

Report of Working Group¹ to review the existing texts with reference to Privatization (ISSAI 5210, 5230 and 5240)

I. Background

The introduction and continuous expansion in the privatisation programs of countries around the world engendered a corresponding need for the audit of such programmes. Consequently, from the mid-1990s onwards, INTOSAI has issued Specific Auditing Guidelines on Privatisation which drew from the experiences of diverse countries at various stages of development who undertook privatisation. The guidelines indicated the objectives behind such audits as well as guidance on the process and methodology of conducting and reporting on such audits. For the purposes of this document, these guidelines, which correspond to existing Level 4 of the ISSAI categorization, refer specifically to ISSAI 5210 (Privatisation), 5230 (Economic Regulation) and 5240 (Public Private Partnership)².

In 2016, it was decided that while removing the ISSAIs and INTOSAI GOVs produced on privatization from the INTOSAI Framework of Professional Pronouncements (IFPP), it would be the aim to “*consolidate and align guidance on Privatization/Disaster-related aid with ISSAI 100*”. The resulting pronouncements and newly drafted guidance on the subject would be classified as GUIDs (INTOSAI Guidance) in the IFPP.

This Working Group was, therefore, assembled in order to review the existing texts and provide a suggestion as to what should happen to the documents.

II. Over-all recommendation of the Working Group

Recommendation 1 - We consider that the topic of privatisation and issues related to it continue to be relevant for all SAIs and, therefore, that GUID(s) would be necessary in all three areas, viz. privatisation, economic regulation and Public Private Partnership (PPP), in order to (i) allow auditors to address key issue and stakeholder concerns, (ii) develop a comprehensive audit engagement which is able to handle the complexity of this area and (iii) express opinion and provide assurance in a professional and credible manner.

¹ Members of the Working Group were SAI China; European Court of Auditors; SAI Fiji; SAI India; SAI Philippines; and SAI USA. FIPP Liaison was SAI Denmark and SAI France. Please see Annexe 1 for details.

² Refer Annexe 2 for details on each ISSAI.

Recommendation 2 - We are of the opinion that separate GUIDs should exist for auditing privatization, economic regulation and PPP arrangements. The existing ISSAs require restructuring, re-focusing and in parts, re-drafting. Relevant material contained in existing ISSAs should be retained by consolidating the relevant parts of the text. These GUIDs should reflect general and specific principles, framework, audit approaches and methods. The GUIDs should consider the differences in both auditing arrangements as well as institutional structures which prevail in the sector across countries.

III. Need for a guidance document on audits of Privatization

Privatisation or some form of divestment is an important activity in the 21st century reflecting the governance goals of many countries, which utilize privatization as a major source of revenue and as a means to boost infrastructure development. Thus, there is a felt need to continuously monitor/evaluate (i) propriety in the sharing of risks and benefits/ rewards from privatisation (ii) propriety of the privatisation scheme/modality chosen *vis a vis* the objective of the privatisation; (iii) effect of privatisation on the cost of services/facilities charged to the public or the users; and (iv) extent to which the sale objectives were achieved.

Similarly, the exercise by the state, either directly or indirectly, of control and influence over suppliers, whether publicly or privately owned, of services to consumers is still relevant, in particular in a globalised world characterised by increasingly atomized markets. Important objectives of regulation include:

- (a) protecting consumer interest
- (b) acting against anti-competitive practices
- (c) securing adequacy and transparency in the provision of information by suppliers to assist consumers in making informed choices
- (d) monitoring the financial standing of suppliers, and
- (e) ensuring that suppliers are able to finance the provision of essential services, such as utilities, public transport and financial services, to specified standards.

The range of business activities covered by economic regulators is vast, directly affecting the vital interests of all citizens.

Finally, world over, PPPs are a well-recognized and established method of development. PPPs are considered important for accelerating growth and boosting innovation at times where public resources have become scarcer. Some legislative initiatives are undertaken in order to promote PPPs and to help deliver better value for money for users of services and for contracting authorities. There is a clear tendency

towards a more intensive leverage of public funds with private funds, for which PPPs can play an important role. However, there are various risks to sound financial management of a PPP including inadequate policy and legal framework for the implementation of the PPP, unjustified decision to go for the PPP approach, inappropriate risk sharing and contractual provisions, sub-optimal performance and weak contract management.

