



**OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

**Special Report of Investigation**

**Conducted into the Circumstances Surrounding the Entering into of an Agreement for the Operation of the Hotel, (Braco Resort Hotel, formerly Breezes Rio Bueno, Trelawny) between the Commissioner of Lands (by virtue of trust on behalf of National Insurance Fund), the Accountant General and the Blue Diamond Hotels and Resorts**

**The National Insurance Fund**

**Ministry of Labour and Social Security**

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### **Conducted into the Circumstances Surrounding the Entering into of an Agreement for the Operation of the Hotel, (Braco Resort Hotel, formerly Breezes Rio Bueno, Trelawny) between the Commissioner of Lands (by virtue of trust on behalf of National Insurance Fund), the Accountant General and the Blue Diamond Hotels and Resorts**

#### **National Insurance Fund**

#### **Ministry of Labour and Social Security**

### **INTRODUCTION**

On March 14, 2013, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to the provisions which are contained in Sections 15(1) and 16 of the Contractor General Act, initiated an Investigation into the circumstances surrounding the entering into of an Agreement for the Operation of the Hotel, hereinafter referred to as the Operating Agreement, for the Braco Resort Hotel, (formerly Breezes Rio Bueno, Trelawny) between the Commissioner of Lands (by virtue of trust on behalf of National Insurance Fund) et al and the Blue Diamond Hotels and Resorts Inc., for the Interim Management of the Braco Resort Hotel.

Section 15 (1) of the 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 license;*



(f) *the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licenses”.*

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 investigation is warranted”.*

The OCG’s decision to commence a formal Investigation into the referenced matter is predicated upon, *inter alia*, the material particulars which were uncovered during the course of the OCG’s sustained monitoring activities which commenced from as early as May 13, 2011. The matter related to the process which was undertaken by the NIF and/or the Ministry of Labour and Social Security, as it regards the Operating Agreement with the entity Blue Diamond Hotels and Resorts Inc., for the Braco Resort Hotel. The OCG’s preliminary review unearthed, *inter alia*, that the Blue Diamond Hotels and Resorts was not registered with the National Contracts Commission (NCC), as prescribed by Section 1.3.2.1, Volume 2 of the Government of Jamaica (GOJ) Handbook of Public Sector Procurement Procedures (GHPPP, October 2010).

Further, the OCG’s preliminary review suggested, *inter alia*, that (a) the procurement and contract administration practices of the NIF and/or the Ministry of Labour and Social Security, as it regards the captioned procurement was irregular, improper and lacking in transparency and (b) the referenced contract might not have been awarded in accordance with the relevant provisions of the Contractor General Act and/or the GOJ Handbook of Public Sector Procurement Procedures (GHPPP, October 2010).

The OCG, during the period leading up to the official commencement of its Investigation, and pursuant to its monitoring mandate, issued several Statutory Requisitions to Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, to ascertain particulars pertaining to, *inter alia*, the process and procedures employed in the foregoing regard.



The OCG's Investigation primarily sought to determine, *inter alia*, (a) the level of compliance, on the part of the NIF and/or the Ministry of Labour and Social Security, with the provisions of the GOJ Procurement Guidelines, (b) the circumstances which led to the entering into of an agreement with the Blue Diamond Hotels and Resorts Inc. for the interim operation of the Braco Resort Hotel, and (c) the propriety of the procurement process that was undertaken by the NIF as it regards the Operating Agreement with the Blue Diamond Hotels and Resorts Inc. for the interim operation of the Braco Resort Hotel.

The foregoing objectives, *inter alia*, formed the bases of the OCG's Terms of Reference for its Investigation and were primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

Additionally, the OCG was guided by the recognition of the very important responsibilities which are imposed upon Public Officials and Officers by, *inter alia*, the Contractor General Act, the (GHPPP, October 2010), the Financial Administration and Audit Act (FAA Act), and the Public Bodies Management and Accountability Act (PBMA Act).

At the commencement of its Investigation in March, 2013 the OCG, by way of a letter which was dated March 14, 2013, wrote to the Hon. Derrick Kellier, Minister of Labour and Social Security, and Mr. Alvin McIntosh, the Permanent Secretary in the Ministry of Labour and Social Security, to inform them of, *inter alia*, the OCG's decision to launch an Investigation into the circumstances surrounding the said Operating Agreement.



## **TERMS OF REFERENCE**

The primary objectives of the OCG's Investigation into the circumstances surrounding the entering into of an Operating Agreement, for the interim management of the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny) are to determine, *inter alia*, the following:

1. Whether there was compliance, on the part of the NIF, with the provisions of the Contractor General Act, the Government of Jamaica (GOJ) Handbook of Public Sector Procurement Procedures (GHPPP, October 2010), the Financial Administration and Audit Act, and the Public Bodies Management and Accountability Act, in the award of any government contract to the Blue Diamond Hotels and Resorts Inc.

### **Specific Objectives**

The specific objectives are as follows:

1. To determine the circumstances that led to the entering into of an Operating Agreement, for the Braco Resort Hotel, with the Blue Diamond Hotels and Resorts Inc.
2. To determine the validity of the contract that was entered with the Blue Diamond Hotel and Resorts Inc. for the interim management of the Braco Resort Hotel.
3. To determine the procurement methodology that was employed by the NIF and/or the Ministry of Labour and Social Security, as it regards the Operating Agreement with the Blue Diamond Hotels and Resorts Inc.
4. To determine the propriety of the process that was undertaken by the NIF and/or the Ministry of Labour and Social Security, as it regards the operating Agreement for the Braco Resort Hotel with the Blue Diamond Hotels and Resorts Inc.



5. To ascertain whether there were any breaches of the GOJ Public Sector Procurement Guidelines (GHPPP, October 2010) on the part of any Official/Officer at the NIF and/or the Ministry of Labour and Social Security and/or anyone acting on their behalf, as it regards the operating Agreement for the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny) with the Blue Diamond Hotels and Resorts Inc.
  
6. To ascertain whether the contract award process(es), for the referenced contract(s) was/were fair, impartial, transparent, and devoid of irregularity and/or impropriety.



## **JURISDICTION**

Detailed below is the legal basis upon which the Contractor General has enquired into the award of a contract for the interim management of the Braco Resort Hotel.

The OCG's jurisdiction into the matter is grounded upon the fact that the signing of the formal Agreement for the Operation of the Hotel, (Braco Resort Hotel, formerly Breezes Rio Bueno, Trelawny) between the Commissioner of Lands, (by virtue of trust on behalf of National Insurance Fund), the Accountant General and the Blue Diamond Hotels and Resorts, constitutes a valid contract. Further, having regard to the fact that the findings noted, herein, have revealed that the contract formally entered into between the Commissioner of Lands, the Accountant General and Blue Diamond Hotels and Resorts brings the matter within the direct remit of the OCG, pursuant to Section 4 of the Contractor General Act.

The OCG must highlight at this juncture that the subject Agreement with the Blue Diamond Hotels and Resorts, was entered into and signed by the Commissioner of Lands and the Accountant General, pursuant to their authority under the Crown Property (Vesting) Act. Section 4 (2) of the Crown Property (Vesting), provides for, *inter alia*, the following:

*“All lands acquired, by whatever means, on or after the commencement of this Act, for the use of the Government of this Island, other than lands acquired by the Minister of Housing for the purposes of the Housing Act, shall be vested in the Commissioner for the time being and held by him and his successors in the said office in trust for Her Majesty, her heirs and successor-*

*(a) for the purposes for which such lands are purchased, taken or held under any enactment; or*



*(b) in accordance with the terms of the transfer, conveyance, lease, will or other assurance executed in relation thereto.”*

Essentially, the Commissioner of Lands is the registered proprietor of the subject land with the result that the Commissioner would be required to, and did sign the Agreement on behalf of the NIF.

