

# OFFICE OF THE CONTRACTOR GENERAL

## Special Report of Investigation

Conducted into the Alleged “Sweetheart Deals” Involving the  
Government of Jamaica and Dehring, Bunting and Golding (DB&G) Ltd.

Ministry of Finance and the Public Service  
(Formerly Ministry of Finance and Planning)

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## INTRODUCTION

On 2008 May 22, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Section 15 (1) and 16 of the Contractor General Act (1983), initiated an Investigation into the circumstances surrounding the alleged “*Sweetheart Deals*” involving the Government of Jamaica (GOJ) and Dehring, Bunting and Golding Ltd. (hereinafter referred to as DB&G).

Consequently, by way of a letter which was dated 2008 June 2, the Contractor General wrote to the Hon. Audley Shaw, Minister of Finance and the Public Service, and Ms. Darlene Morrison, the then Acting Financial Secretary, formally advising them of the OCG’s decision to commence an Investigation into the matter.

Section 15 (1) of the Contractor General Act provides that “...*a Contractor General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters-*

- (a) *the registration of contractors;*
- (b) *tender procedures relating to contracts awarded by public bodies;*
- (c) *the award of any government contract;*

- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.*

Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor General on his own initiative or as a result of representations made to him, if in his opinion such an investigation is warranted*”.

The Investigation was initiated following upon certain allegations and comments which were made by the Hon. Audley Shaw, Minister of Finance and the Public Service, regarding the alleged transactions, as well as the responses which had been made to those allegations and comments by the former Chairman and Chief Executive Officer of DB&G, and now Opposition Member of Parliament, Mr. Peter Bunting.

The allegations and comments suggested, *inter alia*, that the referenced deals were executed by the former Ministry of Finance and Planning (MOFP) under circumstances which may have been irregular, improper or lacking in transparency and fairness and not in accordance with the relevant provisions of the Contractor General Act and the Government Procurement Procedures and Guidelines.

Section 4 (1) of the Contractor General Act (1983) mandates that Government contracts must be awarded “*impartially and on merit*” and in circumstances which “*do not involve impropriety or irregularity*”.

It must be noted that on 2008 April 23, during a sitting of the House of Representatives, the Hon. Audley Shaw, Minister of Finance and the Public Service addressed the House of Representatives with regard to certain transactions which were entered into between

the GOJ and DB&G. Detailed below are succinct elements of the charges, which were made by the Hon. Audley Shaw, as detailed in the Hansard<sup>1</sup>:

- *“...to compound this matter, receivables from the sale of National Commercial Bank and JOSLIN Jamaica Redevelopment Foundation, instruments were sold under further discounts, government was holding paper from the AIC and from the Jamaica Redevelopment Foundation, government was holding paper that was due from these institutions.*
- *They were sold under further discounts to an entity, which was close to the government under very questionable circumstances.*
- *In addition, other inexplicable but equally reprehensible acts included the sale of assets to other government entities while using financial intermediaries unnecessarily and at great cost to the taxpayers.*
- *... On March 26, 2004...receivables due from AIC for some J\$2.5 billion, was sold by the Ministry of Finance to Dehring, Bunting and Golding Limited...at a 6% discount... with full recourse to the Government and interest assignable at the Treasury Bill rate.*
- *...a fee of 1% for a very low risk transaction was charged by DBG. The total discount plus transaction fee – some would say income earned on this initial phase was \$175 million.*
- *DBG in turn sold 34% or \$852 million to the National Housing Trust and the National Insurance Fund...*
- *The discount that was given there at 3%. That is, NHT and NI [sic] bought the receivables from DBG for 97% of the face value.*

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<sup>1</sup> Hansard of the Honourable House of Representatives. Session held on April 23, 2008.

- *In respect of the NHT... the Agreement for Sale was signed with the Ministry of Finance on the 26<sup>th</sup> day of March 2004... the DBG Agreement with the National Housing Trust was approved on March 15, 2004...*
- *...receivables due from the Jamaica Redevelopment Foundation with a face value of US\$29.6 million, was sold to the DBG at a discount rate of 2.4%, plus an agency fee of 1%. Again, at full recourse to the government.*
- *...these receivables were due for payment by the JRF in July of the same year, only three months later, resulting in a further deprivation of government resources when calculated in Jamaican dollars of \$70 million that the taxpayers were deprived that went because the Minister sold it as a discount three months before the instrument was due to be paid.*
- *...the Ministry of Finance technocrats communicated their concern as to pricing being too generous, the one per cent fee as being excessive; saying that what is the norm is one/quarter of one per cent, and not one per cent, and the lack of competitive bids.*
- *The obvious question to be asked is, since the Government had assets to itself, why did it need an intermediary, costing multi-millions of dollars?"<sup>2</sup>*

Following upon the allegations, which were made by Minister Audley Shaw, several newspaper articles were published in the local print media which alluded to the propriety or impropriety of the alleged transactions which had been entered into between the then MOFP and DB&G.

It must also be noted that on 2008 May 13, Mr. Peter Bunting issued a media release regarding the allegations which had been levied against him, in Parliament, by Minister Audley Shaw.

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<sup>2</sup> Hansard of the Houses of Parliament. Wednesday, 2008 April 23

In the referenced media release of 2008 May 13, and in direct reference to the Hon. Audley Shaw, Mr. Peter Bunting indicated that he “...will show that the Minister misled this Honourable House...”<sup>3</sup>

Further, in his media release of 2008 May 13, Mr. Bunting, in reference to the allegations which were made by Minister Shaw, indicated, *inter alia*, as follows:

*“One of those two examples was a supposed sale by the Government of cash flows owing by the Jamaica Redevelopment Foundation... The fact is that no such transaction ever took place. DB&G did communicate with the Government about the potential benefits of a transaction arising from the Government’s ongoing dealings with the Jamaica Redevelopment Foundation. However, those discussions did not lead to any form of transaction.”*<sup>4</sup>

In regard to another of the transactions, which were cited by Minister Audley Shaw, Mr. Bunting indicated, *inter alia*, that:

*“It was a matter of public record that part of the price at which the Government had sold the National Commercial (NCB) to AIC some time before, included a portion that would be paid over time with interest.*

*As the 2003/4 fiscal year was drawing to a close, it was also well known in financial circles that the Government was facing a significant challenge in meeting its fiscal target. Failure to meet the target would have been damaging to the Jamaican economy, as it would result in expectations of higher public sector borrowings and higher interest rates in the coming year.*

*DB&G conceptualised a potential transaction whereby the Government could sell those future payments from AIC to yield their present value, applying current*

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<sup>3</sup> Statement by Mr. Peter Bunting, MP. Re allegations of sweetheart deals by Audley Shaw, Fin. Minister.

<sup>4</sup> Statement by Mr. Peter Bunting, MP. Re allegations of sweetheart deals by Audley Shaw, Fin. Minister.

*interest rates to determine the price of the sale of those cash flows. The transaction would bring forward substantial revenue for the benefit of the Government's coffers. DB&G approached the Ministry of Finance with the idea, and offered to arrange the transaction and to find investors who were willing to fund it.*

*The Government of Jamaica Handbook of Public Sector Procurement Procedures (May, 2001) of the National Contracts Commission describes itself as "the definitive book on the subject as of 1<sup>st</sup> May, 2001"... The Procedures provide that Sole Source or Direct Contracting may be justified in circumstances such as:*

- (1) when the procuring entity receives an unsolicited proposal it considers meritorious;*
- (2) when there is an unusual and compelling urgency; or*
- (3) where it is otherwise in the public interest.*

*The question of putting the AIC Receivables transaction out to tender did not arise. First of all, it would have been quite unethical for the Government to take DB&G's idea and give other finance houses the benefit of the opportunity to bid on it. Secondly, a key objective of the transaction was to assist the 2003/4 fiscal target to be achieved with resulting benefits to the overall economy... It was a clear case in which the Sole Source or Direct Contracting approach was justified in the public interest...*

*...A 1% fee was negotiated by DB&G for conceptualising and arranging the entire transaction and then successfully placing it in the market with investors, and was fair and reasonable. DB&G also had a continuing obligation as Registrar and Paying Agent for the transaction. It cannot be fairly compared to*

*the fees that the Government pays for routine offerings of debt that do not involve any financial engineering or any continuing administrative role...*

*...The transaction was reviewed by an entire team of Ministry technocrats, and the consensus was in favour of the transaction, which is why it proceeded.”<sup>5</sup>*

According to a media report, which was published on the Radio Jamaica website on 2008 May 15, and which was entitled “*No FINSAC/DB&G deal took place*”, Mr. Peter Bunting was quoted as saying “*I acknowledged that discussions for the sale of receivables to JRF did occur but that the transaction did not take place. The documentation presented by Mr. Shaw presents a short term bridging facility which was facilitated given that the transaction didn’t occur...*”<sup>6</sup>

It must be noted that despite the foregoing assertions of Mr. Bunting, it was reported in an article, which was published in the Jamaica Gleaner newspaper, on 2008 May 22, that during a sitting of the House of Representatives on 2008 May 21, Mr. Bunting “*...retracted statements he made last week accusing Finance and the Public Service Minister Audley Shaw of misleading the House with his claims about a so-called “sweetheart deal”.*”<sup>7</sup>

The referenced article that was entitled “*Bunting recants – Apologises to Shaw*”, and which was published on 2008 May 22 stated, in part, that “*... Bunting said the transaction which occurred was a short-term financing arrangement which showed full repayment of US\$29.6 million by the Ministry of Finance to DB&G within 120 days.*”<sup>8</sup>

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<sup>5</sup> Statement by Peter Bunting MP, re allegation of sweetheart deals by Audley Shaw, Fin. Minister.

<sup>6</sup> Media Article published on the RadioJamaica website. 2008 May 15

<sup>7</sup> Media article published in the Jamaica Gleaner on 2008 May 22 entitled “Bunting recants- Apologises to Shaw”

<sup>8</sup> Media article published in the Jamaica Gleaner on 2008 May 22 entitled “Bunting recants- Apologises to Shaw”



Given the many allegations and iterations of the alleged transactions which had been the subject of much discourse, both in the Houses of Parliament and in the media, the OCG, on 2008 May 22, launched an Investigation into the aforementioned alleged transactions.

The Terms of Reference of the OCG's Investigation into the circumstances surrounding the alleged "*Sweetheart Deals*" involving the GOJ and DB&G, were primarily developed in accordance with those of the mandates of the Contractor General which are stipulated in Section 4 (1) and Section 15 (1) (a) to (f) of the Contractor General Act, 1983.

Additionally, the OCG was guided, *inter alia*, by a recognition of the very important responsibilities which are imposed upon Public Officials and Officers of the MOFP by the Corruption Prevention Act, the Financial Administration and Audit Act and the 2001 Government Procurement Procedures Handbook (GPPH) and other relevant statutes and guidelines.

The OCG was also guided by Section 21 of the Contractor General Act, which mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the appropriate authority.

The Findings of the OCG's Investigation into the circumstances surrounding the alleged "*Sweetheart Deals*", involving the GOJ and DB&G, are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of its Investigation.

## **TERMS OF REFERENCE**

### ***Primary Objectives***

The primary aim of the OCG's Investigation was to determine, *inter alia*, the following:

- (1) Whether there was compliance with the provisions of the 2001 Government Procurement Procedures Handbook (GPPH) and the Contractor General Act (1983) by the former Ministry of Finance and Planning (MOFP) in the engagement of the services of DB&G.

### ***Specific Objectives***

The following specific objectives were identified:

1. Identify the procurement process which was employed by the former MOFP or anyone acting on its behalf in the alleged "*Sweetheart Deals*" transactions which were conducted with DB&G;
2. Determine whether there were any breaches of the Government's procurement procedures on the part of the former MOFP or anyone acting on its behalf, in the execution of any aspect of the transactions which were conducted with DB&G;
3. Determine what attempts, if any, were taken by the former MOFP to ensure that a fair market value was realized for each of the transactions which were conducted with DB&G;
4. Determine whether the process leading up to the award of the alleged "*Sweetheart Deals*" contracts to DB&G was fair, impartial and transparent;

5. Determine whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual or entity which contributed to the award of the alleged “*Sweetheart Deals*” agreement/contracts to DB&G.

## **METHODOLOGY**

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures are developed pursuant to the powers which are conferred upon a Contractor-General by the 1983 Contractor-General Act.

It is instructive to note that Section 17 (1) of the Contractor-General Act empowers a Contractor-General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis)

The OCG’s Investigation into the alleged “*Sweetheart Deals*”, which involved the GOJ, through the then MOFP, and DB&G, was initiated following upon (a) certain allegations and comments which were made by the Hon. Audley Shaw, Minister of Finance and the Public Service, regarding the alleged transactions, as well as (b) the responses which had been made to those allegations and comments by the former Chairman and Chief Executive Officer of DB&G, and now Opposition Member of Parliament, Mr. Peter Bunting.

The Terms of Reference of the OCG’s Investigation into the alleged “*Sweetheart Deals*” were primarily developed in accordance with the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (f) of the Contractor General Act, 1983.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed upon Public Officials and Public Officers by the GPPH, the Public Bodies Management and Accountability Act, the Contractor General Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor-General Act which provides that **“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG Emphasis)

A preliminary set of Requisitions/Questionnaires, which were dated 2008 June 12, was sent by the Contractor General to key representatives of the Ministry of Finance and the Public Service (MOFPS) and Mr. Peter Bunting, the former Chairman and Chief Executive Officer of DB&G.

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was considered to be germane to the Investigation by a Respondent, but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.”*

**Very importantly, the form of written Requisition, which was utilised by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers which are reserved to the Contractor General under the Contractor General Act and in particular, Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, “*Subject as aforesaid, a Contractor-General may summon before him and examine on oath* -

- a. *any person who has made representations to him; or*
- b. *any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

*and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.*” (OCG Emphasis)

Further, **Section 18 (3) of the Contractor-General Act** provides that, “*For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents*”. (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, *“In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.”*

**Section 8 of the Perjury Act** provides, *inter alia*, that, *“Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

*(a) in a voluntary declaration; or ....*

*(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force,*

*shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

The material import of the foregoing is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is that the said evidence is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if any part thereof is materially false, the person who has provided same would have, ***prima facie***, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, ***prima facie***, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting

documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there will be no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor-General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

**Section 29 of the Contractor General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

*(i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*

*(ii) fails to comply with any lawful requirement of a Contractor-General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*



*shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should, wherever possible, submit documentary evidence to substantiate the statements that were made.

Finally, all Respondents were advised, in writing, of their rights under Section 18 (5) of the Contractor General Act. Section 18 (5) of the Act provides that “*No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.*”

Requisitions/Questionnaires were directed by the Contractor General to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of relevant information were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

The named public officials are:

- a. The Hon. Audley Shaw, Minister of Finance and the Public Service;
- b. Ms. Darlene Morrison, the former Acting Financial Secretary, MOFPS;
- c. Mr. Donald Moore, the then Acting Managing Director, National Housing Trust (NHT);

- d. Mrs. Audrey Deer-Williams, Senior Director- Investments, National Insurance Fund (NIF);
  - e. Dr. Wesley Hughes, C.D., J.P., Financial Secretary, MOFPS.
- 2. Follow-up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:
  - a. Mrs. Audrey Deer-Williams, Senior Director- Investments, National Insurance Fund.
- 3. A detailed Requisition was also directed to the following persons:
  - a. Mr. Peter Bunting, the former Chairman and Chief Executive Officer, DB&G;
  - b. Dr. Omar Davies, the former Minister of Finance and Planning.
- 4. A detailed review of the certified statements, the supporting documents and the records which were provided by the Respondents to the OCG's Requisitions, was undertaken.

## **FINDINGS**

### **Allegations which were made by the Hon. Audley Shaw**

Given the extent of the allegations which were made by the Hon. Audley Shaw during his presentation to Parliament, on 2008 April 23, the OCG, by way of a written statutory Requisition, which was dated 2008 June 12, sought to ascertain specific information, clarification and/or documentation, from Minister Audley Shaw, regarding the referenced allegations.

