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Full Divestiture and Privatization

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Full divestiture, also known as, privatization, occurs when all or substantially all the interests of a government in a utility asset or a sector are transferred to the private sector.

A divested or privatized utility or public service is distinguishable from a private commercial enterprise in that the government generally retains some indirect form of control or mechanism for regulation over the privatized utility, in the form of a license granted to the entity to deliver the service to the public.

Full privatization is distinguishable from partial privatization and joint venture arrangements between public and private where the public sector maintains a significant interest.

Form of Divestiture and Privatization

Typically a government intending to divest of utility assets will sell shares in the utility or transfer assets into a special purpose company and sell shares in that company, although divestiture can be via a sale of assets. Whether the divestiture is via an asset or share sale will depend on the circumstances of the utility and local issues such as tax treatment of such sales. The share sale is often favored as it allows the government to retain an indirect or veto interest in the privatized utility through a "golden share".

However, a private purchaser may be unwilling to accept all of the existing liabilities of the utility and only be willing to accept a portion of the assets and liabilities. In such case the assets will be transferred to a special purpose company. The prospective purchaser will be interested, however, in knowing that the company has a track record and so the government may be required to run the new company for a few years prior to privatization to establish such track record.

Sector-Specific Privatization Laws and Licenses

- **Water and Sanitation**
  - England and Wales: Licenses for private water / water and sanitation companies
  - Chile: Chilean Experience in Water
- **Power**
  - England and Wales: Licenses for private electricity companies

Full divestiture of a utility versus awarding a concession

Full privatization is often considered to be a more final form of private sector involvement in a utility than a concession. In practice, therefore, there are extensive similarities between the full privatization and concession model, as summarized below:

- The long-term nature of a concession with the responsibilities for asset condition and investment in the assets make the economic and operating drivers, at least in the early part of a concession, similar to those of outright privatization.

- Outright privatization of utilities is usually accompanied by limitations on the private operator who will be required to hold a license to provide the service, and such license is subject to termination.
- In England and Wales, the government in the early 1990s privatized the water, energy, telecommunications and rail sectors and the English experience illustrates the actual limitations imposed on privatized utilities: -
    - The private operators require a license to operate, without which the divested assets have little value and the assets may revert to the government if the license is revoked or terminated.
    - The license can be terminated by the government for serious breaches and, on 10 years notice from 2012, for no cause.
    - In the rail sector, the license of the track owner and operator, Railtrack, was revoked in 2002 when it was put into administration at the UK Government's request; the license to operate the tracks was awarded to a new entity and Railtrack's assets were transferred to that new operator.
    - Similarly, one of the private train operators, Connex, had its license revoked for breach and was required to transfer its assets to a successor operator.

    - Each of the utility sectors is highly regulated and even in the energy and telecoms sectors where competition has been introduced, the regulator still sets limits on what the operators are permitted to charge and the rate of return that the operators are permitted to achieve.

For more, go to Joint Ventures.

For greater analysis and examples of privatization in infrastructure, go to World Bank Resources on Impact of Infrastructure Privatization.

Related Content

- **Contracts & Agreements**
- **Approaches to Utility Reform**
- **Civil Works and Service Contracts**
- **Structuring Management, Operation and Maintenance Services**
- **Leases and Affermage Contracts**
- **Concessions Build-Operate-Transfer (BOT) and Design-Build-Operate (DBO) Projects**
- **Joint Ventures and Government Shareholding in Project Companies**

- **Full Divestiture and Privatization**

- **Performance Contracts**

- **Standardized Agreements, Bidding Documents and Guidance Manuals**

Additional Resources

- Empresas Mixtas
- Joint Venture Checklist

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