Successful Negotiations:

The Key to Privatization

Lessons from **Zambia**

Ostrer & Associates

PN-ABY-447

Successful Negotiations:

The Key to Privatization

●

Lessons from Zambia

Final Report
prepared for:

USAID/Zambia
Zambia Privatization Support Project
Contract No. 623-0230-C-00-3193-00

March 1996

Ostrer & Associates
Silver Spring, MD 20918
(301) 593-9083

Report prepared by:

Marsha A. Ostrer
President
Ostrer & Associates
P.O. Box 3042
Silver Spring, MD 20918
(301) 593-9083

Table of Contents

Acknowledgments

Among the contributors and supporters who helped ensure the success of the Negotiations Skills Workshops and the technical assistance provided by Ostrer & Associates (O&A), the following merit special credit.

The Zambia Privatization Agency (ZPA) Board. The Board's strong endorsement of the training contributed to its successful launch. Of particular help were those Board members who set a fine example of attending the training themselves as enthusiastic participants. Their patience in responding to often hostile questioning showed a high level of dedication to ZPA goals. They demonstrated perseverance in acquiring new skills, a willingness to innovate, and a strong commitment to the success of privatization in Zambia.

The USAID/Zambia Mission, which committed the resources that made the negotiation skills workshops possible and gave the training their full support. Top mission personnel (including the mission director) attended the training and encouraged others to attend. The Mission was both attentive to ZPA needs and served as an active and essential partner in crafting solutions to those needs.

ZPA's Chief Executive Officer(s). As CEO, Steve Mwamba guided the transition of ZPA and strongly supported the negotiation workshops. He was succeeded in mid-1995 by Valentine Chitalu, who championed the cause of privatization in a way that energized the entire process and catapulted it forward. He increased both productivity and performance dramatically. Mr. Chitalu's courage and determination to set an aggressive pace for sales were matched by his insistence on raising performance standards for ZPA as a whole. Without him, privatization in Zambia would never have become the success it so clearly is today.

Mission Project Officer Betty Wilkinson. Spanning the gap between the original scope of work for the training contract and the practical needs of ZPA fell to Mission Project Officer Betty Wilkinson. Ms. Wilkinson was extremely responsive to ZPA needs, demonstrating both flexibility and a willingness to innovate to reach the desired result. She was an active advisor on workshop design, reviewed case studies, and provided input. She offered critical support in drafting the model agreements of sale and was a persuasive advocate for the workshops, first as a participant and subsequently by encouraging others to take part. Without her unflagging support and feedback, the project would not have succeeded.

Center for Financial Engineering in Development (CFED) Consultants. The four long-term CFED advisors, assisted by numerous short-term consultants, led the early effort by serving both as negotiator role models and working staff. They understood the importance of holding themselves accountable for ZPA's results. In the best consulting tradition, they smoothly removed themselves from center stage to phase into a more appropriate advisory role as ZPA competence and proficiency improved.

Cooperation between CFED and O&A served as a model for team cooperation for our Zambian counterparts. This was particularly notable, since the dynamics of the situation (two different companies and two different contracts) could have easily led to competition, undercutting, and turf protection.

CFED consultants made invaluable contributions to the workshops' success by:

- offering critical input in the development of Zambia-specific case materials
- serving as effective advocates for the workshops
- acting as role models, becoming among the foremost practitioners of the skills and techniques taught in the workshops
- providing critical consultation and input in developing the model agreements of sale
- lending ongoing logistical support

Successful Negotiations: The Key to Privatization Lessons From Zambia

Midway through its privatization program, Zambia can claim success. As of December 31, 1995, Heads of Agreement or final agreements of sale have been signed for 101 business units, with many more in the transaction pipeline. With over 144 companies originally scheduled for privatization (many to be later subdivided into business units), the Zambia Privatization Agency (ZPA) is well ahead of schedule in transferring the bulk of Zambian business to the private sector.

Sales to date promise solid benefits for Zambia's long-term prosperity. ZPA has attracted qualified, competent buyers committed to investing the capital needed to revitalize former State Owned Enterprises (SOEs) and to assist them in becoming competitive in the international marketplace. Privatization has provided benefits to individual citizens both in terms of employment and professional opportunities, and in terms of the quality and diversity of goods and services these companies will make available to Zambian consumers.

A key element in this success has been the training in state-of-the-art negotiating skills and technical assistance provided to ZPA by Ostrer & Associates (O&A) through a contract funded by USAID/Zambia. Under this contract, O&A designed a customized training program for ZPA management, staff, Board members, consultants, and prominent members of both the government and business communities. Training equipped graduates to:

- assess a target company and identify the likely negotiation issues
- plan a strategy for conducting professional negotiations
- negotiate and document a successful sale

The Negotiation Skills Workshops combined state-of-the-art theory in alternative dispute resolution (ADR) and mutual gains negotiation skills, with exercises tailored to guide participants throughout the entire transaction process from identification of a target company through to the signing of the agreement of sale.

Additional technical assistance included developing model agreements of sale, case-specific consultations on ongoing negotiations, and additional support in applying the skills and techniques taught in the workshops.

The combination of the workshops and follow-on technical assistance in tandem with the restructuring of ZPA and its Board, the appointment of a new and dynamic CEO, the support of the USAID/Zambia Mission and particularly of the project officer, and long-term technical assistance provided by the Center for Financial Engineering in Development (CFED) team has enabled ZPA to:

- Significantly decrease the amount of time needed to successfully conclude agreements. Transactions that formerly took up to two years are now routinely being concluded in as little as two months, two weeks, or even two days.
- Maximize the long-term economic value of both cash and non-cash commitments in a sale (for example, investment commitments and assumption of debt).

- Improve the efficiency and productivity of ZPA staff, thereby conserving and focusing resources.
- Create more viable short-term prospects for privatized companies and increase their chances to become competitive and profitable in the long term.
- Address the needs of key stakeholders so that they assist, rather than derail, the process.
- Prepare for and conduct negotiations that focus on mutual gain for all parties.
- Become more effective in analyzing and leveraging the differences in negotiations that can result in the creation of new options and more value.

As a result of the training provided, ZPA has chosen to redesign some of its internal procedures to smooth the privatization process. Some of these changes include:

- Expanding authority for negotiation teams to create the best deal for Zambia's long-term development interests
- Developing clear objectives for privatization which serve to guide negotiations and measure the success of the program
- Creating procedures to clarify and rationalize the negotiation process
- Ensuring negotiation teams are properly prepared to conduct professional and competent negotiations
- Creating options and packaging alternatives that better serve all parties' interests and result in more value for all sides

The ability of this project to strengthen privatization in Zambia has important implications for privatization efforts in other countries, both for privatizing entities and for donor agencies.

Zambia's experience demonstrates to other privatization entities the importance of:

- Developing a process for privatization that is inclusive, transparent, and consistent. Privatization is an inherently political process and this dimension cannot be ignored.
- Forming teams with overall responsibility and authority to conduct transactions from initial study to final sale.
- Setting clear and specific objectives to guide each negotiation.
- Providing comprehensive, broad, and flexible authority to allow negotiating teams to make optimal deals.
- Structuring agreements of sale with "teeth" that include monitoring, compliance, and enforcement provisions to document transactions.
- Identifying "champions" with the political access and clout to lead the privatization process.
- Providing negotiators with the dealmaking skills and techniques needed to conclude successful agreements.

Important lessons for donor agencies include:

- the value of broadening the range of technical assistance offered to privatization entities
- the benefits of remaining flexible in program design

The Zambian experience clearly illustrates the value of providing focused training in both the substance and process issues of privatization negotiations. Training in negotiation skills complements and augments technical support to privatization efforts.

Introduction

"As a result of the workshops, we are more focused, see the issues more clearly, know what we want, and have stopped fighting for things we don't want."

—ZPA Negotiator

By October 1993, the Zambian Privatization Agency (ZPA) was experiencing major difficulties. Both ZPA and those who conducted privatization negotiations on their behalf were snared in a morass of conflicting procedures, hindered by inadequate authority, and had little public support.

This report describes how partnership between ZPA, USAID/Zambia, the Center for Financial Engineering in Development (CFED), and Ostrer & Associates (O&A) assisted in turning this situation around.[1] The growing success of ZPA can be traced to a number of critical factors:

- Training in state-of-the-art alternative dispute resolution (ADR) and mutual gains negotiation skills
- Evolution and restructuring of the ZPA Board, which led to better leadership, decision-making, and drive
- Reorganization of ZPA itself including hiring of additional quality staff
- Improvement in the macroeconomic environment and the political willingness to undertake privatization
- Ongoing technical assistance
- Tailoring models for agreements of sale with "teeth"
- Additional technical assistance and training in other substantive areas

[1] This report focuses on the work and contributions of Ostrer & Associates. It does not address the entire scope of the Zambia Privatization Support Project. For an evaluation of all USAID-funded assistance provided to ZPA, see the *Mid-Term Evaluation of the USAID Funded Zambia Privatization Project,* prepared by Peter Boone, SRI International, Inc., and Peter Carr, consultant to SRI, March 1996.

"Training has given us a changed perspective of what's important. We now have an improved vision and understanding of what negotiations are and the importance of the relationship between real objectives and privatization."

—ZPA Staff Member

Skills training was provided both through negotiation skills workshops and by direct technical assistance to the negotiating teams. The above factors worked together to help ZPA create a thriving, successful privatization program and bring about a wholesale reform of the privatization process.

Under the Privatization Act of 1992, ZPA was authorized to:

- scale down government direct initiative in economic activities and minimize bureaucratic involvement in commerce
- reduce government spending for subsidies and capital expenditures
- promote competition and improve operating efficiency of commercial enterprises
- encourage public ownership of shares
- stimulate local and foreign investment in the Zambian economy
- create capital income for the treasury

Despite these lofty aims, during the first year, only 19 small companies had been offered for sale. Of these, only a handful resulted in signed agreements of sale. Some were bogged down in litigation while others were at a stalemate. Public concern over ZPA and its practices was growing for a number of reasons. Some of these related to both active and passive political resistance to privatization within the government while others were in response to ZPA performance.

