

THE UNITED REPUBLIC OF TANZANIA



**PRESIDENTIAL PARASTATAL SECTOR
REFORM COMMISSION**

**Manual for Privatisation, Procedures
And Process Guidelines**

12th November 1999

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Final Outcome:

Transparency

Strict pre-established bidding procedures will ensure the transparency of each transaction.

- Reduced possibilities of process changes - Government establishes at an early stage the main policy parameters and requirements for a given transaction.
- Level playing field - all contractual obligations agreed upon prior to submission of final bid
- Press reports - bid opening held at a public forum with the presence of the media

Process Efficiency

The new procedural guidelines precisely define those points where high-level decisions and approvals are necessary.

PSRC Commissioners will approve the Preliminary Strategy that addresses debt allocation, labour policy, and transaction structure. On approval of the Final Strategy, all legal documents sent to investors become legally binding, ensuring that Government policy goals are contractual obligations.

After receipt of financial bids, the Line Minister will request Cabinet approval. The Government will ensure that Cabinet approval, or rejection, will not exceed 30 days. Upon final approval, Cabinet will authorise the PSRC to proceed with the signing of contracts and transfer of titles.

Objectives to be met:

The Government has defined explicit objectives for the new privatisation process and procedures. These include:

- Expedite the transaction process
- Enhance process transparency
- Maximise level of consensus among all stakeholders in a timely manner
- Develop consistent policies to increase legal guarantees for private investment
- Define clearly the bidding process
- Enhance competitiveness of the bidding process
- Obtain best results for Tanzania

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PRESIDENTIAL PARASTATAL SECTOR REFORM COMMISSION



PRIVATISATION PROCEDURES & PROCESS GUIDELINES

November 1999

Introduction

In its commitment to reform the economy, the Government created in 1992 the Presidential Parastatal Sector Reform Commission, PSRC. The mandate of PSRC is to:

- Improve the operational efficiency of enterprises in the parastatal sector
- Reduce the burden of loss making on the government's budget
- Expand the role of the private sector in the economy

To date over 250 enterprises have been successfully divested, generating approximately US\$ 200 million in revenues.

During the second phase of the privatisation programme, the State will divest from the infrastructure and utilities sector as well as from over 100 small-to-medium size parastatals.

PSRC is implementing new operating procedures to accelerate and successfully complete the privatisation process.

New Procedures:

The entire divestiture processes follows a well-defined Two-Stage Model:

- First stage: Pre-qualification
- Second stage: Final Selection

Pre-qualification

To ensure responsiveness to government policies, potential investors will be required to assume a common set of investment and policy obligations. These will be evaluated in the pre-qualification stage.

Technical and financial credentials, as well as business plan elements that respond to the Government's concerns, will be evaluated on a pass or fail basis against pre-determined benchmarks. Only pre-qualified investors will be able to continue the bidding process.

Final documents sent to pre-qualified bidders, prior to submission of financial bids, are legally binding. This eliminates ex-post negotiations.

Each bidder will be required to submit an unconditional seriousness of proposal bid bond.

Final Selection

Final selection will be determined by a single pre-defined, quantifiable financial parameter. In most cases the winning bid will be determined by price. However, on some transactions this financial parameter may take a different form such as concession fee or tariff.

If the winning bidder fails to comply with contractual obligations, the bid bond will be executed.

Public Information

A communications campaign is being prepared to promote the privatisation programme. In addition, tailored campaigns are being devised to promote specific sectors.

Furthermore, PSRC has established a Public Information Unit that is developing a communications and public awareness programme to reach key stakeholders, including:

- General public
- Members of Parliament
- Company workers and labour unions
- Media and opinion leaders
- International community

Regulatory Framework

A robust regulatory framework will be established for each sector. This will increase the certainty on how regulatory decisions will be made. Under a modern regulatory system, consumers, investors and the State will be safeguarded from the arbitrary conduct of any of the parties.

New, or amendments to existing legislation, will be prepared in the near future. This will include regulation related to: service, tariffs, market structure, concessions, licenses, environment, consumer rights, standards of quality, penalties, sanctions, etc.

Background

The Presidential Parastatal Sector Reform Commission

1. In 1990 there were over 400 parastatals which, as a whole, had accumulated losses greater than US\$ 100M during the previous five years while receiving government loans in excess of US\$ 350M.
2. In its commitment to reforming the economy the Government in 1992 created PSRC, the Presidential Parastatal Sector Reform Commission, with a clear mandate to implement the parastatal reform programme.

PSRC's broad objectives are:

- *Improve the operational efficiency of enterprises in the parastatal sector*
- *Reduce the burden of loss making on the government budget*
- *Expand the role of the private sector in the economy*

3. In 1993 the Public Corporations (Amendment) Act confers on PSRC the mandate to:
 - 1) Implement the policies and programmes on parastatal sector reforms

- 2) Develop operating policies, procedures, and guidelines for restructuring
 - 3) Prepare a list of all public corporations and make recommendations on restructuring options.
 - 4) Formulate and execute detailed plans for the restructuring of public corporations.
4. To date over 250 enterprises have been successfully divested, generating approximately US\$ 200 million in revenues. Throughout this period, PSRC has developed a strong in-house technical team well versed in the restructuring and divestiture process. The acquired expertise will be invaluable during the second stage of the divestiture programme involving over 100 small-to-medium size enterprises as well as the strategic enterprises in the utilities and infrastructure sectors.