Accordingly, the OCG, in its written Requisition that was addressed to Minister Audley Shaw, asked, *inter alia*, the following verbatim questions:

1. *“What transactions between the Government of Jamaica (GOJ) and Dehring, Bunting and Golding (DB&G) did you classify in your closing Presentation to the House of Representatives on April 23, 2008 as “sweetheart deals”?*
2. *Explain the rationale for classifying the GOJ transactions listed in Question/Requisition “1” above with DB&G as “sweetheart deals.””*

In his sworn statement to the OCG, which was dated 2008 July 17, Minister Audley Shaw posited the following response:

1. *“The two transactions between the Government of Jamaica (GOJ) and Dehring Bunting and Golding Ltd. (DBG) which were referred to in my Closing Budget Presentation are signed Term Sheets of:*
  - a. *Sale of Receivables arising from the sale of shares in National Commercial Bank Jamaica Limited signed on March 26, 2004 (Appendix 1)*

*b. Sale of GOJ receivables with full recourse to the Government of Jamaica signed on March 31, 2005 (Appendix 2)*

*2. What are ‘sweetheart deals’? Investopedia (A Forbes Media Company) describes a ‘sweetheart deal’ as “a merger, a sale or an agreement in which one party in the deal presents the other party with very attractive terms and conditions. The terms are usually so lucrative that it is difficult to justify turning down the offer. In general a sweetheart deal is a transaction that simply can’t be passed up.*

*Wikipedia defines a ‘sweetheart deal’ as an abnormally favourable contractual arrangement. The deals are classified as “sweetheart deals” because (sic)*

*What was favourable about the JRF transaction? Appendix 3 is an Inter-Office Memo that Murna Morgan of the Debt Management Unit to the Financial Secretary, duly signed by both persons on 29 March 2005 that indicates the following concerns:*

- i. The FS was advised that GOJ 2005 Global Bonds were trading at 5.4%. The 2005 Bonds matured approx. 50 days before this Facility. Furthermore, a 10 year offer to GOJ was under 8%. In this regard, 7% was considered high for a 4 month facility and 6% was strongly recommended.*
- ii. GOJ Global Bonds cost approx. 0.75% to execute. The transaction size of the Bonds is significantly larger and the arranger bears all the risks, facilitates buybacks, supports the secondary markets, and sometimes underwrites the transaction. Ms. Morgan recommended 0.75% which she deemed “more than fair compensation for an overpriced facility with little or no risk to DB&G”. The transaction fee was 1%.*

- iii. *There was no competitive bidding. Appendix 4 is an e-mail indicating the importance of this from the Senior Director of the Debt Management Unit the previous year on the AIC Receivables Sale.*
- iv. *There was no risk to DB&G as the sale and assignment of the Receivables was with **full recourse to the GOJ**. The Govt. bore all the risk in the event that the JRF did not pay prior or up to the Payment Date.*
- v. *Appendix 5 is a letter from Devon Rowe to Martin Gooden indicating that of the US\$29.59 million due by JRF, only US\$9.5 million was collected. The GOJ had to source the remaining \$20 million for payment*
- vi. *The Govt. paid twice for the sale of this asset: (1) by selling it at a discount, and (2) by borrowing money from Capital and Credit Merchant Bank to pay back the full principal (as per Appendix 6)*

*What was favourable about the AIC transaction?*

- i. *Appendix 4 is an e-mail stating that the Government normally pays 25bps for fees locally versus the 100bps requested and ultimately paid.*
- ii. *Appendix 4 also states the need for competitive bidding which did not take place*
- iii. *There was no financial engineering involved in this transaction. It's a straightforward sale of receivables. The transaction was considered neither complicated nor novel. The ingenious part of it was convincing the Government to bear all the risks of an asset they have sold.*
- iv. *Appendix 7 is the notes of a meeting held at the Ministry of Finance with Attorney General officials regarding this transaction. Points 3, 5 and 7*

*are expressing Ms. Nicole Lambert's view that the Govt. (the seller) should not have a continuing liability after the sale has occurred."*<sup>9</sup>

The OCG, by way of a written statutory Requisition, which was dated 2008 June 12, also required Mr. Peter Bunting, the former Chairman of the then DB&G, to provide particulars of the allegations which were made by the Hon. Audley Shaw.

Accordingly, the OCG asked Mr. Peter Bunting the following questions:

- 1. "Please provide an Executive Summary listing all agreements, if any, which were entered into between the Government of Jamaica (GOJ) and Dehring, Bunting and Golding Ltd. (DB&G) between January 2002 and December 2005. The Summary should detail:*
  - i. The date of initiation of each agreement;*
  - ii. The date of the signing of all contractual agreements listed;*
  - iii. The name of the entity and/or individual and the title of the individual who initiated each of the listed agreements, the circumstances relating to same as well as the date on which such interactions took place;*
  - iv. The name and title of the GOJ official/officials who negotiated and concluded the agreements;*
  - v. The name and title of the DB&G official/officials who negotiated and concluded the agreements;*
  - vi. The specifics of the contractual obligations for each agreement;*

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<sup>9</sup> Statement by the Hon. Audley Shaw dated 2008 July 17. Response to Question # 2

vii. *Any other particulars pertinent to the agreements which were entered into between the GOJ and DB&G.”*

In his sworn response to the OCG’s Requisition, which was dated 2008 June 25, Mr. Peter Bunting responded as follows:

*“1. I am not in a position to provide an Executive Summary of all agreements entered into between the Government of Jamaica and Dehring Bunting & Golding Limited (DB&G, now called Scotia DBG Investments Limited) between January 2002 and December 2005. I ceased working at DB&G in June 2007, am no longer a director, shareholder or employee of DB&G. Those documents are the confidential property of DB&G, to which I have no legal right of access.*

*I cannot from memory provide such an Executive Summary, as DB&G, being an authorised primary dealer appointed by Bank of Jamaica and licensed dealer in securities, would have been a party to numerous transactions with public sector entities during that period. Like all securities dealers in Jamaica, most of DB&G’s assets were invested in Government of Jamaica securities. In DB&G’s case this amounted to tens of billions of dollars acquired in the course of what I expect would have been hundreds of transactions. Furthermore, most of those transactions would have been executed by DB&G’s Treasury Department in the ordinary course of business.*

*Minister Shaw referred to two transactions in his closing Budget presentation. The details and documentation relating to those transactions may be obtained from the Ministry of Finance and/or DB&G. I have no access to such details or documentation.”<sup>10</sup>*

Further, the OCG in its written statutory Requisition, which was dated 2008 June 12, also required Mr. Peter Bunting to provide responses to the following questions:

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<sup>10</sup> Statement by Mr. Peter Bunting dated June 25, 2008

*“In a statement, dated May 13, 2008, you indicated that, “DB&G did communicate with the Government about the potential benefits of a transaction arising from the Government’s ongoing dealings with the Jamaica Redevelopment Foundation. However, those discussions did not lead to any form of transaction”. Kindly give details of the following:*

- i. The name of the entity and/or individual and the title of the individual who initiated communication in regard to the aforementioned transaction which reportedly did not materialize;*
- ii. Please provide, where possible, documentary evidence of all communication between DB&G, the Government of Jamaica and any third party entity and/or individual regarding the probable transaction;*
- iii. Please provide, where possible, documentary evidence in support of the assertion that “those discussions did not lead to any form of transaction”<sup>11</sup>.*

Mr. Peter Bunting, in his sworn response to the OCG’s Requisition, which was dated 2008 June 25, stated, *inter alia*, as follows:

- i. “My recollection is that DB&G was approached by Mr. Rod Heaven, a Jamaican businessman who represented that he was acting on behalf of an Israeli entity called the Red Sea Group. He advised DB&G that the Red Sea Group had been selected to purchase outright Finsac Limited’s (“Finsac”) residual stake in the collections realised by Jamaica Redevelopment Foundation (JRF) from the portfolio of bad loans that JRF had purchased from Finsac. Mr. Heaven was seeking financing for and assistance in structuring the proposed transaction.*

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<sup>11</sup> OCG Requisition to Mr. Peter Bunting which was dated 2008 June 12



- ii. *I do not have any files or documents relating to the proposed transaction. These may be obtained from the Ministry of Finance/Finsac and/or DB&G.*
- iii. *By definition, it is difficult to provide evidence of something that did not take place. However, you may confirm with Finsac that they have not sold their residual stake in the JRF's collections, and that Finsac still owns and receives its share of those collections.*

*I acknowledged in a subsequent statement to Parliament that DB&G had in fact entered into a different financing transaction with the Ministry of Finance, after the transaction referred to above did not occur. That was a short term (120 day) financing facility, and was not the transaction that I recalled and to which I had thought Minister Shaw had been referring in his closing Budget presentation”<sup>12</sup>*

It is instructive to note that the above referenced alleged transaction with the Jamaica Redevelopment Foundation was not amongst the two (2) transactions which Minister Audley Shaw, in his sworn response to the OCG, had indicated as having referred to in his Closing Budget Presentation of 2008/2009.

Having regard to the foregoing, the OCG's Investigation focused upon the following two (2) transactions between the GOJ and DB&G:

1. The Agreement for the “*Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited*” that was consummated between DB&G and the GOJ and which was signed on 2004 March 26; and
2. The Agreement for the Sale of GOJ receivables with full recourse to the Government of Jamaica that was consummated between the Ministry of Finance and Planning and DB&G and which was signed on 2005 March 31.

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<sup>12</sup> Statement by Mr. Peter Bunting dated June 25, 2008

The contractual agreements which governed the above referenced transactions were provided to the OCG, by Minister Audley Shaw, in support of his responses regarding the verbal allegations which he had made in the Houses of Parliament.

## **Ministry of Finance and the Public Service's account of the transactions**

Having established the nature of the allegations which were made by the Hon. Audley Shaw and, which, based upon the statements of both Minister Shaw and Mr. Peter Bunting, were restricted to two (2) identified contracts, the OCG sought to establish details of the referenced transactions from the MOFPS.

The OCG, in its written Requisition, which was dated 2008 June 12, asked the then Acting Financial Secretary, Ms. Darlene Morrison, the following verbatim questions:

*“When were the services of DB&G contracted by the Ministry of Finance and Planning (MOFP)? What services were DB&G contracted to provide? Please provide an Executive Summary listing all agreements, if any, which were entered into between the Government of Jamaica (GOJ) and Dehring Bunting and Golding Ltd. (DB&G) between January 2002 and May 2008. The summary should detail:*

- (i) The date of initiation of each agreement;*
- (ii) The date of the signing of all contractual agreements listed;*
- (iii) The name of the entity and/or individual and the title of the individual who initiated each of the listed agreements, the circumstances relating to same as well as the date on which such interactions took place;*
- (iv) The name and title of the GOJ official/officials who negotiated and concluded the agreements;*
- (v) The name and title of the DB&G official/officials who negotiated and concluded the agreements;*

- (vi) *The terms and conditions of each of the agreements;*
- (vii) *Any other particulars pertinent to the agreements which were entered into between the Government of Jamaica and the former DB&G.”<sup>13</sup>*

The aforementioned question was designed specifically to ascertain the degree of interaction between the GOJ and DB&G, insofar as it was related to financial transactions between the entities.

In a sworn statement to the OCG, which was dated 2008 July 17, from Ms. Darlene Morrison, the then Acting Financial Secretary, it was stated, *inter alia*, that:

*“As it is not absolutely clear that the request excludes the lending of money to the Government, and since the question refers to all agreements between the Government and DB&G, it is considered prudent to include those agreements for debt financing that were entered into directly between the parties between January 2002 and May 2008. Several agreements were entered into between the parties over the period, and arose either from (i) the Government’s invitation by way of public notices and prospectuses to the market to participate in debt raising activities; (ii) solicited and unsolicited offers from DB&G to lend monies to the Government (this was typically applicable to all other institutional investors); and (iii) registered acknowledgements through the issue of Government’s debt certificates of the purchases by DB&G of Government debt instruments from third parties on the secondary market....*

**....In addition, two (2) agreements were entered into between GOJ and DB&G for the purchase of GOJ receivables: (a) a Securitisation Agreement for US\$29,590,205.00 and (b) a Securitisation Agreement for the cash flows with**

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<sup>13</sup> Requisition to Ms. Darlene Morrison which was dated 2008 June 12. Question #1

*face value of \$2,537,862,112.50 arising from the sale/purchase of Government-held NCB shares.*<sup>14</sup> (OCG Emphasis)

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<sup>14</sup> Statement from the then Acting Financial Secretary which was dated 2008 July 17. Response to Question #1

**Sale of GOJ receivables with full recourse to the Government of Jamaica – 120 Day**  
**Short Term Financing**

The OCG in its written statutory Requisition to the then Acting Financial Secretary, Ms. Darlene Morrison, asked the following question:

*“It is alleged by Mr. Peter Bunting, in a statement to Parliament on Wednesday May 21, that a short-term financing arrangement which showed full repayment of US\$ 29.6 million by the Ministry of Finance to DB&G within 120 days had occurred. Please provide an Executive Summary detailing the nature of the agreement between DB&G and the MOFP in relation to the short-term financing arrangement of US \$29.6 million for 120 days. The summary should detail:*

- a. The date of initiation and execution of the agreement;*
- b. The date of the signing of the contractual agreement;*
- c. The name of the entity and/or individual and the title of the individual who initiated communication in regard to the aforementioned transaction and the circumstances relating to same;*
- d. The name and title of the GOJ official/officials who negotiated and concluded the agreement;*
- e. The name and title of the DB&G official/officials who negotiated and concluded the agreement;*
- f. The rational and purpose of the loan;*

- g. *The particulars of any such arrangement, providing a copy of the signed agreement to substantiate the terms outlined.”<sup>15</sup>*

In her sworn response to the OCG’s Requisition, which was dated 2008 July 17, Ms. Morrison advised that *“Following discussions between the Financial Secretary of Jamaica and Peter Bunting of DB&G, the Financial Secretary (Shirley Tyndall) on behalf of GOJ and Garfield Sinclair and Kim Edwards on behalf of DB&G signed a securitisation agreement dated March 31, 2005 on a best efforts basis.*

*The arrangement was for DB&G to provide the GOJ with funding of US\$29,590,205 on March 31, 2005 representing receivables due to the Government on various FINSAC-related transactions. DB&G would arrange to sell those GOJ receivables to investors.”<sup>16</sup>*

It is instructive to note that the OCG, in its written Requisition that was addressed to Dr. Omar Davies, the former Minister of Finance, which was dated 2010 April 14, posed the following verbatim question:

*“Reference is made to the “Agreement for the Sale of GOJ receivables with full recourse to the Government of Jamaica” (120 Day Short Term Financing Agreement in the sum of US\$29.5 Million) that was consummated between the Ministry of Finance and Planning and DB&G and which was signed on March 31, 2005. Please provide responses to the following questions:*

- (a) Are you aware of the referenced transaction? If yes, please provide an Executive Summary detailing the extent of your personal knowledge and the nature of your involvement, if any, in the referenced transaction. The Executive summary should include:*

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<sup>15</sup> OCG Requisition to then Acting Financial Secretary, Ms. Darlene Morrison. Question # 4

<sup>16</sup> Statement from the then Acting FS. Response to question # 4

- i. *The circumstances under which you became aware of the referenced transaction;*
- ii. *The date on which you became aware of the referenced transaction;*
- iii. *The GOJ's rationale for entering into the referenced transaction;*
- iv. *The nature of your involvement in the referenced transaction, including any approvals given, meetings convened and/or meetings in which you participated;*
- v. *The name of the entity and/or individual(s) and the title(s) of the individual(s) who initiated the negotiations which resulted in the consummation of the agreement, the circumstances relating to same, as well as the date on which such interactions took place;*
- vi. *The name(s) and title(s) of the GOJ official/officials who negotiated and concluded the Agreement;*
- vii. *The name(s) and title(s) of the DB&G official/officials who negotiated and concluded the Agreement.”<sup>17</sup>*

In his sworn response to the OCG's Requisition, which was dated 2010 April 27, Dr. Davies advised the OCG as follows:

*“(a) I am aware of the referenced transaction. The extent of my personal knowledge and the nature of my involvement are set out below. I do not have any documents in relation to this transaction.*

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<sup>17</sup> OCG Requisition to Dr. Omar Davies which was dated 2010 April 14. Question # 2



- (i) *I became aware of the proposed transaction in a discussion with the then Financial Secretary, Hon. Shirley Tyndall.*
- (ii) *I do not recall the exact date on which this discussion took place, but it would have been in the period, late February to early March, 2005.*
- (iii) *The rationale for the GOJ to enter into this transaction was to maximize revenue inflows in order to meet the deficit targets assessed as at March 31, 2005, the end of the Fiscal Year 2004/2005.*
- (iv) *My involvement in the above transaction was limited to the discussion with the then Financial Secretary, to which I made reference in answer 2 (a) (i). I attended no other meetings and gave no approvals. See also, my responses at 1(a) above.*
- (v) *I am not aware as to who initiated the negotiations which resulted in the agreement, or the circumstances in which this was done save for what I have indicated in answers 2 (a) (iii) and (iv).*
- (vi) *I am not certain as to the specific GOJ official(s) who negotiated the agreement but it would have been handled by the Debt Management Unit of the Ministry of Finance.*
- (vii) *I am not aware of the name(s) or title(s) of the DB&G official(s) who negotiated on behalf of that company.”<sup>18</sup>*

Further, with regard to the transaction for short term financing, the then Acting Financial Secretary also indicated that *“The receivables comprised liquidation proceeds of shares*

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<sup>18</sup> Sworn response from Dr. Omar Davies which was dated 2010 April 27. Response to Question # 2

*in the Jamaica Grand Hotel, disposal proceeds of certain other real estate transactions and payments by Jamaica Redevelopment Foundation (JRF) of the Government's stake in the "Bad Debt Portfolio" of FINSAC sold to JRF."*

The Acting Financial Secretary also disclosed, in her sworn statement to the OCG, that the *"GOJ would issue DB&G with a Certificate of Participation to evidence the securitisation and DB&G would sell sub-participations to investors. Investors would purchase the sub-participations from DB&G who would provide GOJ with the proceeds. The investors would be repaid from the flows from the receivables."*

*The sale price would be the face value of the receivables of US\$29.59m less the discount equal to 2.19986% p.a. for 3 months at a rate of 7% i.e. US\$28,939,202.49. GOJ would, on actual receipt of those receivables, repay to DB&G the full amount of US\$29,590,205 by July 29, 2005 for onward payment to investors."*

According to the information which was provided to the OCG, it was revealed that by way of a letter, which was dated 2005 March 30, Mr. Garfield Sinclair, then President and Chief Operating Officer (COO) of the then DB&G, wrote to the then MOFP, to the attention of Ms. Shirley Tyndall, the then Financial Secretary, regarding the ***"Sale of GOJ Receivables with full recourse to the Government of Jamaica"***.

