



**GOVERNMENT OF JAMAICA**  
*Policy Framework and Procedures Manual*  
*For the Privatisation of Government Assets: The Privatisation Policy*

**October 2012**



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**Development Bank of Jamaica Limited**

***October 2012***



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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 new framework for privatisation transactions which is currently found 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.

Two decades later, while some of the key provisions of the policy remain relevant, a policy review is necessary given the privatisation experience to date, 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 revised Privatisation Policy aims 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 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 the transfer of assets or shares 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) 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.

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, through a Privatisation Committee of Cabinet, has overall responsibility for the GOJ privatisation activities. The Development Bank of Jamaica (DBJ) will serve as the Privatisation Agency and will report to the Privatisation Committee. The Cabinet will appoint *Enterprise Teams* which will be assigned the task of carrying out the privatisation of specific GOJ assets. The Subject Ministries/Agencies will work closely with the Privatisation Agency 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; joint venture with private sector interests or special groups such as workers; 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 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.

The privatisation process involves the following:

- *Approval of Privatisation List*
- *Appointment of Enterprise Teams*
- *Approval of Privatisation Strategy*
- *Issuance of an Information Memorandum or Request for Proposals (RFP)*
- *Valuation of assets*
- *Pre-marketing of opportunity*
- *Advertisement of Opportunity*
- *Evaluation of Offers*
- *Due Diligence on Bidders*
- *Selection of Preferred Bidder*
- *Negotiation with Preferred Bidder*

- *Approval of Negotiated Privatisation Terms*
- *Contract Closing*

### **UNSOLICITED PROPOSALS**

Unsolicited proposals for entities/assets that are not on the Privatisation list but which meet the Privatisation Criteria will be procured via the Swiss Challenge System. This system utilises the competitive tender process, and allows third parties to submit competing bids for the asset. However, the original proponent has the right to counter match any superior offers to acquire the asset.

This approach allows the Government to benefit from the innovation and market interest that unsolicited proposals present, while preserving competitive pressure and transparency.

### **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.

### **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.

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**

Privatisation costs are related to the entire process: pre-privatisation, privatisation and post-privatisation. They may include legal fees, management consultant fees; valuation costs, advertising costs, administrative expenses, publication of the Information Memorandum and post-privatisation monitoring costs.

Expenses for current/on-going privatisation transactions may be financed from the Privatisation Escrow Account, which is partly funded by privatisation part-proceeds controlled by the Ministry of Finance and managed by the Privatisation Agency. All withdrawals from this account are approved by the Ministry of Finance. Funds may



also be provided by the portfolio ministry or Agency from their own resources to supplement the financing of the privatisation project. 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 the private sector.

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 or state divestment began in Jamaica in the early 1980s when a Divestment Committee was established to pursue the divestment of equity and control in commercial entities at prices based on commercial criteria and the national interest. 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 burden on the budget of the Government of Jamaica (hereinafter called “the GOJ”).

In the 1980s, priorities for divestment 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 which is currently found in Ministry Paper No. 34 of 1991. The revised 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.

The GOJ's privatisation activities have slowed considerably in the years following the privatisation of most of the larger strategic assets such as National Commercial Bank, Caribbean Cement Co., Jamaica Public Service Co. Ltd., and Sangster International Airport. The programme is now at a mature stage, with the remaining portfolio of assets to be privatized (*initially identified under Ministry Paper #34*) consisting largely of land and other entities such as the Jamaica Public Service Co. Ltd. (*GOJ's 20% interest*), Jamaica Railway Corporation and Caymanas Track Ltd.

Two decades later, while some of the key provisions of the 1991 Privatisation Policy remain relevant, the relationship between the key stakeholders and the general modalities associated with different categories of privatisation necessitate review. This policy review is necessary given the GOJ's Privatisation experience to date, increased fiscal constraints in a challenging economic environment and a changing GOJ regulatory framework.

This revised Privatisation Policy aims 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 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 eliminating 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 the 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;
- 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;
- 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 or shares 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 terms 'divestment' and 'privatisation' when used in this policy are to be understood to include all the types of transactions in which government assets are transferred to private ownership in whole or part, including transfers by way of:

- i. Sale (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 Privatisation/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 privatisation 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 privatising lands. 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”) will serve as the Privatisation Agency and will report to the Privatisation Committee. The DBJ will appoint *Enterprise Teams* which will be assigned the task of carrying out the privatisation of specific GOJ assets.

