



# **GOVERNMENT OF JAMAICA**

*Policy on the Categorisation and Rationalisation of Public Bodies*

*September 2016*

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**LIST OF ABBREVIATIONS AND ACRONYMS**

MFPS	Ministry of Finance and the Public Service
SOE	State Owned Enterprise
PBMA Act	Public Bodies Management and Accountability Act
FAA Act	Financial Administration and Audit Act
IMF	International Monetary Fund
GFSM	The Government Finance Statistics Manual 2014, (published by the IMF)
PED	Public Enterprises Division, MFPS
PEX	Public Expenditure Division, MFPS
SHRMD	Strategic Human Resources Management Division, MFPS
CSO	Community Service Obligations
FRF	Fiscal Responsibility Framework
PFM	Public Financial Management
PB	Public Body
PSTM	Public Sector Transformation and Modernisation Programme
CTMS	Central Treasury Management System
TSA	Treasury Single Account
MDA	Ministry Department and Agency

**GLOSSARY**

Public Body	Means a statutory body or authority or any government company, but does not include an executive agency designated under the Executive Agencies Act. <i>PBMA Act</i> .
Statutory Body/ Authority	Means a body corporate established by an Act of Parliament over which the Government or an agency of the Government exercises control. <i>PBMA Act</i>
Government Company	Means a company registered under the Companies Act, being a company in which the Government or an agency of the Government is in a position to direct the policy of that company. <i>PBMA Act</i>
Corporations	Entities that are capable of generating a profit or other financial gain for their owners, are recognized by law as separate legal entities from their owners, and are set up for purposes of engaging in market production. <i>GFSM 2014</i>
Company	Refers to a separate legal entity formed under the Companies Act ( <i>Also termed Limited Liability Companies – LLC</i> )
Public Corporation	A corporation ( <i>government company or statutory body</i> ) that is controlled <sup>1</sup> by government directly or through other government controlled entities that are potential sources of financial gain or losses to its owner. <i>GFSM 2014</i> .
Statutory Corporation	A corporation that is formed by an Act of Parliament.
State-Owned Enterprise (SOE)	An entity with separate legal status that is wholly or partially owned by the government and has a mainly commercial objective. Any corporate entity recognized by national law as an enterprise and in which the state exercises ownership... <i>statutory corporations, with their legal personality established through specific legislation, should be considered SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature</i> <sup>2</sup> . <i>OECD 2015</i>
Quasi-corporations	An unincorporated enterprise owned by a resident institutional unit that has sufficient information to compile a complete set of accounts, that is operated as if it were a separate corporation and whose relationship to its owner is effectively that of a corporation to its shareholders. <i>GFSM 2014</i> . [ <i>These entities are not incorporated or otherwise legally constituted, but function as if they were corporations. They are treated as corporations in the GFS.</i> ]
Institutional Unit	An economic entity that is capable, in its own right, of owning assets, incurring liabilities, and engaging in economic activities and in transactions with other entities. <i>GFSM 2014</i>
Extra-budgetary Units	Government entities with a separate legal identity and substantial autonomy, including discretion over the volume and composition of their expenditures and a direct source of revenue, such as earmarked taxes.
Body Corporate/ legal person	As defined in Section 28 of the Interpretation Act, and includes, <i>inter alia</i> : having legal rights as a natural person; the ability to acquire, hold and dispose of real or personal property; the power to enter into contracts in its corporate name, the ability to sue and

<sup>1</sup> GFSM 2014 defines “Control” as: the ability to determine general corporate policy of the corporation and “general corporate policy” means the key financial and operating policies relating to the corporation’s strategic objectives.

<sup>2</sup> OECD (2015), OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition, OECD Publishing, Paris.

	be sued in its corporate name.
Economically Significant Prices	Prices that have a significant effect on the amounts that producers are willing to supply and on the amounts purchasers wish to buy. Also mean that sales cover the majority ( <i>over 50%</i> ) of the producer's cost. These prices normally result when: <ul style="list-style-type: none"><li>• The producer has an incentive to adjust supply either with the goal of making a profit in the long run or, at a minimum, covering capital and other costs.</li><li>• Consumers have the freedom to purchase or not purchase and make the choice on the basis of the prices charged.</li></ul>
Specified Public Sector (SPS)	Has the meaning as defined in the Financial Administration and Audit Act – (i.e. the public sector not including any public body certified by the Auditor General, in the manner specified in regulations made under section 50(1) of the Financial Administration and Audit Act, as primarily carrying out functions that are of a commercial nature that satisfy such criteria as may be specified in such regulations).
Community Service Obligation (CSO) <sup>1</sup>	A Community Service Obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sectors to generally undertake, or which it would only do commercially at higher prices.

## **VISION**

A Public Bodies Sector that is efficient, effective, accountable and delivers quality service that will redound to the growth and development of Jamaica.

The achievement of which requires greater clarity and coherence in the roles and functions across the entire public sector as well as definite efforts to reduce the number of public bodies in operation. The Government's focus on its core functions will therefore result in opportunities for the private sector, as it divests itself of non-core activities and seeks to strengthen the functions that it needs to perform. Privatisations, mergers and closures of public bodies will result in a smaller and more focussed sector that will be better able to deliver on their mandates.

### **1.0 EXECUTIVE SUMMARY**

1.1 Public bodies are instruments of public policy and therefore operate either as facilitators or direct actors stimulating economic activity and promoting development. Their functions cover a wide spectrum of activities traditionally associated with government including developmental, regulatory, technical, social and delivery of public services. The sector also includes public bodies that operate in the commercial sphere; some being purely commercial while others perform commercial activities as well as delivering some public policy functions. These entities constitute what is internationally recognised as the State Owned Enterprises (SOEs). The formation of public bodies has increased significantly over the years and by the end of 2015/16 there were over 190 active ones.

1.2 The government therefore plans to pursue a programme that promotes an effective an efficient public sector, of which the public bodies have a significant role. This should be achieved through better alignment of the public sector with the core functions of government. Public bodies should be involved in activities that require a degree of independence and impartiality, including regulatory functions and commercial activities, while Ministries and Departments should focus on policy, monitoring and evaluation.

1.3 Despite the diversity in scope, legal formation, functions and funding, public bodies are subject to essentially one universal standard oversight regime defined in the Public Bodies Management and Accountability (PBMA) Act and to a lesser extent in the Financial Administration and Audit (FAA) Act. The absence of the provision for differentiation among public bodies under the PBMA Act leads to inefficiencies in oversight of the public bodies since

some public bodies are monitored excessively/very closely compared with their risk, while there is insufficient monitoring of others. Additionally, the level of oversight and the attendant restrictions, particularly for those that are required to operate successfully in a competitive environment without government assistance, can frustrate such public bodies from acting more efficiently and effectively.

### Aims of the Policy

1.4 The fundamental aims of the Policy are to apply a principle-based approach to the categorisation of the public bodies that will provide for more focussed oversight as well as lead the process of restructuring, with the ultimate reduction in their numbers. This should result in the achievement of a leaner, more efficient and coherent grouping of public bodies. Categorisation provides for the classification of public bodies in groups that are relatively homogeneous, to ensure the provision of more effective oversight, the achievement of operational efficiencies and to differentiate and specify the governance regime that applies to each category. The process of Rationalisation of the public bodies seeks to identify their relevance, the effectiveness of their roles and functions and to determine the best modality by which those functions should be conducted. Application of this systematic approach will indicate the public bodies to be retained, privatized/divested, merged, subsumed into an existing Ministry or Department or abolished. All options for rationalisation will be examined, including shared corporate services. Implementation of the Rationalisation process will be done in conjunction with the Public Sector Transformation and Modernisation Programme (PSTM) of the Office of the Cabinet.

1.5 The main strategy outlined in the Policy to achieve an improved public bodies sector is implementation of Categorisation and Rationalisation. However additional strategies to complement the process include: establishing clearly the requirements for formation of new public bodies, preparing guidelines for the winding-up of inactive entities, introducing payment for community service obligations the cost of which have been appropriately determined as well as clarifying and standardising the definitions and use of terms and nomenclatures for the various organisational types of public sector entities.

1.6 The principles guiding the process of categorisation are firstly based on a determination of whether the public body engages primarily in commercial activities or performs functions of a non-commercial or governmental nature. The second tier of the categorisation determines the level and risk of financial dependency on government funding. Rationalisation will entail the application of a clear and consistent set of rules to the existing public bodies, inclusive of a six-step set of tests that will indicate the best modality to implement the function being performed by each entity.

1.7 Measures to stem the proliferation of public bodies, include (a) application of the test by Ministries when new entities are being contemplated, to indicate, *inter alia*, whether the entity is needed, if the function being contemplated can be performed by an existing entity or whether the function is best performed by the private sector, and (b) strengthening the provisions of the PBMA Act and Regulations, to stipulate clearly the procedures to be followed in the formation of new public bodies. The Act and Regulations currently address procedures that public bodies should follow in forming new companies. However, this needs to be expanded to account for the formation of all public bodies. Applications for approval to form new public bodies should demonstrate proof of assessment by MFPS for compliance with the requirements before being submitted to Cabinet.

### Implementation

1.8 The timely and successful implementation of this Policy will be positively impacted by clarification of the public sector landscape as it relates to the terminologies and nomenclatures being used for various organisation forms, including statutory bodies, authorities, boards, commission. There is currently no consistency in the use of the various terms, which has led to a level of confusion. General agreement is required regarding the use of nomenclatures to ensure consistent application to the appropriate organisational form. The MFPS will lead the process to address this situation.

1.9 Implementation of this Policy will result in changes to the public bodies sector in the medium term with respect to their numbers, the oversight arrangements and mandates. In order to maintain relevance and to ensure that the objectives are being achieved, the Policy will be subject to reviews at intervals no longer than five years. Ministries will be responsible to review their portfolio of public bodies every five years.



