

JAMAICA

No. 1 - 2014

I assent,

[L.S.]

(Sgd.) P. L. Allen

Governor-General.

31st day of March, 2014

AN ACT to Amend the Public Bodies Management
and Accountability Act.

[1st day of April 2014]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and
with the advice and consent of the Senate and House of
Representatives of Jamaica, and by the authority of the same, as
follows:—

1. This Act may be cited as the Public Bodies Management and
Accountability (Amendment) Act, 2014, and shall be read and
construed as one with the Public Bodies Management and Accountability

Short title,
construction
and
commence-
ment.

Act (hereinafter referred to as the “principal Act”) and all amendments thereto, and shall come into operation on the 1st day of April, 2014.

Amendment
to section 2 of
principal Act.

2. Section 2 of the principal Act is amended by inserting in the appropriate alphabetical sequence the following definitions—

“Government–pays public private partnership” means a public private partnership under which a public entity has an obligation to pay for an asset or the use thereof, or for a service supplied in connection therewith, without which payments the project undertaken by the public private partnership is not likely to be economically viable;

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation as constituted under the Kingston and St. Andrew Corporation Act;
- (b) in relation to any other parish, the Parish Council of that parish as constituted under the Parish Councils Act; or
- (c) in relation to a municipality, a Municipal Council established under the Municipalities Act;

“public entity” means the Government or a department or an agency of the Government, a local authority or a public body;

“public investment” means non-recurrent expenditure on goods, works and services carried out by any public entity on its own or by one or more public entities in conjunction with one or more non-public entities through public private partnerships, and which is aimed at accumulating new physical or intangible assets or enhancing human resource capacities, or improving or rehabilitating existing physical or intangible

assets or human resource capacities, to achieve development objectives;

“Public Investment Management System” means the common framework for the preparation, appraisal, approval and management of public investments in Jamaica (irrespective of source of funding or procurement and implementation modalities) which is constituted under the Financial Administration and Audit Act;

“public private partnership” means an arrangement governed by a long-term procurement contract between one or more public entities and one or more non-public entities, involving the designing, financing, building and operating of an infrastructure project or the provision of a service, through the appropriate sharing of resources, risks and rewards;

“user-pays public private partnership” means any public private partnership that is not a Government-pays public private partnership.”.

3. Section 2A of the principal Act is amended—

Amendment of section 2A of principal Act.

(a) in subsection (1), by inserting in paragraph (c) immediately after the words “public bodies” the words “, including information pertaining to the Public Sector Investment Programme,”;

(b) by deleting subsection (2) and substituting therefor the following—

“ (2) The Minister shall, in relation to the Estimates referred to in subsection (1)—

(a) cause those Estimates to be tabled in the House of Representatives and the Senate for approval;

(b) the Minister shall take appropriate measures to ensure that, commencing with the financial year beginning on April 1, 2015, the Estimates are tabled in time for their approval

by both Houses of Parliament no later than March 31 of the year preceding that to which the Estimates relate; and

(c) by inserting next after subsection (2) the following as subsection (3)—

“ (3) In this section, “Public Sector Investment Programme” means the rolling five-year plan of Cabinet-approved, new and ongoing prioritized public investment projects, that is reviewed on a regular basis against—

- (a) the strategic objectives of the Government;
- (b) the fiscal and debt sustainability agenda;
- (c) prevailing socio-economic and environmental conditions; and
- (d) the implementation status and technical capacity of executing agencies.””.

Insertion of
new sections
6B and 6C in
principal Act.

4. The principal Act is amended by inserting next after section 6A the following as sections 6B and 6C—

“Public
private
partnerships.

6B.—(1) All contingent liabilities in relation to public private partnerships, whether in relation to any Government-pays public private partnerships, or user-pays public private partnerships, shall be continually assessed by the Minister.

