CHAPTER -IV
DISINVESTMENT AND PRIVATISATION IN INDIA

4.1 - INTRODUCTION

The Central Public Sector Undertakings (CPSUs) have played an important role in the development of the Indian industry. At the time of independence, political independence without economic self-reliance was presumed to be detrimental to the country’s sovereignty and autonomy in policy-making.

The Industrial policy Statement of July, 1991 mentioned that “portfolio of public sector investment will be reviewed with a view to focus the public sector on strategic, high-tech and essential infrastructure” The six categories mentioned for disinvestment were;

a) CPSUs based on low technology.
b) Small scale CPSUs.
c) Non-strategic CPSUs.
d) Inefficient and unproductive CPSUs.
e) CPSUs having low or nil social consideration or public purpose.
f) Areas where the private sector has developed sufficient expertise and resources.

The objectives of disinvestment

The objectives of disinvestment / privatisation are broadly classified into:

1. Improving the efficiency of public enterprises;
2. Improving Government’s budgetary position through reduced financial support to enterprises, additional resources through sale of ownership and increased tax revenue after the improvement in the efficiency level of the firms;
3. Attracting private investment, both domestic and foreign and developing Indian capital markets;
4. Infusing competitive business environment;
5. Achieving political objectives through reducing the size and influence of public sector and wider distribution of asset ownership.
A Disinvestment Commission was set up in 1996 to study in detail the functioning of CPSUs and give advice to the Government on disinvestment in CPSUs. A Department of Disinvestment was also created in 2000 to coordinate the disinvestment activities of various Government Ministries and Departments.

**Disinvestment – International perspective**

The financial crunch and the poor performance of Government Undertakings/Companies compelled the countries to rethink about the philosophy of Government participating in the areas of economic activity which can be taken care of by the private enterprise. In England the Government started the privatisation process. Subsequent to the British programme, ambitious privatisation programmes were undertaken in some Latin American countries like Argentina, Mexico and Jamaica. USSR initiated the process of disinvestment / privatization and the east European countries-Poland, Hungary, Czech Republic, and Slovak Republic followed suit. Many other developing countries such as India, Turkey, and Malaysia also initiated privatisation programmes in a consistent manner. The international experience of privatisation in developed and developing countries has shown that there is no uniform model for disinvestment. Different countries have tried several models. Jamaica and Malaysia applied direct public offering model and Central and Eastern Europe applied private placement model.

**Long Term Disinvestment Strategy:**

The public sector in India continues to be an important component of the Indian industry even after liberalisation unlike the experience in many other countries which went in for wholesale privatisation.

The Disinvestment Commission’s long term strategy on disinvestment revolves around four long-term objectives:

1. Strengthen CPSUs where appropriate in order to facilitate disinvestment;
2. Protect Employee Interest;
3. Broad base ownership;
4. Augment Receipts for Government; and
5. Reduce bureaucratic control.
The resulting long term strategies arising out of the above objectives are:

1. **Strengthen CPSUs**
   
   a) Strengthen profitable CPSUs to promote greater competitiveness and profitability to enable payment of higher dividends to the Government and to enhance share values.
   
   b) Strengthen other marginally profitable CPSUs and reduce their future dependence on the budget.
   
   c) Financially restructure and revive loss making CPSUs to invite private capital for long term turn around to protect Employee interest.
   
   d) Sustaining long term employment by financial turn around of loss making CPSUs.
   
   e) Providing adequate and fair compensation through VRS to surplus work force.
   
   f) Provide for employee participation in management.

2. **Broad Based Ownership**
   
   Enhance retailing CPSU shares to small investor and offer at suitable price discount as compared to the institutional investor.

3. **Augment receipts for Government**
   
   a) Enhance Government receipts by disinvestment in profitable CPSUs
   
   b) Eliminate the need for budgetary support for loss making CPSUs

4. **Protect employee interest**
   
   a) Sustaining long-term employment by financial turn-around of loss making CPSUs.
   
   b) Providing adequate and fair compensation through VRS to surplus workforce.
   
   c) Provide for employee participation in management.

5. **Reduce bureaucratic control**
   
   The reduction of Government equity in CPSU reduces the control of bureaucracy and provides more autonomy.
Privatisation

The privatization is the concept of private ownership leading to better use of resources and their efficient allocation. The reason for adoption of privatisation around the globe has been the inability of the Governments to raise high taxes, pursue deficit / inflationary financing and the development of money markets and private entrepreneurship. The technology and W.T.O. commitments have made the world a global village.

The objectives for privatizing the CPSUs are:

1. Releasing the large amount of public resources locked up in non-strategic CPSUs, for redeployment in areas that are much higher on social priority, such as, public health, family welfare, primary education and social and essential infrastructure;

2. Stemming further outflow of scarce public resources for sustaining the unviable non-strategic CPSUs.

3. Reducing the public debt that is threatening to assume unmanageable proportions,

4. Transferring the commercial risk, to which the tax-payers' money locked up in the public sector is exposed, to the private sector wherever the private sector is willing and able to step in - the money that is deployed in the CPSUs is the public money exposed to an entirely avoidable and needless risk.

5. Releasing other tangible and intangible resources, such as, large manpower locked up in managing the CPSUs, and the time and energy, for redeployment in areas that are much higher on the social priority but are short of such resources.
4.2 - OPERATIONAL DEFINITIONS

4.2.1 Disinvestment Models

The disinvestment process is based on opting for one or more of the models or a combination of various models of disinvestment. It refers to prescribed means of disinvestment suitable for the concerned sector or company. It is carried through direct public offering through prospectus; Private placement or limited offering to select financial institutions, investment institutions, mutual funds and foreign investors; Initial selling to investment bankers and institutional underwriters with or without an arrangement to share the profit on actual sale of shares; Transferring shares to an intermediary authority, which in turn sell the shares in blocks of individual enterprises; Complete sale to private entrepreneur; and Selling the shares of desired quantities in a single lot or over a period of time in small lots.

4.2.2 Direct public offering

Direct public offering refers to a model of disinvestment where the offer of equity is made directly to the public for subscription of divested equity.

4.2.3 Private placement of equity

Private placement of equity is a model of disinvestment offered to the financial institutions, investing institutions, mutual funds and foreign investors with a prescribed limit on subscription. The Government disinvests a part of its holding in the domestic market to a set of institutional investors at a negotiated price arrived at through valuation, or price discovery through book building process.

4.2.4 Corporate Restructuring

Corporate restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving the desired objectives-staying, synergetic, slim, competitive and successful. It involves significant reorientation, reorganization or realignment of assets and liabilities of the organisation through conscious management actions with the objective of drastically altering the quality and quantity of the future cash flow streams.

4.2.5 Leasing & Management Contract

Leasing and management contract is an organisational measure where the managing of the assets of the CPSU is given to private operator without transfer of
ownership by the Government. The equity of the Government is not sold or offered but the management is entrusted to professional persons or a body corporate.

4.2.6 Disinvestment Commission

The Disinvestment Commission is an advisory body to the Government constituted for the purpose of taking a final decision on the CPSUs to be disinvested and the mode of disinvestment

4.2.7 NCMP

NCMP means National Common Minimum Programme introduced by the UPA Government in 2004 for providing economic benefits to people.

4.2.8 Price band

Price band is the minimum and maximum price range of equity offered for sale.

