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**SAMPLE TERMS OF REFERENCE**

**FOR**

**ELECTRICITY SECTOR PRIVATIZATION**

**TRANSACTION ADVISORY SERVICES**



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Terms of Reference – Energy Transaction Advisor for Privatization

**Table of Contents**

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<b>1st.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
<b>2nd.</b>	<b>ELECTRICITY SECTOR BACKGROUND .....</b>	<b>4</b>
<b>3rd.</b>	<b>SCOPE OF WORK .....</b>	<b>6</b>
	PHASE : ONE	
	PRIVATIZATION STRATEGY OPTIONS ANALYSIS.....	8
	Task 1 : Privatization Strategy Options Analysis and Valuation .....	8
	Task 2 : Resolve of Restructuring Issues .....	9
	Task 3 : Environmental Review .....	9
	Task 4 : Legal Due Diligence .....	10
	Task 5 : Transaction Approach Analysis and Time Schedule .....	10
	Task 6 : Recommendations for Legal and Regulatory Framework.....	10
	Task 7 : Preparation of Technical and Assets Files .....	11
	PHASE TWO .....	
	IMPLEMENTATION OF PRIVATIZATION PROGRAM .....	12
	Task 1: Preparation of Documents .....	12
	Task 2: Marketing and Road Shows .....	12
	Task 3: Prequalification of Bidders .....	13
	Task 4: Data Room Preparation .....	13
	Task 5: Proposal Evaluation .....	13
	Task 6: Assistance in Negotiation with the Selected Bidders .....	13
	<b>D. PROJECT DELIVERABLES .....</b>	<b>14</b>
	<b>E. IMPLEMENTATION ARRANGEMENTS .....</b>	<b>14</b>
	<b>F. CONSULTING SERVICE REQUIREMENTS .....</b>	<b>14</b>
	<b>ANNEX A. EXPECTED PROJECT DELIVERABLES .....</b>	

**TERMS OF REFERENCE  
FOR  
ELECTRICITY SECTOR PRIVATIZATION ADVISORY SERVICES**

## **A. INTRODUCTION**

As a part of the Government of [COUNTRY]'s (GOV) reform policy, GOV has made a commitment to ensure the most efficient use of the national resources by shifting towards a competitive electricity market structure, with a greater role for the private sector. GOV has adopted an electricity sector reform policy aiming at increasing private sector participation in generation and distribution of electricity.

Under this policy guidelines, the vertically integrated state-owned utility, has been unbundled into three separate public shareholding companies – [ ] which became the transmission and dispatch company and [ ] which became a distribution company. The other existing distribution companies in the country are : [ ], which operate under long-term concession contracts.

The Electricity Law adopted by GOV establishes regulatory framework and supports sector restructuring by which it; (i) defines the policy and regulatory role of the Government; (ii) provides for private sector participation; (iii) permits open access to the transmission system; and (iv) provides for the creation of a competitive electricity market structure .

GOV, also, engaged the consulting firm [ ] to undertake a study to complete the restructuring of the sector.

### *Objectives of the Advisory Services*

In line with the policy objectives of GOV for the electric power sector, and after the unbundling and the creation of the new companies in generation and distribution, GOV is in the process of evaluating viable options for private sector participation / privatization of those companies. The purpose of the Advisory Services is to assist GOV in achieving the privatization of the publicly owned assets in generation and distribution through: first the development of a comprehensive strategy for privatizing [ ]% of [ ], and second the implementation of the selected privatization option(s).

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**B. ELECTRICITY SECTOR BACKGROUND**

Until the end of [ ], [XXX] was responsible for generation and transmission of electricity all over [COUNTRY]. [XXX] also was providing electricity in bulk directly to all large industrial companies through its high voltage transmission grid, and was distributing electricity to retail consumers in the districts uncovered by concession contracts.

[XXX] is now a transmission company which has exclusive right for the development of the transmission grid, electric power dispatch and transmission throughout the country. The transmission system in [COUNTRY] is composed principally of [ ] KV and [ ] KV circuits. It is essentially a radial system with no looping except for a small ring around the major load center of [LOCATION]. The radial nature of this system is consistent with what would be found in other systems of comparable size. There are about [ ] circuit-km of [ ] KV lines and about [ ] circuit km of [ ] KV lines in operation. [XXX] operates the National Control Center and main supply substations to provide service to the various distribution networks which have an aggregate capacity of [ ] MVA.

