

No. DPE/3(1)/2021-DD
Government of India
Ministry of Finance
Department of Public Enterprises

Public Enterprises Bhawan
Block No.14, CGO Complex
Lodhi Road, NewDelhi-110003

Date: 13th December, 2021


OFFICE MEMORANDUM

Subject: Guidelines for Implementation of New Public Sector Enterprises (PSE) Policy for CPSEs in Non-Strategic Sector - regarding

The undersigned is directed to forward the guidelines for implementation of New Public Sector Enterprises (PSE) Policy for CPSEs in Non-Strategic Sector notified by the Government on 4th February, 2021.

2. All the administrative Ministries/Departments concerned with CPSEs are requested to take note of the revised guidelines and also bring the same to the notice of all CPSEs under their administrative control for compliance. Closure of CPSEs may be dealt with in accordance with these guidelines.

3. This issues with the approval of Hon'ble Minister of Finance.


(Pramod Kumar Saha)
Director
Tel. 24360841

Encl.: As above

To,
Secretaries to the Ministries/Departments of Government of India (As per List mentioned)

Copy to:

1. Principal Secretary to the Prime Minister (Dr. P. K. Mishra), Prime Minister's Office, South Block, New Delhi - 110001
2. Cabinet Secretary (Shri Rajiv Gauba), Cabinet Secretariat, Rashtrapati Bhawan New Delhi 110004
3. Chief Executive Officer (Shri Amitabh Kant), NITI Aayog, Sansad Marg, New Delhi- 110 001

4. Secretary (Shri Tuhin Kanta Pandey), Department of Investment and Public Asset Management, CGO Complex, New Delhi
5. Secretary (Shri P.K. Srivastava), Coordination, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi
6. Additional Secretary (Ms. Anuradha Thakur), Cabinet Secretariat, Rashtrapati Bhawan, New Delhi
7. Secretary (Shri Anoop Kumar Mendiratta), Department of Legal Affairs, Shastri Bhawan, Dr Rajendra Prasad Road, New Delhi - 110001
8. Secretary (Shri Pradip Kumar Tripathi), Department of Personnel and Training, North Block, New Delhi - 110001
9. Secretary (Shri Rajesh Verma), Ministry of Corporate Affairs, A-wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001
10. Secretary (Shri Sunil Barthwal), Ministry of Labour and Employment, Shram Shakti Bhawan, New Delhi - 110001
11. Secretary(Dr. T.V.Somanathan) , Department of Expenditure, North Block,New Delhi
12. Secretary(Ms. Kimbuong Kipgen), Public Enterprises Selection Board, Block No. 14, CGO Complex, Lodhi Road, New Delhi - 110003

Copy for internal distribution:

1. PS to Minister (Finance),North Block, New Delhi
2. PS to MoS (Finance),North Block, New Delhi
3. PPS to Secretary, DPE, CGO Complex, New Delhi
4. PA to Additional Secretary (RKC), DPE, New Delhi

List of Name of the Ministry/ Department

S. No.	Name of the Ministry/ Department
1	Department of Agriculture , Cooperation and Farmers Welfare
2	Department of Agricultural Research and Education
3	Department of Atomic Energy
4	Department of Biotechnology
5	Department of Chemicals & Petrochemicals
6	Department of Commerce
7	Department of Defence Production
8	Department of Economic Affairs
9	Department of Empowerment of Persons with Disabilities
10	Department of Fertilizers
11	Department of Financial Services
12	Department of Food & Public Distribution
13	Ministry of Heavy Industries
14	Department of Higher Education
15	Department of Promotion of Industries & Internal Trade
16	Department of Pharmaceuticals
17	Department of Posts
18	Department of Social Justice & Empowerment
19	Department of Space
20	Department of Scientific & Industrial Research
21	Department of Telecommunications
22	Department of Health and Family welfare
23	Department of Water Resources, River Development and Ganga Rejuvenation
24	Ministry of Ayush
25	Ministry of Civil Aviation
26	Ministry of Coal
27	Ministry of Development of North Eastern Region
28	Ministry of Electronics & Information Technology
29	Ministry of Environment, Forests & Climate Change
30	Ministry of Home Affairs
31	Ministry of Housing & Urban Affairs
32	Ministry of Information & Broadcasting
33	Ministry of Micro. Small & Medium Enterprises
34	Ministry of Mines
35	Ministry of Minority Affairs
36	Ministry of New and Renewable Energy
37	Ministry of Petroleum & Natural Gas
38	Ministry of Power
39	Ministry of Railways
40	Ministry of Road Transport and Highways
41	Ministry of Ports, Shipping and Waterways
42	Ministry of Steel
43	Ministry of Textiles
44	Ministry of Tourism
45	Ministry of Tribal Affairs

