

JAMAICA

SUPPORT TO OFFICE OF UTILITIES REGULATION (OUR) GOVERNANCE FRAMEWORK

TERMS OF REFERENCE

1 Background

1.1 About Jamaica

Jamaica is an upper middle income country and the third largest island in the Caribbean region with an area of 11,000 km² and a population of 2.83 million, the largest in the English Speaking Caribbean. In 2013, its Gross National Income (GNI) was US\$15.44 billion or approximately US\$5,600 per capita.

For decades, Jamaica has struggled with low growth, high public debt and many external shocks that further weakened the economy. Over the last 30 years, real per capita GDP increased at an average of just one percent per year, making Jamaica one of the slowest growing developing countries in the world. The government steadily accumulated debt, which reached 145 percent of GDP in 2012.

The Jamaican economy is heavily dependent on services, which accounts for more than 70% of GDP. The country continues to derive most of its foreign exchange from tourism, remittances, and bauxite/alumina. Remittances and tourism each account for 30% of GDP, while bauxite/alumina exports make up roughly 5% of GDP. The bauxite/alumina sector was most affected by the global downturn while the tourism industry and remittance flow remained resilient.

¹Jamaica's onerous public debt burden is largely the result of government bailouts to ailing sectors of the economy, most notably the financial sector. In early 2010, the Jamaican Government initiated the Jamaica Debt Exchange to retire high-priced domestic bonds and reduce annual debt servicing. Despite these efforts, debt continued to be a serious concern, forcing the government to negotiate and sign a new IMF agreement in May 2013 to gain access to approximately \$1 billion in additional funds. As a precursor, the government instigated a second National Debt Exchange in 2012. The IMF deal requires the government to reform its tax system, eliminate discretionary tax exemptions and waivers, and achieve an annual surplus of 7.5%, excluding debt payments, to reduce its debt below 100% of GDP by 2020.

¹ World Bank Overview

To stabilize the economy, reduce debt and unlock growth, the Government of Jamaica (GoJ) embarked on a comprehensive and ambitious program of reforms for which has garnered national and international support. As part of a comprehensive package, the World Bank and the Inter-American Development Bank (IDB) are each lending US\$510 million, and the International Monetary Fund (IMF) is lending US\$932 million through a four-year program under its Extended Fund Facility. In addition, the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) will continue to support private sector development.

1.2 Energy Sector

Energy use in the economic development of Jamaica has been mostly dependent on imported petroleum, with a substantial portion of energy consumption originating from oil products. This high level of energy imports exposes Jamaica to the impact of international oil price fluctuations and significantly weakens Jamaica's ability to make payments against its financial debts, while also placing additional pressure on other financial needs of the country.

A combination of old/inefficient generation plants, dependence on oil imports and high levels of system losses has resulted in electricity prices in Jamaica that are some of the highest observed in the Caribbean region.

With natural gas and additional renewable energy generation planned for the grid in the short-medium-term, one of the key energy challenges in Jamaica will be how to manage the influx to the grid. Addressing this challenge will require grid system upgrades to transport additional energy without sacrificing quality standards, improved interconnection requirements applicable to different generation technologies, and new mechanisms to increase overall operational efficiency.

Planning for these upgrades and minimizing costs to consumers is an important part of Jamaica's overall strategic goal for the energy sector. However, the planning, institutional and regulatory landscape for energy in Jamaica is in flux. Roles and responsibilities for key energy stakeholders have been re-defined by recent laws (and their amendments), without sufficient overall supervision or coordination among relevant institutions.

On 2015 August 27 a new Electricity Act was promulgated, replacing the 1890 Electric Lighting Act. The Act repeals previous legislations, with the purpose of consolidating and modernizing the laws relating to the generation, transmission, distribution, supply and use of electricity.

Currently the IDB is supporting the Ministry of Science, Energy and Technology (MSET) with the development of an Integrated Resource Plan (IRP) for Jamaica. The IDB proposes to support the capacity of MSET and key energy stakeholders (such as the OUR), to

undertake essential supervisory and planning functions in order to assess supply and demand-side energy options and services whilst minimizing energy costs for consumers. As an important complement to that work, the IDB is providing phased technical cooperation on institutional, regulatory and capacity support to improve administration and effectiveness of regulatory outcomes.

