

# **GUIDELINES**

**FOR CLOSURE**

**AND**

**WINDING-UP OF GOVERNMENT COMPANIES**

**AND**

**REPEAL OF ENABLING LEGISLATION OF  
STATUTORY BODIES**

**June 2018**

## **1.0 INTRODUCTION**

1.1 The Policy on Categorisation and Rationalisation of Public Bodies was approved by Cabinet in October 2016. The Policy seeks to apply principle-based approaches that will (a) categorise public bodies for more focussed and effective oversight and monitoring, b) rationalise public bodies based on an assessment of their relevance, the effectiveness of their roles and functions and determine the best modality by which those functions should be conducted. Application of this systematic approach will indicate the public bodies to be retained, privatized/divested, merged, subsumed into an existing Ministry or Department or abolished.

1.2 If a public body (PB) is recommended for closure, a request should be made to the Cabinet by the Portfolio Ministry, Ministry of Finance and the Public Service (MoFPS) or the Office of the Prime Minister (OPM). The Cabinet Submission should outline the preferred modality for closure/winding-up. For a government company, this may be members' voluntary liquidation, while a repeal of the relevant enabling legislation would be applicable for a statutory body. A Cabinet Decision that the entity should be closed will then trigger actions for closure and winding-up/repeal of enabling legislation. These Guidelines, while not exhaustive, give an indication of the activities that will need to be undertaken.

1.3 The Portfolio Ministries are responsible for developing and implementing reforms to their PBs, in partnership with staff, trade unions as applicable, stakeholders and the PBs.

## **2.0 GENERAL PRINCIPLES FOR CLOSING AND WINDING UP A PUBLIC BODY.**

2.1 Below are general principles which should be incorporated in activities to effect the closure or winding-up of a public body:

- a) The appropriate model for continued delivery of services, where appropriate, must be considered at an early stage of the process.
- b) PBs and portfolio Ministries must seek the best value for money (VFM) in respect of existing contracts and managing assets.
- c) Approval must be sought for spending in respect of consultancies and other activities which may require the contracting of services.
- d) PBs and Portfolio Ministries must develop a knowledge and information transfer plan to ensure that key knowledge and information assets are appropriately safeguarded and to mitigate risks arising from their loss.
- e) PBs must comply with their obligations to staff.

- f) A transition, change management or project team must be put in place to among other things, maintain capacity for ongoing operational management and leadership during transition which should assess the process for allocation of assets and liabilities between sponsoring Ministry, successor bodies and disposal. To the extent possible, this team should include internal audit representation.

### **3.0 GOVERNANCE**

3.1 Governance relates to the way in which a body is controlled, managed and directed and may vary among different types of PBs. At a very early stage in the reform process, the role of the Board of Directors must be defined.

### **4.0 BOARD OF DIRECTORS**

4.1 The Board of Directors acting on a decision of the Cabinet to close and wind up the PB will:

- a) Call an Extra-ordinary General Meeting and pass resolution/take decision to proceed with closure of the entity and its eventual winding-up or repeal of its enabling legislation.
- b) Prepare a full status report of operation/activities of the entity as at the date of cessation of operations. The report should include information on: records management (retention, culling, etc.), finance, legal matters, human resources, etc.
- c) Develop a communication strategy to outline how staff, trade unions and other stakeholders are to be informed and engaged during the process. The strategy should outline why change is happening, how the change is happening and how it affects each stakeholder.
- d) Pursue activities to wind-up company or repeal legislation as applicable, including those outlined in Tables 1 and 2. The principles outlined in Table 1 are applicable for the closure or winding up of a solvent entity. Where the entity is insolvent, actions should be guided by the Insolvency Act 2015 and any other relevant legislation. Appendix 1 provides relevant information on the Insolvency Act 2014.

