 992 1167">Rs. 2 crores</td> </tr> <tr> <td data-bbox="611 1184 826 1228">Above Rs. 25 crores and upto Rs. 100 crores.</td> <td data-bbox="863 1184 1001 1208">Rs. 10 crores</td> </tr> <tr> <td data-bbox="611 1249 826 1273">Above Rs. 100 crores.</td> <td data-bbox="863 1249 1001 1273">Rs. 15 crores</td> </tr> </table> | <i>Paid up Capital of the existing Company</i> | <i>Limit</i> | Up to Rs. 1 crore | Rs. 20 lakhs | Above Rs. 1 crore and upto Rs. 25 crores | Rs. 2 crores | Above Rs. 25 crores and upto Rs. 100 crores. | Rs. 10 crores | Above Rs. 100 crores. | Rs. 15 crores |
| <i>Paid up Capital of the existing Company</i> | <i>Limit</i> | | | | | | | | | | |
| Up to Rs. 1 crore | Rs. 20 lakhs | | | | | | | | | | |
| Above Rs. 1 crore and upto Rs. 25 crores | Rs. 2 crores | | | | | | | | | | |
| Above Rs. 25 crores and upto Rs. 100 crores. | Rs. 10 crores | | | | | | | | | | |
| Above Rs. 100 crores. | Rs. 15 crores | | | | | | | | | | |

Note 1. While applying the above limits Loans and Capital investments are to be taken together.

Note 2. Short term loans (Working Capital) of duration not exceeding one year, need not be treated as 'New Instrument of Service' but should be reported to Parliament with the ensuing batch of Supplementary Demands.

Note 3. For loans to Port Trusts, Delhi Municipal Corporation Financial Institutions, etc. limits as in the case of Public Sector Companies are to be applied.

Note 4. Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 20 lakhs to an existing Government Company. This limit will apply only in the case of long term loans.

II. Private Sector Companies/Private Institutions.

(a) Investments to be made for the first time.

All Cases.

(b) Additional investments in or loans to an existing Company/Institution.

Rs. 1 crore.

Note 1. While applying these limits Loans and Capital investments are to be taken together.

Note 2. In the case of Loans to statutory and other public institutions like University Grants Commission, Indian Institute of Technology, Khadi and Village Industries Commission, etc. limits as applicable to Private Sector Companies/Private Institutions should be applied.

Note 3. Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 10 lakhs.

III. Grants-in-aid to Private Institution

Recurring—Rs. 5 lakhs and Non-recurring—Rs. 10 lakhs subject to the following:—

- (a) The limits for non-recurring and recurring grants-in-aid to Private institutions would apply with reference to moneys disbursed by an individual Ministry/Department and not by Government as a whole.
- (b) In the case of recurring grants exceeding Rs. 5 lakhs per annum the financial implications would be reported to Parliament where the grant is to be made for two years or more.
- (c) In the case of *Grants-in-aid under Export Promotion Schemes* the limit applicable to Subsidies under these Schemes will apply to Grants-in-aid also.

1	2	Limit
IV. Grants-in-aid to statutory and other public institutions.		
(i) Institutions in receipt of grants-in-aid of less than Rs. 1 crore.		Rs. 10 lakhs
(ii) Institutions in receipt of grants-in-aid of more than Rs. 1 crore but less than Rs. 2 crores.		Rs. 20 lakhs
(iii) Institutions in receipt of grants-in-aid of Rs. 2 crores and above but below Rs. 3 crores.		Rs. 30 lakhs
(iv) Institutions in receipt of grants-in-aid of Rs. 3 crores and above.		Rs. 50 lakhs
<i>Note</i>	These limits would apply with reference to moneys disbursed by an individual Ministry/Department and not by Government as a whole.	

V. Subsidies

- (i) Subsidies under Export Promotion Schemes and on Foodgrain transactions.

(a) *Export Promotion Schemes:*

The budget provision should be split up as under:

- (i) Product Promotion assistance (for Fabricated products like engineering and sports goods, etc.)
- (ii) Commodity Development assistance (for iron and steel, ferrous scrap, etc.)
- (iii) Export credit development schemes (for subsidies to banks).
- (iv) Grants-in-aid and contributions to export development organisations (Export Promotion Councils etc.).
- (v) Grants-in-aid for market development (for market research, fairs, exhibitions, publicity, etc.).

Parliament should be approached whenever it becomes necessary for Export Promotion Schemes or provision under anyone of the

1	2
	heads referred to above by more than Rs. 1 crore.
	(b) <i>Foodgrain transactions:</i>
	Parliament will be approached whenever it becomes necessary to augment existing budget provision by more than Rs. 1 crore.
(ii) Other Subsidies.	Rs. 10 lakhs.
VI. Other Cases :	
(i) New Commissions or Committees of Enquiry	Rs. 4 lakhs (total expenditure)
(ii) Expenditure on a 'new work'	Rs. 25 lakhs.
(iii) Other cases of Government expenditure.	Each case to be considered on merits.
VII. Posts and Telegraphs.	All the above limits including those relating to Works Expenditure (Rs. 25 lakhs) applicable to other Ministries/Departments will apply in the case of these Ministries/Departments; subject to considerations of security in the case of Defence and that for investment in Ordnance Factories the limit of Rs. 1 crore should be made applicable with reference to investments in all the Factories as a whole, Civil Works, which do not form part of any project of the Departmental Undertakings (Ordnance Factories) should be treated like ordinary Defence Works. As such they would attract the limits of 'new instrument of service' if the cost thereof exceeds Rs. 25 lakhs or should be reported if the cost thereof exceeds Rs. 10 lakhs but does not exceed Rs. 25 lakhs. A list of such works should, however, be supplied to the Director of Audit Defence Services.
VIII. Defence	
IX. Railways.	
B—CASES FOR LIMITS BEYOND WHICH REPORT TO PARLIAMENT IS NECESSARY ALONG WITH THE ENSUING BATCH OF SUPPLEMENTARY DEMANDS FOR GRANTS/NOTES ON DEMANDS FOR GRANTS.	
1	2
Nature of transactions	Limits beyond which report to Parliament is necessary
I Additional investment in an existing Departmental Undertaking.	Rs. 50 lakhs and above but below Rs. 1 crore
II Additional investment in or loans to an existing Public Sector Undertaking/Government Company.	

1	2	
	Paid up Capital	Limit
	Upto Rs. 1 crore	Rs. 10 lakhs and above but below Rs. 20 lakhs.
	Above Rs. 1 crore and upto Rs. 25 crores.	Rs. 1 crore and above but below Rs. 2 crores.
	Above Rs. 25 crores and upto Rs. 100 crores.	Rs. 5 crores and above but below Rs. 10 crores.
	Above Rs. 100 crores	Rs. 7.50 crores and above but below Rs. 15 crores.
	<i>Note</i> :—While applying the above limits Loans and Capital investments are to be taken together.	
III	Additional investment in or Loans to a Private Sector Company/Institution.	Rs. 50 lakhs and above but below Rs. 1 crore.
	<i>Note</i> :—While applying the above limit Loans and Capital investments are to be taken together.	
IV	Subsidies	<i>Subsidies under Export Promotion Schemes</i> Augmentation of total provision by re-appropriation of over Rs. 25 lakhs (and less than Rs. 1 crore) or re-appropriation of Rs. 25 lakhs (and less than Rs. 1 crore) from one sub-head to another but without any overall augmentation of the total provision. <i>Subsidies on Foodgrain transactions.</i> Re-appropriations in excess of Rs. 25 lakhs (but less than Rs. 1 crore).
V	Expenditure on a 'new Work'.	Rs. 10 lakhs and above but below Rs. 25 lakhs.
VI	Transfer or a gift of Government assets to Public Corporations/Companies, Autonomous Bodies, Private Parties/Institutions, etc.	Rs. 1 lakh. (To be reported through the Notes on Demands for Grants). <i>Note</i> :—In cases of urgency, where it may not be possible to wait till the matter is brought to the notice of Parliament through the Notes on Demands for Grants, arrangements may be made by entrusting the management of the property to the body or institution but the formal transfer of the title to the property should be effected only after a mention is made in the Notes on Demands for Grants.

