

SUPPORT TO OFFICE OF UTILITIES REGULATION (OUR) GOVERNANCE FRAMEWORK – PHASES II AND III

JA-T1138

CERTIFICATION

I hereby certify that this operation was approved for financing under **Ordinary Capital Strategic Development Program for Infrastructure (INF)** through a communication dated July 31, 2017 and signed by Felipe Caicedo (ORP/GCM). Also, I certify that resources from said fund are available for up to **US\$200,000** to finance the activities described and budgeted in this document. La reserva de recursos representada por esta certificación es válida por un periodo de cuatro (4) meses calendario contados a partir de la fecha de elegibilidad del proyecto para financiamiento. If the project is not approved by the IDB within that period, the reserve of resources will be cancelled, except in the case a new certification is granted. The commitment and disbursement of these resources shall be made only by the Bank in US dollars. The same currency shall be used to stipulate the remuneration and payments to consultants, except in the case of local consultants working in their own borrowing member country who shall have their remuneration defined and paid in the currency of such country. No resources of the Fund shall be made available to cover amounts greater than the amount certified herein above for the implementation of this operation. Amounts greater than the certified amount may arise from commitments on contracts denominated in a currency other than the Fund currency, resulting in currency exchange rate differences, represent a risk that will not be absorbed by the Fund.

CERTIFIED BY:	<u>(original signed)</u>	<u>11/16/17</u>
	Sonia M. Rivera	Date
	Division Chief	
	Grants and Co-Financing Management Unit	
	ORP/GCM	

APPROVED BY:	<u>(original signed)</u>	<u>11/17/17</u>
	Sergio Campos	Date
	Division Chief	
	Water and Sanitation Division	
	INE/WSA	

**TC DOCUMENT**  
**Support to Office of Utilities Regulation (OUR) Governance Framework –**  
**Phases II and III**  
**JA-T1138**

**I. Basic project data**

▪ Country/Region:	Jamaica/CCB
▪ TC Name:	Support to Office of Utilities Regulation (OUR) Governance Framework – Phases II and III
▪ TC Number:	JA-T1138
▪ Team Leader/Members:	Evan Cayetano (WSA/CTT) Team Leader; David Wilk (INE/WSA) Alternate Team Leader; Malaika Masson (ENE/CJA); Jaiwattie Angunu (CMF/CJA); Margie-Lys Ramirez (LEG/SGO); Irene Cartin (INE/WSA) and Naveen Jainauth and Rene Herrera (VPC/FMP)
▪ Indicate if: Operational Support, Client Support, or Research & Dissemination.	Client Support
▪ Reference to Request: (ezShare #)	EZSHARE-863508593-5
▪ Date of TC Abstract:	June 30, 2017
▪ Beneficiary:	Jamaica via The Office of Utilities Regulation (OUR) of Jamaica
▪ Executing Agency and contact name:	Office of Utilities Regulation (OUR) Mr. Maurice Charvis Email: <a href="mailto:maurice.charvis@our.org.jm">maurice.charvis@our.org.jm</a>
▪ IDB Funding Requested:	OC-SDP for Infrastructure (INF) US\$200.000
▪ Local counterpart funding, if any:	-0-
▪ Disbursement period:	24 months
▪ Execution period:	18 months
▪ Required start date:	January 2018
▪ Types of consultants (firm or individual consultants):	Firm
▪ Prepared by Unit:	INE/WSA
▪ Unit of Disbursement Responsibility:	CCB/CJA
▪ Included in Country Strategy (y/n);	NO
▪ TC included in CPD (y/n):	YES
▪ UIS 2010-2020:	Social inclusion and equality; productivity and innovation; and institutional strengthening.

**II. Objective and Justification**

- 2.1 The objective of this Technical Cooperation (TC) is to provide for the organizational governance framework of the Office of Utilities Regulation (OUR) its decision-making protocols between the Office and the OUR executive management with respect of

regulatory decisions affecting energy, water and the telecommunications sectors, determine the gaps and inconsistencies in the legal framework governing the sectors and the development of the optimal structure and institutional capacity for the achievement of its mandate. The TC is aimed at continuing the IDB support to the OUR with strengthening its institutional capacity to carry out its prescribed functions and improving the quality and sustainability of its governance framework. This will be carried out in two stages, hereafter referred to as Stages II and III, following on from Stage I which delivered an organizational governance framework for the OUR and made recommendations for decision-making protocols between the Office and the OUR executive management regarding energy.

