SHAPING NEW PARTNERSHIPS FOR NATIONAL DEVELOPMENT

Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy

ADDENDUM TO
The Policy Framework and Procedures Manual for Privatisation of Government Assets

October 2012
(Revised December 2017)

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Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy

Development Bank of Jamaica Limited
(in consultation with the Ministry of Finance and Planning)

October 2012
(Revised December 2017)

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LIST OF ACRONYMS

DBJ	Development Bank of Jamaica
GOJ	Government of Jamaica
IDB	Inter-American Development Bank
IMF	International Monetary Fund
JAMPRO	Jamaica Promotions
MDA	Ministries, Agencies and Departments
MOFP	Ministry of Finance and Planning
NPV	Net Present Value
OPM	Office of the Prime Minister
PIOJ	Planning Institute of Jamaica
PPP	Public-Private Partnership
RfP	Request for Proposal

EXECUTIVE SUMMARY

A public-private partnership (PPP) is a long-term procurement contract between the public and private sectors, in which the proficiency of each party is focused in the designing, financing, building and operating an infrastructure project or providing a service, through the appropriate sharing of resources, risks and rewards. The definition of PPPs, as outlined in this Policy, is limited to assets of high value and areas where the Government is faced with fiscal constraints and is obligated to provide the infrastructure service.

The Jamaican PPP Policy sets out the principles that should guide decision-making by MDAs which are considering utilising PPPs to improve infrastructure and the delivery of public services.

The PPP Policy seeks to define PPPs, highlight how they can assist in economic development, outline the PPP selection process, and identify roles and responsibilities in managing PPPs. In providing a comprehensive framework for PPPs, the Jamaican Government aims to standardise how PPPs are implemented, attract private investment, increase productivity and limit fiscal exposure while providing public services and infrastructure projects.

Asset Mobilisation has been identified as one of one of three priority themes underpinning the growth impetus of the Government's medium-term economic programme of which PPPs are a critical component. The Asset Mobilisation initiatives are a set of supply-side initiatives aimed at mobilising "idle" or "latently productive" human, physical and financial assets in both the public and private sectors, increasing the mobility of these assets and enabling greater efficiency in the use of these assets to support production.

It is the Government's responsibility to consider innovative mechanisms for the delivery of those services or activities in which the Government has a continuing interest (in other words, must ensure is done) but need not do itself. It is by using PPPs - as opposed to conventional public procurement projects - that greater value for money will be achieved through:

- Risk Transfer
- Whole-of-life costing
- Innovation
- Asset utilisation
- Focus on service delivery
- Predictability of costs and funding
- Mobilisation of additional funding
- Accountability

The PPP Policy will ensure that the programme is guided in all cases by the following over-riding principles:

- Optimal risk transfer – each identified project risk shall be allocated to the party that is better able to manage, control and bear the impacts of that risk.
- Achieving value for money for the public – the PPP must have benefits that exceed its costs, and be the least-cost practical way to achieve those benefits.
- Being fiscally responsible – any PPP that involves fiscal support (whether through planned payments or guarantees) will be scrutinised to ensure that the fiscal commitments are affordable, and not likely to be destabilising.

- Maintaining probity and transparency – making sure that the public is informed at all times about candidate projects, and that no person is unduly advantaged or disadvantaged by the process.

The administration of the PPP process will be captured in two broad institutional structures: (i) Strategic and (ii) Operational.

The strategic responsibilities include the approval of policies and strategies for the implementation of PPPs and take into consideration the alignment of the PPP policy with the other broad economic strategies of the Government while the operational responsibilities are tied to the day-to-day administration of the programme implementation including management of all elements of the transactions and providing advisory support to the teams charged with strategic oversight of the programme.

Strategic oversight of the PPP Programme (Policy and process) is the responsibility of Cabinet through the Ministry/ies with responsibility for the DBJ and MOF PPP Units. The Public Investment Management Committee recommends to Cabinet the approval of PPP projects for development. PIMC is supported by the PIMSec. The operating units will be the PPP Units of the Development Bank of Jamaica (DBJ), and the Ministry of Finance (MOF).

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MDAs pursing PPPs will create teams to develop and implement each PPP project. These teams will be the:

- Enterprise Team
- Project Team
- Contract Management Team

Other government entities which have major roles and responsibilities in the PPP Programme are:

- The Office of the Prime Minister
- The Planning Institute of Jamaica.
- The Attorney General's Chambers
- The Ministries with Portfolio responsibility for the Privatisation Agency and MoFP PPP Unit
- The Public Investment Committee and its Secretariat , the Public Investment Management Secretariat

All PPPs are to be developed and implemented in four stages: Project Identification, Business Case, Transaction, and Contract Management. Each stage is made up of a series of defined tasks and, at the end of each stage, projects will be reviewed and submitted to Cabinet for approval to proceed to the next stage.

Projects will be tested against four main criteria while at the stages of Project Identification; Business Case; and Transaction. These criteria include:

- Project is viable – the project makes sense, in that it is effective in meeting government objectives, technically and legally feasible, environmentally compliant, socially sustainable, and economically viable;
- PPP achieves value for money – procuring the project as a PPP will provide greater net benefit than conventional public procurement ;

- PPP is marketable - there are qualified private parties available to do the project and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension;
- PPP is fiscally responsible – the project's cost to the Government is in line with fiscal priorities, and project risks retained by the Government would not be fiscally destabilising.

The PPP Programme accommodates unsolicited proposals in exceptional circumstances. All unsolicited proposals must be submitted, in accordance with Section 9.0 *Unsolicited Proposals* of this Policy.

This Policy stresses the vital importance of ensuring fairness and transparency in PPP procurement in order to attract the interest of the best local and international private sector parties.

1.0 INTRODUCTION

1.0.1 Background

In October 2012, the Government of Jamaica approved the *Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy* to establish the principles and streamline the processes for the identification, development and implementation of Public-Private Partnership Projects. The PPP Policy is an addendum to the *Policy Framework and Procedures Manual For the Privatisation of Government Assets: The Privatisation Policy* which is guided by the principle that privatisation transactions should allow the state to focus on its core business by providing space for other productive endeavours to emerge, creating an environment that welcomes increased private sector participation and investment in economic development activities, particularly infrastructure projects and services. This Policy applies to modalities outlined in the Privatisation Policy, which are "*contracts under which the Government contracts with private firms to ensure the provision of public services, where these contracts transfer significant risk and management responsibility to the private party*". Such transactions may include[1]:

a. Existing GOJ assets operated under concession to private parties; where such agreements may include specific contractual obligations to develop the asset and deliver specific outputs.

b. Services currently executed by the GOJ which are to be contracted out to a private party and which contracts include specified contractual service delivery obligations and outputs.

Since the 2012 publication of the PPP Policy, the PPP Units in DBJ and the MOFPS have been able to learn from the operationalization of the Policy and have been able to identify areas of the Policy that could be amended to make the PPP process more effective and more efficient. This revised Policy incorporates these changes.

1.0.2 Defining PPPs

A public-private partnership (PPP) is a long-term procurement contract between the public and private sectors, in which the proficiency of each party is focused in the designing, financing, building and operating an infrastructure project or providing a service, through the appropriate sharing of resources, risks and rewards. The definition of PPPs, as outlined in this Policy, is limited to assets of high value[2] and areas where the Government is faced with fiscal constraints and is obligated to provide the infrastructure service.

The PPP contract should define the output that is to be delivered in the agreed quality, quantity, cost and timeframe.

[2] "High Value" means that the project is of a scale that is sufficient to invest resources to seek greater value for money through a PPP. See appendix IV, PPP achieves value for money.

PPPs can take a wide variety of forms, and be used for both existing assets and services (Brownfield), and new projects (Greenfield). The Government may utilize the PPP methodology to engage the private sector to manage and or expand existing infrastructure assets or services or to develop new infrastructure assets. The private sector may receive payment for the services from the Government, from the users or a combination of both. Where an existing Government asset or service is utilised, the Government will negotiate appropriate compensation from the private sector for the use of the asset.

1.0.3 Essential Characteristics of a PPP

For the purposes of this PPP Policy, projects will only be considered as PPPs if they contractually:

i. **Involve an arrangement with a private sector entity** by delegating one or more project functions to them (that is, delegating to a private party the responsibility to design, build, (or expand/develop), operate, maintain, rehabilitate, or finance an asset or service).

