GOVERNMENT OF JAMAICA

Policy Framework and Procedures Manual
For the Privatisation of Government Assets: The Privatisation Policy

October 2012
Revised December 2017

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Development Bank of Jamaica Limited

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EXECUTIVE SUMMARY

The process of privatising the Government of Jamaica's (GOJ) assets began in the early 1980s. A divestment policy, at that time, was proposed to ensure that public funds were not used to finance the operations of inefficient enterprises and to reduce the drain on GOJ's fiscal resources.

In 1991, the Government approved a framework for privatisation transactions as outlined in Ministry Paper No. 34 of 1991. That policy outlined the general rationale and the modalities for privatisation transactions with the main objectives expanded to include broadening the ownership base and competition in the economy, facilitation of the expansion of the equity markets and securing enhanced access to foreign markets, technology and capital and established an agency with specific responsibility for implementing the GOJ's Privatisation Programme.

The Privatisation Policy was updated in October 2012 to reflect the GOJ's two decades of privatisation experience. While some of the key provisions of the 1991 policy remained relevant, a policy review was necessary given the increased fiscal constraints in a challenging economic environment, a changing regulatory framework, and changes in the relationship between the key stakeholders, among other issues. The 2012 review also provided a more streamlined framework that incorporated regulatory and strategic considerations. It was 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. The 2012 Policy revision also recognised a specific policy (the PPP Policy) to guide the implementation of the GOJ's Public-Private Partnership (PPP) Programme as an addendum to the Privatisation Policy.

The Privatisation Policy 2016 policy revisions aim to reflect, recognise and include changes to the legislative, institutional and fiscal framework governing the Privatisation and PPP Programme and to incorporate further amendments aimed at improving the efficiency and speed of implementing transactions by capturing lessons learned from the implementation of the 2012 amendments. These amendments include the Government of Jamaica's updated fiscal framework and introduced the Public Investment Management Committee (PIMC) and its Secretariat the Public Investment Management Secretariat (PIMSec) and listing on the Jamaica Stock Exchange as an additional modality.

This policy applies to the transfer of assets, shares or operational responsibilities currently held by a public body *(that is, a "statutory body or authority or any government company")* or Ministry or Department of the Government to the private sector by way of sale, lease, concession, management contract or any other modality that transfers significant management control, risk or both, to a private firm.

This policy also applies to Public-Private Partnership (PPP) which is defined under the PPP Policy as "a contractual arrangement whereby a private firm (termed Concessionaire) finances the upfront investment to build, rehabilitate, maintain and operate an infrastructure facility that provides services to the public. As repayment for their investment in capital, maintenance and operating costs, the firm receives user revenues, government payments or a combination of both. At the end of the concession the facility is returned to the state. In this arrangement the project risks are allocated to the party best able to bear the risk"

All public bodies, Agencies and Ministries of the GOJ that intend to privatise assets other than land and houses owned by the GOJ are governed by this policy. However, the policy does not apply to the transfer of assets within the public sector, which should be managed by the subject Ministries and approved by the Cabinet.

Assets that are targeted for privatisation include those that:

- *Do not form part of the core service obligations of the Government*
- *Are not currently being used for the provision of social goods and services*
- *Can be more effectively developed and operated with private capital and under private management*
- *Constitute an unnecessary burden on tax payers*
- *Are needed for provision of public services, but can be more efficiently operated by private firms to supply services under contract to the Government.*

STRUCTURE
Cabinet has overall responsibility for the GOJ's privatisation activities. The Development Bank of Jamaica (DBJ) serves as the GoJ's Privatisation Agency and reports directly to Cabinet. The Cabinet will approve the privatisation of GOJ assets.

The Subject Ministries/Agencies will work closely with the Privatisation Agency and the Enterprise Teams (ET) appointed at various stages of the privatisation process.

MODALITIES
The modalities of the privatisation programme will have as the ultimate objective, the transfer of operational risk from the public to the private sector. Such modalities may include the sale/lease of an enterprise as a single unit or some or all of the component parts of an enterprise; the sale of shareholdings in joint ventures with private sector firms; concession, etc.

In the case of a strategic Government asset (an asset or service essential/important to the social, cultural and economic welfare of Jamaica and Jamaicans), the privatisation shall be limited to long-term leases or concession instead of outright sale.

PROCEDURES

The basic requirements for privatisation transactions are that they must be transparent, at arms-length and guided by market and economic valuations.

PROJECT DEVELOPMENT PROCESS

Privatisations are developed and implemented in four stages:

1. Project Identification
2. Business Case
3. Transaction
4. Contract Management

Each stage is made up of a series of defined tasks. At the end of each stage, projects will be reviewed and approval given to proceed to the next stage.

UNSOLICITED PROPOSALS

The Privatisation Programme accommodates unsolicited proposals in exceptional circumstances. All unsolicited proposals must be submitted in accordance with Section 4.0.2 *Unsolicited Proposals* of this Policy.

STRATEGIC INVESTMENTS

Where strategic investment opportunities are presented to Government that appear to merit special consideration, taking into account the economic benefits, these opportunities should exhibit certain characteristics which include:

i. Strong policy coherence with the Government's strategic direction and priorities
ii. Alignment with sector or national development plans; and
iii. Clear long-term benefits to Jamaica's sustained growth.

All Strategic Investments must be submitted, in accordance with Section 4.0.3 *Strategic Investments* of this Policy.

POST PRIVATISATION MONITORING

Where assets are privatised by way of lease or concession or require monitoring in relation to development plans and agreed operational targets; the monitoring will be spearheaded by the owning Agency or Ministry.

Depending on the particular privatisation, financial penalties, step in rights, and reversal of sale are possible consequences in the event an investor fails to perform specific conditions which have been agreed with the GOJ.

In cases of an outright sale, depending on the particular asset/entity, the condition of sale should stipulate the right by the Government to monitor the development to ensure the fulfilment of the conditions upon which the privatisation took place.

PRIVATISATION COSTS

Ministries or Agencies are required to identify the source of financing to fund the cost of the privatisation. Privatisation costs are related to the entire process: project identification, business case, transaction and contract monitoring. They may include legal fees, strategic consultant fees; valuation costs, advertising costs, administrative expenses, publication of the Information Memorandum and post-privatisation monitoring costs.

Ministries, Departments and Agencies (MDAs) may seek approval from the Ministry of Finance for privatisation projects to be financed from the Privatisation Escrow Account, which is partly funded by privatisation part-proceeds. The Privatisation agency manages the Privatisation Escrow Account. All withdrawals from this account must be approved by the Ministry of Finance. Ministries or Agencies are required to reimburse the Privatisation Escrow Account of all proceeds which are advanced for privatisation costs.

The Project Preparation Facility (PPF) is an alternate source of funding available to MDAs for privatisation costs. The PPF will finance studies and technical assistance needed to bring large projects such as infrastructure and social sector public-private partnerships, divestments and other strategic investments to commercial and financial close.

The Privatisation Agency will charge a privatisation fee for the services provided to the GOJ in support of the privatisation transactions. This fee may be negotiated for each transaction.

1.0 BACKGROUND

Privatisation, in its most basic form, is the transfer of state assets to the private sector. Both developed and developing countries have engaged in the privatisation of public assets to meet various objectives including;

- raising additional revenue,
- reducing the public debt stock, and
- stimulating private sector investment.

While no single institutional framework stands out as the best for privatisation, best practice suggests that this intervention is most successful where legal, regulatory and enforcement mechanisms exist to guide and streamline the process.

The process of privatisation began in Jamaica in the early 1980s when a Committee was established to pursue the transfer of equity and control in commercial entities at prices based on commercial criteria and the national interest. A privatisation policy, at that time, was proposed to ensure that public funds were not used to finance the operations of inefficient enterprises and to reduce the burden on the budget of the Government of Jamaica (hereinafter called "the GOJ").

