


OFFICE MEMORANDUM

Subject: Asset Monetization of Central Public Sector Enterprises (CPSEs)/Public Sector Undertakings (PSUs)/ other Government Organizations and Immovable Enemy Properties - Procedure and mechanism thereof.

The undersigned is directed to state that Cabinet in its meeting held on 28.02.2019 has approved the procedure and mechanism for Asset Monetization of Central Public Sector Enterprises (CPSEs)/Public Sector Undertakings (PSUs)/ other Government Organizations and Immovable Enemy Properties as per the enclosed document (Annexure-I).

2. Cabinet its meeting held on 28.02.2019 inter-alia approved the following:
 - i. Delegation of power in favour of Alternative Mechanism for granting approval for disposal of the assets of CPSEs/PSUs/ other Government organizations and Immovable Enemy Property and to lay down the detailed process for Asset Monetization;
 - ii. Alternative Mechanism may set a threshold based on the value of asset(s) and/or any other criteria which would determine the assets that would be monetized through this mechanism. Assets below this determined threshold would be disposed off by the concerned Administrative Ministry/CPSE/CEPI as per extant process;
 - iii. Authorization to MHA to issue Order for guidelines for disposal of enemy property under sub-section 6 of section 8A of the Enemy Property Act, 1968 in line with the process and mechanisms for disposal of the assets approved by the Cabinet in this note, to be communicated by DIPAM;
 - iv. Enabling Asset Monetization through the process and mechanisms as elaborated in Annexure-I;
 - v. Appointment of an Oversight Committee to oversee the process of asset monetization and;
 - vi. Review of the framework after a period of two years for instituting any change including delegations based on financial limits, if required.
3. DIPAM is in the process of preparing the detailed transaction process to be approved by AM.
4. The above is for information and necessary action.


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To,

All the Secretaries, Government of India.

Asset Monetization of Central Public Sector Enterprises (CPSEs)/Public Sector Undertakings (PSUs)/ other Government Organizations and Immovable Enemy Properties - Procedure and mechanism thereof.

1. Preamble:

1.1 Asset Monetization involves creation of new sources of revenue by unlocking of value of hitherto unutilized or underutilized public assets. Internationally, it is recognized that public assets are a significant resource for all economies. Monetizing these assets that Government's control, including in public corporations, is widely held to be a very important but inadequately explored public finance option for managing public resources.

1.2 The assets of the public sector and Government Departments are diverse and spread out across the country. These assets could be categorized, broadly, into the following classes: a) Land and Buildings, b) brown-field operational assets such as pipelines, roads, mobile towers etc., c) financial assets, like equity shares, debt securities, other hybrid/ structured finance asset units etc., d) other miscellaneous assets.

1.3 Many public sector assets are sub-optimally utilised and could be appropriately monetized to create greater financial leverage and value for the companies and of the equity that the government has invested in them. The objective of the asset monetization programme of the Government of India (GoI), for which this note lays down procedures and mechanism, is to unlock the value of investment made in public assets which have not yielded appropriate or potential returns so far; create hitherto unexplored sources of income for the company and its shareholders; and contribute to a more accurate estimation of public assets which would help in better financial management of government/public resources over time.

2. Scope:

2.1 This policy framework lays down the institutional framework for monetization of the following:

- i. Identified non-core assets of CPSEs under strategic disinvestment and
- ii. Immovable Enemy Property under the custody of Custodian of Enemy Property (CEPI), MHA as per sub-section 6 of section 8A of the Enemy Property Act 1968;
- iii. This framework is also available for use to monetize assets of other CPSEs/ PSUs/ other Government Organizations with the approval of the Competent Authority.
- iv. Sick/loss making CPSEs under closure normally follow the DPE closure guidelines dated 14.6.2018 in this regard. However, any sick/loss making CPSEs can also adopt this framework with the approval of Competent Authority.