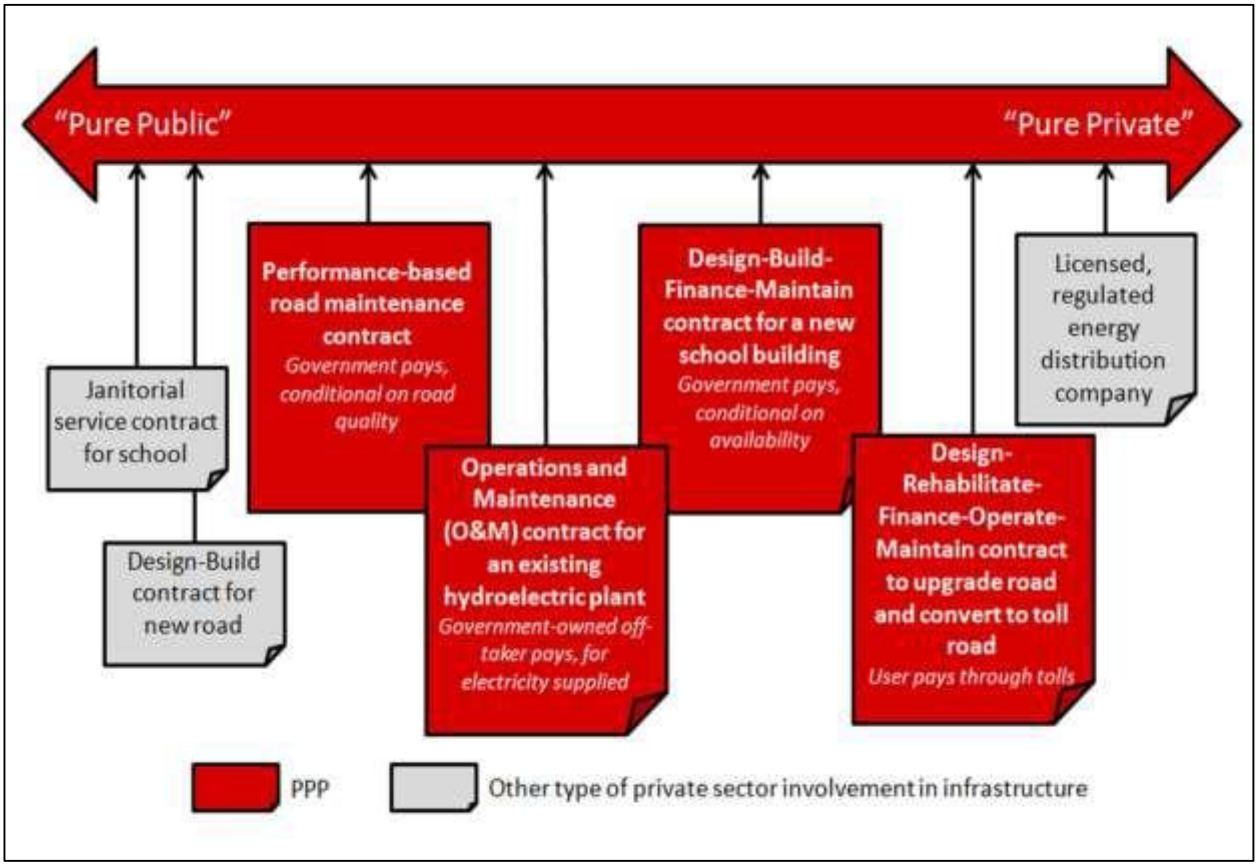
ii. **Require a private party to take significant risk** in performance of the functions delegated - that is, the private party's revenue is dependent on its performance (the availability of an asset, or the quantity and quality of outputs supplied). For example, if a PPP involves the private party building an asset, the private party would take all or a significant portion of construction risk - this means the private party would not receive payment until construction milestones were met and would have to pay for any construction cost overruns.

iii. **Involve public infrastructure/asset or service provided for public benefit** where the output has the element of facilities/services being provided by the Government as a sovereign to its people. Two key concepts are elaborated below[3]:
   a) *'Public Services'* are those services that the State is obligated to provide to its citizens (towards meeting the socio-economic objectives) or where the State has traditionally provided the services to its citizens.
   b) *'Public Asset'* is that asset which is inextricably linked to the delivery of a Public service. For example, public road which is linked to public transportation. Or, those assets to utilise or integrate sovereign assets to deliver the Public services.

iv. **Operations or management of the asset or service is within specified period.** The agreement with the private sector entity has the element of a time period after which the arrangement comes to a closure. Hence, the arrangement is not in perpetuity.

[3] Approach Paper on Defining Public Private Partnerships, Discussion Note, February 2010. Government of India, Ministry of Finance, Department of Economic Affairs.

Figure 1: Examples of PPP Contracts Types



Source: Public-Private Infrastructure Advisory, PPP Reference Guide, February 2012.

2.0 ROLE OF PUBLIC PRIVATE PARTNERSHIPS IN ECONOMIC REVITALISATION

This Policy has been developed to help deliver wider Government Policies and Programmes. In 2009, the GOJ launched Jamaica's first long-term strategic plan, ***Vision 2030 Jamaica – National Development Plan***. The plan sets out the country's national vision statements: "*Jamaica, the place of choice to live, work, raise families and do business*".

Among the goals of Vision 2030 Jamaica is the development of internationally competitive industry structures which will provide the framework for increased productivity throughout the Jamaican economy. The Vision 2030 Plan explicitly recognises the role of PPPs as a means of stimulating economic growth in the Jamaican economy

In 2011, the Planning Institute of Jamaica (PIOJ) elaborated a *Growth Inducement Strategy for the Short and Medium Term*[4]. The Growth Inducement Strategy (GIS) presents comprehensive and integrated policy and programme recommendations to induce higher rates of growth in the Jamaican economy in the short and medium term. PPPs (along with privatisation) play a particularly significant role in the GIS through its *Asset Mobilisation*[5] initiatives.

2.0.1 Public Sector Investment Planning and PPP Project Development

Under the GOJ's enhanced fiscal rules as outlined in the amended *Financial Administration and Audit* (FAA) and *Public Bodies Management and Accountability* (PBMA) Act, a Public Investment Management System (PIMS) has been established to provide a common framework for the preparation, appraisal, approval and management of all public investments in Jamaica, irrespective of source of funding or procurement and implementation modalities.

2.0.1.1 Definition of a Public Investment

Private sector finance through public private partnerships is one method of financing and implementing public investment projects. The FAA Act defines a Public Investment as "any non-recurrent expenditure on goods, works and services carried out by any public entity within the specified public sector on its own, or by one or more such public entities in conjunction with one or more non-public entities through Public-Private Partnerships, and which is aimed at accumulating new physical or intangible assets or enhancing human resource capacities, or improving or rehabilitating existing physical or intangible assets or human resource capacities, to achieve development objectives."

2.0.1.2 Enhanced Fiscal Rules - PPP Accounting Treatment

Jamaica has been undertaking economic reforms in various areas in order to facilitate economic growth. One of the main impediments to economic growth is the unsustainable levels of debt that continues to be a challenge. Accordingly, the GoJ has implemented enhanced fiscal rules which aim to reduce the very high Debt to Gross Domestic Product (GDP) ratio to 60% by year 2025/2026. The PPP

[4]Planning Institute of Jamaica "**A Growth Inducement Strategy for Jamaica in the Short and Medium-Term**" (Revised: December 2011). Available at: www.pioj.gov.jm

[5] Ibid

programme represents one of the critical paths to the fiscal and debt sustainability Agenda. Hence:

- All PPPs should be included in the Public Sector Investment Programme provided for under the PBMA and be subject to the standards set out in the Public Investment Management System as provided for in the FAA Act.
- A Public Private Partnership shall not be entered into by a public entity, except with the approval of the Cabinet on the recommendation of the PIMC established under the FAA Act.

2.0.1.3 Public Sector Investment Programme (PSIP)

The PSIP is the rolling five-year plan of Cabinet approved, new and ongoing prioritised public investment projects that are reviewed on a regular basis against:

a. The strategic objectives of Government;
b. The fiscal and debt sustainability agenda;
c. Prevailing socio-economic and environmental conditions; and
d. The implementation status and technical capacity of executing agencies

The Ministry of Finance is charged with the management and monitoring of the PSIP.

2.0.1.4 Accounting for PPPs

The PBMA defines a **Government -pays** PPP as:

> *A PPP under which a public entity has an obligation to pay for an asset or the use thereof, or for a service supplied in connection therewith, without which payments, the project undertaken by the PPP is not likely to be economically viable.*

The PBMA defines a **user -pays** PPP as:

> *Any PPP that is not a government-pays PPP*

The PBMA prescribes the treatment of PPPs as:

- The indebtedness of a **Government -pays** PPP shall comprise part of the public debt
- The indebtedness of **user-pays** PPP shall not comprise part of the public debt. However, the indebtedness of user-pays is classified as contingent liabilities and shall not exceed 3% of GDP between April 1, 2014 to March 31, 2017.
- Between April 1, 2017 and March 31, 2026 the contingency ceiling shall be 8% of GDP
- All contingent liabilities in relation to PPPs whether user-pays or Government-pays shall be assessed by the Minister of Finance.