1.4. Accordingly instructions were issued by the Ministry of Finance, Department of Economic Affairs, *vide* their O.M. No. F.8(60)-B/69, dated the 27th July, 1970 (Appendix I) requesting the Ministries etc. of the Government of India to note the above limits carefully and to examine cases arising thereafter involving New Service/New Instrument of Service etc. in the light thereof. The above statement on the limits to be observed in deciding cases relating to New Service/New Instrument of Service was appended to the instructions issued by the Ministry of Finance.

1.5. As the statement referred to above did not make any specific mention of the fact that the limits prescribed therein represented limits of expenditure 'from the Consolidated Fund' beyond which prior approval of Parliament would be required before expenditure could be incurred from that fund, a doubt has arisen as to whether the setting up of a new Government company, within the meaning of Section 617 of the Companies Act, 1956, being a subsidiary of an existing Government company, but not involving expenditure from the Consolidated Fund of India, would require prior approval of Parliament.

1.6. The doubt has arisen in connection with the setting up of the SAIL International Limited, which was registered on 10th June, 1974 as a wholly owned subsidiary of Steel Authority of India Ltd. (SAIL). As the said Steel Authority itself is a Government company, its subsidiary would also be a Government company, within the meaning of section 617 of the Companies Act. Since the subsidiary company is to be financed entirely out of the internal resources of the principal company and not from the Consolidated Fund of India, the Ministry of Finance have held the view that the recommendations of the Public Accounts Committee in relation to the expenditure on new service towards setting up of a new Government company were not attracted in this case and therefore no prior approval of Parliament by way of Supplementary Grants, in pursuance of Article 115(1)(a) of the Constitution, was called for.

1.7. The Comptroller and Auditor General's Office have, however, pointed out that although the setting up of the new (Subsidiary) government company did not involve any outgo or expenditure from the Consolidated Fund of India, it required prior approval of Parliament in accordance with the wording of item 1(i) in part 'A' of the Statement dated 27th July, 1970 furnished to the Committee by the Ministry of Finance and that therefore the procedure observed in this case, *viz.*, reporting to Parliament in 1974 during the supplementary grants for 1974-75, when the matter was under correspondence, was

at variance with the instructions issued by the Ministry of Finance. The Comptroller and Auditor General's Office have also pointed out that in terms of item 1(i) in part 'A' of the statement the splitting up of an existing company, amalgamation of two or more government companies and taking up of a new activity by an existing government company may not necessarily mean expenditure from the Consolidated Fund of India. Nevertheless prior approval of Parliament has been made obligatory in all such cases because the scope for which money was voted by Parliament would undergo change if an existing company is split up, two or more companies are amalgamated or any new activity is taken up by an existing government company. While expressing this view and insisting on the need for obtaining prior approval by Parliament, the Comptroller and Auditor General's Office have advised the Ministry of Finance to settle, with the approval of the Public Accounts Committee, the modalities of obtaining prior approval of Parliament in such cases not involving expenditure from the Consolidated Fund of India but covered all the same by the instructions issued by the Ministry of Finance in July, 1970.

1.8. According to the Ministry of Finance, it is obvious that when there is no need for 'supplementary or additional expenditure', as in the case of SAIL International Limited, the instructions contained in their O.M. of July, 1970 are not applicable and therefore no prior approval of Parliament by way of supplementary grants is required before action of this type can be taken by the executive. However, according to the Ministry of Finance, it would be appropriate and desirable that such cases, not requiring prior approval of Parliament, are reported *post facto* to Parliament along with the next batch of supplementary demands for grants. The Ministry of Finance have sought the approval of the Public Accounts Committee to the adoption of this procedure. A copy of the Note [No. F.8(11)-B/74, dt. 23rd July, 1975], received from the Ministry of Finance is reproduced as Appendix II.

1.9. The relevant recommendation of the Committee made in their 11th Report (4th Lok Sabha) reads as follows:—

"1.66 The Committee agree with Government's proposal that the setting up of a new Government company or splitting up of an existing Government company or the amalgamation of two or more Government companies or the taking up of a new activity by an existing government company or a Departmental Undertaking or new investments in Private Sector companies to be made for the first

time should be treated as involving a 'New Service/ New Instrument of Service' requiring Parliament's prior approval."

In their action taken reply on the above mentioned recommendation, the Ministry of Finance (Department of Economic Affairs), informed the Committee as follows:—

"The recommendation of the Committee has been accepted. (Instructions are being issued * * * * * and a copy will be furnished to the Committee in due course."

[50th Report of PAC (4th Lok Sabha), page 9, S. No. 1, read with page 14, S. No. 9].

1.10. In the statement (reproduced in para 3 above) enclosed with the instructions subsequently issued by the Ministry of Finance on 27th July, 1975, the relevant portion in respect of the above mentioned recommendation reads as follows:

"Nature of transactions	Limits beyond which prior approval of Parliament is required.
<p>I. Public Sector Undertakings/ Departmental Undertakings.</p> <p>(i) Setting up of new Government Companies, splitting up an existing company, amalgamation of two or more Government companies and taking up of a new activity by an existing Government company or a departmental undertaking.</p>	<p>All Cases</p> <p style="text-align: right;">"</p>

1.11. As regards the modalities to be followed for bringing before Parliament cases of "New Service" involving no direct expenditure from the Consolidated Fund of India, the question of the details to be given while seeking Parliament's approval to new Services was gone into by the Estimates Committee (1972-73). The recommendation made by the Estimates Committee in their 24th Report (5th Lok Sabha) on 'Revision of the form and contents of the Demands for Grants', the action taken by Government thereon and further comments of the Estimates Committee made in their 48th Report (5th Lok Sabha) are reproduced below:—

Recommendations

The Committee feel that mere listing of the new service/new instrument of service for which provision is included in the Budget estimate does not serve fully the purpose underlying the recommen-

dation made earlier by the Public Accounts Committee. They consider that comprehensive notes on new services/new instruments of service to bring out the objective underlying the service activity, the financial implications thereof, the time schedule for completion and commissioning, the contribution expected to be made in the economic and industrial field etc. may be clearly set out in the notes to be included in Part II of the Demands.

[S. No. 7, para No. 4.4 of 24th Report of Estimates Committee (5th Lok Sabha)]

Reply of Government

The recommendation is noted for compliance. However, owing to the numerous changes involved in the restructuring of the Demands for Grants and the limited time available, it did not become possible to give comprehensive notes on the items of 'New Service/ New Instrument of Service' in Part II of the Demands for 1973-74 in all cases.

[M. of Finance (E.A.D.) O.M. No. F.8(26)-B/72 dt. 7-6-73]

Comments of the Committee

The Committee trust that from next year onward Government would ensure that comprehensive notes on new service/new instruments of service are recorded in Part II of the Demands in each and every case.