Thus, the large share of Government-owned assets and critical role of Government as regulator or partner requires that the transparency and accountability in these processes be safeguarded through independent means. Independent professional government audit is, therefore, necessary to (a) determine and attest on the transparency and accountability of the privatization process / project, (b) obtain the lessons learned from each privatization process / project for future process improvement, and (c) ensure that the risks and benefits of privatization are equitably shared by both government and the private partner.

Privatization is a highly technical area with complex arrangements, principles and sub-activities while audit resources to meet the challenges of such an assignment are not readily or easily available. Consequently, it is possible that these activities remain either unaudited or audited superficially. Further, at present, there are no standard guidelines or system for information / experience interchange which can assist auditors in the audit of privatization projects implemented by government. This gap, in terms of either experience or knowledge, can be successfully filled by the GUIDs which can ensure that uniform standards are applied in practice during the actual audit and enable auditors to express an opinion with confidence or give an assurance in a comprehensive manner.

IV. Key focus of possible GUIDs

The possible GUIDs should be drafted with an emphasis on practicality and should offer step-by-step guidance for each stage of the audit engagement. They should highlight a series of key questions that SAs are likely to need to address when examining the efficiency and effectiveness of the privatization / economic regulation / PPP processes. Since privatization is a complex area, it in turn requires a comprehensive approach in audit with combination of three types of audit – financial, compliance and performance. The GUIDs should be drafted keeping this in mind. In simple terms, the key focus of the possible GUIDs should be the WHAT and HOW to audit in each of the different privatization schemes. The GUIDs should cover the entire life cycle – i.e. from the project development stage (conceptualization, feasibility, etc.) down to review and approval/authorization, then to procurement of the development partner, on to award and implementation, down to monitoring of implementation and termination, etc.

V. Resource requirements for drafting GUIDs and re-usability of current text of existing documents

In general, since the aim of the possible GUIDs is to provide detailed guidance, the drafting, consolidating and culling out of relevant material from the existing documents would require considerable resources, which would be available on voluntary basis. Members from the current Working Group can be requested to associate with the task. It would be preferable to have a dedicated team for each area, *viz.* privatization, economic regulation and PPP, with a time-frame for drafting, editing, consolidation and vetting.

As regards prioritization of the work, on the parameters of greater applicability and relevance for the SAIs, the GUIDs can be developed first for privatization, then PPP and finally for economic regulation. However, in terms of the quantum of work required, the GUID on privatization can most easily be taken forward using the existing material whereas the GUID on PPP will require greater effort and time for development. While the existing ISSAI on economic regulation is suitable and pertinent in its content, however, development of GUID on economic regulation will have challenges given the limited experience of auditing this area (other than financial or compliance audit). It is suggested that all resulting GUIDs have a common format/structure and presentation of the substance. With specific reference to the ISSAIs and the re-usability of the material:

- ISSAI 5210 has considerable portions that can be used. The material requires to be edited to make it more practical. The audit procedures to be applied for each type of privatization scheme need to be made more comprehensive and updated following the order of the stage of the audit process. The guidance or procedures contained in existing texts can be transferred to the GUID and rearranged according to the phase of the audit where the procedure is appropriately performed.
- The present guidance under ISSAI 5230 provides a number of specific recommendations on what the auditor should do to audit economic regulation and includes some guidance on performance appraisal of the exercise of economic regulation. All its present sections/ guidance on WHAT to look for or evaluate in the audit appear to be useful for the GUID. However, economic regulation is an evolving concept, practiced in a variety of ways in different countries with different constitutions and at different stages of development. Therefore, the GUID would have to be updated. Further editing and some enhancements on the substance require to be done.
- ISSAI 5240 requires considerable re-working to reflect current experiences and audit objectives. To that extent, the GUID needs to be drafted from the

auditor's perspective while evaluating risks or decisions. The GUID should help auditors to identify and prioritize the risks that are likely to happen and will have the greatest impact on the goals or objectives of the government or the most significant effect on the users or the public, and thus, require evaluation by the auditors. While portions of the existing material may be re-used, the GUID would have to be more comprehensive and of greater practical utility.