No. DPE/3(1)/2021-DD
Department of Public Enterprises
Government of India

Subject: GUIDELINES FOR IMPLEMENTATION OF NEW PUBLIC SECTOR ENTERPRISES (PSE) POLICY FOR CPSES IN NON-STRATEGIC SECTOR

- 1.1** The Government notified the new Public Sector Enterprise (PSE) Policy on 4th February, 2021 for Atmanirbhar Bharat. The new PSE Policy envisages classification of CPSEs into Strategic and Non-Strategic Sectors and exempts certain CPSEs such as those setup as not for profit companies under the Companies Act, 2013 or those supporting vulnerable and weaker sections of society, from the scope of the Policy. The strategic sectors as per the policy are as under:
- i) Atomic Energy, Space, and Defence
 - ii) Transport and Telecommunication
 - iii) Power, Petroleum, Coal, and Other Minerals
 - iv) Banking, Insurance, and Financial Services
- 1.2** CPSEs in the Strategic Sector/ Non- Strategic Sector are to be taken up for privatisation, merger, subsidiarisation with another CPSE or for closure. Only a bare minimum presence of CPSEs in the aforesaid Strategic Sector is to be maintained.
- 1.3** The Department of Public Enterprises (DPE) has been brought under the Ministry of Finance vide notification dated 6th July, 2021 of Cabinet Secretariat and thereafter, Finance Secretary vide order dated 17th August, 2021 demarked certain responsibilities between DIPAM and DPE. DPE has been entrusted with the responsibility to identify CPSEs for closure or privatisation in non-strategic sector in consultation with administrative ministries/departments and to take in principle approval from CCEA in respect of such identified CPSEs. Besides, DPE has also been entrusted with the task of setting up a Special Purpose Vehicle (SPV) for asset monetisation once the SPV is approved by the Cabinet. DPE is also required to drive the closure process for CPSEs approved for closure, on the lines of disinvestment process being run by DIPAM.

1.4 Accordingly, the following guidelines are prescribed. The closure guidelines as enumerated below will supersede all the closure guidelines issued earlier.

2. Implementation of new PSE policy by DPE:

2.1 Identification of CPSEs of Non-Strategic Sectors for Closure and Disinvestment: Under the New Public Sector Policy, DPE will identify the CPSEs either for closure or privatization in the non-strategic sectors in consultation with the concerned Administrative Ministries/Departments, NITI Aayog, Department of Expenditure and DIPAM.

2.2 Preparation of CCEA Note seeking in-principle: After identification of CPSEs for closure or privatisation under the non-strategic sectors, DPE will prepare a Note for in-principle approval of the CCEA regarding the CPSEs identified for closure and/ or for disinvestment in non -strategic sectors. Such note(s) for in principle approval of CCEA will preferably be prepared separately for individual sectors falling under the category of “non-strategic sector” of new PSE policy. The CPSEs which are approved in principle by CCEA for disinvestment will be communicated to DIPAM for taking necessary action as per its extant procedure. Closure of CPSEs will be done as per the process outlined below at Para 3.

3. Revised closure process of CPSEs:

3.1 Once, the in-principle decision for closure of a CPSE is obtained from CCEA, an IMC will be constituted by DPE to drive the process of the closure of CPSEs.

3.1.1 The Ministry/Department concerned will proceed to work out the details of the closure. This would *inter-alia* include estimation of budgetary support required for financing the closure of the CPSE, the time-lines and phasing of release of funds from the Central Government and updating of records of the movable and immovable assets of the CPSE etc. The brief details of preparatory activities are enumerated below:

a. **Statutory dues:** The statutory dues/ liabilities towards revenues, taxes, cesses and rates due to Central Government or State Government or to local authorities will be worked out by CPSE under the supervision of its Administrative Ministry/ Department.

b. **Serving Closure Notice:** CPSE to give a general notice to employees and other stakeholders intimating about the intention of closure and

also write to the Ministry of Labour and Employment regarding the same, as applicable under Industrial Relations Code, 2020. The CPSE with the approval of the Administrative Ministry should also notify the VRS Scheme