## **2.0 BACKGROUND**

2.1 The public bodies in Jamaica have had a major impact on the economy both positively and negatively. While some entities have contributed to development over the years, others have also reflected sub-optimal performances. Over the last three decades, a number of public bodies have racked up significant losses and debt, some of which the Government has had to assume as in the case of Air Jamaica and the Government owned sugar entities. The overall performance of the public bodies has not been outstanding. This was highlighted in Finding Balance 2014<sup>3</sup> study done by the Asian Development Bank of nine island-countries; Jamaica with 24 commercially oriented public bodies in the sample was listed as the worst performer of the group. The magnitude of operations of larger entities has also created issues with fiscal space, as there has had to be limits placed on the capital expenditure outlay of some entities due to a lack of fiscal space, especially while under the IMF programmes. There have also been issues with the governance and management of some public bodies that have created unfavourable public opinions and reactions.

2.2 Consequently, the Government of Jamaica has, over the years, sought to improve the performance of the public bodies sector by conducting activities aimed at: (a) improving the governance of public bodies (e.g. the promulgation of the PBMA Act, and the Corporate Governance Framework), (b) improving efficiencies and effectiveness by way of restructuring the operations of the sector to effect mergers, divestments and closures.

2.3 Privatisation efforts as well as implementation of recommendations arising from reviews conducted in 1999/2000 and subsequent years, have achieved a measure of success in reducing the number of public bodies. However the concurrent increase in the number of public bodies created has resulted in over 190 active public bodies in 2016. A principle-based approach is therefore needed to guide the process of restructuring going forward that will result in achievement of a leaner more efficient and coherent grouping of public bodies. Although there is no one ideal size for a public bodies sector, with approximately 190 public bodies in operation in Jamaica, the number is considered excessive and should be reduced.

2.4 The proliferation of public bodies has occurred partly as a result of a lack of clarity and enforcement of the legal requirements for the formation of new companies. While the PBMA Act stipulates broad procedures to be followed for a public body to establish a new company, the provision is inadequate, as it does not apply to other entities establishing either companies or statutory bodies.

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<sup>3</sup> The Finding Balance 2014: Benchmarking the performance of state-owned enterprises in island countries was written by Laure Darcy and Christopher Russell and published by the Asian Development Bank. The study reviewed the performance of the SOE sector in nine island countries, including Jamaica, over the period 2002 -2012.

2.5 The absence of the provision for differentiation among public bodies under the PBMA Act leads to inefficiencies in oversight since some public bodies are monitored excessively/very closely compared with their risk, while there is insufficient monitoring of others. As well, the limitations from unnecessary oversight and restrictions, particularly for those who are required to operate successfully in a competitive environment without government assistance, can frustrate such Public bodies from acting more efficiently and effectively.

2.6 Jamaica is definitely not alone in trying to reform its public bodies sector. Many countries have begun the process of reform which is seen as an ongoing activity. The United Kingdom, as reported by the UK Cabinet Office, had an oversized public bodies sector and in 2010 initiated reform that reduced the number from about 900 to 600 with estimated savings of £2 billion by March 2014. There was an overwhelming need to reduce the number of entities as well as to establish a proper classification framework to replace what existed, which was said to result in inconsistencies, confusion and inefficiencies.

2.7 The IMF's Report 'Strengthening the Fiscal Responsibility Framework and Public Financial Management' on Jamaica in 2010 gave an endorsement of the rationalisation of public bodies. Some of the critical issues highlighted as needing urgent attention include the following:

- a) Differentiate the kinds of public bodies under the PBMA Act and provide appropriate governance and accountability arrangements,
- b) Conduct continuous assessment of the relevance of public bodies' functions with respect to Government objectives
- c) Allow greater financial freedom of operation for Public Commercial Enterprises to compete in the market
- d) Limit the potential to create new public bodies.

2.8 In the Finding Balance 2014 study done by the Asian Development Bank (ADB) of nine island states including Jamaica, the key findings include the following:

- a) Low returns on SOE are common throughout the developed and developing world. This under-performance has led to increased fiscal costs and negative impact on growth & poverty alleviation;
- b) SOE reforms indicate that privatization supported by robust regulatory arrangements is the most effective mechanism for long term improvements in state assets' productivity.
- c) SOE performance is enhanced with full commercial orientation, strong governance performance incentives and hard budget constraints.

All of the nine island countries included in the study were at varying stages of reform of their SOE sector.

### **3.0 POLICY FRAMEWORK**

#### **3.1 PURPOSE**

3.1.1 The Policy seeks to establish clear guidelines for categorisation and rationalisation of public bodies, that will organise them for more focussed and effective oversight, improve efficiency by removing redundancies, duplication and waste that will lead to increased transparency and accountability in their operations.

#### **3.2 GOALS**

3.2.1 Implementation of the Policy is expected to:

- a. Lead to a more efficient, effective and accountable public bodies sector;
- b. Consolidate and decrease the number of public bodies in operation to reduce bureaucracy and the cost of government; and
- c. Strengthen and focus the governance and oversight arrangements that will lead to improved efficiency and accountability.

#### **3.3 STRATEGIC OBJECTIVES**

3.3.1 The Policy objectives are envisaged to ensure a more accountable and efficient public bodies sector that provides better value for money to the public. The strategies that will give effect to the Policy are:

- a. Classification of Public Bodies into distinct categories based on similarities to allow for more focussed governance arrangements as well as appropriate levels of operational autonomy that will facilitate the achievement of goals/mandates.
- b. Development and application of suitable oversight and monitoring arrangements which align each category of public bodies with the level of risk they present to the Government's fiscal and Public Financial Management (PFM) programme. The application of the rules of the PFM includes areas such as corporate planning, budgeting and reporting, borrowing, human resource functions and procurement.
- c. Application of the criteria tests to identify those public bodies that can be rationalised via privatisation/divestment, merger (within an existing public body and a Ministry) or closure
- d. Retention of existing oversight arrangements (i.e., governance, control and accountability) applicable to each public body until replaced with the more precisely focused oversight or the public body changes its organisational status as a result of rationalisation.
- e. Defining and enforcing the procedures for the creation and dissolution of public bodies.

- f. Re-defining the terminologies for the various public sector entities in order to achieve greater clarity and consistency in their use and application across the sector. These terminologies include public body, statutory body, authority, commission, trust, and fund.

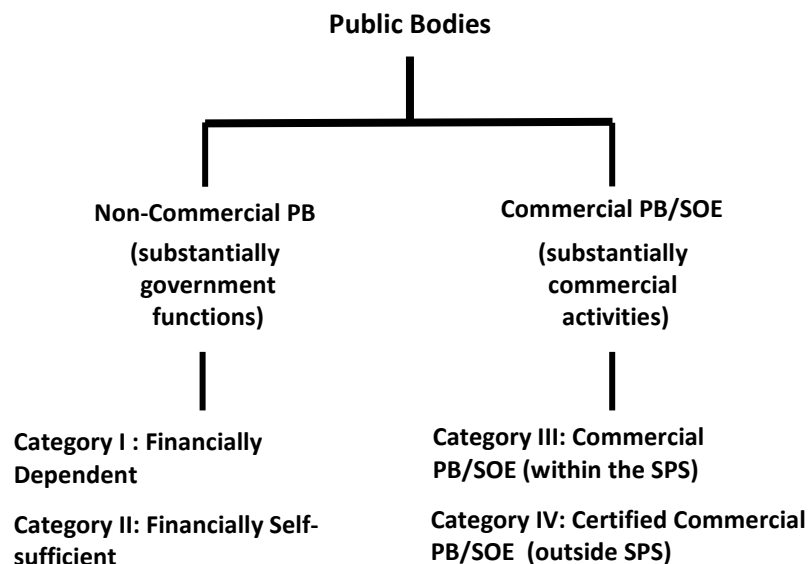
## **4.0 CATEGORISATION OF PUBLIC BODIES**

### **4.1 POLICY**

4.1.1 Categorisation provides for the classification of public bodies into relatively homogeneous groups that provides for the provision of more targeted and effective oversight, the achievement of operational efficiencies and to differentiate and specify the governance regime that applies to each category.

4.1.2 The principal basis for categorisation relates to the nature of the functions being performed by the public bodies. Hence the primary categories that have been established are the *Non-Commercial PBs and Commercial PBs/SOEs*. Non-Commercial entities will include those primarily engaged in functions of a public policy nature normally associated with government, including regulatory, advisory, research, supervisory, quasi-judicial and service delivery functions, while the Commercial entities will include those involved mainly in commercial enterprise that produce goods and services which could be done by private operators for profit. The secondary categorisation differentiates the entities based on the level of financial dependency on government funding along with the nature of the activities being performed.

4.1.3 Consequently, there are four broad categories, which have been identified as Category I – IV entities. The procedures that are to be applied to each public body to determine the category into which they will be assigned are outlined in *Appendix I*. Shown below is a diagrammatic representation of the categories:



4.1.4 All entities included under Categories I – III are within the Specified Public Sector (SPS) while Category IV entities are those that are certified by the Auditor General as commercial and fall outside the SPS.

4.1.5 The principles guiding the categorisation of public bodies are:

- 1) The separation of public bodies engaging substantially in commercial activities, or performing substantially non-commercial or government functions (in the nature of regulatory, advisory, supervisory, research, administrative or quasi-judicial functions).
- 2) The second level of assessment is based on a determination of the level of financial dependency of the public body on Government funding and the likelihood of increased financial dependency as well as the nature of the activity being carried out
- 3) The oversight regime for each category will be aligned to the factors outlined at 1) and 2) above.
- 4) The current oversight arrangements (i.e., governance, control and accountability) applicable to each public body will remain in place until replaced with the more precisely focussed oversight, or the public body changes its organisational status as a result of rationalisation.

4.1.6 The assessment for classification will be restricted to public bodies as defined in the PBMA Act. However there are entities which operate in many respects as if they are public bodies (corporate bodies) but they are in fact unincorporated entities; this may include Commissions, Authorities, Funds and other bodies formed by statute. Some of these entities are currently being treated as public bodies. It is useful therefore that these entities are included in the assessment for categorisation. This position is similar to that of the GFS) Manual 2014, which outlines that unincorporated bodies or *quasi-corporations*<sup>2</sup> are treated as if they are corporations for macroeconomic statistics purposes, as these organisations function as if they are corporations although they are not legal entities.