#### **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 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 and Privatisation Policies.

The Cabinet approves recommendations of the Privatisation Committee on GOJ’s privatisation policy and procedures and specific activities in relation to the privatisation process. These recommendations include:

- The initial privatisation list of assets;
- Entities to be added or removed from the official privatisation list ( including public services which may be outsourced);
- The appointment of Enterprise Teams recommended by the Privatisation Agency;
- 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.

#### **B. Privatisation Committee of Cabinet**

A Committee of Cabinet, the Privatisation Committee, will be established to have general oversight of the GOJ’s privatisation program. The Privatisation Committee will consider all matters on which a Cabinet decision is required, and make its recommendation to the full Cabinet. The Privatisation Committee will approve recommendations made by the Privatisation Agency for presentation to Cabinet for final approval.

The members of the Privatisation Committee are:

- The Prime Minister – Chairman
- The Attorney General
- Minister of Finance and Planning
- Minister of Agriculture and Fisheries
- Minister of Industry, Investment and Commerce
- Minister of Transport, Works and Housing

- Minister of Tourism and Entertainment
- Minister of Science, Technology, Energy and Mining
- Minister of Water, Land, Environment and Climate Change

### **C. The Privatisation Agency**

The Development Bank of Jamaica will serve as the Privatisation Agency and will report to the Privatisation Committee. The Privatisation Agency will provide Secretariat and advisory services to Enterprise 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 Privatisation Committee on specific privatisation transactions and the status of the GOJ's privatisation activities and transactions;
- Review the privatisation list annually and recommend additions, deletions and re-prioritisations.

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

#### **Resource Requirements of the Privatisation Agency**

The Privatisation Agency 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.

### **D. Enterprise Teams**

#### ***Appointment of Enterprise Teams***

The Cabinet, upon the recommendation of the Privatisation Committee, will appoint Enterprise Teams for each privatisation transaction, with

recommendations from the Privatisation Agency where necessary. 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.

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.

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

- The Ministry of Finance and Planning;
- The Office of the Prime Minister;
- The subject/portfolio Ministry;
- The Attorney General's Chambers;
- The Board of the Privatisation Agency ; 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.

### ***Role of External Consultants***

Consultants may be required to execute activities including but not limited to preparing valuation reports, gathering data, preparing Information Memoranda, developing privatisation strategy and evaluation criteria, evaluating bids, conducting due diligence and drafting legal agreements.

### ***Reporting Requirements***

Where transactions are executed directly by the Privatisation Agency, the Enterprise Team should report directly to the Board of the Privatisation Agency, which will then communicate with the Privatisation Committee of Cabinet.



Where privatisation transactions are executed by Agencies or Ministries, the Privatisation Agency will manage and/or monitor privatisation transactions, as stipulated in the Operational Guidelines at *Appendix 2*.

**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 to the Privatisation Agency all information necessary for the appropriate decisions to be taken;
- provide the Agency with an annual list of recommended entities for privatisation;
- nominate representatives to Enterprise Teams; and
- execute privatisation transactions, under the supervision of the Privatisation Agency.

***Inventory of All GOJ Assets***

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

Each Ministry will therefore be required to produce a strategic asset management plan that will outline the list of assets under its control, separate those assets into core and non-core assets, and will articulate a plan to privatise non-core assets. This plan will also be translated to the acquisition of assets which must be viewed within a strategic framework that is linked to the general objectives of the GOJ and should articulate a defined exit strategy if required.

Agencies working in consultation with the Public Sector Transformation Unit (PSTU) will also be required to identify public services which may be more efficiently provided by private firms operating under contract to government. Where these contracts would involve significant transfer of risk and management discretion to the private party, these services should be included in a list annexed to the list of assets that do not form part of the core functions of the agencies. A strategy for optimal outsourcing of these services should be devised.

**F. Ministry with responsibility for the Privatisation Agency**

The Ministry with responsibility for the Privatisation Agency will develop policies and strategies for submission to the Privatisation Committee of Cabinet. The Ministry will monitor and review the programme and make necessary adjustments.