- c. **Dues of employees:** Funds required for implementing VRS/VSS/ payment of wages/salaries and statutory dues in respect of the employees till the time of their release by way of VRS/ VSS/ retrenchment will be worked out.
- d. **Liabilities towards Secured Creditors** Estimation of the amount to be paid back to the Secured Creditors based on the offers from them for settlement at minimum value. Administrative Ministry/Department may critically examine the best possible settlement including schedule of payment, waiver of interest and penalties with secured creditors.
- e. **Dues payable to the Central Government:** The dues payable to the Central Government availed in the form of loans from time to time, segregated into the principal outstanding amount and the interest thereon shall be worked out.
- f. **MAT liability:** In case the proposal involves waiver of outstanding GOI loans (and accrued interest thereon), the MAT liability on the same should also be worked out.
- g. **Other liabilities:** All other liabilities including any to the unsecured creditors should be worked out.
- h. **Estimation of movable assets:** Updating details of movable assets including plant(s) & machineries and verification of inventory from an independent third party e.g., a firm of Chartered Accountants/Cost Accountants. Besides, Book Value of the movable assets, the current estimated market value and realisable value from their sale will be worked out. Wherever movable assets are on lease, negotiation with the lessor will be done by CPSE to ascertain whether lessor would take it back at market price or would like it to be auctioned. Ascertaining whether movable assets are to be utilised by its holding company (in case of subsidiary), if any or by the administrative Ministry/ Department. Market value of brand name, goodwill, trademarks, etc. of the CPSE under closure may also be worked out. In case, market value can not be determined, the same shall be transferred to the concerned administrative Ministry/Department of the CPSE.

- i. **Estimation of receivables:** Ascertaining of trade receivables, securities, loans and advances, etc.

3.1.2 Estimation of budgetary support required for closure: Based on the exercise done as per para 3.1.1, an estimate will be made of requirement of funds for financing the closure of the CPSE. The CPSE's own resources, including amount to be realised from sale of movable assets, which may be available for settlement of liabilities during the course of closure shall be worked out too. Thereafter, the requirement of budgetary support from the Central Government shall be worked out. It is however, clarified that the Central Government reserves the right to decide which of the requirements of funds it will permit out of budgetary support.

3.1.3 Updating of land records of immovable assets: Updating of land records such as title deed, lease hold land, freehold land, conditions of lease, remaining period of lease, current land use, FAR and other rights relating to use of land, whether land compensation (partly/fully) paid by the CPSEs/ Central Government at the time of acquisition, amount of compensation paid, status of possession of land, encroachments, if any, geo-mapping etc. will be done.

3.1.4 Once the preparatory activities are completed by the administrative Ministry/Department, a Draft Note for Closure of the CPSE will be prepared by DPE based on the inputs of preparatory activities and in consultation with the concerned Administrative Ministry/Department for closure of the CPSE on case-to-case basis. The same will be placed before the IMC which after scrutiny will vet the Note. Thereafter, the approval of the Hon'ble Finance Minister (FM) will be taken.

3.1.5 If the Director(s) of the CPSE(s) fails to co-operate, the Administrative Ministry/ Department can take a view on removing the Functional Directors including the CMD and give additional charge of the CMD to the Joint Secretary concerned and charge of Functional Directors to other senior officers in the administrative Ministry/ Department as per extant guidelines in this regard. This information regarding removal of the Functional Directors including the CMD will be communicated to the PESB.

3.2 Disposal of immovable assets

The process of closure of a CPSE and disposal of its immovable assets will be completely delinked. On approval of Closure Note, the Administrative Ministry/ Department/CPSE shall proceed

simultaneously but separately for alienation of immovable properties from its books.

3.2.1 The immovable assets will be alienated from the CPSE in the manner as prescribed below:

- a) **Return of leasehold land to the States:** All kinds of leasehold land of the CPSE will be returned back to the State Government without insisting on any compensation (if due as per lease agreement).
- b) **Transfer of freehold land to Special Purpose Vehicle (SPV)** will be as per the procedure laid down for the operation of the SPV (to be set up in DPE).

3.2.2 Interim arrangement through Land Management Agency (LMA):

Pending setting up of SPV, the closure cases wherein a Land Management Agency (LMA) such as NBCC has earlier been engaged for disposal of land as per the DPE closure guidelines dated 14.06.2018, LMA will continue to manage the land and can dispose off the same to any appropriate agency at best discovered price. The Forward Auction Platform of GeM or MSTC can also be availed by LMA or Administrative Ministry directly for disposal of immovable assets.

3.2.3 The Secretary of the Administrative Ministry/Department will monitor the progress of alienation of immovable assets from the CPSE.

3.3 Implementation of VRS/VSS:

- (a) The Administrative Ministry/ Department through Board of CPSE will settle wages/salaries of employees and statutory dues and complete the VRS/VSS process and payment of compensation to non-VRS optees as per law.
- (b) The CPSE staff shall be assigned specific tasks during implementation of VRS/VSS so that all the groundwork is completed within the above-mentioned period and there is no requirement of retaining the staff during subsequent process of closure.