New Processes and Procedures Guidelines

5. To accelerate and successfully complete the privatisation process in Tanzania, PSRC has developed new procedures for the approval of divestiture strategies and government policies. In addition, PSRC has devised new operating

procedures for future divestiture transaction processes.

Objectives of the new guidelines for privatisation processes and procedures:

- *Expedite the transaction process*
- *Enhance process transparency*
- *Maximise level of consensus in a timely manner*
- *Obtain best results for Tanzania*

6. The present document reflects the decisions taken by the Government to modify existing procedures of the privatisation process. In order to facilitate the understanding of procedural mechanisms, this document separates the divestiture process according to the size and strategic importance of the parastatals. Three distinct groups emerge under this classification:

- 1) Utilities and infrastructure parastatals,
- 2) Small-to-medium size enterprises that present sensitive political and social concerns for the Government, and
- 3) Small-to-medium size enterprises.

Objectives & Key Principles

7. In order to streamline and strengthen the privatisation process, the Government has decided to carry out a number of critical adjustments to the current set of procedures.

Front-Loading Government Decisions

8. The Government will establish at an earlier stage of the process the main policy parameters and requirements for a given divestiture transaction. It will then delegate to PSRC execution of the competitive bidding process, subject to its oversight and final approval. This ensures that policy decisions are separated from the divestiture implementation process and in so doing enhance transparency.
9. Since governmental policies and political considerations will be incorporated into the transaction strategy early on, requests for substantial modifications in the latter part of the process will be significantly reduced. This procedural approach will further enhance the transparency of the divestiture transactions.

10. For the larger as well as the more politically sensitive smaller transactions, participation of the Government leadership will be more intense concerning key policy decisions prior to launching and during the divestiture process.

Early and Permanent Market Testing - Role of Investment Advisers

11. To ensure the adopted strategy responds to market conditions, the Government has accepted, whenever necessary and appropriate, the use of investment and legal advisers for the large utilities and infrastructure transactions. In the selection of consultants, additional weight will be given to those overseas consultants who team up with local firms. This is to ensure that the restructuring of the strategy responds to market condition.
2. Investment banks will provide critical input concerning market knowledge and expertise in attracting quality investors. In addition, these advisers will maintain permanent contact with investors throughout the process. Investment advisers are expected to provide PSRC with a direct contact to potential investors and maintain PSRC well informed of any developments on a regular basis. The presence of a reputable

Investment Bank should increase investor's confidence in the overall process.

13. For the small-to-medium size enterprises, investment advisers will be considered in circumstances where specialised market knowledge is best attained through their expertise and where such enterprises can be grouped together to take advantage of economies of scale. Flexibility to use other methods more suitable to the particulars of the enterprise will be retained.

Pre-qualification and specific Final Selection Criteria

14. The new process calls for a pre-qualification on technical criteria followed by a final stage, which involves bidding on financial variables. If presentation of business plans were deemed necessary to ensure the technical capacity of bidders and responsiveness to government's policy concerns, these would be demanded and evaluated at the pre-qualification stage. Each potential investor will be required to respond to a common set of investment and policy criteria. Business plan elements and other criteria will be

evaluated on a pass or fail basis against a set of pre-determined benchmarks.

15. Once these matters have been addressed explicitly and investors have been pre-qualified, based on the benchmarks the final selection of the winning bidder would be based on a single pre-defined quantifiable financial parameter. The financial variable in this context may involve tariffs, concession fees, selling price and or variation thereof. It is expected that the investors will complete an exhaustive due diligence program in preparation for submission of final bids.
16. The two-stage process, pre-qualification and bidding on a single financial variable of the final stage increases considerably the transparency and competitiveness of the bidding process helping to maximise sale proceeds.

Expeditious Government Approvals

17. Government approvals will differ on the type of transaction. For the large utilities and infrastructure parastatals, final approval will be substantially streamlined by front-loading government decisions. For small to medium sized transactions with no significant policy

implications a Fast-Track mechanism has been created to facilitate rapid approval.

18. For the large utilities and infrastructure parastatals government policy goals will have been included within contractual obligations set forth in the final bidding documents sent to investors prior to the date for submission of financial bids. Since all of the finalised documents sent to investors are legally binding on the bidders and not simply preliminary agreements, ex-post negotiations are reduced to a minimum.

Bid Opening

19. For all transactions, but particularly the larger transactions, bid opening will normally take place at a public forum and the media will be invited to attend and report on the proceedings. In addition, press releases will be issued identifying the bidders and amount of their bids. These actions will enhance the transparency of the privatisation process.

“Batching” of Sales of Small-to-Medium Public Enterprises

20. Wherever feasible, “batching” which involves the grouping of similar number of small-to-medium size enterprises for divestiture purposes, will be used to expedite the process. Batching offers the following advantages:

- Optimise the use of PSRC’s human resources
- Benefit from the economies of scale - reducing unit costs for advisory services
- Provide investors the option to bid for one or more enterprises within a batch
- Allow Investment Advisors to test market various combinations of assets in a batch, ensuring high investor interest in the sale structure.