Further, pursuant to the subject Agreement, Clause 6.1.1, stipulates, *inter alia*, the following:

*“Ownership*

*That the Commissioner is registered under The Registration of Titles Act as the proprietor of lands and buildings comprised in the Property and holds the same in trust for the NIF and the Accountant-General holds the FF&E used in the operation of the Hotel in trust for the NIF, and that as at the Effective Date there shall be no leases or other contracts in existence which are incompatible with the granting or performances of this Agreement.”*

Notwithstanding the above quoted section, the OCG was informed by way of a letter which was dated April 30, 2013, that the “...initial Operating Agreement to operate the Braco hotel for the period February 2010 to May 2012, was negotiated between the National Insurance Fund (NIF) and Blue Diamond Hotel (BDH).” Additionally, the OCG’s review of the documentation relating to this matter indicates that the procurement process was managed primarily and directly by the NIF and/or the Ministry of Labour and Social Security.

Additionally, it is instructive to note that the OCG was informed by Mrs. Audrey Deer-Williams, on the behalf of the Permanent Secretary, by way of a letter which was dated September 26,



2011 that “...the Cabinet by its Decision No. 31/11 dated 15<sup>th</sup> August 2011 gave approval for the divestment of the Braco Resort Hotel; and authorized the National Insurance Fund (NIF), through the Enterprise Unit of the Development Bank of Jamaica (DBJ), to pursue the said divestment”.

The OCG must note that the NIF was established by an Act of Parliament, that is, pursuant to Section 39 of the National Insurance Act, which provides that, “...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”. The administration of the Fund is carried out by the Ministry of Labour and Social Security, however, by virtue of Section 39 (4), the Ministry of Finance and Public Service has responsibility for the financial control of the assets of the Fund. In this regard, the Ministry of Labour and Social Security and the Ministry of Finance stand as the legal administrators of the NIF and subject to the scrutiny of the OCG.

It is also to be noted that the NIF, for the purpose of the Operating Agreement, was not a legal entity and could not have contracted directly with the Blue Diamond Hotels and Resorts with the result that the Commissioner of Land had to on its behalf.

It is instructive to note that Section 2 of the Contractor General Act provides as follows:

**"government contract"** includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;

**"prescribed licence"** means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

**"public body"** means -

- (a) Ministry, department or agency of government;
- (b) A statutory body or authority;



(c) Any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company.

Based upon the definition of a Public Body, noted above, it is held that the National Insurance Fund, being a department of the Ministry of Labour and Social Security, is in fact a Public Body as defined by the Act.

Consequently, the mandatory requirement of the utilization of the GOJ procurement procedures, the failure of the NIF to utilize the required procurement procedures, inclusive of the requirement for National Contracts Commission (NCC) registration of contractors, is the reason for the OCG's Investigation.



## **METHODOLOGY OF INVESTIGATION**

The Requisitions/Questionnaires, which formed a part of the OCG's Investigative methodology, were directed by the OCG to the Permanent Secretary in the Ministry of Labour and Social Security, Mr. Alvin McIntosh, on April 5, 2013. A Follow-up Requisition/Questionnaire was also prepared by the OCG and sent to Mr. Alvin McIntosh, on May 15, 2013, in the foregoing regard.

The OCG conducted a detailed review and cross-referencing of the **sworn** certified Statements, supporting documents and additional documentation which was submitted by Permanent Secretary, Mr. Alvin McIntosh; and conducted a comprehensive review of other correspondence and information which were submitted by Public Officials/Officers of the NIF and the Ministry of Labour and Social Security pursuant to the OCG's monitoring activities.



## **Examination of Facts**

### **The Commencement of the OCG's Investigation**

The Office of the Contractor General's (OCG's) decision to commence this Investigation on March 14, 2013 is predicated upon, *inter alia*, the material particulars which were uncovered during the course of the OCG's sustained monitoring activities which commenced from as early as May 13, 2011.

### **The Decision to Divest Breezes (Braco) Trelawny**

The OCG's monitoring of this matter commenced subsequent to the publication of a Jamaica Gleaner news article on May 4, 2011, which was headlined, "*SuperClubs wants to buy NIF resort...Says pension funds ignorant of market shift*". The referenced article stated as follows:

***"National Investment Fund, having ended its 11-year partnership with John Issa's SuperClubs group, effective April 30, appears to be positioning its 226-room hotel at Rio Bueno for sale but is not yet ready to declare its hand.***

*Issa is among those already lining up to buy.*

*Last week, the NIF got the go-ahead to buy two pieces of private property already in use by the Trelawny-based Rio Bueno hotel at a cost of US\$275,000 (J\$23.38 million).*

*The pension fund did not disclose the names of the sellers, but told Wednesday Business they were private individuals.*



*The lots form part of the property's nine-hole golf course.*

*"These two lots were in the middle course. Being individually owned, the owners could deal with them as they saw fit, including constructing villas," said Audrey Deer-Williams, senior director for investments at the NIF.*

*"We couldn't allow this to happen in the middle of the golf course, hence the strategic acquisition." The fund acquired Rio Bueno in year 2000 for US\$23 million.*

***SuperClubs was hired to manage the property under lease - first under the name of Grand Lido Braco Resorts and Spa and, at the close of the partnership, as Breezes Rio Bueno - paying a fixed monthly rental of US\$200,000, plus insurance, to NIF.***

*Deer-Williams said at the end of the SuperClubs contract, that Breezes Rio Bueno was bringing the best returns of it's the NIF's resort assets.*

*Issa, chairman of the resort group, which also owns the Breezes brand, attempted unsuccessfully to renegotiate the contract to a performance-based arrangement ahead of the renewal period, a*



*proposal that he acknowledged could have resulted in swings in income for NIF.*

*But he also said that pensions funds have failed to recognise that the hotel market has changed since the global recession, requiring new thinking to keep properties viable.*

*"We made a proposal for leasing the property on terms which we thought were fair and in line with current economic conditions," he told Wednesday Business.*

*"It had a lower fixed rental and a higher performance-linked rental. This would not necessarily mean less income, but less of a guarantee."*

*At the end of the contract, Deer-Williams said "all options were on the table", to indicate that while the NIF was looking for a new manager, the option of putting the property on the market had not been ruled out.*

*Issa said he wrote to Prime Minister Bruce Golding after he was made aware of the possible sale, requesting the terms of the divestment.*



*"He wrote us back saying that as soon as a decision was made, we would be advised and that the process for any sale would be totally transparent."*

*On Monday, Zein Issa-Nakash, told Wednesday Business that SuperClubs was definitely interested in acquiring the report property "subject to right price and terms", but did not elaborate.*

*The value of the property has not been disclosed..."*

In a subsequent media article, which was published on the RJR News website on April 21, 2011, and which was headlined, ‘**Govt looks at option to sell Breezes Rio Bueno Hotel in Trelawny**’ it was stated, *inter alia*, as follows:

**"The sale of the Breezes Rio Bueno Hotel in Trelawny is one of the options being looked at by the Government with less than two weeks to go before the SuperClubs chains ends its management contract..."**

**"The Ministry of Labour is proposing three objectives ... one, for an operator to continue carrying on the business, or two, to lease the property or three, to sell the property. It is proposed that the property continue (so that) tourists continue to be there and the workers get to keep their jobs..."** (OCG Emphasis)



In respect of the foregoing, the OCG, by way of a letter which was dated May 13, 2011, wrote to Mr. Alvin McIntosh, the Permanent Secretary in the Ministry of Labour and Social Security, notifying of the OCG's intent to monitor the process if the decision was taken to divest the stated property.