4.2.9 Book Building

Book building is a process of inviting subscriptions to a public offer of securities essentially through a tendering process. The eligible investors are invited to place their bids with co-leaders and co-managers.

4.2.10 Share Purchase Agreement (SPA)

Share Purchase Agreement is entered into among the President of India (acting through the Joint Secretary of the Administrative Ministry), the company, the strategic partner and other principals as applicable. Share Purchase Agreement contains the definitions contained in the agreement, certain rules of implementation and the summary of the entire agreement along with the schedules.

4.2.11 Share Holders Agreement (SHA)

Shareholders' Agreement defines the rights and obligations of both the parties. Shareholders' Agreement is entered into among the President of India (acting through the Joint Secretary of the Administrative Ministry), the company, the strategic partner and other principals as applicable. It contains various definitions and rules of interpretation, the purpose and the scope of the agreement. The conditions for compliance with the agreement, equity participation, additional capital and dilution of Government Equity Interest are stated. It also lays down the terms and conditions of indemnification for any disputed tax liabilities, litigation liabilities and environmental liabilities. It lays down the
procedure for management of the company after disinvestment. It also includes various representations and warranties given by both the parties. It lays down the dispute resolution mechanism for both the parties.

4.2.12 Offer of Sale

Offer of Sale involves a total or a partial change of equity ownership through a direct sale of shares at a fixed price or by a book-building process. Depending on the size of the offer and the state of the capital markets, the process may need to be phased over a period of time.

4.2.13 Strategic Sale

Strategic sale implies sale of a substantial block of Government holdings to a single party which would not only acquire substantial equity holdings of up to 50 per cent but also bring in the necessary technology for making the CPSU viable and competitive in the global market. The valuation of the share depends on the extent of disinvestment and the nature of shareholder interest in the management of the company.

Where Government continues to hold 51 % or more of the share holding, the valuation relates to the shares of the companies and not to the assets of the company. On the other hand, where shares are sold through strategic sale and management is transferred to the strategic partner, the valuation of the enterprise is different as the strategic partner will have control of the management, the valuation of land and other physical assets is computed at current market values in order to fix the reserve price for the strategic sale.

4.2.14 Bid

Bid is a price of a share; a prospective buyer is prepared to pay for particular scrip. Offer is the price at which a share is offered for sale.

4.2.15 IPO

IPO is a first sale of company's stock to the public. Securities offered in an IPO are made by companies seeking outside equity capital.
4.2.19 Expression of Interest

Expression of Interest provides a brief description of the company and of each member in the consortium, containing details like ownership structure, business history and growth, business areas / activities, respective revenue details, etc. It includes a brief commentary on the capability of the company / consortium

4.2.20 Preliminary Information Memorandum

A Preliminary Information Memorandum includes the information, briefing the Government decision regarding disinvestment in the company, the extent of equity held by the Government, the extent of equity to be the disinvested, the contact person, and the relevant telephone numbers and fax numbers and email addresses. This contains information about the company, its history, its activities, the location, management, human resources, quality control, markets and marketing arrangements, capital structure, various assets and other details about the company. It also gives the strengths and opportunities of the company. The Preliminary Information Memorandum gives the profit and loss account and balance sheet of the company for the last five years.

4.2.21 Request for Proposals (RFP):

An RFP consists background and general information, describes the goals of the privatisation transaction. Conditions of Agreement provide a summary of contractual obligations in simple, non-legalistic language. Proposals and Selection Process describes the entire privatisation procedure including the process of evaluation of bids.

4.2.22 Confidential Information Memorandum (CIM)/ General Information/ Sector Scenario

CIM contains executive summary of the company, investment considerations, business overview, objectives of Government of India and the role of the strategic partner. The general information includes institutional framework, demography, language and literacy, international relations, economic and financial indicators, foreign trade, balance of payments, economic indicators and CPSU reforms, if relevant for that particular CPSU. Sector Scenario contains an overview of the industry, its segmentation, regulatory environment governing the sector in India, and policy initiatives in the sector. Business review contains introduction of the company, chronology of its growth, overview of its business, its operations. Structure, Responsibilities and Systems contains structure of the company, structure of the manufacturing units and financial and
management information systems. Directors, Management and Employees contain description of the Directors, Senior Management and Employees their remuneration, employee entitlements, recruitment, retirement and dismissal, training and development, pension and welfare obligations and industrial relations. Financial Statements of the company include profit and loss data, balance sheet data and operational results normally for the last 5 years.

4.2.23 Due Diligence

The purpose of the due diligence programme is to provide the Bidder an overview of the Strategic Sale programme and a detailed information on the company's businesses.

4.2.24 Reserve Price

The Reserve Price is a price recommended by the Inter-Ministerial Group (IMG) evaluated by the Evaluation committee. The Reserve Price decided by IMG after the financial bids are submitted by the bidders and may be different from the recommendations given by the Evaluation Committee. This price is the base price for deciding the bid price quoted by the bidders.

4.2.25 Earnest Money Guarantee

The Earnest Money Guarantee is an agreement for a stipulated amount accepted and agreed by the bidder or consortium of bidders either jointly or individually in the draft Earnest money Guarantee agreement provided along with the other documents.

4.2.26 Post Closing Adjustments

The accretion or depletion in the current assets, current liabilities resulting in the change in Net working Capital and the debt position from the date of the last audited balance sheet, till the closing date is to be adjusted. The difference between the figures between the date of the last audited balance sheet and the closing date is called post closing adjustment which is paid by the Government or purchaser to the other party as per Share Purchase Agreement.

4.2.27 Auction

An auction is a mechanism utilized to fulfill the obligations to a counter party member when a member fails to deliver good securities or make the payment.
4.2.28 Warehousing

Warehousing is transfer of a part of Government equity holdings of a listed CPSU to financial institution at an agreed rate, for the purpose of selling the equity with reference to market prices within a time frame.

4.2.29 Buy Back of Shares

Government agreeing to sell its equity holding in a CPSU beyond 49% to the same CPSU at an agreed price between the Government and the concerned CPSU is called as buy back of shares.

4.2.30 Trade Sale

Trade Sale is a sale of a business or a division or a non-core activity. The auction takes into account price and other factors such as capital investment to which the bidder is willing to commit and guarantees the bidder makes to employees and customers.

4.2.31 Cross sale

The Government permits the purchase of equity of a CPSU by another related enterprise as a part of government policies.

4.2.32 Demerger

Sections 391-394 of the Companies Act 1956 govern demerger. The basic concept of demerger requires transfer of an undertaking from an existing company ("Transferor Company") to another existing company ("Transferee Company"). The demerged companies have a shadow shareholding as that of the Transferor Company. It refers to the process where a business, division or a product line of a company is separately reorganised into a different entity. The entity formed may be in the form of a subsidiary company or altogether a separate company.

4.2.33 Advisors

Advisors assist Government in all aspects of privatisation transactions. Advisors counsel Government on the strategic options open to it for privatisation. The responsibilities of the Advisor is to render advice and assists Government in the disinvestment of the CPSU, suggest measures to enhance sale value, preparing a detailed information memorandum, marketing of the offer, inviting and evaluating the bids,
assisting during negotiations with prospective buyers, drawing up the sale/other agreements and advising on post-sale matters.