In the 1980s, priorities for privatisation were evaluated based on the following criteria:

- Budgetary impact
- Economic impact
- Employment and other linkages
- Social impact

In 1991 the GOJ reviewed its existing privatisation objectives and policies and approved a new framework for privatisation transactions and outlined in Ministry Paper No. 34 of 1991. The 1991 policy outlined the general rationale for privatisation and addressed issues such as the role of the Privatisation Committee and the National Investment Bank of Jamaica (hereinafter called "the NIBJ") as well as the modalities for privatisation transactions. The structure outlined was that Cabinet had overall responsibility for the approval of a privatisation policy and a committee of Cabinet *(the Privatisation Committee)* was established to advise Cabinet. The NIBJ was the central implementing agency, having administrative and operational responsibilities. The NIBJ would then put together Enterprise Teams that would consist of NIBJ personnel and Ministry representatives and external consultants, if necessary.

At that time, the GOJ's main privatisation objectives were expanded to include:

- broadening the ownership base and competition in the economy,
- facilitation of the expansion of the equity markets and
- securing enhanced access to foreign markets, technology and capital.

Two decades later, while some of the key provisions of the 1991 Privatisation Policy remained relevant, the relationship between the key stakeholders and the general modalities associated with different categories of privatisation necessitated review.

The October 2012 Privatisation Policy was aimed at providing a more streamlined framework that incorporates regulatory and strategic considerations. It 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, which may be more profitable or more beneficial to society, to emerge. This policy also seeks to create an environment that welcomes increased private sector participation and facilitates such investment in economic development activities to include infrastructure projects and services.

The Privatisation Policy September 2016 policy revision aims to reflect, recognise and include changes to the legislative, institutional and fiscal framework governing the Privatisation and PPP Programme and to incorporate further amendments aimed at improving the efficiency and speed of implementing transactions by capturing lessons learned from the implementation of the 2012 amendments. These amendments include the Government of Jamaica's updated fiscal framework and introduced the Public Investment Management Committee (PIMC) and its Secretariat PIMSec and listing on the Jamaica Stock Exchange as an additional modality.

The GOJ adopted a policy of privatisation of state-owned assets and enterprises as part of a general strategy to streamline the public sector through a far-reaching administrative reform programme aimed at reducing government bureaucracy and reduce the fiscal burden of non-performing and non-core assets. Privatisation efforts should therefore be viewed in relation to general efforts to streamline the public sector for greater efficiency.

A general privatisation policy must be linked to the activities by the GOJ to reform the Public Sector. The transformation of Jamaica's Public Sector is based on the recommendations contained in the Public Sector Master Rationalisation Plan (MRP). Some of the activities to be undertaken by Public Sector entities involve the rationalisation and sometimes dissolution of some government entities or requiring some agencies to become self-financing rather than depending on the public purse. Privatisation should therefore be seen as a component of a wider attempt to rationalise the GOJ and to return Ministries and Agencies to their core functions.

More specifically, the main precepts underlying this Privatisation Policy are to:

- secure greater efficiency and competitiveness in the operations of GOJ owned enterprises;
- reduce the drain on GOJ's fiscal resources;

- enhance the GOJ's fiscal and debt management programme;
- facilitate the transfer of capital, technology and management procedures;
- widen the base of ownership and direct equity participation in the economy and as a consequence stimulate capital market development;
- monetize non-core assets allowing GOJ to reallocate scarce resources to core activities
- maximise efficiency in the provision of public services by outsourcing them to private firms where this will deliver greater value for money than continued operation within the public sector.

Assets to be targeted include those that:

- do not form part of the core service obligations of the Government;
- are not currently being used for the provision of social goods and services but whose value can be used to enable the government to fulfil core service obligations;
- can be more effectively developed and operated with private capital and under private management;
- constitute an unnecessary burden on tax payers;
- are needed for provision of public services, but can be more efficiently operated by private firms to supply services under contract to government.

2.0 POLICY FRAMEWORK

This policy applies to the transfer of assets, shares or operational responsibilities currently held by a public body *(which is defined in the Public Bodies Management and Accountability Act as "statutory body or authority or any government company")* or Ministry or Department of the GOJ to the private sector. The Public Private Partnership (PPP) Policy forms an addendum to this Privatisation Policy.

The term 'privatisation' when used in this policy is to be understood to include all the types of transactions in which ownership or management responsibility of government assets are transferred to the private sector in whole or part. Privatisation can include transfers by way of the following modalities:

i. Sale or divestment (assets or shares)
ii. Lease
iii. Concession
iv. Management contract; or
v. any other modality that transfers significant management control, risk or both, to a private firm (outsourcing and PPP Contracts).

All public bodies, agencies and Ministries of the GOJ that intend to privatise assets other than land and houses owned by the GOJ are governed by this policy.

2.1 General Principles

The following general principles will govern the conduct of the privatisation process:

a) the selection of items to be privatised, which have been approved by Cabinet, will be publicised;
b) the concept of market valuation will apply in establishing the disposal price;
c) where the transaction involves continued government funding for the provision of a service, a value-for-money analysis will be carried out to ascertain whether or not contracting with a private firm is likely to offer better value to the public than provisions within the public sector;
d) transactions are to be at arms-length and equal opportunity will be given to all potential investors;
e) as far as possible, parties with likely conflicting interests will not be invited to assist the process;
f) public announcements will be made when each entity or asset is to be privatised;
g) government shall make decisions about privatisation on the basis of comprehensive inventories of government-owned assets and relevant selection criteria including budgetary, economic and social impact;
h) the welfare of employees must at all times be given priority consideration in the privatisation process; and
i) the timelines proposed for the privatisation process shall take into careful account the resource allocations and constraints particularly technical, human and financial resources.

2.2 Exemptions

The following are exemptions to this Policy:

1. **This Policy does not apply to the transfer of assets within the public sector. The transfer of assets within the public sector should be managed by the subject Ministries and approved by the Cabinet.**

2. **The sale or divestment of Crown Lands or government houses by any public body, agency and Ministry of the GOJ is governed by the Land Divestment Policy and Policy for the Divestment of Government-Owned Houses respectively.**

   Furthermore, in the case of sale of land, certain agencies *(including, but not limited to, the Development Bank of Jamaica, Urban Development Corporation, National Housing Trust, Sugar Company of Jamaica Holdings Limited and Factories Corporation of Jamaica etc.)*, which by virtue of statute or policy, own or manage lands, will utilise separate approval frameworks in the process of such transactions. Notwithstanding, the general principles within the Land Divestment Policy should be adhered to with respect to land (only) divestment transactions.

3. **The disposal of Government-owned fixed assets, (eg. Motor vehicles) is governed by a separate policy.**

3.0 INSTITUTIONAL FRAMEWORK

Cabinet has overall responsibility for the approval of the privatisation policy. The Development Bank of Jamaica (hereinafter called "the DBJ") serves as the Privatisation Agency and reports to the Cabinet. The Minister with portfolio responsibility for the asset or service being privatised will appoint members of the *Enterprise Team* subsequent to the initial approval given by Cabinet to privatise. The *Enterprise Team* will be assigned the task of overseeing the implementation of the privatisation of specific GOJ assets.

Strategic Oversight of the Privatisation Programme

A. The 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 is 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 Privatisation and PPP Policies.

The Cabinet approves recommendations on GOJ's privatisation policy and procedures and strategic decisions relating to the privatisation programme and specific activities in relation to the privatisation process. Cabinet approval is required for privatisation activities including:

- Approval for the asset to be privatised;
- Entities to be added or removed from the official privatisation list (including public services which may be outsourced);
- The entity-specific Privatisation framework and strategy;
- The selection of the preferred bidder/investor;
- The final privatisation terms;
- The actions to be taken in relation to the management/monitoring of privatised entities; and
- Any changes to the Privatisation Policy.

Note that certain elements of the approval process may be executed by Ministries or Agencies based on the approval levels for each transaction, according to the thresholds outlined in the *Operational Guidelines at Appendix 2*

Operating Entities

The day-to-day coordination of the Privatisation Programme and management of Privatisation project development is the responsibility of the Development Bank of Jamaica (DBJ). There will however be transactions that are managed directly by specific MDAs based on the approval thresholds in Appendix 2.