In the circumstances, and as a precursor to the OCG's monitoring, the OCG, by way of the above stated letter, requested that the Ministry of Labour and Social Security provide the OCG with a copy of the most recent Valuation Report and a detailed Status Report.

Under cover of letter which was dated May 26, 2011, the Permanent Secretary, Mr. Alvin McIntosh, provided the OCG with the requested documentation which also informed of, *inter alia*, the following:

1. ***The hotel was vacated by its former Tenant, BRL Limited, on April 30, 2011. This constitutes a breach of their Lease which has an unexpired term ending November 30, 2012. Additionally, as at April 30, BRL Limited was indebted to the NIF in the amount of US\$4,185,473.01 being rent, interest, and General Consumption Tax. After consultation with the Attorney General, the Legal firm of Nunes, Scholefield, DeLeon and Company has been retained to file a civil suit for the recovery of the debt and for damages for breach of contract.***
2. *Consequent upon the termination of the Lease by BRL Limited, the NIF has been actively examining possible options regarding the future operation of the hotel. The options include:-*



- *Identification of a new tenant/operator*
  - *Sale of the property*
3. ***Expression of interest from seven (7) qualified hotel operators both locally and internationally were received. These proposals will be assessed and a recommendation will be made to the Cabinet for consideration.***

***The selection process will be completed by mid-June 2011. The intention is for the hotel to reopen in time for the 2011/2012 winter tourist season, following a period of refurbishing.***

4. *BRL Limited has filed a civil suit in the Supreme Court of Jamaica for the sum of US\$ 39,683,000 being claim for breach of collateral contract with respect to the maintaining of the hotel at the “Grand Lido Brand” standard. The purported breaches cited are that the NIF failed to provide:*
- *an appropriate conference centre*
  - *satisfactory quality guestrooms*
  - *satisfactory quality guest bathrooms... ”<sup>1</sup> (OCG Emphasis)*

The OCG found by way of a Valuation Report, which was prepared by NAI Jamaica: Langford and Brown, and which was dated April 2011, that the referenced property was found to have

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<sup>1</sup> Letter which was received from Dr, Alvin McIntosh, Permanent Secretary, Ministry of Labour and Social Security that was dated May 26, 2011.



been appraised based upon, *inter alia*, the current market value of the property, as at April 2011, as well as the current annual lease value that should be paid by an Operator.

The referenced Valuation Report detailed that the property was inspected on March 28 and 29, 2011, and that the following determinations, *inter alia*, were made:

1. That the hotel has a total room count of 226;
2. That the approximate area of the buildings measured 226,800; and
3. That the current market value of the property was in the amount of US\$24,000,000.00.

It is instructive to note that, in respect of the property's Lease Value, the referenced Valuation Report indicated that "*...it should be noted that no operator would lease the property in its current state, unless the lease terms (payment) reflected the fact that extensive expenditure is needed to the hotel.*"<sup>2</sup>

In the foregoing regard, it was further explained that "*...it would be imprudent for the owner to speculatively upgrade the property as any particular upgrade may not suit the style of operation a new operator may bring. The best course would be to upgrade the property to the specification of a chosen operator and agree a lease payment accordingly.*"<sup>3</sup>

Having regard to the statements which were made by Mr. Alvin McIntosh, the Permanent Secretary, especially as it regards the "*expression of interest from seven (7) qualified hotel operators...*" the OCG, by way of its letter of May 31, 2011, requested that Mr. McIntosh provide responses to the following questions:

1. "*Were the Expressions of Interest received for the purchase of, or lease of, the property?*"

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<sup>2</sup> NAI Jamaica: Langford and Brown Valuation Report which was dated April 2011, pg. 28.

<sup>3</sup> NAI Jamaica: Langford and Brown Valuation Report which was dated April 2011, pg. 28.



*Please provide a copy of each Expression of Interest;*

- 2. Was the property advertised? Please indicate particulars surrounding the receipt of the Expressions of Interest;*
- 3. Does the Ministry intend to divest the property by way of lease or sale?’<sup>4</sup>*

In respect of the foregoing, Mr. McIntosh, under cover of a letter which was dated June 8, 2011, furnished the OCG with copies of the Expressions of Interest which were allegedly received from seven (7) Hotel Operators, which included six (6) entities that were interested in leasing or managing the property and one (1) which had proposed to purchase the property.

#### The Expressions of Interest

Further to the referenced letter of June 8, 2011, and subsequent to the OCG’s review of certain enclosed documentation, the OCG found that Expressions of Interest were allegedly received from the following entities:

1. Karisma Hotels and Resort Corporation Ltd., dated April 21, 2011;
2. Sol Melia Hotels and Resorts, dated April 8, 2011;
3. Couples Resort, Jamaica, dated March 16, 2011;
4. AM Resorts, dated April 1, 2011;
5. Sandals Resorts International, dated March 24, 2011;
6. Sagikor Life Jamaica Ltd. /Aimbridge Hospitality, dated March 31, 2011; and
7. Desires Hotel, dated April 25, 2011.

Having taken into consideration certain disclosures which were made by the NIF to the OCG, by way of a letter, which was dated June 18, 2013 regarding the current and advanced divestment

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<sup>4</sup> OCG letter which was dated May 31, 2011, that was sent to Mr. Alvin McIntosh.



process which is being undertaken by the NIF for the subject property, the OCG has taken the decision to limit the material disclosed as it regards the aforementioned proposals.

It is instructive to note that although the OCG was not in receipt of a copy of the Request for Expressions of Interest, which was allegedly issued by the NIF, upon a review of the Proposals which were submitted by the aforementioned entities, it was revealed, *inter alia*, that at least three (3) of the referenced Proposals explicitly stated that they were in response to a Request for Expressions of Interest which had been issued by the NIF.

The OCG also found that the aforementioned respondents to the NIF's alleged Request for Expressions of Interest, had each presented varying particulars in the proposals which were submitted, especially as it regards, the terms and conditions of the lease, the management and fee structure, as well as the type and duration of the Lease and/or Management Agreement.

Having regard to the question of whether the referenced property was advertised, Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, informed the OCG, by way of a letter which was dated June 8, 2011 of, *inter alia*, the following:

*“...the NIF has had to resort to legal action to protect its interests as landlord at the Braco Property. The SuperClubs Group gave notice that it was vacating the property initially with effect from March 31, 2011, but subsequently extended to April 30, 2011...It is claiming that as a result of Force Majeure which occurred in mid 2008, it had a right to terminate the lease. The NIF disagrees with this position and is supported by an independent expert determination prepared by KPMG Consultants....”*



**Since the NIF did not wish to compromise its legal position by mutually terminating the lease and thereby releasing SuperClubs of its obligation, the decision was taken to discretely solicit expressions of interest from suitably qualified industry operators. Expressions of Interest were sought from those companies who had the financial and market strength to quickly occupy a position in the property, thereby mitigating any potential loss to the NIF...** (OCG Emphasis)

Having regard to the OCG's question of the Government's intent to divest the referenced property by way of lease or sale, the Permanent Secretary in the Ministry of Labour and Social Security, Mr. Alvin McIntosh, informed the OCG, by way of its letter of June 8, 2011 that the NIF "...is pursuing all its options in order to ensure the most favourable financial outcome."<sup>5</sup>

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<sup>5</sup> Letter which was dated June 8, 2011 that was sent to the OCG by Mr. Alvin McIntosh.



