**INTOSAI Small Group for reviewing of ISSAIs 5210, 5220, 5230 and 5240 on Audit of Privatization for any potential updates**

**7th INTOSAI Knowledge Sharing Steering Committee Meeting**

**Washington DC**

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Following the 66th INTOSAI Governing Board meeting held in Vienna in November 2014, the ASA of Egypt has been asked by SAI- India, being the Chair of KSC, to lead a small group to review the ISSAIs numbers 5210, 5220, 5230 and 5240 for any potential updates.

In February 9th ASA of Egypt has accepted the task and informed SAI of India.

The ASA sent e-mails to the member SAIs of the Working Group that prepared the ISSAIs 5200 series asking them for their proposals concerning potential updates.

The ASA received proposals for updates from four SAIs. Later on, the SAIs of Germany, Estonia, and United Kingdom have apologized for not being able to participate in this project. We appreciate participation of interested SAIs that even were not members of the Working Group.

**Working Group’s Progress**

**Overview of the Working Group’s Progress**

ASA of Egypt has incorporated all proposals received from the SAIs of Australia, Brazil, India, and Zambia, along with the updates from ASA of Egypt technical team to develop the revised ISSAIs. Most of these proposals were derived from the SAIs’ national experience as follows:

**ISSAI 5210 : Guidelines on Best Practice for the Audit of Privatizations.\*\***

This ISSAI was originally endorsed in 1998 and is to be reviewed at least every five years.

* **Introduction :**

In 2015, the guidelines content was reviewed and proposals were submitted as a result of joint efforts coordinated by the ASA of Egypt, in which SAIs of Australia, Brazil, India, and Zambia took part.

Albeit the progressing complexity of the privatization phenomena over the time, the guidelines published by the INTOSAI Professional Standards Committee in November 1998 proved to be as valid and sound nowadays as when they were released, requiring certain adjustments and amendments.

In commending the guidelines to INTOSAI, the INTOSAI Working Group on Auditing Privatization and Public-Private Partnerships were conscious of course that SAIs are operating in an environment which is constantly changing rapidly, both within countries, ranging from former command economies to mixed economies, and across regions. It follows that some at any rate of the detail of what is proposed must be subject to further development and refinement in the light of experience. This underlines the nature of these guidelines. As noted before, they are not laws or procedures set in stone which every SAI should apply in their entirety in studying every sale. They are a checklist, part of the process of encouraging and formulating a professional approach in a complex area of audit. We believe they offer the basis of valuable training for our staff.

* **SECTION #1 has been modified to include three guidelines (covering Audit objectives and skills required by the SAI to carry out privatization audits instead of two guidelines ( covering the skills required by the SAI to carry out privatization audits)**

***SECTION#1 /Guideline 1: Audit objective proposed guideline***

***issue***

The first step that must be taken by the SAI before it starts auditing the privatization is set up the audit goal and to determine what is the expected final audit product.

**Why this matters**

Any organized activity should begin with identifying the goal of this activity. The Audit process, as an organized activity, aims to reach a certain result and to achieve a specific goal. Audit should start with goals identification. The final product should assessed. Without specifying its target accurately, it is difficult to SAI to determine the direction and to identify activities to be carried out and the procedures to be followed to accomplish the task, and skills should be available in the working group to be formed to accomplish this goal.

**Guideline**

**The SAI must determine the objective of auditing the privatization process. That objective may be set as follows:**

**To Give reasonable assurance that the privatization process achieved its own objectives with full compliance with laws, regulations, and prescribed procedures in force, and it is to the best interest to the society ."**

**The report should also address extent to which the process have been carried out with regard to efficiency, effectiveness, economy and environmental impact factors.**

**Reasons for the guideline**

It must be clear from the very beginning that the objectives of the privatization process is completely different from the objectives of auditing the privatization.

Vendor responsibility is to identify and formulate the objectives of privatization process while the SAI's responsibility is to give assurance that there is written objective for the privatization and that objective has been expressed properly to reflect the public interests. In case of multiple objectives, SAI should ensure that the vendor has prioritized these goals, arranged them according to their importance, and give them weights so that it can be accurately measured.