In October 1993, USAID/Zambia asked O&A to assess the status of privatization negotiations. O&A was originally tasked to:

- conduct a training needs assessment to determine the skills ZPA negotiators required
- conduct a "generic" short training course for ZPA and its negotiators
- review and report on negotiations subsequent to the training

It quickly became apparent that more comprehensive help was needed.

From the original "generic" training concept, O&A created a four-and-one-half-day, customized workshop that was conducted eight times over a one-year period. Participants included ZPA Board members, management, staff and technical advisors, current negotiating team chairmen and lawyers, representatives of the business community, members of a variety of government ministries, potential bidders, members of Parliament, representatives of the press, and other influential stakeholders.

The diversity of the group brought added value to the training by representing virtually every significant stakeholder in the privatization process. In response to needs identified by workshop participants, O&A then began to provide follow-up technical assistance. This extended support helped ensure that the knowledge and skills acquired in the workshops were applied to, and integrated into, actual negotiations.

Participants reported that the training helped them to:

- increase their confidence and capacity to prepare for and professionally conduct privatization negotiations
- hone their analytic and communication skills
- develop their understanding of the negotiation process and frame a plan of action to guide negotiations
- internalize "operating principles" for negotiations
- practice and sharpen their strategies, skills, and techniques

By the conclusion of the workshops, participants were able to:

- Assess a target company and identify the likely negotiation issues
- Plan a strategy for conducting the negotiations competently and professionally
- Negotiate and document a successful resolution

This report describes the role and impact of the Negotiation Skills Workshops in assisting the Zambian privatization effort.

Chapter 1, "The Rocky Road to Privatization," describes some of the difficulties ZPA encountered in attempting to privatize parastatal enterprises and the key issues surrounding privatization negotiations.

Chapter 2, "Using Training to Transform the Process," outlines the training workshops themselves.

Chapter 3, "Fundamentals First," looks at the importance of clear objectives and adequate negotiating authority.

Chapter 4, "Defining a Good Deal," explores the value added in looking at total package deals versus price alone.

Chapter 5, "Preparing for Dealmaking," describes the dealmaking skills that ZPA and its negotiators learned during the Negotiation Skills Workshops and how they used these skills to serve the long-term interests of the Zambian people.

Chapter 6, "Making the Deal," outlines how mutual gains negotiation benefited the privatization process.

Chapter 7, "Enforcing the Deal," details how to build agreements of sale with "teeth" that do not require judicial action to enforce commitments.

Chapter 8, "Recommendations for Successful Privatization," outlines the key lessons learned from the Zambian privatization effort and suggests ways in which this model might be applied elsewhere.

1

The Rocky Road to Privatization

Privatization is by its very nature a political process with economic consequences rather than the reverse — an economic process with political consequences.

To appreciate the difficulties ZPA faced in conducting its privatization effort, it is important to understand the statutory process set in motion by the Privatization Act of 1992.

From the early 1960s until the early 1990s, the policy of the Zambian United National Independence Party had been to nationalize industry. Import substitution was bolstered by an overvalued exchange rate and low interest rates. Local entrepreneurs were constrained by regulations that were not conducive to development. By the early 1990s, many State Owned Enterprises (SOEs) were effectively bankrupt, while others limped along through government subsidies while amassing huge debts.

The new government (elected in 1991) promised sweeping reforms to turn the economy around, including privatization of all SOEs, trade liberalization reforms, and a reworking of the legal framework to stimulate private sector economic development. To carry out this effort, the 1992 Privatization Act established the ZPA to privatize all SOEs. The SOEs were then under the ownership and control of an overarching holding company called ZIMCO (the Zambia Industrial and Mining Corporation). Privatization was to take place through divestiture under each of a series of Tranches.

To carry out the planned divestitures, ZPA was established with an independent Board, a CEO (who reported to the Board), a deputy director and secretary to manage daily activities, and a staff to assist outside negotiators. To promote transparency in the process, the 12-member Board was culled from a wide spectrum of the population, which included:

- Permanent Secretaries for the Ministry of Commerce, Trade, and Industry; and the Ministry of Finance
- the Dean of the School of Business at Copperbelt University
- the Attorney General

. . . and one representative from each of the following:

- Zambia Confederation of Chambers of Commerce and Industry
- Zambia Congress of Trade Unions
- Zambia Federation of Employers
- Law Association of Zambia
- Zambia Institute of Certified Accountants
- Bankers Association of Zambia
- the churches
- the farmers of Zambia

Under the provisions of the Act, ZPA was given wide-ranging authority to "plan, manage, implement and control the privatization of State owned enterprises in Zambia." Independent negotiation teams were formed to manage each sale. These teams consisted of prominent Zambians of professional standing. Heading each team was a business person and a lawyer appointed by ZPA. Four internal transaction teams were formed to prepare companies for sale, find appropriate investors, and develop and help conduct negotiations. These four teams reported to a technical director. Each team was responsible for the entire transaction process from assessing an SOE for privatization through to the final sale. Various donors provided technical assistance in the form of consultants (including CFED) to advise in carrying out day-to-day activities. Finally, the Act specified that there was to be a valuation of each SOE by "independent valuers."

Under the provisions of the Privatization Act, ZPA was given wide-ranging authority to "plan, manage, implement and control the privatization of State owned enterprises in Zambia."

Companies scheduled for privatization were evaluated by outside consultants who produced a privatization study which included the company's history, its ownership structure, strengths and weaknesses, a valuation of the company's assets (both business related and non-business related), and a valuation of the company's likely future earning potential (usually a discounted future cash flow).

Based on the information contained in the study, ZPA staff prepared a report for the ZPA Board. This important document contained the Board's authorization for privatization. This included authority to negotiate, terms of the authority, an approved privatization method, and a timetable. Based on that authority, transaction teams either made a public tender or prepared for immediate negotiations. Generally, negotiations involved a minority shareholder holding preemptive rights. Often, these minority shareholders were multinationals who had owned the company prior to nationalization.

Once initial agreement was reached, a Heads of Agreement was signed.

After all details were successfully negotiated, a final agreement of sale was forwarded to the Attorney General for review. The agreement then went to the Minister of Finance for final signature.

In practice, the system did not work very smoothly. Several factors described below contributed to this situation:

- **Lack of private sector experience.** Many ZPA Board members had been raised in a socialist system with little or no knowledge of private enterprise. The objectives for privatization set forth under the Act, while laudable, gave ZPA no specific guidelines for how to build a competitive business out of an SOE.

- **Doubts about Government of Zambia resolve.** Within ZPA there was doubt as to how strongly the Government of Zambia (GRZ) was committed to privatization. As a result, ZPA staff were hesitant to take major risks and tended to hedge their bets by proceeding very slowly. This apparent lack of momentum further reduced buyer interest.

- **Other government agencies opposed to privatization.** ZIMCO, with a corporate agenda diametrically opposed to privatization, was a constant thorn in ZPA's side. ZIMCO impeded investigations into companies, stripped assets and loudly proclaimed ZPA failures to the press. Since ZPA goals and objectives had never been clearly defined, the staff and its negotiators had difficulty defending either the process or their decisions. ZPA teams felt defensive, disempowered, and at the mercy of a process they saw no opportunity to change.

- **Lack of data about targeted companies.** The targeted companies were themselves in less than an ideal state. As in many socialist economies, SOEs were operated more as socioeconomic safety nets than as competitive businesses. The government had required SOEs to provide for worker health, pensions, safety programs, and for redundancy payments if layoffs occurred. Record keeping, in general, was spotty and incomplete. Some SOEs lacked a credible accounting system and many had never been audited. Lack of records establishing worker payments or government debt often led to privatization studies and/or valuations that completely missed unfunded liabilities.

A 1995 report entitled *Privatization in Africa: The Case of Zambia*, noted: "Problems were encountered because of the poor state of the books and records of the parastatal enterprises, an apparent unwillingness to provide information to ZPA in preparation of the enterprises for sale, political representations, misinformation to employees, a failure to perform stewardship functions, and the fact that contentious issues were leaked to the press in a manner designed to destroy the credibility of ZPA." [2]

[2] Kinley, Lana. *Privatization in Africa: The Case of Zambia*. Report prepared for the Government of Zambia by Deloitte Touche Tohmatsu International, funded by USAID contract no. PO-611-023-O-00-5183-00, September 1995.

The objectives for privatization set forth under the Act gave ZPA no specific guidelines for how to build a competitive business out of an SOE.

Rising to the Challenge

ZPA's original staff were drawn from parastatal companies which offered few incentives for hard work, creativity, innovation, or initiative. Lack of morale and low productivity were the norm.

Given their prior SOE experience, the Negotiation Skills Workshop was a major eye-opener for many ZPA staff. Suddenly, they were expected to work long hours and complete homework each night. Active participation and high productivity were set as the standard. Because the training was conducted off-site, there was no place to hide. Much to the chagrin of the workshop leader, two participants ended up going to the hospital, and others found a variety of excuses that limited their participation.

Some staff, however, rose admirably to the challenge. One participant, who suffered a relapse of malaria in the middle of the workshop, insisted on completing the program. Temporarily unable to read because of the malaria, he asked others to read to him so that he could prepare for the negotiation exercises. He not only completed the program . . . he did exceptionally well and has since been recognized as a star within ZPA. Others who rose to the challenge have also been recognized and rewarded.

Over time, less-motivated staff resigned or their contracts were not renewed. ZPA is now able to recruit high-quality talent from the private sector, because it is recognized as a good place to work. When ZPA eventually completes its work, its staff should be in great demand for private sector jobs.