4.1.7 The table below outlines the main determinants of the various categories:

Type of Body	Categorisation	Determinants
<b>Non-Commercial Entities</b>	<b>Category 1</b>	These are primarily entities formed by statute and may or may not be bodies corporate. They predominantly engage in, or provide a government/public service function, with substantially all income coming from government appropriations and the bodies have a limited ability to access government taxing or fee-setting powers, or to generate traditional income from the sale of goods or

		<p>services.</p> <p>The functions provided by the PB are not of a business nature nor would they be interpreted as activity akin to commerce where there is implied option for the “customer” to purchase, or not, the goods or services, and the interaction between the public body and the “customer” or “client” and the service provided by the body is in the nature of regulatory, advisory, supervisory, research, administrative, service delivery or quasi-judicial function.</p> <p>A government company falling in this category would be one that did not satisfy the commercial criteria, is performing primarily a government/public service function, it is supported primarily from the Consolidated Fund. An assessment should be conducted on any company falling in this category to determine its best option, as companies should be formed primarily to engage in commercial activity.</p>
	<p><b>Category 2</b></p>	<p>These PBs are <u>mainly statutory bodies</u>, but may also include government companies that do not meet the commercial criteria. A government company that produces goods or services that is consumed primarily by the government and which is paid for by subventions (i.e. accounting for over 50% of revenue), may be classified in this category as it would not have met the commercial criteria. <i>(If the relationship changes whereby the entity supplies goods/services at economically significant prices to the market then it may be reclassified as commercial.)</i></p> <p>All new entities that will provide primarily government/public policy functions should be established as statutory bodies and not government companies.</p>
		<p>The function provided by the public body is <u>predominantly</u> of a public policy/government nature (regulatory, advisory, supervisory, research, administrative, service delivery or quasi-judicial) but the body has access to income other than government appropriations.</p>

		<p>The source of income for the entity comes predominantly (i.e. over 50%) from the body exercising quasi-taxing or fee-setting powers to obtain income from citizens, individuals, or businesses and the interaction of the public body and the citizenry is not principally of a commercial nature as with a buyer and a seller. Government oversight is needed to ensure the public body does not unduly impose financial demands on its citizens, individuals or businesses through its quasi-government taxing and fee-setting powers.</p>
<p><b>Commercial entities</b></p>	<p><b>Category 3</b></p>	<p>This category includes corporate bodies that are predominantly government companies, but may also include statutory bodies that meet the commercial criteria.</p> <p>PBs/SOEs that engage predominantly in commercial activity but have not met the high threshold of satisfying the criteria for SOEs to be certified by the Auditor General as being outside the Specified Public Sector (Independently Profitable SOEs).</p> <p>PBs/SOEs that engage substantially in commerce where buyers have the option of buying the goods and services, or not, and they pay economically significant prices, i.e. over 50% of the costs of producing the goods or service provided by the public body.</p> <p>These PBs/SOEs may also engage in the provision of some public services/community service obligations (CSO). However it is expected that the cost of any such provision should be properly determined and the PB/SOE will be appropriately compensated by the Government for the CSO. To the extent that compensation is not now being paid, steps should be taken to formalise arrangements for payments at economically significant prices.</p> <p>Ideally, existing statutory bodies that meet the criteria for this category should be considered for conversion to government companies. Any new PB/SOE being considered that meets the commercial criteria should be formed as a government company and not as a Statutory Body.</p>

	<p><b>Category 4</b></p>	<p>Narrowly defined class of PBs/SOEs that engage in commercial transactions with willing buyers. The provision of CSOs if any ought to be paid for at market prices.</p> <p>Largely indistinguishable from successful private companies.</p> <p>These PBs/SOEs meet four standards for certification by the Auditor General:</p> <ul style="list-style-type: none"> <li>i. Fiscal Independence – independence of pricing; no subsidy; and no financial support or preferential tax treatment or outstanding financial guarantees.</li> <li>ii. Independence of Human Resource Decision-Making – staff positions are not included on the civil service establishment; and the PB exercises legal autonomy with regard to its employment decisions (such as hiring and termination).</li> <li>iii. Financial Standards – the auditor expresses an unqualified opinion on the PB’s financial statements; annual reports have been submitted in accordance with the <i>PBMA Act</i>; and the PB has to have recorded a positive net profit after tax, over the three preceding financial years, on a consolidated basis; and either the long term debt to equity ratio is no more than 2.5 over the three preceding financial years, or the positive working capital and current ratio of the PB is at least 1.2.</li> <li>iv. Transparency and Governance – a functioning Audit Committee is required; the annual report including financial statements has to comply with the <i>PBMA Act</i>; and all the information that the <i>PBMA Act</i> and Regulations require has to be disclosed.</li> </ul>
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## 5.0 OVERSIGHT ARRANGEMENTS

### 5.1 POLICY

5.1.1 The governance arrangements and oversight rules applicable to the respective categories of public bodies (PBs) are outlined by category at 5.2 below. The PBMA Act, the Public Bodies Regulations, the Corporate Governance Framework (CGF), the FAA Act and Regulations as well as policy directives outlined in Circulars, stipulate the broad governance and oversight arrangements applicable to the PBs. This includes dimensions of authority, accountability and matters relating to operation of Boards of Directors. The Public Financial Management<sup>4</sup> (PFM) functions (including: budget preparation/implementation, financial planning, cash/debt management, accounting/reporting, accountability) are essentially embodied in these legislative, regulatory and policy prescriptions. The PFM oversight rules applicable to each category are shown in Appendix 2.

5.1.2 The PBMA Act, the Public Bodies Regulations, the Corporate Governance Framework (CGF) and the various policies and frameworks emanating from these are generally applicable to PBs in Categories I – III. The PBMA Act stipulates provisions that are not applicable to Category IV PBs. However further amendments will be made to specify and clarify the additional exemptions that will become applicable to the respective Categories in the future.

### 5.2 OVERSIGHT ARRANGEMENTS BY CATEGORY:

<b>CATEGORY I (Non-Commercial, Financially Dependent)</b>
<p>1) These entities are <u>primarily Statutory Bodies</u> (some may not be corporate entities) and obtain most or all funding from Appropriations - paid from the Consolidated Fund through their parent Ministries. They are therefore treated in most respects like Ministries, Departments and Agencies (MDAs) inclusive of the PFM rules, guidelines and regulations. Entities of a highly technical nature, those requiring legal independence and political impartiality may be allowed, with specific approval, exceptions to these requirements, including but not limited to:</p> <ul style="list-style-type: none"><li>a) Corporate, Operational Plans and budget provisions are agreed with their parent Ministry and included in the parent Ministry's budget. The entity therefore competes with other departments and agencies falling under the Ministry's purview for resources from the public purse/budget allocations</li><li>b) Summary corporate plans and budgets are submitted as part of parent Ministry's budget submission for approval by Parliament</li><li>c) Funds are obtained from the Consolidated Fund via warrants issued to parent Ministry/Department</li></ul>

<sup>4</sup> The Chartered Institute of Public Finance and Accountancy (CIPFA) defines Public Financial Management (PFM) as the system by which financial resources are planned, directed and controlled to enable and influence the efficient and effective delivery of public service goals.'

<ul style="list-style-type: none"> <li>d) Accounting for the use of funds as per the requirements of the Financial Administration and Audit (FAA) Act, through parent Ministry.</li> <li>e) Part of TSA and CTMS, specific approval must be given by MFPS (PEX) for retention of any existing account as well as for opening of any new one; bank accounts deemed unnecessary should be closed.</li> <li>f) Compensation as per the central government rates/scales (default position)</li> <li>g) Human resource issues as per GOJ rules</li> <li>h) Benefits (e.g. motor vehicle, travelling, health, education) applicable to the central government are applicable to these entities, except otherwise specifically approved. This should be the default position.</li> </ul> <ul style="list-style-type: none"> <li>2) Included in the Public Investment Management System (FAA/PBMA Acts) and the Government procurement rules</li> <li>3) All entities may not be bodies corporate, but must be distinct organisations that are formed under statute (Acts of Parliament), which stipulate their responsibilities and powers.</li> <li>4) Generally, the boards of un-incorporated entities are advisory, while corporate bodies have governing boards</li> <li>5) To the extent that the entity is a body corporate: <ul style="list-style-type: none"> <li>a) it must also fulfil the legal, accounting and other requirements attendant on such a status as stipulated by the appropriate oversight entities, such as tax authorities, the Institute of Chartered Accountants of Jamaica (ICAJ), the Companies Office of Jamaica, etc.</li> <li>b) the provisions of the Public bodies Management and Accountability (PBMA) Act are applicable, (unless specific exemptions are given), including reporting requirements, inclusive of annual reports.</li> </ul> </li> <li>6) The financial statements are audited by the Auditor General.</li> <li>7) Entities are not (normally) allowed to borrow, as they do not possess the inherent capacity to service debt.</li> <li>8) The requirements of the Financial Distribution Regulations do not apply to these entities.</li> </ul>
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**CATEGORY II****(Non-Commercial, Financially Self-sufficient)**

- 1) These PBs are primarily bodies corporate and Statutory Bodies, but may include some government companies that do not satisfy the commercial criteria. Companies falling in this category should be reviewed to determine if it should transition to: a) Category III status, or b) a statutory body instead.

- 2) Over 50% of the funding for these entities is self generated, through fees or other legally imposed requirements/tariffs.
- 3) Exemptions from provisions of the PBMA Act, Regulations and CGF must be specifically identified.
- 4) Public sector policies/rules (e.g. motor vehicle policy, overseas travel) and benefits (e.g. motor vehicle concession, concessionary loans, health and study benefits) may be applicable to these entities. Policies and circulars should indicate applicability to the various categories of PBs. Approval must be obtained for any variation of the standard procedures/rules – based on justification provided.
- 5) Human resource functions including structure, staffing and compensation levels must be approved by the relevant authority (Public Service Establishment Division - PSED), and these PBs should comply with the circulars issued except where exemption is clearly stated.
- 6) Financial audits are conducted by auditors who meet the requirements outlined in the PBMA Act. However the Auditor General may conduct financial audits as well, but conducts compliance/special audits at her discretion.
- 7) Corporate Plans/budget, monthly, quarterly and half yearly reports as well as Annual Reports, including audited financial statements, must be prepared and submitted in accordance with the PBMA Act.
- 8) The summary corporate plans and budgets of these PBs will continue to be collated and submitted to Parliament for approval, as part of the Estimates of Revenue and Expenditure for Public Bodies.
- 9) Strict adherence to the borrowing provisions of the PBMA Act must be observed.
- 9) Included in the Public Investment Management System (PIMS)) and the Government Procurement rules as indicated in the FAA & PBMA Acts.
- 10) Compensation from the GOJ for community service obligations (CSO) may be considered
- 11) Annual Reports to be placed on entity's website within 4 weeks after tabling in Parliament

**CATEGORY III**

**(Commercial PBs/SOEs, Financially self-sufficient within the SPS)**

- 1) These PBs/SOEs are corporate bodies that are primarily government companies, but may include statutory bodies that meet the commercial criteria.