Audit objectives are the SAI's responsibility. Audit objectives should be determined as soon as the SAI is informed about the task. Before commissioning the audit there should be an objective to clearly plan and conduct the course of the audit process, identify activities to be undertaken, the form of the final report, and the types of assertions that should be given. Deciding the expertise needed, choosing the working groups and determine the skills required to accomplish the task.

Giving assurance that the privatization process has achieved its objectives, with full compliance with applicable laws, regulations and procedures. Privatization process should be to the best interest of public interest. The audit objective should also address the efficiency, effectiveness and economy of the privatization process as well as to judge the environmental impact.

**SECTION#1 / Guideline #3 : *How to acquire the skills***

The SAI should obtain declaration from hired experts for non-disclosure of any classified information come to their knowledge during the performance of tasks assigned to them under this contractual relationship.

* **SECTION #2 has been modified to include eleven guidelines instead of ten guidelines**

**SECTION #2 /Guideline #4 (*Involvement of the SAI in the privatization* )**

The involvement of the SAI is essential in all different stages of the privatization process that includes the following:

(1) Before the sale:

- This is particularly important where the parties of the sale will be relying on financial information about the business audited by the SAI.

- The SAI may be required to review the procedures of restructuring of the business that must be done before the sale process.

- The SAI is required to review the valuation of the business before the sale.

(2) Throughout the sale:

- The SAI should review the procedures of ownership transfer from the public sector to the private sector and report for the vendor's general assembly before approving the sale regarding the sale fairness, competitiveness, and compliance with laws, regulations, and specified procedures.

(3) After the sale:

- The SAI should ensure that all parties properly and honestly have discharged their contractual responsibilities.

- The SAI should ensure the compliance with the timetable of privatization program.

- The SAI should evaluate the goal congruence and extent to which the vendor's objectives have been achieved.

**SECTION #2/ Guideline #6 (*Planning privatization audit* )**

The planning phase also include assigning responsibilities for audit team, preliminary and comprehensive survey of the facility to be privatized; and preparing an integrated program for examination task.

**SECTION #2 Guideline #7 (*Pre-sale restructuring of the business* )**

The SAI should consider goal congruence of the vendor's objectives and national objectives this includes economic, social, and environmental objectives

***SECTION#2 /Guideline 8 ( privatization alternatives ) propsed guideline***

**Issue**

What should the SAI seek regarding other alternatives for privatization that may be exist?

# Why this matters

Public resources should be used to achieve the highest benefits of the public. Sale is one mean of utilizing public resources. Other alternatives should be stated and studied compared with sale.

**Guideline**

**SAI should answer the question; Was privatization the best alternative for utilizing the resources allocated to the public entity from national perspective, or not?**

**To do so SAI should ensure that the vendor has studied all alternatives. SAI also is required to investigate whither all alternatives properly listed and studied compared with sale.**

**Reasons for the guideline**

It is known that the privatization is a mean and not a goal by itself. The goal is to reach the optimal allocation of scarce resources owned by the society or government and allocated to the vendor. Sale is one alternative to utilize these resources. Other alternatives should be considered to achieve the maximum benefit for the whole economy and enhance economic and social welfare from national perspective; therefore it is incumbent upon the SAI to verify that privatization achieves national goals in the best possible way and that there is no better alternatives to achieve the same goals combined. If it was found that the overall synthesizing effect of privatization could be achieved by a mean other than privatization (e.g., restructuring), a report must then be submitted by the SAI in this regard.

Privatization process may be completed according to law and without any violation. Moreover, the sale may be completed at the best prices and under fair competitive conditions, but in some cases privatization process of an industry with strategic nature and of importance to the community may result in elimination of that industry, in the event when the buyer with the a property right invested to him dismantles the facility and lays off experienced outstanding labor, leading to eliminating the industry and represents a loss to the community.