If at any time during the nine (9) year period (April 1, 2017 to March 31, 2026) there is a reduction in the public debt below 60% of GDP, then the 8% may be increased by the amount by which the public debt has been reduced below 60%.

The contingency ceiling for user-pays shall not apply to the following PPPs:

1. User-pays in existence at March 31, 2014
2. User-pays with minimal contingent accruing to the Government of Jamaica.
3. User-pays with contingent liabilities that become probable, the quantifiable amount of that contingent liability shall thereupon form part of the public debt.

2.0.2 ROLE OF PPPs IN PUBLIC SECTOR TRANSFORMATION

As part of the transformation of the public sector and revitalisation of the national economy, the Government set out a plan to:

i. Transfer to the private sector ownership or operation of those assets or services that are really businesses (for example, ownership of commercial real estate and farms);
ii. Keep in the public sector those assets or services which must be done by Government (for example, the justice system); and
iii. Consider innovative mechanisms for the delivery of those services or activities in which the Government has a continuing interest (must ensure is done), but need not do itself.

It is in this last group of activities that the GoJ seeks to achieve greater value for money through the use of PPPs. For instance, the Government wants to ensure that:

i. Port and airport services are provided, but it need not do this itself
ii. School facilities are provided to all children, and children at risk are provided with nutritious meals in school, but it is reasonable to ask whether private firms could provide these facilities or meals better or at a lower cost than the Government can.
iii. Electricity bills for schools are reduced through the use of renewable energy and it is reasonable to ask the private sector to install and maintain relevant equipment.

Delivering such services and assets through PPPs can often provide better "value for money" – that is, have greater net benefits if done as a PPP rather than a conventional public procurement project. There are seven main ways in which PPPs may be able to offer better value for money. These 'value drivers' are described in ***Table 1*.**

Table 1: PPP Value Drivers

PPP Value Drivers	
Value Driver	**Explanation**
Risk Transfer	Risk retained by the Government in owning and operating infrastructure typically carries substantial unvalued cost. Allocating some of the risk to a private party which can better manage it, can reduce the project's overall cost to government
Whole-of-life costing	Full integration – under the responsibility of one party – of up-front design and construction with ongoing service delivery, operation, maintenance and refurbishment, can reduce total project costs. This occurs because full integration incentivises the single party to complete each project function (design, build, operate, maintain, etc.) well and in a way that minimises total costs. For example, the private party would be able to optimise the trade-off between capital expenditure and maintenance, or develop designs that minimise operating cost
Innovation	Specifying outputs in a contract, rather than prescribing inputs, provides wider opportunity for innovation. Competitive procurement of these contracts incentivises bidders to develop innovative solutions for meeting these specifications
Asset utilisation	Private parties are motivated to use a single facility to support multiple revenue streams, thus reducing the cost of any particular service from the facility
Focus on service delivery	Allows a sponsoring department or agency to enter into a long-term contract for services to be delivered when and as required. Management in the PPP firm is then focused on the service to be delivered without having to consider other objectives or constraints typical in the public sector.
Predictability of costs and funding	Whole-of-life costing and budgeting are considered, providing infrastructure and related ancillary services to specification for a significant period, and including any growth or upgrade requirements. This provides budgetary predictability over the life of the infrastructure and reduces the risks of funds not being available for maintenance after the project is constructed
Mobilisation of additional funding	Charging users for services can bring in more revenue and this can sometime be done better or more easily with private operation than in the public sector. Additionally, PPPs can provide alternative sources of financing for infrastructure where governments face financing constraints or are under cash-based budgeting systems
Accountability	Government payments are conditional on the private party providing the specified outputs at the agreed quality, quantity, and timeframe. If performance requirements are not met, service payments to the private sector party may be abated.

Source: Adapted from: *Partnerships Victoria Guidance Material: Practitioners' Guide*. June 2001. State of Victoria, Australia

3.0 POLICY FRAMEWORK

Since Jamaica's reengagement of the IMF in 2008, the GOJ has embarked on a programme of fiscal rationalisation. The fiscal rationalisation initiative has occasioned widespread planning across government Ministries, Departments and Agencies (MDAs) to partner with the private sector to deliver critical infrastructure and services as a strategy to limit fiscal exposure and risks while achieving planned development goals. Such a strategy requires an appropriate policy framework that:

- Addresses the lack of coordination and central planning in implementing PPPs, which has occurred hitherto;
- Recognises how PPPs are identified, selected and monitored; and
- Addresses issues such as unsolicited proposals

The current legislative framework is inadequate and inappropriate for regulating the implementation of PPPs across MDAs in a consistent and methodical manner.

The PPP Programme will be undertaken within the context of the existing legal framework.

3.0.1 Policy Objective

This policy is intended to provide a framework for Government of Jamaica officials to identify, develop, and implement Public-Private Partnerships (PPPs) and forms an addendum to the GOJ's Privatisation Policy.

3.0.2 Policy Application

This policy is intended to be applicable to all GOJ PPP transactions which are the remit of the Central Government and which meets the definition of a PPP as outlined in this policy. The intended PPP transactions must be of sufficient value and scope to create a significant positive impact on the economy and society.

Exemption

Housing PPPs, which are the responsibility of the Minister of Housing, being undertaken under the Housing Act are exempted from this policy. Therefore, the Housing PPP Policy is applicable to Public-Public Private Partnership agreements with the objective of developing housing solutions, which are be promoted by the Minister of Housing or related agencies under his authority.

3.0.3 Guiding Principles of the PPP Programme

The PPP Programme will be guided in all cases by four (4) over-riding principles:

i. **Optimal risk transfer** – each identified project risk shall be allocated to the party that is better able to manage, control and bear the impacts of that risk.

ii. **Achieving value for money for the public** – the PPP must have benefits that exceed its costs, and be the least-cost practical way to achieve those benefits.

iii. **Being fiscally responsible –** any PPP that involves fiscal support (whether through planned payments or guarantees) will be scrutinized to ensure that the fiscal commitments are affordable, and not likely to be destabilising.

iv. **Maintaining probity and transparency** – making sure that the public is informed at all times about candidate projects, and that no person is unjustifiably advantaged or disadvantaged by the project. The PPP Policy is intended to ensure that these principles are observed when establishing PPP contracts. This policy does not apply to privatisations (where ownership of the asset is completely transferred to private parties) or lease of government-owned assets in which the Government does not intend to control the quantity, quality and price of services provided through contract or regulation.

4.0 INSTITUTIONAL AND ADMINISTRATIVE FRAMEWORK

The lack of a central authority to guide the government in administering the implementation of PPPs increases the potential for inconsistencies in the PPP process thus increasing the risk of failure. Decentralised planning of PPPs creates inefficiencies such as lack of knowledge transfer, inappropriate model selection, cost overruns, misallocation of risks and poorly defined performance measurements. Establishing and operationalising an institutional and regulatory framework inclusive of determining a governance structure is therefore critical.

4.0.1 Overview of PPP Institutional Structures

Strategic oversight of the PPP Programme (Policy and process) is the responsibility of Cabinet through the Ministry/ies with responsibility for the DBJ and MOF PPP Units. The Public Investment Management Committee recommends to Cabinet the approval of PPP projects for development. PIMC is supported by the PIMSec.

Operational management of the process is the responsibility of the two PPP Units in DBJ and MOF and Enterprise Teams, Project Teams and Contract Management Teams in MDAs.

The descriptions of these bodies are provided in the following sections, and supplement those provided in the *Policy Framework and Procedures Manual for the Privatisation of Government Assets* (Privatisation Policy), for the purposes of clarity and ease of reference.

4.0.2 Strategic Oversight for the PPP Programme

4.0.2.1 Cabinet

In accordance with section 69(2) of the Jamaican Constitution in relation to executive authority, the Cabinet is the principal instrument of policy and charged with the general direction and control of the Government. Therefore, the Cabinet is the ultimate authority in relation to matters of policy set out in the PPP Policy.

Cabinet has final decision-making power over all matters involving the PPP Programme. Cabinet approval will be required:

i. After the Business Case Stage, for a project to proceed to the Transaction Stage;
ii. After bids are received and evaluated, to approve the contract with the preferred bidder, or to set the parameters for negotiations with one or more bidders with a view to concluding a contract;
iii. If the Ministry recommends concluding an agreement outside the agreed negotiating parameters, for that agreement to be signed;
iv. For any other decisions with significant implications for any stakeholder, the fiscal situation, or the country's economic development, as deemed necessary by the Ministry or the Privatisation Committee of Cabinet; and
v. For any changes to the PPP Policy.

4.0.2.2 Unit **Ministry/ies with responsibility for the DBJ and MOFPS PPP**

Ministry/ies with responsibility for the DBJ and MOFPS PPP Units will develop policies and strategies for submission to Cabinet. The Ministry/ies will monitor and review the programme and make necessary adjustments. The Ministry/ies will also be responsible for ensuring that the programme is implemented in an effective and efficient manner and this includes addressing issues/impediments that may be identified by the PPP Units which may impact PPP projects.