The referenced letter stated that *"Further to recent discussions with our Mr. Peter Bunting and your Shirley Tyndall, Dehring Bunting & Golding Limited is pleased to propose and arrange up to US\$29,590,205.00 in short term securitization financing for the Government of Jamaica (the "Facility") on a best efforts basis."*

*The Terms and Conditions of the Facility are described in the attached Term Sheet.*

*Please sign below to confirm your mandate to us to proceed with the arrangement of this transaction on the terms and conditions set forth in the attached Term Sheet”<sup>19</sup>*

The referenced letter, which was dated 2005 March 30, was signed by Mr. Garfield Sinclair, President and COO and a Ms. Kim Edwards, Assistant Vice President, DB&G and a representative of the then MOFP. Same was signed by representatives of the then MOFP on 2005 March 31.

It is instructive to note that the Term Sheet, which was referenced in the letter of 2005 March 30, defined the ‘Receivables’ as “ *...financial obligations in an aggregate face value of not less than US\$29,590,205.00, being all or part of the amount which the JRF has agreed to pay to GOJ (through Finsac) by way of the purchase by JRF from the GOJ of the GOJ’s residual stake in the “Bad Loan Portfolio” purchased by JRF from Finsac, which financial obligations are the subject - matter of this securitization and are being assigned by the GOJ to the Investors in consideration of the Sale Price*”<sup>20</sup>

According to the referenced Term Sheet, the ‘Transaction’ is defined as “*A securitization of the Receivables (by way of an outright sale and assignment of the Receivables by the Government of Jamaica to the Investors) with full recourse to the Government of Jamaica.*”<sup>21</sup>

It must be noted, in particular, that the purpose of the Transaction was “*To finance the Government of Jamaica’s budgetary requirements.*”<sup>22</sup>

This particular agreement identified DB&G as the ‘Arranger/Selling Agent’ with responsibility for the transaction.

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<sup>19</sup> Letter dated 2005 March 30 from Mr. Garfield Sinclair to Ms. Shirley Tyndall, then Financial Secretary

<sup>20</sup> Term Sheet – Sale of GOJ Receivables with full recourse to the Government of Jamaica

<sup>21</sup> Term Sheet – Sale of GOJ Receivables with full recourse to the Government of Jamaica

<sup>22</sup> Term Sheet – Sale of GOJ Receivables with full recourse to the Government of Jamaica

The ‘Purchasers’, as defined by the referenced Term Sheet, indicated that *“The Sale Price will be funded and paid to the GOJ on a best efforts basis by DB&G, by DB&G selling (as the selling agent of the GOJ and on the GOJ’s behalf) sub-participations in the Receivables (and in the right of recourse to the GOJ) to Investors. DB&G may (but shall not be obliged to) participate as an Investor for its own account.”*<sup>23</sup>

Further, the referenced Term Sheet defined the ‘Arrangement Fee’ as follows:

*“The GOJ shall pay DB&G an arrangement fee of 1.0% of the Face Value, due on payment of the Actual Sales Proceeds to the GOJ and presentation of the corresponding invoice by DB&G”*<sup>24</sup>

It must be noted that by way of an Inter-Office Memo, which was dated 2005 March 29, that emanated from within the Debt Management Unit of the then MOFP, and which was directed to the Financial Secretary, re: *“Comments DB&G Term Sheet for Sale of Receivables”*, the following comments were made:

*“The attached comments on the term sheet for the sale of the receivables have been sent to DB&G.*

*Our major concerns are:*

1. **Discount Rate:-** *7% is high for a 4-month facility, even after we factor in short notice, etc. At the time the term sheet was submitted the GOJ 2005s, which mature in June 2005, were trading at 4.6% (a perceived tax-free rate). Since the US FED increased rates and the noise in the markets, the 2005s have been trading at around 5.4%. We strongly believe that 6% is a generous discount rate. Evenmoreso when we look at a 10-year bullet offer to Air J under 9% and 10-Yr to GOJ under 8%.*

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<sup>23</sup> Term Sheet – Sale of GOJ Receivables with full recourse to the Government of Jamaica

<sup>24</sup> Term Sheet – Sale of GOJ Receivables with full recourse to the Government of Jamaica

2. **Fees:** DB&G is asking for 1.25%, for best efforts and with full recourse of the investors to GOJ. GOJ's global bonds cost in the region of 0.65 – 0.75% to execute and this for significantly larger size transactions and where the arranger bears all the risks, facilitating buybacks, supporting the secondary markets and in some instances, underwriting the transaction. We think 0.75% is more than fair compensation for an overpriced facility with little or no risk to DB&G.

*Since the facility will become public, the concerns extend to the implications for future local and international transactions.”<sup>25</sup>*

It is instructive to note that the OCG was provided with email correspondence between the then MOFP and representatives of DB&G in which the referenced transaction was discussed. In this regard, in a series of emails, which were dated 2005 March 30, Mr. Garfield Sinclair informed Ms. Murna Morgan, MOFP, and Ms. Kim Edwards, DB&G, as follows:

*“Murns,*

*Also meant to add that the rationale for the Discount rate of 7% is simply the fact that the 05's (maturing at about one month earlier than this instrument) are now trading to yield 5.26%, which when grossed up for 25% withholding tax on this instrument would yield 7.01% and if the corporate tax rate of 33.33% were applied, should yield more like 7.85%. As discussed yesterday, the 7% offer is quite fair when taken in this context.....*

*Regards,*

*Garry...*

*...Murna,*

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<sup>25</sup> Memorandum dated 2005 March 29 from DMU to FS.

*Please see response to your edits from Mark (below). The penal rate and Arrangers fee has been left as is in the attached document, but we'd be willing to reduce fee to 1% as difference splitting compromise, in addition to reducing penal rate to 10% from 12%. The Discount rate (7%) however, is not something that can be changed at this last minute. If we're to conclude this deal and fund it by tomorrow, we will have to finalize commitments today, at rates that have already been agreed and approved by investment committee's etc. Please don't make this a deal breaker...*

*...Mark's response:*

*The Receivables must be properly described in the Term Sheet (so that the transaction is not void for uncertainty of subject-matter), and therefore the references to Joslin must remain (unless they are inaccurate, in which event the GOJ needs to tell us immediately what they are really selling, so that the Term Sheet reflects this).*

*The structure (involving the GOJ, through the MOFP, issuing CPs in the Receivables to the investors) cannot be changed at this point.”<sup>26</sup>*

It is also important to note that, on the same date, at approximately 10:53 a.m, Ms. Murna Morgan, MOFP, wrote to Mr. Garfield Sinclair and Kim Edwards of DB&G and advised as follows:

*“Dear All:*

*Let me restate. I made it very clear last week Wednesday, that the MOFP would NOT be involved in the issuance of CPs. If DB&G is the fiscal agent, then DB&G should do what Fiscal Agents do and for which they asked to be rather handsomely paid. These CPs cannot be accommodated in the payment system we operate so separate facilities have had to be created for the issuance of those related to AIC receivables. It consumes the limited resource we have.*

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<sup>26</sup> Email correspondence between representatives of the MOF and DB&G, 2005 March 30.

*DMU has a serious backlog of certificates for investors for instruments issued in the market, the processing of which are tied to payment for commissions. It means financial institutions are not receiving their commissions in a timely manner. We have been reported to the FSC for the delays by 3 investment houses. We have to stay focused.*

*The CPs through the MOFP is not on. I am sure Mark can draft the relevant Fiscal Agent agreement.”<sup>27</sup>*

In response thereto, Mr. Garfield Sinclair, the then DB&G wrote to Ms. Murna Morgan as follows:

*“Murna,*

*This is the deal that we’ve substantially already sold... however, we can salvage it I believe, if you agree to issue at least on CP to DB&G, so we in turn would issue sub-participations to everyone else. This is frankly the only way (I think) this can work at this late stage....*

*Please let me know this quickly.”<sup>28</sup>*

Despite the aforementioned comments from within the then MOFP, the agreement between the then MOFP and DB&G was consummated on 2005 March 31.

Pursuant to the referenced transaction which was consummated on 2005 March 31, the then DB&G wrote to the then MOFP, on 2005 July 28, and provided them with wire transfer instructions for the transfer of US\$29,590,205.00 to DB&G’s Suntrust Account.

It must be noted that by way of a letter, which was dated 2005 September 6, Mr. Devon Rowe, writing on behalf of the then Financial Secretary, wrote to Mr. Martin Gooden,

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<sup>27</sup> Email correspondence between representatives of the MOF and DB&G, 2005 March 30.

<sup>28</sup> Email correspondence between representatives of the MOF and DB&G, 2005 March 30.

FINSAC Limited, regarding the Sale of the GOJ Receivables with Full Recourse to the GOJ.

In the referenced letter it was indicated that:

*“.... in March of this year the Ministry sold to DB&G certain receivables amounting to US\$29,590,205.00 connected to the GOJ’s portion of the proceeds of the FINSAC “bad debt” portfolio sold to Jamaica Redevelopment Foundation Inc. (JRF), and in respect of the disposal of certain real estate and the liquidation of shares in the Jamaica Grande Hotel.*

*The Ministry of Finance and Planning was designated as the agent to receive funds and pass to DB&G. The Sale Agreement provided DB&G with full recourse to the GOJ for the payment.*

*As it turned out there was a delay in the receipt of those proceeds and there was a shortfall by of [sic] US\$20 million. This shortfall was made good through the provision of resources [sic] the Government of Jamaica.*

*It is therefore in this regard that I write to enquire of the progress being made by FINSAC to collect the remaining balance of the sale as it is the strong desire of the Ministry to have the proceeds as soon as possible.”<sup>29</sup>*

In an email from Mr. Jonathan Brown, to a Mr. Dean Johnson at the then MOFP, which was dated 2005 July 29, it was indicated, *inter alia*, that:

*“Following discussions, this confirms that a payment of US20 million becomes due today to DB&G. The payment is to be made in US\$ and the wiring instructions for payment as received from DB&G have been faxed to you.*

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<sup>29</sup>Letter dated 2005 September 5 from Mr. Devon Rowe to Mr. Martin Gooden.



*As you know, in March of this year the Ministry sold to DB&G certain receivables amounting to US\$29,590,205.00 and connected to the GOJ's portion of the proceeds of the FINSAC "bad debt" portfolio sold to Ja. Redevelopment Foundation Inc. (JRF), and in respect of the disposal of certain real estates and the liquidation of shares in the Jamaica Grande Hotel, with the expectation that those proceeds would have been in place by July 29 (today) to be paid to DB&G. The Ministry of Finance and Planning was designated as the agent to receive funds and pass to DB&G. The Sale Agreement provided DB&G with full recourse to the GOJ for the payment.*

*As it turned out there are delays in the receipt of those proceeds and there is a shortfall of US\$20 million. This shortfall is being made good by a loan from apital[sic] & Credit Merchant Bank and the amount has been lodged to the Accountant General's Account # 809373 at BOJ.*

*Please make payment of US\$20 million as requested per faxed instructions. The balance of US\$9,590,205.00 has been paid by FINSAC.*"<sup>30</sup>

It is instructive to note that by way of a letter, which was dated 2008 April 30, from the Bank of Jamaica to the Hon. Audley Shaw, it was indicated that "We refer to the query of even date regarding the credit of USD\$28.9 million to the Consolidated Fund Account – 809373 on 31 March 2005. We confirm that sender of the amount deposited to the Consolidated Fund was Dehring Bunting and Golding Limited."<sup>31</sup>

It is also important to note that on 2005 March 31, the then DB&G billed the then MOFP in the amount of US\$295,902.05, for an "Arrangement Fee for the financing of US\$29,590,205.00 Sale of GOJ Receivables (1.00%)."<sup>32</sup>

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<sup>30</sup> Email dated 2005 July 29 from Jonathan Brown to Dean Johnson.

<sup>31</sup> Letter dated 2008 April 30 from Bank of Jamaica to the Hon. Audley Shaw.

<sup>32</sup> Billing Memorandum dated 2005 March 31 from DB&G

Further, by way of a letter, which was dated 2005 April 21, a Mr. Jonathan Brown, writing on behalf of the then Financial Secretary, informed Ms. Millicent Hughes, Accountant General, *inter alia*, as follows:

*“The proceeds of the sale of approx. US\$28.9 million were credited to the Consolidated Fund on March 31, 2005.*

*As per the agreement, DB&G is to be paid a fee of 1% of the face value of US\$29,590,205.00 which amounts to US\$295,902.50. You are being requested to make payment to DB&G... of the full amount...”<sup>33</sup>*

It is instructive to note that on 2005 December 30, Mr. Martin Gooden, FINSAC wrote to the then Financial Secretary, Mr. Colin Bullock, and indicated, *inter alia*, as follows:

*“The Government, through the Ministry of Finance & Planning had an obligation to pay Dehring Bunting & Golding (DB & G) US\$29,590,205.00 on July 29, 2005 under the captioned agreement. FINSAC paid US\$9,590,205.00 directly to DB & G on July 29, 2005. The Debt Management Department of the Ministry sourced and paid the balance of US\$20,000,000.00 to DB & G.*

*On December 29, 2005 FINSAC paid US\$5,000,000.00 into the Consolidated Fund (please see bank instruction attached). Mrs. Natalie Haynes of Bank of Jamaica confirmed receipt of the funds. As soon as FINSAC collects the other US\$15,000,000.00 we will forward same to the Ministry.”<sup>34</sup>*

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<sup>33</sup> Letter dated 2005 April 21 from Mr. Jonathan Brown to Ms. Millicent Hughes, Accountant General.

<sup>34</sup> Letter dated 2005 December 30 from Mr. Martin Gooden to Mr. Colin Bullock, Re: Sale of GOJ Receivable with Full Recourse to Government of Jamaica.

**Obligations under the contract in the context of the allegations which were made by the Hon. Audley Shaw**

It must be noted that in the matter of the Sale of the GOJ Receivables, Minister Shaw, in his sworn response to the OCG, indicated, *inter alia*, that the transaction was favourable because:

1. *“There was no risk to DB&G as the sale and assignment of the Receivables was with **full recourse to the GOJ**. The Govt. bore all the risk in the event that the JRF did not pay prior or up to Payment Date.*
2. *...a letter from Devon Rowe to Martin Gooden indicating that of the US\$29.59 million due by JRF, only US\$9.5 million was collected. The GOJ had to source the remaining \$20 million for payment.*
3. *The Govt. paid twice for the sale of this asset: (1) by selling it at a discount, and (2) by borrowing money from Capital and Credit Merchant Bank to pay back the full principal.”<sup>35</sup>*

The abovementioned formed the basis of the allegations, which were levied by Minister Audley Shaw, regarding the cost of the transaction to the GOJ.

It is, however, important to note that the Term Sheet, which governed the Short Term Bridging Facility, had expressly determined the nature and requirements of the Transaction which was consummated between the GOJ and DB&G.

It is also important to note that the ‘Transaction’ as contained in the referenced Term Sheet is defined as “*A securitization of the Receivables (by way of an outright sale and assignment of the Receivables by the Government of Jamaica to the Investors) with full recourse to the Government of Jamaica.*”

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<sup>35</sup> Sworn Response from Mr. Audley Shaw which was dated 2008 July 17

Consequently, and in keeping with the description of the ‘Transaction’, as contained in the referenced Term Sheet, it must be noted that on 2005 March 31, the bank account of the Accountant General was credited in the amount of US\$ 28,939,220.49.

In this regard, by way of a letter which was dated 2005 April 4, Ms. Hopelyn Harris, Bank of Jamaica, informed the Accountant General’s Department as follows:

*“This is to advise for value 31 March 2005 your account was credited with US\$28 939 220.49 by order of Dehring Bunting and Golding representing proceeds from sale of receivables.”*<sup>36</sup>

As it regards the foregoing, the OCG found, *inter alia*, the following:

1. The sum of US\$28.9 million was deposited in the Consolidated Fund by DB&G;
2. In an effort to repay the sum, which was forwarded by DB&G, the GOJ borrowed US\$20 million from Capital and Credit Merchant Bank;
3. The loan from Capital and Credit Merchant Bank was necessitated by the fact that the GOJ had not yet disposed of certain assets in order to repay its debt to DB&G;
4. Based upon the terms of the contract, DB&G had apparently fulfilled its obligations to the GOJ in providing the proceeds of the sale of the Receivables.
5. DB&G was paid an arranger’s fee of US\$295,902.05;
6. It is instructive to note that a technocrat in the then MOFP thought that a more favourable fee would have been 0.75% as the facility was “*over-priced*”;

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<sup>36</sup> Letter dated 2005 April 4 from the Bank of Jamaica to the Accountant General’s Department.