- **Internal staff issues.** ZPA staff, transferred from parastatals, was of uneven quality and had widely varying levels of technical skill, job commitment, and productivity. It was difficult for many staff to envision how the negotiation of any given sale contributed to the long-term interests of Zambia.

- **Complex coordination issues.** Because of the wide range of people involved in negotiations, some of whom were volunteers, it was not easy to coordinate activities. ZPA staff complained it was difficult to get outside chairmen and lawyers to come to meetings. Chairmen and lawyers complained that they were either inundated with too much administrivia or kept in the dark. Overall, there was a certain adversarial attitude between the various elements of the privatization effort. It was difficult for negotiation teams and ZPA staff to develop the kind of working relationships needed to support a consistent, well-thought-out approach to negotiations.

- **Overreliance on price alone.** Initially, little attention was paid to unresolved liability issues involved in sales of SOEs. It was hoped that a buyer could somehow be induced to pay the "right" price and shoulder responsibility for dealing with all liabilities.

  As a result, ZPA tended to define a "good deal" as one that brought the highest purchase price (price per share). Long-term privatization goals such as maintaining a viable business, sustaining productive employment, and developing new ways to upgrade worker skill took a back seat to the perceived need for maximum sales price. Dealing with the political and economic interests of the public were not seen as ZPA's responsibility. Unfortunately, many interested stakeholders (including workers and creditors) did see these issues as ZPA's responsibility. Opposition to privatization grew as stakeholders perceived that ZPA was ignoring their legitimate interests.

- **Poor public understanding.** The public feared privatization would bring about loss of jobs and sale of the country's "crown jewels" to foreigners. Workers would routinely hold up deals or file court suits to insist on redundancy payments even if they were not scheduled for dismissal. Creditors rushed to establish their claims in court because they had no assurance they would be recognized in the future.

  This hostile and skeptical public attitude was made worse by ill-informed and negative press coverage and inconsistent government pronouncements. The public suspected the ZPA of double-dealing, feared loss of national wealth, and had no clear understanding of either the purpose or long-term benefits of privatization. ZPA was having trouble in getting its message heard and there didn't appear to be anyone at ZPA with the forum to explain it.

Viewing this situation from afar, many consultants and "experts" chided Zambia for "lack of political will." They suggested that the GRZ should ramrod needed change (including privatization) regardless of public opinion. By ignoring the need to build political consensus in a democracy (particularly a new one) they missed a critical point.

Privatization is, by its very nature, a political process with economic consequences rather than the reverse—an economic process with political consequences. Politics cannot be eliminated. It informs the entire process of privatization. Blaming "lack of political will" ignores the fact that any democratically elected government is doomed to fail if it tries to coerce change that is unsupported by the electorate. This was as true for Zambia as it is for the elected representatives of any democracy.

Political support can, however, be built, thereby generating political will. The key to doing this rests on providing a forum for raising and resolving process issues with key stakeholders thereby turning them into active participants in privatization.

In light of these problems, it was clear that to be of practical assistance, the training workshops would need to:

- engage participants in defining clear privatization objectives that made sense to the average Zambian
- create criteria for sales that supported long-term Zambian development goals
- create crusaders who could help educate the public and their peers in the benefits of privatization
- develop procedures that would both clarify and rationalize the negotiation process
- produce professionally competent and proficient negotiators

2

Using Training to Transform the Process

The goal in mutual gains negotiation is to maximize negotiation gains for both sides without sacrificing relationships or leaving unrealized gains on the table.

It was clear from the 1993 needs assessment that the originally envisioned, short "off-the-shelf" training in basic negotiation skills would not suffice to overcome the problems ZPA faced. O&A and the Mission agreed that workshops should be as realistic as possible in order to give participants a chance to practice their newly acquired negotiation skills. Accordingly, Zambia-specific content in the training was raised from 10–20 percent to 60–70 percent. Tailored case studies were developed focusing on the reality of the Zambian privatization experience.

To fully engage participants and limit distractions, workshops were held off site with accommodations, meals, and transportation provided. Programs began on Wednesday night and finished Sunday at lunch. With the exception of the first and last day, each training day was approximately 9 hours long with homework assigned each night. This rigorous schedule clearly identified those who were not fully committed to the success of the privatization effort.

The first day and a half focused on the elements of mutual gains negotiation. This approach represents the cutting edge of alternative dispute resolution (ADR) theory. The goal is to maximize negotiation gains for both sides without sacrificing relationships or leaving unrealized gains on the table. Unlike some techniques that promise "how to get yours and most of theirs, too," this is a more subtle approach that supports both negotiation and mutual trust building.

Realistic exercises taught participants how to value differences in:

Valuations

■

Future Forecasts

■

Risk Aversion

■

Capability

■

Time Preferences

Since negotiation is a "learn by doing" proposition, each of the structured exercises in the workshop reinforced basic negotiation skills as they applied to privatization.

The first exercise mirrored the typical understanding of negotiation as "marketplace bargaining."

The second exercise introduced a more cooperative model of negotiation and exposed participants to both the benefits, and pitfalls, of the competitive and cooperative models.

The third exercise showed participants the importance of thorough preparation, exchanging information, and trading options and packages to reach the most efficient agreements.

The fourth exercise introduced participants to the cutting edge of mutual gains negotiation. Most people assume that the goal of negotiation is to find out what each side values and then split the difference. In reality, the best negotiators create joint gains by valuing differences and giving each side most of what it really needs. Moving from theory to privatization practice, participants were challenged to analyze a fictional company and prepare for negotiations by focusing on long-term benefits and goals. They were asked to set clear objectives and obtain negotiating authority sufficiently comprehensive and broad to secure maximally efficient agreements. Thinking through both the nature and structure of Board reports helped participants refine the report format and better define the grant of authority needed to successfully conduct negotiations.

For many participants, the privatization case study was surprising. It detailed the condition of a fictitious company that mirrored the state of many Zambian companies—insufficient cash flow, high debt, old equipment, no sales or marketing skill, no market niche, and new competition. Participants were forced to set aside their accustomed role as critics and engage in the real work of putting together a successful negotiation strategy.

Once the study was complete, the next challenge was to conduct negotiations between team members regarding roles and responsibilities, team positions, scheduling activities and a host of other issues preparatory to the first meeting with potential buyers. Participants learned to set and negotiate agendas, focus on being proactive, and establish procedures to make the team function productively.

The final exercise engaged participants in negotiating the sale of the company detailed in the privatization case study. This presented some of the most difficult and intractable problems found in privatization negotiations. Each side in the negotiation received secret instructions and a wealth of possible options to consider. They were given alternatives for dealing with the many issues of the sale. To "succeed" in negotiating the sale, each side had to realize a minimum score. This exercise highlighted the importance of identifying, and exploiting five critical differences common to most negotiations, described below.

- **Differences in relative valuations.** Each side in a negotiation places different values on different items. Exploring the hierarchy of these values reveals how each side might trade lesser ranked ones for more important ones. Zambian buyers, for example put a high value on tariff relief and forgiveness of outstanding loans. Sellers tend to put a high value on buyer commitment to fund a variety of worker benefits (including salary increases, profit sharing, training programs, and employee stock ownership plans).

- **Differences in forecasts.** Rarely do both sides in a negotiation agree on the likelihood of certain key future events (such as projected revenue). Contingent agreements accommodate these differences by allowing the more optimistic side to profit (if their predictions come true) without penalizing the less optimistic side if these gains fail to materialize. The workshops taught ZPA negotiators how to structure time-specific, profit-sharing arrangements.

- **Differences in risk aversion.** In any given negotiation, one side will be more risk averse or have more to lose than the other if certain events fail to occur. Appreciating this difference, negotiators can craft agreements that insure the more risk-averse party against loss. One form of "insurance" that was discussed for Zambian agreements was to base the profit-sharing arrangement on attaining a certain level of sales.

- **Differences in capability.** When one side has superior access to resources that could help both sides, it makes sense to have that side use its leverage (if it is cost-efficient to do so). An example of this difference in capability was incorporated into the workshop case study. The case raised the possibility of creating an Out Placement Center for redundant employees with the seller providing space and administrative staff (which it had in abundance), and the buyer providing equipment and trained counselors (to which it had better access).

- **Differences in time preferences.** What takes place when is often of primary importance to one side or the other. Dealing with layoffs is a point in case. Sellers are generally more concerned about the timing of layoffs and will want them to occur gradually. Buyers, on the other hand, are generally more concerned with the timing of payments. Negotiating the timing of both can produce significant and valued tradeoffs.

By taking the cutting edge of negotiation theory and applying it very specifically to the challenges facing Zambian privatization, this exercise clearly demonstrated how the principles of negotiation learned on the second day of the workshop applied to real-world companies.

The workshops gave participants a common language and experience base and helped them understand and appreciate all key players in the process and the role each plays.

3

Fundamentals First

Defining an appropriate grant of authority was both the most critical and the most complex issue in the entire privatization process. Lacking clear, unambiguous authority, it was impossible for teams to respond to the questions and proposals of potential buyers in a timely fashion.

Setting Clear Objectives

While the goals of the original Privatization Act were laudable, they were also vague. Lacking clear objectives, neither ZPA nor its Board knew how to measure their performance. The Privatization Act offered little concrete guidance in what priorities to set or what tradeoffs to accept. Consequently, some negotiators became paralyzed for fear of making a wrong move, intransigent (making extreme demands), or set unrealistically high purchase prices.

As a result, negotiations dragged and businesses in the first Tranche continued to deteriorate and lose value. To remedy the situation, negotiators needed clear objectives that they could translate into real-world terms.

The privatization case study exercise was specifically designed to address these issues and to help participants clarify their objectives, both in the initial ZPA Board paper and in their plan for privatization of the company.

Because privatization is essentially a political process, it is critical that privatization agreements address key sociopolitical interests as well as marketplace concerns. Critical issues include what to do with the company's workforce and their future. Not only must worker liabilities—pension deficits and redundancy payment funding—be placed squarely on the table, there is the question of remuneration, training, employee stock ownership plans, and other benefits for the workers who remain.