VI. Options for additional GUIDs

Given the large amount of resources required for re-drafting the existing documents, it would be prudent to concentrate and focus on these GUIDs and postpone decision on content/substance in the present ISSAIs relating to other topics (if any) until completion of the subject proposed GUIDs.

Annexe 1

A. Members of the Working Group

Name of the SAI	Name of the representative
SAI China	Mr. Kang Yantao
European Court of Auditors	Ms. Stéphanie Girard Mr. Dirk Pauwels
SAI Fiji	Mr. Abele Saunivalu
SAI India	Ms. Prachi Pandey
SAI Philippines	Ms. Winnie Rose Encallado
SAI USA	Ms. Phyllis Anderson

B. FIPP Liaison

Name of the SAI	Name of the representative
SAI Denmark	Mr. Kristoffer Blegvad (member of FIPP)
	Mr. Rasmus Hyll Bruun (adviser)
SAI France	Mr. Lionel Vareille (member of FIPP)

Annexe 2

Brief Details regarding ISSAIs³

Reference	Title	Purpose	Remarks
ISSAI 5210	Guidelines on Best Practice for the Audit of Privatisations	A set of recommendations on best practice for the audit of privatisation, identifying eight areas of particular concern for INTOSAI members.	<p>The document distils experiences of privatisation in a variety of economies at all stages of development. The guidelines set out why the state auditor needs to examine and report on these sales and provides practical advice how to do it. The guidelines may be used as a checklist, part of the process of encouraging and formulating a professional approach in a complex area of audit.</p> <p>The document sets out 40 guidelines in eight sections corresponding to the areas of concern of INTOSAI members. Section 1 deals with the skills required by the SAI to carry out privatisation audits. Section 2 consists of ten guidelines covering important questions, which are likely to arise whatever the privatisation method employed and issues relating to the valuation of the business. Sections 3 to 7 consist of 25 guidelines relating to specific issues, which the SAI is likely to need to address and depending on the sale method used by the vendor. Section 8 consists of three guidelines relating to the audit of the costs incurred by the vendor.</p>
ISSAI 5230	Guidelines on Best Practice for the Audit	A set of recommendations on best practice for the audit of	The guidelines highlight a series of key questions that SAIs are likely to need to address when examining the efficiency and effectiveness with which economic regulators set about their tasks. Economic regulation is an evolving concept and is practised in a variety of ways in different

³ Source: INTOSAI published Executive Summary of the relevant ISSAI

	of Economic Regulation	economic regulation, identifying five areas of particular concern for INTOSAI members.	<p>countries with different constitutions and at different stages of development. So the guidelines may need to be applied in the particular circumstances of different countries with appropriate modifications to take account of the state of development there.</p> <p>The guidelines are illustrated by examples drawn from the INTOSAI survey report and the experience of Working Group members. They are grouped in five sections, viz., SAI skills; The business of economic regulation (i.e. its objectives, functions and powers); the supply; and the price of service; developing competition.</p>
ISSAI 5240	Guideline on Best Practice for the Audit of Risk in Public/Private Partnership (PPP)	These guidelines identify key risks facing both the state and the SAI in auditing PPPs and how they can be managed. A range of examples from the work of member SAI supports the guidelines.	<p>The common factor in all PPP-models is that the state delegates elements of control over service delivery to a private sector entity. This delegation entails risks, both to the quality of service and to the state's investment. Given the many types of PPP that are emerging, the guidelines cannot deal with every risk that may arise. The guidelines therefore take a practical approach, outlining how risks can be managed with illustrations drawn from the experiences of Group members.</p> <p>The guidelines are set up in two parts. Part I deals with the key risks and their management facing the state, viz., clarity about partnership objectives; negotiating an appropriate partnership; protecting the state's interests as a minority shareholder; monitoring the state's interests in the partnership; the State's exposure in the event of difficulties. Part II refers to the risks facing the SAI auditing PPPs, viz., examining the process and the results; identifying worthwhile lessons; following up their work. The annex of the document provides illustrations of risk and good practice in managing risks based on examples from the work of member SAIs.</p>