7. DB&G bore no risk in the referenced transaction as it was with full recourse to the GOJ;
8. The 'Agreed Discount' that was given to the DB&G was equal to 2.19986% and was *"calculated from day to day (on a 365-day year basis) on the Face Value for the period from ( and including) – (i) the date(s) of payment to GOJ of the Sale Price (or each part thereof, if paid in more than one tranche), until (but excluding) (ii) the Payment Date, at a discount rate of 7%."*<sup>37</sup>

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<sup>37</sup> The Agreed Discount as defined by the Term Sheet which was dated 2005 March 30

### **Genesis of the Agreement for the Sale of the NCB Shares to AIC Ltd.**

Further, the OCG also required the then Acting Financial Secretary to “...provide an *Executive Summary of the agreement for sale of the National Commercial Bank (NCB) Shares to AIC Ltd. The summary should detail:*

- (i) *The date of initiation of the agreement;*
- (ii) *The date of the signing of the contractual agreement;*
- (iii) *The name of the entity and/or individual and the title of the individual who initiated the agreement, the circumstances relating to same as well as the date on which such interaction took place;*
- (iv) *The name and title of the GOJ official/officials who negotiated and concluded the agreement;*
- (v) *The name and title of the AIC official/officials who negotiated and concluded the agreement;*
- (vi) *The terms and conditions of the agreement;*
- (vii) *Details of any conditions of credit which were extended to AIC Ltd by the GOJ;*
- (viii) *Any other particulars pertinent to the agreement which was entered into between the GOJ and AIC Ltd.”<sup>38</sup>*

According to the then Acting Financial Secretary, in her sworn statement to the OCG, which was dated 2008 July 17:

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<sup>38</sup> Requisition to Ms. Darlene Morrison dated 2008 June 12. Question #2

*“Information on the date of initiation of the agreement is not available. The agreement for sale is dated January 11, 2002. With respect to the name of the entity and/or individual and the title of the individual who initiated the agreement, the circumstances relating to same as well as the date on which such interaction took place there is no available document with a specific response to this question. However, a Cabinet Decision was made on December 20, 2001, regarding the sale of FINSAC’s 75% shareholdings in NCB to AIC. The Cabinet Submission mentioned that HSBC Investment Bank plc (“HSBC”) was appointed financial adviser to FINSAC in relation to the sale of FINSAC’s shareholdings in NCB. Its role was to advise FINSAC on all aspects of the divestment process of NCB, and to scout for buyers for FINSAC’s stake in the bank internationally.)*

*The GOJ official who signed the Sale Agreement was Mr. Patrick Hylton and Mr. Michael Lee Chin signed on behalf of AIC.*

*The main terms and conditions of the Agreement are as follows:*

- (a) The total number of NCB shares sold and transferred under the Agreement was 1,480,057,698 ordinary shares of \$1.00 each, which comprises 75% of NCB’s issued share capital;*
- (b) The purchase price is J\$6,034M, with J\$2,650M payable on Completion and the remaining balance of \$3,384M payable in eight (8) equal annual instalments of J\$423M commencing on March 1, 2003 and on each anniversary thereafter, ending on March 1, 2010;*
- (c) Interest will accrue on the balance of the purchase price from the date of Completion until payment in full and payable in March and September each year.*

*(d) The Agreement makes allowance for a charge to be given by the Purchaser over 840,353,672 of the NCB shares acquired to secure the balance of Purchase Price plus three months interest due to the GOJ from time to time;*

*(e) These shares are released proportionately as and when principal payments are made annually so that the remaining shares being held covers the remaining Purchase Price;...”<sup>39</sup>*

According to the then Acting Financial Secretary, “...the Agreement makes allowance for a charge to be provided by the Purchaser over some of the shares to secure the balance of the Purchase Price. It was later agreed that the MOF would hold LRS owned by NCB/AIC as security for the unpaid balance of the purchase price and interest, instead of a charge over shares. The MOF reduces the amount of LRS held on an annual basis after the instalments are received.”<sup>40</sup>

The aforementioned information provides the basis upon which the GOJ was in possession of the AIC Receivables and, consequently, the subsequent contract with DB&G for the Sale of the AIC Receivables which arose from the sale of the NCB Shares.

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<sup>39</sup> Statement from the then Acting Financial Secretary. Response to Question # 2

<sup>40</sup> Statement from the then Acting Financial Secretary. Response to Question # 2



**Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited (NCB)**

The second contract, which is under consideration, is the “*Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited*”.

By way of a letter, which was dated 2004 January 22, a proposal from DB&G was submitted to the then Minister of Finance, Dr. Omar Davies, regarding “*Cash flows arising from the sale of shares in National Commercial Bank Jamaica Limited – J\$2,537,862,112.50 Securitisation Facility.*”

It is instructive to note that in a Memorandum, which was dated 2004 January 26, Dr. Omar Davies wrote to the then Financial Secretary and indicated as follows:

*“Please find attached a copy of a proposal sent to me by DB&G. Essentially it would provide us with cash up front for the amounts owed to us by AIC. If you are interested please follow up with Peter Bunting.”<sup>41</sup>*

Having regard to the aforementioned, it is instructive to note that the OCG, in the conduct of its Investigation issued a written statutory Requisition to Dr. Omar Davies, which was dated 2010 April 14. In the referenced Requisition, the OCG posed the following verbatim question:

1. “Reference is made to the “Agreement for the Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited” that was consummated between Dehring, Bunting and Golding Ltd. (DB&G) and the Government of Jamaica (GOJ) and which was signed on March 26, 2004. Please provide responses to the following questions:

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<sup>41</sup> Memorandum from Dr. Omar Davies to the then Financial Secretary, Ms. Shirley Tyndall

*(a) Are you aware of the referenced transaction? If yes, please provide an Executive Summary detailing the extent of your personal knowledge and the nature of your involvement, if any, in the referenced transaction. The Executive summary should include:*

- i. The circumstances under which you became aware of the referenced transaction;*
- ii. The date on which you became aware of the referenced transaction;*
- iii. The GOJ's rationale for entering into the referenced transaction;*
- iv. The nature of your involvement in the referenced transaction, including any approvals given, meetings convened and/or meetings in which you participated;*
- v. The name of the entity and/or individual(s) and the title(s) of the individual(s) who initiated the negotiations which resulted in the consummation of the agreement, the circumstances relating to same, as well as the date on which such interactions took place;*
- vi. The name and title of the GOJ official/officials who negotiated and concluded the Agreement;*
- vii. The name and title of the DB&G official/officials who negotiated and concluded the Agreement.*

*(b) If your response to question 1(a) above is 'No', please indicate the basis upon which the referenced contract could have been consummated without*

*your knowledge and/or approval, in your capacity as the then Minister of Finance and Planning.*

*Where possible, please provide documentary evidence in support of your response and any assertions made.”<sup>42</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2010 April 27, Dr. Omar Davies indicated, *inter alia*, as follows:

*“I am answering these questions without access to the relevant files. My responses therefore represent my best recollection.*

1. (a) *I am aware of the referenced transaction. The extent of my personal knowledge and the nature of my involvement are set out below. I do not have any documents in relation to this transaction.*

(i) *In early 2004, Mr Peter Bunting of DB&G, verbally raised with me a proposal whereby the GOJ could realize cash for some receivables due from the firm AIC. I asked him to formally write to me. This he subsequently did.*

(ii) *I do not recall the exact date on which this discussion took place or when I received Mr Bunting’s letter, but it would have been in the period late January to early February 2004.*

(iii) *The rationale for the GOJ to enter into this transaction was to maximize revenue inflows in order to meet the deficit targets assessed as at March 31, 2004, the end of the Fiscal Year 2003/2004.*

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<sup>42</sup> Requisition to Dr. Omar Davies which was dated April 14, 2010. Question # 1

- (iv) *Following my discussion with Mr Bunting and receipt of his letter outlining the proposal, I sent a memo to the then Financial Secretary, together with the proposal, asking her to review it and follow up if she considered it of interest. Having sent the proposal to the Financial Secretary, I took no further part in the analysis, or approval, of the transaction.*
- (v) *As indicated in my answer to I(a) (i), the proposal was initiated by Mr Peter Bunting of DB&G. Following my initial conversation with him, I have no knowledge of the subsequent interactions on the matter.*
- (vi) *I am not certain as to the specific GOJ official(s) who negotiated the agreement but it would have been handled by the Debt Management Unit of the Ministry of Finance.*
- (vii) *I am not aware of the name(s) or title(s) of the DB&G official(s) who negotiated on behalf of that company.”<sup>43</sup>*

Documentary information which was provided to the OCG, by the Financial Secretary, Dr. Wesley Hughes, revealed that on 2004 February 16, a proposal which was entitled “*Cash flows arising from the sale of shares in National Commercial Bank Jamaica Limited – J\$2,537,862,112.50 Securitisation Facility*” was in fact submitted to the attention of the then Financial Secretary, Ms. Shirley Tyndall, MOF.

The referenced proposal indicated, *inter alia*, that “*Further to our recent discussions, we are pleased to present our proposal to arrange the captioned Facility on your behalf as outlined below:*

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<sup>43</sup> Response from Dr. Omar Davies. Question # 1

### The Transaction

*A securitisation by The Government of Jamaica (GOJ), by way of an assignment with full recourse, of the post-March 1, 2004 payment obligations owing by AIC (Barbados) Limited in respect of the outstanding Purchase Price under the Agreement For Sale And Purchase of Shares dated 11<sup>th</sup> day of January, 2002 made between FINSAC LIMITED, ATRIUM HOLDINGS LIMITED, ATRIUM XS HOLDINGS LIMITED AND AIC LIMITED... concerning the sale of stock units in National Commercial Bank Jamaica Limited to AIC Limited...”<sup>44</sup>*

It must be noted that, by way of a letter, which was dated 2004 February 16, the then Financial Secretary, Ms. Shirley Tyndall, wrote to the then Solicitor General, Mr. Michael Hylton, **“Re: Proposal from DB&G Limited to arrange a Securitisation Facility”**.

In the referenced letter, the then Financial Secretary indicated, *inter alia*, as follows:

*“This Ministry has received a proposal from Dehring, Bunting and Golding Limited (DB&G) to purchase from the Government of Jamaica/FINSAC securitised future cash flows, which represent outstanding payments from AIC Limited for the sale of stock units in National Commercial Bank Limited in January 2002.*

*We have reviewed the proposal and would like to formalize an agreement in respect of the proposed transaction, as a matter of urgency. The cash received from DB&G upfront would assist in reducing the fiscal deficit by the end of the current financial year.*

*We are hereby requesting your Department’s assistance with the preparation of an appropriate agreement. In this connection, kindly contact Mr. Devon Rowe/Miss Murna Morgan of this Ministry. Your urgent attention would be greatly appreciated.”<sup>45</sup>*

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<sup>44</sup> Proposal from DB&G dated 2004 February 16 to the Ministry of Finance and Planning.

<sup>45</sup> Letter from the MOF to the Solicitor General dated 2004 February 16

It is instructive to note that on 2004 February 17, the Attorney General's Chambers wrote to the then MOFP and requested that the details of proposal, which was submitted by DB&G, be forwarded to the Attorney General's Chambers due to the fact that the *"...Financial Secretary asked that we assist in the preparation of the appropriate agreement."*<sup>46</sup>

By way of a written Memorandum, which was dated 2004 February 18, the then Deputy Financial Secretary, Mr. Devon Rowe, informed the then Senior Director, Debt Management Unit, Ms. Murna Morgan, as follows:

*"I write further to our conversation (Rowe/Morgan) of February 16, 2004 with regards to matter at caption.*

*As you know a proposal was presented by DB&G to purchase the cash flows arising from the sale of shares in National Commercial Bank related to the outstanding purchase price under the Agreement for sale and purchase of shares between FINSAC and AIC. The proposal is attached.*

*The Financial Secretary has instructed that Senior Director, DMU, should liaise with the Attorney General's Department to conclude the documentation related to the transaction. The rate agreed by the Financial Secretary is Treasury bill + 2%. This has been agreed as it was considered that the transaction was "unusual" and would therefore require much clarification for the funds to be raised. In addition, HFS has indicated that the interest differential to be paid on the bond should be the subject of a loan agreement between GOJ and DB&G.*

*The nature of the transaction being the sale of the cash flow, a receivable, would be brought into the Government coffers as Capital Revenue. DFS (PXPC) has indicated concurrence in the treatment.*

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<sup>46</sup> Letter from the Attorney General's Chambers to the MOF dated 2004 February 17

*There are however, a few issues that should be clarified:*

- 1. These cash flows are not free as the terms and sale agreement they have to be used to redeem NCB held LRS. Does this transaction in its present form breach those provisions?*
- 2. Is there a legal basis for the issue of a Certificate of Participation or will some other mechanism be utilized?*

*HFS is desirous that this transaction be completed speedily so that the flows may be received in fiscal year 2003/04.”<sup>47</sup>*

In a letter which was dated 2004 February 20, which was written on behalf of the then Financial Secretary and which was addressed to Mr. Peter Bunting, it was indicated, *inter alia*, as follows:

*“Further to your proposal with regard to the matter at caption and our subsequent meeting of Friday 13<sup>th</sup> instant, the Ministry of Finance and Planning agrees to proceed with the sale of the receivables as outlined and agreed in our discussions, subject to the advise of our legal representatives.*

*Following a meeting with our attorneys on Monday February 23, 2004 instructions will be issued for a meeting with your legal team so that a firm agreement may be prepared regarding the sale of the AIC receivables. We expect to receive full and complete payment arising from the finalized agreement before the end of the 2003/2004 fiscal year ending March 31, 2004.”<sup>48</sup>*

It is important to note that by way of a letter, which was dated 2004 March 5, Mr. Michael Lee-Chin wrote to the then Financial Secretary regarding the “SALE OF

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<sup>47</sup> Memorandum from DFS to Ms. Murna Morgan- Senior Director DMU.

<sup>48</sup> Letter from the MOF to Mr. Peter Bunting dated 2004 February 20

*RIGHTS TO THE BALANCE PURCHASE PRICE (“THE RIGHTS”) TO DEHRING, BUNTING AND GOLDING (DB&G)”*.

In this regard, the letter from Mr. Lee-Chin indicated, *inter alia*, that:

*“We herby consent to the sale by the Government of Jamaica of the Rights.*

*While we are most willing to also consent to the Government providing DBG with relevant information, we are concerned about any information on either AIC (Barbados) Inc. or AIC Limited that we have provided to you being divulged.”*<sup>49</sup>

Subsequently, a document which was dated 2004 March 26 and which was entitled **“Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited”** that was addressed to Ms. Shirley Tyndall, the then Financial Secretary, indicated, *inter alia*, as follows:

*“Further to our recent discussions, we are pleased to present the agreed terms and conditions of our engagement to arrange the captioned transaction on behalf of the Government of Jamaica, as outlined below. We understand that, in keeping with the AIC Agreement, AIC Ltd. has consented to the sale of the Receivables by GOJ in the manner contemplated herein.”*<sup>50</sup>

Detailed below are the particulars, *inter alia*, of the referenced document.

1. **“The Transaction**

*The transaction shall be a securitisation of the Receivables by GOJ to investors, such securitisation being by way of an assignment with full recourse to GOJ.*

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<sup>49</sup> Letter from Mr. Michael Lee Chin to the Financial Secretary dated March 5, 2004

<sup>50</sup> Document entitled Sale of receivables arising from the sale of shares in National Commercial Bank.



2. **Receivables being securitised**

*The Receivables being securitised shall comprise:*

- i. *The six (6) principal instalments (being amounts on account of the Purchase Price under the AIC Agreement) each in the sum of J\$422,977,018.75 (totalling J\$2,537,862,112.50) comprising the outstanding Purchase Price, falling due under the AIC Agreement on the Principal Due Dates specified below, and*
- ii. *So much of the interest payable by AIC on the outstanding Purchase Price owing by AIC under the AIC Agreement as shall be equal to the Participation Rate of Interest, such interest falling due under the AIC Agreement on the Interest Due Dates specified below.”<sup>51</sup>*

3. **Arranger**

*Dehring Bunting & Golding Limited (“DB&G” or “the Arranger”) will, on a best efforts basis during the period from the date hereof until March 31, 2004, arrange the sale of the Receivables to investors (such sales to be evidenced by the Certificates of Participation issued by GOJ to participating investors, in consideration of funds received by GOJ).*

4. **Nature of DB&G’s commitment**

*DB&G shall use its best efforts, during the period from the date hereof until March 31, 2004, to raise the funding from investors to purchase the securitised Receivables from GOJ, either in a single tranche or in more than one tranche, depending on market conditions.*

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<sup>51</sup> Document entitled Sale of Receivables arising from the sale of shares in National Commercial Bank.