[48th Report of Estimates Committee (5th Lok Sabha) pp. 11-12]

1.12. During evidence, the Secretary, Department of Economic Affairs, has reiterated the view that in cases where no expenditure from the Consolidated Fund of India is involved, prior approval of Parliament is not necessary. The witness has stated:—

“The main issue for discussion here that Government and the Committee have been considering is whether, when a subsidiary, as has happened in this case, is formed from a company and no money is required for that subsidiary from the Consolidated Fund of India, should we still need to go to Parliament to secure a vote approving its formation. Our view is that, in essence, this depends on whether any money from the Consolidated Fund of India will be required to be provided for this subsidiary. If any money is required, we should certainly go to Parliament for vote and approval. If it is a matter of great urgency, even

before doing so we can take money from the Contingency Fund and later secure Parliament's approval if money is involved or is required from the Consolidated Fund. If such money is not required and the funding is to be done outside the Consolidated Fund, it is our view that reporting to Parliament is adequate. When this is reported, Parliament being sovereign can of course discuss the new subsidiary that has been formed, comment on it and give such directions as it may think fit to do. But there need not be a securing of prior approval and vote because no money is involved. We think that Article 115 is clear that it is where expenditures are involved that we need to do this.

In terms of the recommendation of the P.A.C. in regard to New Service also, as stated in para 1.5 of the 50th Report, it is clearly suggested 'the following items of expenditure should constitute a new service'.

1.13. In the context of the position that the Government themselves consider it desirable and proper to 'report' the formation of a subsidiary company to Parliament even if no expenditure was involved from the Consolidated Fund of India, the Committee desired to know what was the difficulty of the Ministry in seeking prior approval of Parliament instead of merely reporting the matter to Parliament at a later stage. In reply, the witness stated:

"In terms of the existence of the company, the Parliament is always entitled to secure any information, as I had said earlier. We have the Committee on Public Undertakings which looks into all the aspects. The Comptroller and Auditor General looks into all the aspects. The only point we are making is that as far as the subsidiary is concerned, which is formed out of the funds of the company itself, that fact should be reported to Parliament."

The witness added:

"Parliament was well aware of the objectives for which the Company was formed. When one of these objectives is furthered by the formation of a subsidiary, I feel that prior approval of Parliament is not necessary. But when the matter is reported to Parliament, if it so wishes or thinks fit, Parliament can enquire into all details of the formation of the subsidiary and how it is functioning."

1.14. Asked whether the setting up of a subsidiary company, though entirely from the internal resources of the principal company, did not carry with it the likelihood, if not at once but subsequently, of an impact on the Consolidated Fund of India and thus indirectly impinge upon the totality of that Fund, the witness replied:

“It is farthest from our thoughts to evade Parliamentary scrutiny of the activities of the subsidiaries formed from the main company. When the main company was formed the draft on the Consolidated Fund of India was approved by Parliament as well as an outline of what was going to be done. Thereafter what happens is this. I am giving this case as an instance. Something which is within the ambit of the main company is done. For an activity to be carried out a subsidiary is needed and so money is provided by the main company and the subsidiary is formed. In this context I should refer to the articles of SAIL. If the operations of the company or its subsidiary are to be financed from the internal reserves of the main company, President's approval is not regarded as necessary. The reason being that these are subsidiary activities arising from the main activity for which the company was formed and for which approval of Parliament has been secured. Over and above that, the activities of this company, the manner in which it has been provided with funds, the manner of its operations, etc. are always open to the scrutiny of the Comptroller & Auditor General, the Parliamentary Committee on Public Undertakings. The fact of reporting to Parliament means that they are cognisant of this happening and Parliament can secure any information by asking questions about this at any time they so wish. There is no attempt at avoidance of parliamentary scrutiny.”

1.15. The Committee desired to know as to when and in what form the prior approval of Parliament was sought to the Articles of Association of the Steel Authority of India Ltd. The information furnished by the Ministry is reproduced below:

“The Articles of Association of Steel Authority of India Ltd. were not placed before Parliament. However, after the company had been registered on the 24th January 1973, a Supplementary Demand for investment in the Company, was presented to, and passed by Parliament, in March 1973. The Supplementary Demand (No. 129) so presented in

March 1973 gave the relevant particulars of the objectives, authorised capital, etc., of the new Company.”

1.16. The Committee, towards the end of their sitting held on 26th September, 1975, to take the evidence of the official representatives of the Ministry of Finance (Department of Economic Affairs) desired that the views expressed in the note of Ministry of Finance dated 23rd July, 1975 might be reconsidered and the Committee apprised of the final views of the Ministry. The Ministry of Finance in their Memo No. F.8(11)-B/74 dated the 10th November, 1975 (reproduced in Appendix III) reiterated the stand taken earlier by the Ministry of Finance in their note of 23rd July, 1975. The concluding three paragraphs of the Ministry's Memorandum of 10th November, 1975 are reproduced below for ready reference:

“(5) From the above, it is abundantly clear to us that what both the Committee and the Government had in mind was to prescribe limits of ‘expenditure on new service’ within the purview of article 115(1)(a) of the Constitution. Imposing the constitutional requirements relating to ‘New Service’ as contemplated in article 115(1)(a) of the Constitution, on cases not involving any expenditure from the Consolidated Fund of India would amount to imposition of extra constitutional fetters on the powers legitimately vesting in the Executive.

Besides, prior approval of Parliament within the ambit of the financial provisions of the Constitution has to take the form of a Grant voted by the Lok Sabha and the related Appropriation Act passed by both the Houses. A Grant and an Appropriation Act can relate only to an outgo from the Consolidated Fund and, consequently, where an executive action does not involve any outgo from the Consolidated Fund, there can be no question of seeking approval of Parliament through a Grant and Appropriation Act.

(6) If the Committee's view is that ‘prior approval of Parliament’ is an essential pre-requisite to the setting up of a new Government company, even where such setting up does not involve any outgo from the Consolidated Fund, it would lead to serious difficulties. Unlike a case of setting up a new Government company involving expenditure from the Consolidated Fund wherefor, in the event of urgency, recourse can be taken to an advance from the Contingency

Fund pending going in for a vote, there are no known means to deal with cases not involving an expenditure from the Consolidated Fund in similar situations. This Ministry suggested in paragraph 6 of the Note dated the 23rd July, 1975 that the latter cases would be reported *post facto* to Parliament along with the next batch of Supplementary Demands for Grants. Any other course would, it is submitted, place cases of setting up of a new Government company etc. not involving an outgo from the Consolidated Fund, on a worse footing than those involving such expenditure.

- (7) In the light of the evidence given by Secretary (Economic Affairs) on the 26th September, 1975, the Public Accounts Committee directed that their suggestions should be further considered by Government. The Committee's suggestions have been examined very carefully, but in view of the facts of the situation, it is submitted that it would not be possible for Government to accept them for reasons outlined above. The Public Accounts Committee are, therefore, requested to agree to the proposal contained in paragraph 6 of the Ministry's note dated the 23rd July, 1975."