4.0.2.3 Public Investment Management Committee

The PIMC is a legislated body created by the Fourth Schedule of the FAA Act. The PIMC has responsibility for:

1. The screening of all investment proposals for feasibility and consistency with government's strategic objectives;
2. Reviewing all projects for technical, financial, economic and environmental feasibility;
3. Prioritizing projects for financing and recommending to Cabinet their inclusion in the PSIP; and
4. Reviewing project performance, monitoring risks to the achievement of objectives and continued relevance to government's policy priorities.

PIMC submits recommendations to the Cabinet for approval. To facilitate PIMC's decision making the PIMSEC which has responsibility for the review and appraisal of projects provides technical support and advice to PIMC.

4.0.2.4 Public Investment Management Secretariat

PIMSEC is a legislated body created by the Fourth Schedule (E) of the FAA Act.

The mandate of the Secretariat is to:

1. undertake the assessment of project proposals presented for screening and appraisal,
2. provide technical support and advice to the PIMC to facilitate its decision-making.

PIMSec's preliminary assessment will be required for the development of any public sector investment programme conceptualised and designed by a Ministry Department Agency (MDA) or Public Body, irrespective of its financing source - Government direct financed (through traditional procurement) or private sector financed (through PPPs). Joint Ventures and other such arrangements must go to PIMC for approval.

PIMSec will liaise the PPP Units at the DBJ and MOFPS on the suitability of projects under consideration for development as a PPP.

4.0.2.5 Operating Entities

The day-to-day coordination of the PPP Programme and management of PPP project development will be the responsibility of a unit in the Development Bank of Jamaica (DBJ). In the Ministry of Finance, a PPP Unit will have responsibility for coordination and fiscal management of PPPs.

a) DBJ's PPP Unit

The DBJ's PPP Unit ensures that every project which the Government has identified and approved for development as a PPP is developed/structured, evaluated, and implemented through a uniform and consistent process. The DBJ PPP Unit assesses the marketability and viability (refer to Section 7.0 of this policy) of all PPP projects.

The Unit coordinates the implementation of the PPP Policy, and monitors and reports to the Ministry with responsibility for the DBJ on its progress in this regard. Responsibilities with respect to specific PPPs are as follows:

i. **Regulate the PPP Programme** – the Unit will ensure that projects are developed in accordance with this policy. It will ensure that projects are properly reviewed against the PPP criteria for each stage; that Gateway Reviews, as per Section 6.0.3, and other checks are completed if required; and that draft Cabinet submissions include all the information required for informed decision-making.

ii. **Manage the PPP Process** – Once project approval is received, and is recommended to be implemented as a PPP, the Unit will coordinate input from various parties involved in developing, and implementing a PPP project. This includes coordinating inputs from consultants and government entities, and external communications on PPP projects

iii. **Provide transaction management and administrative support to PPP projects** – the Unit will work on the development PPP projects, under the guidance of Cabinet, the Ministry with responsibility for the DBJ PPP Unit and Enterprise Team as appropriate. This work will include:

- Provide input and guidance to the Public Investment screening process for potential PPP projects;

- managing external consultants;
- providing technical, administrative, and secretarial support to Enterprise Teams, by providing necessary information, ensuring their instructions are carried out, and preparing all necessary reports.

iv. **Provide a repository of knowledge and skills** – the Unit shall continually build knowledge about identifying, developing, evaluating, implementing, and managing PPPs; including compiling and archiving information on PPP projects, and analysing what has and has not worked.

v. **Identify and manage funds** for the development and implementation of PPPs. Where such funding has been identified and established the Unit will establish mechanisms to manage the funds in conjunction with Ministry of Finance (MOF).

vi. **Conduct sensitisation programme with stakeholders.** The Unit is responsible for conducting sensitisation sessions with the relevant stakeholders.

The Board of Directors of the DBJ will have strategic and operational responsibility and oversight of the Privatisation Agency and the execution of its mandate. The specific role and extent of oversight of the DBJ Board will be determined on a case by case basis at the commencement of each PPP project.

b) Ministry of Finance PPP Unit

A PPP Unit has been established in the Ministry of Finance. This Unit will play a key role in the PPP Programme by coordinating, evaluating, and managing the fiscal implications of PPPs, to ensure:

- The fiscal impact of PPP projects is consistent with the Government of Jamaica's fiscal constraints, and that fiscal risks are identified, managed and accounted for appropriately;
- Economic, financial, and value for money assessments are done rigorously, and drive decision-making on PPPs;
- Timely and complete advice is provided to Cabinet and the DBJ PPP Unit on these issues.

The responsibilities of the MOF PPP Unit are to:

1. Ensure that the Ministry of Finance participates effectively in all stages of the PPP Process;

2. Ensure that positive fiscal impacts are given appropriate weight in prioritising candidate PPP projects, and negative fiscal impacts are scrutinised;

3. Ensure that the 'expected' and 'worst case' values of any fiscal commitments are identified, properly calculated, and highlighted in Business Cases and other decision-documents on PPPs sent to Cabinet;

4. Ensure that economic and financial analyses are duly conducted and given appropriate prominence in decisions relating to PPPs;

5. Ensure that all fiscal commitments required by candidate PPP projects are identified early in the process;

6. Liaise with stakeholders within MOF – such as the departments responsible for budget and debt management – providing a single point of contact between MOFP and Enterprise Teams, ensuring that all budget and fiscal issues are dealt with in a coordinated and timely fashion;

7. Ensure that fiscal commitments related to PPPs are appropriately budgeted for, appropriated, and reported on;

8. Monitor fiscal risk across the government's portfolio of PPP projects. This will include receiving and assessing quarterly risk reports from government entities with active PPP projects. The Node will promptly escalate notification to Cabinet when the fiscal cost of a project has changed, is likely to change, or risk reports are not received.

4.0.2.6 Operational Support Teams

Once Cabinet has approved a project for development as a PPP, an Enterprise Team will be established to guide each project on issues relating to its development, evaluation, and procurement. The Minister with portfolio responsibility for the PPP project has the authority to appoint members of the Enterprise Team. The Enterprise Team will appoint a Project Team to do the day-to-day work. When the PPP transaction reaches financial close, a Contract Management Team will be appointed to take over managing the PPP contract for its duration.

a) Enterprise Team

When a project from the PPP List progresses to the Business Case Stage, Cabinet will appoint an Enterprise Team to guide and govern the development and procurement of that project.

Composition

The Enterprise Team will be comprised of senior officials and other specialists with the expertise to ensure that only viable projects that meet the PPP criteria proceed to the Transaction

Stage, and to guide those projects to a successful close. Such expertise should include experience in the sector, transactions, policy coordination, and economic and financial analysis.

Cabinet will appoint the Enterprise Team, based on the recommendations of the Privatisation Committee of Cabinet, with recommendations from the PPP Unit as necessary. Enterprise Teams will always include representatives from:

- The Ministry of Finance and Planning
- The Subject Ministry/Agency

Depending on the nature and complexity of the project, members may be drawn from throughout the public sector, and may also include representatives from:

1) The Office of the Prime Minister
2) The Planning Institute of Jamaica
3) The Attorney General's Chambers
4) The Board of the Development Bank of Jamaica
5) Any other entity deemed necessary

Responsibilities

The Enterprise Team will ensure all processes and actions undertaken in the Business Case and Transaction Stages are consistent with this policy, including the PPP Principles (*see section 3.0.3*) and guidelines for Probity Management. Specific responsibilities in fulfilling this role include:

i. **Designating the members of the Project Team** (as described in the next section, the Project Team will be the group that actually carries out the day-to-day work of developing the Business Case and prepare the Transaction, under the guidance of the Enterprise Team).

ii. **Providing guidance to the Project Team** on the completion of tasks, including setting the strategic approach to the Business Case and Transaction Stages, deciding which issues are important and how they may be addressed.

iii. **Supervising the work of the Project Team** to ensure that it follows the plan and stays on timetable, resolving difficult or unexpected issues as they arise, and ensuring that the outputs of the Project Team at each stage are prepared in accordance with the policy.

iv. **Approving the Project Plan and engagement of external advisors** at each Stage, including reviewing and amending the Project Plan prepared by the Project Team, and approving the PPP Unit's selection of external advisors.

v. **Making strategic and commercial decisions for the project** as needed, addressing questions such as the level and type of fiscal support to be recommended, the allocation of risk, the level and type of user fees, the structure of the transaction, and the approach to stakeholder consultation. On all such strategic issues, the Enterprise Team will weigh the options, direct the Project Team to prepare the project in line with the Enterprise Team's judgments, and then ensure that those judgments are presented to Cabinet, at the appropriate point, for Cabinet to validate or alter.

vi. **Ensuring recommendations to proceed with the implementation of projects are based on the PPP Criteria** and that these recommendations are well supported by documentation upon which Cabinet can make informed decisions.