(2) The Minister shall ensure that there is full disclosure and regular reporting on contingent liabilities, including the matters referred to in subsections

(10) In this section—

“contingent liability” in relation to an obligation of an entity means—

- (a) a possible obligation that arises from past events and whose existence will have to be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity;
- (b) an existing obligation that arises from past events but is not recognised because—
 - (i) it is not probable that an outflow of resources will be required to settle the obligation; or
 - (ii) the amount of the obligation cannot be measured with sufficient reliability,

and includes debt guarantees, demand or price guarantees, and termination clauses or any other default provisions that could imply a transfer of liabilities to the Government.

“public sector” means the Government and all public bodies;

“specified public sector” means the public sector not including any public body certified by the Auditor-General, in the prescribed manner, as primarily carrying out functions that are of a commercial nature that satisfy such criteria as may be prescribed.

(6) and (9), in each Fiscal Policy Paper to be tabled pursuant to the Financial Administration and Audit Act.

(3) All public private partnerships shall be included in the Public Sector Investment Programme provided for under the Financial Administration and Audit Act, and be subject to the standards set out in the Public Investment Management System.

(4) A public private partnership shall not be entered into by a public entity, except with the approval of the Cabinet on the recommendation of the Public Investment Management Committee established under the Financial Administration and Audit Act.

(5) For the purposes of section 48C(1)(b) of the Financial Administration and Audit Act—

- (a) the indebtedness of a public body within the specified public sector, arising from a Government-pays private public partnership, shall comprise part of the public debt;
- (b) the indebtedness of user-pays public private partnerships shall not comprise part of the public debt;

(6) Subject to subsection (7), the aggregate contingent liabilities of public bodies within the specified public sector arising in respect of user-pays public private partnerships shall not exceed—

- (a) during the three financial years comprising the period beginning on April 1, 2014 and ending on March 31, 2017, three per cent of the gross domestic product;

- (b) during the nine financial years comprising the period beginning on April 1, 2017 and ending on March 31, 2026, eight per cent of the gross domestic product.

(7) Notwithstanding paragraph (b) of subsection (6), if at any time during the period specified in that paragraph there is a reduction in public debt below sixty per cent of gross domestic product, then the percentage of gross domestic product referred to in that paragraph may be increased to an amount equivalent to but not exceeding the percentage by which the public debt has been reduced below sixty per cent of the gross domestic product.

(8) Subsection (6) shall not apply to contingent liabilities that—

- (a) as regards any user-pays public private partnership, are in existence in connection with that public private partnership on March 31, 2014; or
- (b) are referred to in section 48B(6)(d) of the Financial Administration and Audit Act.

(9) Where the likelihood of a contingent liability that—

- (a) accrues to a public body within the specified public sector; and
 - (b) arises from a public private partnership,
- becomes probable, the quantified amount of the contingent liability shall thereupon form part of the public debt, for the purposes of section 48C(1)(b) of the Financial Administration and Audit Act.

*The Public Bodies Management and
Accountability (Amendment) Act, 2014*

Public bodies
to adhere to
the Public
Investment
Management
System.

6C.—Every public entity shall adhere
to the Public Investment Management
System.”.

Amendment
of section 7 of
principal Act.

5. Section 7 of the principal Act is amended by deleting subsection
(1) and substituting therefor the following—

“ (1) The Board of Directors of a public body shall, not later
than November 30 in each financial year of the public body,
deliver to the Minister and to the responsible Minister,
respectively, a draft corporate plan, which shall be in such form
(if any) as may be prescribed.”.

Passed in the House of Representatives this 18th day of March, 2014 with four
(4) amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 21st day of March, 2014 with seven (7) amendments.

FLOYD E. MORRIS
President.

On the 25th day of March, 2014 the House of Representatives agreed to the
amendments made by the Senate.

MICHAEL A. PEART
Speaker.

*This printed impression has been carefully
compared by me with the authenticated
impression of the foregoing Act, and has been
found by me to be a true and correct printed
copy of the said Act.*

(Sgd.) *H. E. Cooke*
Clerk to the Houses of Parliament.