4.2.34 Legal Advisors

Legal advisors are appointed to look into the legal issues and advise the Government with respect to documentation on contractual terms. The legal advisors examine the material contracts and agreements, loan and lease agreements, title deeds, adequacy of insurance and compliance with any legal or other requirement.

4.2.35 Accounting Advisors

The Accounting Advisors review the financial, accounting, reporting and planning systems. They help the Government in analysing the balance sheet of the company, its assets and liabilities and contingent liabilities. The accounting advisor is appointed through a process of limited competitive bidding and is paid a lump sum fees.

4.2.36 Asset Valuer

The asset valuation of the proposed CPSU of disinvestment is conducted by well-established Government-approved valuers. These persons are called as Asset Valuers and responsible for assessing the fair value of the property.

4.2.37 Discounted Cash Flow (DCF)

The Discounted Cash Flow (DCF) methodology expresses the present value of a business as a function of its future cash earnings capacity. This methodology works on the premise that the value of a business is measured in terms of future cash flow streams, discounted to the present time at an appropriate discount rate.

4.2.38 The Balance sheet or the Net Asset Value (NAV)

The Balance sheet or the Net Asset Value (NAV) methodology values a business on the basis of the value of its underlying assets. The NAV method is used to determine the minimum price a seller would accept and, serves to establish the floor for the value of the business. This method takes into account the net value of the assets of a business or the capital employed as represented in the financial statements.
4.2.39 Market multiple method

Market multiple method take into account the traded or transaction value of comparable companies in the industry and benchmark it against certain parameters, like earnings, sales, etc.

The EBITDA multiple or the earnings method is based on the premise that the value of a business is directly related to the quantum of its gross profits. The net profits are adjusted to reflect the operating recurring profits of the business on a standalone basis.

Sales multiple

The sales multiple techniques are based on a similar analysis of relevant acquisitions and are the ratio of Enterprise Value to the current sales.

4.2.40 Asset valuation methodology

The asset valuation methodology estimates the cost of replacing the tangible assets of the business. The replacement cost takes into account the market value of various assets or the expenditure required to create the infrastructure exactly similar to that of a company being valued.
**4.3 - DISINVESTMENT AUTHORITY**

**Disinvestment Commission**

A Commission for disinvestment of CPSUs is constituted by the Government under the supervision of the Department of Public Enterprises and under the control of the Ministry of Industry as per the resolution Number 11013/3/96-Admn dated 23rd August, 1996. The statement of the resolution states that:

a) To draw a comprehensive overall long term disinvestment programme within 5-10 years for the CPSUs referred to it by the Core Group.

b) To determine the extent of disinvestment (total/partial indicating percentage) in each of the CPSU.

c) To prioritise the CPSUs referred to it by the Core Group in terms of the overall disinvestment programme.

d) To recommend the preferred mode(s) of disinvestment (domestic capital markets/international capital markets/auction/private sale to identified investors/any other) for each of the identified CPSUs.

e) To recommend a mix between primary and secondary disinvestment taking into account the Government’s objective, the relevant CPSU’s funding requirement and the market conditions.

f) To supervise the overall sale process and take decisions on instrument, pricing, timing, etc. as appropriate.

g) To select the financial advisers for the specified CPSUs to facilitate the disinvestment process.

h) To ensure that appropriate measures are taken during the disinvestment process to protect the interest of the affected employees including encouraging employees’ participation in the sale process.

i) To monitor the progress of disinvestment process and take necessary measures and report periodically to the Government on such progress.

j) To assist the Government to create public awareness of the Government’s disinvestment policies and programmes.
k) To give wide publicity to the disinvestment proposals so as to ensure larger public participation in the shareholding of the enterprises; and

l) To advise the Government on possible capital restructuring of the enterprises by marginal investments, if required, so as to ensure enhanced realisation through disinvestment.

As the term of the first Disinvestment Commission has expired in the year 1999, a new Disinvestment Commission has been constituted in the month of July 2001.

It shall be an advisory body and its role and function would be to advise the Government on Disinvestment in those public sector units that are referred to it by the Government.

**The Disinvestment Mechanism**

For decision-making and implementation of disinvestment a three-tier mechanism is adopted by Government of India:

1. Cabinet Committee on Disinvestment (CCD)
2. Core Group of Secretaries on Disinvestment (CGD)
3. Inter-Ministerial Group (IMG)

**Chart 4.1**

Disinvestment mechanism

1. **Cabinet Committee for Disinvestment (“CCD”)**
2. **Core Group of Secretaries (“CGS”)**
3. **Inter Ministerial Group (“IMG”)**

![Disinvestment Mechanism Diagram](chart-4.1)

*Source: www.divest.nic.in*
1. **Cabinet Committee on Disinvestment**

The Cabinet Committee on Disinvestment is the apex decision making body in the disinvestment process. The Cabinet Committee on Disinvestment (CCD) is chaired by the Prime Minister and comprises of the Deputy Prime Minister, Minister of Power, Minister of Law and Justice, Minister of Commerce and Industry, Minister of External Affairs, Minister of Finance and Company Affairs, Minister of Petroleum and Natural Gas, Minister of Civil Aviation, Deputy Chairman of Planning Commission, Minister of Disinvestment and the Minister concerned with the CPSU under disinvestment. The CCD considers the advice of Core Group of Secretaries on Disinvestment (CGD) and takes decisions on all the policy matters relating to privatisation. The CCD approves the programme of disinvestment. CGD is chaired by Cabinet Secretary, comprising three secretaries of the ministry of finance, chief economic advisor and secretaries of the departments of public enterprises, planning commission and the concerned CPSU. The CGD directly supervises the implementation of privatisation programme and makes recommendations to CCD on policy matters.

2. **Core Group of Secretaries on Disinvestment**

The Core Group of Secretaries is headed by the Cabinet Secretary and comprises Secretaries from Ministries of Finance, Industry, Disinvestment, Planning Commission and Administrative Ministry and other Department as may be required, like Departments of Legal Affairs, Company Affairs etc.

1. The Core Group of Secretaries is headed by the Cabinet Secretary and comprises of Secretaries from Ministries of Finance, Industry, Department of Disinvestment, Planning Commission and Administrative Ministry and any other Department as may be required

2. The Core Group directly supervises the implementation of the decisions of all strategic sales

3. The Core Group monitors the progress of implementation of the Cabinet decisions

4. The Core Group makes recommendations to the CCD on disinvestment policy matters
a) The Core Group directly supervises the implementation of the decisions of all strategic sales.

b) The Core Group monitors the progress of implementation of the CCD decisions.

c) The Core Group makes recommendations to the CCD on disinvestment policy matters.

3. Inter-Ministerial Group (IMG)

The Inter-Ministerial Group is chaired by Secretary, Ministry of Disinvestment and comprises officers of Ministry of Finance, Department of Public Enterprises, Department of Legal Affairs, Department of Company Affairs, Administrative Ministry, the CMD and the Director (Finance) of the Public Sector Enterprise concerned. The Inter-Ministerial Group is the forum where inter-ministerial consultation takes place at the primary level. The Inter-Ministerial Group is responsible for day-to-day implementation of the disinvestment decision.