**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. In order to fulfil the requirement for transparency, entities to be privatised must be advertised in the print and electronic media.

**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:

1. **Approval of Privatisation List:** After Cabinet approves the list of entities for privatisation, which have been ranked and prioritised, the Privatisation Agency will implement the privatisation programme. The list of assets to be divested would be publicised indicating their state of readiness.
2. **Appointment of Enterprise Teams:** Cabinet or the Privatisation Committee of Cabinet or the relevant Ministry/Agency will appoint an Enterprise Team for each privatisation, as recommended by the Privatisation Agency.
3. **Approval of Privatisation Strategy:** 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. 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.

Due diligence is to be conducted on the entities to ascertain the issues that need to be addressed prior to privatisation. The Privatisation Committee, 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 actually ready for privatisation.

The selected modality and strategy is submitted to the Privatisation Committee of Cabinet for consideration and approval. After the Privatisation Committee's approval, Cabinet will indicate final approval.

4. **Information Memorandum 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.
5. **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.

6. **Pre-marketing:** The Government of Jamaica, through the Enterprise Team will be allowed to pre-market the opportunity to targeted prospective investors, prior to the commencement of the Bidding Process. The opportunity should only be pre-marketed when the Government is in a position to proceed with the privatisation of the asset.
7. **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.
8. **Bid Bond (optional):** The Enterprise Team may require bidders/prospective investors to submit a "good faith deposit" or bid bond along with their proposal.
9. **Evaluation:** After the bids/proposals are submitted by the potential investors, they are evaluated by the Enterprise Team and ranked. The highest-ranked bid or proposal is recommended as the Preferred Bidder.
10. **Due Diligence:** The Privatisation Agency conducts an independent due diligence exercise (*e.g. credit checks, etc*) on the potential investors.
11. **Preferred Bidder:** The Privatisation Agency submits a report recommending the Preferred Bidder to the Enterprise Team for the transaction, and then to the relevant Ministry or Board of Directors of the owning Agency, as appropriate, then the Privatisation Committee for approval. 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<sup>1</sup> 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.

12. **Approval of Negotiated Privatisation Terms:** The Privatisation Agency 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 Enterprise Team, for approval.

Once Board approval is received, the Privatisation Agency will forward a copy of the Board Report indicating the selected bid or proposal to the portfolio ministry to facilitate preparation of a submission to Cabinet for approval.

13. **Closing:** On receipt of approval from Cabinet, the Privatisation Agency will finalise the transaction, including execution of the required legal agreements.

#### **4.0.1.2 Pre – Marketing of the Investment Opportunity**

Prior to the commencement of the Bidding Process, the GOJ, through the Enterprise Team, may pre-market the investment opportunity to prospective investors. 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.

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<sup>1</sup> The Negotiating Team may be a committee of the Enterprise Team.

Pre-marketing and the prior identification of prospective investors include:

- Determining who would be the interested parties (prospective investor groups);
- Identifying the firms/individuals within the prospective investor groups which are strong candidates or have the capacity to participate (for example through research with various local and regional/international bodies including JAMPRO, Chamber of Commerce, Private Sector Organisations, local/regional banks, research on groups within the region);
- Compiling the list of organisations, relevant contact persons and rationale;
- Making contact with investors to share pre-marketing documents, discuss the proposed transaction and ascertain interest in participating;
- Depending on the asset to be privatised, potential investors may be invited to indicate their preferred privatisation modality for a specific asset and or class of assets.

#### **4.0.2 UNSOLICITED PROPOSAL**

An *unsolicited proposal* is a proposal made by a private party who has expressed an interest in acquiring a GOJ asset which the Government had not offered to the public. Unsolicited proposals can be beneficial, but also bring unique challenges. For this reason, this Policy, as well as the PPP Policy, has made provisions to allow the Government to benefit from the innovation and market interest that unsolicited proposals signal, while preserving competitive pressure and transparency.

##### **4.0.2.1 Benefits and challenges of unsolicited proposals**

Both the Privatisation and PPP programmes accommodate unsolicited proposals because they indicate Privatisation and PPP projects that would be successful in the market, and may contain new ideas that add value for both the private sector and the public at large. Private firms are naturally on the lookout for profit-making opportunities – that is, instances where they can add value or reduce costs.