Liabilities are another critical issue that significantly affects a company's future health. Looking at the long term: How will it survive? What will it produce? How will it become (and remain) competitive and profitable? These questions illustrate the host of issues that must be weighed in preparing for negotiations. Having a clear set of objectives helps prioritize and address these issues.

During the course of several workshops, teams developed the following objectives as models in the privatization case study.

- **Sell to a qualified buyer.** In the first Tranche of sales, winning bids were often those that offered the highest cash price whether or not the bidder had experience in running the kind of business being sold or access to critically needed capital and/or technology. Workshop participants came to recognize the long-term benefits of attracting qualified buyers with the expertise and resolve to invest in the company and to revitalize it.

- **Detail and nail down buyer plans and commitments.** As negotiators began to concentrate on crafting deals that reflected all of a buyer's hard cash commitments, they became more adept at valuing and integrating these commitments into the deal.

- **Solicit and evaluate the business plan.** To maximize the probability that a company could become viable, and eventually become competitive, teams learned to favor the buyer who had the best business plan and resources to make the company a success.

Selling Empty Buildings: The Trading Sector Challenge

Privatization of the largely bankrupt Trading Sector was one of many challenges facing ZPA negotiators. Responsible for both retail and wholesale provision of consumer goods, the sector's "assets" consisted mostly of empty buildings. The easiest (and most devastating) thing to do would have been to liquidate the entire sector.

The trade sector negotiation team chose instead to plow ahead and try to hold creditors at bay while they put into practice what they had learned about setting objectives. Their ambitious objectives included finding buyers who could:

- Provide world standard merchandising and retailing services to the citizens of Zambia
- Offer reasonable open market value/price for the trading sector companies' assets being offered
- Help transform the Zambian economy through creating a thriving consumer marketplace
- Generate appropriate tax revenues from growing and profitable companies
- Expand career development opportunities for Zambians
- Increase management, employee, and public participation in the ownership of assets and real estate
- Help transfer financial, ownership, and management responsibility to the private sector as expeditiously as possible
- Contribute to healthy competition in the trading sector

These objectives were made a matter of record in all documents including tender documents and final agreements of sale. Using these guidelines, ZPA negotiators were able to close a number of good deals, including two particularly important multi-location deals with major multinational buyers capable of bringing world-class merchandising (and a host of other benefits) to Zambia.

An example of how these objectives translated into improved deals can be seen in how one ZPA team dealt with the Trading Sector challenge.

Proper Negotiating Authority

Inadequate negotiating authority and lack of corresponding latitude to make operational negotiation decisions had hindered both the ZPA Board and the negotiators working on its behalf. During the first year of privatization, the practice had been for negotiators to request only very limited authority which typically included:

- approval for the mode of privatization (e.g., to a minority shareholder with preemptive rights or through a tender offer or management buyout)

- approval for a certain number of the company's shares to be offered, which would give the new owner majority control

- specification that 30 percent of the authorized shares would be reserved in the Privatization Trust Fund for later sale to the Zambian public through the nascent stock exchange

- terms of payment (invariably cash on the date of transfer)

- a deadline for concluding negotiation and transfer (usually about 90 days)

This limited and wholly arbitrary authority (detailed in the original ZPA Board report) strangled the entire process. It gave negotiators little maneuvering room and set unrealistically tight deadlines. As a result, teams felt obliged to continuously seek Board guidance on individual, often small, negotiation issues. This practice created inordinate delays. The ZPA Board (composed of volunteers) did not meet every week and it was not unusual for requests for clarification to go unanswered for months.

To successfully close optimum deals, negotiators needed comprehensive, yet flexible statements of authority. An ideal authority would be one that gave negotiators latitude to exploit and act on potential offers while allowing the Board to maintain overall control. This authority needed to be made "up front" (meaning that it was included in the initial Board report and granted when the Board authorized the report).

Defining an appropriate grant of authority was both the most critical and the most complex issue in the entire privatization process. Lacking clear, unambiguous authority, it was impossible for teams to respond to the questions and proposals of potential buyers in a timely fashion. Their inability to do so frustrated both the team as well as prospective buyers.

ZPA teams found that the best model for an effective grant of authority was one which consisted of a Board-approved set of company-specific objectives. For example, teams requested authority to conclude transactions whose net present value was no lower than a specified floor price. As a result of the training, ZPA found it increasingly useful to fix the floor price by valuing the BATNA (best alternative to a negotiated agreement). This will be discussed in the next chapter.

Granting broader, more comprehensive and flexible authority was critical to reducing the amount of time needed to negotiate a deal. Expanding the grants of authority also dramatically improved the quality of the deals that were made as can be seen in the Zambia Sugar case described in chapter 4, "Defining a Good Deal."

In the first Tranche of sales, winning bids were often those that offered the highest cash price whether or not the bidder had experience in running the kind of business being sold or access to critically needed capital and/or technology.

4

Defining a Good Deal

Price vs. Net Present Package Value

A primary goal of the Privatization Act was to create capital income for the treasury. This was translated by ZPA into "top bid wins." ZPA instructed its negotiators to obtain the highest price per share possible. Because the final "price" received for each company was printed in the newspaper, ZPA felt under extraordinary pressure to get the maximum price for each SOE. For example, out of 1,000 points that could be accorded a bid (based on a bid evaluation document which has since been changed), 600 points were given for price, and a total of 400 points were awarded for all other aspects of the bid.

Unfortunately, bidders routinely tendered bids lower than the asset and future earnings valuations developed in the privatization study. These studies were not revealed to prospective buyers.

Bidders who underbid this hidden figure were urged by negotiators to "improve" their bids, but were given no rationale or incentive to do so. They were told there was "lots of competition" (though in some cases, there was none) which only served to further sour the climate for negotiations.

From a marketplace perspective, reliance on price makes a certain amount of sense. However, from the perspective of privatization, and the sociopolitical agenda it requires, reliance on price alone presents a false premise.

Deals that in the early days of privatization took up to two years to finalize have since been brought to closure in as little as two months or two weeks. In several cases, deals have been made in as little as two days!

When an asking price is exorbitant, it eats up all spare capital that might otherwise be applied to ensuring corporate survival and developing future competitive advantage.

The goal of privatization is not simply to off-load SOEs. The ultimate objective is to sell SOEs to qualified buyers prepared to invest the time, money, and expertise needed to improve human capital, technology, the physical plant, and equipment and turn these companies into competitive enterprises. When an asking price is exorbitant, it eats up all spare capital that might otherwise be applied to ensuring corporate survival and developing future competitive advantage.

Exclusive reliance on price also invited two other undesirable effects. First, it served to attract otherwise unqualified buyers who only wanted to strip the company of its assets to make a profit. Second, it effectively shut out consideration of workers (who, though they may not have been at the table, certainly influenced the outcome of negotiations). Workers whose welfare is clearly made part of the deal (e.g., when a buyer offers to take over unfunded pension liabilities) are much less likely to either contest the deal or preemptively strip the company of existing assets.

In the Negotiation Skills Workshops, ZPA teams were asked to consider not just price, but the overall value of "a package deal." Package deals take into account any item that the buyer commits to fund that can be accurately valued. These commitments become, in essence, part of the purchase price. If these commitments are not assumed by the buyer, they would be paid for by the seller (out of the sale proceeds). By giving the buyer an incentive to shoulder cash commitments to both long-term and short-term goals, ZPA has been able to get a much higher "price." ZPA can then announce this "price" in the newspapers. At the same time, buyers are rewarded for doing what a good faith buyer would want to do anyway.

A sample of the potential buyer commitments that teams learned to value included:

- investment programs in marketing and sales
- assuming outstanding tax liabilities
- assuming and retiring short-term and/or long-term debt
- share ownership plans for employees or management
- commitment to purchase and import new equipment, stock materials, or to underwrite a rebuilding program
- assuming outstanding legal liabilities
- technical assistance commitments to improve capacity and human capital
- funding redundancy payments or pension plans at a specific level

All of these considerations represent valid hard currency commitments (so long as they are documented and enforced in the final agreements). These commitments (and others) are now routinely included in calculating the final purchase price. ZPA negotiating teams now weigh all these aspects as they assess bids and offers from prospective buyers.

While the above list is by no means exhaustive, it does illustrate the extent of change adopted by ZPA. As the Board, ZPA staff, and negotiators gained confidence in their ability to challenge existing procedures, they became more willing to explore creative ways to maximize the deal value with potential buyers. For example, using the net present package approach (which values all forms of commitments), ZPA negotiating teams are creating much more valuable packages than originally anticipated. Negotiations are resulting in hard cash investment commitments, increased technical assistance, technology transfer, and improved employee packages and benefits. The package deal approach also led to a significant shift in negotiator behavior.

The prevailing attitude prior to the workshops can best be summed up in the marketplace adage "Get the last kwacha and take no prisoners." This approach had led to a "take it or leave it" attitude in ZPA. This was reflected in how ZPA treated potential buyers and their representatives. Rather than treating potential buyers as partners in the process of privatization, buyers were most often seen as petitioners and were left waiting in reception rooms for long periods of time. Buyers' phone calls, letters, and requests for information were routinely ignored. As ZPA focused on creating maximum value for both sides, their attitude toward potential buyers shifted. They began to treat buyers and their representatives as a key part of the process, realizing that without them, there would be no sales. ZPA collectively realized that today's buyers could be the source of future buyers (assuming that if they were satisfied with their experience, they would spread the word to other entrepreneurs). Satisfied buyers could also serve as political supporters to give the government additional incentive to continue privatization efforts. Team members began to redefine their role as facilitating the sales process rather than passing judgment on buyers' offers.