In the disinvestment process, the Ministry of Disinvestment is assisted by Advisors for different purposes. The disinvestment process is carried out with the assistance of an Advisor (known as Global Advisor or Financial Advisor). They could be Merchant Bankers or Consultancy / Advisory firms, but in addition legal advisors, Chartered Accountants, Asset valuers and other valuers are required for specific services. The chart 4.2 below depicts the disinvestment process and role of Ministry of Disinvestment in India.
**Chart 4.2 - Disinvestment Process & Role of MODI**

- **Selection of PSU by MODI**
- **Approval by CCD**
- **Formation of IMG & Selection of Global Advisors**
  - 2-3 months
- **Submission of Expression of Interest**
- **Submission of Initial Technical Proposal**
- **Due Diligence / Commercial negotiations**
  - 3-6 months
- **Finalise Shareholders Agreement (SHA) & Share Purchase Agreement (SPA)**
  - 1 week
- **Financial bids**
- **Selection of strategic partner & signing of SHA & SPA**

**Source:** www.divest.nic.in

**Ministry of Disinvestment/Department of Disinvestment**

The Department of Disinvestment was set up vide Notification No. CD /551/99 dated the 10th December 1999. Vide Notification No. CD-442/2001 dated 6th September 2001; the Department of Disinvestment was renamed as Ministry of Disinvestment. The Ministry of Disinvestment was converted into a Department under the Ministry of Finance vide Notification No. CD-160/2004 dated 27th May, 2004 and was assigned the following work:

1. All matters related to disinvestment of Central Government equity from Central Public Sector Undertakings.
2. Decisions on the recommendations of the Disinvestment Commission on the modalities of disinvestment, including restructuring.
3. Implementation of disinvestment decisions, including appointment of advisors, pricing of shares, and other terms and conditions of disinvestment.

5. Central Public Sector Undertakings for purposes of disinvestment of Government equity only.

Consequent upon change in the policy of the Government the term of Disinvestment Commission was not extended further and it was wound up with effect from 31st October, 2004.

The Secretary (Disinvestment) is assisted by three Joint Secretaries. The Department functions on the Desk Officer Pattern and the disinvestment work is handled at the minimum level of Under Secretary

**Ministry of Disinvestment /Department of Disinvestment**

1. To consider the advice of the Core Group of Secretaries regarding policy issues relating to the disinvestment programme;

2. To decide the price band for the sale of Government shares through GDR/domestic capital market route prior to the book building exercise, and to decide the final price of sale in all cases;

3. To decide the final pricing of the transaction and the strategic partner in case of the strategic sales;

4. To decide on cases where there is disagreement between the recommendations of the Disinvestment Commission and the views of the Ministry of Disinvestment; and

5. To approve the three year rolling plan and the annual programme of disinvestment every year.

The chart 4.3 below shows organisational structure of the department of disinvestment.
The Board of Reconstruction for Public Sector Enterprises (BRPSE)

The National Advisory Council (NAC) proposed to form the Board for Reconstruction of Public Sector Enterprises (BRPSE). The Board is a seven-member body, with Minister of Heavy Industries as its chairman. The disinvestment commission under the finance ministry is replaced by the BRPSE.

Locus of the Board:

The Board is located in the Department of Public Enterprises (DPE), the nodal Department of Central Public Sector Enterprises. DPE provides necessary secretarial assistance to the Board. The establishment cost is met through appropriate provision in the budget of DPE.

Composition of the Board:

The Board comprises a chairman, four members and member secretary

Terms of reference:

Following are the terms of reference to the Board:
(a) To advise the Government on ways and means for strengthening public sector enterprises in general and making them more autonomous and professional;

(b) To consider restructuring - financial, organizational and business (including diversification, joint ventures, seeking strategic partners, merger and acquisition) - of CPSUs and suggest ways and means for funding such schemes;

(c) To examine the proposals of the administrative Ministries for revival/restructuring of sick/loss making CPSUs for their turn around and to make suitable recommendations related thereto;

(d) To advise the Government on disinvestment/closure/sale, in full or part, in respect of chronically sick/loss making companies. In respect of such unviable companies the Board would also advise the Government about sources of fund including sale of surplus assets of the enterprise for the payment of all legitimate dues and compensation to workers and other costs of closure;

(e) To monitor incipient sickness (incurring loss for two consecutive years) in CPSUs; and

(f) To make recommendations and advise the Government on such other matters as may be assigned to it from time to time.
4.4 - INDIAN DISINVESTMENT POLICIES AND METHODS

The Goals of the disinvestment are identified and classified into short term and long term.

The Report of Department of Disinvestment on the disinvestment process states that “As a part of the economic reforms, the public sector reforms are initiated to improve their efficiency and productivity. In this direction disinvestment and privatisation are gaining attention of the Government. The disinvestment process, which began in 1991-92 with the sale of minority stakes in some public sector undertakings (CPSU’s), shifted focus to strategic sales during 1999-2000 to 2003-04. The new policy in this regard is that the Government is committed to a strong and effective public sector whose social objectives are met by its commercial functioning. For this, there is a need for selectivity and strategic focus. The Government is committed to devolve full managerial and commercial autonomy to successful, profit-making companies operating in a competitive environment. Generally, profit-making companies are not be privatized”.

The evolution of the Disinvestment Policy since 1991, as brought out in the address of the President to both houses of Parliament, the Speeches of Finance Ministers and related documents.

Policy of disinvestment:

1. The apex decision-making body on disinvestment matters is the Cabinet Committee on Disinvestment headed by the Prime Minister. A Core Group of Secretaries on Disinvestment headed by the Cabinet Secretary deliberates on various aspects of disinvestments program.

2. On the recommendations of the Disinvestment Commission or of the other expert bodies, or on the basis of decisions taken in consultation with the administrative Ministry, the Ministry of Disinvestment initiates proposals and places them for the consideration of the Core Group of Secretaries on Disinvestment.

3. The decisions taken by the Core Group, in the form of recommendations, are then submitted for the consideration of the Cabinet Committee on Disinvestment and a final decision is obtained.
**Standing Empowered Group (SEG)**

To ensure smooth implementation, a Standing Empowered Group (SEG) is formed. The SEG comprises of the Cabinet Secretary, Secretaries of the Ministry of Finance, Department of Public Enterprises, and Administrative Ministry of the CPSU along with the CEO of the concerned CPSU. This Group provides continuity to the whole process of disinvestment in various CPSUs.

The Government, on 5th November 2009 has approved the following action plan for disinvesting Government equity in profit making CPSUs:

i) Already listed profitable CPSUs, not meeting the mandatory public shareholding of 10%, are to be made compliant;

ii) All CPSUs having positive net worth, no accumulated losses and having earned net profit for the three preceding consecutive years are to be listed through Public Offerings, out of Government shareholding or issue of Fresh Equity by the company or a combination of both; and

iii) The proceeds from disinvestment would be channelized into National Investment Fund and during April, 2009 to March, 2012 would be available in full for meeting the capital expenditure requirements of selected social sector programmes decided by the Planning Commission / Department of Expenditure. The status quo ante will be restored from April, 2012.

**Disinvestment Process:**

The approach to the disinvestment process is to evolve general principles and criteria encompassing all CPSUs and apply them across different CPSUs as and when they are referred. This enhances the transparency of the disinvestment process. The Commission has evolved principles for the extent of disinvestment in CPSUs by categorising them as strategic, core and non core. The criteria for disinvestment are based on these principles and the analysis of each CPSU.