[XXX] has commissioned a project connecting its electrical system to the [NEIGHBOURING COUNTRY] system.

- b. [YYY], the successor company of old [XXX]'s electric power generation assets, owns and operates all the existing generating electric power plants in [COUNTRY]. The total installed capacity is about [ ] MW, of which, generation mix are as follows: [ ]

[ZZZ] resumed the distribution activities of old [XXX] to retail consumers in [ ] parts of the country. It supplies electricity to about [ ] thousand consumers representing [ ]% of total consumers in the country.

Distribution in the central part of the Country is handled by [AAA] (privately owned), which supplies electricity to about [ ]% of the total consumers in the Country.

In general, The [COUNTRY] electricity sector operates efficiently, especially when compared to systems in other countries at a similar level of economic development. The country does not face an electricity shortage. About [ ]% of the total population is supplied with electricity. The total electric energy consumption in [COUNTRY] in [DATE] was [ ] GWh and average per capita consumption is about [ ] KWh.

The electricity industry is characterized by a high level of technical and managerial skills which allow the institutions to plan and implement their programs successfully.

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*Regulatory and Policy Regime*

GOV has recently taken important measures to reform the Electricity Sector in order to achieve the following objectives (i) Separation of policy making, regulation and operations. (ii) supply of electricity under the most efficient conditions in terms of quality and cost. (iii) improve the financial viability of the sector in order that the electric power sector ceases to be a burden to the government's budget, and eventually, the sector is able to mobilize from its own resources the financing required for upgrade and expansion. Consequently, the electricity tariff charged to all classes of consumers will gradually be reformed such that the tariff eliminates subsidies and cross-subsidies, encourages energy conservation, loss reduction, covers cost of supply and provides a reasonable rate of return to the electric utilities. (iv) restructuring and privatization, where appropriate, of the government-owned utilities to make them financially and operationally sound organizations. (v) Creation of an operating and regulatory environment conducive to competition and attraction of private capital and expertise.

Definition of energy policies and indicative sector planning will be functions of the Ministry of Energy and Mineral Resources (MEMR), while electricity sector regulatory functions will be exercised by an independent Regulatory Commission (RC). The RC would be responsible for:

- licensing electricity sector related facilities;
- regulating the retail and whole-sale tariffs;
- protecting consumers from potential abuse from monopolistic behavior of utility operators;
- promoting economic efficiency; and
- promoting much-needed private investment in utilities through safeguarding and securing the application of rules and regulations in a transparent manner and without government interference.

Measures for the establishment of Electricity Sector Regulatory Commission is underway. A consultant, an international specialist, is to be sought soon to assist the GOV in the development of the detailed regulations and the creation and full functioning of the Regulatory Commission.

### **C. SCOPE OF WORK**

The Advisory Services Group (hereinafter called the Consultants) appointed by GOV shall be responsible for carrying out the assignment - as stated below - in its full scope for the development and successful implementation of the privatization strategy(ies) of [ ]% of [YYY], [ ]% of [ZZZ] and [ ]% of [XXX]. The bidder is required to provide a proposal that demonstrates the bidder's understanding and experience of this type of assignment and the overall scope of work.

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Also, it should be noted that :

- a) GOV expects the privatization process to be an interactive one between the Consultants and the Counterpart team nominated to represent GOV, so as to enable efficient decision making . The Consultants are expected to draw comparisons with other privatization transactions to assist GOV in better understanding the issues as they arise .
- b) The Consultants shall provide justification and/or calculations used as well as a detailed explanation for the methodology used in arriving at specific recommendations.
- c) The Consultants shall be responsible for carrying out initial technical, financial and legal framework reviews that are deemed necessary for a successful completion of the transactions, including, but not limited to:
  - Relevant existing reports, studies, audits, etc. necessary to become familiar with the electricity sector in [COUNTRY].
  - All information pertaining to electricity market structure, particularly those tasks being completed by [ ].
  - Existing financial forecasts, historical financial performance and technical operating history for the three companies.
  - Existing Electricity Law and regulatory functions of proposed Regulatory Commission.
  - Responsibilities and relationships of [YYY], [ZZZ], and [XXX] with other government entities at different levels .
  - Concession contracts of the two distribution companies ([ ] and [ ]), including their rights to generate electricity.