Enterprise Teams will report to the Privatisation Committee of Cabinet, through the Board of the Development Bank of Jamaica.

b) Project Team

It takes a great deal of time and specialised skills to develop Business Cases and manage Transactions. The Enterprise Team members will generally be senior level officials with additional responsibilities outside the PPP Programme. For this reason, the Enterprise Team will designate a Project Team to do the day-to-day work involved in the Business Case and Transaction stages. This team will collect and analyse information, write reports, plan and structure the PPP; and perform administrative and management functions involved in developing, evaluating, and procuring PPP projects.

Composition

Each Project Team will be led by a Transaction Officer of the PPP Unit. This is to ensure that the day-to-day work of the project is managed by someone with both the time to dedicate to the tasks, and knowledge of the procedures set out in this policy.

The PPP Unit will analyse the skills and time commitments required to develop, evaluate, and procure each project, and recommend to the Enterprise Team who should be on the Project Team. Generally, Project Team members will include officials from the Subject Ministry/Agency, the Ministry of Finance and Planning, the Attorney General's Chambers and suitably qualified consultants. The Enterprise Team will designate the members of the Project Team (other than the Transaction Officer) after considering the recommendations of the PPP Unit.

Responsibilities

The Project Team will be responsible for developing the Business Case and managing the Transaction. The Business Case stage includes structuring the PPP, evaluating whether it meets the PPP Criteria, and drafting the Business Case document and accompanying Cabinet submission. The Transaction Stage includes drafting project agreements (with assistance from legal counsel), qualifying bidders, participating in pre-Request for Proposals (RfP) consultations, drafting and issuing the RfP, conducting the tender, and evaluating bids.

c) Contract Management Team

The Contract Management Team will manage the PPP Contract after it has reached financial close and will be the responsibility of the relevant subject Ministry or Agency. The Contract Management Team (or Contract Manager in the case of an individual) will be appointed by the PPP Unit in consultation with the Subject Ministry/Agency, with responsibility for the PPP contract. The PPP Unit will have oversight of the Contract Management Team and may require the Contract Management Team to subcontract services of external consultants for independent management and monitoring, depending on the complexity of the transaction.

In summary, the main responsibilities of the Contract Management Team include:

1) Establishing the contract management processes, including communication and reporting protocols within Government and with the private party.
2) Monitoring delivery of the facilities and services specified in the contract in consultation with relevant regulatory bodies.
3) Prompting those Government entities with responsibilities under the project to discharge their responsibilities quickly and efficiently.
4) Monitoring and managing risk under the contract, and reporting fiscal risk developments to the Ministry of Finance and Planning.
5) Managing changes in the contract, as necessary, because of changing environment or circumstances (to be done with advice from the PPP Unit).
6) Enforcing the contract as necessary (with advice from the PPP Unit and legal counsel).
7) Closing the contract, at its termination.

4.0.2.7 Roles of Existing Entities

1) **Ministries/Agencies:** All Subject Ministries/Agencies in Government are responsible for identifying candidate PPP projects. This should be done in the context of submitting their annual Strategic Plans. Ministries and Agencies are also

to consider whether a PPP would be a good delivery method for any significant new asset(s) they are planning to construct, or any new service(s) they intend to deliver. Subject Ministries/Agencies will submit candidate projects to the PPP Unit, with all the information required for screening them.

Where a project is selected for development, the Subject Ministry/Agency will nominate to the PPP Unit, suitable staff for inclusion on the Enterprise and Project Teams, and will be responsible for implementation and the post-implementation management/monitoring of the PPP through Contract Management Teams appointed by the Ministries/Agencies.

2) **The Government Body responsible for planning (currently the MOFP) and the Planning Institute of Jamaica:** The Ministry of Finance & Planning, and the Planning Institute of Jamaica will also be represented on or consulted by the Strategy Committee and Enterprise Teams, where necessary to ensure co-ordination and strategic consistency across government.

5.0 REPORTING REQUIREMENTS

5.0.1 Reporting to Privatisation Committee of Cabinet

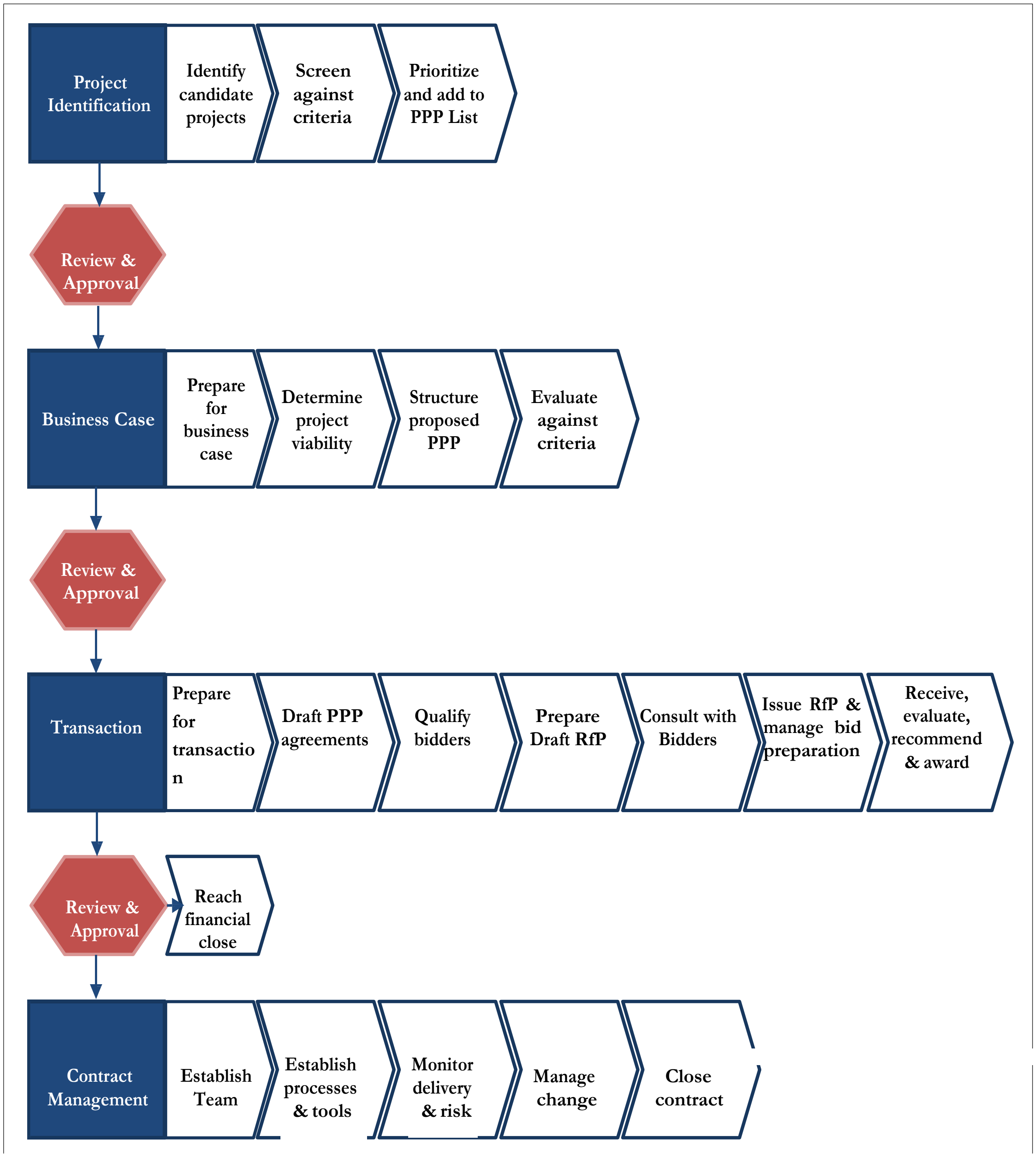
- The MDAs, through the MOF PPP Unit, will report on the fiscal aspects of all PPPs on a quarterly basis or as determined by the Cabinet
- The MOF PPP Unit will report to the Auditor General on the fiscal aspects of all PPPs on a quarterly basis or as determined by the Cabinet
- MDAs, through the DBJ PPP Unit, will report on non-fiscal aspects of PPPs on a quarterly basis or as determined by the Cabinet
- The DBJ PPP Unit to report to the Ministry with responsibility for the DBJ PPP Unit on PPP transactions in progress on a quarterly basis or as determined by the Cabinet

Contract Management Teams will provide the required information and updates to the DBJ and MOF PPP Units to facilitate compliance with reporting requirements to the Cabinet.