1.17. The Ministry of Finance in their Memorandum No. F. 8(11)-B/74 dated the 10th November, 1975 have laid excessive stress on the letter of Article 115(1)(a) of the Constitution which requires that when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for the year, another statement showing the estimated amount of that expenditure should be laid before both the Houses of Parliament and necessary appropriation law got enacted in terms of Article 115(2) of the Constitution. The Ministry have also tried to recall the history of the case in order to state that the omission of the words 'expenditure from the Consolidated Fund of India' in clause (A)1(i) in paragraph 2 of the enclosure to Ministry's circular dated 27th July, 1970 and in paragraph 1.66 and 1.68 of the Eleventh Report of the Public Accounts Committee is not of material importance as neither the Ministry's note dated 23rd December, 1967 nor the recommendations of the Public Accounts Committee could go beyond the scope of Article 115(1)(a) of the Constitution. The Committee would like to recall that in their earlier Reports on New Service/New Instrument of Service (Eleventh and Fiftieth Report of Fourth Lok Sabha, April 1968

and April 1969) the Committee were stressing not so much on the letter of the provisions of the Constitution but the spirit underlying it. This would be clear from the fact that at first Government's plea before the Committee was that they had provided loans to the Heavy Engineering Corporation, the Fertiliser Corporation of India etc. by reappropriation as savings were available under the relevant grants. It was, therefore, not so much a question of net additional outgo from the Consolidated Fund of India which was the subject of detailed examination by the Committee but the principle underlying it. The principle was that the substantial amounts voted by Parliament should be applied for the objectives for which these were voted and not reappropriated in a manner so as to divert them to New Services/New Instruments of Service which required specific prior approval of Parliament. It was for this reason that both in the letter of the Ministry of Finance dated 23rd December, 1967 as well as in paragraphs 1.66 and 1.68 of the Eleventh Report of the Public Accounts Committee and in clause A1(i) of the enclosure to the Ministry's O.M. No. F. 8(60)B/69 dated 27th July, 1970, there is no mention of any financial limit, but it has been clearly stated that all cases of 'setting up of new Government companies, splitting up of an existing Government company or amalgamation of two or more Government companies and the taking up of a new activity by an existing Government company or a departmental undertaking' would constitute a new service requiring prior approval of Parliament.

Coming to the present case, according to the Ministry's evidence the SAIL International Ltd. was financed entirely out of the internal resources of the principal company (Steel Authority of India Ltd.) in June-July, 1974. Since the funds for the subsidiary company have been given entirely by SAIL, the parent company, it is evident that the fluctuations in the fortunes of the subsidiary, SAIL International Ltd., are bound to have effect on the finances of the parent company. Any material effect on the finances of the parent company (SAIL) is bound to have an impact on the Consolidated Fund of India, which had initially contributed the resources for its formation. To take a hypothetical case, supposing the SAIL International Ltd. runs into heavy losses and the parent company, SAIL, is unable to absorb these losses, it may have to fall back on the Government for bailing it out. Such a contingency would imply an outgo, whether in the form of loan or additional contribution for equity investment, from the Consolidated Fund of India. (As the state of finances of a parent company have an impact on the Consolidated Fund of India, it cannot be denied that a wholly financed subsidiary company constituted by the parent company would also

have an impact on the Consolidated Fund of India). Besides, it has come to be established over the years, in terms of Government's own agreement, the Committee's recommendations and Government's circular of 27th July 1970, that all cases of setting up of new Government companies including splitting up of an existing Government Company or amalgamation of two or more Government companies and taking up of a new activity by an existing Government Company or a departmental undertaking would constitute a New Service requiring Parliament's prior approval. It cannot be denied that by setting up a new subsidiary company and thus giving birth to a new entity, the parent company, in fact, has undertaken a new activity. On principle as well as in terms of Government's own orders issued after most careful consideration of the Committee's recommendations, this new activity requires prior approval of Parliament.

The Committee need hardly point out that behind the constitutional provision of obtaining Parliament's prior approval for outgo from the Consolidated Fund of India, lies the principle that the representatives of the people should have an effective say in the utilisation of the resources which are raised through voted taxes. Parliament has to see that before a new activity is undertaken the Members are furnished with all the relevant information so as to be able to express their considered viewpoint on it. It is, therefore, imperative that Government should submit to Parliament any proposal to set up a subsidiary to be financed entirely out of the internal resources of a Government company, even if it involves no immediate and visible outgo from the Consolidated Fund of India, before it is brought into existence. The peoples' representatives should not be presented with a *fait accompli* without their being made fully cognisant in advance of the proposal and its implications. The *raison d'être* for this invariable parliamentary principle is accountability of the public sector, financed from the voted resources, to Parliament. Government should, therefore, ensure that Parliament's prior approval is obtained not only before setting up a new Government company but also when a subsidiary company, financed wholly by such a parent company in the public sector is to be formed. Full details of the subsidiary company including the economics of the proposal, its role and relationship with the parent company, its place in the public sector etc. should be furnished to Parliament so that it may have an opportunity to fully discuss and express its views in advance before it is brought into being.

1.18. As regards the modalities to be followed for bringing before Parliament cases of 'New Service' involving no immediate expenditure from the Consolidated Fund of India, the Committee suggest

that in the Notes relating to New Services included in Part II of the Demands for Grants, all cases of 'New Services' involving no immediate expenditure from the Consolidated Fund of India should also be included, with a suitable indication to the effect that the new service in question does not involve directly any expenditure from the Consolidated Fund of India, the funds therefor being provided by the Government Company (to be specified), the setting up of which was earlier duly approved by Parliament (full details to be given).

1.19. The Committee trust that Government would, in accordance with the spirit underlying the recommendation contained in their 11th and 50th Reports (Fourth Lok Sabha) and the orders issued by the Ministry of Finance in consultation with C.&A.G. in the circular of 27th July, 1973, now ensure that Parliament's prior approval is invariably sought before a new subsidiary is set up by a Government Company.

NEW DELHI;
December 16, 1975
Agrahayana 25, 1897 (S).

H. N. MUKERJEE,
Chairman.
Public Accounts Committee.

APPENDICES

APPENDIX I

(Vide Paras 1.3 and 1.4 of the Report)

No. F.8(60)-B/69

GOVERNMENT OF INDIA

Ministry of Finance

Department of Economic Affairs

New Delhi, the 27th July, 1970

OFFICE MEMORANDUM

SUBJECT.—*New Service/New Instruments of Service—Limits to be observed pursuant to the recommendations of the Public Accounts Committee.*

The undersigned is directed to invite a reference to this Ministry's O.M. No. F.8(10)-B '68, dated the 2nd November, 1968 and 25th January, 1969 on the above mentioned subject with which copies of 'Action Taken Statements', incorporating the views of the Government on the recommendations of the Public Accounts Committee contained in their 11th Report (4th Lok Sabha) were circulated to all the Ministries, etc. These 'Action Taken Statements' have been considered by the Committee and their observations thereon are contained in their 50th Report (4th Lok Sabha). For the convenience and guidance of the Ministries, etc. and for deciding the cases of the type, the limits to be observed in deciding whether a case relates to New Service/New Instrument of Service and for determining whether it be reported to Parliament, have been indicated in the enclosed statement drawn up on the basis of the Government decisions on the recommendations of the Committee. Ministries, etc. are requested to note these limits carefully and examine cases arising hereafter, involving 'New Service'/New Instrument of Service', etc. in the light thereof. All doubtful cases may, however, continue to be referred to this Ministry for consideration.

Sd'-

(B. Maithreyan)

Joint Secretary to the Government of India.

To

All Ministries/Departments, etc. and All Financial Advisers in the Department of Expenditure (with five spare copies).

No. F.8 (60)-B/69

Copy forwarded for information to:—

1. Lok Sabha Secretariat (P.A.C. Branch). With regard to the recommendations of the Public Accounts Committee contained in Para 1.16 of their 50th Report (4th Lok Sabha), attention is invited to this Ministry's 'Action Taken' Statement No. F. 8(60)/69 dated 14th November, 1969.
2. Comptroller & Auditor General of India, New Delhi.
3. Department of Expenditure (E. Coord. Branch), Department of Revenue and Insurance (C.B.E.&C. and C.B.D.T.), Department of Banking, Adm. III Branch of Department of Economic Affairs (for circulation in the Department and its attached and subordinate offices).
4. Finance Secretaries of all the State and Union Territory Governments.

Sd/-

(K. S. Sastry)

Deputy Secretary to the Govt. of India.

Encl. Statement.