**SECTION #2 Guideline # 9 (*Sale objectives )***

In some cases a conflict may occur between the goals and if the State tried to achieve all of them, the situation could lead to failure of the process. If, for example, the State wants to improve the company's performance and upgrade its efficiency, it may need to sell a large proportion thereof to a a local or foreign strategic investor. If the State aims at the same time to expand the ownership base, it needs to distribute the company's shares to the largest possible number of buyers. Thus it is important to choose the methods of privatization to fit with the goals and do not cause any kind of conflict between the goals.

**SECTION #2 Guideline # 10 (*Timing of the sale)***

It is not unusual to find that one of the vendor’s sale objectives is to carry out the privatization as quickly as possible. On one hand, the SAI will wish to ascertain whether the vendor made key deadlines public, to ensure fairness between bidders. On the other hand, the economy may suffer during a certain period of time (the time which is desirable for sale) of an economic recession or slowdown, making sale then inappropriate. The SAI also needs to be alert that adherence to a demanding timetable is not at the expense of other sale objectives.

**SECTION #2 Guideline # 12 (*sale methods )***

The sale method should be consistent with the privatization objectives. The sale method depends on some factors:

* Privatization objectives.
* The size and the nature of the business and its financial position.
* The extent to which the financial market is developed and the legislative framework is matured.
* Investors and buyers features.
* Competition.

In some cases selecting more than one sale method may be appropriate based on the differences of these factors.

**Section #2 /Guideline # 13 (Vendor integrity in conducting the sale)**

The guideline is focused on the prevention of failures of probity in the sales process and the detection and analysis by SAIs.

An SAI would expect that an appropriate end to end compliance process for vendors includes breach identification and resolution procedures.

Guideline 11 could be amended or a new guideline issued focusing on how vendors identify and attempt to correct breaches in probity in transactions.

**Section #2 /Guideline # 14 (Residual management issues)**

Guideline 12 is focused on structure in place to manage ongoing obligations of the state .

our experience indicates that there are risks with the adequacies of the state’s ongoing monitoring of the obligations of the vendor.

The guidelines could be revised to include guidance on ensuring that ongoing management issues include organizations, policies and procedures being put in place to ensure compliance by the purchaser with the ongoing obligations provided in the sales agreement.

* **Section #3 /Guideline # 18 ( Information for potential bidders)**

Where the vendor seeks to rely on a particular condition of the sale, inconsistent or delayed communications can subject the vendor to a diminished capacity to enforce that provision.

The guideline could include recommendations for SAIs around the consistent and timely provision of information.

* **SECTION #4 Guideline #25 ( securing the best possible price)**

The SAI must ensure that the buy-out team did not take advantage of their position as insiders who utilized special information that was available to them solely.

* **Section #8 /Guideline # 40 (Appointing external contractors)**

The guideline is focused on a preference for open competition and how the vendor ensured value for money where less competition was required.

The guideline could be updated to reflect that in less competitive procurement process vendors may prioritize technical expertise and capacity to deliver over absolute value for money.

The guideline should help SAIs assess whether the trade- off between cot and technical skill I appropriate.

**ISSAI 5220 : Guidelines on Best Practice for\*\***

**the Audit of Public/ Private Finance and Concessions**

**SECTION #3 has been modified to include fourteen guidelines instead of thirteen guidelines**

**SECTION #3 Guideline #18 (Provision for Exit Strategy in the Contract) proposed guideline**

***Guideline***

The SAI should examine whether the contract for award of a concession provides adequate measures that the contracting body may take in the event of non-performance or stripping of assets by the concessionaire

**Reason for the guideline**

The contracting body, in most cases, the government represented by the respective ministry should be able to take action against the concessionaire who does not perform accordingly or strips the assets of the concessioned public company. For SAIs that have the mandate to review contractual terms before final award, the SAI should confirm that such a provision is provided for in the contract to protect the public asset.

**\*\*ISSAI 5230 : Guidelines on Best Practice for the Audit of Economic Regulation.**

* **Section #1 Guideline #2 (*Acquiring the skills)***

**Guideline:**

**Existing Paragraph:**

It may also be valuable for the SAI to seek secondments of members of its staff to regulatory bodies to obtain a better understanding of how economic regulation operates, and to acquire expertise which they can apply in subsequent performance examinations. The SAI may also wish to take staff on secondment from the regulatory bodies, so that they can gain a better understanding of the role of performance audit.