## **The Engagement of Blue Diamond Hotels and Resorts**

The OCG found, by way of a Jamaica Gleaner news report which was published on September 11, 2011 and which was headlined, ‘Braco up for sale - Gov’t backtracks on management contract’, that the Cabinet of Jamaica had ordered the sale of the referenced property. The referenced news report indicated, *inter alia*, the following:

**“Cabinet has reportedly ordered the sale of the National Investment Fund (NIF)-owned 250-room Braco resort in Trelawney (formerly Breezes Rio Bueno), which was under the management of SuperClubs for 15 years.**

*However, weeks after, stakeholders in the tourist industry are questioning whether the US \$30 million property, which is owned 100 percent by the Jamaican Government, will go to public tender.*

**The concerns are heightened by the fact that up to two months ago, the Government, through the NIF, was working feverishly to sign off with a management group for the property. Then, the organizations shortlisted were the Butch Stewart-led Sandals Resorts International, Spain’s Sol Melia, and a Mexican company with which European tour operator group TUI is involved.**

*The Government had hoped to collect some US\$200,000 per month from any of its new lessees.*



**But, cash-strapped and busy selling off a number of its assets, the Government has reportedly backtracked on any hope of signing a management contract.**<sup>6</sup> (OCG Emphasis)

In the foregoing regard, the OCG by way of a letter which was dated September 15, 2011, requested that the Permanent Secretary in the Ministry of Labour and Social Security, Mr. Alvin McIntosh, provide a status update to the OCG on the progress of the captioned divestment opportunity.

In response to the foregoing, it is instructive to note that the OCG was informed by Mrs. Audrey Deer-Williams, on the behalf of the Permanent Secretary, by way of a letter which was dated September 26, 2011 that “...the Cabinet by its Decision No. 31/11 dated 15<sup>th</sup> August 2011 gave approval for the divestment of the Braco Resort Hotel; and authorized the National Insurance Fund (NIF), through the Enterprise Unit of the Development Bank of Jamaica (DBJ), to pursue the said divestment”.<sup>7</sup>

Further, the stated letter also informed of, *inter alia*, the following:

*“...the NIF has been communicating with the DBJ and the DBJ has outlined the requisite divestment procedure to be followed in selling the property. We are currently in the process of establishing the Enterprise Team, which will recommend an appropriate privatization strategy for the sale.*

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<sup>6</sup> Jamaica Gleaner News Article entitled ‘Braco up for sale- Govt backtracks on management contract’ which was published on September 11, 2011.

<sup>7</sup> Letter which was dated September 26, 2011, that was sent by Mrs. Audrey Deer-Williams to the OCG .



**...the NIF has commissioned a valuation of the property, which will provide guidance in determining a reserve price ...**<sup>8</sup>

It is instructive to note that the OCG was again made aware, by way of a Jamaica Gleaner News report, which was headlined ‘Two hotels to re-open’ and which was published on December 28, 2011 of, *inter alia*, the following:

**“The former Grand Lido Braco in Trelawny and the former Super Fun Resort in Runaway Bay, St Ann, will be reopening following last week’s signing of lease agreements between the Government and two tourism entities.**

*Tourism Minister Edmund Bartlett in making the announcement said, “The 226-room **Grand Lido Braco has been leased by Sun Wing Limited and will be operated by Blue Diamond Resorts Limited...**”<sup>9</sup> (OCG Emphasis)*

Having regard to the foregoing, the OCG, by way of a letter which was dated January 23, 2012, wrote to Mr. Alvin McIntosh, the Permanent Secretary in the Ministry of Labour and Social Security, to ascertain, *inter alia*, the following:

1. Whether an Enterprise Team had been constituted and the names and titles of each member of the team;
2. Whether Valuations had been conducted and a copy of the Reports;
3. An Executive Summary outlining the discussions which ensued between the NIF and/or the Ministry of Labour and Social Security and the Development Bank of Jamaica;

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<sup>8</sup> Letter which was dated September 26, 2011, that was sent by Mrs. Audrey Deer-Williams to the OCG.

<sup>9</sup> Jamaica Gleaner News report, which was headlined ‘Two hotels to re-open’ and which was published on December 28, 2011.



4. The Schedule of the timeline for privatization; and
5. A Status Report with regard to the privatization transaction, indicating the impact, if any, which the Lease/Agreement with Sun Wing and/or Blue Diamond Hotels and Resorts will have on the transaction.

In respect of the foregoing, Mr. Alvin McIntosh, the Permanent Secretary, responded to the OCG's requests, by way of a letter which was dated January 27, 2012, and provided, *inter alia*, the following information:

1. That the Enterprise Team was constituted and comprised of the following individuals:
  - i. Mr. Alvin McIntosh, Permanent Secretary- Ministry of Labour and Social Security;
  - ii. Mr. Barrington Chisholm, Former Chairman, NIF;
  - iii. Mr. Michael McMorris, Consultant;
  - iv. Mrs. Audrey Deer-Williams, Senior Director, Investments, NIF; and
  - v. Mr. Ludlow Bowie, Director, Real Estate/ Property Management (NIF) - a representative from the Attorney General's Chambers.
  
2. That, in addition to the Valuation Report which was prepared by NAI Jamaica – Langford and Brown, which is referred to herein, a second Valuation which was dated November 14, 2011, was conducted and a Report produced by Allison Pitter and Co., which detailed, *inter alia*, the following pertinent information:
  - i. That the property measured 3,628,302.9 Sq. ft. or 83.29 acres;
  - ii. That the referenced Property was inspected on September 21 and 23, 2011;
  - iii. That the appraised value was in the amount of US\$34,000,000.00- US \$36,000,000.00; and
  - iv. That the referenced Property was valued on the basis of its Open Market Value and as such, "...the best price at which an interest in a property might reasonably



*be expected to be sold by private treaty at the date of valuation...’’<sup>10</sup>, given due consideration to certain assumptions.*

3. That there was no Agreement with Sun Wing Limited and that the Agreement was in fact with the Blue Diamond Hotels and Resorts.

It is instructive to note that the OCG found, by way of the Minutes of the Meeting of the Board of Directors of NIF, which was dated September 28, 2011, that it was stated that the **Cabinet, by its Decision No. 31/11, and which was dated August 15, 2011, gave its approval for the divestment of the Hotel, through the Enterprise Unit of the Development Bank of Jamaica.**

The referenced Minutes also stated that “**...the NIF in consultation with the Ministry of Finance and the Attorney General should explore the possibility of a short term lease arrangement, without prejudice to the divestment exercise, in order to ensure the availability of the hotel rooms during the 2011/2012 winter tourist season.**’’<sup>11</sup> (OCG Emphasis)

In addition, the referenced Minutes revealed that the Cabinet, by its Decision No. 33/11, which was dated August 29, 2011 “**...approved the interim management of the Braco Resorts Hotel to Blue Diamond Hotels and Resorts, for six months commencing 1<sup>st</sup> November 2011.**’’<sup>12</sup> (OCG Emphasis)

The referenced Minutes also disclosed the following:

*“Blue Diamond has indicated that the total start-up cost is estimated to be US\$2.1 Million which would be undertaken by them. This expenditure would be recovered from the NIF during the course of the interim management contract.*

<sup>10</sup> Valuation Report which was dated November 14, 2011 and that was conducted by Allison Pitter and Co.

<sup>11</sup> The Minutes of the Meeting of the Board of Directors of NIF, which was dated September 28, 2011.

