ANNEX 1

SPECIAL GUIDELINES ON DIVESTITURE OF STATE-OWNED ENTERPRISES (SOEs)

July 2023

MINISTRY OF FINANCE, ECONOMIC STABILIZATION AND NATIONAL POLICIES

STATE-OWNED ENTERPRISES RESTRUCTURING UNIT

SPECIAL GUIDELINES ON DIVESTITURE OF STATE-OWNED ENTERPRISES (SOEs)

1. **Preamble**:

The Government of Sri Lanka (GOSL) has decided to carry out reforms in the State-Owned Enterprise (SOE) sector, including the divestiture of selected SOEs, to enhance competitiveness, productivity, and efficiency across the economy and to assist in the country's socio-economic development and fiscal consolidation efforts.

Due to the absence of a pre-approved process for the divestiture of State-Owned Enterprises and the inapplicability of the existing guidelines for the procurement of goods and services and PPPs for a divestiture process, the need for development and approval of an appropriate special divestiture process has arisen.

This divestiture process will ensure GOSL's Procurement principles of Transparency, economy, efficiency, effectiveness and equity.

2. **SOEs for Divestiture**

The Cabinet of Ministers (Cabinet) shall approve the SOEs to be divested and direct the Implementing Agency (IA) to carry out such divestiture.

3. **Divestiture**

Divestiture can take the form of disposing existing shares or issuing of new shares of SOEs that are already established as, or converted into limited liability companies following due process. Divestiture can constitute the sale of majority stake or a minority stake of a SOE. Other forms of divestiture may also be considered on a case by case basis.

4. **Implementing Agency (IA)**

The Ministry of Finance, Economic Stabilization and National Policies (MoF) of the GOSL, with the approval of the Cabinet, has established a dedicated IA, the State-Owned Enterprise Restructuring Unit (SOERU), with a mandate to carry out SOE sector reforms including the divestiture of selected SOEs.

Responsibilities of the IA are:

a) Facilitate and coordinate the divestiture of the relevant Entity in a transparent manner.
b) Facilitate and coordinate the selection of TA.
c) Facilitate and coordinate the preparation of EOI, RFP and relevant agreements.

d) Liaise with the Entity, TA, SpCANC, SPC and other relevant stakeholders.
e) Facilitate and coordinate the sell-side due diligence and buy-side due diligence.
f) Facilitate and coordinate the approval process.
g) Any other activity necessary to facilitate the divestiture.

5. Applicability

These special guidelines will cover the SOE divestiture process to be followed by the IA in coordination with the MoF, other relevant GOSL entities, specific committees appointed by the Cabinet in relation to such divestitures and the relevant SOEs themselves. These special guidelines shall prevail over any other decisions, directives or circulars issued by the MoF or any other authorities in respect to the SOE divesture process. The final authority of all divestitures will lie with the Cabinet, whilst the ministry responsible for finance will be responsible for implementation.

6. Governing Principles

While the specific steps in the divestiture process to be followed may vary with the SOE concerned, the overall divestiture process will be governed by the following principles where and to the extent applicable:

a) **Transparent and Well-Defined Process**: Follow a clear and transparent divestiture process with well-defined objectives, timelines, and criteria for investor selection in order to build confidence among all stakeholders including potential investors and ensure fairness and accountability throughout the process.

b) **Sound Legal and Regulatory Framework**: Adherence to existing laws and regulations of Sri Lanka.

c) **Comprehensive Sell-side Due Diligence**: Conduct thorough sell-side due diligence on the SOE to assess its financial health, operational efficiency, assets, liabilities, and potential risks. This evaluation helps in setting realistic expectations, determining a fair valuation, and if deemed appropriate, identifying areas for improvement, or restructuring before divestiture.

d) **Asset and Liability Management**: Where deemed appropriate, prioritize the resolution of any outstanding issues, such as addressing non-performing assets, cleaning up balance sheets, and addressing contingent liabilities, to enhance the attractiveness of the divested entity and minimize risks for investors.

e) **Professional Advisors**: Engage appropriate consultants to provide expert advice and support throughout the divestiture process. Their role will be to assist, inter alia, in conducting valuations, structuring the transaction, negotiating with potential investors, and ensuring compliance with legal and regulatory requirements.

f) **Transaction Structuring**: Determine the most appropriate transaction structure based on the divestiture objectives and the specific circumstances of the SOE. Options may include full or partial divestiture, initial public offerings (IPOs), management buyouts, or strategic partnerships. Tailor the structure within the principles of good governance and investment best practices to attract suitable investors and maximize the divestiture's benefits.