- 2) PBs/SOEs are essentially commercial in nature, otherwise referred to as state-owned enterprises or public corporations. They produce and supply goods and services to the market at prices that are economically significant, i.e. cover more than 50% of the cost of producing the goods/service, and have the potential to be a source of profit or other financial benefit to their owner. These enterprises have not (yet) met the requirements to be Certified Commercial by the Auditor General to be outside the SPS.
- 3) Revenue from economic/market activities should normally cover more than 50% of the operating expenses of the entity. The PB/SOE may also provide public services/CSOs in addition to its commercial activities.
- 4) To the extent that these PBs/SOEs provide public services/CSOs on behalf of the GOJ, the cost of supplying these goods/services should be properly determined and the entity appropriately compensated by GOJ. This should be accomplished by end FY 2020/21.
- 5) Further reviews will be done to determine exemptions that will apply under the PBMA Act/Regulations to this Category. PBMA Act will therefore be amended to specify what provisions are not applicable or to state an alternative applicability for this group. Areas for consideration include Procurement limits, capital spending under the PIMS and CTMS.
- 6) Not all government policies/guidelines will be applicable to these PBs/SOEs. Applicable policies/guidelines should precisely identify this category and be clearly indicated as such. There should be collaboration between the responsible Division and PED on such matters.
- 7) With respect to human resource matters in general, these entities may develop policies to govern specific aspects of operation; however these policies must be approved by the MFPS as applicable. This includes:
  - Ability to operate within a wage bill envelope. With this authority the entity is able to function within the envelope and therefore without the need for specific approval for each activity/request; this could include areas such as recruitment for positions that are already on the entity's establishment.
  - Compensation rates and packages are determined after discussion, negotiation and agreement with MFPS. Whereas the central government rates are not normally applicable, increases above those rates will need to be justified on criteria determined by MFPS including ability to pay.
- 8) PBs/SOEs may develop policies/guidelines for areas of operation such as: investments, asset management, overseas travel, insurance premium financing, overdraft facilities with other areas to be determined over time. In formulating these policies/guidelines, the PB may use the existing government policies/guidelines as the baseline, but include variations as appropriate in order to improve their operational efficiencies and effectiveness. These operational policies/guidelines must be approved by the relevant authorities upon requests submitted by the Board of Directors before they can be implemented. Upon approval by MFPS then PBs may operate within the guidelines without having to seek approval for individual cases/activities covered under the guideline. PBs would be audited against such approved policies.

- 9) PBs/SOEs are subject to the PIMS and the Government Procurement rules as indicated in the relevant legislation and policies. SOEs should have some degree of flexibility for capital spending that is financed from their own resources, in order to respond to market conditions. Hence, higher threshold values for projects needing to go through the PIMS and Procurement procedures are to be agreed and outlined in the relevant regulations, policies and guidelines. *Increased thresholds should be determined by end FY 2017/18)*
- 10) Annual Reports to be published/placed on entity's website within 4 weeks of being tabled in Parliament
- 11) Any new company (subsidiary) to be formed must first meet the rationalisation assessment as well as the requirements stipulated in the PBMA Act and Regulations.

**CATEGORY IV****(Commercial PBs/SOEs, Certified by the Auditor General and outside the SPS)**

- 1) These are PBs/SOEs that are certified commercial by the Auditor General and are excluded from the Specified Public Sector as of April 1 following the year of certification.
- 2) The FRF Regulations and the PBMA Act outline the limits of authority for these entities.
- 3) The PBMA Act outlines exemptions that are applicable to this category of entities.  
*[However, further amendments are needed to allow the Board to borrow locally and for the Board to consult with MFPS in the formation of new companies (subsidiaries)]*
- 4) These entities will continue to prepare corporate plans and budgets, as per section 2A of the PBMA Act, which are approved by their respective Boards of Directors and tabled by the HMFPS in Parliament for information (not approval as with the other PBs).
- 5) PBs to adhere to requirements for submission of Annual Reports (Sections 3, 22)  
*[N.B. No exclusion was granted in the PBMA from S.22 & 23 and the schedules for the provision of monthly, quarterly, half yearly and annual reports. This needs to be addressed, to determine what aspects of these provisions should apply to this Category of PBs/SOEs. At the least however, they will be expected to provide quarterly reports.]*
- 6) A Public Bodies Human Resources Committee will be named by the Minister with responsibility for finance, to perform functions as specified in S.20A of the PBMA Act and include matters concerning hiring, separation, salaries and other terms and conditions of employment.
- 7) These SOEs will be assessed to determine readiness for privatisation.

## **6.0 RATIONALISATION OF PUBLIC BODIES**

### **6.1 POLICY**

6.1.1 Rationalisation – provides for an assessment of the number of public bodies, to identify their relevance, the effectiveness of their roles and functions as well as the best modality by which those functions should be effected. Application of this systematic approach will indicate the public bodies to be retained, privatized/divested, merged (including shared corporate services), subsumed into an existing Ministry or Department or abolished. A review of each public body is to be conducted to determine their eligibility for retention, rationalisation or efficiency-enhancement. This is to be accomplished through a series of tests to establish the best modality to deliver public policy associated with the public body. The tests to be performed are as follows:

- (a) Public Interest Test – Does the programme area or activity delivered by the public body continue to serve a significant public interest?
- (b) Role of Government Test – Is there a legitimate and necessary role for government in this programme area or activity? If so where in the public sector should the function be located?
- (c) Partnership Test – What activities or programmes should or could be transferred in whole or in part to the private/voluntary (non-for-profit or civil society) sector that exists?
- (d) Overlap Test – Is there any other public body or Ministry programme delivering a similar or comparable programme or activity? Could they be merged or assessed jointly?
- (e) Affordability Test – Is the resultant package of programs and activities offered by the Public Body affordable within fiscal constraints? If not, what programs/activities should be abandoned?
- (f) Efficiency Test – If the programme or activity continues to be delivered by the Public Body, how could its efficiency be improved?

6.1.2 Detailed decision criteria/rules are to be applied in conducting the tests. Listed in the Table below are some of the questions to be considered in applying the tests. Detailed procedures are outlined in the criteria/rules as well as the decision tree/flowchart shown in *Appendix 3*. Applying each step will result in a decision as to the treatment for each entity and function.

## 6.2 DECISION CRITERIA FOR RATIONALISATION OF PUBLIC BODIES

CONSIDERATION	QUESTIONS
1. Public Interest	<p>Does the program area or activity delivered by the Public Body continue to serve a significant public interest</p> <p>Does the public rely on it for the provision of outputs?</p> <p>Is there a perceived or actual need/demand for the activity?</p> <p>Is the provision of this activity for the general protection of the public?</p> <p>Is the mandate of the entity still relevant and needs to be fulfilled?</p> <p>Is there a legal or international requirement for the activity</p>
2a. Role of Government	<p>Is there a legitimate and necessary role for government in this program area activity?</p> <p>Is the output considered a public/merit good which reflects a significant margin of social returns over private returns?</p> <p>Does the provision of this activity reflect Government Policy?</p> <p>If the Government is not involved in this activity, is there a significant risk that it will not be done?</p> <p>Does the provision of the activity address a market failure?</p> <p>Is the activity one of oversight/regulation without which the public will be placed at risk?</p>
2b.Placement (of Activity in Government)	<p>Is the activity of a commercial or regulatory nature?</p> <p>Is there need for impartiality and or independence in the provision of this activity?</p> <p>Is the activity of a technical, social or developmental nature that is best carried out by a separate (legal) entity?</p> <p>Is there a legal, social or moral imperative for the activity to be outside of the central government?</p> <p>Is the perceived risk of failure higher if the activity is performed by an MDA?</p>
3. Partnership	<p>Is there sufficient demand to allow the function to be operated profitably by the private sector?</p> <p>Is there merit in the function being transferred to the Not for Profit Sector? - Transfer</p> <p>Can the function be undertaken in partnership with the government?</p>
4. Overlap/Duplication	<p>Are similar or complementary functions being performed in the public sector?</p> <p>Does the function duplicate work undertaken elsewhere?</p> <p>Could the function be merged with those of another public body?</p> <p>Could efficiencies be made by merging the body or some of its functions with another body or bodies?</p>
5. Affordability	<p>If activity is of a commercial nature, is the activity being carried out profitably or at least to cover the cost of operations?</p> <p>Is the cost of operations lower or comparable to similar activities</p>

	<p>whether in the public or private sectors?          Does the provision of the activity reflect efficient use of resources?          Is the fiscal risk posed by the continued provision of this activity minimal, such that the Government may not be inclined to discontinue operations?          Is the need for funding growing at a much slower rate than inflation or any additional increase in scope of operations?          Is value for money being achieved such that there will be an incentive for the public purse to continue to funding this activity?</p>
<p>6. Efficiency</p>	<p>Are outputs being provided cost effectively compared with the industry or other suppliers?          Are the efficiency ratios positive comparative to industry standards and are at levels to encourage continued operations?          Is the entity reinvesting in continued improvements to its operations/service delivery?          Is the entity able to surmount any legal, technical or regulatory impediments to improving its operations?          Would improved efficiency be affordable?          Is the activity/industry a viable one whose future is fairly secure and not in doubt?</p>

6.3 For government entities (MDAs or PBs) that are contemplating formation of a new public body, there are prior actions that need to be addressed before a request is made to Cabinet for approval. The procedure includes: a) an assessment to be done by the portfolio Ministry or PB using the rationalisation criteria to determine, *inter alia*, the need for the public body, whether the functions can be performed by an existing entity and the organisational form most suited to effect the function; b) assessment to be undertaken within the provisions of the PBMA Act and the Public Bodies Regulations; c) a review to be conducted by the MFPS to ensure compliance with the requirements. The legislation is to be amended to allow for greater clarity in the process.