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3. Decision making bodies:

- 3.1 An Alternative Mechanism (AM), Core Group of Secretaries on Asset Monetization (CGAM) and Inter Ministerial Group (IMG) for overall implementation of the asset monetization programme.
- 3.2 AM, comprised of Union Finance Minister, Minister of Road Transport and Highways and Minister of the concerned respective Administrative Ministry.
- 3.3 CGAM, under the Chairmanship of Cabinet Secretary comprising of Secretary (DEA), Secretary (Revenue), Secretary (Expenditure), Secretary (DIPAM), Secretary (DPE), Secretary (Corporate Affairs), Secretary (Legal Affairs), Secretary (Urban Development) (in case of monetization of land assets), and Secretary of the Administrative Department concerned.
- 3.4 IMG, Chaired /Co-Chaired by Secretary, DIPAM and Secretary, Administrative Department and consisting of representatives of the Administrative Department, Department of Economic Affairs, Department of Expenditure, Department of Public Enterprises, Department of Legal Affairs, Department of Corporate Affairs, Financial Advisor (DIPAM), Financial Advisor (Administrative Department), CMD and Director (Finance) of the CPSE concerned.
- 3.5 The detailed roles and responsibilities of AM, CGAM and IMG is discussed at para 5 subsequently. DIPAM shall function as the Secretariat for Alternative Mechanism, CGAM and IMG.

4. Components and broad process of the Asset Monetization Programme:

- 4.1 Identification of CPSEs/ PSUs/ Government Bodies and their Assets:
- 4.1.1 The Alternative Mechanism (AM) would approve the CPSEs/PSUs/ Government Bodies and their Assets that are to be monetized based on the recommendation of IMG.
- (a) IMG will recommend the assets of the CPSEs either on the basis of the recommendation of NITI Aayog or IMG may also suo-moto recommend the assets to AM.
IMG/ CGAM would also recommend the value/ threshold on case to case basis.
- (b) NITI Aayog will recommend the assets for monetization after consultation with a duly notified consultative group comprising of the Administrative Ministry, Department of Investment and Public asset Management (DIPAM), Department of Economic Affairs (DEA) and Department of Public Enterprises (DPE). While recommending the assets for monetization, consultative group may consider various factors including tentative value of the asset, strategic nature of the assets, availability of data, geographical location, situational analysis w.r.t law & order, whether assets which can be easily ring fenced, stable or potential cash flows, level of revenue growth, etc.
- (c) Once the AM approves the assets for monetization, it should be completed within 12 months from the date of approval and this will be the target to be achieved by the CPSEs as part of the MoU with DPE.
- 4.1.2 DIPAM shall start discussions with the CPSEs/Administrative Ministry whose assets seem possible for monetization under this framework. These may further be subsumed to be taken up within the contours provided by this Institutional mechanism.

4.1.3 In case of Immovable enemy properties, AM shall approve the properties to be taken up for disposal on the basis of recommendation of IMG as under:

- a) CEPI / MHA will select the properties for disposal in consultation with all the stakeholders including State Government.
- b) CEPI will certify that the disposal of the identified Enemy Property is not in contravention of any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force.
- c) CEPI will also certify that a clear title deed is available and that the property is free of encumbrances and encroachment and give a complete proposal with the coordinates and revenue papers of the said property along with circle rates (indicating the date on which this rate was fixed, and the periodicity of the revision of the circle rate), valuation and other relevant papers for consideration of IMG which would recommend the same to AM. IMG/ CGAM would also recommend the value/ threshold as indicated on case to case basis

4.1.4 As may be needed from time to time and on case to case basis, AM may set a threshold based on the value of asset(s) and/or any other criteria to be recommended by IMG/CGAM which would determine the assets that would be monetized through this mechanism. Assets below this determined threshold would be disposed off by the concerned Administrative Ministry/CPSE/CEPI as per prescribed/laid down process.

4.1.5 In case, IMG feels that selection of any specific asset requires intervention of CGAM, in such cases IMG may refer it to CGAM. In such cases, AM would approve the Assets to be monetized based on the recommendation of CGAM.

4.1.6 The list of selected Assets approved by the Alternative Mechanism will be placed on the website of the DIPAM.

4.2 **Appointment of intermediaries/ Advisers:** The required Advisers/Intermediaries for rendering advisory support for the transaction would be appointed by IMG. These include Technical Consultants, Transaction Adviser, Legal Advisor, Asset Valuer, institutions such as multilateral institutions like World Bank (WB), International Finance Corporation (IFC), Asian Development Bank (ADB), other international expert bodies and others. IMG itself would be supported by an Asset Monetization Cell at DIPAM, which will also include experts.