Policy Issues

Retrenchment Policy

21. The Planning Commission has established a Task Force to finalise Government Policy Statement on the retrenchment of parastatal workers. The objective is to ensure that consistent policies are applied throughout and that retrenchment issues do not hinder the process at the more advanced divestiture stages.
22. Government will ensure that there are effective communication strategies to:
 - i) Improve relationships with workers,
 - ii) Create employees awareness of the opportunities arising from a successful privatisation, and
 - iii) Inform the workers about the benefits of becoming shareholders.

Regulatory Policies

23. A Cabinet Submission paper will be prepared on the model to be adopted by December 1999. The objective of the policy is to establish robust and specialised regulatory framework for each sector,

increasing the certainty of how regulatory decisions will be taken.

24. The Cabinet Submission is the result of the work of a Regulatory Study-Tour delegation led by the Permanent Secretary, and composed by members of the Planning Commission and PSRC's Regulatory Consultants. This group has recommended two multi-sector regulatory agencies: one for utilities; water, electricity, telecommunications, the other for transport; railway, roads and ports and maritime. Consultations are now taking place to arrive at an agreed position.

Debt Policy

25. The Planning Commission has also established a Task Force to finalise Government Policy Statement on the treatment of parastatal debt. Again the objective is to achieve clear, uniform rules for dealing with parastatal debt and to ensure that debt issues do not hinder the divestiture process at the later stage.

Public Information

26. PSRC has established a Public Information Unit that is developing a communications and public

awareness campaign to address key stakeholders, including:

- Company workers and unions
- Consumers,
- Government representatives,
- Members of Parliament,
- Media, opinion leaders and public opinion in general
- International Community

27. As part of the information strategy, an overall communications campaign is being prepared to promote the program as a whole. In addition, tailored campaigns are also being designed to promote privatisation interest in specific sectors and for specific transactions.

Principal Actors

The principal actors and the main tasks involved throughout the process are:

PSRC TASK FORCE

28. For each major transactions, namely in the utilities and infrastructure sectors, as well as the “batched” group of companies, a small but

highly specialised transaction task forces will be established. For small-to-medium size routine transactions there would be no specialised task-force. However the Transaction Consultant within PSRC will co-ordinate and lead the process.

29. The PSRC Co-ordinator is directly responsible for the overall supervision of the divestiture transactions and the operations of each Task Force.

***Task Force composition for Utilities,
Infrastructure and other major
Transactions,***

- *Principal Consultant*
- *Lead Advisor*
- *Utilities Advisor*
- *Principal Legal Counsel*
- *Senior Consultant*

30. For the rest of the Transactions the following would apply:

Task Force for other Transactions

- *Principal or Senior Consultant*
- *Legal Counsel*

- *Lead Advisor*

31. The Task Force is responsible for the preparation of detailed information as well as to the day to day procedures. Although legal and financial documents are elaborated with the assistance of specialised advisers, it is the Task Force that has ultimate responsibility on the quality of these products. In addition, the Task Force ensures continuity of process advancement even when key team members suddenly leave the project.

32. A partial list of activities in which the Task Force would have a critical role is:

- *Conduct all the preparatory work for the selection of advisers*
- *Supervision and co-ordination of studies involving specialised advisers*
- *Identification of labour and ownership issues*
- *Preparation of a Preliminary Strategy with policy options and recommendations*
- *Preparation of Terms of Reference for the selection of Advisers*

- *Preparation of Terms of Reference for Pre-qualification*
- *Evaluation of proposals for pre-qualification*
- *Preparation of Terms of Reference for Final Selection*
- *Preparation of contracts*
- *Preparation of responses to investors' questions*
- *Preparation of documents for the Closing phase*
- *Preparation for the hand-over stage.*

Divestiture Technical Team (DTT)

33. In addition to the Task Force, a Divestiture Technical Team will be created for each of the major transactions. Although the DTT is not within the organisation's legal structure, its role as a consensus building committee is critical for the success of the process. Largely based on DTT's role, PSRC formulates a common position that is presented to the Commission. The DTT includes either a Senior or Principal Consultant from PSRC who presides over the Team, other representatives from PSRC, including the Resident Advisers, as well as representatives from the Parent Ministry, Treasury, Planning Commission, the parastatal and the Attorney General's Office. This

composition serves well in building consensus at the various stages of the process.

34. Amongst the main responsibilities of the DTT are:

- Discuss the main findings of external advisors on a variety of topics related to strategy preparation
- Discuss scenarios of alternative policies in relation to debt allocation, retrenchment policies, tariffs and other policy matters.
- Reviews recommendations from the Task Force and the PSRC Consultants on the small-to-medium size enterprises and assists in the review of legal and financial documents required for the final bid. PSRC's Commission may call upon the DTT for further technical input at any point during the process.

35. The DTT also provides a vehicle for active involvement of key government officials throughout the process. Members of the DTT ensure that the Permanent Secretary, along with other senior government officials, is well informed during the divestiture process. The DTT must also ensure the positions of

stakeholders, including the Parent Ministry, Finance Ministry, and Parastatal Company, have been fully taken into account from the beginning of the process.