As a result of this shift in attitude, ZPA has become a more "user-friendly" and customer-service-oriented organization. Both internal and external negotiators now realize that part of their job is to market the privatization process, as well as marketing their companies to a broad spectrum of potential buyers. Teams work to convince potential buyers that the selling process is, in fact, fair and objective. This transition better serves the long-term interests of the company, the buyer, the workers, the GRZ, and the citizens of Zambia.

The prevailing pre-workshop attitude was the old marketplace adage "Get the last kwacha and take no prisoners."

A Case in Point: Zambia Sugar

One of the first profitable companies offered for privatization was Zambia Sugar (ZS). It was in better shape than many others and had a willing buyer in its minority shareholder (an international sugar conglomerate which had owned the company prior to nationalization). ZS's Articles of Association specified that, prior to any sale to outside interests, the party wishing to sell must first offer its shares to the other party at the net asset value. This clause became a major sticking point.

Based on the company's books, the net asset value was extremely low. An earnings valuation (conducted by a multinational accounting firm) placed the value at approximately 9 times the asset book value. The minority shareholder, however, insisted on its rights under the Articles. The shareholder claimed that its earnings valuation (calculated independently) was in line with asset book value. This dispute led to an 18-month stalemate during which both parties pursued legal options. Meanwhile, the conflict escalated and the company suffered.

After members of the ZS team attended the first Negotiation Skills Workshop in October 1994, they decided to try a different approach. They suggested the parties leave aside for the moment the legal issues pertaining to market value and the content of the Articles and focus instead on business issues and negotiating a process for breaking the deadlock. This significantly reduced the emotional temperature. In the discussion that followed, both sides came to realize that their valuations were at odds because they were based on very different assumptions about the likelihood of certain future events. These included the future price of sugar exports, capital spending requirements, the future price of molasses, and the price of sugar in world markets.

Package deals take into account any item that the buyer commits to fund that can be accurately valued. These commitments become, in essence, part of the purchase price.

Both sides agreed to empower a subcommittee to develop an agreed upon set of assumptions to guide a new valuation. By spinning off a technical committee (composed of representatives from each party and the original independent valuer) to work this issue, the rest of the negotiations were free to proceed.

The joint valuation subcommittee was successful in agreeing on a value with a $4 million range, which both parties could accept. With the stalemate broken, the group then went on to successfully negotiate the other remaining issues. The Heads of Agreement was signed in late March 1995 and the final agreement of sale followed.

This second effort, led by ZPA graduates of the negotiation skills training, took 4 months. It broke the 18-month stalemate and produced a good deal for both sides, as well as for the company.

Since the Zambia Sugar deal, ZPA negotiating teams have become even more adept at process negotiations and at the art of closing deals. Deals that in the early days of privatization took up to 2 years to finalize, have since been brought to closure in as little as 2 months or 2 weeks. In several cases, deals have been made in as little as 2 days! From the outset of privatization to the first Negotiation Skills Workshop in October 1994, 13 SOEs were sold. In the 6 months following the training, 12 Heads of Agreement or agreements of sale have been signed. According to ZPA status reports, as of December 31, 1995, a total of 101 business units have signed Heads of Agreement.

Selling to a Qualified Buyer

A second goal of the Privatization Act was to improve the competitiveness of enterprises within Zambia. To do so required qualified buyers.

The first companies privatized often continued to struggle for survival. They faced mounting debts and had outdated plants, generations-old production equipment, and insufficient operating capital. Their workers had little experience in marketing, sales, or customer service. There were constant fears that new buyers would sell off assets or strip the company rather than improve it. As a result, companies sold in the first Tranche generally failed to demonstrate the anticipated benefits that could be used to showcase them to the public.

Discussing what constituted a "qualified" buyer in the negotiation workshops helped participants recognize the importance of assessing both the long-term and short-term benefits associated with privatization. These discussions clarified the need to attract qualified buyers with the expertise, financial resources, and desire to invest in and revitalize the companies being offered. It also reinforced the need to structure agreements that provided buyers with incentives to make needed investments.

While all the SOEs in the first Tranche had assets and strengths that a savvy owner could successfully exploit, negotiators had generally ignored investment needs, available resources, and manpower issues. These are key business issues.

Good dealmaking focuses on business issues to reach a business agreement. A key insight for participants was to realize that if the overall objective was to sell the company, it was best to table legal issues and focus on critical business issues first so that companies did not languish during negotiations. When timely closure became a priority for ZPA negotiators, a new, nonadversarial perspective entered the privatization effort.

A key insight for participants was to realize that if the overall objective was to sell the company, it was best to table legal issues and focus on critical business issues first.

A Piece of the Action

The Privatization Act included a clause that "each enterprise shall be sold for its market value." In practice, this meant that two types of valuations were conducted for each company: one dealt with a projection of the company's earnings and the other was a valuation of all the company's assets including the non-performing assets. By statute, asset valuers were paid a percentage of the amount at which they valued the asset. In essence, the law gave valuers a clear incentive to overvalue company assets and it was these unrealistically high valuations which had become a major hurdle to the process of privatization.

ZPA staff, who were accustomed to this practice, had difficulty in seeing possible connections between this provision and the wildly unrealistic valuations they had been receiving. Once teams began to focus on the linkage between the way valuers were paid and the reports they produced, they recommended ZPA reconsider the practice.

As a result, ZPA began to pay asset valuers a fixed fee. Over time, as ZPA became more comfortable with net present package negotiations, they concluded that business valuation alone was often sufficient, and that asset valuations were not always necessary.

Enter the Best Alternative to No Agreement (BATNA)

In the marketplace paradigm of negotiations, both sides develop what they refer to as a "bottom line." This is the figure below which either party will walk out of the room rather than strike a deal. The problem with these bottom lines is that they provide no viable alternative in case of deadlock. Prior to October 1994, ZPA negotiators developed their bottom line from the asset and earnings valuations calculated during the privatization studies. These bottom lines were then memorialized in the Board papers as part of the negotiating authority.

Valuation is standard practice in developed market economies where companies have well-kept records, where comparable sales provide a basis for comparison, and where market niche is well established. Under these conditions, forecasts can be made (and are accepted) with some confidence. In developing economies, financial records may be incomplete or nonexistent. There is no clear market niche. Future prices, the security of material supply, the business environment itself, and the issue of political risk all influence the calculation of value.

Despite these uncertainties, once a valuation range had been established, it became ZPA gospel. It dictated both the asking price (per share) and the bidding floor. The problem was, that in most cases, there were no buyers willing to pay the floor price, much less the asking price!

The valuation belief that "true market value can only be determined by a willing buyer and a willing seller both of whom have equal knowledge and each of whom is acting for self-interest and gain" did not apply well in Zambia. Lacking alternative guidelines, ZPA tended to rely on valuations even though the valuers themselves warned against this. By relying exclusively on asset and earnings valuation, Zambian privatization had the worst of all possible worlds. This problem was compounded by the fact that asset valuers were routinely paid a percentage of the value of the asset they analyzed.

In place of valuation, the workshops introduced an alternative approach to establishing a valid floor price— the BATNA (best alternative to a negotiated agreement). It is one of the key concepts of mutual gains negotiation.

A BATNA is an assessment of a negotiator's "no agreement alternative" and its value. If the negotiator fails to make a deal with the current potential buyer, what is the no agreement alternative and what is it worth?

The attraction of a BATNA is that from the outset of negotiations, it provides both parties with a clear understanding of their options should negotiation fail. Assessing and placing a value on a BATNA grounds negotiations in the real world of costs, benefits, and tradeoffs. Basically, any deal is worth making if it exceeds one's BATNA. If it doesn't, then the BATNA should be pursued instead.

Training helped negotiators determine floor price based on a company's BATNA. For example, suppose a SOE was in bad shape. The most realistic BATNA, if agreement is not reached with a potential buyer, is liquidation. Assume the liquidation price (after calculating in all of the gains and losses) is $3 million. Using the BATNA, any offer that exceeds $3 million is an offer worth taking, even if the company valuation is much higher. If no buyer can be found who will accept a package of $3,000,001, then liquidation is a better option.

Employing the BATNA concept removes a lot of posturing, wasted time and effort, and adversarial behaviors from negotiations. That is not to say that valuations are not an important part of the privatization process. On the contrary, they uncover useful information that is critical to negotiations. But experienced valuers readily admit that a valuation is a perishable product and should be used merely as a guide, not gospel.

Assessing and placing a value on a BATNA grounds negotiations in the real world of costs, benefits, and tradeoffs.

5

Preparing for Dealmaking

By focusing on long-range goals and objectives, teams became more willing to take politically courageous stands when they felt Zambian interests as a whole were not being well served.

As has been noted, in ZPA's first year of operation, there was a certain amount of strain between the ZPA Board, staff members, and outside negotiators. The Board felt overwhelmed with the avalanche of paper and requests that rained down on them by the staff and negotiating teams. The teams felt disconnected, and were often unable to decipher the Board's instructions. ZPA staff found it difficult to get outside chairmen and lawyers to come to meetings. Chairmen and lawyers felt that they were either inundated with too much administrivia or kept in the dark.

At the negotiation table it was apparent to prospective buyers that negotiating teams had no shared strategy and little cohesion. Team members interrupted and contradicted each other in front of potential buyers. Bidders interviewed during the October 1993 needs assessment reported that teams appeared unprepared and that negotiations seemed to lack forward movement. In short, the privatization process did not seem to be a managed effort.

As the workshops progressed, it became clear that ZPA teams needed to focus on their roles and responsibilities both during negotiations, and as part of the process as a whole. During the course of eight workshops, a significant number of ZPA Board members, the entire ZPA staff and management, long-term technical advisors, potential outside negotiators, several members of Parliament and donors,

Doing the Right Thing

During the sale of a basic food staple company, ZPA's new-found empowerment proved critical. The importance of this food stuff dictated that ZPA had to find a qualified buyer who could invest in and revitalize the company. The highest cash bid came from a ranking member of government who proposed to finance the bid from the operational proceeds of the business.

