



## **TERMS OF REFERENCE**

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**CONSULTANT TO CONDUCT A PRIOR OPTIONS REVIEW OF  
THE REVENUE APPEALS DIVISION**

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# TERMS OF REFERENCE

## Conduct a Prior Options Review

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### 1. SERVICES REQUIRED

The Government of Jamaica (GoJ) represented by the Ministry of Finance and the Public Service (MoFPS), seeks proposals from competent Consultants to undertake a Prior Options Review for the Revenue Appeals Division.

### 2. BACKGROUND

Jamaica is the third largest island in the Caribbean, with an area of 11,000-square kilometres (km<sup>2</sup>) and an estimated population of 2.83 million people (52% of which reside in urban areas). While Jamaica remains the fifth largest economy in the Caribbean, over the last two decades GDP growth has failed to keep pace with population growth, resulting chiefly in higher rates of unemployment and social fragmentation than previous years, greater dependence on commodity imports and higher reliance on remittances and tourism. The Jamaican economy has also been experiencing a gradual structural transformation. This has involved the gradual decline of the manufacturing sector and the concomitant increasing contribution to GDP of the service industries, particularly tourism.

The GOJ has adopted a proactive approach, through public sector transformation, to address the challenging economic and fiscal situation in order to regain macroeconomic stability and return to a sustainable path of growth and development. The recent establishment of the Public Sector Implementation Team in late 2016 by Prime Minister, the Most Honourable Andrew Holness, is aimed at accelerating public sector transformation to make all government entities leaner, more efficient, flexible, responsive and accountable.

The World Bank's Doing Business Report 2016 has ranked Jamaica's economy in the top ten most improved economies worldwide. Jamaica has also improved its ranking in the Latin America and the Caribbean region. Despite Jamaica having also shown an improvement on the Transparency International Corruption Perception index between 2014 and 2015, corruption is still a prevalent and pervasive threat to good governance and economic stability. The National Security Policy cites corruption as one of the Tier 1 – Clear and Present Danger – High Impact – High Probability- threats to national security and **economic, institutional and social structures**.

The World Economic Forum, Global Competitiveness Report 2005-2015, cites **corruption** as one of the elements that detract from the First of Twelve Pillars of Competitiveness. The report<sup>1</sup> describes “*competitiveness as the set of institutions, policies, and factors that determine the level of productivity of a country*” and goes on to say that:

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<sup>1</sup> <http://reports.weforum.org/global-competitiveness-report-2014-2015/wp-content/blogs.dir/54/mp/image-cache/site/e/weforum-logo.dd4714f8927c3bdad11178c6164f0bcc.png>

*“The quality of institutions has a strong bearing on competitiveness and growth. It influences investment decisions and the organization of production and plays a key role in the ways in which societies distribute the benefits and bear the costs of development strategies and policies. For example, owners of land, corporate shares, or intellectual property are unwilling to invest in the improvement and upkeep of their property if their rights as owners are not protected. “*

*“The role of institutions goes beyond the legal framework. Government attitudes toward markets and freedoms and the efficiency of its operations are also very important: excessive bureaucracy and red tape, overregulation, corruption, dishonesty in dealing with public contracts, lack of transparency and trustworthiness, inability to provide appropriate services for the business sector, and political dependence of the judicial system impose significant economic costs to businesses and slow the process of economic development.*

*In addition, the proper management of public finances is critical for ensuring trust in the national business environment. Indicators capturing the quality of government management of public finances are therefore included here to complement the measures of macroeconomic stability captured in pillar 3.”*

The Ministry of Finance and the Public Service, through the completion of a Strategic Review in December 2013, in addition to other work, has recognized these and other factors, including corruption as threats to being able to fulfill its role and mandate and that there needs to be institutional strengthening of the entities within the Ministry which have a significant role to play in this area.

The Revenue Appeals Division along with The Financial Investigations Division, The Revenue Protection Division, and The Public Accountability Inspectorate Division are the major players within the Ministry that carry out this role in distinctly different ways and to different extents but nonetheless each plays a critical part in ensuring fairness, accountability, good governance and that the rule of law is encouraged and maintained. It is critical that each institution is adequately and properly positioned to be able to perform its functions in an effective, efficient and cost effective manner.