**The activities required under this scope of work shall be carried out in two Phases :**

**Phase One: Privatization Strategy Options Analysis and Restructuring.**

**Phase Two: Implementation of Privatization Program.**

*( Implementation of this phase is subject to GOV approval and adoption of the privatization strategy emanating from Phase One ).*

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**PHASE ONE**

=====

**PRIVATIZATION STRATEGY OPTIONS ANALYSIS  
AND RESTRUCTURING**

The main purpose of this phase is to : ( i ) develop a strategy to assist GOV for the privatization of [YYY], [ZZZ], and [xxx]. This will entail analysis of all viable privatization options for these companies; ( ii ) provide recommendations to address any issues pertaining to the restructuring of the emerging groupings of generation plants and distribution entities to ensure successful implementation of the privatization option(s) adopted, (iii) assist GOV in implementing the recommendations referred to in (ii) above; and ( iv ) provide recommendations on improvements to the existing legal and regulatory framework to be more supportive of the efficient development and operations of the power sector.

The following paragraphs detail the main advisory services that the Consultants shall provide to complete tasks of Phase 1:

**Task 1: Privatization Strategy Options Analysis and Valuation**

The Consultants shall carry out the following sub-tasks to complete this task:

- ( i ) Analyze different organizational options for [YYY] and the distribution utilities ([ZZZ] and [xxx]). This will include analyzing organizational options for [YYY] (whether to retain it as one company or separate it into two or more generating companies), taking into consideration that GOV prefers to retain it as one entity. In case of separation, the consultants shall assist GOV in the splitting process including the preparation of balance sheets, statutes and other arrangements needed for the establishment and operation of these entities.

Also, this includes analyzing the organizational options for the distribution companies with regard to their viability i.e., retaining the status quo position or integrating the two distribution companies, taking into consideration the overall strategy analysis and specifically possible alternative policies such as redefining the distribution service areas and other issues studied under task ( 2 ) below .

The purpose of this task is to come up with groupings of generation/distribution plants/companies that would be attractive to potential private investors.

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- (ii) Analyze possible sale options for private sector participation focusing on the following:
  - Sale to a strategic partner.
  - Sale to an investor / consortium .
  
- (c) Assess the financial feasibility and provide valuation of generation and distribution companies to be privatized according to the different options and based on more than one criterion or methodology, including creating financial projections up to ten years for these companies. Various assumptions used in the forecasts including those of demand and pricing should be stated clearly.
  
- (d) Advise on an adequate financial (capital) structure for these companies taking into consideration that the new companies will inherit all the liabilities of the original companies including debts.
  
- (e) Analyze various options of local private sector and utility employees participation in the privatization process, and recommend preferred approach(es).

**Task 2: Resolve of Restructuring Issues**

The Consultants shall identify, study and present recommendations and action plans regarding all priority matters that need to be addressed, either prior to the initiation of the privatization program or during the implementation period, including matters that are required within the context of the adopted privatization option. These matters include, but are not limited to, the following:

- (a) Issues related to the financial viability of the generation and distribution companies such as subsidies, levels of retail tariffs, etc....
- (b) Any further restructuring (separation or integration) of the generation and distribution companies that might be needed according to the adopted privatization strategy (ies).
- (c) Power sales agreements .
- (d) Employees related issues: As part of the privatization process the current employees will be transferred to the privatized companies. The Consultants shall assist GOV in developing and implementing a clear and workable plan for the transfer of employees including the retrenchment plans for redundancies (if any) as well as compensation packages or other arrangements to solve the problems that may arise so as to ensure that the rights of the existing employees will not be compromised .



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**Task 3: Environmental Review**

The Consultants shall review the present operational conditions of [YYY], [ZZZ] and IDECO regarding its compliance with the applicable environmental standards and identify any deviations and provide recommendations on measures required to meet applicable regulations / standards.

**Task 4: Legal Due Diligence**

The Consultants shall review all concerned legislation related to [YYY], [ZZZ] and [xxx] so as to provide legal assessment of the companies contractual obligations and liabilities *vis-à-vis* third parties and methods of transferring such obligations to the privatized entity(ies) .

Also, the Consultants shall undergo a due diligence investigation of laws and regulations that have impact on the successful completion of the privatization process or may hinder such successful completion.