## **7.0 IMPLEMENTATION STRATEGY**

### **7.1 STRATEGY**

7.1.1 The MFPS is responsible for implementation of the categorisation of the public bodies. . Whereas there will be an initial categorisation of public bodies, the roll-out of the rationalisation will have an impact on the sector, including a reduction in the number of entities and the categories in which they fall. The next three to five years will therefore be a period of adjustments that will see major changes in the sector as the rationalisation exercise is implemented.

7.1.2 Implementation of the rationalisation of public bodies will commence upon approval of the Policy and will be done in close collaboration with the portfolio Ministries and the Office of the Cabinet. The Office of the Cabinet, with the assistance of the MFPS, has developed an Action Plan for Public Sector Transformation that includes the rationalisation of the public bodies as a major component. An Implementation and Coordination Team will oversee the rationalisation activities. The team will include representatives from the lead agencies responsible for implementing the initiatives of the Action Plan, namely the MFPS, the Development Bank of Jamaica (DBJ), and the Office of the Cabinet. A co-ordinator for the team will be appointed by the Prime Minister to ensure that implementation of the Action Plan progresses as planned. This function will be particularly important to coordinating the inputs of the various Ministries, Departments and Agencies (MDAs) and guiding the collaboration efforts that will be necessary to execute the changes.

7.1.3 Upon approval of the Policy, each Ministry, with support from MFPS and the Office of the Cabinet, should conduct a review of all public bodies falling under its purview, in keeping with the objectives of the Policy. This process should be completed within five years thus resulting in the organisational form deemed most suited for effecting the functions of the organisation.

Options that will arise based on the review include:

- a) Entities that are not reflecting core government functions and are best suited to be operated by the private sector should be privatised or transferred to the NGO sector
- b) Those performing similar or complementary functions should be merged in whole (entire organisations) or in part (corporate services)
- c) Entities that have fulfilled their mandate, or are no longer deemed necessary but for which privatisation is not a viable option, should be closed.
- d) Those performing functions of a government nature, for which there is no compelling reason (e.g. independence or impartiality) for them to continue as separate entities should either be subsumed in an MDA or another PB.

7.1.4 The default positions to implement functions should be as follows:

- a) Entities performing mainly commercial functions should be limited liability companies formed under the Companies Act. To the extent that there are statutory bodies satisfying the commercial criteria, an assessment should be made to have them transition to a company, where feasible. All new entities that satisfy the commercial criteria should be companies and not statutory bodies.
- b) Entities performing predominantly government functions should be statutory bodies. To the extent that there are companies satisfying this criterion, they should be assessed to determine if they could be assisted to attain the commercial status, if not they should be transitioned to statutory bodies instead. All new entities to be formed that meet the criteria should be statutory bodies.

7.1.5 Assessments need to be conducted during fiscal year (FY) 2017/18, to clarify the public sector landscape as it relates to the terminologies and nomenclatures being used for various organisational forms. Currently, there is no consistency in the use of the terminologies (e.g. Commissions, Trusts, Funds, etc) for the various organisations in the sector. There ought to be general agreement on the use of nomenclatures, to ensure that there is consistency in the understanding and interpretation for each organisational type. Templates for the various types of entities need to be formulated such that on determination that a new entity is required then based on its functions it will be clear what type of entity and which template will be applicable. The MFPS should lead this process.

## 7.2 INSTITUTIONAL ARRANGEMENTS

7.2.1 The MFPS will have overall responsibility for the Policy and will conduct the categorisation of the public bodies. The Implementation Team will coordinate the activities of the Action Plan and rationalisation efforts. The MFPS will collaborate with the critical stakeholders including the portfolio Ministries, the Office of the Cabinet and DBJ to implement the rationalisation of public bodies. Financial resources and technical expertise in areas such as organizational reform, change management, economics, financial analysis and legislative drafting will be needed to implement the recommendations arising from the rationalisation exercise, including mergers and the various forms of change that are likely to result.

7.2.2 Each Ministry, with support from the Office of the Cabinet and the MFPS, will be required to lead the review of its portfolio of public bodies using the rationalisation criteria every five years after the initial assessment is done. The MFPS will be responsible to provide guidelines on the conduct of the reviews and to monitor the application of the Policy. In addition, the MFPS will conduct reviews of the Policy every five years to determine its relevance and need for adjustments. The Policy will also be evaluated to ascertain its impact.

### 7.3 LEGISLATION

7.3.1 Amendments to the legislative and regulatory regimes under which public bodies operate, will become necessary after implementation of the Policy has begun. Enabling Statutes will need to be repealed or amended as Statutory Bodies are rationalised. The PBMA Act, the Public Bodies Regulations and the CGF will need to prescribe the oversight and governance arrangements that will accrue to each category of public bodies, consequent on the expanded or restricted flexibility that will be implemented for the respective categories. This will include amendments to reporting requirements and borrowing powers of Category IV SOEs. The FAA Act, the Financial Management and the FRF Regulations will also require review as aspects of these impact public bodies' operations.

7.3.2 The provisions of the PBMA Act and Regulations will also need to be strengthened to stipulate clearly the procedures to be followed in the formation of new public bodies. The Act and Regulations currently address procedures that public bodies should follow in forming new companies. However, this provision needs to be expanded to include the formation of all public bodies, that is companies and statutory bodies, by all government entities. The amendment should also require prior application of the rationalisation criteria to determine the need and best modality for the new entity and to clarify the role of the MFPS in the assessments. Guidelines for the winding up of inactive public bodies also need to be prepared.

7.3.3 The exercise to clarify the definitions/nomenclatures for the various entities in the public sector and possibly to prescribe the templates for the various organisational types will also require legislative amendments. Legal expertise will be needed to draft the necessary changes to the legislative framework impacting the public bodies as outlined.

### 7.4 COMMUNICATION STRATEGY

7.4.1 Consequent to the approval of the Policy by the Cabinet, the MFPS will commence sensitisation with the various stakeholders, including the Permanent Secretaries Board, the Board of Directors and Senior Management of PBs and Senior Public Sector Managers. This is expected to be done during the third quarter of the FY 2016/17. Thereafter, information on the Policy will be included in ongoing governance seminars and workshops that will be conducted by MFPS with PBs.

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**APPENDIX 1**

**PROCEDURE: DECISION RULES FOR CATEGORISING PUBLIC BODIES**

The steps involved in applying the decision rules that will determine the Category in which each public body will fall are:

- 1) The first level assessment determines whether the entity is **Commercial** or **Non-commercial**
- 2) The second level assessment to determine the further breakout of the two primary groups based on funding status and the nature of activity being performed.

**Non-Commercial PB:**

Primarily a statutory body that engages in the provision of public goods/services normally associated with government. However this may include government companies set up to operate as market-based entities but do not meet the commercial criteria currently. The service provided by the entity is in the nature of regulatory, advisory, supervisory, research, administrative, service delivery or quasi-judicial function. The entity may be financed fully or partly from budget appropriations, or its source of income may be predominantly from the entity exercising quasi-taxing or fee-setting powers authorised by legislation to obtain income from citizens, individuals, or businesses. The interaction of the public body and the citizenry is not primarily of a commercial nature as with a buyer and a seller. This group is broken out into Category I and II PBs.

**Commercial PB/SOE** *(Also referred to as a Public Corporation/Public Enterprise/State Owned Enterprise in the international arena)*

A corporate body that produces and supplies goods and services to the market at prices that are economically significant, i.e. covers more than 50% of the cost of producing the outputs, and has the potential to be a source of profit or other financial benefit to its owner. Revenue from market activities should normally cover more than 50% of the operational expenses of the entity. The entity may also provide some public services in addition to its commercial activities. It is expected that a PB/SOE will be compensated by the Government for the provision of public services (also termed community service obligations - CSO). To the extent that compensation is not now being paid for CSO, steps should be taken to formalise arrangements for payments to be made at economically significant prices. This group includes Category III and IV PBs/SOEs.

The criteria to assess commercial or market functions are:

- (a) The entity produces goods and services for the market at economically significant prices,<sup>5</sup> *i.e. prices cover, on average, more than half of the cost of producing its outputs; consumers have the freedom whether or not to purchase based on the prices charged.*
- (b) The entity has the potential to be a source of profit or other financial gain to its owners;
- (c) The entity is recognised by law as separate legal entity from its owner.

*The default legal status of an entity deemed commercial is that of a company. However there are statutory bodies that satisfy the commercial criteria and are classified as such. These statutory bodies should be assessed to determine the best legal status for its future operations.*

The criteria to assess non-commercial or government/public policy functions are:

- (a) The entity is engaged primarily in non-market production of goods and services, i.e. it provides most or all of its outputs for free or at prices that are not economically significant.
- (b) Its activities are financed primarily out of taxation or other compulsory transfers
- (c) The entity is engaged primarily in functions of a public policy nature normally associated with government, including regulatory, advisory, research, supervisory and service delivery.

*The default legal status for a non-commercial entity is a statutory body. However there are companies that fall in this classification either because they did not satisfy the commercial criteria or were not set up to operate commercially at all and therefore performs public policy functions. These entities should be reviewed to determine the best option for their future status.*

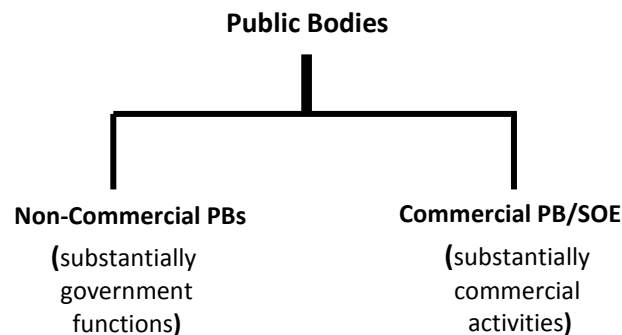
### **Determine First Level of Categorization - based on primary functions.**

If a public body performs mainly commercial functions, (entity may also perform some public policy functions), then entity is categorised as a Commercial PB/SOE; if not, then the entity is a Non-Commercial PB.