- 2.2 The main focus of the Stage I support was from the perspective of the Energy Sector and the main deliverables were the Governance Charter and Code as well as the Decision-Making Manual, which were delivered with this optic. The Governance manual was formally adopted on August 8<sup>th</sup>, 2016 and implemented via IDB TC RG-T2480 (ATN/OC-14948-RG). The Stage II phase will perform a comprehensive review of the policy, legal and regulatory framework governing all the sectors regulated by the OUR and make recommendations for their improvement to allow the OUR to function as an effective regulator. Stage III will review the scope, structure and functions of the OUR, taking into consideration the requirements of the policy and legislative framework, examine the capacity of the OUR to perform its obligations, and define recommendations for strengthening the OUR, where necessary.
- 2.3 The OUR is a body corporate established under the Office of Utility Regulation (Amended) Act ("OUR Act")<sup>1</sup> that contributes to Jamaica's national development by creating an environment for the efficient delivery of utility services to the customers while ensuring that service providers have the opportunity to make a reasonable return on investment. The Office consists of seven Members including the Director General who is an ex-officio member, all appointed by the Governor-General, based on the recommendation of the Prime Minister. The Office employs staff to assist it in fulfilling its statutory mandate. The Office is accountable to Parliament through the 'responsible minister' (for administrative responsibility), but also has specific obligations to sector ministers as defined in statutes. The Office's statutory duties are adjudicatory, advisory and regulatory in nature. The main functions of the OUR, as stated in the OUR Act, are to: regulate the provision of prescribed utility services by licensees of specialized organizations; receive and process applications for license to provide a prescribed utility service and make recommendations to the Minister in relation to the application; give directions to any licensee to ensure the needs of the consumers of services are met, and the prescribed utility service operate efficiently and healthily, among others. In addition, the members of the Office are required to set the strategic priorities of the OUR in its Business Plan.

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<sup>1</sup> The Office of Utilities Regulation (Amendment) Act, 2015 – No. 27, Effective November 17, 2015.

- 2.4 The objectives of the OUR include to: (i) ensure that consumers of utility services enjoy an acceptable quality of service at reasonable cost; (ii) establish and maintain transparent, consistent and objective rules for the regulation of utility service providers; (iii) promote the long term, efficient provision of utility services for national development consistent with government policy; (iv) provide an avenue of appeal for consumers in their relationship with the utility service providers; (v) work with other related agencies in the promotion of a sustainable environment; and (vi) act independently and impartially.
- 2.5 The situation/problem is that the OUR Act, amended in 2015 and the Electricity Act 2015, have among other things defined a new structure for the OUR in respect of the composition of the Office; mandated new methodologies and approaches to the conduct and determination of rates which changed the scope of work and responsibilities. The amended Act outlines an oversight structure, heralding a new direction for the OUR and pointing to both external and internal governance changes which will impact on the role of the regulator and, in turn, the coordination and arrangements among key stakeholders associated with energy, water supply, sewerage and telecommunications in Jamaica. Roles and responsibilities for key energy stakeholders have also been redefined by the new laws and amendments. The overall supervision or coordination among relevant institutions attendants on these changes are yet to be fully defined. The issues, specific to the energy sector, were directly addressed by the Stage I Study under the ongoing effort mentioned above. The OUR is, however, a multi-sector regulator and so it is necessary to ensure that there is symmetry and consistency across the regulated sectors. In this regard, the water and sanitation, and information and communication technology (ICT) sectors, having not being included in Stage I, are now subjected, along with energy, reviewed against the new legislative stipulations and provide for the organizational governance framework of the OUR and its decision-making protocols between the Office and the OUR executive management in respect of regulatory decisions affecting the totality of these sectors.
- 2.6 This TC is aligned with the IDBG Country Strategy with Jamaica 2016 – 2021 (GN—2868) with respect to improved public sector management, specifically strengthening the financial management system of public enterprises, and coincides with Vision 2030 Jamaica (National Development Plan of Jamaica) which outlines the Government of Jamaica's long-term plan for strategic goals of national growth and development. The TC contributes to the Corporate Results Framework 2016-2019 (GN-2727-6) and is aligned with the Update to the Institutional Strategy 2010-2020 (GN-2788-5) (UIS) by addressing challenges of social inclusion and equality as well as productivity and innovation in Jamaica. These include the strengthening of the capacity of the state, and establishing smart institutional frameworks, particularly transparent interactions with government as the TC will provide for improved capacity of the OUR and transparent determination of tariffs by the OUR. The TC is aligned with the IDB Infrastructure Strategy (GN-2710-5) as it provides for improvements in infrastructure

governance; i.e. governance for decision-making on infrastructure service management, as well as the legal and regulatory framework for their regulation and supervision as the main factors determining their performance, quality, and sustainability. The TC is aligned with the Ordinary Capital Strategic Development Programs (GN-2819-1) (OC-SPD) addressing unique development contexts of small and vulnerable countries and is in alignment with the UIS mentioned above. The TC is also aligned with the Water and Sanitation Sector Framework (GN-2781-3) with respect to strengthening governance of the water sector in Jamaica and integrated management of urban utilities.