<sup>12</sup> *Ibid.*



**The NIF would be guaranteed a rental payment of US\$500,000 for the six month period.**<sup>13</sup>(OCG Emphasis)

In relation to the divestment of the property, the referenced Minutes disclosed, *inter alia*, the following:

*“The NIF has commenced discussions with the DBJ in respect of the proposed divestment of the hotel. In accordance with the Government of Jamaica privatization process, the property should be divested via the public tender process to ensure equity and transparency of the transaction.”*<sup>14</sup>

In the foregoing regard, the OCG found that the DBJ had proffered the following recommendations:

- *“The establishment of an Enterprise Team in consultation with the Ministry of Labour and Social Security, to oversee the privatization strategy and framework for the privatization of the hotel*
- *The Enterprise Team will recommend an appropriate privatization strategy and framework for the privatization*
- *DBJ to be engaged to provide Secretariat services to the Enterprise Team*
- *Due diligence on the entity, and preparation of an Information Memorandum document*

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<sup>13</sup> *Ibid.*

<sup>14</sup> the Minutes of the Meeting of the Board of Directors of NIF, which was dated September 28, 2011



- *Advertisement of the hotel for sale*
- *Selection of a preferred bidder for the hotel, and*
- *Recommendation to be made to Cabinet for their approval*<sup>15</sup>

The OCG found by way of the Minutes of the Braco Hotel Resort Property Enterprise Team Meeting, which was held on December 5, 2011, that the following, *inter alia*, was disclosed:

**“Mr. Reynolds enquired about the status of operations on the Braco property and was informed by Mrs. Williams that ...one interested group, the Blue Diamond Group from Canada with whom the NIF had started negotiating an agreement to manage/lease the property on a temporary basis... beginning in January 2012. Negotiations had come to a standstill since the group was informed by the Attorney General’s Department ... of the need to be registered by the National Contracts Commission (NCC) before being permitted to enter into a lease agreement for the property.”**<sup>16</sup>(OCG Emphasis)

It is instructive to note that the referenced Minutes have also disclosed that Mr. Douglas Leys, the then Solicitor General and member of the referenced Braco Resort Enterprise Team, stated that “**... a Cabinet Decision was already taken to permit the Braco property to be leased to the Blue Diamond Group (BDG) for the 2012 winter season and that the BDG was informed of**

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<sup>15</sup> *Ibid.*

<sup>16</sup> Minutes of the Braco Hotel Resort Property Enterprise Team Meeting, which was held on December 5, 2011.



**the need to register with the NCC and to get a Tax Compliance Certificate**<sup>17</sup>. (OCG Emphasis)

The OCG has found, by way of a Cabinet Submission, which was referenced as ‘No.../MLSS/09/2011’, and which was submitted by the former Minister of Labour and Social Security, Mr. Parnel Charles, that the NIF was in discussion with two (2) entities, which were reportedly suggested by the Ministry of Tourism, namely, Blue Diamond Hotels and Resorts and Karisma Hotels and Resorts and, as it regards the feasibility of entering into an interim Management Agreement. Further, the referenced Submission noted that the Ministry of Tourism and the NIF had met with the two (2) prospective Operators and that both had given undertakings to provide detailed proposals during the week commencing August 15, 2011.

The mentioned Cabinet Submission requested that the Cabinet approve the interim management of the hotel for a six (6) month period commencing on November 1, 2011, whilst pursuing the divestment, subject to agreement on the terms and conditions.

The OCG has confirmed, by way of a copy of Cabinet Decision No.31/11, which was dated August 15, 2011, that the Cabinet (1) “...gave approval for the divestment of the property and authorized the National Insurance Fund, through the Enterprise Unit of the National Development Bank, to pursue the said divestment”; (2) “...**agreed that the Minister of Labour and Social Security and the Minister of Tourism, in consultation with the Minister of Finance and the Attorney General, should explore the possibility of a short-term lease arrangement, without prejudice to the divestment exercise...**” and (3) “**stipulated that the lease arrangements were to be pursued expeditiously to allow the Minister of Labour and Social Security to resubmit the matter (to the Cabinet) as soon as possible.**”<sup>18</sup> (OCG Emphasis)

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<sup>17</sup> Minutes of the Meeting of the Board of Directors of NIF, which was dated September 28, 2011.

<sup>18</sup> Cabinet Decision No. 31/11 which was dated August 15, 2011.



The OCG found, based upon the disclosures detailed in a Cabinet Submission, which was referenced as ‘No.../MLSS/10/2011’ and submitted by Mr. Pearnel Charles, the then Minister of Labour and Social Security, dated August 19, 2011, that the following was noted:

**“The Ministry of Labour and Social Security is recommending the engagement of Blue Diamond Hotels & Resorts to manage/operate the Hotel for six months commencing November 1, 2011 and ending on April 30, 2012. Blue Diamond was selected from a number of entities that were considered.”<sup>19</sup>**

The OCG found, by way of Cabinet Decision No. 33/11, which was dated August 29, 2011, that after consideration, the Cabinet “...**approved the recommendation for the interim management of the Braco Resorts Hotel by Blue Diamond Hotel and Resorts for six months commencing 1 November 2011, under the specified terms and condition...**”<sup>20</sup> (OCG Emphasis)

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<sup>19</sup> Cabinet Submission, referenced as ‘No.../MLSS/10/2011’ and submitted by the then Minister of Labour and Social Security, Mr. Pearnel Charles and dated August 19, 2011.

<sup>20</sup> Cabinet Decision No. 33/11 which was dated August 29, 2011.



## **The Selection Process of the Blue Diamond Hotel and Resort**

Having regard to, *inter alia*, the material particulars of Cabinet Decision No. 33/11, referred to herein, the OCG, by way of a letter which was dated January 23, 2012, wrote to Mr. Alvin McIntosh, the Permanent Secretary in the Ministry of Labour and Social Security, and requested, *inter alia*, particulars relating to (a) the Privatization transaction and (b) the Agreement with Sun Wing Ltd. and the Blue Diamond Hotels and Resort.

The Ministry of Labour and Social Security, by way of a letter which was dated January 27, 2012, responded to the OCG and provided (a) particulars relating to the Privatization process, (b) the disclosure that the said Ministry did not have an Agreement with Sun Wing Ltd. and that the Agreement was with the Blue Diamond Hotels and Resorts, and (c) a copy of a letter which was dated January 25, 2011 and written to the NIF by the Attorney General's Chambers.

The OCG found that the abovementioned letter of January 25, 2011, which was sent to the NIF by the Attorney General's Chambers (AGC) revealed that the AGC had reviewed certain draft Agreements as it regards "*...Braco Resorts: Commissioner of Lands et al: Blue Diamond Hotels and Resorts Ltd.*"<sup>21</sup>

Further, the OCG found by way of the referenced letter that the AGC considered the draft Agreement that had been reviewed to be "*... in order for signature by the... [Commissioner of Lands], subject to...[Blue Diamond Hotels and Resorts] obtaining registration from the National Contracts Commission and the Commissioner of Lands and the Accountant General conducting the appropriate due diligence within their realm of portfolio responsibility...*"<sup>22</sup>(OCG Emphasis)

It is instructive to note that the OCG, by way of its letter of February 8, 2012, wrote to Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, and again

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<sup>21</sup> Letter dated January 25, 2011, which was sent to the NIF by the Attorney General's Chambers.

