

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

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**Public Enterprises Bhawan  
Block No.14, CGO Complex  
Lodhi Road, New Delhi-110003**

**Date: 31<sup>st</sup> October, 2022**

**OFFICE MEMORANDUM**

**Subject: Guiding Principles for Closure of Subsidiaries/Units by their  
Holding/Parent Public Sector Enterprises-reg.**

The undersigned is directed to refer to the OM No.3/17/2021-DIPAM-II-B(E) dated 1<sup>st</sup> June, 2022 and to enclose herewith "Guiding Principles for Closure of Subsidiaries/Units by their Holding/Parent Public Sector Enterprises".

2. This issues with the approval of Competent Authority.



(Pramod Kumar Saha)  
Director  
Tel. 24360841

Encl.: As above

To,  
All Secretaries to the Ministries/Departments of Government of India



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- 1.1** Cabinet in its meeting held on 18.05.2022 approved a proposal with regards to empowerment of the Board of Directors of the Holding/Parent Public Sector Enterprises (PSEs) to recommend and undertake the process for Disinvestment (both strategic disinvestment and minority stake sale)/ closure of their Subsidiaries/ units/stake in JVs as given below:
- (A) To recommend on Disinvestment (both strategic disinvestment and minority stake sale) or closure of any of their Subsidiaries or Units or for sale of stakes in a JV company, whether set up in pursuance of the approval of Cabinet/CCEA or within the delegated powers of the PSEs. Proposal in this regard shall be submitted by the Parent/ Holding PSEs to DIPAM through its administrative Ministry. DIPAM shall take 'in-principle' approval of the proposal from the Alternative Mechanism (AM). However, Boards of Maharatna PSEs shall continue to divest its shareholding (minority stake sale) as per the powers delegated to them vide DPE's OM dated 04.02.2010.
  - (B) To undertake transactions for disinvestments (both strategic disinvestment and minority stake sale)/closure of subsidiaries/units/ sale of stakes in JVs, including for such cases, where 'in-principle' approval by the CCEA/AM has been accorded.
  - (C) For closure, DPE shall issue guiding principles.
- 1.2** DIPAM has notified the above decisions of the Cabinet vide OM No.3/17/2021-DIPAM-II-B(E) dated 1st June, 2022.
- 1.3** At para 7 of the DPE closure guidelines dated 13.12.2021, it is mentioned that the process of closure of subsidiaries/JVs/units of CPSEs shall be carried out by the Board of Directors (BoD) of the Holding CPSE(s) in accordance with said guidelines. Accordingly, the following guiding principles are prescribed in order to facilitate holding/parent PSEs for the closure of subsidiaries/units.

## **2. Closure process of subsidiaries/units by their holding/parent PSEs:**

**2.1** Once, the in-principle decision for closure of a subsidiary/unit is obtained from Alternate Mechanism (AM) by DIPAM or such an approval by the Cabinet/CCEA already exists, the Holding /Parent PSE will drive the process of the closure.

**2.1.1** The concerned Subsidiary/unit under closure will proceed to undertake the preparatory activities for closure as 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 to be worked out.
- b. **Serving Closure Notice:** To serve a general notice for closure to employees, intimate other stakeholders about the intention of closure and take approvals from the concerned authorities as required under Industrial Relations Code, 2020 or as per the laws applicable from time to time. The subsidiary/unit with the approval of the BoD of holding/parent PSE 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.
- 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:** the MAT liability should also be worked out, if any.
- 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 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 /Parent PSE, if any or by the administrative Ministry/ Department. Market value of brand name, goodwill, trademarks, etc. of the Subsidiary/Unit under closure may also be worked out.

- i. **Estimation of receivables:** Ascertaining of trade receivables, securities, loans and advances, etc.
- j. **Estimation of funds required for closure:** Based on the exercise done above, an estimate of the funds required for closure to be made.
- k. **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 Subsidiary/Unit / Central Government at the time of acquisition, amount of compensation paid, status of possession of land, encroachments, if any, geo-mapping etc. may be done.

**2.1.2 Closure Note:** Once the preparatory activities are completed, a draft Closure Note will be prepared and submitted by the subsidiary/unit to the Holding /Parent PSE. The Note shall include a detailed statement with all the estimates as mentioned in Para 2.1.1 *ibid*. It should be ensured that a Government Nominee Director is present in such BoD meetings of Holding/ Parent PSE, where the note for closure is approved.

## **2.2 Disposal of immovable assets**

The process of closure of a Subsidiary/Unit and disposal of its immovable assets will be completely delinked. On approval of Closure Note, the Holding/Parent PSE shall proceed simultaneously but separately for alienation of immovable properties from Subsidiary/ Unit books.