6.0 PPP DEVELOPMENT PROCESS

All PPPs are to be developed and implemented through the process described in this section. As illustrated in Figure 3, this process consists of four stages: Project Identification, Business Case, Transaction, and Contract Management. Each stage is made up of a series of defined tasks.

Figure 2: PPP Process Overview



6.0.1 Stages of PPP Development and Implementation

PPP projects will progress through four (4) stages of development. The purpose of each of the 4 stages, and their key tasks, are summarised below and captures the integrated PPP assessment process with the Public Investment Management System.

1. **Project Identification Stage** – the purpose of this stage is to find those assets and services – existing or planned – where value for money could possibly be increased if they were done as PPPs. The steps in the project identification stage are as follows:

   a. MDA goes to PIMSec with a proposed public investment project concept. PIMSec will be the first formal point of contact for public investment projects which may be considered for development as PPPs.

   b. MDA submits its application to PIMSec which includes mandatory high level PPP screening questions. The questions are mainly geared towards determining:

      - any issue (legal, social, environmental, technical) of which the MDA is aware may preclude or impede the project's development as a PPP
      - the private sector interest and capacity to undertake the obligations which will be assumed (finance, operate, maintain the asset) and
      - which functions and risks will be retained by private sector and those to be retained by Government

   c. The MDA submits the completed form to PIMSec for review and assessment.

   d. PIMSec, based on review of the PPP screening requests the DBJ and the MoF PPP Unit to comment on or to provide its assessment of information provided by the MDA as it relates to the suitability of the project to be developed as a PPP.

   e. The DBJ and MoF PPP Units will submit their written responses to the PIMSec which will complete its assessment of the project concept and submit its recommendation to PIMC for approval, deferral or decline.

   PIMSEC maintains its role as the sole point of contact with the MDA during the formal PCS evaluation and assessment process.

   Notwithstanding the above, MDAs may have preliminary sensitization discussions with the DBJ and MOF PPP Units in relation to understanding PPPs, (including for example identification and allocation of risks and functions, transaction structure and likely fiscal impact) and the GoJ's PPP development and assessment process prior to completion of the application and submission to PIMSEC.

2. **Business Case Stage** – is the development of a thorough report on the candidate project (the "Business Case") and is a detailed proposal that summarizes the project's key features (such as outputs and major risks), the results of all necessary research and analysis, and the proposed structure of the

project as a PPP. The purpose of the Business Case is to ensure that only good PPPs are developed. The steps in the Business Case Stage are as follows:

a. Once PIMC's approval is received, and the project is recommended to be implemented as a PPP, the MDA is referred to the DBJ for assistance with the further development of the project as is necessary.

b. The DBJ's PPP Unit determines whether a pre-feasibility assessment is required prior to full business case development in order to assess whether the project will deliver value for money for the Government if developed as a PPP.

c. The project returns to the PIMSEC after the Business Case has been completed, with the relevant recommendations from the DBJ and MOF, and goes through a second round of review by the PIMSec prior to submission to the PIMC for a decision as to:

Depending on the results of a pre-feasibility study:

- Approve for preparation of Business Case, or
- Defer preparation of a Business Case, or
- Reject the PPP modality and proceed to traditional procurement
- Reject the project based on the results of the pre-feasibility

In the case of a business case:

- A recommendation to Cabinet for inclusion in the PSIP
- A recommendation to Cabinet for the PPP procurement to proceed to transaction stage
- An advisory that the total estimated value of the PPP is to be recorded in the PSIP. Given that a PPP provides value to the recipients all assets and liabilities must be recognized. However, the final accounting treatment for user-pays PPPs is determined by the PBMA after PPP contract is signed.

3. **Transaction Stage** – is when bidders are actually requested for the project, pre-qualified, and then invited to bid. The purpose of this stage is to promote competitive bidding by well qualified firms, so as to deliver value to the public. The Project Team will draft the PPP Agreements, qualify bidders, draft the Request for Proposals (RfP), consult with bidders, issue the RfP, evaluate bids and recommend award. The Enterprise Team will guide the Project Team in completing these tasks and review the bid evaluation before submitting the results to Cabinet for final approval. This stage continues past bid evaluation to include negotiation (if needed), contract signature, and financial close. It is important to note the following:

i. On conclusion of the Public Tender Process, the Preferred Investor is approved by Cabinet. (PIMC's approval is NOT required for this milestone).

ii. After negotiations, Cabinet approves the final terms of the concession agreement. (PIMC's approval is not required for this milestone however in the event there are material deviations to the project cost the MDA will be required to submit an updated Project Proposal to the PIMSec for assessment prior to seeking approval from Cabinet).

4. **Contract Management Stage** – with the closing of the transaction, the PPP itself is just starting. This stage is where the Government needs to ensure that the promises in the contract are delivered, and that new events are responded to intelligently. The MDA, in consultation with the DBJ PPP Unit will establish the Contract Management Team (or Contract Manager in the case of an individual), and the process and tools for managing the contract. The Contract Management Team will monitor PPP delivery and risk, manage change, enforce the contract as necessary (with advice from the DBJ PPP Unit and AGC), manage the hand- back period and close the contract.

   The PIMSec continues to monitor and evaluate the implementation and performance of the contract through information submitted by the MDAs to the Public Investment Management Information System.

The PPP Process outlined below assumes that the relevant MDA would have received approval from PIMC for development of the business case. At the end of each stage, projects will be reviewed and submitted to Cabinet for approval to proceed to the next stage.

6.0.2 REVIEWS AND APPROVALS

The objective of reviews and approvals of candidate projects is to:

i. Ensure that the PPP Principles are effectively and consistently applied;
ii. Ensure Government resources available to develop and implement PPP projects are used efficiently, by implementing first the highest priority projects that will deliver the most value;
iii. Ensuring that these projects are properly developed and evaluated, and meet the criteria set out in the PPP Policy and Procedures Manual.

The PPP Process includes three (3) required[6] "*Review and Approval*" points. These points occur:

a) ***After the Project Identification Stage*** – PIMC approval will be required for candidate projects to be developed as a PPP. The project if approved is added to the PPP List.

   The PPP list is defined as those projects approved by PIMC for further development and implementation as a PPP.

b) ***After the Business Case Stage*** – Cabinet approval will be required to advance the project to the Transaction stage to enable the procurement of the proposed PPP. The Enterprise Team recommendations and the PPP Units comments on the project should be provided to Cabinet to support a decision.

[6] In some transactions, more Review and Approval points may be necessary—for example, if the Enterprise Team is not able to conclude an agreement within the parameters approved by Cabinet.

c) ***Before the contract is signed in the Transaction Stage*** – Cabinet approval will be required to approve the parameters of the final deal. The Enterprise Team recommendations and the comments from the PPP Unit should be provided to Cabinet to support (reviewed by the Enterprise Team).

In addition, the Business Case may, as deemed necessary, be subject to a special '*Gateway Review*', described below, before it is submitted to Cabinet.

6.0.3 GATEWAY REVIEW

A Gateway Review is a specially structured, in-depth review of a PPP transaction process, intended to ensure that all necessary analysis has been completed, and that all required information is presented when Cabinet is asked to make a decision.

The PPP Unit, the DBJ Board, the Enterprise Team or Cabinet reserves the right to commission independent Gateway Reviews of a transaction as it deems necessary.

The Gateway Review team will check to ensure that the notes to form the basis of the Cabinet submission:

- ➢ are presented in a clear format that includes the contents specified in the PPP Policy and Manual;
- ➢ fairly reflect the strengths and weaknesses of the proposed project, including compliance with all evaluation criteria;
- ➢ clearly identify risks and possible difficulties in project development, and present reasonable recommendations to deal with same;
- ➢ include the views of all relevant stakeholders, including the Ministry of Finance & Planning.

7.0 PPP CRITERIA

The PPP criteria are standards that a candidate project must meet to be developed and implemented as a PPP. Projects will be tested against the criteria at three (3) stages: (i) Project Identification; (ii) Business Case; and (iii) Transaction. The assessment will be quick and approximate at the Identification Stage, with more in-depth analysis reserved for the Business Case. Finally, before a PPP transaction is closed it will be checked to ensure the final PPP contract meets the criteria. This evaluation will form the basis of project approvals.

There are four (4) main PPP criteria:

i. ***Project is viable*** – the project makes sense, in that it is effective in meeting government objectives, technically and legally feasible, environmentally compliant, socially sustainable, and economically viable
ii. ***PPP achieves value for money*** – procuring the project as a PPP will provide greater net benefit than conventional public procurement
iii. ***PPP is marketable*** – there are qualified private parties available to do the project and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension
iv. ***PPP is fiscally responsible*** – the project's cost to government is in line with fiscal priorities, and project risks retained by the government would not be fiscally destabilising.