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<sup>5</sup> Economically significant prices – Means that prices cover over 50% of the producer’s cost and consumers are free to choose whether to buy and how much to buy, on the basis of prices charged. *See definition in Glossary.*

The first level classification is represented diagrammatically below:



To the extent that a government company is included as a Non-Commercial entity, it should be reviewed to determine what is required for it to transition to the Commercial Category, where it is able to cover at least 50% of its cost of operations. This assessment should include accounting for payment for community service obligations (CSO) performed on behalf of the government, for example, where the government requires the JUTC to provide concessionary fares for students and the elderly. If no reasonable solution can be found then options for the entity include transition to a statutory body, privatise, merge or close.

All Non-Commercial statutory bodies should be reviewed using the rationalisation criteria to determine their future status. This includes:

- (i) Ascertaining whether or not the entity needs to operate as a corporate body
- (ii) Merging entities, especially smaller ones that have enough similarities or complementarities to allow for effective combinations or shared services
- (iii) Subsuming the functions of entities into MDAs.
- (iv) Closing the entity.

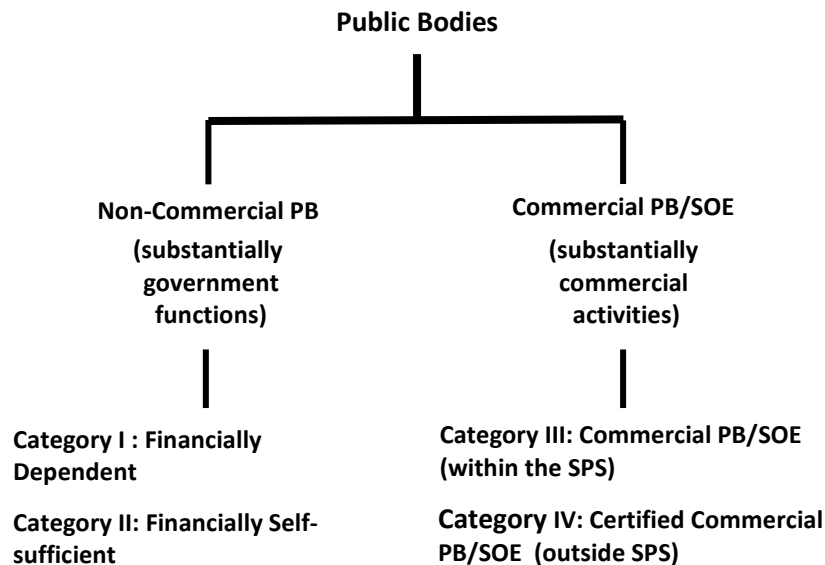
### **Determine Second Level of Categorisation – based on financial dependency**

Consequent on the first level of assessment at Step II in which the primary categories of Commercial and Non-Commercial have been determined, this second level of assessment is done to determine in which of the four categories each entity will fall. Further explanations to assist in clarifying the criteria for each category are included in the section on the respective categories below. The decision trees/flowcharts are also appended; these provide schematic representations of the procedures.

To determine the second level of Categorisation, the following criteria should be applied:

- a. If an entity is a Non-Commercial PB:
  - i. Ascertain if it is a government company formed to operate as a market entity but whose operation does not meet the commercial criteria
  - ii. determine if it is mainly self-supporting (i.e. 'earns' over 50% of its revenue), or if it is primarily supported by appropriations paid from the Consolidated Fund.
  - iii. If conditions i & ii are met the entity is classified as Category II, if the conditions are not met, then the entity is a Category I entity.
  
- b. If entity is a Commercial PB/SOE as determined by the first level assessment, determine if it has been certified by the Auditor General as Commercial and therefore outside the Specified Public Sector. If certified, then PB/SOE is a Category IV entity; if not then PB/SOE is a Category III entity.

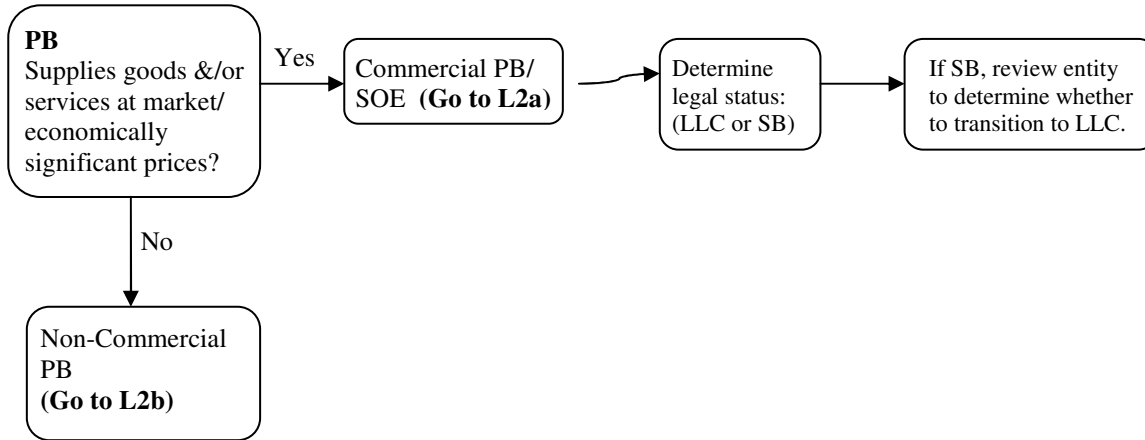
The second level classification is represented diagrammatically below:



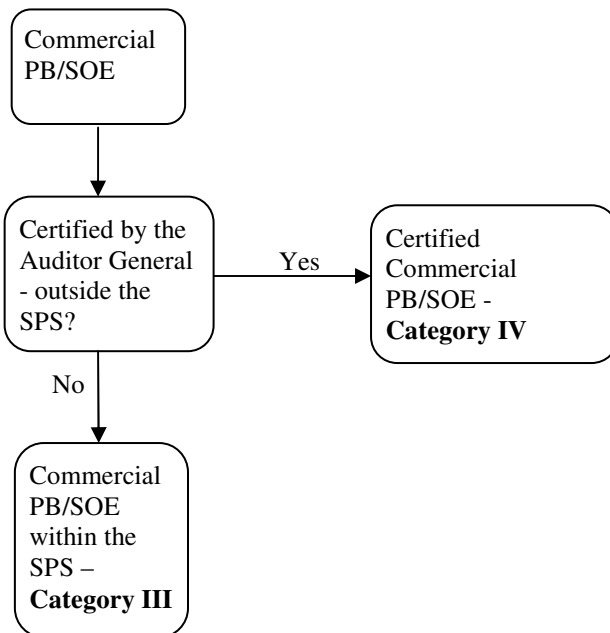


## DECISION TREE – CATEGORISATION OF PUBLIC BODIES

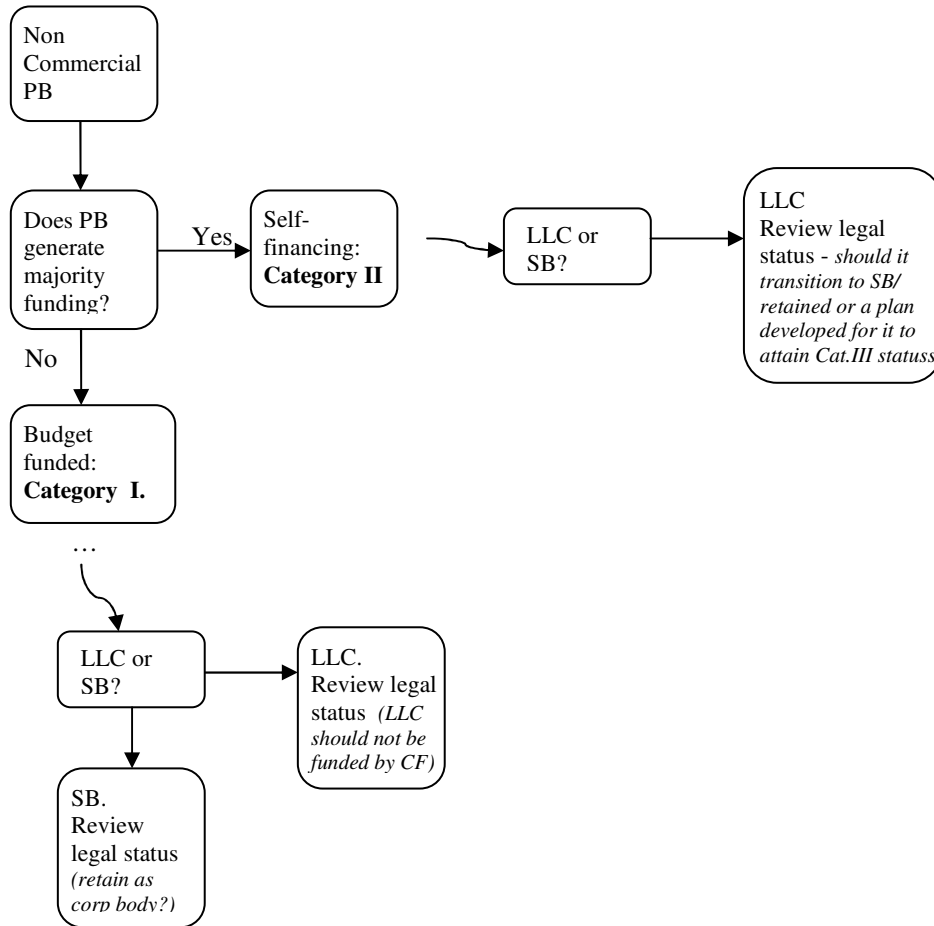
### Level 1 Assessment (L1):



### Level 2(a) Assessment (L2(a))



Level 2(b) Assessment (L2(b))