B. The Privatisation Agency

The Development Bank of Jamaica will serve as the Privatisation Agency and will report to Cabinet through the Ministry with responsibility for the Privatisation Agency. The Privatisation Agency will provide Transaction Management and Secretariat support to Enterprise Teams and Negotiating Teams (as stipulated in the recommended operational guidelines in Appendix 2) by co-ordinating the technical and administrative activities relating to the implementation of GOJ's privatisation programme. In particular, the Privatisation Agency, as Secretariat, will:

- Identify entities for privatisation based on information provided by Ministries/ Agencies;
- Prepare technical analyses of entities for privatisation to guide recommendations on the privatisation strategy and framework; Prepare the selected entity for privatisation and manage all aspects of the overall privatisation process;
- Prepare reports and submissions for the Cabinet on specific privatisation transactions and the status of the GOJ's privatisation activities and transactions;
- Review the privatisation list and recommend additions, deletions and re-prioritisations;
- Provide recommendations for amendments to the PPP & Privatisation policies.

See Terms of Reference of the Privatisation Agency as Transaction Manager and Secretariat, and how it supports the Enterprise Team and Negotiation Team at *Appendix 1.*

Resource Requirements of the Privatisation Agency, Owning Ministries Departments and Agencies and the Supporting Government Agencies

The Privatisation Agency, Owning Ministries Departments and Agencies and supporting Government Agencies must be adequately resourced if privatisation transactions are to be completed in an efficient manner. The resource requirements include accounting, legal and administrative support. These requirements will be determined by:

1. The nature and complexity of the assets/entities identified in the revised privatisation list;

2. The number of assets slated for privatisation;
3. The estimated privatisation timeline; and
4. The terms of reference and role of the Privatisation Agency.

Operational Support Teams
Once the Government has approved a project for development, 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 transaction reaches financial close, a Contract Management Team will be appointed to take over managing the PPP contract for its duration.

C. Enterprise Teams

Appointment of Enterprise Teams
The general terms of reference and the core functions of each team will be to facilitate each stage of the privatisation process, provide reviews of the enterprises, establish exactly what is being privatised, ensure that the process and modalities are compatible with the general principles of privatisation, and ensure that the expectations of the interest groups are duly noted. The Minister with portfolio responsibility for the privatisation transaction may appoint members of the Enterprise Team upon receipt of the initial approval of the project from Cabinet.

Each member of the Enterprise Team is expected to present the views of his/her subject Ministry/ Agency concerning the privatisation and facilitate the expeditious and successful completion of the privatisation, within the designated timetable. **The responsibilities of the Enterprise Team are listed in *Appendix 1*.**

Composition of Enterprise Teams
Members may be drawn from the private and public sector to ensure that the required range of expertise, skills and knowledge is available to the GOJ.

It is recommended for efficiency that Enterprise Teams should be composed of no more than between five (5) to seven (7) representatives.

Depending on the nature and complexity of the privatisation transaction, Enterprise Teams may include representatives from:

- The Ministry of Finance(MOF);
- The subject/portfolio Ministry;

- The Board of the Privatisation Agency ;
- Attorney General's Chambers and
- Any other entity deemed necessary.

If any other member deemed necessary is from the private sector, they should possess the relevant technical, industry and/or management expertise to enhance the effectiveness of the Enterprise Team and to make meaningful contributions to the privatisation process. Private Sector members appointed to Enterprise Teams are required to declare all conflict of interest associated with the privatisation transaction.

Remuneration of Enterprise Team Members
It is recognized that a significant level of commitment and time is required by persons who agree to participate on Enterprise Teams (or Negotiating Teams) and consideration may be given by the owning Ministry of Agency for the compensation of members of the team. It is anticipated that at a minimum, the compensation structure will mirror fees in line with the relevant GOJ guidelines regarding the compensation of Board Members of Public Bodies. Where the relevant Ministry, Department or Agency deems it fit, it may include in the remuneration package other compensation mechanisms including but limited to:

- Annual retainers
- Honorarium on successful completion of the transaction (as a percentage of the final deal value OR a flat-fee)
- Initial upfront fee (one meeting payment) to cover the initial preparatory work at the commencement of the process

Note that employees of public bodies whose assets or entities are being privatised or being considered for PPP arrangements, would not be eligible for compensation. Employees of the Privatisation Agency would also not be eligible for compensation on these teams, where DBJ provides transaction management and secretariat support. Civil servants who serve on Enterprise Team and Negotiation Teams (including the Attorney General's Chambers and MOF) are eligible for compensation.

Where the Ministry, Department or Agency approves remuneration to the Enterprise Teams and Negotiation Teams these costs are to be included in the privatization budgets and the source of funding identified.

Role of External Consultants
Consultants may be required to execute activities including but not limited to preparing valuation reports, undertaking due diligence data gathering, preparing Information Memoranda, developing privatisation strategies and

evaluation criteria, evaluating bids, conducting due diligence and drafting legal agreements.

Reporting Requirements

Enterprise Team should report directly to Minister with portfolio responsibility for the asset or his appointee or directly to the Minister with responsibility for the Privatisation Agency and Privatisation Programme as directed by the Prime Minister. The Minister will update Cabinet as required.

Where transactions are executed directly by the Privatisation Agency, 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 Privatisation transaction.

Where privatisation transactions are executed by Agencies or Ministries, the privatisation transaction will be managed and/or monitored as stipulated in the Operational Guidelines at *Appendix 2.*

D. 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 privatisation; and perform administrative and management functions involved in developing, evaluating, and procuring the privatisation project.

Composition

Each Project Team will be led by a Project Manager from the MDA. 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 policies and strategies of the MDA.

Project Team members will include officials from the MDA, the DBJ, MOF the Attorney General's Chambers and suitably qualified consultants. The Enterprise Team will designate the members of the Project Team (other than the DBJ and MOF members) after considering the recommendations of the Privatisation Agency.

E. Ministries/Agencies

The Subject Ministries/Agencies will:

- work closely with the Privatisation Agency to identify related public entities which provide opportunities for privatisation;
- ensure the proper maintenance of companies to be privatised and on-going operation until privatisation and hand over is effected;
- provide the Privatisation Agency with all information necessary for the appropriate decisions to be taken within timelines;
- provide the Agency with a list of recommended entities for privatisation;
- nominate representatives to Enterprise Teams and Negotiation Teams; and
- execute privatisation transactions, under the supervision of the Privatisation Agency and in accordance with the guidelines of the Privatisation Policy.
- Identify and appoint dedicated resources within the Ministry or Agency to ensure efficient execution of the transaction
- Fund privatisation transactions (See Section 7.0)

Inventory of All GOJ Assets: Ministry of Finance and Planning and Public Sector Transformation Unit

The Privatisation Policy forms part of a general process of asset management in the public sector and should in particular guide GOJ's policy decisions made in relation to asset acquisitions. As a corollary to this policy an inventory of GOJ's assets has been compiled by the Public Sector Transformation Unit (PSTU), so as to identify the assets that do not form a part of its core functions, and a strategy for their management devised.

F. Public Sector Investment Planning

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

PIMC will have no oversight of privatisation transactions where the Government invites the private sector to submit bid proposals to purchase or acquire and operate Government assets *and* where the Government will have no continuing interest or financing obligation in the operation of that asset save and except for the monitoring of the related Development Plan where required.

G. Ministry with responsibility for the Privatisation Agency

The Ministry with responsibility for the Privatisation Agency will develop policies and strategies for submission to Cabinet. The Ministry 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 Privatisation Agency which may impact privatisation projects.

4.0 PRIVATISATION PROCEDURES

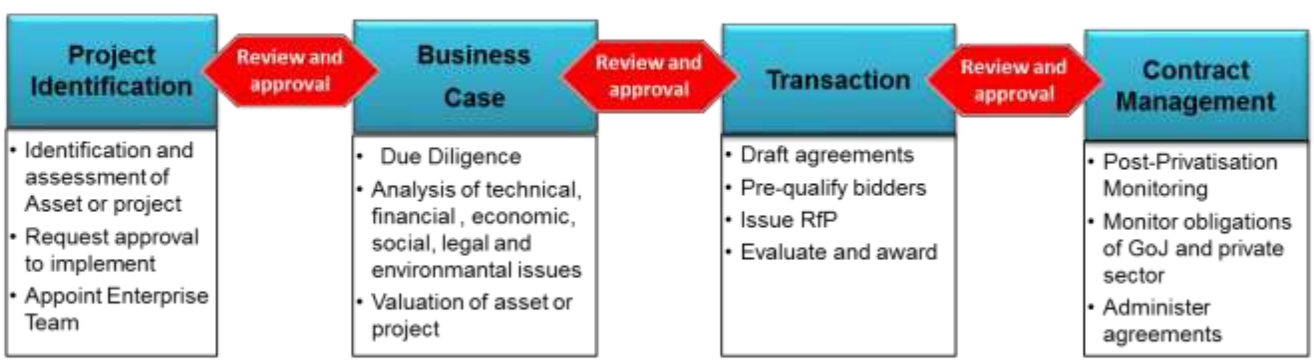
4.0.1 GENERAL FRAMEWORK

4.0.1.1 The Privatisation Process

The basic requirements for privatisation transactions are that they must be transparent, at arms-length and guided by market and economic valuations.