1.3 The Water Sector

The Water and Sewerage Sectors are governed by a Water Sector Policy which was developed at the turn of the century. An updated Water Sector Policy has been drafted with technical support from the IDB, and is currently under review by key stakeholders.

There is no overarching industry specific legislation governing the Water Sector. At the time of development of the initial policy document, efforts were initiated to prepare a Water and Sewerage Services Act. These efforts were suspended and there is need to review the prior efforts and develop and draft a new act, based on the updated policy, once this has been approved.

There is no clear responsibility assigned with respect to long term planning for the development of the water and sewerage sectors. The dominant service provider, the National Water Commission, which accounts for over 90% of potable water supply and is fully government owned, does limited planning based on its own objectives. There is no obligation for the NWC to satisfy requests for supply within its service areas.

Small water and sewerage service providers are generally associated with housing developments which could not obtain supply from the NWC. These service providers are generally contented to operate within their existing service areas, typically linked to specific housing developments.

1.4 The ICT Sector

ICT policy and legislation have not kept pace with developments in this fast moving sector. The latest ICT Policy was developed in 2011 and the current Telecommunications Act was promulgated in 2000.

Efforts are now underway to create a new ICT Act, with a proposal to create a single ICT Regulator for the spectrum management, voice, data and aspects of content.

1.5 The Office of Utilities Regulation (OUR)

The Office of Utilities Regulation (OUR) is the entity charged with regulation of utilities operating in the electricity, water, sewerage and ICT sectors. The OUR Act is the

umbrella legislation which establishes the organization and sets out its functions and responsibilities.

In addition to the provisions of the OUR Act, there are sector specific legislation and instruments which contain specific provisions regarding the functions of the OUR and its relationship with service providers. In delivering its mandate, the OUR is required to operate in a manner which is characterized by fairness, timeliness, efficiency, transparency and independence.

The OUR Act, as amended in 2015, has defines a new structure for the OUR and addressed the conditions under which rates should be determined, among other key regulatory issues. The amended Act also 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, sewerage and telecommunications in Jamaica.

1.6 IDB Support

The Inter-American Development (IDB) is providing technical support to the Government of Jamaica (GOJ), through the Office of Utilities Regulation (OUR), with the development of the regulatory framework for the regulated utility sectors, including the following:

- The Energy/Electricity
- The Water
- Sewerage
- Information and Communication Technology (ICT).

The technical support is being carried out in three stages:

- Stage I - Organizational Governance Framework of the OUR
- Stage II - Review Policy, Legal and Regulatory Framework within which the OUR Operates
- Stage III - Review Scope and Functions of the OUR and Its Institutional Capacity

Stage I has was completed 2016 August 04. It focused on the organizational governance framework of the Office, as well as decision-making protocols between the Office and the OUR executive management in respect of regulatory decisions affecting energy, water and the telecommunications sectors. Deliverables included a Contextual Report and a Governance Manual for the OUR, which was formally adopted on an interim basis by the Office on August 8th 2016.

Stage II will review the policy, legal and regulatory framework associated with the energy/electricity sector, the water/wastewater sector and the ICT sector in Jamaica,

with a view to recommending such changes as may be necessary to bring the framework in line with best practices.

Stage III will assess and recommend an appropriate “scope of functions” for the OUR’s activities, based on the Government’s policy, legal and regulatory framework for the sectors regulated by the OUR. It will review OUR’s activities as they relate in particular to energy, water and telecommunications, taking into consideration existing and planned government policy and legislation, including recommendations based on Stage II activities. Stage III will also examine the OUR’s current institutional capacity and make recommendations based upon identified gaps in institutional structure, human and material resources and support systems. This stage would also involve revisiting Stage I deliverables in light of Stage III recommendations and making any further recommendations necessary.

Ultimately, the aim is to bring OUR in line with best practices for independent regulators.