Reforming Public Bodies  
Summary of Public Bodies PFM Procedures by Category

PFM Function	MDAs  (within the Specified Public Sector - SPS)	NON-COMMERCIAL Category I PBs [Entities formed by statute with or without body corporate status]  (within the SPS)	NON-COMMERCIAL Category II PBs [Mainly Statutory Bodies, may also include Limited Liability Companies (LLC) that do not meet commercial criteria]  (within the SPS)	COMMERCIAL Category III PBs/SOEs [State Owned Enterprises (SOEs) – mainly LLCs but also include SBs that meet commercial criteria]  (within the SPS)	COMMERCIAL Category IV PBs/SOEs [PBs Certified Commercial by the Auditor General]  (Outside the SPS)
<b>Budgeting:</b> (1) Corporate plan/budget preparation and approval (Estimates of Rev and Exp)	4 year revenue and expenditure plan – FAA section 48E (4), FRF Reg 6.	4 year rev and exp plan – FAA section 48E (4) and FRF Reg 6. Submitted thro portfolio ministry.	Submit draft to HMOF and responsible ministry by end Nov – 1 <sup>st</sup> draft to PED Dec. - feedback from PB End Dec. Final version of Corporate Plan/budget. Feb.- tabled in Parliament PBMA sections 3 & 7. .Approved by end March in Parliament – PBMA sections 2A & 7 (6).	Same as Category II PBs	Summary sent to Parliament for info only - PBMA sections 2A (& 7(1)(7)) CP/budget approved by Board of Directors, HMOFP tables in Parliament for information.
<b>Budgeting</b> (2) Budget Coverage. (Includes MDAs and PBs within SPS)	National budget consists of central govt and entities financed from the Consolidated Fund. Consolidated Budget includes National and PB budgets.	National budget consists of central govt and entities financed from the Consolidated Fund inclusive of Category I entities.	Included in PBs budget (all transfers to/from GOJ appropriately identified), and Consolidated Budget  <i>NB. All PBs within SPS covered as their budgets are approved by Parliament.</i>	Included in PBs budget and Consolidated Budget  <i>NB. All PBs within SPS covered as their budgets are approved by Parliament.</i>	Excluded from SPS. PBMA 7(1)(7) applies: CP/ budget tabled for information

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PFM Function	MDAs  (within the Specified Public Sector - SPS)	NON- COMMERCIAL Category I PBs [Entities formed by statute with or without body corporate status]  (within the SPS)	NON-COMMERCIAL Category II PBs [Mainly Statutory Bodies, may also include Limited Liability Companies (LLC) that do not meet commercial criteria]  (within the SPS)	COMMERCIAL Category III PBs/SOEs [State Owned Enterprises (SOEs) – mainly LLCs but also include SBs that meet commercial criteria]  (within the SPS)	COMMERCIAL Category IV PBs/SOEs [PBs Certified Commercial by the Auditor General]  (Outside the SPS)
<b>Budgeting</b> (3) FRF- FPP coverage (Includes MDAs and PBs)	Includes MDAs	Includes Category I entities as part of MDAs	Includes PBs	Includes PBs	Excluded, except for fiscal risk
<b>Debt Management</b> (1) Borrowing authority	Exercised by Min responsible for finance on behalf of GOJ	Not allowed to borrow	Requires prior written approval from the Minister of FP – PBMA section 5 (1),(2),(5)	Requires prior written approval from the Minister of FP – PBMA section 5 (1),(2),(5) [Guidelines for overdraft facilities and insurance premium financing to be agreed with EMD]	Same as Category III PB . [Amendment to be made to allow board to approve local borrowing to specified limit, but overseas borrowing to be approved by Minister.]
<b>Debt Management</b> (2) Coverage of public debt	Included. "total debt" means the stock of public debt directly contracted by the Government and Gov. guaranteed external debt.	Included. "total debt" means the stock of public debt directly contracted by the Government and Gov. guaranteed external debt.	Included if government guaranteed	Included if government guaranteed	Excluded due to definition of category
<b>Debt Management</b> (3) Guarantees	Exercised by Min responsible for finance on behalf of GOJ and approved by Parliament	Unlikely, but otherwise same as MDAs	Guarantee to a public body requires prior approval of the House of Representatives and FS agrees in writing with the public body on terms – PBMA section 5A (1)&(2)	Same as Category II PB	Not eligible.
<b>Procurement</b> (1) Coverage	Government procurement rules	Government procurement rules	Same as MDA – PBMA section 6A	Same as MDA – PBMA section 6A. [Exemptions to be finalized for this ]	Excluded from govt procurement rules – PBMA S6A
<b>Procurement</b>	Each MDA shall use the	Each MDA/public body shall	Every public body shall use	Same as Category II	Not required. PBMA S.6C

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**Categorisation and Rationalisation of Public Bodies**

**September 2016**

PFM Function	MDAs  (within the Specified Public Sector - SPS)	NON- COMMERCIAL Category I PBs [Entities formed by statute with or without body corporate status]  (within the SPS)	NON-COMMERCIAL Category II PBs [Mainly Statutory Bodies, may also include Limited Liability Companies (LLC) that do not meet commercial criteria] (within the SPS)	COMMERCIAL Category III PBs/SOEs [State Owned Enterprises (SOEs) – mainly LLCs but also include SBs that meet commercial criteria] (within the SPS)	COMMERCIAL Category IV PBs/SOEs [PBs Certified Commercial by the Auditor General]  (Outside the SPS)
(2) Use of the Public Investment Management System/capital budget	PIMS. FAA S.48J & 4 <sup>th</sup> Schedule	use the PIMS. FAA S.48J & 4 <sup>th</sup> Schedule / PBMA section 6C.	the PIMS. PBMA section 6C.	<i>(Higher threshold to be finalized for PBs in this category)</i>	
<b>Governance</b> (1) Governing authority – legal framework	FAA Act and Regulations	FAA Act/Regs, also enabling statute and PBMA Act/Regs/CGF esp. for corporate entities	PBMA Act/Regs and CGF and enabling statute/ Companies Act	Same as Category II PB	Aspects of PBMA/CGF + Co Act
<b>Governance –</b> (2) Appointment of: i) CEO ii) Board members iii) Chairman  (3) Board/Committee Fees	#2 - N/A for Ministries & Departments - EAs: CEO by Services Commission; and Advisory Boards by Minister  #3 – N/A ... however fees paid to Audit Committee as per MOFPS guidelines	(2) For non-corporate entities: Minister appoints all; for corporate entities: as per Cat II  (3) As per MOFPS guidelines	(2) i) Board appoints CEO (in consultation with Minister)(CGF Principle 2) ii & iii) Minister nominates & appoints on approval by Cabinet (CGF P 3,8)  (3) As per MOFPS guidelines	(2) Same as Category II  (3) As per MOFPS guidelines	2) Same as Cat II  3) As per HR Committee recommendations (PBMA S.20A)
<b>Human Resources</b> (1) Structure, staffing, conditions of service	Per GOJ rules	Per GOJ rules	Per guidelines or specific approvals given by SHRMD, otherwise as per GOJ rules	As per guidelines and specific approvals given by SHRMD	Minister may appoint a Human Resources Committee to advise on HR matters – see PBMA 2015 S.20A
<b>Human Resources</b> (2) Emoluments / salaries/ allowances	As per GOJ rates	As per GOJ rates (except otherwise approved)	Boards set staff salaries in accordance with guidelines issued by the Minister responsible for the public service – PBMA section 20.	Same as Category II, except where specific approvals are given by SHRMD. <i>(To pursue general guidelines being approved by SHRMD)</i>	Excluded from PBMA S.20. HR Committee appointed by HMOFPS to advise, monitor, report on PB wrt HR matters. PBMA S20A

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				<i>within which PBs may operate – already agreed in principle)</i>	
<b>Human Resources</b> (3) Pensions	GOJ pension scheme	GOJ pension scheme if no PB scheme	PB pension scheme but may be part of GoJ pension scheme	PB pension scheme	Company's pension scheme
<b>Financial Management</b> (1) Accountability - (Accounting / accountable officer and scope of work)	Appointed with responsibilities identified in FAA s.16. Regs 2011 Schedule B	Appointed with responsibilities identified in FAA s.16. Regs 2011 Schedule B. Falls directly under scope of Portfolio Ministry	PBMA does not explicitly mention the role of Perm. Secretary as Accounting Officer (PBMA section 5, CGF principle 4&8)  PBMA vests authority with the Board – S.6  <i>[Matter of accounting officer in relation to PB. to be pursued]</i>	PBMA does not explicitly mention the role of Perm. Secretary as Accounting Officer (PBMA section 5, CGF principle 4&8)  PBMA vests authority with the Board – S.6  <i>[To pursue matter of accounting officer in relation to PBs.]</i>	Same as Category III PBs.  <i>[Some of the provisions applicable to Category IV will need to change before it becomes operational. PBMA already allows for some exclusions, but not all areas are addressed. New governance regime to be defined.]</i>
<b>Financial Management</b> (2) Accounting standards	As prescribed by HMOFPS FAA S24B, Regs ..... (Government accounting/IPSAS)	As per MDA; corporate PBs also PBMA S.3.	PBMA S 3 - Generally accepted acctg principles promulgated by the Institute of Chartered Accountants (i.e. IFRS)	PBMA section 3, (IFRS)	IFRS
<b>Financial Management</b> (3) Systems & Procedures: Use of Central Treasury Management System / Treasury	Must use the CTMS. FAA 48 I (1)	Included in CTMS. 2011 FAA 48 I (1)	Finance Minister by affirmative resolution <u>may</u> require public bodies to use. FAA 48I (1) b and (3). See also FAA FM Regs para 157,	Should be excluded  <i>[Will require legal change to FAA/PBMA Acts to properly account for this group]</i>	Excluded