This bidder had no demonstrable experience in operating a business of this type, no technical partner, and financing the purchase would have reduced funds for capital improvements in the plant, or for investment in equipment, technical assistance, and human resources.

Other bidders, with proven international track records, offered less cash up front, but promised substantial investments in capital and human resources. It took real "political will" to make the best deal for Zambia, which, in this case, meant selling a majority interest in the company to a foreign multinational.

buyers and buyers' representatives came to better understand the role that each had to play.

Having learned in workshops how to work more effectively together across institutional and self-imposed boundaries, ZPA teams began to focus on how to delineate and delegate roles and responsibilities more effectively. The results of this effort were notable. Teams began to:

- Produce meeting schedules and agendas in advance of scheduled negotiations.
- Develop goals and objectives for each negotiation meeting and share them in advance with bidders to solicit their feedback and ideas.
- Present themselves more professionally at the negotiation table.
- Focus on longer-range goals and objectives.
- Take politically courageous stands when they felt Zambian interests as a whole were not being well served. An example of this centered around "doing the right thing."

The attitude of the ZPA Board was also changed as a result of the workshops. Initially, the Board tended to polarize around private sector members (who were early proponents of privatization) and government officials (who retained a socialist mindset). Rather than setting overall direction and policy, the Board tended to micro-manage (albeit from a distance), centralizing all decisionmaking.

Board members who completed the workshop became markedly more accessible to both staff and outside chairmen, consultants, and negotiators. The Board began to meet more regularly to provide more timely guidance. They permitted the Zambia Sugar negotiation team to report to them directly on their novel valuation approach.

Having experienced the difficulties involved in operating with insufficient authority in the workshops, the Board began to delegate increased authority to the negotiation teams. Overall, communication between the Board and negotiation teams has improved and there has been a concerted effort to better integrate each other's contribution to the overall effort.

As workshop participants developed more understanding and mastery of negotiation skills, they gained confidence in both the process and their own abilities. With this growing sense of empowerment came greater willingness to take responsibility for making things happen. The following examples illustrate how this has transformed the privatization program.

- The ZPA Board decided that all outside negotiators would first have to graduate from the Negotiation Skills Workshops before they would be appointed to negotiate for ZPA.
- Negotiation teams themselves began to refine ZPA procedures. Originally, all information was funneled from

the teams through the CEO to the Board and then back to the teams. This led to confusion, miscommunication, and substantial delays. Teams had to wait for their requests to be presented, for the Board to reach a decision, and then for that decision to be transmitted back to them via the CEO. Improving on this process, at least one team (Zambia Sugar) presented directly to a committee of the Board, answering the Board's questions and simultaneously receiving instructions from the Board. This has since become a model for interactions with the Board.

- Teams began preparing requests for, and receiving more expansive and realistic negotiating authority. This authority allowed them a freer hand in negotiating agreements without constant recourse to the Board.
- Non-ZPA participants such as the Zambian Association of Chambers of Commerce and Industry (ZACCI) became more active advocates for expanding privatization. ZACCI participants in the training remarked that they had never really understood privatization before or what it was trying to achieve. After several ZACCI Board members attended the training, the organization began to take a more visible and proactive role as advocates for privatization. For example, ZACCI has taken the lead in offering their services to assist ZPA in its efforts to install oversight committees in companies awaiting privatization to forestall employee asset stripping. They have actively promoted business community participation in the Negotiation Skills Workshops. ZACCI's chairman approached the USAID/Zambia Mission about a joint venture to offer a condensed version of the workshop in major cities throughout Zambia. ZACCI saw this as a way to educate their members about privatization and to build support and interest in the business community for buying privatized companies. This would be a major undertaking and marks the first time ZACCI has attempted such an effort.

In many cases, workshop graduates began to shoulder responsibility for challenging established authority in their role as privatization advocates. This is an unusual act in Zambia where deference to authority is the norm. For example:

- Twenty business and political leaders from the February 1995 program formed a group to raise issues of concern with the ZPA Board. Several members went on to become chairmen of negotiating teams. One of ZPA's most successful deals came from a team chaired by a member of this group which continues to provide valuable input to both ZPA and its Board.
- At one stage, a participant who was a prominent member of Parliament attempted to put together a program exclusively for government officials. While this workshop had to be postponed, a number of officials including permanent secretaries in the Ministry of Finance; Ministry of Commerce, Trade,

Moses and the Tablets

In the hostile public environment surrounding initial attempts at privatization, it was difficult for ZPA staff to take independent action or show initiative. There was a strongly perceived need to circle the wagons and batten down the hatches. After the initial negotiation training, participants saw that both the structure of the Board reports and the requests for authority had to change, but they were pessimistic that either management or the Board would accept such changes.

A small delegation of brave souls took on the challenge of approaching ZPA's CEO. Consultants had suggested that they use humor to broach the issue of change. They informed the CEO they had discovered a little-known fact: "When Moses came down from the mountain he carried two things—the 10 commandments and the format for ZPA Board reports."

"Was it true," they inquired, "that nothing less than an Act of God could change the formats?"

The CEO stared at the delegation for a long time and then burst out laughing. "No," he said, "changes can certainly be made."

Welcome to the Team

In the initial workshops on negotiation skills, a fair amount of hostility to privatization was apparent. In an early program, participants asked:

"How were decisions made to sell?" "Who decides what company is sold to whom?" "Is preferential treatment being given to 'insiders' or government officials?" "Why are foreigners allowed to participate?" "Shouldn't the government protect key industries from competition?"

These and many other questions revealed a lack of understanding not only of privatization, but of how free markets operate. They also showed that some negotiators saw themselves as separate from ZPA.

After patiently responding to hours of hostile questioning during one workshop, the vice chairman summarized, "Look, after this training you'll be representing ZPA. You'll be the ones responsible for privatizing individual companies. There won't be any surprises because you'll be making the decisions. In fact, after you leave this program, it won't be 'those people at ZPA,' it will be you. Welcome to the team."

This "welcome to the team" speech became a turning point in each successive workshop.

and Industry; Ministry of Information; and Ministry of Tourism, as well as the Office of the Attorney General have taken part in other runnings.

- Early press coverage of privatization was both uniformly negative and uninformed.[3] In order to generate any positive press coverage, ZPA was forced to take out advertisements in the national newspapers (even when announcing the sale of a privatized company). A senior editor of the *Times of Zambia* was the first member of the press who agreed to attend a Negotiation Skills Workshop. He later wrote an article entitled "Privatization Needs Support From All."[4]

  One quote in particular is telling:

  > "By the end of the workshop, it became clear that there are more challenges than meet the eye in this process. For instance, the tips on negotiations revealed the amount of work taken by the negotiators to see that before the company is sold, the welfare of those to be laid off and those to remain is addressed. The negotiators also seek possible options in the event of companies that cannot be sold. Alternatives are explored to see how the firm can survive if not privatized. Surprisingly, liquidation came out always as the last option."

The article ended by stating, "Privatization is a challenge to Zambians, its failure will leave the clock showing doomsday again."

[3] One long-term CFED consultant provided significant technical assistance to address this issue by working with ZPA to create a strong, multifaceted public relations and marketing program. Efforts have included ZPA forums to explain privatization to the public, coverage in top international financial publications, overseas investor visits, and radio and television advertising. This has led to a better public understanding of the privatization process and greater support for the program.

[4] "Privatization Needs Support From All," Hicks Sikazwe, *Times of Zambia*, October 28, 1995.

6

Making the Deal

Most agreements fall apart for one of three reasons.

1
Parties fail to address critical issues.

2
Parties establish extreme positions and refuse to budge.

3
Parties leave too much on the table.

While mutual gains negotiating techniques are well recognized and widely taught as a critical feature of alternative dispute resolution, they had not previously been offered as a form of technical assistance by donors to privatization programs. Lack of these skills put ZPA negotiators at a serious disadvantage, particularly when negotiating with multinational corporations. Understanding the fundamentals of dealmaking is a major source of personal empowerment for individuals charged with privatization and is critical to the success of such a program.

Unfortunately, the privatization literature is thin on the specifics of making a deal—how to prepare a privatization transaction, the issues to be considered, the tradeoffs to be weighed, and means of building an agreement of sale with "teeth." Yet at the heart of all successful privatization efforts is the ability to make a deal. This is especially the case in underdeveloped countries where capital markets are weak and companies cannot be privatized by public share offerings.

Effective deals are those that transfer ownership of companies from public to private hands in a timely fashion and in a way that preserves their economic value. Even if everything else is done right (creating the right environment, program design issues, negotiating standards, etc.), that alone will not close deals, particularly in highly volatile political climates. Dealmaking skills and techniques are indispensable tools for managing both the substantive and process issues in negotiation.

Most agreements fail or fall apart for one of three reasons.

1. Parties fail to address critical issues, which come back to haunt them later. (One example is

A key component of making deals is understanding that negotiations actually take place on two levels — the process (what will be negotiated and how) and the substance (who will get what).

ignoring interested stakeholders who later charge that they were "sold out.")

2. Parties establish initial, extreme positions which rapidly harden until all their energy is spent in arguing over and defending these positions. Any subsequent movement is seen as a defeat. This stymies the search for alternative solutions.
3. Parties develop insufficient information, leaving "too much on the table" which could have benefited one or both parties.

ZPA negotiation teams experienced all of these problems during the early stages of the privatization. As they polished and applied their newly acquired dealmaking skills, ZPA teams have become adept at:

- maximizing the economic value of both the cash and non-cash items in each transaction
- improving their own productivity and efficiency (thereby conserving and focusing ZPA resources)
- creating more viable short-term prospects for privatized companies and increasing their chances to become competitive and profitable in the long term
- addressing the needs of key stakeholders so that they assist, rather than derail, the process

A key component of making deals is understanding that negotiations actually take place on two levels—the process (what will be negotiated and how) and the substance (who will get what). Unfortunately, most negotiators tend to focus exclusively on substantive issues assuming that the process will take care of itself. Ignoring these larger process issues can be both time-consuming and costly.