DTT's Composition

- *PSRC sector consultants/Task Force*
- *Parent Ministry*
- *Treasury*
- *Planning Commission*
- *Attorney's General Chambers*
- *Parastatal*
- *Other stakeholders as determined by the PSRC Executive Chairman*
- *Resident PSRC Advisers*

PSRC Commission

36. For the infrastructure and utility enterprises as well as for small-to-medium size parastatals of political concern to the Government, the PSRC Commission will be responsible for:

- Approval of the strategy to be submitted to the Line Ministry and subsequently to the rest of the Cabinet

- Approval of the Benchmark and Technical variables to be used in the technical evaluation
- Initial approval of the technical evaluation of the pre-qualification proposals.
- Initial approval of the financial bid assessment.
- Approval of the report to be sent to the Line Ministry stating that a divestiture transaction is set for final approval - including the recommended winning bidder. This notice is sent immediately to the other relevant authorities, including the Presidents Office the Prime Minister's Office, the Ministry of Finance, and the Planning Commission.
- The PSRC Commission will execute the transaction agreement and oversee implementation of the process once government approval has been granted.

“FAST TRACK” CABINET SUB COMMITTEE

37. To expedite the transaction process for the divestiture of non-core assets and small-to-medium enterprises with no major policy significance, the Government has introduced the “fast-track” approval system. For that purpose the Government has resolved that sale approval shall be the responsibility of a Committee of the Cabinet which acts on behalf of the full Cabinet. The standing members of the committee are the Prime Minister (Chairman), the Minister of Finance, the Minister of the Planning Commission. In addition the relevant parent minister and other ministers whose portfolios are relevant to the particular transaction will be invited to join the Committee.

Cabinet

38. In the case of the infrastructure and utilities companies as well as other major or policy sensitive transactions, the full Cabinet will continue to be responsible for major decisions

*Infrastructure, Utilities and Major
Transactions*

39. To streamline procedures and enhance the level of transparency of the divestiture processes of infrastructure and utility companies, a model consisting of three well-defined stages will be implemented.

- First stage: Strategy Preparation
- Second stage: Bidding process
- Third stage: Award & Closing

Detailed step by step procedures for each of the stages are presented in the Annex section.

First Stage: Strategy Preparation

40. Formulation of the Strategy will emphasise those characteristics that balance the interests of the State, private investors, and consumers.

41. The role of the Government will be paramount in defining a divestiture strategy that meets the Government's policy concerns in each sector. Accordingly, the input of the Government will be introduced at the early stages of the process. High-level input in the development of the Preliminary Strategy will have the single highest impact in streamlining the transaction process.

42. The role of investment and technical advisers is also critical in the drafting of the Preliminary Strategy as they provide access to specialised market knowledge in specific sectors and industries. These specialised advisers can better assess what transaction features are more appealing to potential investors.

External Advisors

43. Procedures in selecting and engaging advisers will be transparent and competitive. Invitations will be advertised in international, regional and local media, especially for professional and highly specialised services. Advisers will be encouraged to team up with local consultants whenever possible.
44. The complexity of these large transactions will usually demand the participation of a number of external advisers both local and overseas, including:

Financial advisers

45. - *Investment Bank*. Responsible for a number of critical activities, including: strategy formulation, financial restructuring

proposals, preparation of the information memorandum, market analysis, identification of potential investors, enterprise valuation, due diligence on potential investors and assistance in executing the transaction.

Remuneration for the Investment Bank will generally take the form of a fixed fee and success fee. The success fee which is payable only upon completion of the transaction will provide an additional monetary incentive to bring transactions to closure. Remuneration of services will be based as much as possible on deliverables rather than on calendar month

46. - *Auditor.* In charge of the preparation of balance sheets and auditors report.

Legal advisors

47. - *International and local law firms.* In charge of the preparation of the concession/ lease agreement, industry specific regulatory matters, legal due diligence, evaluation of proposals, amending or drafting new legislation, incorporation of new companies, sale agreements and other documents to facilitate the Closing Stage and the transfer or dissolution of the parastatal.

Technical advisors

48. - *Specialised firms.* Responsible for technical evaluations, technical recommendations, environmental impact assessments, tariff structure, market analysis, and other technical work.

Regulatory advisors

49. - *Specialised firms.* Responsible for the development of regulatory frameworks and for the organisational structure of a modern regulatory agency.

50.

Hiring of external advisors involves:

- *Elaboration of Terms of Reference and the evaluation criteria*
- *Preparation of a Short-list*
- *Designation of an Evaluation Committee*
- *Evaluation and selection of advisors*
- *Contract Negotiations*
- *Performance Monitoring*

Main Activities

1) Issues identification and policy guidelines

51. Based on policy guidelines established by the Government, together the Task Force, DTT, Investment Bank, law firms and technical consultants will identify issues that must be addressed early on to set the groundwork for a successful transaction.
52. Draft working papers will be produced on issues such as industry structure, divestiture options, retrenchment, debt allocation, regulatory framework, land titles, and other relevant issues. Guidelines would also be drafted on broader issues including popular or public participation.

2) Legislation and Regulation

53. Under this category new, or amendments to existing legislation, would be considered, including: regulation related to service, tariffs, market structure and organisation, concession and licenses regulation, environmental issues, consumer

protection, quality standards, penalties, sanctions, etc.

3) *Due Diligence*

54. This activity will include legal audits of all the existing and pending contracts, assessment of current and potential liabilities, revision of property rights. In addition, under this category it may be necessary to conduct environmental audits, assessing existing and potential liabilities. All due diligence activities should be completed prior to presentation of financial bids.

