

Terms of Reference for an International Legal Consultant
[and
a Local Legal Adviser],
among other things, to review draft legislation governing
PRIVATIZATION

1. Background

The Government of [COUNTRY] (the “Government”), [with support from the donor community (World Bank and []),] is currently undertaking a review of a number of key pieces of legislation relating to commerce, procurement and privatization and is seeking to promote privatization of public sector services/ companies where this is appropriate and will help the country.]

This strategy requires the review by the Government of its privatization law of [date] (the “Law”) to ensure that it is consistent with promoting private sector investment in [COUNTRY].

Based on the above, [the World Bank] is ready to assist the Government in its efforts to review the Law. And, as such, with financing provided by [], the World Bank now seeks to contract the services of an international law firm (hereinafter termed the “Consultant”) which shall:

- (a) designate an expert member of the firm (hereinafter termed the “Expert”) as approved by the World Bank in order to lead all aspects of the assignment as hereinafter defined (the “Assignment”); [and
- (b) in turn, and as approved in advance by the World Bank, itself retain the services of one [COUNTRY] legal consultant (the “Adviser”)] in order that the Consultant [and the Adviser] may [together] carry out the Assignment.

2. The Assignment and its Objectives

The Assignment has the following components:

- (a) a diagnostic review of current legal and regulatory rules and procedures relevant for privatization in [COUNTRY] as well as the role of the key institutions involved, including but not limited to the Law, relevant procurement laws, competition laws, company laws, foreign investment laws;

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- (b) a diagnostic review of the draft Privatization Law dated [] and suggested amendments thereto;
- (c) the formulation of recommendations regarding the institutional framework and of the rules and procedures to process privatizations of whatever kind;
- (c) [the formulation of amendments to any other relevant laws;] and
- (d) [one] workshop of stakeholder consultations in [COUNTRY].

The objective of the Assignment is to support the Government's efforts in establishing a sound framework for the development of Privatizations, leading to increased and sustainable private sector investment and hence improved service provision in the country.

In the short term, the Assignment will enable the Government to consider the potential means to alleviate the weaknesses in the current rules and procedures regarding privatization. In this respect, it will be essential to clarify the roles and responsibilities of different Government authorities as well as the procedures that must be followed regarding the preparation and implementation of transactions so as to enhance the transparency and sustainability of privatizations.

In the medium- to long-term, the Assignment is expected to enhance private sector investment and expand access to basic services in [COUNTRY].

3. Detailed Scope of Work and Deliverables

In carrying out the Assignment, the Consultant through its Expert, together with the Adviser, will be required to perform the following tasks: -

- a) review the current legal and regulatory rules and procedures relating to privatization in [COUNTRY] (hereinafter collectively referred to as the "Relevant Laws"), including the Privatization law, procurement laws, competition laws and all other relevant laws, regulations and procedures so as to ascertain whether and to what extent they: -
 - permit private sector investment in public owned assets/ services in [COUNTRY];
 - are consistent with international practice regarding private sector investment in public assets/ services, including procurement procedures and rules;

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- allow for the protection of private sector investors, considering issues such as, but not limited to, laws relating to: (a) title to land, (b) restrictions on foreign exchange, (c) limitations on taking secured interests in property of whatever nature, (d) limitations, if any, on granting step-in rights to creditors in the event of breaches of financing agreements, and (e) labor laws; and
- prohibit any Minister, the Council of Ministers or any other public authority of [COUNTRY] entering into a contract to sell assets or share in a privatized entity of any nature on behalf of [COUNTRY] without a prior competitive bidding process that leads to the selection of the private sector party to the contract on a wholly transparent basis.

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- b) Draw up recommendations for: (i) the appropriate institutional framework; (ii) amendments to the Relevant Laws; and (iii) a review of Draft law and amendments thereto, and provide these recommendations, with a brief report, to the Task Manager for his reactions.

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- c) Provide the recommendations and the reactions of the Task Manager under (b) to Government Ministers of [COUNTRY] and others and agree on any changes as a result.