This consultancy is limited to Stage II and Stage III, taking into consideration work already done in Stage I.

2 Objective of the Consultancy

The main objective of the Stage I was to deliver an organizational governance framework for the OUR and related protocols to support decision-making protocols between the Office and the OUR executive management. This phase was completed with the preparation of a Governance Manual for the organization. The Stage II and Stage III Consultancy will review and build on the work done at Stage I.

The objective for Stage II will be performance of a comprehensive review of the policy, legal and regulatory framework governing the sectors regulated by the OUR and to make recommendations for their improvement to allow the OUR to function as an effective regulator.

The objective for Stage III will be to review the scope and functions of the OUR, taking into consideration the requirements of the policy and legislative framework, as well as to examine the capacity of the OUR to perform its obligations, and to make recommendations for strengthening the OUR, where necessary.

3 Main Activities

The Contractor will perform all tasks within the scope of work with expected professional skills and based on its research, experience, knowledge and analysis capacities. The Contractor will perform the work in an efficient manner and will avoid unnecessary

expenses by assigning appropriate personnel, utilizing appropriate means of communication, optimizing travel schedules (if necessary) and through other appropriate means without compromising the thoroughness or quality of the work.

In order to achieve the consultancy objective, the Contracting firm will develop at least the following activities:

Stage II: Review Policy, Legal and Regulatory Framework

- Review existing policies and laws, including planned amendments, to identify any inconsistencies with related policies and overarching national development vision and programmes of the GoJ;
- Review recommendations made by the OUR and other stakeholders;
- Where necessary, make recommendations to address any deficiencies, after due consideration of alternative solutions;
- Carry out the necessary consultations with relevant stakeholders and fine tune recommendations based on these;
- Prepare drafting instructions for agreed legislation or legislative changes.

Stage III: Review Scope of Functions and Institutional Capacity of OUR

- 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;
- Identify the key outputs and indicators that need to be produced and achieved by the OUR to meet its obligations under applicable policies and legislations for the regulated sectors;
- Review the internal governance and operations of the OUR with a view of determining the optimal levels of delegation and devolution of functions, powers and authority throughout the organisation
- Review the internal processes and procedures of the OUR to determine adequacy and effectiveness and recommend modifications or additional procedures to ensure that the OUR perform to achieve the desired outputs in a timely and efficient manner;
- Establish the optimal support systems, organizational structure, skills and staffing requirements for the OUR to effectively perform its functions.

Taking into account prior work, the Charter and Manual should at least define, for all regulated sectors:

I. Governance Policy

- Define the role, functions and responsibilities of the Office, Chairperson and Executive management, including a Code of Conduct.

II. Structure

- Office composition, addressing such aspects as relevant areas of skills and experience, independence and selection criteria. Charters for Office Sub-Committees, for example the Audit and/or Risk Committee.

III. Office Meetings

- The Meetings Calendar and Agenda including the format. For each agenda item the responsible Office member and allocated timing for presentation and meeting debate.
- Reporting process for Office meeting and reporting processes for Sub-Committees. Office meeting issues including deadlocks. Delegations of functions, powers and authority among the Office, Committees of the Office and Executive Management
- Conflict of interest, and Register of Conflicts of Interest. Potential conflicts of interest among the Office, Committee, Executive Management, the Generation Procurement Entity and the Ministry; and how conflicts of interest should be managed and reported.

IV. Office Performance and Development

- Office induction processes, evaluation processes (both Office and individual member), ongoing professional development.

V. Strategic and Business Planning Processes

- Sourcing risk intelligence; the criteria and requirements for a risk management plan complete with objectives, strategies, actions, milestones and performance indicators.
- Technical areas (and the underlying principles for this choice) for which the Office retains strategic decision-making control, taking into consideration issues that could have material impact on the OUR, from either a financial or a public perspective (e.g. how cost reductions are passed through to final consumers).
- The contribution of external industry/technical experts, and the process to manage their inputs
- The level of detail and evidence the Office requires for certain critical/strategic areas, whether decision-making should be phased etc.