g) **Market Testing and Competition**: To the extent feasible, conduct market testing to gauge investor interest and assess market conditions. Encourage competition among potential investors to maximize value and ensure fair and transparent processes. This can involve using competitive bidding, auctions, or other market-based mechanisms.

h) **Investor Selection Criteria**: Establish clear and objective criteria for investor selection under a competitive process that evaluates potential investors based on their experience, financial capability, strategic fit, and commitment to the development of the entity being divested.

i) **Communication and Stakeholder Engagement**: In order to ensure transparency around the divestment process, develop a comprehensive communication strategy to engage and inform various stakeholders, including employees, labor unions, local communities, and the general public. Clear and timely communication helps manage expectations, mitigate resistance, and build support for the divestiture process.

j) **Post-Divestiture Monitoring**: Implement mechanisms, via an appropriate agency, to monitor the performance and compliance of the divested entity. This can include reporting requirements, performance benchmarks, and regular evaluations to ensure that the investor fulfills its commitments, and the divested entity operates efficiently and in line with the divestiture objectives.

k) **Promoting Competition**: Promote competition in the divested sector by facilitating regulations and safeguards that prevent anti-competitive practices. This includes measures to prevent monopolistic behavior, encourage market entry by new players, and protect consumer interests.

l) **Addressing Social Impact**: Encourage the development of strategies to address potential social and economic impacts resulting from the divestitures, especially concerning employees affected by the transition. Consider measures such as retraining programs, severance packages, or assistance in finding alternative employment opportunities.

7. Transaction Advisors (TA)

Considering the nature and the complexity of the transaction, the IA will obtain the services of a Transaction Advisor of repute to assist in the divestiture process of a given SOE with the approval of the Cabinet.

Transaction Advisors shall be appointed following GOSL's Consultant Procurement Guidelines.

8. Steering of Divestiture Process

The divestiture process will be facilitated and coordinated by the IA. Oversight of the divestiture process and responsibility for all recommendations to Cabinet pertaining to SOE divestiture shall be carried out by a Special Cabinet Appointed Negotiating Committee (SpCANC) assisted by a Cabinet Appointed Special Project Committee (SPC).

9. Special Cabinet Appointed Negotiating Committee (SpCANC)

The Cabinet will appoint a Special Negotiating Committee to handle all matters pertaining to divestiture(s) and make recommendations on the selection of investor(s).

The composition of SpCANC shall be determined by the Cabinet. The Chairman of the SpCANC shall be a Secretary to a Ministry other than the Line Ministry and shall include 04 other members with relevant knowledge and experience including a Deputy Secretary to the Treasury.

The SpCANC may obtain relevant external expertise, local and foreign, where deemed necessary to assist in specific matters.

The SpCANC shall be assisted by a Cabinet Appointed Special Project Committee.

A representative of the IA will function as the Secretary/Convener to the SpCANC.

Key Responsibilities of the SpCANC are:

a) Provide necessary guidance to the Special Project Committee (SPC) appointed for the divestiture process.
b) Approval of the Expression of Interest (EOI), Request for Proposals (RFP) and any Agreements prepared by the SPC.
c) To determine if a non-refundable deposit is required from bidders and if so, to determine its value. Where a non-refundable deposit is deemed necessary, this should be specified in the RFP.
d) Critical review of the reports submitted to the SpCANC by the SPC.
e) Determine the points for negotiations based on reports submitted by the SPC.
f) Engage in negotiations with the bidder(s).
g) Make all necessary recommendations to the Cabinet during the divestiture process.

10. Cabinet Appointed Special Project Committee (SPC)

The Cabinet shall appoint a Special Project Committee to prepare EOI/RFP documents, establish evaluation criteria, and to evaluate technical and financial proposals received in response. The SPC shall comprise of 07 members with multi-disciplinary skills and sector specializations.

A representative of the IA will function as the Secretary/Convener to the SPC.

Key Responsibilities of the SPC are:

a) Prepare the EOI / RFP and other relevant documents as necessary, in the event a TA is not appointed.
b) Review and scrutinize the EOI / RFP and other relevant documents prepared by TA.
c) Establish the evaluation criteria for technical and financial proposals
d) Evaluation of the technical and financial proposals.
e) Make recommendations to the SpCANC on the shortlisted bidders for final negotiations.
f) Provide the necessary technical assistance and advice to the SpCANC
g) Liaise with IA, TA, SpCANC and the relevant entities for completion of reports.