'NEW SERVICE' /NEW INSTRUMENT OF SERVICE-LIMITS TO BE OBSERVED IN DECIDING CASES RELATING TO A. CASES FOR LIMITS BEYOND WHICH PRIOR APPROVAL OF PARLIAMENT IS REQUIRED

Nature of transactions	Limits beyond which prior approval of Parliament is required.
1	2
1. Public Sector Undertakings/ Departmental Undertakings	
(i) Setting up of new Government Companies, splitting up of an existing company, amalgamation of two or more Government Companies and taking up of a new activity by an existing Government Company or a departmental undertaking.	
(ii) Additional investments in an existing Departmental Undertaking.	Rs. 1 crore

1	2										
(iii) Additional investment in or loans to an existing Government Company	<p style="text-align: center;"><i>Paid up Capital of the existing Company</i></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="text-align: right; vertical-align: bottom;"><i>Limit</i></th> </tr> </thead> <tbody> <tr> <td style="padding-left: 20px;">Upto Rs.1 crore</td> <td style="text-align: right;">Rs. 20 lakhs</td> </tr> <tr> <td style="padding-left: 20px;">Above Rs. 1 crore and upto Rs. 25 crores.</td> <td style="text-align: right;">Rs. 2 crores</td> </tr> <tr> <td style="padding-left: 20px;">Above Rs. 25 crores and upto Rs. 100 crores</td> <td style="text-align: right;">Rs. 10 crores</td> </tr> <tr> <td style="padding-left: 20px;">Above Rs. 100 crores</td> <td style="text-align: right;">Rs. 15 crores</td> </tr> </tbody> </table> <p><i>Note 1.</i>—While applying the above limits Loans and Capital investments are to be taken together.</p> <p><i>Note 2.</i>—Short term loans (Working Capital) or duration not exceeding one year, need <i>not</i> be treated as ' New Instruments of Service ' but should be reported to Parliament with the ensuring batch of Supplementary Demands.</p> <p><i>Note 3.</i>—For loans to Port Trusts, Delhi Municipal Corporation Financial Institutions, etc. limits as in the case of Public Sector Companies are to be applied.</p> <p><i>Note 4.</i>—Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 20 lakhs to an existing Government Company. This limit will apply only in the case of long term loans.</p>		<i>Limit</i>	Upto Rs.1 crore	Rs. 20 lakhs	Above Rs. 1 crore and upto Rs. 25 crores.	Rs. 2 crores	Above Rs. 25 crores and upto Rs. 100 crores	Rs. 10 crores	Above Rs. 100 crores	Rs. 15 crores
	<i>Limit</i>										
Upto Rs.1 crore	Rs. 20 lakhs										
Above Rs. 1 crore and upto Rs. 25 crores.	Rs. 2 crores										
Above Rs. 25 crores and upto Rs. 100 crores	Rs. 10 crores										
Above Rs. 100 crores	Rs. 15 crores										
II.—Private Sector Companies Private Institutions											
(a) Investments to be made for the first time.	All cases										
(b) Additional investments in or loans to an existing Company Institution.	Rs. 1 crore.										
	<p><i>Note 1.</i>—While applying these limits Loans and Capital investments are to be taken together.</p> <p><i>Note 2.</i>—In the case of Loans to satisfactory and other public institutions like University Grants Commission, Indian Institute of Technology, Khadi and Village Industries Commission, etc. limits as applicable to Private Sector Companies/ Private Institutions should be applied.</p> <p><i>Note 3.</i>—Where there is no budget provision, prior approval of Parliament will be necessary in the case of loans exceeding Rs. 10 lakhs.</p>										

1	2
II. <i>Grants-in-aid to Private Institutions</i>	<p>Recurring—Rs. 5 lakhs and Non-recurring—Rs. 10 lakhs subject to the following :—</p> <p>(a) The limits for non-recurring and recurring grants-in-aid to private institutions would apply with reference to moneys disbursed by an individual Ministry/Department and <i>not</i> by Government as a whole.</p> <p>(b) In the case of recurring grants exceeding Rs. 5 lakhs per annum the financial implications would be reported to Parliament where the grant is to be made for two years or more.</p> <p>(c) In the case of <i>Grants-in-aid under Export Promotion Schemes</i> the limits applicable to Subsidies under these Schemes will apply to Grants-in-aid also.</p>
IV. <i>Grants-in-aid to statutory and other public institutions</i>	<p>(i) Institutions in receipt of grants-in-aid of less than Rs. 1 crore. Rs. 10 lakhs</p> <p>(ii) Institutions in receipt of grants-in-aid of more than Rs. 1 crore but less than Rs. 2 crores. Rs. 20 lakhs</p> <p>(iii) Institutions in receipt of grants-in-aid of Rs. 2 crores and above but below Rs. 3 crores. Rs. 30 lakhs</p> <p>(iv) Institutions in receipt of grants-in-aid of Rs. 3 crores and above Rs. 50 lakhs</p> <p><i>Note:</i> These limits would apply with reference to moneys disbursed by an individual Ministry/Department and <i>not</i> by Government as a whole.</p>
V. <i>Subsidies</i>	<p>(a) <i>Export Promotion Schemes</i> The budget provision should be split up as under:</p> <p>(i) Product Promotion assistance (for Fabricated products like engineering and sports goods, etc.)</p> <p>(ii) Commodity Development assistance (for iron and steel, ferrous scrap, etc.)</p>

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(iii) Export credit development schemes (for subsidies to banks).

(iv) Grants-in-aid and contributions to export development organisations (Export Promotion Councils etc.).

(v) Grants-in-aid for market development (for market research, fairs, exhibitions publicity, etc.).

Parliament should be approached whenever it becomes necessary for Export Promotion Schemes or provision under any one of the needs referred to above by more than Rs. 1 crore.

(b) *Foodgrain transactions:*

Parliament will be approached whenever it becomes necessary to augment existing budget provision by more than Rs. 1 crore.

(ii) Other Subsidies Rs. 10 lakhs

VI. Other Cases:

(i) New Commissions or Committees of Enquiry Rs. 4 lakhs (total expenditure)

(ii) Expenditure on a 'new work' Rs. 25 lakhs

(iii) Other cases of Government expenditure. Each case to be considered on merits.

VII. Posts and Telegraphs

VIII. Defence

IX. Railways

All the above limits including those relating to Works Expenditure (Rs. 25 lakhs) applicable to other Ministries/Departments will apply in the case of these Ministries Departments; subject to considerations of security in the case of Defence and that for investment in Ordnance Factories the limit of Rs. 1 crore should be made applicable with reference to investments in all the Factories as a whole. Civil Works, which do not form part of any project of the Departmental Undertakings (ordnance Factories) should be treated like ordinary Defence Works. As such they would attract the limits of 'new instrument of service' if the cost thereof exceeds Rs. 25 lakhs or should be reported if the cost thereof exceeds Rs. 10 lakhs but does not exceed Rs. 25 lakhs. A list of such works should, however, be supplied to the Director of Audit, Defence Services.

B—CASES FOR LIMITS BEYOND WHICH REPORT TO PARLIAMENT IS NECESSARY ALONG WITH THE ENSUING BATCH OF SUPPLEMENTARY DEMANDS FOR GRANTS/NOTES ON DEMANDS FOR GRANTS.