4.3 **Finalization of Model for monetization of Identified Assets:**

4.3.2 Models could vary from plain vanilla models with a contractual agreement between the private party and CPSE to structured finance models. Selection of the appropriate model for asset monetization would depend upon the financial analysis as well as investor feedback. Some of models/approaches are illustrated in Annex-II.

4.3.3 The exact Model for monetization of any particular asset and the model contract documents will be approved by the AM based on the recommendation of the IMG. The IMG would be informed/ advised about the appropriate Model for the transaction by the Technical consultants at DIPAM, proposals of Administrative Ministry/CPSE, recommendation of NITI Aayog etc. Due

consultation with Administrative Ministry and CPSE would be ensured. The IMG will be the repository of all models and Endeavour to create new models. 7/1

4.4 Transaction Process

4.4.2 The detailed transaction process will be prepared by DIPAM and approved by AM on the recommendation of IMG/CGAM. The process shall be a transparent and competitive one with emphasis on robust analysis, stakeholder consultation, rich data base and proper price discovery etc. Detailing of the tender process would be part of this exercise with the final allotment generally being made to the highest bidder; in case of sole bidder, the deciding authority being the AM.

4.4.3 Amount received by GoI from asset monetization will be counted as disinvestment proceeds. In the case of identified non-core assets of the CPSEs under strategic disinvestment and divestment of the Enemy Properties in the custody of the CEPI, 100% of the proceeds of the monetization will be treated as disinvestment proceeds.

4.4.4 Monitoring of performance of CPSEs will be done by Administrative Ministry, with regards to the achievement of target as set in MoU with DPE. Linking of the proceeds received/ expected to be received through asset monetization with budgetary support will also be examined by the Administrative Ministry. Both the issues shall be covered in the overall periodic review by CGAM as detailed in para 5.10.

4.5 Oversight Committee:

4.5.1 In order to have transparency in all the deals and to oversee the entire process of monetization, it is proposed that an Oversight Committee may be put in place for overseeing the asset monetization program.

4.5.2 The Independent External Monitor (IEM) set up for Strategic Disinvestment may be tasked for the purpose.

5 Roles and Responsibilities of different bodies: Following functions assigned to the different bodies with respect to Asset Monetization:

5.1 Cabinet Committee on Economic Affairs (CCEA):

- (i) To approve of any subsequent change in the overall institutional framework approved by the Cabinet.

5.2 NITI Aayog:

- (i) To recommend the selection of the CPSEs and their Assets and the model for monetisation in consultation with a "Consultative Group on Asset Monetization" consisting of the concerned Administrative Ministry, DPE, DEA and DIPAM. Recommendations may be given twice in a year by the NITI Aayog to DIPAM for consideration of the Government.

5.3 Alternative Mechanism (AM):

- (i) To approve the proposals relating to selection of CPSE and selection of Assets of CPSEs and immovable Enemy Property for monetization as recommended by IMG or CGAM as the case may be.

- (ii) To set a threshold based on the value of asset(s) and/or any other criteria which would determine the assets that would be monetized through this mechanism. Assets below this determined threshold would be disposed off by the concerned Administrative Ministry/CPSE/CEPI as per extant process on the recommendation of IMG/CGAM;
- (iii) To approve appropriate Model for monetization, model contract documents, all process documents for inviting bids and contracts, etc. with respect to process to be followed for monetization of the assets of the CPSEs/ immovable Enemy Property, on the recommendation of IMG.
- (iv) To approve the detailed process for Asset Monetization on the recommendation of IMG/CGAM.

5.4 Core Group of Secretaries on Asset Monetization (CGAM):

- (i) To recommend to CCEA any subsequent change in the overall institutional framework approved by the Cabinet.
- (ii) To recommend to AM, the proposals relating to selection of CPSE and selection of Assets of CPSEs and immovable Enemy Property in cases where IMG refer it to CGAM.
- (iii) To recommend to AM a threshold based on the value of asset(s) and/or any other criteria which would determine the assets that would be monetized through this mechanism.
- (iv) Recommend to AM to lay down the detailed process for Asset Monetization.
- (v) Periodic supervision and monitoring of the Asset Monitoring Programme at least twice a year.
- (vi) Consider change in the transaction process, if any.