During the first year of Zambia's privatization program, little effort had been made to make the implementation process for negotiations transparent, consistent, or predictable. Widespread public confusion about the purpose of privatization was exacerbated by the constant drumbeat of negative press and ZIMCO criticism. In its eagerness to "get on with the business of sales" ZPA had bypassed consensus building. Despite the fact that privatization is essentially a political process, it was one in which public opinion had been largely ignored.

Attention to inclusion and consensus building is important. Public consensus helps build political support thereby generating political will. A variety of consensus-building tools exist within the field of alternative dispute resolution to bring government representatives and interest groups together to negotiate proposed rules or processes. When these tools are bought to bear in the early stages of a program, they can lead to processes that are understandable, consistent, and predictable. Through consensus building, groups who might feel disenfranchised are able to see their needs met. They are less likely to raise roadblocks to programs they have helped design. Implementation becomes easier. Unfortunately, by the time the 1993 needs assessment was conducted, implementation had already begun and it was felt that it was too late to go back and correct this missing step.

Although lack of public consensus (and the absence of any overarching policy advisory group) continued to hamper negotiations, over time, the Negotiation Skills Workshops did help to address this deficit. Through exposure to a wide range of stakeholders who took part in the workshop, negotiators gained both a clearer understanding of, and greater facility in, managing process issues and dealing with the concerns of multiple stakeholders.

Specifically, ZPA negotiators learned how to:

- Recognize and overcome obstacles that could derail negotiations.
- Build successful relationships and overcome "people problems" by anticipating the factors that impact on all negotiations. Negotiators became more adept at negotiating without locking themselves into fixed positions. They also learned how to manage the normal escalation process that occurs during bargaining.
- Deal with differences. Negotiators learned how to structure the bargaining process to accommodate joint problem solving, brainstorming options, and fact-finding. They became skilled in exploiting differences for mutual gain and in broadening the boundaries of potential agreements.

In June 1995, after six successful runnings of the workshops, a one-day retreat was held with graduates who had successfully concluded agreements. Attendees were asked to summarize their key lessons learned as a guide to future negotiators. Interestingly, the majority of the points they raised related to process issues in negotiation rather than to substance. The lessons they cited eloquently demonstrate the importance of negotiating both process as well as substantive issues. Successful teams advised future negotiators to:

- Establish who on the buyer's team has real authority for negotiating on behalf of the buyer and focus on that person or persons.
- Negotiate a method of operation and common process that all parties can "buy into." Ensure this process includes ways to handle disruptions.
- Identify critical areas of agreement as well as differences. Identify an agreed-upon process for moving forward and resolving differences.
- Think ahead, be proactive.
- Assign the best person in terms of knowledge, skills, and contacts to address a particular problem.
- Focus on business interests, not legal issues, to move the deal forward.
- Open discussion early about alternatives. What would make it a worthwhile deal for both sides? What would stop one or both sides from reaching agreement?
- Focus on building informal relationships, one-on-one, with team members on the other side.
- Be willing to trade price concessions for warranty concessions.
- Negotiate sale of the core business first. Focus on non-business assets later or disaggregate them.
- Make sure title to property and goods is pre-cleared before opening negotiations with potential buyers.
- Deal with buyers' preconditions to an agreement in advance of negotiations.

This session demonstrated that the participants had learned how to tie key elements of substantive negotiation to the most effective processes in order to achieve mutually satisfactory agreements.

Through consensus building, groups who felt disenfranchised and raised roadblocks to privatization are able to see their needs met.

7

Enforcing the Deal

The key benefit to the model agreements was that they contained "teeth"—realistic compliance, monitoring, and enforcement provisions to ensure performance without recourse to the courts.

When the mutual gains approach was first introduced, the question arose: "How do you document and enforce such an agreement?" Straight cash sales are easy to "enforce" since the money changes hands at the time of sale. As ZPA embraced the notion of negotiating package deals (not solely dependent on price) the question became, "How do we hold buyers responsible for the promises they made during negotiations (particularly when those promises and commitments could take years to fulfill)?" This was a legitimate concern on several counts.

First, the original agreements of sale were problematic. They tended to be very short, containing only minimal provisions (such as the parties involved, ownership of shares, share price, purchase price, completion date, transfer of company documents, a statement about buyer due diligence, etc.).

Second, there were no references to documents provided by the buyers which led to the agreement. As a result, the buyer was not bound by anything contained in those earlier documents. The agreements also failed to specify enforcement conditions or provisions should breach occur. The agreements were insufficient to protect the GRZ's interests in the deals it negotiated.

Agreements drafted by prospective buyers were quite another matter. Written by experienced commercial lawyers, they provided maximum protection to the buyer and none to ZPA. Since the first person to table a draft of an agreement has the

How do we hold buyers responsible for the promises they make during negotiations (particularly when those promises and commitments could take years to fulfill)?

upper hand in controlling the result, ZPA was at a distinct disadvantage.

If net present package deals were to succeed, some mechanism, outside of the judicial system, was needed to ensure that buyers honored their commitments. A basic agreement of sale was needed that was fair and protected the seller's interests.

Working with commercial lawyers who had represented buyers in the past, O&A crafted two "model" agreements of sale; one, a transfer of assets without associated liabilities, and the second, an agreement on the sale of shares. Together, these two models addressed the majority of Zambian cases. The models were immediately effective in:

- Raising the overall standard for agreements in a cost-effective way. Each negotiating team was assigned a lawyer who could customize the model as needed for each sale. On critical provisions such as financing and timing of payment, the models provide a variety of options so that the drafting lawyer can choose the appropriate one.

- Providing a comprehensive agreement which protected ZPA and GRZ interests while dealing with all the important issues.

- Providing the negotiating teams with a means of seizing the initiative in negotiations.

- Establishing some measure of quality control for agreements.

- Creating a framework for conducting negotiations.

The key benefit was that the model agreements contained "teeth"—realistic compliance, monitoring, and enforcement provisions to ensure performance. Some critical (and often innovative) provisions contained in the agreements included the following.

- **Compliance reports.** A requirement that the newly privatized company file certificates of compliance with the seller or its successors or assignees for a period of five years. These compliance reports not only cover the various commitments the buyer has undertaken, but provide critical information about the financial health of the company, increases in employment, increases in employee benefits, capital expenditures, etc. These reports help ZPA monitor company performance of its obligations. They can also be used to demonstrate the long-term benefits to Zambia. These benefits include new investments, increased employment, taxes paid, and revenues generated.

- **"No termination" provisions.** Once the Heads of Agreement was signed and a deposit placed in escrow, the buyer waived all rights not to go to completion unless it could establish fraud. This was a critically important point. Because there were no auditors' statements, and few detailed records, companies often had unrecorded liabilities. ZPA had no means to guarantee financial accuracy. In fact, if the buyer had been a minority shareholder involved in running the business, they often had better knowledge than ZPA. Buyers had, in the past, held up transactions when "new" information came to light. Given the special nature of these sales and the need for timeliness, it was important that buyers go to completion, even if new information emerged.

- **Provisions for management oversight committees.** A major concern of all stakeholders in the privatization process was the prospect of asset stripping by employees or management prior to completion. The model agreements specify that either (a) a management oversight team (comprised of a buyer's representative and a seller's representative) monitor company activities until negotiations are concluded or (b) buyers take over control of the company at the time of signing the Heads of Agreement (so long as they pay a 50 percent deposit).

- **Asset protection provisions.** Since the goal of privatization was to allow these companies to continue to function, model agreements of sale contain detailed restrictions on the use of the purchased shares and core assets and requirements for managing the company's business. For example, while the agreement permits the buyer to shut down for a period of time to refurbish, it forbids the transfer, sale, or dissolution of assets for a period of five years. This mirrors the period of the buyer's investment commitments. This provision prevents asset stripping and "raiding" of company assets. Should the buyer violate this provision, there are tough financial penalties.

- **Failure to follow through on commitments.** To insure that there are monies available for sanctions, buyers can be required to deposit an irrevocable cash equity amount in a designated bank, or obtain a guarantee of a bond.

- **Extra judicial enforcement mechanisms.** Even in more developed market economies, going to court to collect damages for breach of contract is time-consuming, expensive, and often unsatisfactory. Because the Zambian legal system is in a state of flux, it was critical to find ways to exact compliance without recourse to litigation.

One way in which this could be done was through a variation on "a golden share." Buyers agree that so long as they owe any obligation to the seller, they will vote their shares to include a representative of the seller (or its successors or assignees) as a voting member of the company's Board of Directors.

Before the agreement of sale is executed, basic company documents are amended to require unanimous Board and/or shareholder approval over certain specific actions. Such actions might include declaration of dividends, change in the size of the company's Board, sale of shares,

If net present package deals were to succeed, some mechanism outside the judicial system was needed to ensure that buyers honored their commitments.

sale of any capital asset, and further amendments to basic company documents. If the buyer fails to live up to agreed-upon commitments, the seller's Board member can vote against the proposed measure, such as dividend declaration until compliance occurs.

Other provisions of interest that also serve to protect ZPA and GRZ interests include:

- A requirement that buyers demonstrate they have the wherewithal to implement their plans by providing evidence of access to capital. This could include letters of credit, financial instruments, or guarantees.

- A provision limiting the seller's representations and warranties to a period of one year while requiring a five-year period on the buyer's representations and warranties. The rationale is that ZPA does not have ongoing obligations (as buyers do) and the one-year period offers the buyer reasonable opportunity to discover any problems that should have been disclosed. The buyer does have ongoing obligations based on its business plan, investment commitments, etc. Because ZPA will not be involved in the daily affairs of the company, any discrepancies will take longer to come to ZPA's attention.

Finally, if all else fails, the model agreements contain an alternative dispute resolution clause. Should disputes arise, both parties agree in advance to mediation and to a specific mediation provider named in the agreement. If mediation fails, the parties agree in advance to arbitration with the selection of an arbitrator by a neutral third party.