Nature of transactions	Limits beyond which report to Parliament is necessary	
1	2	
I. Additional investment in an existing Departmental Undertaking	Rs. 50 lakhs and above but below Rs. 1 crore.	
II. Additional investment in or loans to an existing Public Sector Undertaking/ Government Company	Paid up Capital	Limit
	Upto Rs. 1 crore.	Rs. 10 lakhs and above but below Rs. 20 lakhs.
	Above Rs. 1 crore and upto Rs. 25 crores.	Rs. 1 crore and above but below Rs. 2 crores.
	Above Rs. 25 crores and upto Rs. 100 crores.	Rs. 5 crores and above but below Rs. 10 crores.
	Above Rs. 100 crores	Rs. 7.50 crores and above but below Rs. 15 crores.
	NOTE :— While applying the above limits Loans and Capital investments are to be taken together.	
III. Additional Investment in or Loans to a Private Sector Company/Institution.	Rs. 50 lakhs and above but below Rs. 1 crore.	
	NOTE :— While applying the above limit Loans and Capital investments are to be taken together.	
IV. Subsidies	<i>Subsidies under Export Promotion Schemes</i>	
	Augmentation of total provision by re-appropriation of over Rs. 25 lakhs (and less than Rs. 1 crore) or re-appropriation of Rs. 25 lakhs (and less than Rs. 1 crore) from one sub-head to another but without any overall augmentation of the total provision.	
	<i>Subsidies on Foodgrain transactions.</i>	
	Re-appropriations in excess of Rs. 25 lakhs (but less than Rs. 1 crore).	
V. Expenditure on a 'New Work'.	Rs. 10 lakhs and above but below Rs. 25 lakhs.	

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VI. Transfer or a gift of Government assets to Public Corporations/Companies, Autonomous Bodies, Private Parties/Institutions, etc. Rs. 1 lakh. (To be reported through the Notes on Demands for Grants).

*Note:—*In cases of urgency, where it may not be possible to wait till the matter is brought to the notice of Parliament through the Notes on Demands for Grants, arrangements may be made by entrusting the management of the property to the body or institution but the formal transfer of the title to the property should be effected only after a mention is made in the Notes on Demands for Grants.

APPENDIX II

(Vide Para 1.8 of the Report)

No. F. 8(11)-B/74

Ministry of Finance

(Department of Economic Affairs)

Budget Division

New Delhi, the 23rd July, 1975

NOTE FOR PUBLIC ACCOUNTS COMMITTEE

Subject:—Observance of the limits prescribed for determining 'New Service' expenditure on which attracts the provisions of article 115(1)(a) of the Constitution.

In 1968, the Public Accounts Committee had considered the desirability of prescribing guidelines for determining the items of expenditure, from the Consolidated Fund of India, as would constitute expenditure on 'New Service' so as to attract the provisions of article 115(1)(a) of the Constitution. In their Report (Eleventh Report—Fourth Lok Sabha), the Committee recommended that expenditure arising out of following should constitute 'New Service'/'New Instrument of Service' requiring Parliament's prior approval:—

- (i) expenditure arising out of a policy decision, not brought to Parliament's notice earlier, including a new activity or a new form of investment;
- (ii) substantial expenditure arising from an important extension of an existing activity; and
- (iii) the setting up of a new Government Company or the splitting up of an existing Government Company or the amalgamation of two or more Government Companies or the taking up of a new activity by an existing Government Company or a Departmental Undertaking or new investments in Private Sector Companies to be made for the first time.

In the same Report, the Committee also made certain recommendations with regard to financial limits beyond which

expenditure in this regard, from the Consolidated Fund of India, should be deemed to constitute expenditure on 'New Service'.

2. The action taken by the Government on the recommendations of the Committee contained in their Eleventh Report (Fourth Lok Sabha) were considered by the Committee and their final recommendations were made in the Fiftieth Report (Fourth Lok Sabha). Pursuant to the Committee's final recommendations, instructions were issued by this Ministry, under Office Memorandum No. 8(60)-B/69 dated 27th July, 1970, laying down the nature and financial limits of expenditure, from the Consolidated Fund of India, for determining whether an item would attract the restrictions applicable to 'expenditure upon some new service' not contemplated in the Annual Financial Statement, within the ambit of article 115(1)(a) of the Constitution, thereby requiring prior approval of Parliament.

3. Article 115(1)(a) and, in the case of State Government, article 205(1)(a) are the only two articles in which the term 'new service' appears in the Constitution and both specifically refer to 'expenditure on New Service'. Although the term 'New Service' has not been defined in the Constitution, it is evident that, in terms of these two articles, the restrictions relatable to 'new service' would be attracted provided only it involves 'expenditure', and that too from the Consolidated Fund. Otherwise, the operative part of the articles, viz. the sub-para of clause (1) and more particularly, clause (2) thereof, in relation to 'Demand for Grant' and 'Appropriation Act', can have no application. The recommendations in the Committee's Reports (Eleventh and Fiftieth—Fourth Lok Sabha) were also clearly in respect of items involving 'expenditure' from the Consolidated Fund of India. It was rather an omission that this aspect had not been specifically mentioned in column 2 of Part-A of the Statement enclosed to this Ministry's Office Memorandum dated 27-7-1970 wherein the 'limits beyond which prior approval of Parliament is required' were laid down. What was necessary was to make it clear that the limits prescribed represented limits of "expenditure from the Consolidated Fund" beyond which prior approval of Parliament would be required before expenditure could be incurred from that Fund.

4. As a result, a doubt has arisen whether, the setting up of a new Government Company, within the meaning of section 617 of the Companies Act, 1956, being a subsidiary of an existing Government Company, but not involving expenditure from the Consolidat-

ed Fund of India, would require prior approval of Parliament. The doubt arose in connection with the setting up of the Ispat International Limited, which had been registered on 10-6-74, as a wholly-owned subsidiary of Steel Authority of India Limited. As the SAIL itself is a Government Company, its subsidiary would also be a Government Company, within the meaning of section 617 of the Companies Act, 1956. The Subsidiary Company was set up, and would be financed entirely, out of the internal resources of the Principal Company, and not from the Consolidated Fund of India. Consequently, this Ministry held the view that the recommendations of the Public Accounts Committee in relation to 'expenditure on new service', towards setting up of a new Government Company, were not attracted in this case and, therefore, no prior approval of Parliament, by way of Supplementary Grant, in pursuance of article 115(1)(a) of the Constitution, was called for. In the opinion of this Ministry, it would be enough if such cases, not involving expenditure from the Consolidated Fund of India, though having the attributes of the transactions mentioned in Column—1 against Item 1(i) of Part A of the Statement enclosed to this Ministry's O.M. dated 27-7-1970, were brought, *post-facto*, to the notice of Parliament along with the next batch of Supplementary Demands for Grants and this is what was done in this case, *vide* page 30 of the Supplementary Demands for Grants of the Central Government laid before Parliament on the 23rd August, 1974.

5. The Comptroller and Auditor General's office, however, held the view that although the setting up of new (subsidiary) Government Company did not involve any outgo or expenditure from the Consolidated Fund of India, it required prior approval of Parliament in accordance with the wordings of item 1(i) in Part A of the Statement enclosed to this Ministry's O.M. dated 27-7-1970 and that the procedure observed in this case *viz.* reporting to Parliament in August, 1974 through the Supplementary Demands for Grants for 1974-75, when the matter was under correspondence was at variance with the instructions in the Ministry's O.M. It was pointed out by Comptroller and Auditor General's Office that in terms of item 1(i) in Part A of the statement enclosed to the Ministry's O.M. of 27-7-1970, splitting up of an existing company, amalgamation of two or more Government Companies and taking up a new activity by an existing Government Company may not necessarily mean expenditure from the Consolidated Fund of India. Nevertheless, prior approval of Parliament has been made obligatory in all such cases because the scope for which money was voted by Parliament would undergo change if an existing company is split up, two or more companies are amalgamated or any new activity is taken up by an ex-

isting Government Company. In the Ministry's view as no expenditure from the Consolidated Fund was involved, there was no question of presenting to Parliament a Demand for Supplementary Grant and the provisions of article 115(1)(a) could not be resorted to for seeking prior approval of Parliament in a case like this. The Comptroller and Auditor General's Office while insisting on the need for obtaining prior approval of Parliament, in view of the provisions in item 1(i) in Part A of the Statement *ibid* has advised that the Ministry of Finance may settle, with the approval of the Public Accounts Committee, the modalities of obtaining 'prior approval' of Parliament in such cases not involving expenditure from the Consolidated Fund of India but covered, all the same, by the instructions contained in the Ministry's O.M. dated 27-7-1970.