**Task 5: Transaction Approach Analysis and Time Schedule**

Based on the analyses carried out, the Consultants shall recommend the optimal privatization strategy(ies) which considers the best organization and ownership option(s) to achieve the objectives of GOV, including: ( i ) a strategic plan for the privatization of [YYY], and the two distribution utilities; (ii) the number of phases to complete the privatization of [YYY] and the distribution companies; (iii) evaluation of the revenue implications for the Government; (iv) the pros and cons of various modes of the transaction, and recommend the optimal option; (iv) an action plan for the implementation of the recommended option(s).

It should be noted that this task shall be carried out through continuous interaction with the GOV to scrutinize the different options for final selection.

**Task 6: Recommendations for Legal and Regulatory Framework**

As part of the privatization program, GOV wants to ensure that the legal and regulatory framework for the power sector is conducive to efficient business operations, and to the promotion of the development of local and foreign investment in electricity sector in [COUNTRY]. Thus, the Consultants shall examine the legal framework in [COUNTRY] related to the electricity sector and state enterprises including the Electricity Law of [DATE] and by-laws of the companies to be privatized and their subsidiaries (if any). In addition, the Consultants shall review concession agreements of [ ] and [ ] including the rights to be electricity producers as well, licenses and related regulations.

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It is expected that the above review shall lead to the achievement, inter alia, of the following tasks:

- (a) Recommendations on the amendments (if any) in the Electricity Law, by-laws and any other related legislation.
- (b) Identifying any obstacles such as those that may restrict the purchase of electricity from private generators.
- (c) Identifying, if there is any, overlapping duties and responsibilities of different institutions and departments in the electricity sector that may impede the development of the sector.
- (d) Identifying existing legal obstacles (if any) in the concession agreements of [ ] and [ ] that may impede or contradict with the overall strategy for regulating and restructuring the electricity sector; and proposing recommendations related to overcoming these obstacles.
- (e) Carrying out all legal work required for the implementation of the selected privatization (sale) option(s).

**Task 7: Preparation of Technical Assets Files**

The Consultants shall organize and collect all technical data files, plant performance data file, environmental performance data file..etc, which are part of the privatization program of [YYY], [ZZZ] and [xxx]. This technical assets file must correlate with the updated technical Asset Registers of each company and power plants.

At a minimum, the technical assets file must include the following information:

- Plant performance data ;
- Environmental performance data ;
- Procurement date;
- Cost of procurement;
- Depreciated value;
- Remaining life;
- Present value for land and real estate properties;

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**PHASE TWO**

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**IMPLEMENTATION OF PRIVATIZATION PROGRAM**

The activities of this phase include the implementation of the selected privatization option(s) by the Government and subject to Government's decision to proceed with this implementation process.

**Task 1:        Preparation of Documents**

The Consultants shall at a minimum develop the following documents and any other additional documents required in line with the privatization strategy option(s) adopted by GOV.

- Prequalification Document
- Information memorandum
- Bidding Document
- Transaction Agreement(s) and related documents
- Land Lease Agreement;
- Preparation of Due Diligence list;

The Information Memorandum should contain at a minimum the following information:

- General information of [COUNTRY];
- Geography and demography;
- Political and macro-economic perspectives;
- Banking context and relations with international financial institutions;
- Foreign investment treatment;
- Taxation policy;
- Technical and Financial information of the utility to be privatized;
- General information on utility sectors;
- Tariff information;
- Asset valuation estimate;
- Process of Sale or private sector participation;
- Time Schedule for the privatization program.
- Criteria for the Proposal evaluation and assessment; and
- Enforced Electricity Law.

**Task 2:        Marketing and Road Shows**

The Consultants shall endeavor to develop a tightly focused promotional campaign for the private sector participation in the generation and distribution companies. At an earlier

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stage in the implementation phase, the Consultants shall prepare short press briefing on [COUNTRY] that can be distributed to journalists to generate initial interest in the generating and distribution companies, and shall prepare advertisement inserts to be published in international trade publications and business newspapers. This would be followed up some weeks later by the targeted marketing of the selected privatization option(s) for the generation and distribution companies through organizing Road Shows and Seminars for potential investors as well as initiating direct communications with them. The cost of the marketing program shall be borne fully by the Consultants.

#### **Task 3: Prequalification of Bidders**

The Consultants shall prepare a prequalification document with appropriate criteria for the prequalification and advertise the “Prequalification Announcement” in international financial news papers and trade journals requesting international Bidders to submit prequalification application. In addition, the Consultants shall make direct contact with the potential investors .