4) *Financial and Accounting Audit*

55. Financial audits, principally the preliminary balance and auditor's report.

5) *Contracts*

56. A complete set of contracts will be prepared for each transaction. These may include concessions/licenses/sales agreements, shareholders agreements, investment contracts, management contracts, and industry specific contracts such as power purchase contracts for the electricity sector.

6) *Terms of Reference for Pre-qualification*

57. This documentation will define the guidelines and criteria for the selection of potential investors. Benchmarks will be developed to evaluate the legal status of the company, to analyse financial indicators, to review industry specific performance indicators, operator history and current capabilities. Benchmarks will also be developed to evaluate business plans that address specific government concerns on policy issues such as investment commitments or expansion of critical services.

Preliminary Strategy Approval

58. The Task Force, together with the DTT and external advisors will prepare and submit to PSRC Commissioners a Preliminary Strategy that addresses:

- *Formation of business units*
- *Debt and asset allocation*
- *Labour policy*

- *Transaction Structuring Options*

- *Trade sale*
- *Concession*
- *Other*

59. On approval by the Commissioners, PSRC will submit to the Line Ministry options of the Preliminary Strategy. Upon review and approval the Line Ministry will submit these documents to the Cabinet for Government approval.
60. Upon approval of the Preliminary Strategy, PSRC, with the assistance of the Investment Advisor, will organise an Investors Conference to market-test the proposed strategy. This event may take place in an international centre, such as London or New York. PSRC and the Line Ministry would be present at these events to receive first-hand feedback from potential investors.
61. The Task Force, along with external advisors, will prepare a report for the consideration of the PSRC Commission, indicating changes proposed by potential investors and the possible implications for accepting or rejecting such requests. The Commission assesses the situation

and determines which changes will be incorporated in the revised strategy.

Second Stage: Bidding Process

62. Formal initiation of the bidding process will be made via public announcement and invitations in the local and international press as well as in specialised journals.

63. The tasks involved during the initial part of the process will include:

- Approval of the Terms of Reference for pre-qualification
- Public invitation for pre-qualification
- Preparation and approval of the Information Memorandum
- Information Memorandum sent to potential investors
- Continuous transaction promotion

Pre-qualification

64. Pre-qualification procedures will be used to ensure the participation of qualified investors responsive to governmental policy concerns.

The requirements for qualification purposes would typically include:

1) Legal documentation

65. Legal credentials, submitted in an easily verifiable format, will typically include certificates of good standing issued by local regulatory agencies or similar agency in their place of origin, original auditors report from a recognised independent accounting firm, annual reports and sworn declarations.

2) Financial information

66. Financial credentials, also submitted in an easily verifiable format, will typically include net-worth of operator, net-worth of consortium, debt/equity ratio, variation on net-worth over the last three years and the ownership by structure. This documentation, submitted with the original auditors report, will be accompanied by a letter from a regulatory agency, financial institution or an equivalent office.

3) Industry Specific

67. Specific technical credentials requested from potential investors will depend on the sector. For example, the electricity sector may

request documents concerning capacity indicators, owned capacity, period of continuous operation, efficiency indicators and other specific technical information. This documentation will have to be confirmed with reports of other institutions such as regulatory agencies in their home country.

4) Business Plan

68. Where presentation of business plans is deemed necessary in order to ensure the technical capacity of bidders and/or responsiveness to Government's policy concerns, this would be evaluated at the pre-qualification stage by requiring investors to respond to a common set of investment and policy criteria.

69. Potential Investors documents are to be opened in a public forum. The DTT would then coordinate the evaluation of proposals and presentation to PSRC Commission, ensuring completion within two weeks. Formal announcement of pre-qualified bidders will be published both in the local press and directly communicated to each bidder.

70. *The pre-qualification phase would observe the following sequence of events:*
- 1. Establishment of an Evaluation Committee*
 - 2. Receipt of pre-qualification proposals*
 - 3. Public forum for the opening of envelopes containing legal and technical documentation*
 - 4. Evaluation of proposals*
 - 5. Period for corrections/clarifications*
 - 6. Submission of recommendations to PSRC Commissioners for approval*
 - 7. Public announcement of results*
 - 8. Pre-qualified bidders invited to proceed with the second part of the bidding process*

Final Selection

71. Once the pre-qualification stage is completed, pre-qualified investors will be able to participate in the Final Bidding Stage. Among some of the principal activities at this stage are:

72. Investors' due diligence formally commences during this part of the bidding process. Pre-qualified investors are encouraged to ask questions in writing, visit the enterprises and data rooms. Throughout the process, enquiries made by investors will be promptly responded. Questions, along with PSRC's response, raised by any one of the potential investors will be forwarded to all of the other pre-qualified bidders.

2) *Data Rooms*

73. To facilitate investors' due diligence, relevant information pertaining to each of the companies will be located in a Data-Room. Complete data-rooms will be established for each of the strategic enterprises. Technical expertise will be accessible at these offices to facilitate due diligence work.

74. In some cases PSRC may consider setting-up a duplicate data room in an international financial centre to facilitate access to critical information, increasing international attraction to the transaction. Organisation of data rooms will be the responsibility of PSRC's Task Force under the guidance of the investment banks.

3) Road Shows

75. PSRC's Task Force along with the Investment Bank will closely moderate the relationship with potential investors. Road shows will be organised to promote the transaction and to resolve additional questions. During this period, and in particular, during the "one on one" meetings during the latter part of due diligence process, PSRC's Task Force will receive comments and further observations from potential investors on both the Preliminary Strategy and on the proposed contracts.