At the same time, unsolicited proposals also bring challenges. If the Government negotiates directly with a proponent<sup>2</sup>, it loses

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<sup>2</sup> The Proponent refers to a firm that makes an unsolicited offer to acquire a Government asset.

the benefits of competition, so it may not achieve maximum value for money. Other firms may complain that direct negotiations are unfair, since they were not given an opportunity to participate, or profit by offering a better deal. On the other hand, if all unsolicited proposals are simply put out to competitive tender, few firms may bring unsolicited proposals, since their investment in developing the proposal may not benefit them financially.

The Privatisation and PPP Policies specifically outline how unsolicited proposals will be considered and treated. The details of the procedural requirements for the submission of unsolicited proposals are contained in the Privatisation and PPP Procedures Manuals.

#### **4.0.2.2 Treatment of Unsolicited Proposals in Privatisation**

All unsolicited proposals must be submitted in writing to the Privatisation Agency of the DBJ. The treatment of unsolicited proposals considered in the Privatisation Policy, depends on whether the asset is already on the Privatisation List.

If the ***asset is already on the Privatisation List***, the Unit will consider whether to prioritise the privatisation. The interest expressed in the unsolicited proposal may change the Unit's assessment of the marketability of the asset. It may make the Unit realise that it needs to move fast to take advantage of bidder interest that may diminish in the event of delay. In these cases, the Unit should recommend to the Privatisation Committee that the asset should be put to public tender sooner than previously planned. If the Privatisation Committee of Cabinet agrees, it will recommend this change in prioritisation to Cabinet for approval.

All projects that are on the Privatisation List before an unsolicited proposal is received will be bid out competitively, regardless of whether or not an unsolicited proposal is submitted. The competitive bid will be conducted in accordance with the procedures outlined in the Privatisation Manual and no special preference will be given to a firm that has submitted an unsolicited proposal.

**If the asset is not on the Privatisation List**, the Unit may evaluate the proposal to determine whether it meets certain required criteria. The required criteria are as follows:

- i. The development plan does not include Government's financial support.
- ii. The proposed project demonstrates viability and is feasible.
- iii. The proposal is consistent with meeting government's objectives and relevant development plans.
- iv. The project is technically, legally and environmentally feasible.
- v. The project proponent possesses a good reputation, financial capability and good track record in undertaking projects.

**If the proposal does not meet the criteria**, the Unit will reject the proposal.

However, if the **proposal meets the criteria**, the Unit may recommend to the Privatisation Committee that the GOJ utilises the Swiss Challenge system to test market interest. However, prior to conducting the Swiss Challenge, a valuation must have been conducted on the asset as well as due diligence to ensure that all legal, environmental and any other matters are sufficiently addressed to prepare the asset for privatisation.

Unsolicited proposals that are not on the Privatisation List and meet the Privatisation Criteria will be market tested via the Swiss Challenge System. This approach also applies to the PPP programme.

#### **4.0.2.3 Swiss Challenge Process**

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

1. A firm may make an unsolicited offer to acquire a government asset. (this firm is referred to as the 'Original Proponent');
2. The Privatisation Agency will check that the offer meets requirements for unsolicited offers (i.e. it meets the Privatisation Criteria, and is not already on the list). The Privatisation Agency makes a recommendation to Cabinet on whether to proceed with the offer and finalise the terms of the proposal;
3. If the decision is to proceed, an Enterprise Team is formed for the project;
4. Valuation and due diligence is done on the asset;
5. The Enterprise Team negotiates with the Original Proponent in an attempt to reach agreement on contract



- terms acceptable to the Government and the Original Proponent;
6. The Privatisation Agency confirms that the terms of the contract are acceptable. If this is the case, a recommendation is made to Cabinet to proceed to the Challenge Process. If Cabinet agrees, the Challenge process is then initiated (if Cabinet does not agree, the original offer is rejected);
  7. 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 Privatisation Agency within [1] month of the advertisement of the challenge opportunity;
    - c) Registered challengers are provided with the draft 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 project and the key contractual terms that have been negotiated;
    - d) Challengers are given a time period not less than sixty (60) days to submit their 'challenge bid' to the Privatisation Agency. The time period is based on the discretion of the Enterprise Team depending on the complexity of the project;
    - e) Challengers must offer to supply:
      - i. A similar or enhanced privatisation project proposal/offer;
      - ii. A proposal/offer that poses no increased risk to the government or to the public;
      - iii. A proposal/offer providing equivalent assurance on quality, performance guarantees, and financial standing.
    - f) If warranted and appropriate, the Enterprise Team may prescribe 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 a proposal that is at least as

- good as the Original Proponent's, 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 in its challenge;
8. Once the Enterprise Team has decided on the firm to recommend for acquisition of the asset, 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;
9. The contract will then be signed, and the project implemented and monitored as with other privatisations.