<sup>22</sup> *Ibid.*



requested, *inter alia*, (a) the Agreement(s) which were entered into with the Blue Diamond Hotels and Resorts, as it regards the interim operation of the Braco Resorts and Hotels, (b) an Executive Summary, detailing the genesis of the discussions with and the rationale for the selection of the entities which had been evaluated as potential Operators, and (c) the procurement methodology which was utilized in the selection of Blue Diamond Hotels and Resorts.

In the foregoing regard, and by way of a letter which was dated February 21, 2012, Mrs. Audrey Deer-Williams responded for and on behalf of Mr. Alvin McIntosh, the Permanent Secretary, and provided the OCG with a copy of the Operation Agreement which was entered which was entered into with the Blue Diamond Hotels and Resorts, along with other 'Licence Agreements' for the associated Golf Course, Sewage Treatment Plant, Water Treatment and Storage Plant and the remaining lands.

The OCG was also provided with a copy of an Evaluation Form which was prepared and completed by the NIF, in respect of the evaluation of Proposals for the 'Short Term Management' of the Braco Resort Hotel.

The referenced Evaluation Form detailed, *inter alia*, the following:

1. That four (4) proposals were reviewed and evaluated;
2. That the Proposals which were submitted in the captioned regard were submitted by; Karisma Hotels and Resort Corporation Ltd., Blue Diamond Hotels and Resorts, Desires Hotel, and H10 by Ocean Hotels;
3. That details pertaining to the terms and conditions which were proposed by the referenced four (4) entities', *inter alia*, were outlined; and
4. That both Karisma Hotels and Resort Corporation Ltd. and the Blue Diamond Hotels and Resorts had proposed, *inter alia*, an option of an interim operation of six (6) months commencing on November 1, 2011.

The OCG also found that the mentioned Evaluation Form noted the following comments:



1. **Karisma Hotels and Resort Corporation Ltd.** – *“Significant experience in hospitality management of 5 –star resort properties... proposed income to the NIF is based on operating profit and is not guaranteed. Requires long term lease arrangement following short term management contract which would not align with the NIF’s divestment plan”.*
2. **Blue Diamond Hotels and Resorts-** *“Limited experience in hospitality management. Opened first hotel in February 2011...Proposal provides a guaranteed income of US\$500,000 for the 6 month period and possible upside of 20% of earnings...”*
3. **Desires Hotel-** *“...proposal was received shortly before the hotel was closed on April 30. At that time the NIF was seeking to have continued operation of the facility and was soliciting expressions of interest for a long term lease/operation.”*
4. **H10 by Ocean Hotels-** *“Operator indicated that it would be uneconomical for them to operate the hotel for the desired short period of 6 months.”*

It is instructive to note that the OCG found that the said Evaluation Form failed to provide any specific details of the criteria which were utilized in the assessment of the Proposals, or which was ultimately used to select the lowest responsive bid. Additionally, the OCG has seen no evidence to indicate that an invitation to bid and/or a Tender Document had been prepared and issued to prospective bidders by the NIF, which would, *inter alia*, aptly advise of the eligibility and evaluation criteria.

As it regards the procurement methodology which was utilized in the selection of the Blue Diamond Hotels and Resorts, the OCG was informed by Mrs. Audrey Deer-Williams, in her referenced letter of February 21, 2012, of, *inter alia*, the following:

*“After the evaluation process was complete, the Government took the decision to divest the property. However, a shortage of hotel rooms was evidenced*



*in the industry and extensive discussions were held between the Ministry of Tourism and our Ministry at which time it was decided that the hotel be reopened on a short term basis while steps taken to divest. **Blue Diamond Hotels and Resorts Limited was the only operation who [sic] was willing to partner with us and Cabinet accepted our proposal to operate the hotel for a six-month period**”<sup>23</sup>.*

(OCG Emphasis)

The OCG’s review of the Operating Agreement revealed that the Agreement was made on February 2, 2012, and was entered into between the Commissioner of Lands, the Accountant General and Blue Diamond Hotels and Resorts. Of note is the fact that the Agreement, which exhibited an effective date of February 1, 2012, was duly signed by the relevant parties and notarized by a Notary Public on January 3, 2012.

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<sup>23</sup> Letter which was dated February 21, 2012 and which was sent to the OCG by Mrs. Audrey Deer-Williams.



### **The bona fides of the Entity ‘Blue Diamond Hotels and Resorts’**

It is instructive to note that the OCG conducted a comprehensive review of the Company information for the entity, Blue Diamond Hotels and Resorts, which is available on the Office of the Registrar of Companies website. The OCG’s review revealed that the Blue Diamond Hotels and Resorts is a private overseas company. It was further stated that the company was incorporated on January 6, 2012, and held as its Directors: Mr. Frederick Baker, Mr. Colin Hunter, Mr. Mohammed Patel, and Ms. Natalia Sisnett.

Additionally, the OCG found, by way of a letter which was dated January 27, 2012, and which was sent to the Contractor General by Mrs. Audrey Deer-Williams, for and on behalf of Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, that the following were the Shareholders of Blue Diamond Hotels and Resorts:

1. Tui Travel Overseas Holdings Limited;
2. Mr. Derek S. Hunter; and
3. 2267912 Ontario Inc.

The OCG’s review of the National Contracts Commission (NCC) Contractor Registration File for the Blue Diamond Hotels and Resorts revealed that, by way of a letter which was dated January 10, 2012, Myers, Fletcher and Gordon, Attorneys-At-Law, acting on behalf of Blue Diamond Hotels and Resorts, wrote to the NCC informing of, *inter alia*, the following:

*“We act on behalf of ... [Blue Diamond Hotels and Resorts Inc.] which is a wholly owned subsidiary of the major Canadian Travel and Hotel Group, Sunwing Travel Inc...**Our client has been in negotiations with the National Insurance Fund (“NIF”) to take over and operate the Braco Resort And Hotel in Trelawny on a short term basis, in***



**order to satisfy the demand for hotel rooms for the current winter season.**

*The Braco Resort And Hotel (“Braco Hotel”) has been closed for many months since the previous Lease of the premises expired. **Our clients, BDH, have asked NIF to advise you on the status of the negotiations and to confirm their desire to proceed to sign appropriate agreements if these applications are approved...***<sup>24</sup>

The following enclosures, *inter alia*, were also appended to the aforementioned letter:

1. The Approved Supplier Agreement;
2. The Affidavit under the Voluntary Declarations Act;
3. National Contracts Commission Declaration Form;
4. Certificate of Incorporation of BDH under the Companies Act of Jamaica;
5. Particulars of Overseas Company (Form 31) issued in respect of Blue Diamond Hotel;  
and
6. A Certified copy of Blue Diamond Hotel’s Tax Registration Number.

In addition, the said letter informed that the subject company received clearance letters from the National Insurance Scheme, as well as the HEART TRUST/NTA. A request was also made for the Application to the NCC for registration to be treated as a matter of “priority” and “urgency” on the premise that “ *...a fair amount of work has to be done including procurement to make the premises ready for opening as early in February as practical.*”<sup>25</sup>

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<sup>24</sup> Letter which was sent to the NCC by Ms. Stephanie Sterling, Myers, Fletcher and Gordon- Attorneys-At Law, and which was dated January 10, 2012.

<sup>25</sup> Letter which was sent to the NCC by Ms. Stephanie Sterling, Myers, Fletcher and Gordon- Attorneys-At Law, and which was dated January 10, 2012.



Having regard to the foregoing, the OCG found, by way of a letter which was dated February 15, 2012, and which was addressed to the Manager of the Blue Diamond Hotels and Resorts Inc., and sent by the NCC, that notification was provided that the application for the said entity to become a Supplier of Goods and Services to the GOJ had been approved. The referenced company was registered in the category of General Services, specializing in Hotel Property Management and Operation with a registration validation of up to 12 months, expiring on February 14, 2013.