Privatisations 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. At the end of each stage, projects will be reviewed and approval given to proceed to the next stage.

Note that the process outlined below may be executed by Ministries or Agencies based on the approval levels for each transaction, according to the thresholds outlined in the *Operational Guidelines at Appendix 2*.



The privatisation process involves the following steps:

Project Identification: the purpose of this stage is to identify those assets or services which do not form part of the core services to be provided by the MDA to assess the feasibility for privatisation. Subject Ministries/Agencies that have identified potential assets or services will be asked to scope the projects and submit them to the

Privatisation Agency for screening. The projects identified by the Subject Ministries/Agencies will be screened to determine the suitability and readiness for privatisation. Privatisations supported by the Privatisation Agency will be submitted to Cabinet for approval. New projects will be progressively identified, and added to the Privatisation List through a similar process.

Privatisation List[1] refers to**:**

1. Assets which Cabinet has approved for privatisation and the process has commenced;
2. Assets that have been identified by MDAs and approved by the Minister and are being assessed for readiness for privatisation;
3. Assets identified on Ministry Paper 34 and PSTU

The list of assets to be privatised are publicised indicating their state of readiness.

1. **Project Identification Stage** may include the following steps:

   Project assessment by the Privatisation Agency: Projects identified by the Subject Ministries/Agencies are reviewed by the Privatisation Agency to determine the state of readiness for approval for privatisation. The Privatisation Agency will, in the case of existing assets or entities review financial, operational and legal documents to determine the extent of initial work required to be completed by the Subject Ministries/Agency in order to facilitate the privatisation process.

   Request Approval to Implement: The Subject Ministries/Agency will seek Cabinet approval to initiate the implementation of the project. The privatisation recommendation to Cabinet will include the comments of the Privatisation Agency.

   Appointment of Enterprise Teams: The Minister with responsibility for the privatisation project will appoint the members of the Enterprise Team.

2. **Business Case:** is the thorough due diligence review on the privatisation transaction to determine the appropriate method

[1] Update on approved privatisation list

for privatising the entities, in accordance with the Government of Jamaica's objectives for privatisation, and the policy relating to the ownership of assets. Depending on the complexity of the privatisation, independent consultants may be retained to advise the Enterprise Team on strategies to facilitate the Enterprise Team's assessment of the entity and execution of the privatisation.

The Business Case stage may include the following steps:

Due Diligence: is to be conducted on the entities to ascertain the legal, operational, fiscal, environment, social and policy issues that need to be addressed prior to privatisation.

Analysis of Privatisation Issues: The Cabinet, through the Privatisation Agency, shall ensure that all the necessary legal and administrative arrangements are completed to ensure that the asset to be privatised is attractive to the private sector. The Enterprise Team will check that the privatisation modality and structure creates value for money, the privatisation is attractive to the market; and is fiscally responsible. If the analysis does not demonstrate these, then the project will be reassessed to determine whether to defer privatisation. If the Business Case demonstrates good value, marketability and is fiscally responsible; the Enterprise Team approves the appropriate method for privatising the entities, in accordance with the Government of Jamaica's objectives for privatisation, and the policy relating to the ownership of assets.

Valuation: The Enterprise Team will commission a valuation of the asset/enterprise to be privatised. Where the transaction involves provision of a public service by a private firm operating under contract to government, a value-for-money analysis will be prepared by the Enterprise Team, comparing the likely value for money that could be achieved through outsourcing as compared to continued government provision. The Enterprise Team, at its discretion, may require a second valuation, provided that the cost to do so is not prohibitive.

Market Assessment of the Investment Opportunity: The Government of Jamaica, through the Enterprise Team may choose to seek the feedback of prospective investors, prior to the commencement of the Bidding Process. The objective of this process is to stimulate interest, determine the existing market interest and identify factors which may enhance the marketability of the opportunity.

Market Assessment involves:

- Determining who would be the interested parties (prospective investor groups); and,
- Making contact with investors to share pre-marketing documents, discuss the proposed transaction and ascertain interest in participating and invited to indicate their preferred privatisation modality for a specific asset and or class of assets.
- The opportunity is assessed as part of the due diligence review for the business case to determine the optimal privatisation modality to proceed with the privatisation of the asset.

3. **Transaction Stage:** The purpose of this stage is to promote competitive bidding by well qualified firms, so as to deliver value to the public for the privatisation. During this stage bidders are requested for the project, in some cases pre-qualified, and then invited to bid.

   The Transaction stage may include the following steps:

   Information Memorandum(IM) or Request for Proposals (RFP): Once the modality and/or strategy is approved by Cabinet, the Privatisation Agency will prepare an Information Memorandum (IM) or Request for Proposals (RFP) document, which includes background information on the entity's operations and financial performance, as well as the bidding process and evaluation criteria. The document may be sold to prospective investors *(for a nominal fee)* to assist them in conducting their assessment of the entity.

   Advertisement of Opportunity: The privatisation opportunity must be given the widest possible exposure within the context of limited funding. The Privatisation Agency will advertise the sale or lease of the entity via local and/or overseas media including print and electronic media. The advertisement period will depend on the type and state of the asset, complexity of the transaction and the Enterprise Team's decision, however the duration should not be less than one month. The advertisement will include a submission deadline date for the proposals or bids and indicate that an IM or RFP is available.

Bid Bond (optional): The Enterprise Team may require bidders/prospective investors to submit a "good faith deposit" or bid bond along with their proposal.

Bidder Due Diligence: Once the investment opportunity is advertised potential investors are given time to access detailed information on the asset/entity via an electronic data room to guide the preparation of their bids.

Evaluation: After the bids/proposals are submitted by the potential investors, they are evaluated and ranked by the Enterprise Team, with the process co-ordinated by the Privatisation Agency. The highest-ranked bid or proposal is recommended to Cabinet as the Preferred Bidder.

Investor Due Diligence: The Privatisation Agency conducts an independent due diligence exercise *(e.g. credit checks, etc)* on the potential investors.

Preferred Bidder: The Privatisation Agency and Project Team submits a report recommending the Preferred Bidder for the transaction to the Enterprise Team, and subsequently to the relevant Ministry or Board of Directors of the owning Agency. The Cabinet then gives final approval of the selected bidder. After receiving the requisite approvals, the selected bidder will be formally advised that they are the Preferred Bidder.

Negotiations: After the relevant Board/Ministry and Cabinet approves the preferred bid or proposal, the Enterprise or Negotiating Team[2] may commences negotiations with the selected investor if necessary to finalise the privatisation terms and conditions, including price, payment plan, period of privatisation, options and the development plan, etc. Where the government has a continued interest in the provision of the service, this may include specific payment terms and service standards to be met, as well as penalties and termination provisions for non-performance by the selected bidder. In such

[2] The Negotiating Team may be a committee of the Enterprise Team.

instances the approval of the MOF and Cabinet is required prior to agreement.

Approval of Negotiated Privatisation Terms: The Negotiation Team, through the Privatisation Agency or Owning MDA prepares a submission to its Board of Directors or the Board of Directors of the owning Agency or directly to the relevant Ministry recommending the terms negotiated by the Negotiation Team, for approval.

Once approval is received, the Privatisation Agency or Owning MDA will forward a copy of the Report or notes on the Final Negotiated Terms to the portfolio Ministry to facilitate preparation of a submission to Cabinet for approval.