**Proposed Addition:**

In addition to secondments, the SAI may also wish to arrange training programmes for its staff to be conducted by economic regulators to benefit a larger number of SAI employees

* **Section #2 Guideline #3 (The regulatory framework)**

**Guideline:**

**Existing Paragraph**

In many countries, regulatory functions are carried out directly by government ministries. In others there may be subsidiary regulatory commissions answerable to government*.*

**Proposed Amendments**

In many countries, regulatory functions are carried out directly by government ministries. In others there may be subsidiary regulatory commissions answerable to *government through their respective ministries.*

* **Section #4 Guideline #16 (Linking price to quality)**

**Guideline** :

**Existing Paragraph**

The SAI should examine whether the regulator has sought to ensure that the price consumers are required to pay is matched by the quality of service provided.

**Proposed Amendments**

The SAI should examine whether the regulator has sought to ensure that the price consumers are required to pay is matched by the quality of services provided. In addition the SAI should also examine whether Laws/Acts guiding the regulator have sufficient provisions for penalties for players or suppliers of services who fail to match the price of services to the quality of services consumers receive.

**Reasons for the guideline**

**Existing Paragraphs**

Regulators need to monitor the quality of service provided by suppliers to consumers, to ensure that consumers get a level of service commensurate with price. This is especially important when regulators set suppliers’ prices for a period of years to give them an incentive to cut costs (guideline 15), because the regulator needs to ascertain that suppliers’ cost cutting is not at the expense of services to consumers. Establishing a link between prices and the quality of service provided is animportant way of providing an incentive to suppliers to provide a good service at the same time as they seek to cut unnecessary costs (guideline 17).And regulators can allow suppliers to charge extra for additional services. For example, in one country the water regulator allows water companies to insist that consumers with swimming pools pay for their water through a meter (as opposed to standard fixed charge) so that their bills reflect the large amount of water that such customers are likely to use [United Kingdom].The SAI also needs to check whether the regulator has required suppliers to consult consumers in deciding whether or not to withhold a service on cost grounds, and to examine the methods used to establish customers’ views and to seek to accommodate the range of preferences that consumers are likely to have.

**Proposed Addition to the existing paragraph**

In most Least Developed Countries certain industries are dominated by few large players thereby limiting the consumer’s choice. Thus the players may lax about the quality of service provided to consumers. And without stiff penalties, the economic regulatory activities would be in futility

* **SECTION #5 has been modified to include four guidelines instead of three guidelines**

**SECTION #5/Guideline 23 Reasonableness of Penalty Charges the proposed guideline**

**Guideline**

The SAI should examine whether the charges or penalties reflected in the economic regulator’s act or laws are reasonable and reflect the current economic situation

**Reason for the Guideline (Additional*)***

In most Least Developing Countries acts or laws governing economic regulators were written a long time ago and are hardly revised to show the current chargeable unit in relation to the current value of their currencies.

The SAI therefore needs to examine whether the chargeable units reflect their current economic value and whether such charges are likely to deter future inappropriate conduct by the players in an industry

**\*\*ISSAI 5240 : Guideline on Best Practice for the Audit of Risk in Public/Private Partnership (PPP)**

**Introduction : The key risks and their management (Part 1): Risks facing the State.**

**B: Negotiating an appropriate partnership .**

**The risk:**

The bidder may use or enter into a joint venture using goodwill of a reputable company to get the public private partnership agreement and later relinquish its interest in the PPP leaving the inexperienced partners.

**Managing the risk:**

The change in shareholding or Joint Venture must be approved by the government and an option of termination by either party should be provided for.

**C:Protecting the state's interests as a minority shareholder.**

**The risk:**

The state may not get the full benefit of the PPP due to matters of transfer pricing or undeclared dividends.

**Managing the risk:**

State inspectors/auditors should have access to all records and the State to have right to appoint independent auditors in case of a dispute.