Each of the 4 criteria will be assessed using a number of sub-criteria. Appendix 1 lists each of the PPP criteria, their sub-criteria, and the extent to which projects will need to demonstrate compliance at the Project Identification, Business Case and Transaction Stages.

8.0 CONTRACT MANAGEMENT

Change in the contract environment is inevitable, given the long-term and complex nature of PPP contracts. The contract should include mechanisms to adjust to such changes. These contract mechanisms will typically include adjustment provisions, dispute resolution, and *force majeure* and termination provisions.

If the time comes to use one of these contractual mechanisms, the Contract Manager must ensure that the appropriate skills are available on the review/negotiation team. This will generally involve engaging legal counsel, seeking help from the PPP Unit, and keeping the Ministry of Finance and Planning PPP Node involved.

8.0.1 Renegotiation

In some cases the Government may decide to seek changes in the contract that cannot be accommodated through the contractual adjustment provisions – or the private party may suggest such changes, and the Government may be inclined to agree. In such cases, the contract can be renegotiated. However, if a new contract is to be entered into, then that contract may be subject to legal procedures.

Since there is no competitive pressure in a renegotiation, the private party may take advantage of the chance to improve its position, to the detriment of value for the public and as such renegotiations should always be approached with caution.

In light of these risks, a formal and well-structured approach to renegotiation, modeled after the approach used to create the PPP, should be employed. This may include:

- Creating an Enterprise Team to guide the negotiations (including at a minimum representatives from the MOFP, PPP Unit, Attorney General's Chambers and owning Ministry/Agency);
- Creating a reporting structure to Cabinet, with defined approval points;
- Ensuring that specialised legal, financial, economic and technical advisors are engaged;
- Only entering renegotiations if it seems likely that to do so will improve value for money (compared to not renegotiating) and there are no mechanisms to achieve the same end within the terms of the contract itself ;
- Conducting a formal value for money analysis, compared to a non-renegotiation counterfactual, before agreeing to the renegotiation.

9.0 UNSOLICITED PROPOSALS

Unsolicited proposals can be beneficial, but also bring specific challenges. For this reason, this Policy, as well as the PPP Policy, recognises the benefit to the Government from the innovation and market interest that unsolicited proposals signal, while preserving competitive pressure and transparency.

For the purposes of this policy an unsolicited proposal includes the following:

- A statement of the objectives, approach and scope of the proposed asset or service;
- Independently verified financial information on the proponent to demonstrate financial capacity to undertake the transaction;
- Development Plan including detailed technical specifications of the project
- Proposed investment modality
- Fully costed funding plan
- Implementation schedule

A distinction must be made between an ***Unsolicited Expression of Interest*** and an ***Unsolicited Proposal***. An ***Unsolicited Expression of Interest*** is usually takes the form of an introductory letter, meeting, brochure, presentation, by the Ministry, Department and Agency. The policy and the processes for project identification would apply for ***Unsolicited Expression of Interest***.

The PIMSec will publish the criteria and guidelines for the review and assessment of USPs. The approval of the Public Investment Management Committee will be required for all USP. Therefore, all USPs are to be submitted to the PIMSec by the Parent Ministry for review and assessment. PIMSec will then determine if the proposal meets the USP criteria for project acceptance and the optimal modality for the project to be developed.

In the event that the proposal meets the PPP criteria and Cabinet has approved the GOJ negotiating an agreement with the investor; the Swiss Challenge system can be used to test market interest prior to closing the deal.

9.0.1 Swiss Challenge System

If the Cabinet decision is to proceed with the development of the project, a Negotiation Team of no more than four persons is formed for the project

The Negotiation Team negotiates mutually acceptable contract terms

The PPP Units confirms that the contract would meet the PPP criteria and makes a recommendation to **Cabinet** to approve the negotiated terms and proceed to the Challenge Process. If Cabinet agrees, the Challenge process is then initiated (if Cabinet does not agree, the original offer is rejected)

The DBJ PPP Unit will manage the Challenge process as outlined below

1. **Challenge process**:
    a) The opportunity to challenge the offer is advertised in the same way that an opportunity to bid on an RfP is advertised

    b) Potential challengers are required to register with the PPP Unit within [1] month of the advertising of the challenge opportunity

    c) Registered challengers are provided with the contract and other documents negotiated with the Original Proponent. Trade secrets, including special techniques to be used in provision of the services, will be removed from the information provided. Nevertheless, at a minimum registered challengers must be given: a complete description of the services to be provided; the government support that will be offered; the risk allocation; the payments made to or from the government; and the key contractual terms that have been negotiated

    d) Challengers are given three [3] months from the date of advertising to submit their 'challenge bid' to the PPP Unit

    e) Challengers must offer to supply:
        i. The same or better services (Note the Enterprise Team will need to have defined the PPP services in the contract e.g. if land is being made available for an economic development project, the contract is not a contract for sale of land, but for provision of the economic development project. Therefore, a challenge bid could not be one that just offered to buy the land for a higher price. It would have to offer to provide at least equivalent economic development benefits, and also a better price or lower government contribution)
        ii. At the same or lower cost
        iii. With no increase in risk to the government or public
        iv. Offering equivalent assurance on quality, performance guarantees, and financial standing.

    f) If warranted and appropriate, the Enterprise Team may describe the information that must be supplied, the conditions that must be met, and the form a challenger's proposal must take. The Enterprise Team may also specify evaluation criteria in advance. If no evaluation criteria are specified in advance, the 'Best Challenger' will be the one that provides at least as good services and other conditions as the original proponent, at the lowest cost to government (or with the highest payment to government).

g) After the Best Challenger is selected, the Original Proponent will be notified of the Best Challenger's offer, and given up to one month to match the offer.

h) If the Original Proponent matches or betters the Best Challenger's offer, the contract will be awarded to the Original Proponent, on the terms offered. If the Original Proponent chooses not to match, the Best Challenger will be recommended for contract award, on the terms proposed in its Challenge.

2. Once the Enterprise Team has decided on the firm to recommend for contract award, its recommendation will be submitted to Cabinet, along with all the information that would normally be submitted after evaluation of a tender process, and Cabinet will make a decision.

3. The contract will then be signed, and the project implemented and monitored as with other PPPs.

The intellectual property rights of the Original Proponent and the Best Challenger will be treated fairly and equitably in accordance with law. In the event of an intellectual property issue arising the Privatisation Agency and PPP Unit will refer the matter to the Attorney General Chambers for an opinion.

10.0 PROBITY MANAGEMENT

The Government of Jamaica is committed to probity and transparency in all aspects of its PPP Programme.

Probity management is the set of responsibilities and practices designed to promote the development and implementation of PPPs through a fair process, in which no person improperly achieves personal advantage or disadvantage through involvement in the process. Additionally, probity management will align with the general principles of the *Policy Framework and Procedures Manual for the Privatisation of Government Assets* (the Privatisation Policy), and promote compliance with the *Contractor General Act*, the *Public Sector Procurement Regulations*, and the *Government Procurement Procedures Handbook*.

The PPP Unit will oversee and implement probity management.

10.0.1 TRANSPARENCY PROCEDURES

Transparency procedures are the Government's commitment to ensure that information about the project is available to the public. The Access to Information Act, 2002, and Access to Information Regulation, 2003, will apply to all PPP projects, and requests for information will be dealt with in accordance with this Act and its regulations. In addition to this, the PPP Unit will adopt the following practices on disclosure:

- The PPP List will be published after it is approved by Cabinet, and whenever it is updated.
- A summary of information on each PPP project will be published before the tender process begins (prior to issuing a Request for Qualifications or Request for Expressions of Interest).
- Requests for Proposals (RfPs) will be published when they are issued to potential bidders.
- PPP contracts will be published after they become effective.
- The Contract Manager will make performance data publicly available, following an agreed-upon schedule and format.

The term *'publish'* in this section is defined as posting online, making available for viewing during working hours at a government office, and making copies publically available by request at a reasonable cost. When publishing information on PPPs, the PPP Unit:

- Will ensure information is published in a timely manner and in accordance with all relevant laws, regulations, and policies
- May redact portions of RfPs or contracts before publication where it would be detrimental to effective competition or the achievement of value for money (for example, because of a need to preserve trade secrets or future competition). The remainder of the document will be published
- Will notify Cabinet when part of a document is to be redacted before publication and explain the reasons for the redaction.

11.0 FUNDING

A viable funding mechanism must be established to support the sustainability of the GOJ PPP programme. This is imperative as PPP transactions are very costly. These costs are related to the entire process: Business Case, Transaction and Contract Monitoring. The GOJ must therefore identify resources to fund the budget of each PPP prior to the commencement of the transaction.

The costs related to contract monitoring of the PPP are necessary to ensure compliance with covenants and terms of the contract. These may include technical consultant fees, legal, audit, software licences and administrative fees.