5.5 Inter-Ministerial Group (IMG) for Asset Monetization:

- (i) To recommend to CGAM any subsequent change in the overall institutional framework approved by the Cabinet.
- (ii) To recommend to AM, selection of certain assets of CPSEs/PSUs/Government organizations in consultation with the stake holders.
- (iii) To examine the proposal of CEPI/ MHA and to recommend to AM selection of the immovable property for monetisation.
- (iv) In case, IMG feels that any specific asset requires intervention of CGAM, in such cases IMG may refer it to CGAM. In such cases, AM would approve the Assets to be monetized based on the recommendation of CGAM.
- (v) To consider interpretation and deviation in the transaction process.
- (vi) To recommend to CGAM a threshold based on the value of asset(s) and/or any other criteria which would determine the assets that would be monetized through this mechanism.
- (vii) Recommend to CGAM to lay down the detailed process for Asset Monetization.

(viii) Selection of intermediaries, including inter alia:

- Technical Advisors/experts for DIPAM who will help IMG to coordinate on Asset Monetization program;
- Consultant/Technical Advisor for Administrative Ministry of selected CPSEs/ CEPI, if required;
- Transaction Advisor, Legal Advisor and Asset valuer through a transparent and competitive bidding process.
- Seeking advice /partnership with insitutions such as multilateral institutions like World Bank (WB), International Finance Corporation (IFC), Asian Development Bank (ADB), other international expert bodies etc.

The Finance Minister will approve appointment of the above mentioned intermediaries

- (ix) Examination and granting relaxation to the proposals of CPSEs which could not meet the asset monetization target.
- (x) To recommend to Alternative Mechanism, the appropriate Model to be used for the Asset under consideration. The IMG would be informed/advised about the appropriate Model for the transaction by the Technical consultants at DIPAM, proposals of Administrative Ministry/CPSE, recommendation of NITI Aayog etc. Due consultation with Administrative Ministry and CPSE would be ensured. The IMG will be the repository of all models and endeavour to create new models.
- (xi) To recommend to Alternative Mechanism model contract documents, all process documents for inviting bids and contracts, etc. with respect to the assets of the CPSEs/ immovable Enemy Property.

5.6 DIPAM:

- (i) To carry out the function as Secretariat for Alternative Mechanism, CGAM, IMG and Oversight Committee and provide all secretarial support including preparation of all agenda notes, minutes, notice etc.
- (ii) To coordinate and put up to CGAM, at least twice a year, the monitoring formats for supervision and monitoring of the Asset Monetisation Program as a whole including Immovable Enemy Property.
- (iii) To analyse of the proposals received from the Administrative Ministry and to start discussion with the CPSEs/Administrative Ministry to take up assets which seems possible for monetization under this framework.
- (iv) To appoint all intermediaries associated with Asset Monetization programme on the basis of the recommendations of IMG.
- (v) To develop E-bidding platform.
- (vi) To function as a part of the Consultative Group.
- (vii) To interact with potential investors, potential bidders and other stakeholders including State Government.
- (viii) To lay down the detailed transaction process for consideration of IMG/CGAM/AM.

5.7 Administrative Department:

- (i) To recommend the CPSEs and their Assets to be taken up as a part of the Consultative Group on Asset Monetization.
- x (ii) In case of Enemy Property, MHA after carefully examining the proposal of CEPI, to submit its proposal to IMG.
- (iii) To ensure that completion of Asset Monetisation within 12 months forms part of Target for MoU between DPE and the concerned CPSE.
- (iv) To interact with potential investors, potential bidders and other stakeholders including State Government.
- (v) To recommend to IMG the appropriate Model for Asset Monetization.
- (vi) Examine and recommend the exemption proposals of CPSEs which could not meet the asset monetization target to IMG.
- (vii) To ensure that the assets of the company are properly accounted for and listed by the CPSE concerned / CEPI and all the accounts are complete.
- (viii) To supervise and monitor the asset monetisation of the CPSEs/ CEPI under their administrative control.
- (ix) To supervise all contract agreements.
- x (x) The Enemy Property Act, 1968 empowers vesting of Enemy Property in the CEPI. Further, as per the ABR, issued by the Cabinet Secretariat "Matters relating to management, preservation and control of enemy property including Custodian of Enemy Property in India" is listed under M/o Home Affairs. Therefore, it is proposed that custody and upkeep of the immovable enemy property shall continue to be under the purview of MHA as per Allocation of Business Rule. Therefore, Physical maintenance of the files and documents, dealing with court cases/ claims etc. relating to immovable enemy property shall be handled by MHA/ Custodian of Enemy Property in India (CEPI).