Closing: On receipt of approval from Cabinet, Negotiation Team, and the MDA supported by the Privatisation Agency will finalise the transaction, including execution of the required legal agreements.

4. **Contract Management**: This stage is where the Government needs to ensure that the promises in the privatisation contract are delivered, and that new events are responded to intelligently. The Subject Ministry/Agency will be responsible for establishing the process and tools for managing the contract.

4.0.2 UNSOLICITED PROPOSAL (USP)

Unsolicited proposals can be beneficial, but also bring unique 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 competition and transparency.

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

- A statement of the objectives, approach and scope of the proposed asset or service;
- Independent due diligence on the proponent to include 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

- Imple ment at ion 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 proponent to the MDA. The policy and the processes for project identification would apply for ***Unsolicited Expression of Interest***.

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

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

4.0.2.1 SWISS CHALLENGE PROCESS

The steps in the Swiss Challenge Process will be as follows:

1. 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
2. The Negotiation Team negotiates mutually acceptable contract terms
3. The PIMSec confirms that the contract would meet the 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 Privatisation Agency will manage the Challenge process as outlined below:

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 an Expression of Interest with the MDA or DBJ, depending on the entity that is conducting the challenge process, within [1] month of the advertising of the challenge opportunity

c) The challengers must provide information on its financial capability and track record in undertaking projects. The GOJ may request the challenger to provide additional information to satisfy GOJ's assessment. The GOJ reserves the right to reject challengers after assessment. At minimum registered challengers must be given: a complete description of the services to be provided or the asset/entity; 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. Trade secrets, including special techniques to be used in provision of the services, will be removed from the information provided.

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:

   The same or better services (Note the Negotiation Team will need to have defined the privatisation or 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 at the same or lower cost with no increase in risk to the government or public, 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.

i) 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.

j) The contract will then be signed, and the project implemented and monitored as with other PPPs or privatisations.

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.

4.0.3 STRATEGIC INVESTMENTS

There may be instances where strategic investment opportunities are presented to the Government that appear to merit special consideration, taking into account the economic benefits.

In such cases these strategic investment opportunities are likely to and should exhibit the following characteristics:

Necessary conditions

i. Strong policy coherence with the Government's strategic direction and priorities;
ii. Alignment with sector or national development plans;
iii. Clear long-term benefits to Jamaica's sustained growth;
iv. An opportunity for an industry/sector to be transformed by the investment of a 'marquis' investor whose involvement may attract other major entrants;
v. Competitive asset value return to the Government;
vi. There is evidence that there is no other investor interest in the opportunity. The Jamaica Promotions Corporation (Jampro) and owning Ministry/Agency would be required to provide advice to the Cabinet on the availability or desirability of potential investors (investor interest).

Other conditions

i. Capitalises on global or regional market repositioning, emergence of new/unexpected catalytic drivers, or recent[3] shifts/shocks in the external environment which are highly time sensitive and require action within a limited time frame to maximise an economic opportunity or competitive advantage and avoid opportunity loss or significantly diminished value;

[3] Occurring within a timeline not exceeding twelve (12) months.

ii. Unique, compelling and innovative proposal that has overall scientific, technical or socio-economic merit and is comprehensive (contains sufficient technical information and cost/price related information for evaluation).

The approval of the Public Investment Management Committee and Cabinet will be required for all Strategic Investments. Therefore, all Strategic Investments are to be submitted to the PIMSec by the owning Ministry of Agency for review and assessment. PIMSec will then determine if the proposal meets the criteria for project acceptance as a Strategic Investment and the optimal modality for the project to be developed. The PIMSec will publish the criteria and guidelines for the review and assessment of Strategic Investments.

4.0.4 NO SATISFACTORY BID RECEIVED

Where assets have been advertised and no satisfactory bid is received the Enterprise Team may choose to:

a) re-advertise the opportunity; or
b) engage in direct negotiations with parties who have expressed an interest in acquiring the asset subsequent to the termination of the previous public tender process; or
c) identify selected parties and invite them to participate in a further limited tender process; or
d) liquidate the asset.
e) Best and Final Offer (BAFO)

Ideally, after the outcome of the evaluation process, a preferred bidder is selected. If a single preferred bidder cannot be identified but the Enterprise Team believes a value for money solution can still be achieved, a BAFO may be used. BAFOs may be appropriate to use where:

- Offers submitted by all bidders are too low; or
- where two or more bids receive the same evaluation score; or
- all RFP responses are deficient in one or more areas

To minimise costs to the private sector and government in undertaking a BAFO:

- only those bidders believed capable of delivering the desired results should be invited to participate in the BAFO;
- the BAFO should be completed within a short, well-defined period; and agencies should request only one BAFO.

- The bidders selected for the BAFO process should be provided with detailed questions relating to their proposals and/or informed of the deficient parts of their proposal. The bidders are then given the opportunity to revise their bids and eliminate any unacceptable conditions contained in their original proposals. The amended sections are then re-evaluated and rescored according to the evaluation process defined in the RFP.

4.0.5 FAILURE TO CONCLUDE NEGOTIATIONS WITH THE PREFERRED BIDDER If the Negotiating Team fails to conclude negotiations with the Preferred Bidder, then negotiations may be, at the discretion of the Cabinet, on recommendation of Cabinet, then conducted with the second ranked qualified bidder, subject to the second ranked bidders continued interest in the acquisition. If the Preferred Bidder is the sole bidder the tender process is terminated, and the conditions under "No Satisfactory Bid Received" would be exercised.

4.0.6 ENGAGEMENT OF EXTERNAL CONSULTANTS

In order to facilitate increased efficiency in the privatisation process, the MDA or the Privatisation Agency on behalf of the MDA may engage consultants to assist in the execution of privatisation transactions as deemed necessary including legal, valuation and financial consultants.

The Privatisation Agency may create a panel of consultants that will provide the required services.