It is instructive to reiterate that the Operating Agreement revealed that the Agreement was made on February 2, 2012 and was entered into between the Commissioner of Lands, the Accountant General and Blue Diamond Hotels and Resorts Inc. The Operating Agreement, which exhibited an effective date of February 1, 2012, was duly signed by the relevant parties and notarized by a Notary Public on January 3, 2012.

The OCG notes that Section 1.3.2.1, Volume 2 of the (GHPPP, October 2010) states, *inter alia*, as follows:

*“Registration is not a requirement for foreign Bidders to participate in the Government Procurement process. However, if the Bidder is successful and any aspect of the contract is to be executed in Jamaica, **the foreign contractor shall be required to register with the NCC before the contract is awarded.**”<sup>26</sup>(OCG Emphasis)*

Having regard to the foregoing, the OCG has found that the actions of the Public Body, in entering into a contractual agreement with Blue Diamond Hotels and Resorts Inc. prior to the entity obtaining NCC registration, contravened Section 1.3.2.1, Volume 2 of the GOJ Handbook of Public Sector Procurement Procedures (October, 2010).

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<sup>26</sup> GOJ Handbook of Public Sector Procurement Procedures – General Provisions - Revised October 2010.



It is instructive to note that the OCG found, by way of a letter which was dated November 25, 2011, and which was sent to Mrs. Audrey Deer- Williams, NIF, by one Ms. Carole Barnaby, on behalf of the Attorney General, that the following, *inter alia*, was stated:

**“It is submitted that in the premises, the Agreement for the Operation of the Hotel which has due regard to the terms of Cabinet approval for the instant transaction is not merely a lease but also has components of a contract for the procurement of goods and services and therefore falls within the rubric of public sector procurement and the guidelines for that process.”<sup>27</sup>**

The referenced opinion from the Attorney General Department also informed of the following:

***“Emergency Contracting***

***You confirmed by email dated 25<sup>th</sup> November, 2011 that “...the proposal by Blue Diamond Hotel (BDH) to lease the Braco property on a short-term basis was unsolicited.” In conversation of even date (Barnaby/Deer-Williams), we were also advised that the unsolicited proposal was made to the NIF in August, 2011.***

*At our meeting on the 22<sup>nd</sup> November, 2011 concern was raised about the timeline for the opening of the*

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<sup>27</sup> Letter which was dated November 25, 2011, which was sent to Mrs. Audrey Deer- Williams, NIF, by Ms. Carole Barnaby.



*hotel on December 15, 2011 for the winter tourist season, and the implications for procurement. Those present were advised by us that the procurement procedure relative to emergency circumstances contained in section 1.1.5 of Volume 2 of the Government of Jamaica Handbook of Public Sector Procurement Procedures...would apply...*

***We are of the view that based on the circumstances outlined and the nature of the asset, the subject matter of the contract, that is the hotel, this is an emergency within the meaning of the guidelines in Handbook...***

*Having regard to the need to preserve the assets, secure jobs in the midst of a world recession, as well as the commencement of operations so as to maximize revenues from the upcoming winter tourist season, the entering into a short term contract with BDH with a view to the optimal use of the property would qualify as emergency contracting within the context of the guidelines stated in the Handbook...*

*If the normal tender procedures of 4-6 months were to be followed, having regard to the time at which the unsolicited proposal was received, it would not be possible to successfully put this property out to tender and achieve all that was needed to be done*



*to realize a start up date of December 15, 2011. A tender, if properly implemented would place the start up date well beyond December 15, 2011. In those circumstances, the winter tourist season would have expired or nearly so as the necessary start up works and other operational matters would not have been addressed and completed in time...*

***It is to be noted however, that no provisions is made for excluding the qualification requirements for National Contracts Commission Registration and Tax Compliance prior to the award of a contract to which the procurement regulations apply where the emergency contracting procedure is utilized.***

***In the circumstances BDH would need to be registered with the National Contracts Commission and will also be required to provide proof of tax compliance ...prior to the award of the Contract...***<sup>28</sup>(OCG Emphasis)

Having regard to the foregoing disclosures, the OCG has found the following to be of significant import:

1. That the proposal which was submitted by the Blue Diamond Hotels and Resorts was stated to have been an Unsolicited Proposal;

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<sup>28</sup> Letter which was dated November 25, 2011, and which was sent to Mrs. Audrey Deer- Williams, NIF, Ms. Carole Barnaby.



2. That the referenced proposal was made to the NIF in August 2011;
3. That there was an urgent need by the NIF to have the referenced hotel opened by December 15, 2011 and in time for the winter tourist season;
4. That the Attorney General's Chambers opined that procurement, by way of the Emergency Contracting provision, as outlined in the GOJ Handbook of Public Sector Procurement, was applicable; and
5. That the use of the Emergency Contracting procedures does not preclude the requirement for the NCC registration of the Blue Diamond Hotels and Resorts prior to the award of contract. In this regard, the Attorney General's Chambers recommended that said Hotel take steps to register with the NCC and obtain its TCC.



## **Unsolicited Proposal Submitted by the Blue Diamond Hotels and Resorts**

Having regard to the disclosure that was made in the referenced Opinion from the Attorney General's Chambers, which was dated November 25, 2011, *inter alia*, the OCG, by way of its Requisition which was dated April 5, 2013, required that the Permanent Secretary in the Ministry of Labour and Social Security, Mr. Alvin McIntosh, respond to the following question:

*“Please indicate whether you are aware of an Unsolicited Proposal which was submitted by the Blue Diamond Hotel, in respect of the operation of the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny). If yes, please provide comprehensive responses to the following:*

- i. The date(s) on which the NIF and/or the Ministry of Labour and Social Security received the referenced Unsolicited Proposal;*
- ii. The manner and/or nature of the medium of communication which was utilised;*
- iii. The name(s) and title(s) of the GOJ/ Ministry of Labour and Social Security and or NIF Official(s) and/or Officer(s) to whom such a proposal was submitted;*
- iv. The circumstances relating to the NIF's and/or the Ministry of Labour and Social Security's receipt of such a proposal;*
- v. The name(s) and title(s) of the Blue Diamond Hotel Official(s), Officer(s), Employee(s) and/or anyone acting on their behalf who interacted with the GOJ/ Ministry of Labour and Social Security and or NIF*



*with regard to the proposal;*

- vi. The name(s) and title(s) of the GOJ/ Ministry of Labour and Social Security and or NIF Official(s) and/or Officer(s) who was/were involved in the assessment and/or evaluation of the referenced proposal;*
- vii. The criteria by which the Ministry of Labour and Social Security and/or NIF evaluated and assessed the proposal;*
- viii. The terms and conditions of the referenced proposal;*
- ix. A copy of the referenced proposal;*
- x. A copy of the written evaluation and/or assessment of the referenced proposal;*
- xi. Particulars of the recommendation(s) which was/were made, if any, arising out of the referenced evaluation and/or assessment; and*
- xii. Any other relevant particulars that are pertinent to the Ministry of Labour and Social Security's and/or NIF's receipt of the referenced Unsolicited Proposal.”<sup>29</sup>*

In respect of the foregoing, Mr. McIntosh, in his sworn response<sup>30</sup> which was dated April 30, 2013, informed the OCG that he was aware of an Unsolicited Proposal which was submitted by the Blue Diamond Hotels and Resorts, in respect of the operation of the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny). Mr. McIntosh advised that the referenced Proposal was submitted to Mrs. Audrey Deer-Williams, Senior Director, Investments, NIF, by way of an

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<sup>29</sup> OCG Statutory Requisition which was dated April 5, 2013 and that was sent to Mr. Alvin McIntosh.