4) Final Strategy Approval

76. Prior to submitting the Final Strategy for final Cabinet approval, the Commission will assess the implications of proposed modifications in terms of the overall government objectives. A decision to modify the strategy and the contracts at this juncture would not have an adverse effect on the credibility of the process since all changes would be done in a timely and transparent manner. The Commission will subsequently submit the Strategy for Cabinet approval. On approval of the Final

Strategy, all legal documents will be finalised and sent to investors.

Bidding Documents

77. All of the finalised documents sent to investors are legally binding on the bidders and not preliminary agreements. This implies the elimination of all of ex-post negotiations on the bidding documents. Government policy goals will therefore be included within the contractual obligations set-forth in the final bidding documents.
78. Although the Government retains the right for final changes, it will be extremely cautious in exercising this right. For this reason the role of the Government leadership in defining the final strategy and bidding documents is critical. Close involvement of the Government, especially during the early stages, will ensure the drafting of a strategy that addresses satisfactorily government's policy concerns.

Third Stage: Award & Closing

79. A single pre-defined and measurable variable will be the criterion used to determine the

winning bid. This single variable will generally be price, however, depending on the transaction, this single variable can adopt another form such as tariff or concession fee. The single variable approach will be possible because all pre-qualified bidders would have pre-signed all legal bidding documents, guaranteeing a priori accordance to all terms and conditions.

80. The mechanics of the process will be clearly established in the Final Selection Terms of Reference. For instance the requirement that pre-qualified bidders submit two sealed envelopes. The first envelope containing contracts and other legal documentation as well as the seriousness of proposal bid-bond. The second envelope containing the financial bid. This second envelope will be opened after verifying that all legal documents presented in the first envelope fulfil the Terms of Reference and are conforming documents.
81. This process will also be conducted in a public forum, and will typically involve the following activities:

Public Forum

82. Bid opening session will be held at a public forum. The media will be invited to attend and report on the event. Press releases will be

issued indicating the outcome of the bidding process.

Bid Opening Procedures

83. Final bids sealed in two separate envelopes, will be submitted first thing in the morning. Envelope 1 containing legal documentation, will be opened upon receipt, Envelope 2 containing only the financial bid will be deposited in a safe box that will be displayed publicly until the opening in a public forum later that evening. The price offered and submitted in envelope 2 shall be the full and final price, as the bidder will already have completed an exhaustive due diligence programme.

84.

Legal documentation in Envelope 1:

- *Signed contracts*
- *Seriousness of proposal Bid bond*
- *Sworn declaration*
- *Certified legal documentation*

85. The technical evaluation committee consisting of the Task Force and external advisors will have enough time to verify that all legal documents are duly signed, completed and are in accordance to the Terms of Reference.

Investors that need to amend or correct their documents will have time for these activities prior to the opening of financial bids later that evening.

Opening of Financial Bid

86. The second part of the Public Forum starts with the announcement of candidates that submitted financial proposals and whose legal documents meet the requirements of the Terms of Reference.

87. Each of the investors' legal representatives verifies the envelope deposited earlier in the day containing the financial bid. These envelopes are then opened and the results are immediately registered in a table in front of the public.

88. After all financial bids are disclosed the Commission will immediately prepare a report for the Line Ministry requesting approval to award the winning bid. The Line Ministry will then forward this request for Cabinet approval. A public announcement will follow the Cabinet's decision.

Cabinet Approval

89. A recommendation will be made to the Cabinet to award the bid to the highest bidder. The Cabinet will consider approval of the recommendation, and will authorise PSRC Commission to proceed with the signing of contracts and the transfer of shares to the winning bidder. However, the Cabinet reserves the right not to approve the recommendation and to re-tender the process. Re-tendering will take effect in rare and compelling cases. The Government will ensure that Cabinet approval, or rejection, will occur no later than 30 days after financial bids have been submitted.

Closing

90. In the case where the investor is not able to make a full payment, or meet instalment obligations as previously agreed, the Government reserves its right to execute the bid bond and proceed with the second highest bidder.
91. In order to protect the investor from experiencing significant financial and legal variations from the award date to the actual hand-over date, specific clauses in the contracts

would restrict any action, including capital investment, gearing, and labour commitments that would affect the value or condition of the enterprise.

The Closing phase is divided into two parts

92.

1. Closing Preparation:

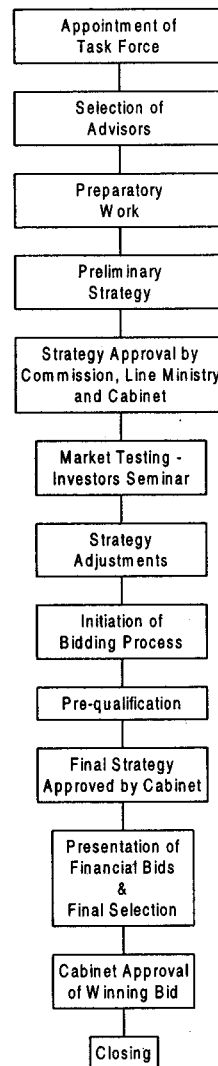
- *Legalisation and registration of all documents*
- *Inventory checks*
- *Administrative issues*
- *Conformation of the new Board*
- *Labour issues*
- *Other*

93.