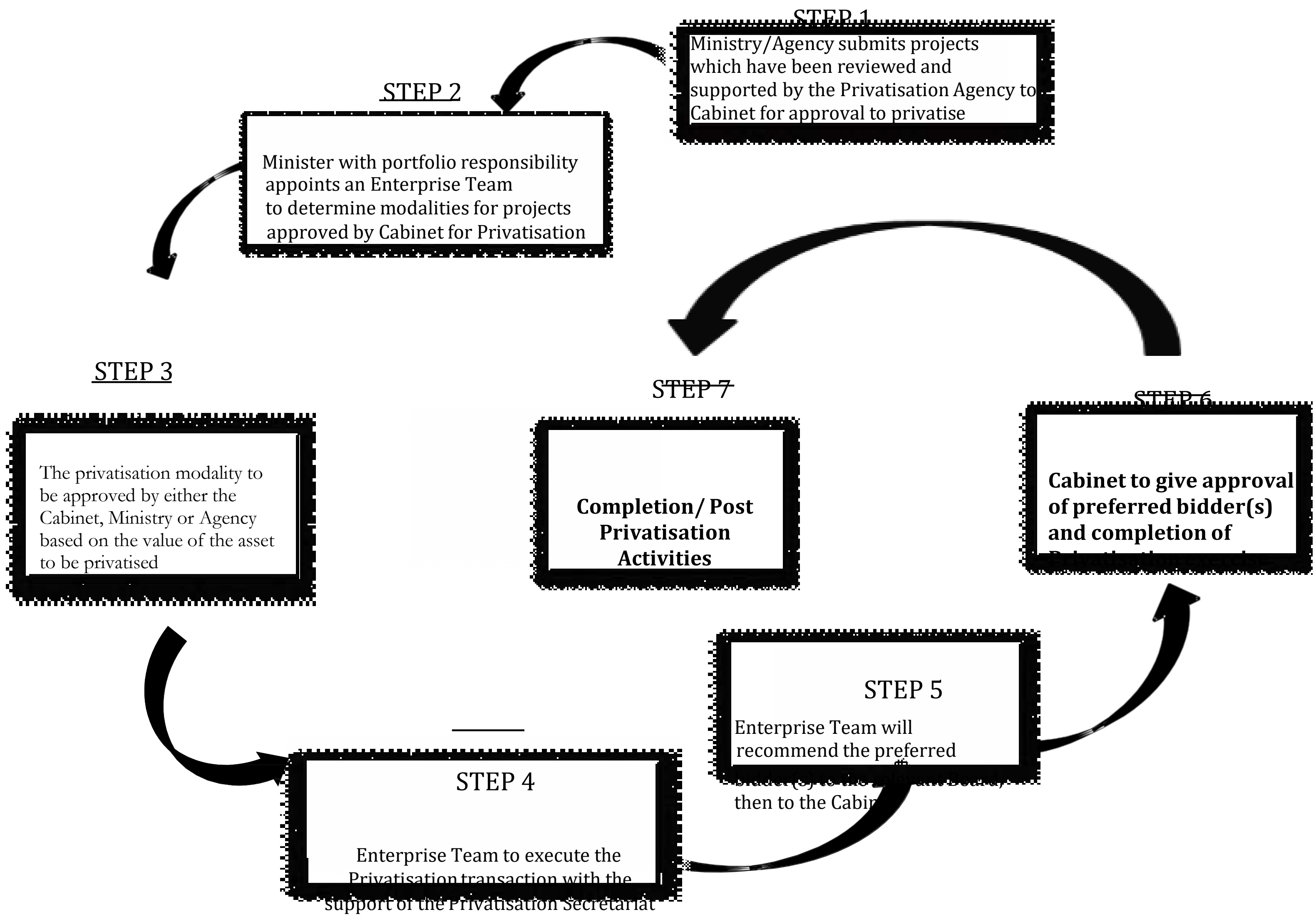
5.0 POST-PRIVATISATION MONITORING

Where assets are privatised by way of lease or concession or require monitoring in relation to development plans and agreed operational targets, the monitoring will be conducted by the owning agency or Ministry. The Ministry or Agency which owns the asset that has been privatised must provide quarterly reports to the Privatisation Agency.

Depending on the particular privatisation, financial penalties, step in rights, and reversal of sale are possible consequences in the event an investor fails to perform specific conditions which have been agreed with the GOJ. The Privatisation Agency will be guided by its legal support team on the most appropriate penalties/sanctions for non-compliance with the GOJ's requirements. The GOJ's performance requirements will be indicated to the investor via the Information Memorandum or RFP document, and also included as conditions in the contract with the Preferred Bidder.

In cases of an outright sale, depending on the particular assetjentity, the condition of sale should stipulate the right by the Government to monitor the development to ensure the fulfilment of the conditions upon which the privatisation took place.

PRIVATISATION PROCESS FLOWCHART



NOTES

1. Consultations with relevant Ministry/ Agency will be held at each step ;
2. Subject Agencies will perform their own Privatisation exercise as outlined in steps 2-8;
3. Subject Agencies pursuing Privatisation exercises will report to the Cabinet

6.0 PRIVATISATION MODALITIES

The modalities of the privatisation programme will vary, but will have as the ultimate objective, the transfer of risk associated with the operation of the enterprise/activity/asset from the public to the private sector. Such modalities may include:

- sale/lease of an enterprise as a single unit;
- sale/lease of some or all of the component parts of an enterprise;
- sale of shareholdings in joint ventures with private sector firms;
- contracting with private firms to provide services traditionally provided by the public sector;
- Sale/lease of land and buildings;
- Concession and
- Any other method endorsed by the relevant authorities based on the conditions and specificity of each project.

In the case of a strategic Government asset, the privatisation shall be limited to long-term leases instead of outright sale.

Strategic assets or services are those which are so designated by the GOJ to be important to the social, cultural and economic welfare of Jamaica and Jamaicans and consequently the risk attached to privatising such entities is high. The GOJ would therefore wish to ensure that investors are eventually selected to execute the service or operate the asset in line with specific standards and articulated objectives. Such assets may include infrastructure, medical services, transport, education and national heritage sites and given their importance must be subject to the full privatisation process.

6.1 MODALITIES BASED ON ASSET TYPE

It is acknowledged that each privatisation is unique and appropriate modalities will be recommended by the Enterprise Team. Such recommendations will be based on the specific nature of the assets being privatised, general market conditions and any legislative or contractual conditionality which may attach to the assets (e.g. Options and Pre-emptive rights). The following are principles based on asset type which the Enterprise Team may take into consideration when determining the modality for privatisation to be employed.

A. Land

Divestments of Crown Land will be governed by the Land Divestment Policy. For lands other than Crown Lands refer to Section 4.0 of this policy.

B. Monopolies and Near-Monopolies

Some privatisation transactions in Jamaica will invariably involve monopolies and near-monopolies. These privatisation transactions tend to be the most complex as there are many regulatory and service provision considerations, and these privatisation transactions have tended to pose the most procedural problems across the globe. It is therefore imperative that the necessary technical, financial, legal, environmental and other preparatory studies be conducted to identify project risks prior to taking the asset to market.

Additionally, assessments of market conditions, future service projections, regulatory framework and the identification of the source of funding for any contingent liabilities should be completed as part of the privatisation process. More specifically, the following modalities should apply:

- Projections should be made vis-à-vis future demand for the goods or services produced by the entity;
- Adequate consideration should be given to the future investment requirements based on the projections for future demand and market conditions;
- International best practices to be used to determine detailed modalities for the privatisation of the monopoly entity;
- Consideration may be given to the factors necessary for service provision at an agreed level and standard;
- Appropriate regulatory and legal framework to be reviewed;
- GOJ international obligations should form a key consideration in the privatisation process; and
- An Enterprise Team should be established for the privatisation of this category of assets.

C. Selling of Shares Via the Stock Exchange

The GOJ can also seek to privatise assets via the Jamaica Stock Exchange as detailed below:

i. Divesting of GOJ's shares in a company already listed

The GOJ may seek to divest its shares in a publicly traded company for the following reasons:

- Unlocking capital for other GOJ expenditure;
- Diversifying the ownership base and direct equity participation in the economy;

If the GOJ owns majority shares in a publicly traded company then the Privatisation process must comply with the rules of the Jamaica Stock

Exchange governing such sale transactions. There are various methods by which this can be done as follows:

- *Offer for Sale being an offer to the public, by or on behalf of a third party at a fixed price.*
- *Offer by Tender being an offer to the public, by or on behalf of a company or a third party by tender.*
- *Placing being an offer through stockbroker-members of the Exchange to sell the securities of a company to the public.*

When the GOJ has a majority stake in a company already listed on the Exchange it must abide by the Securities Act -Takeover & Mergers Regulations and the JSE's rules.

Where the GOJ owns shares in a publicly traded company and intends to divest its shares, then the GOJ must enlist the services of a stockbroker-member of the Exchange.

ii. Listing a state owned company on the Jamaica Stock Exchange

The GOJ may decide to list an entity on the stock exchange for several reasons including:

- Reduction of debt;
- Increase capital for expenditure;
- Diversifying the ownership base;
- Increasing the productivity of the entity via the profit incentive

Potentially ideal entities/candidates for listing on the stock exchange must be prepared to demonstrate or be willing to take the steps to have the following:

- good corporate governance practices;
- business documents are readily available;
- current audited financial statements; and
- strong management of the entity.

There are several ways in which a company may be listed on the Jamaica Stock Exchange including.

- *Prospectus Issue/Initial Public Offering being an offer to the public by or on behalf of a company at a fixed price*

- *Placing/Private Placement being an offer through stockbroker-members of the Exchange to sell the securities of a company to the public.*

- *Introduction where none of the company's securities are being offered to the public.*

Once any of the methods listed above are being utilised a stockbroker-member/dealer of the Exchange should be retained. The conditions for listing must abide by the Jamaica Stock Exchange's rules related to **minimum requirement for listing**.

Prospectus Issue/Initial Public Offering
Where the GOJ wholly owns an operating company and thereby wishes to invite public participation in the ownership of such company, an initial public offering (IPO) may be issued and must comply with the rules of the Jamaica Stock Exchange. Where the GOJ intends to raise capital for expansion or debt reduction, the IPO method is recommended.

Private Placement/Placing
Where the GOJ raises funds from a limited number of persons in keeping with the Securities Act relating to private placement. This must be guided by the provisions or requirements of the Securities Act.