5. **Instruments**

*...There may be several Certificates of Participation (in such denominations as the Arranger may require) corresponding to each principal instalment, but – (i) the aggregate of the participations in any principal payment shall not exceed the amount due in respect of such principal instalment under the AIC Agreement, and (ii) no single participation shall be for an amount less than J\$10,000,000.00”<sup>52</sup>*

6. **Securitisation price**

*“The total purchase price payable to the GOJ for the Receivables (principal and interest) shall be the equivalent of 94.00% of the principal face value of the principal payments purchased by investors.*

*In addition, the GOJ will be paid an amount equal to the interest accrued under the AIC Agreement from March 1, 2004 to the settlement date of each tranche of Certificates of Participation purchased.*

**To the extent that DB&G is able to place the Receivables with investors in the market at prices higher than J\$0.94 per \$1.00 of principal, the amounts paid by investors in excess of J\$0.94 per \$1.00 of principal shall not be deemed to comprise part of the sale proceeds for the securities Receivables and shall be retained by DB&G for its own account.”<sup>53</sup>(OCG Emphasis)**

7. **Full recourse to GOJ**

*The sale of the Receivables is with full recourse to GOJ. Accordingly, in the event that any amount comprising any part of the Receivables is not paid by AIC to GOJ on its Due Date, GOJ shall be liable to pay the unpaid amount to the Paying*

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<sup>52</sup> Document entitled Sale of Receivables arising from the sale of shares in National Commercial Bank

<sup>53</sup> Document entitled Sale of Receivables arising from the sale of shares in National Commercial Bank

*Agent (on behalf of the holder(s) of the Certificates of Participation entitled thereto).*

8. **Arranger Fee**

*The GOJ shall pay DB&G an arrangement fee of One per cent (1%) of the securitisation proceeds raised under this Facility, payable by the GOJ on the date that the sale proceeds of the securitised Receivables (or each tranche thereof) are paid over to the GOJ. The arrangement fee is payable by GOJ to DB&G on presentation of the corresponding invoice by DB&G.”<sup>54</sup>*

The OCG has, therefore, found that DB&G could, as it deemed fit, engage potential investors for the Sale of the NCB Receivables. Further, the terms of the agreement indicated that the GOJ, was both fully aware of, and agreed to, DB&G being able to sell the referenced receivables in the market above the securitisation price of \$0.94 per \$1.00 for which it had originally purchased the Receivables from the GOJ.

It also important to note that in an email which was dated 2004 March 1, from Ms. Murna Morgan, MOFPS, to Nicole Lambert, Devon Rowe and several other officers of the then MOFPS, it was indicated as follows:

*“Ladies & Gentlemen*

*You will recall that at the meeting with DBnG last week I’d ask for the price DBnG would be prepared to offer for the receivable if the principal **and** interest flows were bought and paid for by the investors (as against only the principal). They have indicated a price of \$94.58/\$100 as against a price for principal only of \$99.25/\$100. I spoke with the FS on the pricing and she’s okay with it. With this kind of structure there would be no “interest liability” just a clean sale. The difference in gross receipts would be approx. \$112M.*

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<sup>54</sup> Document entitled Sale of Receivables arising from the sale of shares in National Commercial Bank

Murna”<sup>55</sup>

It is instructive to note that by way of an email, which was dated 2004 March 4, from Mr. Mark Walters, DB&G, to Ms. Murna Morgan, MOFP, the basis of DB&G’s arrival of the price of \$0.94 per \$1.00 of the receivables was detailed.

The calculations included an analysis of the projected Treasury Bill Rates and a present value analysis of the Principal Flows over a six (6) year period.

It must be noted that on 2004 March 5, Ms. Murna Morgan emailed the following persons ‘Dylan Coke’, ‘Dian Black’, ‘Johnathan Brown’, ‘Devon Rowe’, ‘Nicole Lambert’ and ‘Robert Martin’. In the referenced email Ms. Morgan indicated as follows:

*“Please see attached from DBnG [sic] on the pricing of the AIC receivables. To assumption [sic] as to the path of the TBill rate over the next 10 years doesn’t show confidence in the GOJ’s improving economy story at all. DBnG [sic] charges the GOJ 1% for “arranging” the facility (and in case this comes up again, under dire circumstances we pay 25bps for fees locally. If the transaction is deemed complicated – which this is neither is it novel, then that is given consideration). **Again, it reinforces the need for competitive bidding**”<sup>56</sup> (OCG Emphasis)*

Prior to the date of the aforementioned email, it must be noted that a Meeting was convened at the MOFP on 2004 February 23, at which time the transaction with DB&G was considered.

According to the Notes of the Meeting, the following persons were in attendance:

- I. Devon Rowe - MOFP
- II. Johnathan Brown - MOFP

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<sup>55</sup> Email from Ms. Murna Morgan, which was dated 2004 March 1, Re: Securitization Facility.

<sup>56</sup> Email from Murna Morgan entitled FW: Murns, this is how we arrived at the price.”

- III. Robert Martin - MOFP
- IV. Dian Black - MOFP
- V. Nicole Lambert - Attorney General's Chambers
- VI. Dylan Coke - Attorney General's Chambers

The referenced Notes of the Meeting which was held on 2004 February 23 indicated, *inter alia*, as follows:

1. *"Mr. Rowe informed all present that the FS had given the go-ahead for the securitised transaction, subject to the attorneys finalizing the structure of the transaction.*
2. *...Mr. Rowe confirmed that the aim of the Ministry of Finance and Planning (MOFP) is for the amounts received by the GOJ under the transaction, to be reflected in the Government's records as revenue to improve the fiscal situation. He also said that the transaction would need to be completed and the funds received by March 31, 2004.*
3. *Ms Lambert stated that in a securitised transaction, the GOJ would upon receipt of the sale proceeds from the purchaser have no further obligation to pay money to anyone. She noted that DB&G's proposal contemplated the GOJ having received the sale proceeds, being also liable to make payments to the investors. She said that ought not to be the case and that if these investors had loaned money to DB&G to enable it to buy the receivables, then they should be looking to DB&G and not the GOJ for repayment of the money loaned by them.*
4. *Mr. Rowe said that he suspects that DB&G wants to have the GOJ in the picture as far as the investors are concerned, to increase the investors' level of "comfort" as regards the repayment of the loan. He said that the investors may not want to have to look to DB&G for repayment of the money loaned by them to cover the purchase price of the receivables.*

5. *Ms. Lambert indicated that upon the sale of the assets to DB&G there would be no basis upon which the GOJ should still be holding the Charge over the shares that was given by AIC as security. This security should properly be transferred to DB&G (the new owner of the receivables), who could then enter into an agreement with the investors whereby it agrees to hold the NCB shares that are the subject of the Charge, on behalf of the investors. The effect of the Charge over the shares is that the chargee is entitled to sell the NCB shares that are the subject of the charge if AIC fails to pay the sums due under the share sale agreement. Ms Lambert indicated that the assignment by the GOJ of the Charge over the shares to DB&G, should be sufficient security for the investors.*
6. *Mr. Brown noted that the interest payable by AIC under the NCB share sale agreement was capped at 15% but that the interest to be paid to the investors under the DB&G proposal was based on t-bill rates plus 2%. The effect of this he said, is that there could be a shortfall in the amounts received by the Purchaser from AIC and the amounts to be paid by the purchaser to the investors (e.g. if t-bill rates moved to rate in excess of 15%). He mentioned that the GOJ had agreed to pay this difference. He also noted that under the NCB share sale agreement the GOJ had agreed to use the amounts paid by AIC to redeem certain LRS' held by NCB.*
7. *Ms. Lambert again emphasized that in a securitised transaction the seller of the asset would not have a continuing liability to pay a person sums other than expenses or other costs incidental to the sale, which would properly be factored in either the purchase price or the net proceeds of sale. She suggested that any such additional liability by the GOJ to pay this difference in the interest rates, would at best have to be treated as an expense of the transaction and preferably deducted from the sale proceeds prior to payment of the net proceeds of sale to the GOJ.*

8. *Mr. Brown expressed the view that the difference in interest rates, could not be treated as an upfront expense as there would be uncertainty in ascertaining treasury bill rates during the period that AIC was liable to pay interest.*
9. *Mr. Rowe queried whether or not the differential interest rate to be borne by the GOJ could be treated as an expense of the sale payable over a specified period after the completion of the sale. Ms. Lambert is to research this.*
10. *It was queried whether or not we would need to secure the consent of AIC to the transaction and Ms. Lambert expressed the view that this was likely to be necessary.*
11. *Ms Lambert noted that it was important for the MOFP to relay to DB&G the importance/necessity of the transaction to be structured as a sale of assets. Mr. Rowe suggested that we meet with DB&G on Thursday of this week for this purpose.*
12. *He also noted that although he was present at the meeting with DB&G, Ms Murna Morgan would be the person from the MOFP spearheading this transaction.”<sup>57</sup>*

It is instructive to note that subsequent to this meeting and the email from Ms. Murna Morgan, which was dated 2004 March 5, regarding the price at which DB&G bought the Receivables, the transaction was executed between DB&G and the MOFP on **2004 March 26.**

However, the OCG has seen evidence that on 2004 March 11, instructions were issued to DB&G advising the company of the account to which the proceeds of the sale was to be lodged. Detailed below are the full particulars of correspondence from the MOFP to the DB&G, on the captioned matter.

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<sup>57</sup> Notes of a Meeting held at the Ministry of Finance and Planning on February 23, 2004.

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MINISTRY OF FINANCE AND PLANNING  
30 NATIONAL HEROES CIRCLE  
KINGSTON 4  
JAMAICA

March 11, 2004

ANY REPLY OR SUBSEQUENT REFERENCE  
SHOULD BE ADDRESSED TO THE  
FINANCIAL SECRETARY AND THE  
FOLLOWING REFERENCE NUMBER  
QUOTED:-

TELEPHONE NO. 922-8600-16  
Website: www.mof.gov.jm

Mr. Garfield Sinclair  
Chief Operating Officer  
Dehring Bunting & Golding Limited  
7 Holborn Road  
Kingston 10

Dear Mr. Sinclair:

**Re: Proceed from the sale of receivables arising from the sale of shares in National Commercial Jamaica Limited**

Further to the agreement dated March 11, 2004, between Dehring, Bunting & Golding Limited and the Government of Jamaica, acting through the Ministry of Finance & Planning, please be advised that the proceeds of J\$2,385,590,385.75 from the sale of shares in National Commercial Bank Jamaica Limited is to be credited as follows:

Accountant General for Consolidated Fund  
Bank of Nova Scotia, Scotia Centre  
Account No. 1886-11.

Sincerely,

  
Murna Morgan  
For Financial Secretary

*Office of the Contractor General*  
1st Floor, PIOJ Building  
16 Oxford Road  
P.O. Box 540  
Kingston 5, Jamaica W.I.

Cc: Mr. L. Dias  
Accountant General

It is important to note that a Facsimile Sheet which was attached to the referenced letter, and which was addressed to a "Mr. L. Dias, Accountant General" indicated as follows:

*"Please see copy of payment instructions sent to DBnG Ltd for \$2.386B in proceeds from the sale of GOJ shares in NCB. DBnG has advised that these funds will flow over the two weeks beginning today (11/3)*

*Murna"*<sup>58</sup>

Subsequent to same, the OCG has seen evidence that on 2004 March 16, DB&G was already crediting the consolidated Fund with proceeds from the proposed transaction with

<sup>58</sup> Facsimile Cover Sheet from Ms. Murna Morgan to Mr. L. Dias, Accountant General.



Barbara  
7 Holborn Ro



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D.R.#2413

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**Re: GOJ receivables arising from the sale of NCB shares to AIC**

This payment, inclusive of JA\$2,226,816.96 in accrued interest, represents a purchase price of JA\$292,773,183.04 for a face value of \$311,460,833.02, in accordance with our agreement as Arrangers of the captioned transaction on behalf of investors in this security.

Kindly acknowledge the foregoing by signing and returning a copy of this letter by fax to 960-6705.

  
Kim Edwards  
Assistant Vice President

2004/03/22  
B7-

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2010 August

### **Fees charged by DB&G for the AIC Ltd. receivables transaction**

The OCG, in its written Requisition to Mr. Peter Bunting, asked the following question:

*“What fee/fees was/were charged by DB&G to the Ministry of Finance and Planning (MOFP) for the transaction relating to the sale of the AIC Ltd. receivables?”*

- i. *Was/were the fee/fees charged in keeping with standard charges by DB&G for transactions of a similar nature?*
- ii. *If possible, kindly provide a schedule of fees charged to support your assertions.*
- iii. *Was/were the fee/fees comparable to DB&G’s standard fee structure for transactions of a similar nature? If possible, please provide documentary evidence in support of same.”<sup>59</sup>*

In his sworn response to the OCG, which was dated 2008 June 25, Mr. Peter Bunting indicated that:

*“I do not recall the specific fee that DB&G charged for the AIC Receivables transaction, but I would imagine that Minister’s[sic] Shaw’s assertion of a 1% fee is probably accurate as in my experience it is not out of line with fees often charged by banks and finance houses in Jamaica. The AIC Receivables transaction was conceptualised, structured and arranged by DB&G, and to the best of my recollection DB&G did not have a standard fee structure for such customized transactions. Fees charged by DB&G were generally subject to negotiation, as I recall happening in the case of the AIC Receivables transaction, and fees often varied even in the case of standard financing transactions such as loans.”<sup>60</sup>*

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<sup>59</sup> OCG Requisition to Mr. Peter Bunting dated June 12, 2008

<sup>60</sup> Statement by Mr. Peter Bunting dated June 25, 2008

Similarly, the OCG, in its written Requisition, which was dated 2008 June 12, also required the then Acting Financial Secretary, Ms. Darlene Morrison, to indicate “*What fee/fees was/were charged by DB&G to the MOFP for the transaction relating to the sale of the AIC Ltd. receivables?*”

- (i) *Was/were the fee/fees charged in keeping with market rates?*
- (ii) *Was/were the fee/fees comparable to that which the Government would normally pay for similar transactions?’’<sup>61</sup>*

In her sworn response to the OCG’s Requisition, the then Acting Financial Secretary indicated that “*DB&G charged an initial arrangement fee of 1.25% of the face value, but a final negotiated fee of 1% was agreed on. The fees charged were initially regarded as being excessive, but the timeframe within which the transaction was required to be completed meant that the Government did not have a strong negotiating position.*”<sup>62</sup> (OCG Emphasis)

The OCG has, therefore, found that in the opinion of the MOFP, the fees which were charged by DB&G were excessive. However, according to the then Acting Financial Secretary, because the GOJ required the funds to meet its fiscal targets, as at 2004 March 31, the GOJ did not have a strong negotiation point.

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<sup>61</sup> OCG Requisition to Ms. Darlene Morrison which was dated 2008 June 12. Question # 14

<sup>62</sup> Response from Ms. Darlene Morrison: Question # 14

### **Analysis of agreements between the GOJ and DB&G over the years**

In order to determine the extent of the relationship between the MOFP and DB&G, the OCG, in its written statutory Requisition, which was dated 2008 June 12, required the then Acting Financial Secretary, Ms. Darlene Morrison, to provide the OCG with particulars of “...all the local Financial Institutions/Investment/Brokerage Houses which were engaged by the MOFP between January 2002 and May 2008.”<sup>63</sup>

An analysis of the spreadsheet which was provided, to the OCG, by the MOFPS and which was entitled “*DEBT INSTRUMENTS ISSUED BY THE GOVERNMENT OF JAMAICA – NON- MARKET*” revealed the following:

<b>Year</b>	<b>Number of Transactions</b>	<b>No. of Transactions Involving DB&amp;G</b>	<b>Percentage of Transactions to DB&amp;G</b>
2002	51	13	25.49 %
2003	28	4	14.29 %
2004	68	2	2.94 %
2005	40	7	17.5 %
2006	21	1	4.76 %

It must be noted that numerous financial institutions were listed on the spreadsheet which was provided, to the OCG, by the MOFPS. These financial institutions included, *inter alia*, Pan Caribbean Financial Services, the Bank of Nova Scotia Jamaica Limited, NCB, the then Life of Jamaica and Mayberry Investments Limited.

The aforementioned list of transactions were predominantly identified on the spreadsheet which was provided by the MOFPS as being for the purpose of “Budgetary Financing”.

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<sup>63</sup> Requisition to Ms. Darlene Morrison dated 2008 June 12. Question #10

It must be noted that within the five (5) year period of 2002 through to 2006, numerous debt instruments were reportedly issued by the then MOFP. In more than one instance, such Debt Instruments were issued in or about March and/or April 1 of one or more of the years under consideration.

Therefore, the OCG found that the issuance of Debt Instruments in or around the time of the close of the Fiscal Year, by the then MOFP, was by no means a new and/or unique activity for the then Ministry.