5.8 Central Public Sector Enterprises (CPSE):

5.8.1 CPSEs under the overall supervision and approval of the Board of Directors following the provisions of Companies Act, 2013 and any other Act, Rules and Regulations in force will perform the following functions:

- (i) To account for and list all the assets of the company and ensure proper housekeeping of all assets and completion of all the accounts.
- (ii) To ensure proper data collection and availability with regards all the assets under it.
- (iii) To interact with potential investors, potential bidders and other stakeholders including State Government.
- (iv) To recommend models/ instruments to be used for monetization of the identified assets.
- (v) To immediately start making an inventory of all assets, ensuring proper title deeds, resolving litigation etc.

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- (vi) To establish proper and effective mechanism for Contract Management, including enabled with an MIS system to monitor the contract through the life of the project and beyond.
 - (vii) Non-core assets of the CPSEs under Strategic Disinvestment are to be hived off to the SPV especially created/or through de-merger to hold and monetize assets. Since, transferring of assets to SPV may involve time and issues like stamp duty, the disposal with the approval of IMG on a case to case basis may be done by the CPSE itself. In such cases the CPSE may create an escrow account to park the sale proceeds so as to ring fence these from the rest of the business which is under strategic disinvestment.

5.9 Custodian of Enemy Property of India (CEPI):

5.9.1 CEPI under the overall supervision and approval of MHA following the provisions of Enemy Property Act, 1968 as amended by the Enemy Property (Amendment and Validation) Act, 2017 and any other Act, Rules and Regulations in force will perform the following functions:

- (i) To identify the properties to be taken up for sale;
- (ii) To certify that the disposal of the identified Enemy Property is not in contravention of any judgment, decree or order of any court, tribunal or other authority or any law for the time being in force.
- (iii) To certify that a clear title deed is available and that the property is free of encumbrances and encroachment.
- (iv) To give a complete proposal with the coordinates, revenue papers and other relevant papers.
- (v) To submit its proposal, after carefully examining the points mentioned above, to IMG with the approval of MHA.
- (vi) To account for and list all the assets under its custody and ensure that all the accounts are complete.
- (vii) To ensure proper data collection and availability with regards all the assets under it.
- (viii) To interact with potential investors, potential bidders and other stakeholders including State Government.
- (ix) To recommend models/ instruments to be used for monetization of the identified assets.
- (x) To inventorize assets, ensuring title deeds, resolving litigation etc.
- (xi) To establish proper and effective mechanism for Contract Management, including enabled with an MIS system to monitor the contract through the life of the project and beyond as needed.
- (xii) To physically maintain the files and documents relating to immovable enemy properties and dealing with court cases/ claims etc.

5.10 Role of DPE, DoE and DEA and DIPAM as part of selection and monitoring framework:

5.10.1 Solution: Role of DPE, DEA and DIPAM in selection of CPSE was discussed at Para 4.1.1(b).

5.10.2 Monitoring mechanism is a critical piece in the framework to ensure that asset monetization is implemented as planned and agreed between various stakeholders. There are four key tools available for monitoring and supervision. First of all, the target for asset monetization would be set as a time-based one, i.e 12 months for completing the same from the date of its approval from the Competent Authority. This target will be included as a parameter for performance of the CPSEs in the MoU between CPSEs and Department of Public Enterprises. The Second tool for monitoring shall be that any budgetary support for the CPSEs will be considered by Department of Expenditure and Department of Economic Affairs only if Asset Monetization target is achieved by the CPSEs unless exemption has been taken as prescribed. Third, this framework also has a provision for seeking relaxation incase targets are unable to be met completely, from the IMG. Fourth, the Core Group of Secretaries shall review the progress periodically (at least twice in a year). DPE, DoE and DEA and DIPAM are included as part of the selection and monitoring framework.

