Commercialising State Assets

Presentation to Pacific Island Law Office Network
by Denis McNamara

5 December 2011
Outline

Discussion will cover:

- Which Assets can be considered?
- Investor Issues
- Corporate Governance
- Case Study - Niue
Assets

- Departments – Businesses Locked up in Government Departments
- Identify Businesses – May be several business under one roof
- NZ Experience in 1990’s – eg: Electricity Industry, Post and Telegraph
Commercialisation

- What does it mean?
- State Ownership – Is it efficient?
- Shared Ownership / PPP / Joint Venture – Issues raised.
- Outright Sale – Is it best option?
Investor Issues

- Countries are competitors for “Foreign Investment Dollars”
- Country Risk – Very important
  - Investors look for certainty and lack of ambiguity
  - Example – (Fiji) State Lands Decree (39 of 2011)
GOVERNMENT OF FIJI

STATE LANDS (AMENDMENT) DECREES 2011
(DECREE NO. 39 OF 2011)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

TO AMEND THE STATE LANDS ACT [CAP. 132]

Short title and commencement

1. This Decree may be cited as the State Lands (Amendment) Decree 2011 and shall come into force on the date of its publication in the Gazette.

2. Section 6 of the State Land Act [Cap. 132] is amended by inserting the following new subsection after subsection (4)—

"(5) Notwithstanding anything contained in this Act, in exercising his powers to exchange portions of State land for portions of native land under subsection (3) or for portions of private freehold land under subsection (4), the Minister may, in addition to such exchange, require the payment of such monetary contribution as he deems appropriate for the value of the State land being exchanged."

Given under my hand this 7th day of September 2011,

EPELI NAILATIKAU
President of the Republic of Fiji
Investor Issues

- Exchange Control - money both in and out
- Taxation - must be fair – DTAs’s
- Resources and Infrastructure
- Land – is reform needed, security of tenure?
- Foreign Ownership Rules – must be clear and fairly applied
- Business Licences
- Court System – Dispute Resolution - unbiased
- Litigation – timing and fairness
Corporate Governance

- What does it mean?

- The Board – and its Members
  - Can they contribute?
  - Look outside of country for expertise
  - Days of “jobs for mates” now gone
  - Remuneration – dangers of remuneration based on “meeting fees” – likely to result in unnecessary meetings and Board interference in management

- Management
  - Distinct from governance
  - Must be kept separate

- Roles of Chairman and CEO
Niue

Background

Facts & Figures
1. Land Area – 260 sq kilometers (100 square miles)
2. Population – approx 1500 (20,000 plus in New Zealand)
3. Economy
4. NZ Investment – NZAID
5. Tourism
6. www.niueisland.com
Matavai Resort
1. History
2. Position in Tourism in Niue
3. GON • GNZ approach

Tourism Activities
1. Director Appointed – promotion activities
2. Sea Tracks, other activities and repair work funded by NZAID
NIUE TOURISM
Property Trust
Trustees (3)

sub

Matavai Niue
Limited (MNL)
Directors (4)

Matavai Resort

1. Settlor – GON
2. Trustees – Appointed by NZ Minister of Foreign Affairs
3. Vesting – at discretion of Trustees but must be with 10 years
4. Funding – NZAID
5. Beneficiary – GON

1. Redevelopes and expands Resort
2. Directors are trustees plus one Niuean
3. Purchases Resort from GON

1. Major tourism property
2. MNL introduced new operations systems
3. Staff employment and training
4. Option to engage international Operator in due course.