2. Closing

- *Signing of contracts*
- *Receipt of payment*
- *Share transfer*
- *Transfer of administration*
- *Extraordinary shareholders meeting presided by the new Board*

Infrastructure, Utilities and Major Transactions



SMALL TO MEDIUM ENTERPRISES

94. The Two-Stage Model will be implemented in a simplified version for the divestiture of small-to-medium size public enterprises. To enhance the transparency and efficiency of the current process, specific changes have been introduced into the process.

Policy Guidelines

95. Under the new guidelines, all contractual obligations concerning the transaction will be pre-agreed prior to receipt of financial bids. This creates a level playing field where final selection of the winning bid is based on a single objective criterion, price. Transparency is further enhanced since the opening and announcement of financial bids will be done in a public forum.
96. To expedite the transaction process of non-core assets and small-to-medium size enterprises with no major policy significance, the Government is committed to strengthen and fully implement the "fast-track" approval system. For small and medium enterprises which raise particular concern. Government favours a process similar to that adopted for the large transactions, where policy concerns are incorporated early in the process and final selection is based on a single criterion: price.

Transactions Preparatory Work

Issues Identification

97. As a general practice, PSRC will outsource to independent consultants and advisers a number of activities, including valuation exercises, market analyses, financial and legal audits, and where necessary, environmental audits. The Consultants will provide well-documented asset valuations based on accepted methodologies such as depreciated replacement value and discounted cash flow taking into account additional parameters such as goodwill, etc. The value supplied by the independent consultants will help determine the reference price for the financial bids. Setting a reference price closely related to the market value will mitigate incentives for collusion practices.

Reference Price Determination

98. Since it is the market that ultimately sets the price for any asset, careful consideration will be given in establishing reference prices. Reference prices are solely for the use of the Government

and its advisors and would only be revealed after a sales agreement has been approved.

99. Careful analysis will be carried out to determine reference prices, as these will become crucial benchmarks in the privatisation process. Reference prices are important for the Government, the general public and private investors. Since the general public will voice its opinion on the appropriateness of the selected value, this number will be determined in a transparent and consistent manner.
100. Book Value, which has often been used in the past, is frequently inappropriate when determining a floor or reference price during privatisation. This is because assets and liabilities, as described in company accounts, frequently do not represent true and fair conditions of the company. To increase the confidence of potential investors, the services of a reputable accounting firm and recognised independent appraisals will be employed.
101. In conjunction with the technical advisors, alternative valuation techniques will be used to determine the fair market value of the company.

Techniques that may be utilised by the advisors are:

- *Asset based,*
- *Earnings based, and*
- *Cash based.*

102. The last technique will provide a closer estimate of expected value as it concentrates in determining the ability of the company to generate cash for investors.

103. The Government will analyse the possible consequences of establishing a high reference price or a lesser value that permits potential investors to considerably improve benchmark prices.

Identification of Potential Investors

104. PSRC will advertise the particular divestiture process in local, regional and where appropriate the international press. The adverts will briefly describe the asset, provide a timetable of the transaction process, and invite interested parties to acquire the information package. In this manner, potential investors will have solid understanding of the assets involved. In regards

to the bidding process, the package will include Terms of Reference for the entire process as well as a draft of final contracts.

Information Package

105. PSRC will prepare an information package that will contain two principal sets of material. One will describe in detail the asset being privatised while the other will focus exclusively on the bidding process. The former will include the report by the independent consultant; this document will take the form of an Information Memorandum. In this manner potential investors will have a solid understanding of the assets involved. In regards to the bidding process, the available material will include Terms of Reference of the complete process as well as a draft of the final contract.

Marketing with Investors

106. About a month prior to submission of the financial bid, PSRC will arrange one or two meetings to absolve any questions raised by potential investors who have acquired the information package. Present in the meetings

will be the independent consultants, PSRC members, including the legal counsel and any other advisors deemed necessary by PSRC.

Award & Closing

107. In accordance to the Terms of Reference, submission of bids will take place about a month after the Question-and-Answer seminars. The format will involve two sealed envelopes, one containing all the required legal and financial documentation, including signed final sales agreement, the other exclusively the financial bid. The envelopes will be opened on the same day with a recess of about six hours in between. Opening of the financial bid will only take place if the first envelope fulfils the Terms of Reference. In order to avoid disqualifying potential bidders on minor technicalities, the Terms of Reference will allow for minor corrections prior to opening of financial bids.

108. The bidding process will follow strict pre-established conditions, maintaining a high level of transparency. At this point, the principal role of PSRC Commissioners will be to ensure that all of the required documentation has been presented in accordance to the Terms of

Reference, not to perform a technical nor financial evaluation of bids, there are no negotiations with any of the bidders.

Bid-Bond

109. The objective of the Bid Bond is to ensure seriousness of proposal. Pre-qualified bidders are required to present an unconditional bid bond or Stand By letter of credit on behalf of PSRC. A Bank whose credit rating is at least equivalent to BBB as per Standard & Poors must issue the Stand By letter of credit.
110. The Bid Bond will follow strict guidelines established in the Terms of Reference of the privatisation process. The Bid Bond will be submitted about two weeks prior to the presentation of the Financial Bid. Three days later PSRC will notify the bidder if it has any observations on the Bid Bond. If observed, the bidder will have about six days to fix any problems. PSRC will set the deadline for submission of the amended Bid Bond about three days prior to the presentation of the Financial Bid.