1. Public enterprises which are chronically sick and which are unlikely to be turned around will, for the formulation of revival/rehabilitation schemes, be referred to the Board for Industrial and Financial Reconstruction (BIFR), or other similar high level institutions.
2. In order to raise resources and encourage wider public participation, a part of the Government’s share-holding in the public sector would be offered to mutual funds, financial institutions, general public and workers.

3. Boards of public sector companies would be made more professional and given greater powers.

4. There will be a greater thrust on performance improvement through the Memorandum of Understanding (MoU) system through which management would be granted greater autonomy and will be held accountable.

5. To facilitate fuller discussion on performance, the MoU signed between Government and the public enterprises is placed in Parliament.¹

Disinvestment Models

The disinvestment process is based on opting for one or more of the following models:

1. Direct public offering through prospectus;

2. Private placement or limited offering to select financial institutions, investment institutions, mutual funds and foreign investors;

3. Initial selling to investment bankers and institutional underwriters with or without an arrangement to share the profit on actual sale of shares;

4. Transferring shares to an intermediary authority, which in turn sell the shares in blocks of individual enterprises;

5. Complete sale to private entrepreneur; and

6. Selling the shares of desired quantities in a single lot or over a period of time in small lots.

India has applied a combination of various models of disinvestment.

Modalities of Disinvestment

The modalities of disinvestment available for disinvestment of Government equity are as follows:

1. **Offer of Sale**

   This measure involves a total or a partial change of equity ownership through a direct sale of shares at a fixed price or by a book-building process.

2. **Strategic Sale**

   A strategic sale alternative for select CPSUs may involve selling a substantial stake with management control or a minority stake supplemented by technology transfer arrangements.

   The best value through strategic sales is necessary for a transparent and competitive procedure and to encourage enough competition among viable parties. The following are steps of the process:

   a) One or more global financial advisers with or without association with Indian advisers is selected in a transparent and competitive manner.

   b) Bids are obtained from the financial advisers in a transparent manner, the services of internationally experienced team of one or two Consultants. These consultants will draw up the terms of reference for the financial advisers, invite bids and advise the SEG on the selection of the financial adviser.

   c) Detailed rules of competitive bidding are drawn up with specific reference to the CPSU under the terms of the strategic sale.

   d) For disinvestment by the Government as agreed with the strategic partner the same financial advisers is engaged if it is a GDR sale. In the alternative, a fresh selection of financial advisers / global coordinators is made for the subsequent GDR sale.

   e) It is desirable to offer Government shares in the rejuvenated CPSUs with a strong strategic partner to the Indian investors.

3. **Sale of Units after Corporate Restructuring**

   This option is explored if a holding company structure has to be devised in order that the operating companies under the holding company could be disinvested. This is also applicable in cases where a multi-unit organisation could be spun off into independent companies which could then be disinvested.
4. Leasing & Management Contract

Leasing of assets is a method of disinvestment in cases where it may not be feasible to value the underlying assets of the CPSU. Another modality for disinvestment of the units is management contract. In case of leasing of assets, management contract will automatically follow while in the case of management contract, it may not be necessary to lease the assets.

5. Selection of Merchant Bankers/Global Co-Coordinators

An offer of sale is done either in the domestic or in the international market or in both. A two stage process of selection of merchant bankers/investment bankers is recommended. The selection is CPSU specific and depends up on the suggested mode of disinvestment based on the following factors:

a) Experience and capabilities
b) Commitment to India
c) Research Capability
d) Qualification of Personnel
e) Marketing Strategy
f) Conflict of interest

6. Retailing of CPSU Shares to Small Investors and Employees:

The Commission recommends reservation of a sizeable quantity of shares to be offered to the small investors and CPSU employees in the domestic market to achieve the objectives of the disinvestment strategy. The offer will be made at a price up to 10% below the issue price to Indian institutional investors or investors in the GDR market. When GDR is not involved the offer of shares to the small investors in the domestic market may be undertaken first and at a later date the balance remaining could be offered to the institutional investors at an appropriate price. A ceiling of 200 shares is recommended for such allotment. Since it is desirable that the employees of the CPSUs should become share holders, preferential allotment is made to employees with a ceiling of 200 shares per employee at the same price as the small investor. A separate ceiling of
500 shares is fixed for preferential allotment to the employees. Where the shareholding exceeds 200, there will be a lock-in period for three years for such preferential allotment. In the case of high price shares, the tradable lots need to be reduced to enable the small investors to participate in the sale. In the case of employees, they may be permitted to pay in instalment up to a maximum of two.

**Government Policy on Disinvestment**

In May, 2004, Government adopted the National Common Minimum Programme (NCMP), which outlines the policy of the Government with respect to the public sector. The relevant extracts of NCMP are:

i. Commercial functioning of public enterprises through selectivity and strategic focus.

ii. Full managerial and commercial autonomy to successful, profit-making companies operating in a competitive environment.

iii. Profit-making companies will not be privatized.

iv. All privatizations will be considered on a transparent and consultative case-by-case basis.

v. To modernize and restructure sick public sector companies and revive sick industry, chronically loss making companies will either be sold-off, or closed, after workers are paid legitimate dues and compensation.

vi. To induct private industry to turn around companies that has potential for revival.

vii. A direct link between privatization and social needs.

viii. Public sector companies and nationalized banks to be encouraged to enter the capital market to raise resources and offer new investment avenues to retail investors

**Procedure for Disinvestment**

Disinvestments are in accordance with the prescribed procedure that ensures complete transparency. The procedure is reviewed from time to time and modified with a view to accelerating the process further. At present it is as follows:
Proposals for disinvestments in any CPSU, based on the recommendations of the Disinvestment Commission or in accordance with the declared Disinvestment Policy of the Government are placed for consideration of the Cabinet Committee on Disinvestment (CCD).

After CCD clears the disinvestments proposal, selection of the Advisor is done through a competitive bidding process.

After receipt of the Expression of Interest, in pursuance of Advertisement in newspapers/website, prospective bidders are short listed based on objective screening in the light of announced criteria/requirements.

The advisors, after due diligence of the CPSU, prepare the information memorandum in consultation with the concerned CPSU. This is given to the short listed prospective bidders who have entered into a confidentiality agreement.

The draft share purchase agreement and the shareholder agreement are also prepared by the Advisor with the help of the legal Advisors.

The prospective bidders undertake due diligence of the CPSU and hold discussions with the Advisor/ the Government/ the representatives of the CPSU for any clarifications.

Concurrently, the task of valuation of the CPSU is undertaken in accordance with the standard national and international practices.

Based on the reactions received from the prospective bidders, the Share Purchase Agreement (SPA) and ShareHolders Agreement (SHA) are prepared. After getting them vetted by the Ministry of Law, they are approved by the Government. Thereafter, they are sent to the prospective bidders for inviting the final binding bids.

After examination, analysis and evaluation, the recommendations of the Inter Ministerial Group (IMG) are placed before the Core Group of Secretaries on Disinvestment (CGD), whose recommendations are placed before the Cabinet Committee on Disinvestment (CCD) for a final decision regarding selection of the strategic partner, signing of the Share Purchase Agreement and Shareholders Agreement, and other related issues.
In the disinvestment process, Ministry of Disinvestment is assisted at each stage by IMG, headed by Secretary (Disinvestment) and comprising officers from the Ministry of Finance, Department Of Public Enterprises, the Administrative Ministry/Department controlling the CPSU, Department of Company Affairs, Department of Legal Affairs, CMD/Director (Finance) of the company being disinvested, and the Advisors.