3.4 Settlement of liabilities

- (a) The payment of statutory dues/ liabilities towards revenues, taxes, cesses and rates due to Central Government or State Government or to the local authorities to be completed first.

- (b) Administrative Ministry/Department will negotiate with the Secured Creditors to settle their dues at the minimum value as One Time Settlement (OTS).
- (c) The order of priority of settlement of other liabilities will be in the priority of distribution as mentioned in Section 53 of Insolvency & Bankruptcy Code 2016.

3.5 Disposal of movable assets:

- (a) The CPSE shall carry out the processes of disposal of movable assets including plant & machinery in a transparent manner through an Auctioning Agency (such as MSTC) appointed / 'Forward Auction' Platform available on GeM by the CPSE, under the supervision of administrative Ministry/ Department.
- (b) Intangible assets like brand name, goodwill, trademarks, intellectual property, etc. of the CPSE under closure shall be transferred to the concerned administrative Ministry/Department of the CPSE for disposing of separately.
- (c) The leasehold movable assets may be returned to the lessor at latter's option.
- (d) In case, any of the movable assets are required by its holding company or by the administrative Ministry/ Department, the same may be transferred to them.
- (e) The CPSE in consultation with the administrative Ministry/ Department, if necessarily required, may dispose of factory building structure along with disposal of movable assets.
- (f) If the CPSE is not able to dispose of movable assets within the stipulated time-frame, it should be brought to notice of the Administrative Ministry/ Department by the CPSE. Thereafter, the Administrative Ministry/ Department shall redress the matter within 15 days and shall take a decision on settlement of the disposal of movable assets.

3.6 Budgetary support from D/o Expenditure: Based on the detailed liabilities to be settled as per the Closure Note, DPE will make a request for budgetary support to DoE in respect of the liabilities to be settled. However, the right to decide as to which of the requirements of

funds is to be permitted out of budgetary support would vest with the Central Government.

- 4. Filing of application before Registrar of Companies (RoC):** Once the requisite formalities related to settlement of all liabilities and assets are completed, the Board of Directors of the CPSE shall take necessary steps for filing the application for removal of name from the Register of Companies as given below:
 - a) Apply under Section 248 of the Companies Act, 2013 to the RoC for removal of the name of the CPSE from the Register of Companies with the new revised form STK-3A issued by Ministry of Corporate Affairs (MCA) vide notification dated 29th June, 2020 along with other forms (STK-2&4) prescribed under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 by MCA. This amendment enables the authorized representative (Under Secretary or its equivalent) of the concerned administrative Ministry/ Department to furnish indemnity bond on behalf of the administrative Ministry/Government of India (Owner of CPSE) for any future liability instead of by individual Directors of the CPSE.
 - b) The Administrative Ministries/Departments and their CPSEs filing closure application before the Registrar of Companies will also take a note of the MCA Circular No. 1/2020 dated 1st July, 2020 issued to all the Registrars of Companies to enable processing of applications of CPSEs having pending litigations relating to service matters, VRS/VSS of employees, so that the same is not the ground for rejection of such closure applications.
- 5. Policy support:** For any policy support or clarification on any issue for completing the closure process, as required by the administrative Ministry/Department, the same will be provided by the IMC. While taking the “in-principle” approval of CCEA, the approval will also be sought for empowering the Hon’ble Finance Minister to approve the cases of any deviation with respect to the closure process of Non-strategic sector CPSEs from the decision of CCEA. The concerned administrative Ministry/Department shall refer the proposal for clarification/policy support to DPE for placing before the IMC. The recommendations of IMC shall be thereafter referred by DPE to Finance Minister for seeking approval. DPE will function as the secretariat for processing the policy matters to be referred to Finance Minister.
- 6. Special cases:** Closure u/s 248 of CA 2013 is recommended as primary mode under the revised guidelines. In complex cases especially

involving exorbitantly high liabilities, IBC 2016 route may be followed while providing adequate justification in the note for CCEA approval by DPE. The process of filing application under IBC 2016 shall be done within 3 months of receipt of Minutes of CCEA approval by concerned CPSE Board & its Administrative Ministry. In addition, in respect of the listed CPSEs, the SEBI Delisting Regulations, 2009 and regulatory requirement(s) will be complied with under the supervision of IMC before filing for removal of company's name from the Register of Companies.