111. Generally the sum established for the Bid Bond is a significant percentage of the reference price.

112. Approximately two weeks after the Closing date, Bid Bonds posted by non-winning bidders will be returned directly to the issuing banks. The Bid Bond for the winning bidder will be retained and executed if this bidder fails to comply with obligations set forth in the Terms of Reference.

Due Diligence on Bidders

113. If PSRC deems necessary the screening of potential bidders, the process will include a pre-qualification stage prior to receipt of the financial offer. Pre-qualification will involve submission of credentials proving that potential investors meet minimum technical and financial capabilities. The pre-qualifying stage will have specific Terms of Reference unambiguously stating the conditions that must be satisfied by all bidders.

114. PSRC will either outsource the work on due diligence of bidders, or, where appropriate, PSRC itself will conduct these activities with the assistance of the Government of Tanzania overseas consular services. The focus of the due diligence on bidders will be on financial strength, degree of technical competence and

their legal standing. This way, PSRC will establish the accuracy of bidder credentials. This new standardised procedure will allow screening of candidates. To optimise the costs of these services, PSRC will explore the possibility of entering into a few contracts whereby the consultancy services involve a package of transactions rather than individual events.

Fast-Track Approval System for the Small-to-Medium Size Enterprises

115. In February 1999 the Ministry of State Planning Commission, Office of the President prepared a paper to develop an expeditious process for the divestiture of non-core assets and small-to-medium size enterprises with no major policy significance. As a result, the Government has resolved that sale approval shall be the responsibility of a Committee of the Cabinet. The Prime Minister as the Chairman, Minister of Finance, Planning Minister, Parent Minister, and other ministers whose portfolios are relevant to the divested parastatal will compose this Committee.

116.

Under the fast-track initiative, the procedural steps are as follows:

- 1. Following the opening of the bids PSRC directly notifies the line Ministry that it has an agreement for approval.*
- 2. Immediately thereafter PSRC notifies other relevant authorities – President's Office, Prime Minister's Office, Ministry of Finance and Planning Commission – that a divestiture transaction is set for final approval.*
- 3. The line Ministry prepares a Brief Paper seeking approval from the Cabinet Fast-Track Committee*
- 4. Once approval is granted, PSRC is authorised to proceed with the signing of the Sales Agreement*

Cabinet Approval System for Politically Sensitive Small-to-Medium Size Enterprises

117. For the large and for the politically sensitive smaller enterprises, the latter stages of the approval procedures will differ from the fast-track approach.

118.

- 1. Following opening of the bids PSRC directly notifies the line Ministry that it has an agreement for approval.*
- 2. Immediately thereafter PSRC notifies other relevant authorities – President's Office, Prime Minister's Office, Ministry of Finance and Planning Commission – that a divestiture transaction is set for final approval.*
- 3. The Line Ministry submits a Cabinet Paper draft to the Cabinet Secretariat.*

4. The paper is discussed by the Inter-Ministerial Technical Committee and subsequently tabled by the Line Ministry to Cabinet seeking approval.

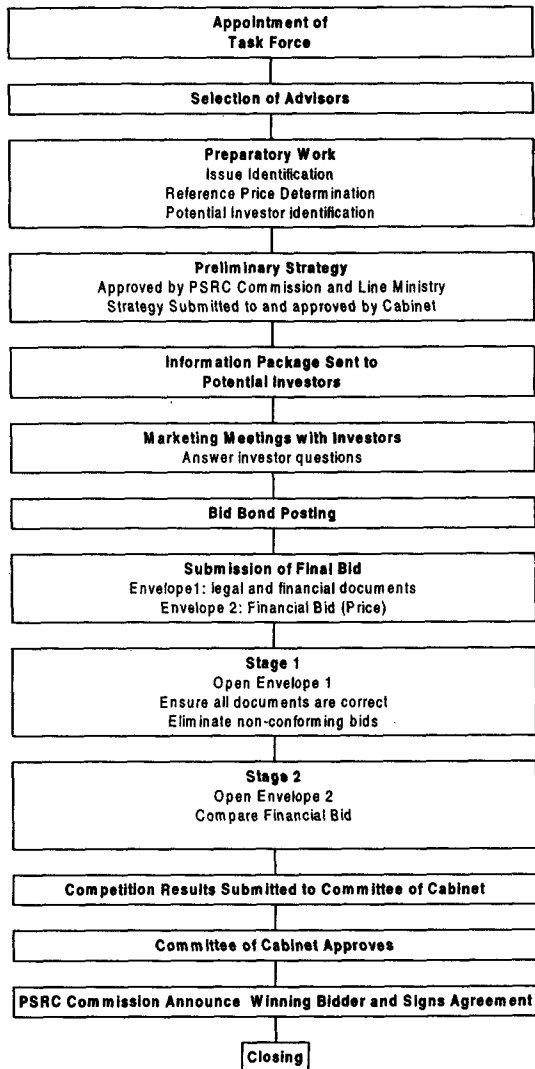
5. Once approval is granted PSRC is authorised to proceed with the signing of the Sales Agreement.

Closing

119. The investor makes full payment of contractual obligations and in exchange receives legal titles.

Medium and Small Enterprise Transactions

Fast-Track Transactions



Medium and Small Enterprise Transactions Politically Sensitive Transactions