11. Responsibilities of the SOE

The SOE being divested shall extend its fullest co-operation to the divestiture process in order to meet the expected outcomes. This includes but is not limited to the provision of all relevant data and information as may be required by the IA, TA, SpCANC and SPC on a timely basis.

12. Transaction Structure Strategy

Transaction Structure(s) shall be approved by the Cabinet on the recommendation of the SpCANC.

13. Pre-qualification of Bidders

All bidders shall be pre-qualified through an EOI process.

14. Expression of Interest (EOI)

The format and contents of the EOI shall be approved by the SpCANC.

The invitation to express interest shall be given reasonable and fair publicity in the local and international media enabling interested parties to respond.

Prospective bidders will have a minimum duration of 28 days from the date of the publication of the EOI to make a submission.

Eligibility criteria must be included in the EOI document.

15. Evaluation of EOI

The SPC shall evaluate proposals received in response to the EOI and make its recommendations to the SpCANC for approval. Only the pre-qualified firms shall be eligible for the issuance of the RFP. Fulfilling of Generally Accepted Know-Your-Customer (KYC) standards shall be mandatory to pre-qualify for the RFP stage.

16. Creation of a Data Room

The IA with the support and assistance of the SOE concerned and the duly appointed TA shall create a Data Room, containing all related information and data pertaining to the SOE to be divested and make such data and information available for the pre-qualified firms, for a predetermined period indicated in the EOI, subject to minimum period of 60 days and the execution of an Non-Disclosure Agreement (NDA) with the SOE concerned.

A standard NDA shall be developed and subjected to the review and approval of the Attorney General and made available to the Pre-Qualified Bidders for signature.

17. Valuation of the SOE

The TA shall value the SOE using accepted valuation methods such as discounted cash flow, trade comparables and transaction comparables, sum of all parts and industry specific methodologies based on information / forecasts provided by the management of the relevant SOE. Such valuation shall be endorsed by the Government Valuer.

18. Request For Proposals (RFP)

On approval of the Transaction Structure by the Cabinet of Ministers, the SPC assisted by the IA/ TA shall develop an RFP based thereon. The RFP shall be approved by the SpCANC and forwarded to the bidders shortlisted from the EOI process.

19. Contents of RFP

The RFP shall contain:

a) relevant information on the SOE to be divested;
b) specific information required from the bidders to evaluate the proposal;
c) a defined format for the bidders to follow in submitting their proposals.

Accordingly, the RFP shall include of the following components:

(i) Summary of the Proposed Divestiture:

This part shall provide a summary of the proposed divestiture and the main responsibilities of the prospective investors during and after the divestiture process.

(ii) **Technical Proposal:**

This part shall provide instructions to the bidders on the preparation of the technical proposal and shall be based on the technical evaluation criteria and the selection process.

(iii) **Financial Proposal:**

This part shall provide instructions to the bidders on the financial proposal and how to demonstrate financial capability.

(iv) **Evaluation and Selection Process:**

This part shall provide the key information required from the bidders to assess their suitability, the basis for screening proposals and the evaluation methodology, and subsequent steps.

The information provided in this section must be set out in sufficient detail so that the selection is unambiguous, and the process is clearly understood by the potential bidders.

(v) **Contractual, Financial and Legal Framework:**

This part shall describe;

a) Drafts of the contracts and agreements between the parties;
b) Financial requirements;
c) Fiscal and regulatory issues and the relevant laws; and
d) The Bid/Performance Bonds required to be entered into.

20. Schedules and Appendices

In addition to the above components, the RFP if required shall be supplemented by "Schedules and Appendices" containing further information relating to the divestiture and the procedures and formats for the submission of proposals,

21. Legal Obligations

Since negotiations on divestiture(s) may result in legal obligations on the part of the GOSL, recommendation for any contractual commitments shall be made by the IA in consultation with the MoF, SpCANC, SPC and Attorney-General and be approved by the Cabinet prior to entering into any formal contractual commitment.