5.10.3 On the monitoring side, DPE may include a parameter on achievement of the target (Completion of the monetization process within 12 months from the date of approval of the Alternative Mechanism) for asset monetization in the MoU for performance assessment of the CPSEs.

5.10.4 Similarly, Department of Expenditure and Department of Economic Affairs may consider any proposal from the CPSE/Administrative Ministry for budgetary support only after looking at the achievement of asset monetization target by the CPSE. Performance of contract management will be considered before sanctioning any government budgetary support. In case the target for asset monetization is not met for any reason, CPSE may seek relaxation through Administrative Ministry from IMG.

Illustrative list of Models

There are several models available for monetization of the assets. Some of the illustrative models are discussed below:-

- (a) **Direct contractual approach:** Under the direct contractual approach revenue generation from the underutilized or idle assets can be done in two ways. (i) large upfront payments are made to Government either coupled with small annual payments or no annual payments; (ii) small or no upfront payment is made coupled with annual payments. Adoption of one or the other would depend upon many factors, like type and use of asset, objective for monetization and various other factors specific to that sector. The model favouring a large upfront payment maximizes value upfront of the asset, but could create issues of service levels, which would then need to be assured by putting standard service parameters in the contract with clearly defined penalties for every day's delay of meeting them, alongwith a termination clause; the concession period would need to be such that there is no windfall to the concessionaire but is sufficiently long for the concessionaire to retain interest in the asset. One of the models that has been successful, in recent times, is the one being used by the NHAI, is where operations of existing revenue generating assets are entrusted to a private party for a specific period on specified terms and conditions like the Toll-Operate-Transfer (TOT). The key issue with the other model of small or no upfront payment coupled with large annual payment would be the determination of parameters for the regular payments to be made. Concession period, revisiting of the payments to be made, ease of enforceability of service levels through the regular revenue share etc are other issues. Clarity in tariff determination and its regulation, dispute resolution mechanism etc. are key for both models.
- (b) **Structured Finance approach:** Structured Finance models essentially involve different ways of securitization of public assets. Securitization allows a lender to sell a pool of assets on which bond market securities are issued. Under the INVITS and REITS models of securitization, the assets are transferred to a trust structure for other institutional investors to invest in. However, there can be many ways of securitizing assets, including bundling different asset classes, to attract different investor classes. The key issue in securitization remains risk identification, apportionment and mitigation, including appropriately selected asset pools, mechanisms to manage floating-to-fixed interest rate risk of infrastructure assets, important institutional and monitoring mechanisms etc. InvITS, was notified by SEBI vide No. LAD-NRO/GN/2014-15/10/1577 on 26th September, 2014. Checking for the feasibility of assets towards this type of instrument would be important and depend on many things, including investor interest. or other models of securitization. Besides, there could be occasion for creation of market linked structured finance products pooling in different type of assets. The REIT model notified by SEBI vide Notification No. LAD-NRO/GN/2014-15/11/1576 on 26th September, 2014 can be an effective instrument to link financial markets with land assets, but it has not been used so far.
- (c) **Land monetization:** Of the different possible models and instruments for unlocking the value of land, the ones used so far across different public sector entities remain centred around sell and lease arrangements mainly. However, structured finance models can also be used including REITS.

(d) **Model as per DPE Guideline:** DPE has issued the guidelines for disposal of the assets of the closed and sick CPSEs. As per the guideline NBCC can be nominated as Land Management Agency(LMA). As LMA, NBCC develops the land and conducts feasibility study and dispose of the land by offering it to (i) Affordable Housing (ii) Central Government Departments (iii) Central Government Organisations(CPSEs/ PSUs) (iv) State Government (v) Others in order of the priority as mentioned in the DPE guidelines.

(e) **Other Models/approach for land monetization also can be used.** There are many other ways of using land as a resource including Transferrable Drawing Rights (TDRs), taxation on vacant land, development impact fees and other fees and levies. There exist examples in the world, of countries like the US and Canada where land belonging to many military installations had been transferred to local development authorities for commercial and development use. To be able to effectively monetize the surplus Government land with the public sector, clear and transparent methods of valuation would be needed, creation of proper inventories and proper legal formalities would need to be followed depending on the title and agreement of the CPSE land with the State Government.