### **III. Description of activities and outputs**

- 3.1 In order to achieve its objective, the TC will finance consulting services from OC-SPD to review the policy, legal and regulatory framework within which the OUR operates and reviews the scope, structure and functions of the OUR and its institutional capacity. Accordingly, the TC has two components as follows:
- 3.2 **Component 1 (US\$100,000) - Review the policy, legal and regulatory framework.** Under this component, the selected consultant will: (i) review existing policies and laws, to identify any inconsistencies with related policies and overarching national development vision of the GOJ; (ii) assess the need for any necessary legislative initiatives (tertiary or secondary) required to implement the OUR's statutory mandate (statute, rules, regulations, procedures, etc.); (iii) examine the extent to which it is possible to harmonize regulatory policy and approaches across the regulated sectors to achieve consistency and congruency in sector approach, except in so as constrained by sector peculiarities; (iv) make recommendations to address any deficiencies after due consideration of alternative solutions; and (v) prepare drafting instructions for agreed legislation or legislative changes (tertiary or secondary). The main output will be drafting instructions for agreed legislation or legislative changes. Based on this output, it is expected that the Government of Jamaica (GoJ) will enact recommended legislation.
- 3.3 **Component 2 (US\$70,000) - Review Scope of Functions and Institutional Capacity of OUR.** (i) Review the existing policies and legislations and make recommendations to establish the scope, authority, functions, powers and role of the OUR vis-a-vis other stakeholders in accordance with best practices; (ii) review the internal governance and operations with a view of determining the optimal levels of delegation and devolution of authority and function throughout the organization; (iii) review the internal processes and procedures to determine adequacy and effectiveness and recommend modifications to ensure that the desired outputs are achieved in a timely and efficient manner; and (iv) establish the optimal support systems, organizational structure, skills and staffing requirements for the OUR to effectively perform its functions. The main output will be recommendations for the

optimal support systems, organizational structure, skills and staffing requirements for the OUR to effectively perform its functions.

- 3.4 The total cost and the amount that would be made available by the IDB for the proposed TC is US\$200,000 financed by the OC-SDP for Infrastructure (INF).

#### Indicative Budget (US\$)

Activity/Component	Description	IDB/Fund Funding (US\$)	
Review the policy, legal and regulatory framework	Review the policy, legal and regulatory framework governing the Energy, Water & Sewerage and ICT Sectors and make recommendations to address deficiencies	100,000	
Review Scope of Functions and Institutional Structure and Capacity of OUR	Review the existing policies and legislations and make recommendations to establish the scope, authority, functions, powers, role and structure of the OUR	70,000	
Other costs	Contingencies, financial audit, and evaluation	30,000	
<b>Total</b>		<b>200,000</b>	

[Detailed budget](#)

#### IV. Executing agency and execution structure

- 4.1 The OUR, as mentioned before, is the entity charged with regulation of utilities operating in the electricity, water & sewerage and ICT sectors. In delivering its mandate, the OUR is required to operate in a manner which is characterized by fairness, timeliness, efficiency, transparency and independence. It is primarily governed by the OUR Act, which is the umbrella legislation that establishes the organization and sets out its functions and responsibilities.
- 4.2 The OUR will be the Executing Agency for the TC. The TC will be implemented by the OUR Project Executing Unit, under the leadership of the Program Manager who reports to the OUR Director General. The OUR will be responsible for the contracting of the required consulting services in accordance with Policies for the Selection and Contracting of Consultants Financed by the IDB (GN-2350-9)
- 4.3 **Monitoring arrangements.** The TC execution will be supervised by the assigned INE/WSA sector specialist with the support of the IDB Jamaica Country Office. The OUR will submit a project execution plan (PEP) for the execution the TC which the IDB will use to supervise the execution and monitor progress. The submission of the PEP will be a condition precedent to first disbursement. As part of its execution reporting requirements, the OUR Project Team will submit to the IDB: (i) semi-annual progress reports due August 2018 and March 2019 respectively, in accordance with deliverables of the consulting services, and (ii) a final evaluation report, within six (6)

months after the completion of the last activity of the Project, which shall include the final reports of the consultancies and their recommendations.

- 4.4 **Financial audit.** The OUR Project Team will be responsible for keeping updating accounting records. Financial statements, audited by a firm of independent public accountants acceptable to the Bank, will be submitted within 90 days of the last disbursement.

## V. **Project Risks and issues**

- 5.1 The main risk of this operation would be further changes to the legal and regulatory framework for the utilities under the OUR's purview. The 2015 amendment in the OUR Act took place under the previous Administration. The current Administration could introduce further changes during the process of the legal and regulatory review. Early and regular engagement with the Ministries responsible for the sectors will be required in order to ensure that the recommendations are aligned with the current thinking of the GoJ.
- 5.2 Other risks relate to the lengthy and complex procurement process to which government entities are subjected and poor contract management between OUR and consultants. Close monitoring will be required in order to mitigate any delays associated with unfamiliarity of the Executing Agency with the IDB's procurement policies and their alignment with those of the GOJ.

## VI. **Exceptions to Bank Policy**

- 6.1 No exceptions to Bank policy were identified

## VII. **Environmental and Social Classification**

- 7.1 This TC will finance consultancy products, studies and plans and, as such, does not require the implementation of specific environmental or social safeguard policies. According to the IDB "Safeguards Policy Filter Report" and the Saveguard and Environmental Policies (OP-703), this operation is classified as Category "C" ([environmental filters](#)).

### **Annexes:**

Annex I	<a href="#">Letter of request</a>
Annex II	<a href="#">Results Matrix</a>
Annex III	<a href="#">Procurement Plan</a>
Annex IV	<a href="#">Terms of reference</a>