Whilst the Financial Investigations Division, the Revenue Protection Division and the Public Accountability Inspectorate Division carry out key functions in enforcing legal provisions relating to anti-money laundering, terrorism financing, anti-corruption, revenue protection and inform public sector governance and accountability legislation, The Revenue Appeals Division plays a key role in Tax Management as the division reviews and adjudicates cases with an aim to resolving taxation disputes. As such, the Ministry requires that a Prior Options Review be conducted on the Revenue Appeals Division to consider and determine the most appropriate status and legal identity that will provide the best value for money to the public.

## 2.1 REVENUE APPEALS DIVISION

The Taxpayers Appeals Department (TAD), now Revenue Appeals Division (RAD) was established as a department of government in 1999 under the Revenue Administration Act (RAA) to create a means by which taxpayers could avoid the cost and lengthy delays of litigation in the Revenue Court. However, TAD was not a separate and independent entity from the then Tax Administration Directorate, reporting directly to the Director General of Tax Administration. This was contrary to international best practices of having an impartial entity to resolve tax disputes. As at April 1, 2011, by way of an amendment to the RAA, on recommendation from the International Monetary Fund (IMF) and as a part of the overall tax reform programme, the TAD began reporting to the Financial Secretary within the Ministry of Finance thereby giving the department complete autonomy from the Tax Administration Directorate. In March 2011 drafting instructions were issued to the Chief Parliamentary Counsel to draft legislation establishing the Revenue Appeals Division. The Revenue Appeals Division Act, 2015 came into effect as at August 4, 2015.

The principal function of facilitating the determination of appeals by taxpayers against decisions of Revenue Commissioners regarding their revenue liability under the revenue laws remains the same and is clearly articulated in section 4 of the Act. While the legislation itself has brought many positives, specifically the expansion of the Commissioner's powers and flexibility in how these powers may be executed, the entity, while divorced from Tax Administration Jamaica (TAJ) and the Jamaica Customs Agency (JCA), is only semi-independent due to its divisional status. Section 3 of the Revenue Appeals Division Act establishes the Revenue Appeals Division as "a **division** of the Ministry with responsibility for finance". This is therefore still not entirely in keeping with international standards.

TAJ and JCA are now semi-autonomous and executive agencies, respectively. The RAD reviews the work of these entities and issues rulings on the appropriateness and legality of decisions which are issued by these agencies. It therefore requires that the entity executing such a revenue appellate function should be structured with a similar level of autonomy or higher. The ideal would be for the entity to be a department of government thereby removing any perception of bias and to instil confidence in its impartiality; fairness at the highest standard. While the division adjudicates without influence from the FS or the Minister, its independence is susceptible to legal challenge.

Additionally, the effective and efficient delivery of high quality decisions in relation to revenue disputes requires specialised skills and expertise in the area of revenue law and procedure, and international accounting and auditing principles and practices. This is due to the intensive review, examination and analysis of case files, parties' submissions and the law that goes into drafting each decision that is issued by the RAD. The organisational structure must therefore be parallel to and/or higher than management levels within TAJ and JCA, as was the case under its previous dispensation. The SEG classification, under which the technical officers of the RAD are currently appointed as a result of the aforementioned changes does not provide for such, thereby making it challenging to recruit suitable talent for the organisation. It has also acted as a demotivating factor for existing staff, which can negatively impact service delivery and efficiency. Thus one of the

objectives of the RAD reform, the timely issuance of decisions, is therefore compromised. These anomalies must be reviewed with a view to addressing them.

### **3. OBJECTIVES OF CONSULTANCY**

The purpose of this assignment is to conduct a Prior Options Review. The Review will determine the most effective and efficient institutional and management arrangement for the functions of the RAD. At the end of the assignment the Ministry will be able to determine:

1. If the current institutional and administrative structures are in keeping with the applicable legislative arrangements;
2. If the functions performed by the Division are suitably anchored in the Strategic Mandate of the Ministry;
3. The best strategic, institutional, administrative, and operational arrangements for the achievement of stated goals of the RAD.

### **4. SCOPE OF WORK**

In fulfilling the requirements of these Terms of Reference, the Consultant will support the Programme Management Office of the Ministry in the second stages of the transformation process.