**Table 1: Action Sheet for Winding up a Solvent Company**

ACTION SHEET FOR MEMBERS VOLUNTARY WINDING-UP OF A COMPANY		
	ACTION	RESPONSIBILITY
1.	Make a full inquiry into the affairs of the company to ensure the company is able to pay its debts within a period not exceeding twelve months and request preparation of or obtain up-to-date financial statements and have them audited (if no recent <sup>1</sup> audit exists).	Board of Directors
2.	Obtain the following information in order to ascertain status of compliance and other matters which should be addressed prior to closure: a) status report from Companies Office of Jamaica, b) minutes of AGM, c) Articles and Memorandum of Association	Company Secretary
3.	Prepare draft "Declaration of Solvency"	Legal Officer/Company Secretary
4	Convene Board meeting for acceptance of Financial Statements and Declaration of Solvency and to pass special or extraordinary resolution.	Chairman
5	File Declaration and Statement of Assets and Liabilities with the Registrar (Companies Office of Jamaica) five weeks immediately preceding the date of the passing of the resolution for winding up of the company.	Company Secretary
6	Notify public of winding up and Extraordinary General Meeting (EGM) via newspaper	Company Secretary/ Chairman
7	Hold EGM to pass Special or Extraordinary Resolution for winding up	Chairman/ Board
8	Appoint Liquidator	Board
9	Cut newspaper clipping of notice of Resolution and attach to winding up resolution and submit to Registrar	Company Secretary/ Legal Officer
10	Gazette Resolution	Company Secretary/ Legal Officer

**Table 2: Action Sheet for Closure of a Statutory Body**

<u>ACTION SHEET FOR CLOSURE OF A STATUTORY BODY VIA REPEAL OR AMENDMENT OF ENABLING/RELEVANT LEGISLATION</u>		
	ACTION	RESPONSIBILITY
1	Obtain copy of enabling legislation (that formed the statutory body), Cabinet Submission and Decision (regarding closure) for guidance on legislative and Cabinet's requirements	Company Secretary (CS)

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<sup>1</sup> Preferably no more than 6 months old

2	Request preparation of or obtain up-to-date financial statements as well as a status report on activities of the entity in order to show the assets, liabilities and matters to be addressed, and have the accounts audited.	Chief Financial Officer
3	The Board of Directors should meet to <ul style="list-style-type: none"> <li>ratify the Decision of Cabinet to close entity;</li> <li>prepare a plan of action for closure and repeal/amendment of legislation; and</li> <li>appoint a liquidator to ensure the disposal of assets, discharge of liabilities and the satisfaction of all other requirements as appropriate.</li> </ul>	Chairman/ Board
4	Obtain Cabinet approval for the issuance of drafting instructions and Prepare drafting instructions for the Chief Parliamentary Counsel regarding repeal/amendment of the relevant legislation, where such instruction was not given previously.	Legal Officer/ Relevant officer of Parent Ministry
5	Prepare Submission to Cabinet for tabling of Bill to repeal the enabling legislation and ensure tabling in Parliament.	Parent Ministry Legal Officer/CS/ Relevant officer of Parent Ministry
6	Residual Administrative activities	Parent Ministry

## 5.0 FINANCIAL MATTERS

### 5.1 Financial Statements

5.1.1 Prepare final accounts, including Balance Sheet to establish the balances for assets and liabilities prior to closure and have them audited. This will facilitate an assessment of the entity's ability to settle obligations from its asset holdings. The financial statements will need to be audited for each year until the entity is wound-up or the enabling legislation repealed. PBs should execute all financial reporting requirements under the Public Bodies Management and Accountability Act (PBMA), the Companies Act and any other applicable law before closure.

### 5.2 Assets

- a) Prepare/update assets register/schedule which is to be verified by internal auditor. These will include motor vehicles, furniture, computers, printers, other office equipment and schedule of investments.
- b) Dispose of (transfer or sell) assets and collect all amounts owing to the entity. Disposal of assets (including motor vehicles, laptops and cell phones) should be done in accordance with relevant policy guidelines.
- c) For physical (fixed) assets, a Board of Survey is to be established in accordance with Guideline 2.06 - Asset Management of the Guidelines to Financial Management in Public

Sector Entities to determine disposal modality/price. At a minimum, the following steps should be followed:

- (i) For assets with historical/cultural value these ought to be assessed by the relevant authority (e.g. Jamaica National Heritage Trust) prior to disposal.
  - (ii) Sale – Values should be determined for significant assets such as motor vehicles and large equipment.
  - (iii) Transfer - establish ownership and ensure no encumbrance in order to effect legal transfer of the asset. Where real property is to be transferred to the Government of Jamaica (GoJ), the transfer is to be made to the Commissioner of Lands. For residual fixed assets (not to be sold), these may be transferred to the Portfolio Ministry or other entity as agreed by the Board of Directors, Cabinet or the Portfolio Ministry. In the case of a PB that is a subsidiary company, the assets would be transferred in accordance with agreement by the shareholders.
  - (iv) Proposals for the sale of assets of PBs financed from the Consolidated Fund must have the prior written approval of the MoFPS.
  - (v) A knowledge and information transfer plan to ensure that key knowledge and information assets are appropriately safeguarded and to mitigate risks arising from their loss must be put in place.
- d) Financial Assets -
- (i) Bank accounts (Procedures outlined in Circular #26 re Revised Procedures for Opening and Closing of Official Bank Accounts are applicable to public bodies that are financed from the Consolidated Fund, but may be used as a guide for PBs that are self-financed):
    - Signatories: where the original signatories are no longer available, steps will need to be taken to ensure that appropriate signatories are in place. Signatories that are no longer available should be removed and replaced with PS/designate of parent ministry and/or such other officers and board members as appropriate. As far as is feasible signatories should be divided into two groups representing executive and operational personnel.
    - Closure: all bank accounts should be reconciled and brought up to date before they are closed. As at the date of closure (i.e. the date the entity ceases normal operations) bank accounts should be utilized only for executing payments and receiving outstanding funds. Operating accounts may be retained for 6 months after closure to facilitate transactions (encashment of cheques); permission for extension beyond this time should be sought from the MoFPS for PBs financed from the Consolidated Fund or the Board of Directors for PBs that is self-financing. Close

accounts that are not needed for close-out activities and transfer funds to remaining operating accounts.

- Funds remaining in accounts after liabilities have been discharged, should be transferred to the Accountant General/Consolidated Fund (representing the owner/shareholder) or other shareholders, as applicable. This should occur upon repeal of the Act or prior to the company being wound-up.

Leases - to be discontinued in accordance with their terms and conditions.

- (ii) Investments - should be retained and utilised to liquidate liabilities. Investment balances remaining after liabilities have been liquidated, should be paid over to the Accountant General/Consolidated Fund or other shareholders as applicable. This should occur upon on repeal of the Act or prior to company being wound-up.

### 5.3 Liabilities

- a) Liquidate or transfer liabilities to newly merged body, parent PB, MoFPS or Portfolio Ministry as applicable (including trade payables, statutory obligations, loans, etc.)
  - (i) This involves a process of reconciliation with each creditor to agreed amounts and the terms of settlement. The discharge of outstanding balances should then be followed by written confirmation from each creditor of full and final settlement of the liability.
  - (ii) Statutory deductions: Verify outstanding amounts and settle obligations. Where finances are inadequate to cover all liabilities, discussions should be had with MoFPS in an effort to address amounts for PAYE, Ed. Tax (& 3% HEART Tax). NIS and NHT are to be paid.
- b) Review loan contracts/bond agreements and act accordingly. If the entity's assets are inadequate to liquidate these liabilities, approval should be sought from MoFPS, the Cabinet and the Parliament for the GOJ to assume the obligations or provide funding to liquidate such, where there is no Government guarantee. If the debt is guaranteed, no Parliamentary approval is required. PBs which are subsidiaries of other PBs should first begin their discussion with their shareholders as it relates to settlements.

## 6.0 HUMAN RESOURCE MATTERS

6.1 Prepare change management and HR transition plans to engage staff in the process prior to closure. The entity should be guided in its actions by relevant national labour laws, as well as applicable GOJ policies and guidelines, including circulars issued by the Ministry with responsibility for the public service.

6.2 Determine the entity's obligations to staff (including redundancies, pensions, health insurance and other benefits as applicable) and provide/seek resources to finance activities. Computation of redundancy payments should be consistent with the labour laws and the respective contracts of employment. Separation benefits are to be audited prior to payment.

6.3 Where there is a pension plan for staff, determine: requirements/obligations, how payments are to be effected and the future treatment of the pension fund.

6.4 In case of redundancies, determine amount of obligation for each member of staff and ensure adequacy of funds to effect payments. If the entity's resources are inadequate, discussions are to be held with the MoFPS for assistance and approval sought from the Cabinet. For subsidiary Companies, discussions should begin with the relevant shareholders.

## **7.0 LEGAL MATTERS**

7.1 Determine whether there are existing legal matters (law suits or other legal obligations) that have not yet been concluded or satisfied.

7.2 Determine whether there are probable legal matters that may arise given current issues and institute mitigating strategies (such as settlement discussions).

7.3 To the extent that any of these matters can be finalised, efforts should be made to conclude. Otherwise, determine which matters will need to be transferred/assigned to other public entities (Attorney General or other appropriate entity) for continued action.