After the transaction is completed, all papers and documents relating to it are turned over the CAG of India; the CAG prepares an evaluation for sending to Parliament and releasing to the public.

The chart 4.4 given below shows the disinvestment procedure followed by the Government in India
### CHART - 4.4 CHART SHOWING DISINVESTMENT PROCEDURES

<table>
<thead>
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<th>Description</th>
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<td>RECEIPT OF EXPRESSION OF INTEREST (EoI) FROM ADVISORS</td>
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<td>PRESENTATION, SELECTION &amp; APPOINTMENT OF ADVISORS</td>
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<tr>
<td>APPOINTMENT OF LEGAL ADVISORS &amp; FIXED ASSET VALUERS ON RECOMMENDATIONS OF EXPERT COMMITTEE &amp; INTERMINISTERIAL CONSULTANTS</td>
<td></td>
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<td>PROCESS FINALISATION &amp; DUE DILIGENCE BY ADVISORS</td>
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<td>ADVERTISEMENT FOR INVITING EXPRESSION OF INTEREST</td>
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<td>RECEIVING EXPRESSION OF INTEREST</td>
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<td>SHORT LISTING OF BIDDERS &amp; SIGNING CONFIDENTIAL UNDERTAKING</td>
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<td>FINALIZING &amp; DISTRIBUTION OF INFORMATION PACKAGE</td>
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<td>DUE DILIGENCE BY SHORT LISTED BIDDERS</td>
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<tr>
<td>FINANCIAL/ CAPITAL /BUSINESS RESTRUCTURING</td>
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<td>FINALISING SHAREHOLDERS /SHARE PURCHASE AGREEMENTS</td>
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<td>RECEIPT OF FINAL BID &amp; BID EVALUATION</td>
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<td>CCD/SEBI/REGULATORY APPROVALS</td>
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<tr>
<td>EXECUTION OF LEGAL DOCUMENTS &amp; INFLOW OF PUBLIC OFFER FUNDS BY STRATEGIC PARTNER AS PER SEBI TAKEOVER CODE</td>
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<td>DOCUMENTS SUBMITTED TO CAG'S OFFICE FOR ASSESSMENT</td>
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**Source:** [www.divest.nic.in](http://www.divest.nic.in)
A. Stage I: Inviting Expression of Interest and Qualification of Bidders

Issue of Advertisement inviting Expression of Interest (EoI)

Preliminary Information Memorandum (PIM)

The preliminary information memorandum contains the conditions for (a) qualification of bidders and (b) formats for submitting (i) Expression of Interest (ii) statement of legal capacity and (iii) Request for Qualification (RFQ).

Qualification of Companies/Consortia

Based on the information submitted in EOIs, the Ministry and the advisors will carry out an evaluation of the qualifications of the companies / consortia and subsequently notify in writing those companies / consortia which qualify to participate in the next stage of the process.

B. Stage II: Request for Proposal (RFP) & Submission of Bids

Request for Proposal & Bid Process

Notification to qualified / short listed parties & issue of Bid Packs

A Bid Pack containing the following documents is available to the qualified / short listed bidders, along with RFP after getting a confidentiality undertaking signed by them:

a) Confidential Information Memorandum (CIM)

b) Previous 3 years' audited annual accounts of the company, and

c) Data Room Rules.

The CIM undertaking requires that the potential bidders do not misuse wealth of information. It is an undertaking made by the bidder in favour of President of India (acting through Joint Secretary of the administrative ministry), the company and advisors to treat all the confidential information in Confidence and not to disclose to any person, the fact of the inspected confidential documents or the discussion/negotiation regarding the transaction.

It also includes information memorandum, request for proposal, draft of shareholders and share purchase agreements or other materials prepared in connection with the transaction.
The confidentiality undertaking contains an indemnity clause, whereby the bidder agrees to indemnify the advisor, the Government and the company any damages, loss, cost or liability arising out of any unauthorised use or disclosure by the bidder.

**Share Purchase Agreement**

Share Purchase Agreement fixes the closing date on which the company is handed over to the buyer so that the difference between the closing date and the date of last audited balance sheet can be arrived at and accounted for. It describes the purchase price, the mode of payment and the actions at closing time.

**Shareholders' Agreement**

Shareholders' Agreement defines the rights and obligations of both the parties. Concerns of Government on protection of employees' rights, future investment / business plans and the precautions against assets stripping are generally reflected in it.

**Due Diligence**

The purpose of the due diligence programme is to provide the Bidder an overview of the Strategic Sale programme and a detailed information on the company's businesses. In order to enable the Bidder to obtain the required information, the programme provides data room visit. The data room is created by the Company containing all information required by the prospective bidder followed by site visit. The indicative list of types of documents and information required are.

- Financial Documents
- Accounts and Investments
- Loan Documents
- Equity Documents
- Corporate Documents
- Licenses and Permits
- Litigation
- Employee Matters
- Tax Matters
- Real Estate
- Property, Plant and Equipment
• Intellectual Property
• Customer Documents
• Technical Data

Submission of final bid

The Financial Bid must be:

i. In the form provided by GoI;

ii. Expressed in Indian Rupees;

iii. Made on the basis of the terms of the revised final drafts of the Contractual Documentation as may be circulated to the Bidder

iv. Unconditional and open for acceptance for a period of 180 days from the stipulated deadline;

v. Must be signed by the Bidder or, where the Bidder is a Consortium by all the Members of the Consortium, and

vi. Submitted to GoI on or prior to the stipulated deadline.

Earnest Money Guarantee

The Bidder or in the case of Consortium any of the Members of that Consortium, singly or jointly, shall be required to enter into an Earnest Money Guarantee agreement for a stipulated amount.

Bidding procedure for strategic sale in CPSUs

Ministry of Disinvestment, with a view to maintaining absolute transparency and ensuring a foolproof process removing all possibilities of tampering, has evolved a bidding procedure. The criteria is

1. Reserve Price should not be fixed by the Government before the bidders submit their financial bids.

2. The Government, while fixing the Reserve Price, does not have knowledge of the price bids submitted.

3. The Advisors do not finalise Reserve Price.

4. The bidders are provided full comfort that their bids.
The bidding procedure, adopted by the Ministry of Disinvestment involves five activities, they are:

**Activity I- Receiving the bids and Valuation Reports**

Bids are received in two separate sealed envelopes from the bidders on a specified date, time and venue. One envelope contains only the price bids. The other envelope contains other documents, namely, Bank Guarantee by the bidder, Board Authorisations, FIPB / SIA application, if required, Copy of the SHA / SPA authenticated by the bidder.

The Secretary, Ministry of Disinvestment and Secretary of the Administrative Ministry receive the bids. The Global Advisors and Legal Advisors are present.

**Activity-II- Proceedings of the Evaluation Committee**

a) The Global Advisors make a detailed presentation before the Evaluation Committee on the business valuation and the asset valuation as also their recommendation of the reserve price.

b) The Global Advisors are not involved in the process of making the final recommendation of the reserve price by the Evaluation Committee.