22. Time Frame

The minimum time periods for the following steps in the divestiture process shall be:

a) Submission of EOI: 28-days

b) Evaluation of responses to EOIs including pre-qualification: 14-days
c) For Buy-Side Due Diligence: 60-days
d) Pre-Tender Meeting(s): as determined by the SPC
e) Submission of a Proposal in response to RFP: 42-days
f) Evaluation of the Technical Proposal: 28-days
g) Evaluation of the Financial Proposals: 14-days
h) Negotiations & Selection of Bidder: 28-days

The total period of time from invitation to conclusion viz. the submission of an EOI to signing of a binding Sale and Purchase Agreement and/or Transaction Agreement should not be more than one year. The time frame may be extended with Cabinet approval on a case-by-case basis depending on the complexities of the divestiture process.

23. Unsolicited Proposals

Under no circumstances whatsoever shall Unsolicited Proposals be entertained for the divestiture of SOEs.

24. Opening of Proposals

The proposals received in response to EOIs and RFPs, shall be opened by the IA in the presence of at least 02 members of the relevant SPC. All bidders are eligible to be present at the opening of proposals.

25. Announcement at the Proposal Opening

The following details should be recorded in a book meant for the purpose and announced immediately after the opening of proposals.

a) The names of the bidders
b) The number of envelopes received
c) Where relevant, if both technical and financial proposals are submitted
d) Modification and withdrawals

26. Process of Evaluation

The proposals received shall be evaluated by the SPC in three stages:

a) Assessment of Information Adequacy

SPC will assess the adequacy of information provided in the proposals to enable them to complete a proper evaluation. Bidders shall be notified of inadequate, unclear or inconsistent information within a specified period following closing of the proposals and clarifications if any should be obtained in writing.

b) Assessment of Responsiveness

The SPC will assess the responsiveness of the information provided in the proposals to the requirements specified in the RFP. The information provided in a proposal may pass the adequacy test, but may or may not be sufficiently responsive to the RFP. The SPC shall use principles of materiality and relevance to determine the responsiveness of a proposal or parts thereof.

c) **Evaluation**

The SPC will carry out the technical evaluation (refer 28 below) and financial evaluation (refer 29 below) of proposals in order to rank the competing bids, on a clear and objectively verifiable criterion.

The SPC may obtain local and/or foreign expert advise in consultation with the SpCANC for the purpose of evaluating the Proposals.

During the evaluation process extreme confidentiality shall be maintained.

The evaluation process should be transparent and fair, ensuring equal opportunities for all bidders. It should be conducted in a manner that avoids favoritism or bias and promotes healthy competition.

27. Inadequate / Non-responsive proposals to be rejected by the SpCANC

Following receipt of all the requested additional information from the bidders, the SPC will prepare a report on the completeness of the information supplied for each proposal. This report will include recommendations on any proposal which should be rejected for being incomplete or unresponsive. The decision to reject on the basis of non-responsiveness should be made by the SpCANC.

28. Technical Screening

Only the proposals determined to be responsive as above should be subjected to Technical Screening.

The following criteria may be used to evaluate the proposals:

a) **Experience and Expertise**: Investors with relevant industry experience and expertise are often preferred. Their track record in successfully managing similar businesses or investments can indicate their ability to add value and drive the divested entity's growth.

b) **Strategic Fit:** The investor's strategic vision and plans for the divested entity should align with the GOSL's objectives. This includes considering the investor's business plans, growth strategies, and how they intend to utilize the divested entity's assets or resources.

c) **Commitment to Development**: Investors who demonstrate a commitment to the development and long-term success of the divested entity are often favored. This can be assessed by evaluating their plans for capital investment, job creation, technological advancements, and other initiatives that contribute to the entity's growth and competitiveness.

d) **Legal and Regulatory Compliance**: Potential investors should have a solid reputation and comply with relevant laws, regulations, and ethical standards.

e) **Stakeholder Considerations**: It is important to consider the interests of various stakeholders, such as employees, customers, local communities, and the broader economy. Potential investors should demonstrate their commitment to maintaining positive relationships with stakeholders and minimizing any potential negative impacts resulting from the divestiture.

f) **Post-Divestiture Plans**: Investors should provide clear plans for the post-divestiture period, including how they intend to manage the entity, implement necessary reforms, and ensure its long-term sustainability.

These criteria are not exhaustive and may vary depending on the specific entity to be divested. The SPC shall propose and the SpCANC will approve the criteria to be used and the % weights to be assigned to each criterion. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. Each competing proposal will be scored accordingly and the total points scored by an individual proposal will be denoted by the variable **St**.

The applicable criteria and the weights should be disclosed in the RFP.

29. Financial Screening

Financial Screening should establish that:

a) the proposal is financially acceptable.
b) the bidder has demonstrated sufficient financial capability to acquire and operate the divested entity effectively.
c) the bidder has high creditworthiness and is capable of securing the required funding for the transaction.