- The follow-up required with management to ensure that decisions of the Office are effectively implemented and that the many secondary decisions stemming from the primary decisions are dealt with as well.
- Consultation protocols and communication protocols with stakeholders, including Ministers and other central government agencies.

4 Deliverables/Reports

1. **Draft Report for Stage II activities**
2. **Final Report for Stage II activities**
3. **Draft Report for Stage III Activities**
4. **Final Report for Stage III Activities**
5. **Contextual Report.** Must reference international best-practice and should include:
 - (i) Review of policy and legal framework. Summary of consultations with stakeholders
 - (ii) Review of the functions and institutional capacity of the OUR. Review of written and unwritten internal processes and procedures
6. **Amended operations Manual dealing with internal processes and procedures**
7. **Recommended structure, staffing and level of responsibilities to optimally carry out functions**
8. **Amendments to Governance Charter & Code** dealing with general corporate governance provisions **and**
9. **Amendments to Decision-Making Manual** that will define the protocols to support energy sector decision-making between the Office and the OUR executive management.

5 Timeline

Work plan. Presented to the IDB and Office one (1) week after the signature of the contract. The work plan should include in detail the methodology, schedule of activities and timeframe for the presentation of all deliverables.

Drafts of the Governance Charter and Decision-Making Manual, Operations Manual and Structure and staffing. Microsoft Word draft reports should be prepared in English with a summary of the draft reports to be presented to the IDB Team and Office who will collect comments and discuss the main findings of the Draft Reports. The Draft Reports must be sent to IDB and Office seven (7) days in advance of the meeting in which the Draft reports would be reviewed.

Final Contextual Report and Manuals and Structure and staffing. These must be presented within 20 weeks of appointment, to the IDB and Office Team, and no later than _____.

6 Qualifications

6.1. Academic Degree/ Level & Years of Professional Work Experience: Proposals can be made from consulting firms, partnerships or individuals with persons assigned to the project having the following skills. Master's Degree or higher in Regulation, Energy Policy or Electricity Economics, with a University Bachelor's degree in Electrical, Mechanical Engineering or Energy Regulation/Economics. Professional legal qualification with experience in local or similar jurisdictions. In-depth knowledge and experience of utility markets, regulatory issues, and practical experience is required. Experience and knowledge of comparative governance arrangements within regulatory bodies is highly desired. Knowledge and experience working with IDB's procedures and stakeholders is desired.

Areas of Expertise: Regulation, utility market structure, governance arrangements within utilities regulators and legal.

Skills: Excellent drafting ability and strong communication skills, both written and oral; proven ability to communicate complex concepts and prepare reports that are clear, concise and meaningful.

Languages: Fluency in English is required.

7 Characteristics of the Contractual

Contractual category and modality: Consulting firm, partnership or individuals. Products and External Services Contractual, Lump Sum.

Duration: 60 work-days

Place of work: home-based, with at least one return trip to Kingston, Jamaica.

Coordination/Responsible person: Mr. Evan Cayetano Specialist (_____) (EVANC@iadb.org), is the team leader of this work and will be responsible for the day-to-day supervision of the consultancy.

8 Payment Schedule:

The payment schedule is the following:

- 20% at contract signature and approval of Work Plan.
- 15% upon presentation of acceptable Stage II Draft Report.
- 25% upon approval of Stage II Final Report
- 15% upon presentation of acceptable Stage III Draft Report
- 25% upon approval of Stage III Final Report.

Payment and Conditions of Employment: Remuneration will be determined in accordance with Bank regulations and criteria.

Consanguinity: Individuals with relatives working for the IDB within, and including the fourth degree of consanguinity and the second degree of affinity are not eligible for employment as staff or contractor. Candidates must be citizens of a member country of the Inter-American Development Bank.

Diversity: The IDB is committed to diversity and inclusion and to providing equal opportunities in employment. The IDB embraces diversity on the basis of gender, age, education, national origin, ethnic origin, race, disability, sexual orientation, religion and HIV/AIDs status. The IDB encourages women, Afro-descendants and persons of indigenous origins to apply.