The intellectual property rights of the Original Proponent and the Best Challenger will be treated fairly and equitably in accordance with the laws of Jamaica. 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 which arise in which 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 Privatisation Committee 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<sup>3</sup> 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;
- 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).

It is anticipated that these types of strategic opportunities are not common place or high frequency. The proposal would be screened by the Privatisation Agency as per the criteria outlined above and in each case due diligence on the investor and on the asset is conducted, independent asset valuation and identification and assignment of all attendant project risks. The Privatisation Agency would make a recommendation to the Privatisation Committee for approval. The investment proposal would also be subject to rigorous scrutiny by an Enterprise Team to be established as needed by the Privatisation Committee to evaluate the offer.

If all the requisite criteria are fulfilled by the interested party, Cabinet approval is required to proceed with direct negotiations. Such negotiations are to be guided by clear negotiating parameters (including timelines for completion) approved by Cabinet and a draft contract prepared by the Attorney General's Department which includes all of the Government requirements, including performance obligations.

#### **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

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<sup>3</sup> Occurring within a timeline not exceeding twelve (12) months.

- c) identify selected parties and invite them to participate in a further limited tender process; or
- d) liquidate the asset.

#### **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 are 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 DBJ:

- may engage consultants to assist in the execution of privatisation transactions as deemed necessary including legal, valuation and financial consultants.
- will create a panel of consultants that will provide the required services.
- will work with the National Contracts Commission to explore the possibility of establishing a Sector Committee which has the sole responsibility of managing privatisation matters.

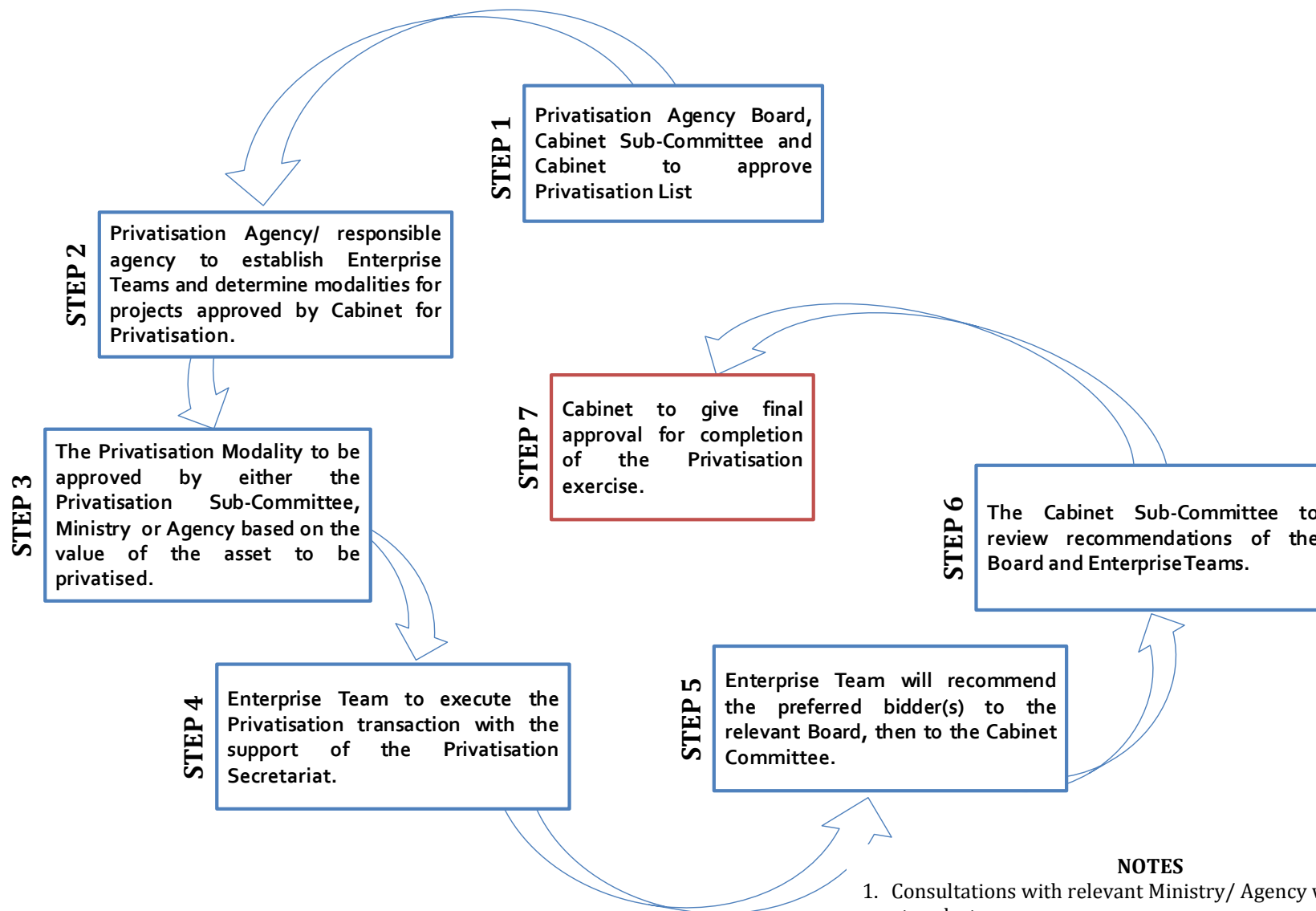
### **5.0 POST-PRIVATISATION MONITORING**