**Activity-III - Meeting of the Inter-Ministerial Group (IMG) to consider Reserve Price and Bids.**

a) At the meeting of the IMG, the IMG first deliberates on the report of the Evaluation Committee and the Reserve Price recommended by the Evaluation Committee. In this process the Global Advisors also make a presentation before the IMG.

b) The third envelope is then opened and the sealed envelopes containing price bids are scrutinised by both the Secretaries and the bidders.

c) The sealed envelopes containing the price bids are opened and signature of the Secretaries and the bidders obtained on the reverse of the price bids.

**Activity-IV- Consideration of the bid by the Core Group of Secretaries for Disinvestment**

The recommendations of the IMG, including the recommendations of the Evaluation Committee are thereafter placed before the CGD for making recommendations to the CCD.
Activity-V Consideration and Approval of the bid by the Cabinet Committee on Disinvestment

Recommendations of the CGD are thereafter placed before the CCD for final approval. Time frame for Activity-I to Activity-V is about a week to ten days.

C. Stage III: Completion

a. The necessary approvals from RBI, Department of Company Affairs, FIPB are applied for and obtained at this stage.

b. The Share Purchase Agreement is signed and on receipt of the bid money from the strategic partner, the Share Holders Agreement is also signed.

c. Completion/closure of strategic sale in case a listed CPSU is being sold to a strategic partner (SP) and if the acquiring company is purchasing more than 15% of share of the CPSU the SP is required to make an open offer to buy back 20% of the shares from the floating stock of the CPSU as per SEBI guidelines under the Takeover Code.

Indemnification by the Government

The Government indemnifies the purchaser from any actual losses, liabilities, damages, judgments, settlements and expenses arising out of any breach by the Government of any representations and warranties contained in the agreement.

Various Methodologies for Disinvestment

The various methodologies of disinvestment are as follows:

1. Strategic sale

2. Capital market

   a) Offer for sale to public at a fixed price

   b) Offer for sale to public through book building

   c) Secondary market operation

   d) International offering

   e) Private placement

   f) Auction
3. Warehousing
4. Reduction in equity
   A. Buy-back of equity
   B. Conversion of equity into debt exchangeable into capital market instruments
5. Trade sale
6. Asset sale / winding up
7. Management / employee buy out
8. Cross sale
9. Sale through demerger / spinning off.

Table 4.1
Methodologies of disinvestment

<table>
<thead>
<tr>
<th>Methods</th>
<th>Transactions cost</th>
<th>Time frame</th>
<th>Regulation</th>
<th>Suitability</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Strategic sale</td>
<td>Low</td>
<td>6-10 month</td>
<td>SEBI take over code, RBI, FIPB</td>
<td>Transfer of Management control</td>
<td>Maximises &amp; minimises cost</td>
</tr>
<tr>
<td>2. Capital market</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Offer for sale at fixed price</td>
<td>High</td>
<td>3-4 months</td>
<td>SEBI/ SE</td>
<td>Profit making with good future prospects</td>
<td>Brood based and transparent</td>
</tr>
<tr>
<td>b. Offer for sale to public through Book Building</td>
<td>High</td>
<td>3-4 months</td>
<td>SEBI/ SE</td>
<td>Profit making with good intrinsic value</td>
<td>Brood based and quick</td>
</tr>
<tr>
<td>c. Secondary market operation</td>
<td>Low</td>
<td>Spot</td>
<td>SE regulation</td>
<td>Sizeable floating stock with good intrinsic value</td>
<td>Market condition and uncertainty</td>
</tr>
<tr>
<td>d. International offering / GDR/ ADR</td>
<td>High</td>
<td>3-5 months</td>
<td>Securities regulation commission / GAAP / listing</td>
<td>Listed in International markets/ actively traded / Good intrinsic value</td>
<td>Stringent regularity requirements / accounting norms and disclosure</td>
</tr>
<tr>
<td>e. Private placement of equity</td>
<td>Low</td>
<td>1-2 months</td>
<td>SEBI and foreign investment guidelines</td>
<td>unlisted and listed companies with low floating stock and volume</td>
<td>No wide spread share holding and transparency</td>
</tr>
<tr>
<td>f. Action</td>
<td>Low</td>
<td>1-2</td>
<td>SEBI take</td>
<td>unlisted and</td>
<td>French option/</td>
</tr>
</tbody>
</table>
1. Warehousing

- **Fixed and low cost**
- **Less than 1 month**
- **RBI restriction**
- **Listed / liquidity and growth potential**
- **Remote change of taking at discount price**

2. Reduction of equity

   a. **Buyback**
   - **Low**
   - **Within 3 months**
   - **Companies Act/ SEBI buyback regulation**
   - **Cash rich / low geared with good intrinsic value**
   - **Improves EPS / Book value and ROI/ Strict regulation**

   b. **Conversion of equity into another instrument**
   - **Low**
   - **Within 3 months**
   - **Companies Act**
   - **Cash rich / low geared with good intrinsic value**
   - **Improves EPS / Book value and ROI/ Strict regulation**

3. Trade sale

- **Low**
- **Quicker**
- **Companies Act / SEBI**
- **Sale of non-core activity**
- **Maximum sale financial strength and credentials**

4. Asset sale or winding up

- **High**
- **Longer**
- **Companies Act/ BIFR/ court**
- **Sick Companies**
- **Open auction or tender**

5. Management – employee buyout

- **Low**
- **Shorter**
- **ESOP**
- **High profit making low asset based and motivated manpower**
- **Active participation of work force suitable privatisation technique**

6. Cross sale

- **High**
- **Longer**
- **SEBI/ Govt. regulation**
- **Sale through trade/ bides**
- **Not for privatisation**

7. Sale through demerger/ Spinning –off

- **Low**
- **Longer**
- **Department of company affairs and companies Act**
- **Loss making**
- **Transfer of ownership and capital**

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**Source:** www.divest.nic.in

**National Investment Fund**

In pursuance of the policy laid down in NCMP and the decision of the Government to constitute NIF, the proposal for its operationalisation was approved on 3rd
November, 2005. Accordingly, DOD has issued a Resolution on 23rd November, 2005 constituting ‘NIF’ with the following objectives, structure and administrative arrangements, investment strategy and accounting procedure:

**Objectives**

i. The proceeds from disinvestment of CPSEs will be channelised into NIF, which is to be maintained outside the Consolidated Fund of India (CFI).

ii. The corpus of NIF will be of a permanent nature.

iii. NIF will be professionally managed to provide sustainable returns to the Government, without depleting the corpus. Selected Public Sector Mutual Funds will be entrusted with the management of the corpus of NIF.

iv. From the annual income of NIF, 75 per cent will be used to finance selected social sector schemes, which promote education, health and employment. The residual 25 per cent of the annual income of the Fund will be used to meet the capital investment requirements of profitable and revivable CPSEs that yield adequate returns, in order to enlarge their capital base to finance expansion/diversification.

**Structure and Administrative Arrangements**

NIF will be operated by the selected Fund Managers under the ‘discretionary mode’ of the Portfolio Management Scheme, which is governed by SEBI guidelines. The entire work of NIF will be supervised by the Chief Executive Officer (CEO) of NIF, a senior officer of the Government.