The GOJ's PPP programme may be funded from the following sources which will be identified by the PPP Unit in conjunction with the Ministry of Finance:

- Low-cost debt financing to GOJ
- Grant funding from multilateral institutions
- Infrastructure Funds
- Bond floats on the local or international capital markets
- A Nominal Cess to be withheld /deducted (up to 2%) from proceeds of each PPP transaction

Appendix

Appendix 1: PPP Criteria Chart

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
Project is Viable				
Effective in meeting government objectives	The project is an effective method of meeting government objectives, and is consistent with the sector's strategy and relevant development plans	The project, as proposed for consideration as a PPP, is consistent with the sector's overall strategy, relevant development plans and integrates (as appropriate) with existing and planned assets and services	Unchanged	Unchanged
Technically feasible	The project can be implemented technically, as planned, using known and proven technologies and engineering methods	There is a reasonable expectation that the project is technically feasible, based on expert judgment or prefeasibility studies	A feasibility study indicates that the project (as defined for consideration as a PPP) is technically feasible	The project defined in the final PPP contract is materially the same as that assessed by the feasibility study undertaken during the business case
Legally feasible	All aspects of the project are permitted by law, the parties involved in the project are legally empowered to do what they will need to do under the project, and the agreements that will be required can be made legally binding on all parties concerned	There is a reasonable expectation that the project is legally feasible, based on expert judgment or preliminary legal analysis	A thorough legal due diligence of the project (as defined for consideration as a PPP) has assessed all legal issues having a bearing on the project, including reviewing all applicable laws and regulations, use rights, and (as appropriate) legalities of the project site, and indicates the project (as defined for	The project defined in the final PPP contract is materially the same as that assessed by the legal due diligence undertaken during the business case

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
			consideration as a PPP) is legally feasible	
Environmen-tally compliant	The environmental impacts of the project are in compliance with environmental laws and regulations, or can gain the necessary permits, etc. to become compliant	There is a reasonable expectation that the project is environmentally sustainable based on expert opinion or initial environmental impact assessment	Environmental impact assessment(s) indicates that the project (as defined for consideration as a PPP) is, or is highly likely to be, in compliance with environmental laws	The project defined in the final PPP contract is materially the same as that considered in the environmental impact assessment undertaken during the business case
Socially sustainable	All substantial social impacts of the project (as defined for consideration as a PPP) have been assessed, including providing impacted individuals and groups ample opportunity to provide feedback and voice concerns, mitigation solutions have been incorporated into the PPP contract as appropriate, and the	There is a reasonable expectation that the project is socially sustainable	A social impact assessment and public consultation indicate the project (as defined for consideration as a PPP) is socially sustainable	The project defined in the final PPP contract is materially the same as that considered in the social impact assessment undertaken during the business case

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
	likelihood of any one group blocking or undermining the project successfully is low			
Economically viable	An economic analysis of the project shows the expected economic benefits exceed the expected economic costs, and that the project is the least cost way of achieving the benefits that is practical and feasible	There is a reasonable expectation that the project is economically viable, based on expert judgment or an economic prefeasibility study	An economic analysis of the project (as defined for consideration as a PPP) indicates the project is economically viable	The project defined in the final PPP contract is materially the same as that considered in the economic analysis undertaken during the business case

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
PPP achieves value for money				
Project scale is sufficient	The value of the project should be sufficient to invest resources to seek greater value for money through a PPP. Generally, if the net present value of the project's costs is below US$10 million the transaction costs for both the public and private parties may prohibit achieving value for money. It may be possible to bundle related projects to achieve this threshold	The value of the proposed project is expected to be above US$10 million, or there is clear reason to believe a PPP will be successful and offer value for money in the case of smaller projects	Unchanged	Unchanged
Project duration is sufficient	The duration of the proposed PPP project should be for the life of the project asset and service, or at least 10 years if the project life is longer than 15 years. Projects with durations below 5 years will not generally make good PPPs	The duration of the proposed PPP is expected to meet the criteria	Unchanged	Unchanged

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
Outputs are clearly specified	Required outputs are defined in clear and measurable terms around which performance mechanisms can be effectively structured	There is a reasonable expectation that the project's outputs could be clearly specified in measurable terms	The project's outputs are clearly specified in measurable terms and effective contractual mechanisms for performance monitoring and enforcement have been developed	The required outputs are clearly specified in measurable terms in the PPP contract, which also includes effective and clearly specified mechanisms for monitoring and enforcing performance
One or more PPP Value Drivers applies	The PPP increases value through one or more PPP Value Drivers (see attached information sheet)	All PPP Value Drivers have been considered and there is a reasonable expectation that one or more of them will apply and make a PPP the better value option	One or more PPP Value Drivers have been effectively applied in structuring the PPP, and includes significant risk transfer to a private party	Unchanged
Functions are optimally allocated	Functions are optimally allocated between the private and public sectors, maximising incentives for performance, accountability, and the use available expertise	There is a reasonable expectation that project functions can be optimally allocated	Functions have been optimally allocated. This allocation, and the preferred solutions and consequences if should either party should fail to fulfill these functions have been clearly defined	Functions are optimally allocated and clearly defined in the PPP contract, which also specifies the permissible solutions and consequences if should either party should fail to fulfill these functions
Risks are identified and allocated optimally	All material project risks have been identified and optimally allocated to the party best able to manage, mitigate or diversify the risk so as to maximise value for money	There is a reasonable expectation that risks can be optimally allocated	All risks have been identified and optimally allocated, and mitigation strategies defined	The PPP contract clearly defines the risk allocation and mitigation obligations

PPP Criteria Chart				
Criterion	**Definition**	**Extent Demonstrated**		
		Initial Screening	**Business Case**	**Prior to Contract Signing**
Value for Money: PPP achieves greater net economic benefit than public provision	An economic cost-benefit analysis indicates that the proposed PPP is likely to provide greater net benefit then public provision	There is a reasonable expectation that a PPP is likely to provide greater value than public provision, based on expert judgment or preliminary economic analysis	A comparison of economic costs and benefits (quantitative and qualitative) indicates the PPP would provide greater net economic benefit	The PPP contract is materially the same as the PPP concept considered under the economic cost benefit analysis conducted during the business case, OR an economic cost-benefit analysis of the structure of the PPP defined in the contract indicates the PPP would provide greater net economic benefit
PPP is marketable				
PPP is a viable "commercial project"	The PPP's revenues cover costs and provide a rate of return that is sufficient for the private sector to consider the project commercially viable	There is a reasonable expectation that the project's revenues (from users, the Government, or both) would cover costs and provide a rate of return sufficient for the private sector to consider the PPP a viable commercial project, based on expert judgment or a preliminary financial analysis	A financial analysis indicates the PPP's revenues will cover its costs and provide a rate of return sufficient for the private sector to consider the PPP a viable commercial project	A compliant winning bid is received from a well-capitalised bidder, and there is no indication (based on financial analysis of the bids) that it would not be financially sustainable
Market has sufficient capacity and appetite	There is sufficient market interest to generate competitive tension amongst private parties with the capacity and resources to deliver the project	There is a reasonable expectation, gained from expert judgment or initial market sounding, that there is sufficient market interest from qualified private parties	Market consultations indicate there is sufficient market interest from qualified private parties to generate competitive tension	A competitive tender process resulted in at least one bid that offers value for money

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PPP is fiscally responsible				
Likely cost of Government support is consistent with fiscal priorities	The amount of Government support, including scheduled payments and contingent liabilities, under the outcomes most likely to occur (the modal value), is within fiscal priorities	There is a reasonable expectation that the cost to Government under the proposed PPP would align with fiscal priorities, based on budget projections and pre-feasibility level estimates of the project's costs and revenues	A financial analysis has calculated the modal value of the cost of the PPP to Government. MOFP has reviewed this value and confirmed it is within the Government's fiscal priorities	The cost to Government is materially the same in the PPP contract as calculated by the financial analysis during the business case, **OR** a financial analysis estimating the modal value of the cost to the Government under the final PPP contract has been reviewed by MOFP and determined to be within fiscal priorities
Fiscal risk would not be destabilizing	The expected value of the cost to the Government under the "worst case" scenario would not require the Government to make difficult and unexpected changes in fiscal variables—such as materially increasing debt or taxes, or suffering a drop in its credit rating	The fiscal risk of the proposed PPP is not expected to be fiscally destabilising, based on expert judgment and preliminary identification of likely fiscal risks	A sensitivity analysis has calculated the expected value of the cost to the Government under the "worst case" scenario. MOFP has reviewed this value and confirmed it would not be fiscally destabilising	The fiscal risk of the PPP contract is materially as the same as that calculated by the sensitivity analysis during the business case, **OR** MOFP has reviewed a sensitivity analysis of a financial model of the PPP contract and confirmed it would not be fiscally destabilising