Further, it must be noted that in her sworn response to the OCG's Requisition, the then acting Financial Secretary, Ms. Darlene Morrison, indicated that *"...when the GOJ borrows money by way of issuing of securities the MOFP does not consider this as falling under the ambit of procurement of goods and services. Thus entities and individuals lending money to the GOJ do not need to be registered with the NCC."*<sup>64</sup>

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<sup>64</sup> Response from Ms. Darlene Morrison: Question # 10

**The need to solicit a Brokerage House and the fostering of competition to provide the services which were provided by DB&G**

It is instructive to note that the OCG, in its written Requisition to the then Acting Financial Secretary, Ms. Darlene Morrison, asked, *inter alia*, the following question:

*“Was there an attempt on the part of the MOFP to solicit the services of other financial institutions to provide the services which DB&G performed?”*

In her sworn response to the OCG’s Requisition, the then Acting Financial Secretary informed the OCG that *“No attempt was made by the MOFP to solicit the services of other financial institutions to provide the services that DB&G performed.”*<sup>65</sup>

The OCG also asked the then Acting Financial Secretary *“Did the MOFP approach any other financial institution to provide the short-term bridging facility which DB&G offered?”*<sup>66</sup>

In her sworn response to the OCG’s Requisition, the then Acting Financial Secretary advised the OCG that *“The short term bridging facility relates to the securitisation facility with DB&G of US\$29.5mn and not the NCB Receivables. There is no record that other approaches were made to any other financial institution.”*<sup>67</sup>

The OCG, in its written statutory Requisition to the then Acting Financial Secretary, asked the following verbatim question: *“Why was there a need to solicit the services of a Financial Institution/Investment/Brokerage House for the sale of the GOJ receivables from the sale of the NCB Shares?”*<sup>68</sup>

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<sup>65</sup> Response to the OCG’s Requisition from Ms. Darlene Morrison. Question # 15

<sup>66</sup> OCG Requisition which was dated 2008 June 12. Question # 21

<sup>67</sup> Response to the OCG’s Requisition from Ms. Darlene Morrison. Question # 21

<sup>68</sup> OCG Requisition to Acting Financial Secretary. Question # 11

The then Acting Financial Secretary, in her sworn response to the OCG's Requisition, indicated that *"The funds were required to satisfy fiscal imperatives for the financial year 2004/2005 before the end of the financial year. The block of funds amounting to \$2.5 billion was too large to be treated in retail manner and the nature of the transaction required an arranger with the necessary expertise to undertake."*<sup>69</sup>

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<sup>69</sup> Statement from the then Acting Financial Secretary. Response to Question # 11

### **Uniqueness of transaction**

The OCG, in its written statutory Requisition, which was addressed to the then Acting Financial Secretary, which was dated 2008 June 12, asked the following question:

*“Do you consider anything to be ‘unique’ about the transaction between the MOFP and DB&G as it relates to the sale of the AIC receivables. If yes, please detail the ‘unique’ elements of the transaction.”*<sup>70</sup>

In her sworn response to the OCG’s Requisition, which was dated 2008 July 17, the then Acting Financial Secretary indicated as follows:

*“Unique elements of the transaction:*

- it is not a common practice to offer discounts on financial instruments whilst simultaneously paying a handling fee;*
- the rate of interest was the weighted average 6-month Treasury Bill yield rate plus 2% per annum (p.a) while the prevailing market rate for similar securities issued during the period was in the region of Treasury Bill rate plus 1.5% p.a;*
- the discount rate of 7% and fee of 1% paid was above what would normally obtain in the market.”*<sup>71</sup>

Similarly, the OCG posed the same question to the Hon. Audley Shaw, Minister of Finance and the Public Service. In his sworn response to the OCG’s Requisition, which was dated 2008 July 17, Minister Shaw indicated as follows:

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<sup>70</sup> OCG Requisition to Acting Financial Secretary. Question # 22

<sup>71</sup> Statement from then Acting Financial Secretary. Response to Question # 22



*“Yes. It was ‘unique given the fact that:*

- It is not a common practice to offer discounts on financial instruments whilst simultaneously paying a handling fee;*
- The rate of interest was the weighted average 6-month Treasury Bill yield rate plus 2% p.a. while the prevailing market rate for similar securities issued during the period was in the region of Treasury Bill rate plus 1.5% p.a;*
- The discount rate of 7% and fee of 1% paid was above what would normally obtain in the market.”<sup>72</sup>*

The OCG, in its written Requisition to Mr. Peter Bunting, which was dated 2008 June 12, asked the following question:

*“In your statement of May 13, 2008 re: “allegations of sweetheart deals by Audley Shaw, Fin. Minister” (available at [www.pnpjamaica.org](http://www.pnpjamaica.org)) you asserted that, “DB&G conceptualized a potential transaction whereby the Government could sell those future payments from AIC to yield their present value, applying current interest rates to determine the price of the sale of those cash flows”. The statement of the instant date further states that, “The question of putting the AIC Receivables transaction out to tender did not arise. First of all it would have been quite unethical for the Government to take DB&G’s idea and give other finance houses the benefit of the opportunity to bid on it.”*

- i. Please provide full particulars of the circumstances under which DB&G came to conceptualize the referenced potential transaction.*
- ii. Please indicate the reason underlying your statement that tendering on such a transaction would have been unethical.*

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<sup>72</sup> Response from Minister Audley Shaw: Response to question # 7

- iii. *Was there a real and/or perceived urgency in regard to the execution of this transaction between the GOJ and DB&G? If yes, please detail the full particular of any such urgency which existed at the time.*”<sup>73</sup>

In his sworn response to the OCG’s Requisition, which was dated 2008 June 25, Mr. Peter Bunting indicated as follows:

*“My recollection is that in discussing possible financing opportunities within DB&G, the fact (which was in the public domain) that the privatisation of National Commercial Bank Jamaica Limited to AIC (Barbados) Limited involved the Government giving credit terms to AIC for part of the purchase price presented itself as an opportunity to leverage DB&G’s expertise in financial structuring. It was also in the public domain, as far as I can recall, that the Government was challenged to meet its fiscal target for the year ending March 31, 2004. This was demonstrated by the government, in January 2004, raising US\$100 million from the Bank of Nova Scotia (Toronto) which had not initially been programmed (nor was it competitively tendered) as part of its attempt to bridge the financing gap.*

*Being aware of these two pieces of information and the opportunity it presented (an opportunity which was not generally recognised in the market), DB&G conceptualised a transaction which would involve creating a security which could be sold to investors and would thereby bring forward the cash flows from these AIC Receivables. DB&G developed the detailed structure for such a transaction and approached the Ministry of Finance with it.*”<sup>74</sup>

In regard to Mr. Peter Bunting’s opinion that tendering on the referenced unsolicited proposal would have been “*unethical*”, it is instructive to note that in his sworn response to the OCG’s Requisition, Mr. Peter Bunting indicated that:

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<sup>73</sup> OCG Requisition to Mr. Peter Bunting dated 2008 June 12. Question #6

<sup>74</sup> Response from Mr. Peter Bunting: Response to Question # 6

*“Part of DB&G’s core business was creating and selling financial structuring ideas in respect of which we would act as financial intermediaries and/or advisors, thereby earning revenues. I believe it would have [sic] unethical for the AIC Receivables transaction, that DB&G had conceptualised, structured and packaged and therefore comprised its intellectual property, to be appropriated by the Ministry of Finance and put out to tender.”<sup>75</sup>*

Having regard to all the assertions which were made in reference to the timing of the transaction, and its alleged urgency, it is instructive to note that Mr. Peter Bunting indicated that:

*“The AIC Receivables transaction was negotiated during the final weeks leading up to the end of the Government’s fiscal year. It had particular value to the Government as it would provide a capital sum which would significantly reduce its fiscal deficit, and therefore assist the Government in meeting its fiscal target (a matter which reflects substantially on the country’s perceived creditworthiness and, consequently, the availability and cost of its future borrowings). It was therefore urgent that the transaction be executed and completed before the end of the fiscal year, which entailed (once the Ministry had reviewed and approved the transaction) the drafting of legal documentation and the review thereof by the Government’s attorneys-at-law.”<sup>76</sup>*

Further, and in regard to the alleged ‘novelty’ of the AIC Receivables Transaction, the OCG, in its Requisition to Mr. Peter Bunting, which was dated 2008 June 12, posed the following question:

*“In your statement of May 13, 2008 re: “allegations of sweetheart deals by Audley Shaw, Fin. Minister” (available at [www.pnpjamaica.org](http://www.pnpjamaica.org)) you asserted that, “It was the first time that the Government was issuing asset-backed securities in the domestic capital market to raise cash by securitizing future flows arising from a complex privatisation*

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<sup>75</sup> Response from Mr. Peter Bunting: Response to Question # 6ii

<sup>76</sup> Response from Mr. Peter Bunting: Response to Question # 6iii

*agreement, and the transaction was accordingly recognized in the financial marketplace as a creative and innovative financial solution.” Please detail what you consider/considered to be ‘innovative’ about the transaction between the MOFP and DB&G as it relates to the sale of the AIC Ltd. receivables.”<sup>77</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2008 June 25, Mr. Peter Bunting responded as follows:

*“My recollection is that the AIC Receivables arose out of a complex sale agreement between Government-owned entities, AIC Limited and AIC (Barbados) Limited. The innovation involved designing a security which could be issued by the Government without creating an additional debt on its books, and mitigating the underlying credit risk by the recourse provisions in the DB&G/Ministry of Finance letter of agreement, and reducing the investment certificate that would be issued to investors in such a security to a set of terms which were simple enough to be easily understood and accepted by the local investment market.”<sup>78</sup>*

In its Requisition which was dated 2008 June 12, the OCG required Minister Audley Shaw to provide responses to the following questions:

*“In your presentation to the House of Representatives on April 23, 2008, you are quoted in the Hansard as saying, “...receivables from the sale of National Commercial Bank and Joslin Jamaica Redevelopment Foundation, instruments were sold under further discounts, government was holding paper from the AIC and from the Jamaica Redevelopment Foundation, government was holding paper that was due from these institutions. They were sold under further discounts to an entity, which was close to the government under very questionable circumstances.”*

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<sup>77</sup> OCG Requisition to Mr. Peter Bunting which was dated 2008 June 12. Question # 7

<sup>78</sup> Statement by Mr. Peter Bunting Response to question # 7

- i. Please explain the “questionable circumstances” which were alluded to by you in your presentation to Parliament.*
- ii. Please provide documentary evidence in support of your assertions.”<sup>79</sup>*

In his sworn response to the OCG’s requisition, which was dated 2008 July 17, Minister Shaw asserted that *“The ‘questionable circumstances’ are (i) the timing of these transactions – both coinciding with the March 31 closing of the Fiscal Year; (ii) the fact that in both sales, the investors had full recourse to the Government; (iii) no “competitive tender” having regard to anomalies with spreads and fee payment; and (iv) the fact that, in addition to the fee payment of 1%, DB&G made a spread on the sale of the AIC Receivables...minutes of the NHT’s Board Meeting on March 29, 2004, which indicated that DB&G would sell \$300million at \$97.50 or \$600 million at \$95.25. Both prices are above the discount price of \$94.00”<sup>80</sup>*

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<sup>79</sup> OCG Requisition to Minister Audley Shaw which was dated 2008 June 12. Question # 8

<sup>80</sup> Statement from Minister Audley Shaw dated 2008 July 17. Response to Question # 8

## **The involvement of the NHT**

It must be recalled that in his address to Parliament on 2008 April 23, the Hon. Audley Shaw indicated, *inter alia*, that “*In respect of the NHT, the Agreement for Sale was signed with the Ministry of Finance on the 26<sup>th</sup> day of March 2004... the DBG Agreement with the National Housing Trust was approved on March 15, 2004.*”<sup>81</sup>

In his sworn statement to the OCG, which was dated 2008 July 17, Minister Shaw provided particulars of the transaction between the NHT and DB&G in the form of:

1. A Certificate of Participation in the name of the National Housing Trust;
2. An “*EXTRACT FROM MINUTES OF MEETING OF THE BOARD OF DIRECTORS, HELD ON MARCH 29, 2004*”.

The OCG has found that the agreement between the MOFP and DB&G was in fact signed on 2004 March 26, as was alleged by Minister Audley Shaw in his presentation to the House of Representatives on 2008 April 23.

However, the extract of the referenced Minutes of the Meeting of the NHT Board of Directors revealed the following:

### ***“Securitization of GOJ Receivables Arising From Sale of NCB Shares to AIC***

#### **Background**

*As settlement for sale of National Commercial Bank (NCB) shares owned by the Government of Jamaica (GOJ), a payment schedule was worked out with AIC Limited. This resulted in a receivable due to GOJ from AIC to be settled between 2005 and 2010 in six (6) equal instalments.*

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<sup>81</sup> Hansard of the Honourable House of Representatives. Session held on April 23, 2008.

### Proposal

GOJ, through the Ministry of Finance, sought investors to purchase certificates of participation in the receivables of \$2.5B (representing the six principal instalments due of \$422M, together with interest). The Certificates of Participation would be issued in multiples of not less than Ten Million Dollars (J\$10,000,000.00). The arranger of this transaction was Dehring Bunting & Golding Limited.

### Price & Returns

This was a variable rate instrument priced at 97.5%, providing a yield of 16.7%. Interest rate was reset using average six (6) months Treasury Bills.

### Repayment

Interest would be paid on the first day of March and September annually. The principal sum would be repaid annually in five (5) equal sums between 2005 and 2010.

### Conclusion

The proposal was attractive for the following reasons:-

- The potential capital gain (from discontinuing the instrument);
- The yearly principal repayment, commencing 2005, was a further plus, as it shortened the investment period.
- A GOJ undertaking backed the investment.

### Recommendation

*The Committee had accepted, for the approval of the Board, Management's recommendation that the National Housing Trust participate by investing Three Hundred Million Dollars (J\$300,000,000.00) in this security.*

*The Senior Director, Finance, however, advised that since the meeting of the Finance and Audit Committee, Management had reviewed a proposal for investment for an additional \$300M, which would enable the Trust to purchase at a further discounted price of \$95.25. This would result in an additional yield of 2.25%.*

*The Board approved the investment of the additional \$300M, making a total investment of \$600M in this security.”<sup>82</sup>*

### National Housing Trust Act

Given the nature of the allegations which had been made by Minister Audley Shaw, it is instructive to note Section 4 (2) of the National Housing Trust Act (1979) provides as follows:

*“In the exercise of its functions, the Trust shall have power-*

*(a) to provide finance for-*

- i. development projects undertaken by the Trust pursuant to sub-paragraph (i) of paragraph (a) of subsection (1);*
- ii. social services and physical infrastructure for communities developed under the projects;*

***(b) to administer and invest the moneys of the Trust;***

*(c) to enter into loan agreements with borrowers;*

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<sup>82</sup> Extract from Minutes of Meeting of the Board of Directors, held on March 29, 2004.



- (d) to receive and administer funds entrusted to the Trust in accordance with the provisions of this Act;*
- (e) to make refunds and grants to contributors or any category thereof, on such terms and conditions as may be prescribed;*
- (f) to re-finance from time to time, subject to such restrictions and conditions as may be prescribed, mortgages held by members of any prescribed category of contributors; and*
- (g) to do such other things as may be advantageous, necessary or expedient for or in connection with the proper performance of its functions under this Act.***<sup>83</sup>

The OCG found that the NHT, based upon the statutes governing the entity, has the ability to enter into such investment transactions as deemed fit by the agency.

Therefore, the NHT, in participating in the purchase of 24.49% of the Receivables was acting in accordance with the provisions/limits of the National Housing Trust Act.