The financial screening carried out by the SPC will assess whether the offer price is acceptable, focusing on the credit-worthiness and the financial strength of the bidders and also their bankers' and financial managers' experience.

Subject to the establishment of financial capability and creditworthiness, SPC will assign 100 marks to the bidder offering the highest price (**Pm**).

The financial scores (**Sf**) of the other financial proposals will be computed as:

Sf = 100 x P/Pm where **P** is the offer price of the other bidder(s).

30. Final Ranking of Proposals

The final score shall be obtained by weighting **St** and **Sf** as recommended by the SPC, approved by the SpCANC and specified in the RFP and adding the weighted technical and financial scores. This will determine the overall ranking of the bidders' proposals.

Proposals will be ranked according to their combined technical (**St**) and financial (**Sf**) scores using the weights where T = the % weight given to the Technical Proposal and **P** = the % weight given to the Financial Proposal (T+ P = 100).

Final Score **S = St x T% + Sf x P%.**

The bidder(s) achieving the highest combined technical and financial score(s) **(S)** shall be invited for negotiations.

31. The Special Project Committee's Final Report

The SPC will issue a final report to the SpCANC, which will consist of the interim reports issued during the evaluation phase (Technical, Financial and General). A comprehensive executive summary will be prepared to include the following:

a) **Introduction:** Summary of the process from the issuance of the EOI to the selection of finalists and clarifications with finalists;

b) **Technical:** Summary of the technical review compared to the RFP requirements and comparing each proposal;

c) **Commercial:** Summary of commercial considerations;

d) **Financial:** Summary of financial capabilities and offer prices;

e) **Conclusions:** Summary of SPC's overall ranking and recommendations.

32. Negotiation and Selection

The SpCANC will conduct the final negotiations with the selected bidder(s). If necessary, the assistance of SPC and/or local and/or foreign experts may be obtained for negotiations.

On the conclusion of negotiations, the SpCANC shall select the successful bidder for the divestiture and send a Bidder Selection Notice (BSN) to all bidders who responded to the RFP.

33. Appeals

Any unsuccessful bidder, not satisfied with the recommendation of the SpCANC with regard to the selected investor, may appeal against the recommendation to the Divestiture Appeals Board (DAB). The DAB shall be appointed by the President on the recommendation of the National Procurement Commission (NPC).

The Appeal shall be made either physically or electronically within 07 days of the BSN. The DAB shall respond within 14 days of receipt of the appeal. A non-refundable deposit shall be made along with the appeal. The amount of the non-refundable deposit and the details of the payee will be described in the RFP.

34. Term Sheet (TS)

After the conclusion of appeals, if any, the SPC assisted by the IA will prepare a draft TS for approval by the SpCANC.

The purpose of the TS is to obtain the concurrence of the successful bidder prior to seeking Cabinet approval to conclude the transaction.

The TS shall include among others:

a) obligations of the successful bidder and GOSL;
b) agreed purchase consideration and other commercial terms;
c) representations, warranties, indemnities and any other terms and conditions;
d) a summary of performance criteria, if any, and;
e) a declaration by both parties that further changes shall not be made to the contents of the TS which is to be reproduced in the Agreement.

35. Letter of Intent (LOI)

On receipt of Cabinet Approval for the TS, Secretary to the Treasury (ST) shall issue an LOI to the successful bidder. The LOI shall contain the TS and will include a period of exclusivity to enable the successful bidder to complete all activities and preparations leading up to signing of the final agreements. The LOI shall be countersigned by the successful bidder signifying acceptance.

36. Agreements

A typical list of agreements is given below. The list may vary depending on the requirements of the particular entity to be divested. The Attorney General's advice and concurrence will be obtained in all cases.

a) Sale and Purchase Agreement
b) Shareholders Agreement in case of partial divestitures
c) Escrow Agreements, if required
d) Approvals and licenses, if applicable
e) Loan Agreement and other documents necessary for the financial obligations of the successful bidder
f) Any other applicable agreements

37. Final Cabinet Approval

Prior to execution, the final proposal together with the final agreements should be submitted to the Cabinet for approval. The IA shall submit the Cabinet Memorandum with the recommendations of SpCANC.

38. Signing of Agreement

Upon finalization of the relevant agreements and after receiving approval by the Cabinet, the ST shall execute the agreement with the successful bidder.