Specifically for this assignment, the Consultant will be required to:

#### **4.1. Conduct a Prior Options Review which should:**

- 4.1.1. Undertake a review of the functions within the division to decide on the most effective and efficient arrangements for service delivery; The Consultant will be required to:
  - a) Review the Ministry's existing vision, mission and strategic objectives in relation to its overall mandate to determine strategic alignment with the division;
  - b) Identify and facilitate the development of an output map and value chain for the division;
  - c) Review the specific legislation, regulations and policies around the division to determine if they support the current thinking and operations of the entity and make recommendations for amendments, if required;
  - d) Review the operations of the division to identify activities that support or do not support its mandate, and determine organisational overlaps and duplications that may exist among the wider portfolio or with other GOJ entities;
  - e) Recommend organisational changes based on findings and international best practice;
  - f) Identify the best arrangement for the provision of support services (human resource management, office services, etc.) for the division in light of the GoJ's intention to promulgate the delivery of the shared services model;

- g) Analyse the Strengths, Challenges, Opportunities and Threats (SCOT Analysis) of the division as well as the Ministry in relation to its current operations and performance;
- h) Conduct consultations with key stakeholders within the division, in the Ministry and across the public service to determine client views of the services of the entity;
- i) In light of the mission, strategic objectives, stakeholder consultations and the SCOT analysis, review the appropriateness of the current operating model and make recommendations where necessary;
- j) Develop a draft framework documenting the key required skills and competencies with clear identification of any new skills and competencies that would arise under the recommended operational model;
- k) Prepare a Prior Options Report, documenting the findings and analysis with accompanying recommendations, the rationale and value for money implications of the recommendation; and, any related implementation risks.

## **5. METHODOLOGY**

The exercise to be undertaken by the Consultant will be informed by this Terms of Reference, the Preliminary Assessment already conducted, the Technical and Financial Proposals received from the Consultant, and any negotiations conducted following the selection of the Consultant.

The Consultant will be required to prepare a detailed methodology and work plan indicating how the objectives of the assignment will be achieved, and the support required from the Ministry.

## **6. KNOWLEDGE TRANSFER**

Building capacity of the PMO, RAD and Corporate Services Division and transfer of skills is a critical objective of this assignment. The Consultant's role will be to support the PMO so that the staff who take part in the Transformation process, are able to contribute to and 'own' the systems and procedures produced, and decisions made, and consequently develop the skills to sustain the new organisation.

The Consultant should so structure the project as to include components which will enable the transfer of certain skills. A specific plan for skills transfer and capacity development will be a requirement of the assignment. The capacity building and skills transfer should take place in the Prior Options Review and will be with a view to enable the Ministry to extend the Transformation and to continue to effect the transformation of government.

## 7. DELIVERABLES

Key Deliverable	Proposed Timeline	Standard For Delivery
1. Work Plan and associated Gantt Chart outlining the assignment to be undertaken	2 weeks after signing of the contract	A time-bound Work Plan in Microsoft Word identifying activities, methodology and required resources, this should be linked to a Gantt outlining tasks, duration and start and end dates. The format of the document should be agreed prior to submission.
2. Draft Prior Options Report RAD	To be determined by workplan	The report should include at a minimum: <ul style="list-style-type: none"> <li>• Recommendations for the institutional arrangements for the entity;</li> <li>• Advantages and disadvantages in term of service delivery and efficiency;</li> <li>• Risk analysis in relation to implementation issues</li> </ul>
3. Finalised Prior Options Report	Two(2) weeks prior to end of contract	Changes agreed should be reflected in the final report. Submitted within the timeframe agreed.

## 8. PROJECT MANAGEMENT AND ACCOUNTABILITY

### 8.1. "Sign-off" Procedure

A Technical Working Group will be established to oversee the Transformation process in the Division. Deliverables will be considered certified as satisfactory when they are accepted by the Technical Working Group, and the Deputy Financial Secretary Technical Coordination based on the defined and agreed performance standards for delivery.

## 9. QUALIFICATIONS

The Consultant is required to have the following minimum qualifications:

1. At least a Master's degree in a field related to Public Sector Governance and Management; Strategic Management or Organisational Development;
2. At least 10 years' experience in institutional analysis and diagnosis and in developing and implementing Public Sector modernisation strategies, with particular experience in governance, public administration and management, organisation and management of central government institutions;
3. Familiarity with the operations, best practices, priorities and business processes of investigative and quasi-judicial entities to include knowledge of dispute resolution mechanisms;

4. At least 4 years' experience in leading process for conducting strategic organisational reviews to a successful conclusion;
5. Where the Consultant conducting the assignment happens to be based outside of Jamaica it is expected that local support would be engaged where appropriate.

#### **10. COMMENCEMENT DATE AND PERIOD OF EXECUTION**

The Consultant must be prepared to complete the assignment within an thirty (30) day period commencing, March 1st , 2017.