- 7. Closure of subsidiaries/units of CPSEs:** The process of closure of subsidiaries/JVs/units of CPSEs shall be carried out by the Board of Directors of the Holding CPSE(s) in accordance with above guidelines.
- 8. Process for on-going Cases:** Cases in which the Administrative Ministry/ Department has obtained the CCEA/ Cabinet approval for closure, the concerned administrative Ministry/Department will review and seek the budgetary support from D/o Expenditure through Financial Adviser (FA) within 15 days of the issue of these guidelines to complete the closure process as per revised mechanism. However, the right to decide as to which of the requirements of funds is to be permitted out of budgetary support would vest with the Central Government.
- 9. Time-lines:** The entire process of closure of CPSE shall be completed within the Timeframe mentioned in Annex-I.
- 10.** The Finance Minister will be the competent authority for granting approval to make any changes in these guidelines.

Timelines of activities for closure of CPSEs

Sl.N o.	Milestones/ Activities	Time- Lines
1	a) In principle approval of closure / disinvestment of CPSEs in a non-strategic sector by the Cabinet/ CCEA. b) Setting up of IMC for the Sector comprising Secretary, DPE as Chairman, representatives of concerned Administrative Ministry(ies), DIPAM, NITI Aayog and co-opted members, if any	Preparat ory date (T₀)
2	Preparation of Draft Closure Note for each CPSE by IMC after ascertaining statutory dues, liabilities such as taxes, cess, MAT, dues to secured and unsecured creditors, funds required for VRS / VSS, wages due to employees till the time they are released through VRS / VSS, receivables, value of movable and immovable assets, etc	T ₀ + 3 months
3	Vetting of Draft Closure Note by IMC and forwarding the same for approval of FM on case-to-case basis.	T ₀ + 5 months
4	Return of leasehold land to the State government	T ₀ + 7 months
5	Transfer of freehold land to Special Purpose Vehicle (SPV)	
6	Intimation to the Ministry of Labour and Employment in respect of closure	
7	Request for budgetary support from Department of Expenditure.	
8	Release of budgetary grants by Department of Expenditure	
9	Transfer of assets to Holding company/ administrative Ministry/ Department	
10	VRS / VSS to employees and settlement of wages/salaries of employees and statutory dues <i>(in case employees not opting for VSR / VSS, retrenchment of employees)</i>	
11	Settlement of statutory dues/ liabilities towards revenues, taxes etc. payable to State Government / Central Government / Municipal Bodies	
12	Payment of secured creditors as one-time settlement	
13	Disposal of movable assets	
14	Application to Registrar of Companies for removal of name of CPSE	T ₀ + 7 months and 45 days.

DEFINITIONS

- i) **Preparatory Date (T₀)** shall be the date on which 'in principle' approval of closure of CPSE has been taken by the CCEA.
- ii) **CPSE:** Certain statutory corporations and all Government Companies in which more than 50% equity or controlling stake is held by the Central Government are classified as CPSEs. The Subsidiaries of these Companies in which any CPSE has more than 50% equity are also categorised as CPSEs, if registered in India.
- iii) **Inter-Ministerial Committee (IMC):** Constituted by DPE and comprising Secretary, DPE as Chairman and representatives of concerned Administrative Ministry (ies), DIPAM and NITI Aayog as its members, to drive the closure process. The IMC can also co-opt any other member(s). Secretarial assistance to IMC will be provided by DPE.
- iv) **Special Purpose Vehicle (SPV):** 100% government owned company under the administrative control of DPE to facilitate monetization of non-core assets of the Ministries/Departments and Public Sector Enterprises.
- v) **Land Management Agency (LMA):** It can be a CPSE such as NBCC (India) Ltd.(NBCC)/ Engineering Projects (India) Ltd.(EPIL) or a public agency under Ministry of Housing and Urban Affairs (MoHUA) which has been appointed and have the experience of management, development and disposal/monetisation of immovable assets.
- vi) **Forward Auction Platform:** It is a facility available on GeM for auction of movable and immovable items in a transparent method.
- vii) **Auctioning Agency (AA)** A CPSE such as Metal Scrap Trading Corporation (MSTC), which can be nominated by the administrative Ministry/ Department/ Board of the CPSE under closure to dispose of movable and immovable assets through e-auction in a transparent manner.
- viii) **Book Value:** For the purpose of these guidelines, it is the carrying value of the assets in the balance sheet of the CPSE.
- ix) **Immovable Asset:** Immovable Asset is a piece of land/property tied to the land, such as estate, building, premises, etc.

- x) **Movable Assets:** Any asset other than Immovable asset like Plant & Machinery, Furniture, vehicles etc.