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- d) Prepare draft legislation based on the recommendations, as agreed under (c), and provide the draft to the Task Manager and to the Government of [COUNTRY], [specify ministries] for review and comment.

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- e) Give a personal presentation of the draft legislation to Ministers of the Government of [COUNTRY] and any other interested individuals who shall be invited to provide inputs on this draft.

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TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- f) Revise the draft legislation based upon the generally accepted inputs received under (d) and (e).

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

- g) Prepare a report to be provided to the Task Manager and to the Government of [COUNTRY] regarding all recommendations, as agreed, as well as the final version of the draft legislation.

TIME ESTIMATED FOR THE EXPERT AND THE ADVISER: [] Days

4. Qualifications

In order for the Consultant to be qualified for the Assignment, its Expert must be:

- a) a lawyer qualified to practice in at least one jurisdiction and with at least [10] years post-qualification experience;
- b) fluent in [LANGUAGE] and English; and
- c) experienced in advising on privatizations and privatization legislation.

In addition, the Expert will ideally be familiar with the World Bank and its systems.

The Adviser must be:

- a) a lawyer qualified to practice in [COUNTRY] and with at least [10] years post-qualification experience; and
- b) fluent in [LANGUAGE] and English.

In addition, the Adviser will ideally be:

- experienced in advising on privatizations and privatization laws;
- experienced in advising on, reviewing and/or drafting [COUNTRY] legislation; and
- familiar with the World Bank and its systems.

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With respect to the existing legislative framework and access to Government Ministers and others, the Consultant shall be at liberty to call upon [].

5. Supervision

The Assignment will be task managed by [] in the [] practice group of the World Bank (the “Task Manager”). The Expert will be required to report to, and coordinate with, the Task Manager throughout the Assignment.

6. Hiring of Adviser

The Consultant shall provide the Task Manager with the name and CV of its Expert as well as its chosen candidate for the post of Adviser and, in consultation with the Task Manager and with his prior approval, the Consultant shall retain the services of the Adviser.

7. Time-frame

Although the Assignment period will inevitably be a function of the degree and speed of Government cooperation, it is anticipated that the Assignment will be completed within a total of [] weeks from the date of the signing of the consultancy contract between the World Bank and the Consultant. The times allotted to the Expert and the Adviser under each task under paragraph 3 are estimates only.

8. Payment

The Assignment will be performed for the lump sum of [] (US[]) in fees, with payments being made by the World Bank to the Consultant as follows:

- [] on commencement of the Assignment;
- [] on the completion by the Consultant of tasks set out in paras 3(a) to 3(c) inclusive in form and substance satisfactory to the World Bank;
- [] on the completion by the Consultant of tasks set out in paras 3(d) and 3(e) in form and substance satisfactory to the World Bank; and
- [] on the completion by the Consultant of tasks set out in paras 3(f) and 3(g) in form and substance satisfactory to the World Bank.

From the fees indicated above, the Consultant shall be solely responsible for making fee payments to the Adviser as agreed between the Consultant and the Adviser for the services rendered by the Adviser in connection with the Assignment.

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PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS.
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FOR SPECIFIC LEGAL ADVICE FOR A PROJECT.

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In compliance with 3 (e), the Expert will be obliged to make [one] trip to [COUNTRY] for not more than [5] working days so as to meet with Government Ministers, the Task Manager and others. This trip will be funded as a separate item. In this respect, the Consultant will be reimbursed for the reasonable cost of his or her:

- travel by air in Economy Class (unless Business Class is available) from the Consultant's home city to [] and return;
- lodging in [] (and elsewhere as is necessary for any compulsory stop-over en route whether to or from []), provided such lodging is in accommodation costing no more per night than that at which World Bank staff normally stay;
- meals while undertaking this trip, provided that original receipts are submitted to the World Bank in respect of each of these; and
- transport by taxi to and from any relevant airport and within cities, provided that original receipts are submitted to the World Bank in respect of each fare claimed for reimbursement.