Introduction
Where the GOJ meets all the requirements for listing but none of the company's securities at the time of listing is offered to the public. This may be considered where there is no immediate need to raise capital but provides a secondary market for transparency, evaluation, governance and ease of secondary market transactions.

D. Limited Equity Holdings/Joint Ventures Where the GOJ holds equity in a privately held firm and such an equity stake is held as a normal course of the activity of the agency*, (for example the NHT, NIBJ (now DBJ) and the UDC)*, privatisation of the equity interest will be governed by and be executed in accordance with any applicable conditions and terms outlined in the Shareholders Agreements, Articles of Association or other relevant agreement governing the disposal of shares. In the absence of pre-emptive clauses for acquisition of the shares by the non-GOJ partners, the general GOJ privatisation guidelines will apply.

If there are instances where the GOJ holds equity in a privately held firm and there may be extenuating circumstances (for example legal claims, existing contractual obligations which impact the marketability of the shares) which warrant that the GOJ engages in negotiations for sale of the stake to the existing partner/s, a clear and credible justification should be made to Cabinet.

E. Operating Entity

Where the GOJ wholly owns an operating company, the general GOJ Privatisation guidelines will apply. In such cases a recommendation must be made as to the appropriate modality whether a sale of assets or a sale of shares. Further decisions must be taken in terms of winding up the entity on completion of the privatisation.

F. Assets under Long-term Lease

The applicable modality for assets, other than land, under long term lease is determined by a number of factors: the type of asset; the duration of the lease; and the type of lease agreement in place. Special consideration must be given to the following cases:

- If the lease agreement has a pre-emptive clause, privatisation will take place in such a manner so as to comply with the original terms of the lease with respect to the sale of the asset.
- If there is no pre-emptive clause, special consideration may be given to the existing lessor, if the lessor is not in breach of the original contract.

G. Services to be Contracted Out/ Outsourced

The management of specific functions/operations now undertaken by the GOJ will be outsourced. In certain cases, the GOJ will wish to retain ownership of the operating assets and will outsource the management of the operation via management contract, or lease. The GOJ's general privatisation guidelines will apply. In the case of a concession, the PPP Policy guidelines will apply.

6.2 REGULATORY CONSIDERATIONS

Consideration must be given to the promulgation of the regulatory and legislative framework to facilitate and promote the successful privatisation of specific asset types where appropriate. This is especially the case for monopolies where privatisation efforts are even more complex and where some level of Government oversight may be necessary to protect the public interest. In these cases it is imperative that consideration be directed towards ensuring that regulatory frameworks are developed in a manner that balances the needs of consumers and investors. Such efforts may require the creation of new or amendment of existing legislation, the issue of orders, notices or regulations and the provision of statutory approvals.

Two institutional efforts to address these regulatory gaps were the creation of the Office of Utilities Regulation (OUR) and the Fair Trading Commission (FTC). In spite of these developments, the regulations of natural monopolies such as the air and sea ports and utility companies will inevitably pose significant challenges. As such, it is important that the regulatory framework be reviewed prior to the start of privatisation transactions and in some cases the review of the framework will continue during the privatisation process.

7.0 FUNDING FOR PRIVATISATION PROGRAMME

7.0.1 PRIVATISATION COSTS

Ministries or Agencies are required to identify financing to fund the privatisation project. MDAs may seek approval from the Ministry of Finance for privatisation projects to be financed from the Privatisation Escrow Account, which is partly funded by privatisation part-proceeds. The Privatisation agency manages the Privatisation Escrow Account. All withdrawals from this account must be approved by the Ministry of Finance.

A viable funding mechanism must be established to support the sustainability of the GOJ's Privatisation programme. This is imperative as privatisation transactions are very costly. These costs are related to the entire process:

- The project identification costs may include management consultant fees, accounting, legal, surveying and sub-division costs, liquidation of debts in order to remove liens and/or other impediments to the sale of the assets and administrative expenses.
- The business case and transaction stage privatisation costs may include legal fees (preparation of relevant agreements), management consultant fees, valuation of the assets/enterprise/shares (equity), procurement of due diligence reports, advertising costs (local and foreign), administrative expenses and costs to publish the Information Memorandum.
- The contract management and post-privatisation costs relate to the monitoring of the privatised entities where necessary to ensure compliance with covenants and terms of the sale or lease. These may include technical consultant fees, legal and administrative fees. There may also be issues or claims arising after the privatisation of assets or entities that have financial implications as they may require financial settlement or legal remedies.

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

- Low-cost debt financing to GOJ
- Grant funding from multilateral institutions
- A Nominal Cess to be withheld/deducted (up to 2%) from proceeds of each privatisation transaction
- Entities/Agencies with adequate resources to finance the privatisation transaction (in part or whole).

7.0.2 PRIVATISATION ESCROW ACCOUNT

The GOJ established a Privatisation Escrow Account which is funded by privatisation part-proceeds and any other source as determined by the Ministry of Finance and/or Cabinet. The Account is controlled by the Ministry of Finance and managed by the Privatisation Agency. All withdrawals from this account are approved by the Ministry of Finance. Expenses for current/on-going privatisation transactions may be financed from the Escrow Account.

In cases where privatisation budgets exceed the funds available in the Escrow Account, the Ministry of Finance and Planning may authorise an alternate source of funding for the particular privatisation transactions and replenish the Privatisation Escrow Account accordingly. Funds may also be provided by the portfolio Ministry or Agency from their own resources to supplement the financing of the privatisation.

7.0.2.1 OPERATION AND MANAGEMENT OF THE GOJ PRIVATISATION ESCROW ACCOUNT

The GOJ Privatisation Escrow Account is managed by the Privatisation Agency, for a fee (currently 2% per annum of the balance of the Escrow Account) on behalf of the Ministry of Finance. All payments or withdrawals from the Fund are to be approved by the Ministry of Finance.

The Privatisation Agency must provide monthly status reports and accounting statements to the Ministry of Finance on the operation of the Privatisation Escrow Account.

The Privatisation Escrow Account is to be audited annually.

Up to 2% of privatisation net proceeds of each transaction is to be deposited in the Privatisation Escrow Account

Reimbursement of privatisation expenses should be deposited to the Privatisation Escrow Account

Privatisation expenses funded by the Privatisation Escrow Account are to be recovered from sales proceeds and deposited to the Privatisation Escrow Account

7.0.3 PROJECT PREPARATION FACILITY

An alternate source of funding for privatisation costs is the Project Preparation Facility (PPF). The PPF is funded from the World Bank under the Foundations for Competitiveness and Growth Project. The PPF will finance studies and technical assistance needed to bring large projects such as infrastructure and social sector public-private partnerships, divestments and other strategic investments to commercial and financial close. The PPF is a revolving facility, where the costs for the studies related to commercially viable transactions are ultimately borne by the successful bidders of the investment projects.

Eligible activities that will be supported include:

1. Consultant services required to prepare and bring approved projects to the market
2. Pre-feasibility and feasibility studies, including:
    a. Market Analysis
    b. Demand forecasts
    c. Technical designs and specifications
    d. Environmental and social impact analyses, and any other required safeguard policy or other studies to protect the public interest
    e. Preparation of detailed cost estimates and financing plans
    f. Assessment of the need for direct government support in case the project is not viable on its own
    g. Analysis of project delivery options

3. Preparation and analysis of financial models or cash flow projections
4. Valuation reports
5. Business Plan development
6. Transaction management services

8.0 PRIVATISATION FEES

Privatisation Fees - Remuneration for Privatisation Agency

The Privatisation Agency will charge a Privatisation fee for the services provided to the GOJ in support of the Privatisation transactions. The MDA is required to execute a Privatisation Services Agreement upon appointment of an Enterprise Team where the Privatisation Agency provides privatisation support including Transaction Management or Secretariat Services. The Privatisation Agency may charge a flat fee, a commission based fee or a combination thereof.

Commission Based Fees

The Privatisation Agency may charge a commission of between 1% to 5% of the sale proceeds of the privatisation project. In addition, a quarterly administration fee may be negotiated, as deemed necessary.