6. As explained in paragraph 3 above, the instructions contained in this Ministry's O.M. dated 27-7-1970, issued on the basis of the recommendations of the Public Accounts Committee, were in the context of the requirements of article 115(1)(a) of the Constitution and are, consequently, attracted "when a need has arisen during the current financial year for supplementary or additional expenditure upon some 'new service' not contemplated in the annual financial statement for that year." It is obvious that when there is no need for 'supplementary or additional expenditure', as in the case referred to above, the instructions contained in the Ministry's O.M. dated 27-7-1970 are not applicable and, therefore, no prior approval of Parliament, by way of Supplementary Grant, is required before action of this type can be taken by the executive. The Constitution does not also contain any other provision in pursuance of which executive action of this type would require prior approval of Parliament. However, it may be appropriate and desirable that such cases, not requiring prior approval of Parliament, are reported, *post facto*, to Parliament along with the next batch of Supplementary Demands for Grants.

7. Approval of the Public Accounts Committee is solicited to the adoption of the procedure mentioned in paragraph 6. After the Committee has approved, suitable clarificatory instructions to the O.M. dated 27-7-1970 will be issued for the guidance of all concerned.

9. Audit has seen.

Sd/-

(B. MAITHREYAN)

Joint Secretary to the Govt. of India.

The Chairman and Members of the Public Accounts Committee.

APPENDIX III

(Vide Para 1.16 of the Report)

No. F.8(II)-B/74

GOVERNMENT OF INDIA

Ministry of Finance

(Department of Economic Affairs)

New Delhi, the 10th November, 1975

MEMORANDUM

SUBJECT.—*Observance of the limits prescribed for determining 'New Service' expenditure which attracts the provisions of Article 115(1) (a) of the Constitution.*

In their meeting held on the 26th September, 1975 to consider the Note dated 23rd July, 1975, on the above subject, submitted by this Ministry, the Public Accounts Committee desired the Secretary, Ministry of Finance, Department of Economic Affairs, to reconsider the views expressed in the Note dated 23rd July, 1975 and apprise the Committee of the final views of the Ministry.

2. The Committee relied mainly on the Note dated 23rd December, 1967 submitted by this Ministry to the Public Accounts Committee (Fourth Lok Sabha) in regard to the scope of expenditure on 'New Service'. On the basis of that Note, it was held by the Committee that all cases of 'setting up of new Government companies splitting up of an existing Government company or amalgamation of two or more Government companies and the taking up of a new activity by an existing Government company or a departmental undertaking' would require prior approval of Parliament, even if there be no immediate outgo from the Consolidated Fund on the activity. Attention of Secretary, Ministry of Finance (Deptt. of Economic Affairs) was drawn specifically to paragraph 1.66 of the Eleventh Report of the Committee (Fourth Lok Sabha) as well as to clause (a) (i) of paragraph 1.68 thereof.

3. Secretary (Economic Affairs) urged that this matter would, by its very nature, require to be viewed in the light of the relevant provision of the Constitution, namely, Article 115(1) (a) thereof, which specifically refers *inter alia* to "expenditure upon 'some new service' not contemplated in the annual financial statement."

4. It is true that neither clause 1(a) (i) in paragraph 2 of this Ministry's Note dated 23rd December, 1967 nor paragraph 1.66 and 1.68 [Clause (a) (i) of the later] of the Eleventh Report of the Public Accounts Committee (Fourth Lok Sabha) specifically referred to 'expenditure from the Consolidated Fund' on the setting up of a new Government Company etc. This omission is immaterial as the proposals contained in the Ministry's Note dated 23rd December, 1967 or the recommendations contained in the Eleventh Report of the Committee could not go beyond the scope of article 115(1) (a) of the Constitution. Further, the mere absence of the word 'expenditure' in the paragraphs referred to above would hardly justify the proposal of the Ministry and the recommendation of the Committee being interpreted in a manner which ignores the context in which they had been made. In this respect, this Ministry would briefly recapitulate, as follows, the history of the discussions in the Public Accounts Committee, on the basis of which this Ministry's Note dated 23rd December, 1967 was submitted:—

- (a) The Eleventh Report of the Public Accounts Committee (Fourth Lok Sabha) is the first one which deals with the question of 'expenditure on new service'. The very first paragraph of the Report reproduces article 115(1) of the Constitution. In paragraphs 1.2 to 1.29 of the Report, the Committee dealt with cases of 'substantial expenditure which were met by reappropriation' without specific approval of Parliament. After having considered the specific cases of 'additional expenditure', the Committee, in paragraph 1.30 of the Report, enquired whether there should not be 'some limit' beyond which the sanction of Parliament should be obtained or, in cases of urgency, 'the post facto approval of Parliament' should be obtained where—

"a fresh investment was made or when a fresh loan of substantial amount was given."

- (b) In deference to the wishes of the Public Accounts Committee for prescribing such limits of expenditure, in consultation with the Comptroller and Auditor General, the Ministry submitted to the Committee the Note dated 23rd December, 1967. The following portions of this Ministry's Note dated 23rd December, 1967 reproduced in paragraphs 1.33 and 1.34 of the Eleventh Report are specially relevant:

"Broadly, however, expenditure arising out of a new policy decision.....is regarded as an item of 'new

service'. Similarly, relatively large expenditure arising out of an important extension.....is treated as a 'new Instrument of Service'.....Thus, the setting up of a new Government company is treated as a 'new Service'.....expenditure on which is to be incurred after obtaining Parliamentary approval....."

"In order however, that new investments, additional investments by reappropriation and new or additional loans by reappropriation are brought to Parliament's notice, it is proposed after consultation with the Comptroller and Auditor General, to observe the following procedure in future....."

- (c) The Ministry's proposal in relation to 'setting up of a new Government company etc.' (reproduced in paragraph 1.35 (a)(i) of the Eleventh Report) thus related only to 'expenditure from the Consolidated Fund' on 'new Service'. After considering the proposals of this Ministry contained in the Note dated 23rd December, 1967, the Committee observed in paragraph 1.64 that they were "broadly in accord with the views of the Government enunciated in the note dated 23rd December, 1967". The Committee's recommendations are contained in paragraphs 1.64 to 1.73 of the Eleventh Report.
- (d) In the related 'Action Taken' Report of the Committee—Fiftieth Report (Fourth Lok Sabha)—the Committee, in paragraph 1.9 thereof, expressed its happiness that the Government have generally accepted the recommendations regarding 'the nature of expenditure' which should constitute 'New Service' 'New Instrument of Service.'

5. From the above, it is abundantly clear to us that what both the Committee and the Government had in mind was to prescribe limits of 'expenditure on new service', within the purview of article 115(1) (a) of the Constitution. Imposing the constitutional requirements relating to 'New Service' as contemplated in article 115(1) (a) of the Constitution, on cases *not involving any expenditure from the Consolidated Fund of India* would amount to imposition of extra constitutional fetters on the powers legitimately vesting in the Executive.

Besides, prior approval of Parliament within the ambit of the financial provisions of the Constitution has to take the form of a

Grant voted by the Lok Sabha and the related Appropriation Act passed by both the Houses. A grant and an appropriation Act can relate only to an outgo from the Consolidated Fund and, consequently, where an executive action does not involve any outgo from the Consolidated Fund, there can be no question of seeking approval of Parliament through a Grant and Appropriation Act.