**2.2.1** The immovable assets will be alienated from the subsidiary/unit under closure in the manner as prescribed below:

- a) **Return of leasehold land to the States:** All kinds of leasehold land of the subsidiary/unit under closure may be returned back to the State Government without insisting on any compensation (if due as per lease agreement).

- b) **Transfer of freehold land to NLMC** as per the procedure laid down for the operation of NLMC.

### **2.3 Implementation of VRS/VSS:**

- (a) 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 subsidiary/unit staff shall be assigned specific tasks during implementation of VRS/VSS so that all the groundwork is completed within the timelines and there is no requirement of retaining the staff during subsequent process of closure.

### **2.4 Settlement of liabilities**

- (a) BoD of the Holding /Parent PSE may critically examine the best possible settlement including schedule of payment, waiver of interest and penalties with secured creditors and negotiate with the Secured Creditors to settle their dues at the minimum value as One Time Settlement (OTS).
- (b) 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.

### **2.5 Disposal of movable assets:**

- (a) The subsidiary/unit under closure 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.
- (b) The leasehold movable assets may be returned to the lessor at latter's option.
- (c) 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.
- (d) The subsidiary/Unit in consultation with the holding/Parent PSE, if necessarily required, may dispose of factory building structure along with disposal of movable assets.

(e) If the Subsidiary/Unit is not able to dispose of movable assets within the stipulated time-frame, it should be brought to notice of the BoD of the holding/parent PSE, which shall redress the matter within 15 days and shall take a decision on settlement of the disposal of movable assets.

(f) Administrative Ministry/ Department or/and the concerned Holding/ Parent PSE of the subsidiary/unit may acquire the Intangible assets like brand name, goodwill, trademarks, intellectual property, etc. of the subsidiary/unit under closure for disposing of separately.

**3. 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 subsidiary 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 29<sup>th</sup> June, 2020, wherever applicable, 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 individual Directors of the CPSE.
- b) MCA Circular No. 1/2020 dated 1<sup>st</sup> 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.

**4. Policy support:** for any policy support or clarification on any issue for completing the closure process, as required by the Holding/ Parent PSE may be sought from Administrative Ministry/ Department. While taking the "in-principle" approval of CCEA/AM by DIPAM, the approval will also be sought for empowering the Minister of the concerned administrative Ministry/Department to approve the cases of any deviation with respect to the closure process of subsidiary/unit from the decision of CCEA/AM.

5. **Special cases:** Closure u/s 248 of CA 2013 is recommended as primary mode for closure. In complex cases especially involving exorbitantly high liabilities, IBC 2016 route may be followed while providing adequate justification in the note for CCEA/AM approval by DIPAM. The process of filing application under IBC 2016 shall be done within 3 months of receipt of Minutes of AM approval by concerned Subsidiary.
6. **Time-lines:** The entire process of closure of the subsidiary/unit shall be completed within the Timeframe mentioned in Annex-I.
7. DPE will be the competent authority to make any changes with respect to the above-mentioned guiding principles.

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**Timelines of activities for closure of Subsidiary/Unit**

<b>Sl.No.</b>	<b>Milestones/ Activities</b>	<b>Time-Lines</b>
1	In principle approval of closure by DIPAM from AM	<b>Preparatory date (T<sub>0</sub>)</b>
2	Preparation of Draft Closure Note for subsidiary/unit and its approval by holding company/Parent PSE as stated in para 2.1.2.	T <sub>0</sub> + 5 months
3	Return of leasehold land to the State government	T <sub>0</sub> + 7 months
4	Transfer of freehold land to National Land Monetization Corporation (NLMC)	
5	Intimation to the Ministry of Labour and Employment in respect of closure	
6	Transfer of assets to Holding / Parent PSE / administrative Ministry/ Department	
7	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>	
8	Settlement of statutory dues/ liabilities towards revenues, taxes etc. payable to State Government / Central Government / Municipal Bodies	
9	Payment of secured creditors as one-time settlement	
10	Disposal of movable assets	
11	Application to Registrar of Companies for removal of name of Subsidiary	T <sub>0</sub> + 8 months and 15 days.

**DEFINITIONS**

- i) **Preparatory Date (To)** shall be the date on which 'in principle' approval of closure of Subsidiary/Unit has been taken by DIPAM from AM.
- ii) **Forward Auction Platform:** It is a facility available on GeM for auction of movable and immovable items in a transparent method.
- iii) **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.
- iv) **Book Value:** For the purpose of these guidelines, it is the carrying value of the assets in the balance sheet of the Subsidiary/Unit.
- v) **Immovable Asset:** Immovable Asset is a piece of land/property tied to the land, such as estate, building, premises, etc.
- vi) **Movable Assets:** Any asset other than Immovable asset like Plant & Machinery, Furniture, vehicles etc.

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