**Investment Strategy**

i. The broad investment strategy is to provide sustainable returns without depleting the corpus.

ii. The investment strategy for NIF will be formulated by CEO based on the advice of the Advisory Board.

iii. Broad guidelines are to be provided under the “discretionary mode” to the Fund Managers, within which individual investments would be made independently by the Fund Managers.
iv. Allocation of funds to the selected Fund Managers, negotiations of management fee and charges to be paid to the Fund Managers, are decided by CEO based on the advice of the Advisory Board.

**Accounting Procedure**

i. The receipts from disinvestment of CPSEs will be deposited in CFI under the designated Head.

ii. Income from NIF will similarly be deposited in CFI and would be appropriated from it for specific purposes as per the scheme of appropriation approved from time to time by the Department of Expenditure.

**Fund Managers of NIF**

The following Public Sector Mutual Funds have been appointed as Fund Managers to manage the funds of NIF under the ‘discretionary mode’ of the Portfolio Management Scheme which is governed by SEBI guidelines.

a. UTI Asset Management Company Limited

b. SBI Funds Management (Private) Limited

c. Jeevan Bima Sahayog, Asset Management Company Limited
4.5- PRIVATIZATION IN INDIA

Privatisation is transfer of ownership from the public to the private sector, or transfer of control over the assets or activities through leasing, retaining ownership and leaving management of assets and activity to private parties.

Methods of privatisation

Privatisation through Operational and Organisational measures without loss of ownership:

1. **Operational measures:** This measure emphasis privatisation of management as against privatisation of ownership. The two operational measures are-
   a) **Measurement of performance against targets:** The CPSUs operate with definite target in profits, unit cost output and productivity.
   b) **Nationalisation of Government controls:** The CPSUs are excessively directed and controlled by the government. This measure recognises the autonomy of CPSUs.

2. **Organisational measures:** This are of three methods, namely
   a) **Introducing competition and unbundling:** Competition promotes efficiency and expansion of services in areas of infrastructure in the country.
   b) **Corporatisation:** CPSUs operating as statutory corporations are transformed into joint stock companies for better operations as commercial entities. This facilitates in approaching the capital market for funds through sale of equity.
   c) **Leasing:** This is a measure adopted to lease the enterprises to private operator or sector and retaining the ownership of the Government. It is a compromise between total privatisation and complete Government ownership.

3. **Ownership measures:** Transfer of CPSU to private ownership is an option adopted to totally withdraw the ownership of the Government permanently to augment resources and to avoid budgetary commitments. The following methods are adopted in ownership measures, namely
   a) **Full Divesture:** The whole of the enterprise is sold through a trade sale or a public offer by the Government diluting its share holding.
b) **Partial divesture with majority being held by the Government:** The majority of the equity is retained by the Government and lesser percentage is offered for sale.

c) **Partial divesture with minority equity being retained by the Government:** This refers to partial disinvestment of Government equity through public offer retaining minority shares. It is made through public offering of shares and GDR issues.

**Forms of Privatisation**

Privatisation of CPSUs can be made in the following forms as suggested by OM. Prakash:\(^2\)

1. **Complete privatisation:** Total privatisation tantamount to denationalization of the CPSUs both in terms of ownership and management.

2. **Partial privatisation:** This may be affected in two ways, minor or major. Under minor complexion a wholly owned CPSU may offer minority interest to private parties not being less than 20%. In case of majority ownership is passed on to private interest, the state may find difficult to monitor such organisation in matter of social interest.

3. **Privatisation of management:** This is formally affected through the device of an operating contract entrusted to private party or private sector managers, industrialist and professionals associated with CPSUs.

4. **Creating competitive condition:** Creating a situation, in which CPSUs compete amongst and/or with comparable private enterprises.

5. **Deregulation/Liberalisation measures:** Privatisation resorted to in the form of decontrolling and liberalisation measures for the private sector.

**Privatisation of Sick Enterprises**

The net worth of 25% CPSUs show a negative figure and many of these are not of the turnaround zone. The reasons for this phenomenon are manifold and vary from case to case. The common two factors are:

1. The impact of economic reforms and denial of a level playing field to CPSUs.

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2. Management failure, because of an inadequate top management, frequent changes of the chief executive and long intervals between one chief executive leaving and the successor taking over.

CPSUs suffering from out-dated technology, wrong location, huge surplus manpower and structural defects need decisive steps to meet the situation.

“The sick CPSUs are restructured by constitution of a separate professional agency or board through an Act of Parliament. A separate restructuring fund is constituted from the budget to advance funds to sick CPSUs to offer a compensation package to the workers. After the separation of labour, the assets of the sick CPSU shall be available for disposal. The proceeds of the disposal after setting off liabilities are credited to restructuring fund. This would enable the fund to operate on at least a partially self-sustaining basis and it is expected that in the course of time, budgetary support for the fund will gradually diminish”

THE NEW MODEL FOR DISINVESTMENT

The respective industrial ministry based on the performance of the concerned CPSUs informs the Inter-ministerial Group (IMG). The IMG under the control of the Cabinet Committee forwards the proposal to the cabinet. The Scrutiny Division approves for action. IMG directs Disinvestment and Privatisation Corporation (D&PC) and the Disinvestment Approval and Regulatory Commission (DA&RC). The D&PC is fixed with the responsibility of appointing bidders and approval of bids. Additionally, it is delegated with the authority of appointing merchant bankers or FIs for receiving the sale proceed money from bidders/buyers upon its direction, the DA&RC is allotted with work of securitizing the proposals, the related regulatory approvals and recommendations. The Scrutiny and Regulatory approvals are divisions whereas the Recommendation is a Committee. This Committee has a sub-committee for review of entire process and report thereon to the DA&RC through Recommendation Committee. The sale or bid process money is settled to the merchant bankers/FIs, which in turn remits the same to National Investment Fund Limited (NIFL), a corporate body functioning directly under the supervision and control of Finance Ministry. The fund so formed is periodically dispersed

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to SEBI approved public sector banks/FIs and private sector banks/institutions in the proportion of 60% and 40% respectively (or any other percentage as the finance ministry decides with the approval of cabinet committee). The investment thus made by the public sector and private sector banks and institutions are rated by not less than two credit rating agencies (one being international) and publishes periodical reports making known the facts to Government, employees, public, investors, CPSUs and other stakeholders.

This model is designed to speed-up the disinvestment operation and its process. The unnecessary procedures and steps are eliminated. The DA&RC is only entrusted with approvals and recommendation, the work of executing the deals are undertaken by D&PC. The rating agencies play a vital role in evaluation of reinvestment of public and private bankers/ FIs, thus making it more transparent. Similarly the Government’s involvement and control is minimised, facilitating to complete the process of disinvestment with lesser interference. The chart 4.5 below shows the new disinvestment model.
Chart 4.5
New Disinvestment model

Concerned CPSUs → Respective Industry Ministry → Finance Ministry → IMG

Disinvestment and Privatisation Corporation

Appointment of bidders & approval of bids

Bidders / Buyers → Settlement of Money

Appointment of merchant Bankers / FIs & Issue of Direction

National Investment Fund Ltd (Corporate body)

Cabinet Committee

Disinvestment Approval and Regulatory Commission

Scrutiny Division

Recommendation Committee

Regulatory approval Division

SEBI Approved public sector banks / FIZ / MF / Insurance (60%)

SEBI Approved private sector banks / Institutions / Investors (40%)

Rating Agencies (Two or more) (for evaluation of investments)

Publishes Reports