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Single Account			which is NOT definitive re everyday usage.		
<b>Financial Management</b> (4) Expenditure control	As per FAA Act & Appropriations	FAA Act, and if separate legal entity and receives funds by way of subventions same as Category II PBs.  Check	Payment to a public body of grant, capital, loan or assignment of revenue requires prior approval of the House of Representatives and FS agrees in writing with the public body on terms – PBMA section 5A (1) and (2)	Same as Category II PBs	Excluded
<b>Financial Management</b> (5) Authority to create bank accounts	Prior written authority from the FS is required. FAA section 17.	Prior written authority from the FS is required. FAA section 17.	Board; but may include reference to MOFP	Board	Board
<b>Financial Management</b> (6) Distribution of dividends or financial contributions to Consolidated Fund	Not applicable	Not applicable	Made in accordance with PBMA S.4 and PB Regulations – (applicable to self-financed PBs) Min 5% of net profits/fin distributions – Dividend Policy PBMA 2015 para9	Same as Category II PB	Same as Category II PB i.e. made in accordance with PBMA S.4 and per PB Regs, but excluded from payment of special distributions.
<b>Financial Management</b> (7) Proceeds from sale of government property	Deposited in Consolidated Fund FAA S.38 & Regs	Deposited in Cons Fund ( <i>if public body receives 50 % or more “of its funds” from the Cons Fund</i> ). FAA S.38 & FM Regs134	If PB received funds from the Consolidated Fund (i.e.less than fifty <i>per cent</i> of its funds), may keep; otherwise keep. FAA FMRegs 135	Keep.	Keep.
<b>Financial Management</b> (8) Reporting - semi-annual, quarterly and	FAA Act (S24A), FM Regs Part IV & Financial Instructions.	As for MDAs; corporate entities should adhere to PBMA regarding annual	Submitted in accordance with the requirements of PBMA Act S.3, 22 & 23.	Same as Category II PB	Same as Category II PB.  <i>[The MOF still needs to</i>

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other reports	FS to prescribe guidelines for preparation and presentation of monthly, quarterly, annual and other financial reports to be submitted by accounting officers	reports (S.3&22).	Annual Report Tabled in the House of Rep. –		<i>monitor these entities; however, the requirements of PBMA S.3, 22 &amp; 23 needs to be modified for these PBs.]</i>
<b>Audit &amp; Internal Control</b>  Audited Financial Statements/Annual Reports	Accounting Officer to prepare and submit to Minister & Auditor General within 4 months of end of FY. Certified Fin Statements to be tabled in Parliament. FAA S24I, FM Regs - Part IV (Regs 68-75)	As with MDAs. Where entity is corporate body, PBMA S.3 is also applicable.	Annual Report including audited Fin Statements – to be submitted to responsible minister, who sends to Parliament (“laid on the Table”), four months after FY ends. <u>PBMA section 3</u>	PBMA section 3; also PBMA section 4 (6) which requires public companies to adhere to Companies Act when filing accounts.	As per Co Act and PBMA section 3.
<b>Audit &amp; Internal Control</b>  Internal audit/Audit Committee	Each department shall have an internal audit unit and system. FAA FM Regs Part IX, (142-149). Each dept shall have an audit committee... FAA S33(2)	As for MDA. Corporate bodies also PBMA sections 8-19	Each PB shall have an internal audit committee. PBMA sections 8-19	Same as Category II PB	Same as Category II PB
Create a new company	Portfolio Minister after consultation with Minister of Finance. [ <i>This is then referred to Cabinet, although not stipulated</i> ]	Same as MDA, but as Category II for corporate entities.	By public body, requires prior approval from the responsible Minister after <u>consultation</u> with the Minister of FP – PBMA section 21 and 24 (1), PBMA	Same as Category II PB	Responsibility of the PB (board approves) per PBMA S.21A Subsidiary also a public body as long as holding is certified.



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			Reg 19. [PBMA Provision to be strengthened to ensure assessment/recommendation by MOFPS]		[Provision to be made for the Board to consult with MOFPS, before new company formed]
Access to Information Policy	Applies	Applies	Applies (except for exempt documents)	Applies.	Applies. [The extent of applicability is to be assessed]

## **DECISION CRITERIA FOR RATIONALIZATION OF PUBLIC BODIES**

The following procedures are to be applied in assessing public bodies. Application of the steps will result in a determination of whether the entity/function should be retained, subsumed in central government, merged, transferred to the not-for-profit sector or closed.

Outlined below are (a) a summary of the decision criteria to be used in the process, (b) the step by step procedures to be applied, and (c) Figure 1, which provides a schematic overview of the procedures.

**Decision Criteria** for assessing continuance of existing or need for new public entities may be summarised as follows:

1. *Determine if the activity/function is deemed necessary, that is, whether it serves a public interest. If not the entity/function should be closed.*
2. *Determine if there is a necessary role for the Government in provision of activity. If not, it should be privatized, transferred to the not-for-profit/NGO sector or closed.*
3. *Determine where in the public sector is best suited for the activity - Ministry, Department, Agency or Public Body and assign accordingly.*
4. *Determine if similar activity is being performed by another entity in the public sector. If so, merge, if not, proceed to next test.*
5. *Determine if activity is affordable within present fiscal constraints. If not the options are: close, provide assistance to NGO sector to deliver activity, an entity with less than 20 employees becomes a prime candidate for a merger or shared corporate services, or review to determine best modality for improving affordability i.e. contract out or restructure.*
6. *Determine how best to improve efficiencies in the organisation going forward.*

### **Procedure:**

**Step 1: Determine if the function or activity carried out by the entity has a significant public interest and whether there is a need/demand for its continued operation. (Pb interest tests)**

Considerations for determining public interest/need for function, includes the following:

- 1.1 The public relies on the provision of outputs
- 1.2 There is an actual or perceived need/demand for the activity
- 1.3 The provision of this activity is for the general protection of the public
- 1.4 A determination of whether the mandate of the entity is still relevant, and not fulfilled
- 1.5 There is a legal/international requirement for the activity

**Yes:** Proceed to Step 2.

**No:** Close. (*There is no real need for the activity.*)

**Step 2: Determine if the activity needs to be performed by the Government.**

Considerations for assessing whether there is a legitimate role for GoJ in the provision of the activity:  
(*Role of govt test*)

- 2.1 The output is considered a public/merit good, which may reflect a significant margin of social returns over private returns
- 2.2 Is the provision of this activity reflective of Government policy?
- 2.3 If the Government is not involved in the provision of the activity, is there a significant risk that it will not be done (the private sector may not wish to do it)?
- 2.4 Is there a legal requirement for this activity to be effected by the Government?
- 2.5 Does the provision of the activity address a market failure?
- 2.6 Is the activity one of oversight/regulation without which the public will be placed at risk?

**Yes:** Proceed to Step 2a.

**No:** Proceed to Step 3.

**Step 2a: Determine where in GoJ is best suited for activity - whether to be performed by a Public Body or by an MDA. (*Pb sector location test*)**

Considerations for determining best suited location in the public sector:

- 2a.1 Is the activity of a commercial or regulatory nature?
- 2a.2 Is there a need for impartiality and or independence in the provision of this activity?
- 2a.3 Is the activity of a technical, social or developmental nature that is best carried out by a separate (legal) entity?
- 2a.4 Is there a legal, social or moral imperative for the activity to be outside of the central government?
- 2a.5 Is the perceived risk of failure (based on past/current public perception of government) significantly higher if the activity is performed by an MDA?

**Yes:** activity should be carried out by a public body

**No:** activity best suited for an MDA

Move to step 3.

**Step 3: Determine if the function can be carried out in partnership with the Non-profit sector**

- 3.1 A: Assess if there is sufficient demand to allow it to be operated profitably by the private sector
- 3.2 B: Assess if there is merit in the function being transferred to the non-profit/NGO sector: if so transfer,
- 3.3 C: In not assess whether the sector would absorb the function if operated in partnership with the government.

**Options:** If A – privatise, B – transfer to NGO sector, C – function should be operated by NGO in partnership with the government, if none of the above: close. (*P'ship test*)

**Step 4: Determine if similar activity is being performed by another public entity.**  
*(Overlap/Duplication test)*

Considerations for determining if similar functions are being performed in the public sector:

- 4.1 An assessment of the functions of MDAs and PBs should be done to determine whether similar activities are being performed within the public sector.
- 4.2 Further examination should determine the feasibility of subsuming an activity within an MDA or merging with another public body.

**Yes:** Where functional overlaps/duplications exist with MDAs the activity should be assessed to determine the best organisational unit to continue the activity, whether the activity should be subsumed into the MDA operation or vice versa.

Where functional overlaps exist with other public body/ies, then the activities should be merged.

**No:** Where no apparent overlap exists, continue assessment to step 5.

**Step 5: Determine if activity is affordable - within fiscal constraints.** *(Affordability test)*

Considerations for assessing affordability within fiscal constraints:

- 5.1 If activity is of a commercial nature, is the activity being carried out profitably or at least able to cover the cost of operations?
- 5.2 Is the cost of operations lower or comparable to similar activities whether in the public or private sectors?
- 5.3 Does the provision of the activity reflect efficient use of resources, as suggested by the financial and operating statistics?
- 5.4 Is the fiscal risk posed by the continued provision of this activity minimal, such that the Government may not be inclined to discontinue operations?
- 5.5 Is the need for funding growing at a much slower rate than inflation or any additional increase in scope of operations?
- 5.6 Is value for money being achieved such that there will be an incentive for the public purse to continue to fund this activity?

**Yes:** Proceed to Efficiency test

**No:** Assess to ascertain best option: restructure, outsource/contract out or close if little scope of improvement.

**Step 6: Determine how best to improve efficiency.** *(Efficiency Test)*

Considerations for assessing efficiency:

- 6.1 Are the outputs being provided cost effectively compared with the industry/other suppliers/?
- 6.2 Are the efficiency ratios positive/comparative to industry standards and are at levels to encourage continued operations?
- 6.3 Is the entity reinvesting in continued improvements to its operations/service delivery

- 6.4 Is the entity able to surmount any legal, technical or regulatory impediments to improving its operations?
- 6.5 Would improved efficiency be affordable?
- 6.6 Is the activity/industry a viable one whose future is fairly secure and not in question?
- 6.7 Is the merit in shared

**Yes:** If deemed fairly efficient: Continue operations, but seek opportunities for improvement.

**No:** If operations not as efficient as should be: determine best modality to improve entity’s efficiency - options include: Perform organisational review; Perform management review; Implement Shared Corporate Services or outsource aspects of operations.

**6.3 Figure 2.**

**DECISION TREE FOR ASSESSING EXISTING/NEW FUNCTIONS IN GOVERNMENT**