Effective deals are those that transfer ownership of companies from public to private hands in a timely fashion and in a way that preserves their economic value. Dealmaking skills and techniques are essential to that process.

8

Recommendations for Successful Privatization

In addition to monitoring and enforcement, oversight has another potential benefit. Monitoring can support new management by spotlighting government policies and practices that would impede growth.

While not complete, privatization in Zambia is well underway and, it seems fair to say, can be labeled a success. In reviewing this project and the history of privatization in Zambia, there are a number of recommendations that can be made for ZPA, other privatization agencies, and donors. They are discussed below.

Recommendations for the Zambia Privatization Agency

Compliance, Monitoring, and Enforcement

ZPA has embraced the net present value package strategy for negotiating agreements of sale with "teeth." Currently, over 101 business units have reached at least the Heads of Agreement stage and many more are in the pipeline. To ensure the success of these business units, deciding who will monitor these agreements over the long term is crucial.

If ZPA is dissolved in the next few years as expected, Zambia will need to decide where the monitoring function will be housed and who should oversee the process. Various proposals have been discussed with ZPA, including use of the Investment Center, the new Directorate for State Enterprises, or contracting the function out to one or more private entities. To date, no decision has been made. For the sake of consistency, fairness, and quality control it would be best if this monitoring function could be centralized.

ZPA should consider ways and means to capture and disseminate ongoing lessons learned, both for its own use and for the benefit of others attempting to implement privatization programs.

Regardless of who plays this role, the organization will require the necessary authority, resources, and staff to effectively monitor compliance of agreements and enforce their provisions.

In addition to monitoring and enforcement, this oversight function has another potential benefit. Monitoring can support new management by spotlighting government policies and practices that would impede growth. Where government policies result in roadblocks to private sector growth, centralized oversight can highlight this conflict and serve as a catalyst for discussing policy implications and reform. Information about job creation, new foreign investments, improved productivity, tax yield, and other issues can be collated and presented to the public to show how privatization is succeeding and directly benefiting Zambia and individual Zambians—not only at the time of sale but subsequently.

Planning and Preparing for the Privatization of Natural Monopolies

As ZPA moves ahead with the privatization of strategic industries (those whose service to the public is a matter of government concern and/or which require massive infrastructure), Zambia needs to consider which option best meets the country's needs:

- partial privatization (such as management contracts, service contracts, leases or concessions)
- full divestiture (with appropriate regulatory structures to safeguard standards of service and a fair, rather than confiscatory, rate of return)
- full divestiture by unbundling services (rather than selling an entire, vertically integrated enterprise to introduce and promote competition)

Privatizing enterprises that operate as monopolies is more difficult than negotiating the sales of competitive firms because the stakes are higher, foreign investment issues are more sensitive, and local capital markets are thin. To ensure success, it will be necessary to build political support for any divestiture strategy in consultation with key stakeholders and through an effective public education and public relations campaign. With monopolies it is even more important to provide for monitoring, compliance, and enforcement to include some form of regulatory board or agency.

Capturing Lessons Learned

ZPA has developed both expertise and a concrete body of knowledge in privatization negotiations. The initial attempt to capture this experience at the "Lessons Learned" meeting in June 1995 needs to be carried forward.

ZPA should consider ways and means to capture and disseminate ongoing lessons learned, both for its own use and for the benefit of others attempting to implement privatization programs. There is a dearth of literature on the "how to's" of successful privatization negotiations. This kind of information is in great demand by novice negotiators.

One possibility would be for each negotiating team chair to submit a short report to the Board summarizing what worked, what didn't work, and what was new in dealing with that particular negotiation. A standardized format would help ensure both consistency and quality in reporting these lessons learned. These reports could be compiled and given to new negotiators on request or provided to others.

Recommendations for Other Privatization Entities

There are a number of important lessons that other privatization agencies and organizations can learn from the Zambian experience.

Develop a Process That Is Inclusive, Transparent, and Consistent

In Zambia, as in other countries, there was a rush to implement privatization without taking the time to involve key stakeholders in establishing the "rules of the game." This delayed and nearly derailed the process at one point. Because privatization is a political process, consensus must be built for it to succeed. Tools exist to help bring together government representatives with various interest groups to design a process that is both consistent and transparent to all parties. When these tools are brought to bear early in the program, stakeholders develop a sense of ownership and implementation becomes much easier. This kind of exercise often leads to the creation of policy advisory committees that can continue to play an active, coordinating role as privatization moves forward. While ZPA managed to make up much lost ground (assisted by the wide range of stakeholders who attended the training workshops), the lack of this activity continues to cause problems.

Privatization impacts many areas of the public and private sectors including financial institutions, the legal system, investment firms, land owners, trade unions, and the business community. Some of these entities have created roadblocks, often unintentionally or through a lack of information. For example, several negotiations were nearly derailed when the Revenue Authority announced it would assess and collect back sales taxes. This created large, new liabilities for some privatizing companies. An overarching policy advisory committee could help ensure consistent coordination among the various entities and support consistency in policies and practices regarding privatization.

Objectives are like targets — they provide a way to measure results. Clear objectives give concrete guidance in setting priorities and determining acceptable options. Without them, the process falters.

Use Negotiating Teams

A team approach to negotiation works well. In Zambia, teams are put together with overall responsibility for privatizing a particular company from the initial study to the final agreement of sale. While the ZPA teams needed time to sort themselves out and to coordinate their roles, overall, they have done well. Teams are given both responsibility and commensurate authority. This engenders a sense of personal accountability that leads to better performance and results. Also teams bring a consistence of approach to the privatization of a company which would be lost if responsibility were more diffuse.

Set Clear Objectives

To be maximally effective, negotiating teams require clear objectives and a flexible, comprehensive grant of authority. Authorizing legislation for privatization is often purposely vague in order to satisfy multiple constituencies. Generalized objectives, however, are not useful in designing a privatization program nor negotiating a privatization deal. Objectives are like targets—they provide a way to measure results. Clear objectives give concrete guidance in setting priorities and determining acceptable options. Without them, the process falters. Therefore, time should be spent in the early stages of planning each privatization determining which objectives will guide that negotiation and provide a yardstick for measuring success.

Through training, participants acquired the tool set they needed to create a framework for developing the companies over the long term.

Provide Adequate Authority

Negotiations can be strangled by inadequate negotiating authority and lack of latitude to make operational decisions. To close a deal negotiators need authority that gives them room to take advantage of potential offers and opportunities while keeping overall control and direction in the hands of the privatizing agency.

To optimize deals, focus on process as well as substance. Carefully negotiating the process issues can help:

- avoid or break through deadlocks
- structure the bargaining situation for maximum return
- prevent or control the escalation of interpersonal conflict
- build momentum with early successes
- build effective coalitions
- maintain control of the negotiations

Structure Agreements of Sale with "Teeth"

Agreements should not only document terms and conditions but also provide for monitoring, compliance, and enforcement. Privatization sales are different from other commercial sales in that the government has both societal and commercial objectives. For that reason, typical commercial agreements are inadequate. What is needed are agreements that not only maximize profit at minimal contractual risk but reflect social, business, and employment concerns.

Address Negotiation Skills as a Separate Discipline

Coaching negotiators in successful dealmaking skills and techniques gives them the tools they need to do the privatization job. When asked about the value of negotiations training, members of the ZPA Board, management, staff, and others offered the following:

- "Training gave us the engine to increase our pace and sustain momentum. We wouldn't be where we are now without it."
- "Negotiation training helped us streamline the process, do things more efficiently, and become more focused. We now know what we want and don't fight for things that are not critical."
- "The workshops gave us a common language and experience base. It helped us understand the key players in the process and the role that each of us plays."
- "We acquired the tool set we needed to create a framework at the point of sale to develop companies over the long term. Packaging the companies for sale is an art and science of its own."
- "We learned how to get opinion makers on our side and enlist them in disseminating the good news about privatization."

Identify a Champion with Political Clout

Privatization requires countries to think in new and often threatening ways. Parastatal managers who are politically well connected and powerful have a vested interest in maintaining the status quo. Privatization needs champions who can overcome these impediments by maintaining focus and momentum, successfully closing deals, and heralding the benefits for the country as a whole. Champions require regular and continuous access to the Chief of State and to others in the political hierarchy. While privatization in Zambia was moving forward before Valentine Chitalu took office, he has been the force that has made it a dynamic success. He created a clear and comprehensible strategy, communicated that strategy to every significant stakeholder, and is able to clearly articulate the benefits of the process.

Packaging companies for sale is an art and science of its own.

Recommendations for Donors

Broaden the Range of Technical Assistance Offered

The Zambia experience has shown the importance of focusing on process as well as substance in structuring a successful privatization program. Process skills are useful at two different levels — shaping the overall privatization process and in negotiating sales.

The first level has to do with ensuring that all major stakeholders are given an opportunity to become partners in the process of defining shared goals. The second level focuses on the negotiation skills required for the sale of specific, state-owned enterprises. By tailoring training to match the situations negotiators are most apt to encounter, it is possible to strengthen their skills in both areas.

In order to succeed, privatization needs very specific goals, objectives, and priorities—the very things governments are afraid of announcing for fear of alienating support. Without further support and technical assistance, governments tend to hope that some sort of consensus will develop. When it does not, privatization fails before it is effectively begun.

Remain Flexible in Program Design

In Zambia, the original scope of work and the design that evolved over time were two very different things. Even after the training began, participants offered feedback which improved later runnings of the workshop and led to additional kinds of technical support. The project evolved according to the needs of ZPA. Too often, projects are frozen too early in time. There is a real need for this evolutionary process to take place.

To summarize, the Zambian experience clearly illustrates the value of providing focused training in both the substance and process issues of privatization negotiations. Training in negotiation skills complements and augments technical support to privatization efforts.