6. If the Committee's view is that 'prior approval of Parliament' is an essential pre-requisite to the setting up of a new Government company, even where such setting up does not involve any outgo from the Consolidated Fund, it would lead to serious difficulties. Unlike a case of setting up a new Government company involving expenditure from the consolidated fund wherefor, in the event of urgency, recourse can be taken to an advance from the Contingency Fund pending going in for a vote, there are no known means to deal with cases not involving an expenditure from the Consolidated Fund in similar situations. This Ministry suggested in paragraph 6 of the Note dated the 23rd July, 1975 that the latter cases would be reported *post facto* to Parliament along with the next batch of Supplementary Demands for Grants. Any other course would, it is submitted, place cases of setting up of a new Government company etc. not involving an outgo from the Consolidated Fund, on a worse footing than those involving such expenditure.

7. In the light of the evidence given by Secretary (Economic Affairs) on the 26th September, 1975, the Public Accounts Committee directed that their suggestions should be further considered by Government. The Committee's suggestions have been examined very carefully but in view of the facts of the situation, it is submitted that it would not be possible for Government to accept them for reasons outlined above. The Public Accounts Committee are, therefore, requested to agree to the proposal contained in paragraph 6 of the Ministry's note dated the 23rd July, 1975.

Sd|-

(K. N. Row)

Jt. Secretary to the Govt. of India.

To

The Chairman & Members of the
Public Accounts Committee.

APPENDIX IV

Summary of main conclusions/recommendations

Sl. No	Para No.	Ministry/Department	Conclusions/Recommendations
1	2	3	4
1	1.17	Ministry of Finance (Department of Economic Affairs)	The Ministry of Finance in their Memorandum No. F.8(11)-B/74 dated 10th November 1975 have laid excessive stress on the letter of Article 115(1)(a) of the Constitution which requires that when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for the year, another statement showing the estimated amount of that expenditure should be laid before both the Houses of Parliament and necessary appropriation law got enacted in terms of Article 115(2) of the Constitution. The Ministry have also tried to recall the history of the case in order to state that the omission of the words 'expenditure from the Consolidated Fund of India' in clause (A) 1(i) in paragraph 2 of the enclosure to Ministry's circular dated 27th July, 1970 and in paragraphs 1.66 and 1.68 of the Eleventh Report of the Public Accounts Committee is not of material importance as neither the Ministry's note dated 23rd December, 1967 nor the recommendations of the Public Accounts

Committee could go beyond the scope of Article 115(1) (a) of the Constitution. The Committee would like to recall that in their earlier Reports on New Service, New Instrument of Service (Eleventh and Fiftieth Reports of Fourth Lok Sabha, April 1968 and April 1969) the Committee were stressing not so much on the letter of the provisions of the Constitution but the spirit underlying it. This would be clear from the fact that at first Government's plea before the Committee was that they had provided loans to the Heavy Engineering Corporation, the Fertiliser Corporation of India etc. by reappropriation as savings were available under the relevant grants. It was, therefore, not so much a question of net additional outgo from the Consolidated Fund of India which was the subject of detailed examination by the Committee but the principle underlying it. The principle was that the substantial amounts voted by Parliament should be applied for the objectives for which these were voted and not reappropriated in a manner so as to divert them to New Services/New Instruments of Service which required specific prior approval of Parliament. It was for this reason that both in the letter of the Ministry of Finance dated 23rd December, 1967 as well as in paragraphs 1.66 and 1.68 of the Eleventh Report of the Public Accounts Committee and in clause A1(i) of the enclosure to the Ministry's O.M. No. F.8(60)/69 dated 27th July, 1970, there is no mention of any financial limit, but it has been clearly stated that all cases of 'setting up of new Government companies, splitting up of an existing Government company or amalgamation of two or more Government companies and the taking up of a new activity by an existing Government company or a departmental undertaking' would constitute a new service requiring prior approval of Parliament.

Coming to the present case, according to the Ministry's evidence, the SAIL International Ltd. was financed entirely out of the internal resources of the principal company (Steel Authority of India Ltd.) in June-July 1974. Since the funds for the subsidiary company have been given entirely by SAIL, the parent company, it is evident that the fluctuations in the fortunes of the subsidiary, SAIL International Ltd., are bound to have effect on the finances of the parent company. Any material effect on the finances of the parent company (SAIL) is bound to have an impact on the Consolidated Fund of India, which had initially contributed the resources for its formation. To take a hypothetical case, supposing the SAIL International Ltd. runs into heavy losses and the parent company, SAIL is unable to absorb these losses, it may have to fall back on the Government for bailing it out. Such a contingency would imply an outgo, whether in the form of loan or additional contribution for equity investment, from the Consolidated Fund of India. (As the state of finances of a parent company have an impact on the Consolidated Fund of India, it cannot be denied that a wholly financed subsidiary company constituted by the parent company would also have an impact on the Consolidated Fund of India. Besides, it has come to be established over the years, in terms of Government's own agreement, the Committee's recommendations and Government's circular of 27th July, 1970, that all cases of setting up of new Government companies including splitting up of an existing Government Company or amalgamation of two or

more Government companies and taking up of a new activity by an existing Government Company or a departmental undertaking would constitute a New Service requiring Parliament's prior approval. It cannot be denied that by setting up a new subsidiary company and thus giving birth to a new entity, the parent company, in fact, has undertaken a new activity. On principle as well as in terms of Government's own orders issued after most careful consideration of the Committee's recommendations, this new activity requires prior approval of Parliament.

The Committee need hardly point out that behind the constitutional provision of obtaining Parliament's prior approval for outgo from the Consolidated Fund of India, lies the principle that the representatives of the people should have an effective say in the utilisation of the resources which are raised through voted taxes. Parliament has to see that before a new activity is undertaken the Members are furnished with all the relevant information so as to be able to express their considered viewpoint on it. It is, therefore, imperative that Government should submit to Parliament any proposal to set up a subsidiary to be financed entirely out of the internal resources of a Government company, even if it involves no immediate and visible outgo from the Consolidated Fund of India, before it is brought into existence. The peoples' representatives should not be presented with a *fait accompli* without their being made fully cognisant in advance of the proposal and its implications. The *raison d'etre* for this invariable parliamentary principle is accountability of the public sector, financed from the voted resources,

to Parliament. Government should, therefore, ensure that Parliament's prior approval is obtained not only before setting up a new Government company but also when a subsidiary company, financed wholly by such a parent company in the public sector is to be formed. Full details of the subsidiary company including the economics of the proposal, its role and relationship with the parent company, its place in the public sector etc. should be furnished to Parliament so that it may have an opportunity to fully discuss and express its views in advance before it is brought into being.

As regards the modalities to be followed for bringing before Parliament cases of 'New Service' involving no immediate expenditure from the Consolidated Fund of India, the Committee suggest that in the Notes relating to New Services included in Part II of the Demands for Grants, all cases of 'New Services' involving no immediate expenditure from the Consolidated Fund of India should also be included, with a suitable indication to the effect that the new service in question does not involve directly any expenditure from the Consolidated Fund of India, the funds therefor being provided by the Government company (to be specified), the setting up of which was earlier duly approved by Parliament (full details to be given).

The Committee trust that Government would in accordance with the spirit underlying the recommendation contained in their 11th and 50th Reports (Fourth Lok Sabha) and the orders issued by the Ministry of Finance in consultation with C.&Ar.G. in the circular of 27th July, 1970, now ensure that Parliament's prior approval is invariably sought before a new subsidiary is set up by a Government Company.