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 as deemed appropriate.

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 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 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 to 8;
3. Subject Agencies pursuing Privatisation exercises will report to the Cabinet Sub-Committee through the Privatisation Agency.

## **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;
- joint venture with private sector interests or special groups such as workers;
- 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 page 10 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. Shares/Limited Equity Holdings/Joint Ventures**

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. The shares must be privatised via a public tender process and the GOJ privatisation guidelines will apply.

Where a minority stake is held in a publicly traded company as part of a general investment portfolio, then the shares may be listed with a securities firm or firms as determined by the Board of Directors of the agency or Ministry.

Where the GOJ holds equity in a privately held firm via joint venture 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 via joint venture, 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 the Privatisation Committee/Cabinet.

#### **D. 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.

#### **E. 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.

#### **F. 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 recent 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**

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: pre-privatisation, privatisation and post-privatisation. The GOJ must therefore identify resources to fund the budget of each privatisation prior to the commencement of the transaction.

The pre-privatisation process involves the preparation of the selected assets/enterprise for privatisation. The objective of the pre-privatisation process is to identify all the assets to be privatised, review the existing status of the assets/enterprise, identify any issues which may impede the privatisation and make recommendations to improve the marketability of the asset or to facilitate the delivery of assets unencumbered. Pre-privatisation 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 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 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 revised privatisation programme may be funded from the following sources which will be identified by the Privatisation Agency in conjunction with the Ministry of Finance and Planning:

- 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 should be financed from the Escrow Account.

In cases where privatisation budgets exceed the funds available in the Escrow Account, the Ministry of Finance may authorise and identify 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.

### **7.0.3 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

## **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. This fee may be negotiated for each transaction.

#### ***Assets/Transactions valued over J\$100M***

It is proposed that fees are charged between 1% to 3% of the sale proceeds of the divested entity. In addition, a quarterly administration fee may be negotiated, as deemed necessary.

#### ***Assets/Transactions valued under J\$100M***

It is proposed that fees are charged between 3% to 5% of the sale proceeds of the divested entity. In addition, a quarterly administration fee may be negotiated as deemed necessary.

#### ***Flat Fees***

The Privatisation Agency may charge flat transaction fees (*payable annually, quarterly or on successful completion*) and may charge a non-refundable retainer (*being up to 25% of the total fees*).