In regard to the involvement of two (2) public bodies in the purchase of the Receivables, which were being sold by DB&G, the OCG in its written statutory Requisition, that was addressed to Mr. Peter Bunting, which was dated 2008 June 12, asked Mr. Bunting the following questions:

*“What was the nature of DB&G’s transactions with the National Insurance Fund and the National Housing Trust in regard to the sale of the AIC Ltd. receivables? Please detail:*

- i. The date/dates on which the National Insurance Fund and the National Housing Trust were first approached by DB&G in regard to the purchase of any portion of the receivables;*

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<sup>83</sup> Section 4(2) of the National Housing Trust Act

- ii. *The date/dates on which a written agreement/agreements was/were signed between DB&G, the National Insurance Fund and the National Housing Trust;*
- iii. *If possible, a copy of the Agreement between DB&G and the National Insurance Fund with respect to the sale of the AIC Ltd. receivables;*
- iv. *If possible, a copy of the Agreement between DB&G and the National Housing Trust in regard to the sale of the AIC Ltd. receivables;*
- v. *What were the terms and conditions of the Agreement between the National Insurance Fund and DB&G?*
- vi. *What were the terms and conditions of the Agreement between the National Housing Trust and DB&G?”<sup>84</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2008 June 25, Mr. Peter Bunting indicated, *inter alia*, that:

*“I do not have any files or documents relating to DB&G’s sale transactions with the NIF and NHT, and cannot reliably provide this information from memory. These may be obtained from the NIF and NHT and/or DB&G. My recollection is, however, that the investment certificates were sold to a number of investors, both in the private and public sectors, and would have been sold by DB&G for prices as favourable to DB&G as could be negotiated by the DB&G employees who were handling the selling effort.”<sup>85</sup>*

The OCG, in its written Requisition, also asked Mr. Peter Bunting the following questions:

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<sup>84</sup> Requisition to Mr. Peter Bunting: Question # 8

<sup>85</sup> Response from Mr. Peter Bunting dated 2008 June 25: Response to Question # 8

*“Was/were the National Insurance Fund and/or the National Housing Trust charged any fee/fees by DB&G in regard to the sale of the receivables to either of the entities? If yes, please indicate:*

- i. The fee/fees which was/were charged to each of the entities;*
- ii. The purpose of the fee/fees which was/were charged;*
- iii. Was/were the fee/fees comparable to DB&G’s standard fee structure for transactions of a similar nature? If possible, please provide documentary evidence in support of same.”<sup>86</sup>*

In his sworn response to the OCG’s Requisition, Mr. Peter Bunting indicated, *inter alia*, that *“...I do not recall any fees being charged to investors, but the pricing of the securities in all the trades would have probably involved DB&G making a margin over what it paid the Government for the securities, as is customary in such transactions.”<sup>87</sup>*

It is instructive to note that the OCG, in its written Requisition that was addressed to Ms. Darlene Morrison, the then acting Financial Secretary, posited the following specific questions:

*“Did the GOJ at any point directly approach the Board of the National Insurance Fund, the National Housing Trust or any other public entity, to sell to them the receivables which were due from the sale of the NCB Shares to AIC Ltd.?”*

- (i) If yes, please state when such an approach/approaches was/were made, by whom and to whom and the outcome/outcomes?*
- (ii) If no, was an approach to the National Insurance Fund and the National Housing Trust or any other public entity ever considered by*

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<sup>86</sup> OCG Requisition to Mr. Peter Bunting Question # 9

<sup>87</sup> Response from Mr. Peter Bunting dated 2008 June 25: Response to Question # 9

*the GOJ? Please justify the decision not to directly approach these entities.”<sup>88</sup>*

In her sworn response to the OCG’s Requisition, the then Acting Financial Secretary, Ms. Darlene Morrison, indicated as follows:

- (i) *“There was no direct approach to the NIF, NHT or any other public entity to sell to them the receivables from the sale of the NCB shares to AIC Ltd.*
- (ii) *There is no record of any approach having been considered by the GOJ. The decision not to directly approach any of these entities could have been influenced by the consideration that neither entity would have been able to on its own absorb the amount of the receivables. There was a need to ensure that the receivables would be sold as a block, and there would have been no guarantee that any of those entities could buy such a large portfolio. Neither were they equipped to or in the business of arranging or structuring the sale of receivables.”<sup>89</sup>*

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<sup>88</sup> OCG Requisition to the then Acting Financial Secretary: Question # 12

<sup>89</sup> Response to the OCG’s Requisition. Acting Financial Secretary: Question # 12

## **The NHT's account of its involvement in the transaction with DB&G**

The OCG, by way of a written statutory Requisition, which was dated 2010 March 16, asked the then Acting Managing Director of the NHT, Mr. Donald Moore, the following verbatim questions:

*“Please provide an Executive Summary detailing the circumstances under which the National Housing Trust (NHT) became aware of the transaction for the Securitization of Government of Jamaica (GOJ) Receivables arising from the sale of NCB Shares to AIC. The Executive Summary should detail the following:*

- i. The date of initiation and execution of the agreement;*
- ii. The date of the signing of the contractual agreement;*
- iii. The name of the entity and/or individual and the title(s) of the individual(s) who initiated communication in regard to the aforementioned transaction and the circumstances relating to same;*
- iv. The name and title of the NHT official/officials who negotiated and concluded the agreement;*
- v. The name and title of the DB&G official/officials who negotiated and concluded the agreement;*
- vi. The date on which the Board of the NHT first considered the matter;*
- vii. The date on which the Board of the NHT granted approval to enter into the referenced transaction;*

viii. *Details of the recommendation, if any, from the management of the NHT in regard to the referenced transaction;*

ix. *The particulars of any such arrangement, inclusive of a copy of the signed agreement to substantiate the terms of the transaction.*

x. *Any other particulars and documentary evidence which denotes the NHT's consideration and evaluation of the proposed transaction;*

*Where possible, please provide documentary evidence in support of your responses and any assertions made.”<sup>90</sup>*

In his sworn response to the OCG's Requisition, which was dated 2010 March 25, Mr. Moore advised the OCG, *inter alia*, as follows:

*“In a letter dated March 15, 2004, and signed by Garfield Sinclair and Kim Edwards, President and Vice President respectively, Dehring, Bunting & Golding Limited (DB&G) presented the terms of the AIC bond to the NHT. The instrument carried a coupon equivalent to the prevailing weighted average Government of Jamaica (GOJ) six-month Treasury Bill Rate at the beginning of each interest period. Principal was to be repaid in six equal instalment, due on the first of March of each year, starting March 01, 2005 through to Maturity on March 01, 2010. The GOJ guaranteed all payments of principal and interest.*

*The Senior Director of Finance recommended to the Finance and Audit Committee by way of submission dated March 17, 2004, the investment of \$300,000,000 in the instrument. The Committee approved the recommendation for submission to the Board of Directors.*

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<sup>90</sup> OCG Requisition to Mr. Donald Moore: March 16, 2010. Question # 1

*By letter dated March 26, 2004, and addressed to the NHT's Assistant General Manager for Financial Controls, DB&G presented the terms and conditions for a total investment of six hundred million dollars(\$600,000,000.00). This included a proposal for an additional investment of three hundred million dollars (\$300,000,000.00), with an additional discount of \$2.25 per unit. This resulted in an initial yield on the instrument (first six months) of 17.789%, at a purchase price of \$95.25 per unit (a discount of \$4.75 per unit).*

*The Board reviewed the recommendation for the DB&G/AIC investment on March 29, 2004. At that meeting, the Board was informed of the proposal from DB&G for the additional investment. The Board of Directors approved the transaction, with an investment of six hundred million dollars (\$600,000,000.00), on said date. The investment compared to the applicable GOJ Treasury Bill yield of 15.570% for March 24, 2004. The Senior Director of Finance signed the offer letter, indicating NHT's acceptance.*

*Under cover of letter dated March 30, 2004, signed by Ray Nixon – AGM Financials Control and Shelley Whittle – Senior Director Operation, NHT delivered National Commercial Bank Cheque No. 511734 in the amount of six hundred million dollars (\$600,000,000.00) to DB&G, with a transaction execution date of March 31, 2004...*

*...The instrument matured on March 01, 2010. All relevant payments from the investment – principal and interest – have been received in accordance with the terms and conditions.”<sup>91</sup>*

The documentary evidence which was provided to the OCG, by the NHT, revealed that on 2004 March 15, representatives of DB&G wrote to Mr. Hugh Reid, the Senior Director, Finance, NHT, advising as follows:

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<sup>91</sup> Sworn response from Mr. Donald Moore dated 2010 March 25.

*“ Further to our recent discussions, we are pleased to present the terms and conditions of the captioned transaction on behalf of the Government of Jamaica (“GOJ”), as outlined below:... ”*<sup>92</sup>

Subsequently, on 2004 March 17, a submission was made to the NHT’s Finance and Audit Committee by Mr. Hugh Reid, the Senior Director of Finance. The conclusion of the referenced ‘Submission’ indicated that:

*“The proposal is attractive for the following reasons:*

- *The potential capital gain (from discounting of the instrument)*
- *The yearly principal repayment, commencing 2005, is a further plus as it shortens the investment period.*
- *A GOJ undertaking backs the investment.”*<sup>93</sup>

Given the aforementioned, the ‘Submission’ posited a recommendation that *“... The National Housing Trust participate by investing Three Hundred Million Dollars (J\$300,000,000.00) in this security.”*

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<sup>92</sup> Letter dated 2004 March 15 from DB&G to Mr. Hugh Reid, Senior Director of Finance, NHT.

<sup>93</sup> Submission to the NHT’s Finance and Audit Committee which was dated 2004 March 17.



## **The involvement of the NIF**

Having regard to the fact that the NIF was alleged to have purchased a component of the AIC Receivables, the OCG sought to examine and determine the basis upon which the NIF became involved in the referenced transaction and the total amount which was invested by the NIF.

It is instructive to note that Section 39 of the National Insurance Act provides as follows:

### ***“39. The National Insurance Fund.***

*39. (1) For the purposes of this Act, there shall be established, under the control and management of a public officer designated for the purpose by the Minister, a Fund called "The National Insurance Fund".*

*(2) There shall be paid into the Fund -*

*(a) all contributions and any interest thereon payable by virtue of the provisions of this Act by employers and insured persons;*

*(b) all rent, investment or other income derived from the assets of the Fund;*

*(c) all sums recovered under this Act as fines, fees, penalties or costs;*

*(d) all sums properly accruing to the Fund under this Act, including, without prejudice to the generality of the foregoing, the repayment of benefit; and*

*(e) such other sums as may from time to time be received and accepted by the Minister on behalf of the Fund.*

*(3) Subject to subsection (4), payments out of the Fund shall not be made otherwise than in respect of claims for benefits, refunds of contributions paid in error, expenditure authorized by or pursuant to section 30 and payments to the Consolidated Fund pursuant to subsection (4) of section 40.*

***(4) Any moneys and investments forming part of the Fund may from time to time be invested or realized, as the case may be, in accordance with the directions of the Minister responsible for finance.”***

*(5) Accounts of the Fund shall be prepared in such form, in such manner and at such times as the Minister responsible for finance may direct and the Auditor-General shall examine and certify every such account and report thereon to the House of Representatives.” (OCG Emphasis)*

Due to the nature of the allegations surrounding the AIC Receivables Transaction, as well as Minister Shaw’s assertion that DB&G “...sold 34% or \$852 million to the National Housing Trust and the National Insurance Fund...”, the OCG deemed it prudent to ascertain the actual involvement of the NIF in the referenced transaction.

Accordingly, by way of a written statutory Requisition, which was dated 2010 March 16, the OCG required Mrs. Audrey Deer-Williams, Senior Director – Investments, NIF, to provide the OCG with certain information and documentation. As such, in its written Requisition, which was dated 2010 March 16, the OCG posed the following question:

*“It was alleged by Minister Audley Shaw, in a presentation to Parliament, on 2008 April 23, that Dehring, Bunting and Golding Ltd. (DB&G) sold a portion of receivables which were due from AIC, in regard to the sale of certain NCB Shares, to the National Insurance Fund (NIF). Are you aware of the referenced allegations? If yes, please provide responses to the following questions:*

*Are the referenced allegations true? If yes, please provide an Executive Summary detailing the circumstances under which the NIF became aware of the transaction for the Securitization of Government of Jamaica (GOJ) Receivables arising from the sale of NCB Shares to AIC. The Executive Summary should detail the following:*

- i. The date of initiation and execution of the agreement;*
- ii. The date of the signing of the contractual agreement;*
- iii. The name of the entity and/or individual and the title(s) of the individual(s) who initiated communication in regard to the aforementioned transaction and the circumstances relating to same;*
- iv. The name and title of the NIF official/officials, or anyone acting on their behalf, who negotiated and concluded the agreement;*
- v. The name and title of the DB&G official/officials who negotiated and concluded the agreement;*
- vi. The date on which the Board of the NIF first considered the matter;*
- vii. The date on which the Board of the NIF granted approval to enter into the referenced transaction;*
- viii. Details of the recommendation, if any, from the management/Committees/Sub-Committees of the Board of the NIF in regard to the referenced transaction;*

- ix. *The particulars of any such arrangement, inclusive of a copy of the signed agreement to substantiate the terms of the transaction;*
- x. *Any other particulars and documentary evidence which denotes the NIF's consideration and evaluation of the proposed transaction.”<sup>94</sup>*

In her sworn response to the OCG's Requisition, which was dated 2010 March 25, Mrs. Deer-Williams provided, *inter alia*, the following response to the OCG:

- i. *“From the records present in the NIF's office the date of initiation was on or before March 29, 2004, as in a letter dated on that day, reference was made to “recent discussions” on the proposal. Further, per the records present in the office, the agreement was executed on the same date, March 29, 2004.*
- ii. *Following on from number i. above, the date of the contractual agreement is March 29, 2004.*
- iii. *The transaction was initiated by DB&G, through one of its officers, Ms. Kim Edwards, an Assistant Vice President of the company at the time. I am advised that Ms. Edwards contacted the NIF stating she had an instrument issued by the Government of Jamaica (GOJ) which her company (DBG) was brokering.*
- iv. *Correspondence to the NIF were addressed to Mr. Kevin Richards who was the Investment Manager of the NIF at the time. As he would have been responsible for the management of the funds of the NIF, he signed the agreement on March 29, 2004.*

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<sup>94</sup> OCG Requisition to Mrs. Deer- Williams- March 16, 2010. Question # 1

- v. *The persons who negotiated on behalf of DBG and agreed the amount the NIF would invest in this particular instrument were Kim Edwards, Assistant Vice-President and Garfield Sinclair, President & Chief Operating Officer.*
- vi. *As a matter of course and practice, transactions (purchase or sale) involving Government of Jamaica debt are not brought before the Board for approval. This is because the Board of the National Insurance Fund is an advisory board. Its recommendations will need the approval of the Minister of Finance prior to any execution thereof. Since the Ministry of Finance and the Public Service (MF&PS) handles the issuing of debt instruments on behalf of the GOJ, the NIF secretariat would not refer these matters to the Board.*
- vii. *Based on the foregoing, there is no date on which the Board of the NIF granted approval to enter into the referenced transaction.*
- viii. *A formal recommendation was therefore not prepared for the Board's perusal....*<sup>95</sup>

In regard to “Any other particulars and documentary evidence which denotes the NIF’s consideration and evaluation of the proposed transaction”, Mrs. Deer Williams, in her sworn response to the OCG, indicated that “No further information is on file.”<sup>96</sup>

Having regard to the information which was provided to the OCG by Mrs. Audrey Deer-Williams, on 2010 March 25, the OCG, on 2010 April 7, again wrote to Mrs. Audrey Deer-Williams seeking clarification on one of the disclosures which had been made in her previous statement to the OCG, which was dated 2010 March 25.

Accordingly, the OCG, in its written statutory Requisition, which was dated 2010 April 7, asked Mrs. Deer- Williams the following verbatim questions:

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<sup>95</sup> Response from Mrs. Deer-Williams dated 2010 March 25: Question # 1

<sup>96</sup> Response from Mrs. Deer-Williams dated 2010 March 25: Question # 1

1. *“Reference is made to your sworn response to Question # 1(vi) of the OCG’s Requisition, which was dated March 16, 2010. In your sworn response to the OCG you indicated that:*

*“As a matter of course and practice, transactions (purchase or sale) involving Government of Jamaica debt are not brought before the Board for approval. This is because the Board of the National Insurance Fund is an advisory board. Its recommendations will need the approval of the Minister of Finance prior to any execution thereof. Since the Ministry of Finance and the Public Service (MF&PS) handles the issuing of debt instruments on behalf of the GOJ, the NIF Secretariat would not refer these matters to the Board.”*

*Please ascertain and advise of the following:*

- (a) Did the then Minister of Finance, Dr. Omar Davies, approve the referenced transaction? If yes, please indicate:*

*(i) The date on which the then Minister of Finance was approached regarding the NIF’s involvement in the transaction;*

*(ii) The date on which such approval was granted by the then Minister of Finance;*

*(iii) The manner in which approval was granted by the then Minister of Finance, i.e. in writing or verbally.*

- (b) If your response to Question 1(a) is no, please indicate the name(s) of the person(s) and/or authority under which the NIF proceeded to enter into the referenced transaction with Dehring, Bunting & Golding (DB&G) Ltd.*

*Where possible, please provide documentary evidence in support of your response and any assertions made.*

2. *Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation which you are desirous of placing on record? If yes, please provide full particulars of same.*<sup>97</sup>

In her sworn response to the OCG's Requisition, which was dated 2010 April 9, Mrs. Deer-Williams provided the OCG, *inter alia*, with the following information:

- "a) My research of the files does not indicate that the former Minister of Finance, Dr. Omar Davies approved the referenced transaction.*
- b) Correspondence in the office is addressed to Mr. Kevin Richards who was the Investment Manager of the NIF at the time. For ease of reference I am attaching copies of the correspondence which were previously supplied to your office. The management of the NIF has the ability to purchase securities issued by the Government of Jamaica.*
- c) I am not aware of any further information.*<sup>98</sup>

It must be noted that the agreement, which was executed between the NIF and DB&G, was addressed to the attention of Mr. Kevin Richards and was dated "*March 29, 2004*". The referenced agreement was accepted and agreed to by the NIF on 2004 March 29.

According to the signed agreement, the OCG found, *inter alia*, the following:

1. The settlement date of the agreement was "*March 29, 2004*";
2. The bid was listed at 97.00; and

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<sup>97</sup> OCG Requisition to Mrs. Audrey Deer-Williams which was dated 2010 April 7

<sup>98</sup> Response from Mrs. Audrey Deer Williams which was dated 2010 April 9

3. The purchase price was listed at J\$197,453,103.15.

The Certificate of Participation which was issued in the name of the NIF, and which was dated 2004 March 31, indicated that the face value of the certificate was J\$203,559,900.15, which is 8.02% of the AIC Receivables.

Having regard to the provisions of Section 39 of the National Insurance Act, as well as the sworn assertions of the current Senior Director, Investment, NIF, the OCG deemed it prudent to obtain particulars of the transaction from Dr. Omar Davies, the then Minister of Finance and Planning.