The Consultants shall assist GOV in the evaluation of Prequalification Applications and selection of Prequalified Bidders.

#### **Task 4: Data Room Preparation/Due Diligence**

The Consultants shall establish a Data Room in [LOCATION] during the due diligence period where all pertinent documents will be properly cataloged and titled for the prequalified bidders review. The Data Room shall be equipped with photocopy machine and a full time attendant.

#### **Task 5: Proposal Evaluation**

In this task, the Consultants shall provide at a minimum the following support services to GOV:

- Arrange and participate in pre-bid meeting if needed;
- Receipt of all proposals and review for their completeness;
- Preparation of notes of clarification and answers to questions that could be raised during the bidding process;
- Drafting of correspondence on behalf of GOV with the Bidders;
- Preparation of a confidential Evaluation Report based on the Bidding Resolution Criteria which has been adopted by the GOV; and
- Providing appropriate recommendations for starting the negotiation process with the first ranked Bidder;

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**Task 6: Assistance in Negotiation with the Selected Bidders**

The Consultants shall assist GOV during the negotiation process. Closure of a contractual agreement(s) with the successful Bidder(s) would signify the completion of the Phase 2 implementation activities.

**D. PROJECT DELIVERABLES**

Upon completion of the individual tasks specified in the terms of reference, the Consultants shall be able to produce the reports/activity outputs as presented in Annex A.

**E. IMPLEMENTATION ARRANGEMENTS**

GOV will assign counterpart Working Group to work with the Consultants and provide the Consultants with adequate office accommodation in [COUNTRY], with basic office furniture and access to telephone and fax services. The Phase One of the project will have duration of ten months. The duration of Phase Two activities will be determined after the completion of Phase One .

**F. CONSULTING SERVICE REQUIREMENTS**

The Consultants shall field a team with expertise in the technical and financial valuation and privatization of power utilities and legal and regulatory works of electricity generation and distribution companies. The Consultants are encouraged to engage a local legal firm as part of the team.

For Phase One activities, about [ ] person-months of international consulting services are required. In Phase Two, about [ ] persons-months of advisory services will be required. It is expected that a major part of the work would be conducted in [COUNTRY]. The Consultants should indicate in their proposal the proposed total level of effort broken down according to phases, tasks and location (Inside and Outside [COUNTRY]).

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*Annex A to Section 5*

**Expected Project Deliverables**

ACTIVITIES / TASKS	OUTPUTS
<b>PHASE I : PRIVATIZATION STRATEGY OPTIONS ANALYSIS AND RESTRUCTURING</b>	
Inception Report	An Inception Report outlining the final agreed Work-Plan, Milestones and Deliverables.
Monthly Progress Reports	Reports outlining the work performed for the different tasks during each month.
Phase I Draft Report	Report covering the findings of the study of different tasks and recommendations.
Phase I Final Report	Comprehensive Report covering the work done in Phase I taking into consideration the comments of GOV on the Draft Report.

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ACTIVITIES / TASKS	OUTPUTS
<b>PHASE 2 : IMPLEMENATATION OF PRIVATIZATION PROGRAM</b>	
Task 1 : Preparation of Documents.	<input type="checkbox"/> Prequalification Document; <input type="checkbox"/> Information Memorandum; <input type="checkbox"/> Bidding Document; <input type="checkbox"/> Transaction Agreement(s) and related Documents; <input type="checkbox"/> Land Lease Agreement; <input type="checkbox"/> Preparation of Due Diligence list;
Task 2 : Marketing and Road Shows	<input type="checkbox"/> Advertisement of Privatization Program; <input type="checkbox"/> Press Releases; <input type="checkbox"/> Contacting all potential Bidders; <input type="checkbox"/> Presentations in Europe and North America, if Necessary, <input type="checkbox"/> Correspondence with the Potential Bidders;
Task 3 : Prequalification of Bidders.	<input type="checkbox"/> Prequalification Document Preparation; <input type="checkbox"/> Advertisements and Assistance in the Selection of Bidders;
Task 4 : Data Room Preparation / Due Diligence	Computerize Catalog of all Documents in the Data Room.
Task 5 : Proposal Evaluation.	An Independent Proposal Evaluation Report with Recommendations for the two Highest Bidders for Negotiation.
Task 6 : Assistance in negotiation with the Selected Bidders.	Advise during the Negotiation Process.
Closing Report.	A Project Closing Report and Final Transaction Documents.