Where the Privatisation Agency's Terms of Reference will include the monitoring of privatised assets, a separate monitoring fee must be negotiated. 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 major transactions the potential investor will be required to pay this fee or the fees would have to be paid by the GOJ from privatisation proceeds, the GOJ Privatisation Escrow Account or other resources determined by the Ministry of Finance or the portfolio Ministry. Again this is a matter to be recommended by the Enterprise Team. The threshold value of J\$100M to be amended as required and approved by the Privatisation Committee of Cabinet and Cabinet.

## **9.0 USE OF PRIVATISATION PROCEEDS**

### **9.0.1 Sale Proceeds of Privatisation**

**The following charges will be made against the gross privatisation proceeds:**

- 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 and approved by the Ministry of Finance)

Where the privatised assets are owned by the Accountant General, net proceeds from the sale 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 and Planning.
- 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 and Planning.**

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.

#### **10.0 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 the Privatisation Committee, through the DBJ, 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

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### 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 Privatisation Committee;
- To prepare, for the approval of the Privatisation Committee, an annual plan for the divestment of companies and equity interests;
- To monitor progress against this plan and report on progress to the Privatisation Committee;
- To prepare, for the approval of the Privatisation Committee, 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 Privatisation Committee 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.

## **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 the Privatisation Committee/Cabinet;

- 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	<b>All Strategic Assets or Assets which are either valued or for which revenues are anticipated in excess of US\$50M</b>	<b>Assets which are either valued or for which revenues are anticipated within the range of US\$5M -US\$50M</b>	<b>Assets which are either valued or for which revenues are anticipated less than US\$5M</b>
GUIDELINES	<ol style="list-style-type: none"> <li>1. Cabinet &amp; Privatisation Committee Approvals: <ul style="list-style-type: none"> <li>• <i>To privatise (addition to list)</i></li> <li>• <i>Appointment of Enterprise Team based on the recommendations of the relevant Ministry/Agency and Privatisation Agency</i></li> <li>• <i>Approval of privatisation strategy and modality</i></li> <li>• <i>Approval of preferred bidder</i></li> <li>• <i>Final negotiated privatisation terms and conditions</i></li> </ul> </li> <li>2. Transaction to be executed by the Enterprise Team with Secretariat support from Privatisation Agency.</li> <li>3. Privatisation Agency Board and /or relevant Ministry or Agency to approve strategy and modality prior to submission</li> </ol>	<ol style="list-style-type: none"> <li>1. Cabinet &amp; Privatisation Committee Approvals: <ul style="list-style-type: none"> <li>• <i>To privatise (addition to list)</i></li> <li>• <i>Final negotiated privatisation terms and conditions</i></li> </ul> </li> <li>2. Privatisation Committee Approvals for: <ul style="list-style-type: none"> <li>• <i>Appointment of Enterprise Team based on the recommendations of the relevant Ministry/Agency</i></li> <li>• <i>Approval of the privatisation strategy or modality</i></li> <li>• <i>Approval of the preferred bidder</i></li> </ul> </li> <li>3. Transaction to be executed by the Enterprise Team with Secretariat support from Privatisation Agency.</li> <li>4. Reporting: Quarterly reporting to Privatisation Committee through the Privatisation Agency</li> <li>5. Modality: Not specified</li> </ol>	<ol style="list-style-type: none"> <li>1. Cabinet Approvals: <ul style="list-style-type: none"> <li>• <i>To privatise (addition to list)</i></li> </ul> </li> <li>2. Privatisation Committee Approvals: <ul style="list-style-type: none"> <li>• <i>Final Negotiated Terms</i></li> </ul> </li> <li>3. Ministerial Approvals: <ul style="list-style-type: none"> <li>• <i>Appointment of Enterprise Teams</i></li> <li>• <i>Approval of strategy/modality</i></li> <li>• <i>Approval of Preferred Bidder</i></li> </ul> </li> <li>4. Process to be managed by Ministry/Agency and monitored by the Privatisation Agency</li> <li>5. Reporting: Quarterly reporting to Privatisation Committee through the Privatisation Agency</li> <li>6. Modality: Not Specified</li> </ol>

	<p>to Cabinet/Privatisation Committee.</p> <p>4. Reporting: Monthly reporting to Privatisation Committee through the Privatisation Agency</p> <p>5. Modality (Strategic Assets): Not Specified</p>		
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*Note: The threshold values above may be amended as necessary and approved by the Privatisation Committee and Cabinet.*