Consequently, the OCG, in a written statutory Requisition, that was addressed to Dr. Omar Davies, which was dated 2010 April 14, posed the following questions:

*“It was alleged by the Hon. Audley Shaw, current Minister of Finance and the Public Service, in a presentation to Parliament, on 2008 April 23, that DB&G sold a portion of receivables which were due from AIC, in regard to the sale of certain NCB Shares, to the National Insurance Fund (NIF). Are you aware of the referenced allegations? If yes, please provide responses to the following questions:*

*Are the referenced allegations true? If yes, please provide an Executive Summary detailing the extent of your personal knowledge and the nature of your involvement, if any, in the referenced transaction involving the NIF.”<sup>99</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2010 April 27, Dr. Davies provided the following response:

*a. “I am aware of the allegations. I was in Parliament when the Minister made them.*

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<sup>99</sup> Requisition to Dr. Omar Davies, dated April 14, 2010- Question # 3



- b. I do not know if the allegations are true.*
- c. I have no personal knowledge of or involvement in the referenced transaction.”*

It is instructive to note that the OCG, in its Requisition that was addressed to Dr. Davies, which was dated 2010 April 14, also posed the following verbatim question:

*“In regard to the participation of the NIF in the referenced transaction with DB&G it has been reported to the OCG, by the current Senior Director, Investments, NIF, that:*

*“As a matter of course and practice, transactions (purchase or sale) involving Government of Jamaica debt are not brought before the Board for approval. This is because the Board of the National Insurance Fund is an advisory board. Its recommendations will need the approval of the Minister of Finance prior to any execution thereof.”*

*(a) Please advise if the referenced transaction received your approval in your capacity as the then Minister of Finance and Planning. If yes, please indicate, where possible:*

- (i) The date on which you were approached regarding the NIF’s involvement in the transaction;*
- (ii) The name(s) of the person(s) who approached you regarding the NIF’s participation in the transaction;*
- (iii) The date on which such approval was granted by you;*
- (iv) The manner in which you granted approval to the NIF to participate in the referenced transaction, i.e. in writing or verbally.*

*(b) If your response to Question 4(a) is “No”, please indicate the basis/authority upon which the NIF proceeded to enter into the referenced transaction with DB&G Ltd.*

*Where possible, please provide documentary evidence in support of your response and any assertions made.”<sup>100</sup>*

It is instructive to note that in his sworn response to the OCG’s Requisition, which was dated 2010 April 27, Dr. Davies indicated as follows:

*“I reject the assertion that any such transaction would need my approval, as Minister of Finance, prior to execution. To the best of my recollection, the requirement of approval by the Minister of Finance was limited to investments which carried risks, such as in real estate. In such cases, a Submission would be taken to Cabinet by the Minister of Finance, for consideration and possible approval.*

- a. To the best of my recollection, the referenced transaction did not receive my approval.*
- b. As indicated in my answer to 4, in certain instances, the NIF could make investments without the approval of the Minister of Finance.”<sup>101</sup>*

Having regard to the assertions which were made by both the current Senior Director, Investments, NIF and Dr. Omar Davies, the former Minister of Finance and Planning, the OCG, by way of a written statutory Requisition which was addressed to Dr. Wesley Hughes, Financial Secretary, and which was dated 2010 April 14, asked the following question:

*“In regard to the participation of the National Insurance Fund (NIF) in the referenced transaction with DB&G, it has been reported to the OCG, by the current Senior Director of Investments, NIF, that:*

*“As a matter of course and practice, transactions (purchase or sale) involving Government of Jamaica debt are not brought before the Board*

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<sup>100</sup> OCG Requisition to Dr. Omar Davies which was dated 2010 April 14 – Question # 4

<sup>101</sup> Sworn response from Dr. Omar Davies which was dated 2010 April 27: Response to Question # 4

*for approval. This is because the Board of the National Insurance Fund is an advisory board. Its recommendations will need the approval of the Minister of Finance prior to any execution thereof.”*

*Please ascertain and advise of the following:*

*(a) Did the then Minister of Finance, Dr. Omar Davies, approve the referenced transaction? If yes, please indicate, where possible:*

*(i) The date on which the then Minister of Finance was approached regarding the NIF’s involvement in the transaction;*

*(ii) The date on which such approval was granted by the then Minister of Finance;*

*(iii) The manner in which approval was granted by the then Minister of Finance, i.e. in writing or verbally.”<sup>102</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2010 May 7, Dr. Hughes indicated that *“There is no information to show that the Minister of Finance was approached regarding the NIF’s involvement.”<sup>103</sup>*

It is also important to note that in his sworn response to the OCG’s Requisition, Dr. Hughes further indicated that *“No approval is seen on the files researched regarding an approval granted by the Minister of Finance and Planning.”<sup>104</sup>*

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<sup>102</sup> Requisition to Dr. Wesley Hughes dated 2010 April 14: Question # 3

<sup>103</sup> Dr. Wesley Hughes – Sworn Response to the OCG’s Requisition which was dated 2010 May 7- Question # 3

<sup>104</sup> Dr. Wesley Hughes – Sworn Response to the OCG’s Requisition which was dated 2010 May 7- Question # 3

## **CONCLUSIONS**

Based upon the documents which have been reviewed, as well as the sworn testimony which has been received from the representatives of the MOFPS and other persons of interest, the OCG has made the following considered Conclusions.

1. The OCG has found and has concluded that the two (2) agreements which were referred to by the Hon. Audley Shaw, Minister of Finance, in his presentation to Parliament, were as follows:
  - a. The Agreement for the “*Sale of receivables arising from the sale of shares in National Commercial Bank Jamaica Limited*” that was consummated between DB&G and the GOJ and which was signed on 2004 March 26; and
  - b. The Agreement for the Sale of GOJ receivables with full recourse to the GOJ that was consummated between the then MOFP and DB&G and which was signed on 2005 March 31.
2. Based upon the documentary evidence which has been provided to the OCG, by Dr. Omar Davies, the former Minister of Finance and Dr. Wesley Hughes, the incumbent Financial Secretary, the OCG has been led to conclude that the then MOFP was approached by DB&G with a proposal for the Sale of the AIC Receivables in 2004 January.

The referenced proposal from DB&G amounts to the receipt and acceptance by the then MOFP of an **unsolicited proposal**.

Based upon the foregoing, the OCG has been unable to conclusively determine that the above transaction was fair, transparent and/or indicative of the most beneficial terms and conditions which could have been derived by the GOJ, given the lack of competition.

3. Further, and based upon the sworn evidence which was provided to the OCG, the OCG has also been led to conclude that there is no evidence to indicate that attempts were made by the then MOFP to solicit and/or engage other financial institutions to provide the services which DB&G provided to the GOJ, in regard to the two (2) transactions which were consummated in 2004 March and 2005 March, respectively.
4. The Sale of the AIC Receivables was subject to the review of senior personnel within the then MOFP and also the Attorney General's Chambers.
5. The AIC Receivables were in fact sold at a discounted rate to DB&G and included the payment of an arrangement fee by the then MOFP. According to the MOFPS, this was in part due to the fact that the then MOFP did not have a strong bargaining position.

In point of fact, the then Acting Financial Secretary, Ms. Darlene Morrison, in her sworn response to the OCG's Requisition indicated that *"DB&G charged an initial arrangement fee of 1.25% of the face value, but a final negotiated fee of 1% was agreed on. The fees charged were initially regarded as being excessive, but the timeframe within which the transaction was required to be completed meant that the Government did not have a strong negotiating position."*<sup>105</sup>  
(OCG Emphasis)

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<sup>105</sup> Response from Ms. Darlene Morrison: Question # 14

Although the OCG has seen evidence that the referenced rates and discounts were negotiated between the DB&G and the GOJ, the sworn evidence which was provided to the OCG, by the MOFPS, has indicated that *“It is not a common practice to offer discounts on financial instruments whilst simultaneously paying a handling fee.”*<sup>106</sup>

Given the foregoing, the OCG has been led to conclude that the terms and conditions of the referenced transaction with DB&G were in fact favourable to DB&G.

6. The Sale of the AIC Receivables, according to the documentary evidence which was adduced to the OCG, was done in order to meet the fiscal requirements of the 2004 fiscal year. The referenced Conclusion lends credence to the assertion of the then Acting Financial Secretary, Ms. Darlene Morrison, that the GOJ did not have a strong negotiating position.
7. The OCG has concluded that DB&G was in fact placing the AIC Receivables in the market place, prior to the formal execution and finalization of a written contract with the then MOFP.

The OCG has been led to conclude the foregoing based upon the evidence which has been provided to it by the MOFPS. Should the referenced evidence be accepted as factual and correct, then, as at 2004 March 16, the DB&G had already credited the GOJ with proceeds from the sale of the AIC Receivables Transaction.

The OCG must, therefore, conclude that, whatever the circumstances and reasons were, the execution of a GOJ contract, prior to the finalization of a formal written contract, was in fact irregular and highly improper.

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<sup>106</sup> Response from Ms. Darlene Morrison: Question # 20

8. DB&G in fact sold some thirty two percent (32%) or \$852 million of the AIC Receivables to the NHT, and the NIF, at a price which varied from that at which it had bought the said Receivables.
9. In the case of the NHT, the OCG has concluded that a submission was made to the NHT's Finance and Audit Committee on 2004 March 17, at which time the proposed transaction was considered attractive, by the Committee, for various reasons.
10. The Board of Directors of the NHT approved the DB&G transaction on 2004 March 29, following which a cheque in the sum of J\$600 million was submitted to DB&G with a transaction date of 2004 March 31.
11. The evidence, which has been provided to the OCG, refutes the allegation which was made by Minister Audley Shaw that *"...the Agreement for Sale was signed with the Ministry of Finance on the 26<sup>th</sup> day of March 2004, the DBG Agreement with the National Housing Trust was approved on March 15, 2004."*

However, it should be noted that on 2004 March 15, DB&G presented the NHT with a letter in which the terms and conditions of the AIC Receivables transaction were detailed. Subsequent to DB&G's submission of the referenced letter, which was dated 2004 March 15, a presentation was made to the NHT's Finance and Audit Committee on 2004 March 17.

Consequently, the Board of Directors of the NHT gave its final approval for the referenced transaction on 2004 March 29.

12. The OCG has concluded that the DB&G presented the NHT with the terms and conditions of the AIC Receivables transaction prior to the finalization of a formal signed agreement with the then MOFP. In point of fact, the agreement between DB&G and the then MOFP was executed on 2004 March 26. However, DB&G presented its terms and conditions to the NHT on 2004 March 15.

Despite the short timeline which was identified as being available to complete the referenced transaction, the OCG must conclude that the foregoing actions of DB&G were premature, having regard to the fact that the terms and conditions of the sale of the Receivables, by the GOJ, were not finalised in writing, and executed in writing, until 2004 March 26.

13. In the case of the NIF, the OCG has found and concluded that Section 39 (4) of the National Insurance Act permits that:

**“Any moneys and investments forming part of the Fund may from time to time be invested or realized, as the case may be, in accordance with the directions of the Minister responsible for finance.”**

Consequently, the OCG has concluded that the NIF, under the direction of the Minister of Finance, has the authority to commit the Fund’s money to investment opportunities.

14. The OCG has been advised by the NIF that the then Minister of Finance, Dr. Omar Davies, did not provide any approval for the referenced transaction. Further, and according to the NIF ““As a matter of course and practice, transactions (purchase or sale) involving Government of Jamaica debt are not brought before the Board for approval. This is because the Board of the National Insurance Fund is an advisory board. Its recommendations will need the approval of the Minister of Finance prior to any execution thereof.”



However, Dr. Omar Davies, the then Minister of Finance, has flatly rejected the foregoing assertion that investments made by the NIF would have required the approval of the Minister of Finance and Planning. In point of fact, in his sworn statement to the OCG, Dr. Davies asserted, *inter alia*, that **“To the best of my recollection, the requirement of approval by the Minister of Finance was limited to investments which carried risks, such as in real estate...the NIF could make investments without the approval of the Minister of Finance.” (OCG Emphasis)**

In light of the provisions of the National Insurance Act, and the foregoing contradictory statements, the OCG has been led to conclude that the clarification of the matter will require further legal consideration by the Attorney General and the Solicitor General.

15. To date, the OCG has not been able to determine whether the requisite approvals were granted by the then Minister of Finance, Dr. Omar Davies and/or whether the Board of Directors of the NIF had granted an approval to enter into the referenced investment transaction.

This is premised upon the fact that the OCG has not been provided with any documentary evidence to support the approvals which would have been required.

16. Based upon the sworn evidence which has been provided to the OCG during the course of its Investigation, the OCG has found and has subsequently concluded that the then MOFP did not directly approach the NIF, the NHT or any other Public Body, to sell to them, the Receivables from the sale of the NCB Shares to AIC Ltd.

According to the then Acting Financial Secretary, Ms. Darlene Morrison, “...*The block of funds amounting to \$2.5 billion was too large to be treated in retail manner and the nature of the transaction required an arranger with the necessary expertise to undertake.*”<sup>107</sup>

17. The OCG has concluded that the GOJ entered into a one hundred and twenty (120) day short term financing agreement with DB&G on 2005 March 31, in the amount of some US\$29.6 million, for the purposes of meeting the fiscal deficit in that particular financial year.
18. The OCG has found and concluded that on 2005 March 31, the GOJ signed an agreement with DB&G for the sale of certain receivables which were due to the GOJ on various FINSAC related transactions.
19. The OCG has concluded that on 2005 March 31, DB&G credited the Consolidated Fund in the amount of US\$28.9 Million and, further, on the same date, billed the then MOFP, in the sum of US\$295,902.05, as an “*Arrangement fee for the financing of US\$29,590,205.00 Sale of GOJ Receivables.*”
20. The OCG has also concluded that the GOJ experienced a shortfall in its collection of debts related to the FINSAC transactions. As such, in order to repay the money which had been provided by DB&G, on 2005 March 31, for short term financing, the GOJ borrowed money from Capital and Credit Merchant Bank on 2005 July 29, in order to repay DB&G, as per the terms and conditions of the Term Sheet (signed contract).
21. Based upon the sworn evidence which was provided to the OCG, by the then Acting Financial Secretary, Ms. Darlene Morrison, the then MOFP did not consider the two (2) referenced transactions, which were consummated between the GOJ and DB&G, in 2004 March and 2005 March, as falling within the ambit of the procurement procedures and guidelines.

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<sup>107</sup> Statement from the then Acting Financial Secretary. Response to Question # 11

Irrespective of same, the OCG must clearly and unequivocally state that the award or settlement of any GOJ contract, by any Public Body, must adhere to the contract award principles which are enshrined in Section 4 (1) of the Contractor General Act which stipulates that such contracts must be awarded impartially and on merit, and in circumstances which do not involve impropriety and/or irregularity.

In this regard, the OCG has concluded that the referenced transactions with DB&G were not subject to any form of a competitive process whereby the then MOFP could verify that it was in fact obtaining the best financing offer.

## **REFERRALS**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”**<sup>108</sup> (OCG Emphasis)

1. Pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the matter is hereby being referred to the Solicitor General and the Attorney General for a considered determination to be made as to whether the provisions of the National Insurance Act, and the subsequent actions of representatives of the National Insurance Fund (NIF), as evidenced by the Fund’s participation in the purchase of the AIC Receivables, were in keeping with the provisions of the said Act and, in particular, the authority on which the NIF proceeded to invest in the purchase of the AIC Receivables without the approval of the then Minister of Finance, Dr. Omar Davies.

The matter is being referred to the Solicitor General and the Attorney General particularly for a determination to be made as to whether or not the actions of the representatives of the NIF, with regard to the participation in the purchase of the AIC receivables, amounted to a breach of the National Insurance Act.

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<sup>108</sup> Contractor-General Act. 1983

## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.***” (OCG Emphasis).

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. It is recommended that an immediate review of the evaluation and approval processes for commercial agreements, by the Ministry of Finance and the Public Service, be undertaken by the Public Administration and Appropriations Committee of the House of Representatives and by the Auditor General.

This review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented by these Public Bodies, but are aggressively enforced to secure a radically improved level of compliance with the relevant Government approved procedures, regulations and laws. Particular attention must also be paid to the requirements of the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act, the Contractor General Act and the Government’s Procurement Procedures.

2. The OCG is of the view that the concept of the **unsolicited proposal**, which has found its way into the country’s procurement conventions, should be immediately excised from the Government’s Procurement Guidelines. The OCG has formally made this considered Recommendation before, but, like so many of its other considered Recommendations, nothing has come of it.

The OCG is concerned that the **unsolicited proposal** mechanism is a corruption enabling device which can be utilized by unscrupulous Public Officials to direct lucrative multi-million dollar State contracts to connected, undeserving or desired contractors. This can be easily accomplished by influential but corrupt Public Officials who are willing to clandestinely conspire with a contractor to have the contractor approach the State with what appears to be a unique contracting proposal.

It is the OCG's considered contention that all such proposals must be tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place.

3. Finally, the OCG is obliged to strongly recommend that all Public Bodies and Public Officers should ensure that proper procedures are adhered to in the consummation and execution of any and all GOJ contracts. In this regard, the OCG is recommending that every GOJ contract should be finalised and evidenced in writing prior to the execution of same.

The aforementioned Recommendation should be applicable to all forms of GOJ contracts and should have even greater applicability and implications for financial transactions and commercial agreements in which GOJ assets and/or finances are being negotiated, divested and/or realized.