Flat Fees

The Privatisation Agency may charge flat transaction fees *(payable on the achievement of project milestones)* and may charge a non-refundable retainer *(being up to 25% of the total fees).*

Monitoring Fees

Where the Privatisation Agency's Terms of Reference will include the monitoring of privatised assets, a separate monitoring fee must be negotiated with the MDA. Specifically, where lease collections are being monitored a monitoring Fee of 10% of lease income received plus out of pocket expenses which are to be reimbursed to the DBJ. In the case of the monitoring a vendor's mortgage the monitoring fee will be negotiated with the MDA.

10.0 USE OF PRIVATISATION PROCEEDS

10.0.1 Proceeds of Privatisation

<u>The following charges will be made against the gross privatisation proceeds:</u>

- Direct privatisation costs to the entity, including privatisation fees,
- Staff obligations – redundancy costs
- Tax obligation of the company/entity being privatised
- Secured debt obligations of the company being privatised including loans from Government of Jamaica and other financial institutions or guaranteed loan of the GOJ (unless the purchasers have agreed to assume debt obligations)
- Unsecured creditors (as negotiated by the entity)

Where the privatised assets are owned by the Accountant General, net proceeds of privatised entities will be placed in an Escrow Account and may be distributed as follows:

- Provisions for budgetary support to the Ministry of Finance.
- Special funds for capital projects
- Paid over to the Consolidated Fund

The distribution of proceeds in this case is to be approved by the Ministry of Finance.

Where the privatised assets are owned by public bodies, agencies or statutory bodies, the net privatisation proceeds will be paid over to the company owning the privatised assets, on approval of Cabinet.

11.0 REMOVAL OF AN ENTITY FROM THE PRIVATISATION LIST

There will be occasions when an asset cannot be privatised due to the lack of interest from potential investors, bids below an acceptable amount and/or changes in GOJ policy. Cabinet approval must be sought for the removal of an entity/project from the privatisation list.

A Ministry or Agency may also submit a formal request (via a Cabinet Submission) to Cabinet for an asset to be removed from the list. This request should include the rationale for the removal of the entity from the list, and in the case of a Ministry requesting the removal prior to privatisation; the rationale must be aligned with GOJ priorities and objectives. The removal from the list should be justified based on the strategic positioning and objectives of the Ministry or Agency.

Appendices

APPENDIX 1: Terms of References

A. PRIVATISATION AGENCY

Terms of Reference

The terms of reference for the Privatisation Agency are as follows:

- To be responsible for the complete reporting of privatisation activities to the Cabinet;
- To prepare, for the approval of the Cabinet, an annual plan for the divestment of companies and equity interests;
- To monitor progress against this plan and report on progress to the Cabinet;
- To prepare, for the approval of the Cabinet, procedures and rules governing the conduct of privatisations, in line with this policy;
- To ensure that privatisations are conducted in accordance with the approved procedures and rules, and to report to the Cabinet on any instances in which the procedures and rules are not followed;
- To assist with conducting or commissioning the necessary studies and analyses which will offer government the opportunity to make informed decisions;
- To carry out privatisation activities wholly or jointly with other government agencies and offer consultancy services when required;
- To co-ordinate and support the work of the Enterprise Teams;
- To co-ordinate requests for funding from international agencies as these relate to privatisation activities;
- To compile and archive all information on GOJ privatisations;
- To manage the privatisation escrow account on behalf of the GOJ.

The Privatisation Agency supports the work of the Enterprise Team by:

- Co-ordinating communication between all the parties involved in the privatisation;
- Ensuring that the Enterprise Team conducts the privatisation in a manner consistent with this policy, and with approved rules and procedures;
- Providing secretarial and administrative support – draft minutes, agendas, prepare meeting notes, schedule and host meetings of the Enterprise Team, etc;
- Being a centralised point of contact for information on the Privatisation transaction;
- Providing technical advice via internal archives and/or external consultants *(where necessary)*; The external consultant provides guidance, training, process support & technical advice as needed;

- Monitoring the performance of the external consultants, if applicable;
- Monitoring budgetary allocations;
- Planning & preparing status reports;
- Writing research papers and providing background information;
- Maintaining records and documents *(e.g. legal, other documents for the privatisation)*;
- Coordinating external communications with stakeholders;
- Engaging any consultant required to provide services to facilitate the privatisation;
- Providing Data Room facilities;
- Recommending members for the Enterprise Team.
- Assist in the preparation of OR prepare advertisements for the Project and monitor the preparation and review of the Information Memorandum and Request for Proposals for the transaction/Project;
- Monitor the preparation and review of the Contractual Agreements, including but not limited to Sales Agreements and Concession Agreements;
- Assist with the preparation of Terms of Reference for Consultants and conduct the tender process to engage external consultants, as required;
- Facilitate potential investors' due diligence on the Project as required;
- Assist with the preparation of Cabinet Submissions;
- Assist with the identification of funding for the Project on a best efforts basis;
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B. ENTERPRISE TEAM

Responsibilities of Enterprise Team

The responsibilities of the Enterprise Team are as follows:

- recommend an appropriate privatisation strategy and framework for the privatisation transaction, to include specific privatisation objectives *(which must be aligned with GOJ's general privatisation objectives)*, modality and appropriate evaluation criteria for prospective investment proposals;
- adequately represent the position of the relevant agency or ministry regarding the entity to be privatised;
- facilitate the Privatisation Agency's access to the information required on the entity and the progress of the privatisation;

- recommend additional members for the team if and when necessary;
- review consultants reports (including asset/enterprise valuations)and make the necessary recommendations;
- recommend specific evaluation criteria and weightings for selection of investment proposals;
- review the information memorandum and other profiles of the entity to be privatised and make the necessary recommendations;
- ensure that bottlenecks in the process requiring Ministerial or Subject Agency facilitation are addressed expeditiously;
- recommend members of the proposal selection/evaluation teams when necessary;
- review due diligence reports;
- recommend preferred proposals/investors to theCabinet;
- negotiate and/or recommend the final privatisation terms;
- ensure that the privatisation is conducted in accordance with this policy, and agreed rules and procedures;
- ensure that satisfactory records of the privatisation process are maintained;
- ensure that the welfare of employees is given priority;
- ensure that the Privatisation process complies with Jamaican labour laws.
- ensure compliance with GOJ procurement rules.

APPENDIX 2: OPERATIONAL GUIDELINES FOR THE PRIVATISATION OF GOJ ASSETS

OPERATIONAL GUIDELINES

	LEVEL 1	LEVEL 2	LEVEL 3
ASSETS	**All Strategic Assets or Assets which are either valued or for which revenues are anticipated in excess of US$50M**	**Assets which are either valued or for which revenues are anticipated within the range of US$5M -US$50M**	**Assets which are either valued or for which revenues are anticipated less than US$5M**
GUIDELINES	1. Cabinet Approvals: • *To privatise (addition to list)* • *Approval of privatisation strategy and modality* • *Approval of preferred bidder* • *Final negotiated privatisation terms and conditions* 2. Ministerial Approvals: • *Appointment of Enterprise Teams* 3. Transaction to be executed by the Enterprise Team with Secretariat support from Privatisation Agency. 4. Privatisation Agency Board and /or relevant Ministry or Agency to approve strategy and modality prior to submission to Cabinet. 5. Reporting: Monthly reporting to Cabinet through the Privatisation Agency 6. Modality (Strategic	1. Cabinet Approvals: • *To privatise (addition to list)* • *Final negotiated privatisation terms and conditions* 2. Cabinet Approvals for: *Approval of the privatisation strategy or modality* • *Approval of the preferred bidder* 3. Ministerial Approvals: • *Appointment of Enterprise Teams* 4. Transaction to be executed by the Enterprise Team with Secretariat support from Privatisation Agency. 5. Reporting: Quarterly reporting to Cabinet through the Privatisation Agency 6. Modality: Not specified	1. Cabinet Approvals: • *To privatise (addition to list)* 2. Cabinet Approvals: • *Final Negotiated Terms* 3. Ministerial Approvals: • *Appointment of Enterprise Teams* • *Approval of strategy/modality* • *Approval of Preferred Bidder* 4. Process to be managed by Ministry/Agency and monitored by the Privatisation Agency 5. Reporting: Quarterly reporting to Cabinet through the Privatisation Agency 6. Modality: Not Specified

Assets): Not Specified	

Note: The threshold values above may be amended as necessary and approved by Cabinet.