<sup>30</sup> Letter was certified on April 30, 2013, but was dated May 20, 2013.



email which was dated July 29, 2011. Mr. McIntosh added that the Blue Diamond Hotels and Resorts was referred to the NIF, by one Mr. Lionel Reid of the Jamaica Vacations Limited.

As it regards the Public Officer(s) and/or Official(s) of the NIF, the GOJ and/or the Ministry of Labour and Social Security who was/were involved in the assessment and/or evaluation of the referenced proposal, Mr. McIntosh, in his above referenced sworn response stated that the said assessment and/or evaluation was handled by Mrs. Audrey Deer-Williams, Senior Director, Investments, NIF, and Mr. Ludlow Bowie, Director, Real Estate/Property Management.

Specifically, as it regards the OCG's question of the criteria by which the Ministry of Labour and Social Security and/or the NIF evaluated and assessed the Unsolicited Proposal, Mr. McIntosh informed the OCG that the following criteria were used to evaluate the proposal from Blue Diamond Hotels and Resorts:

*“...willingness to operate the hotel for the intended short term of six (6) months; ability to pay the prescribed rent; capability to have the hotel opened in time for the 2011/2012 winter tourist season”<sup>31</sup>.*

As it regards the OCG's question of the circumstances relating to the NIF's and/or the Ministry of Labour and Social Security's receipt of such an Unsolicited Proposal, Mr. McIntosh informed the OCG, in his sworn response which was dated April 30, 2013, as follows:

*“The NIF was in the market seeking to divest the property. Additionally, the MOT expressed serious concern about the property being closed for the then upcoming winter tourist season. **Out of this concern, the MOT recommended BDH to the NIF**”*

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<sup>31</sup> Sworn response of Mr. Alvin McIntosh, which was dated April 30, 2013.



**for discussion to be had in relation to the hotel”.**

(OCG Emphasis)

Mr. McIntosh, in his referenced sworn response of April 30, 2013, stated that the Terms and Conditions of the referenced Proposal were as follows:

*“Duration – 6 months commencing 1<sup>st</sup> November 2011; Rent – US\$500,000 for the six month period; Twenty percent (20%) share of the operating profit from the hotel operation; Operator to cover all operating cost (including any potential operating losses that may be incurred); Operator to pay the property tax; BDH to provide NIF with Interest free loan – US\$2.4 Million; BDH’s commitment to increase airlift to the island”<sup>32</sup>.*

It is instructive to note that Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, provided the OCG with a copy of the referenced ‘Unsolicited Proposal’ which was dated August 12, 2011, and which detailed, *inter alia*, as follows:

*“Herewith please find Sunwing Travel Group’s resort division, Blue Diamond Hotels & Resorts’ formal letter of our expression of interest in operating the Braco Village, Rio Bueno Hotel asset of the National Insurance Fund.*

**Following our meeting and review of the property this week, we are pleased to officially notify you of**

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<sup>32</sup> Sworn response of Mr. Alvin McIntosh, which was dated April 30, 2013.



*our interest in operating the hotel on an interim basis; and also based on future direction from your office or responsible agents on the proper procedures, wish to formally bid for the purchase of the property.*

*We look forward to receiving all available information pertaining to the hotel and the property in order that we can better assess the value and, in order to follow with a formal bid for its purchase...*

*In order that you can best evaluate the immediate and numerous benefits to the NIF and Jamaica, through the provision of an interim operating contract for the Braco property to Blue Diamond, we have outlined for you details of our proposal:*

*-Blue Diamond commits to taking over the management, operation and commercialization of the hotel effective immediately with opening on or about November 01, 2011. (This would require an immediate finalization of an arrangement between NIF and Blue Diamond and access to the property in order that the hotel is opened successfully on time). The term of this interim agreement is proposed as being November 01, 2011 through April 30, 2012. (Blue Diamond is open to negotiating an extension to the agreement for*



*additional months should NIF be unsuccessful in disposing of the asset on its preferred schedule).*

*-Sunwing Travel Group commits to increasing airlift to Jamaica by two planes...in support of the hotel upon opening ...*

*-Blue Diamond commits to providing the funding for necessary investments in hardware, soft goods, staff and training, to ensure the hotel is brought up to and maintained at the necessary standard to meet or exceed the its existing condition and customer expectation and guest satisfaction ...*

*-Blue Diamond commits to cover all operating costs of the hotel, including any potential operating losses during the period of this interim agreement ...*

*-Blue Diamond agrees to provide a guaranteed rental payment to NIF, of US\$500,000 dollars, for the period November 2011- April 2012. An immediate deposit in advance of the term of the contract, of US \$ 100,000 would be made to NIF upon the signing of the agreement...*

*- Blue Diamond requests that NIF provide Blue Diamond the option to match the highest bid for the property during the course of the auction of*



*the hotel plus, a premium of US\$500,000.*”(OCG  
Emphasis)

Having regard to the aforementioned ‘Unsolicited Proposal’, the OCG found the following to be of significant import:

1. That, the ‘Unsolicited Proposal’ was stated to have been submitted by the Blue Diamond Hotels and Resorts on August 12, 2011;
2. That, Blue Diamond Hotels and Resorts’ letter of August 12, 2011, which was sent to the attention of Mrs. Audrey Deer- Williams and Mr. Ludlow Bowie, indicated that the said letter was following upon a meeting between Blue Diamond Hotels and Resorts and the Ministry of Labour and Social Security and/or the NIF;
3. That, based upon a Cabinet Submission, referenced No.../MLSS/09/2011, referred to herein, and dated August 15, 2011, Mr. Pearnel Charles, the then Minister of Labour and Social Security, disclosed that the NIF was “... *presently in discussion with two hoteliers suggested by the Ministry of Tourism, namely, Karisma Hotels & Resorts Corporation Ltd and Blue Diamond Hotels and Resorts*”.
4. That based upon a Cabinet Submission, referenced as No.../MLSS/10/201, referred to herein, and dated August 19, 2011, Mr. Pearnel Charles, the then Minister of Labour and Social Security, disclosed that the “...*Ministry of Labour and Social Security is recommending the engagement of Blue Diamond Hotels & Resorts to manage/operate the Hotel for six months commencing November 1, 2011 and ending on April 30, 2012. Blue Diamond was selected from a number of entities that were considered.*”
5. Having regard to the lack of transparency attending this matter, in terms of the absence of certain procurement requirements, procedures and documents, the OCG is unable to determine whether the Blue Diamond Hotels and Resorts’ letter of August 12, 2011 was



submitted to the above referenced officers of the NIF prior or subsequent to the NIF's receipt of at least three (3) other proposals referred to herein.



## **Review of the Procurement Process Employed by the NIF in respect of the Operating Agreement with the Blue Diamond Resorts and Hotels**

In an effort to determine the procurement process which was employed by the NIF as it regards the Operating Agreement with the Blue Diamond Hotels and Resorts, the OCG, by way of its Statutory Requisition of April 5, 2013, required that Mr. Alvin McIntosh, Permanent Secretary in the Ministry of Labour and Social Security, provide responses to, *inter alia*, the following questions:

*“Please indicate whether a formal tender process was employed by the NIF and/or the Ministry of Labour and Social Security in the award of a contract to the Blue Diamond Hotels and Resort for the operation of the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny). If yes, please provide responses to the following:*

- i. The date(s) on which the opportunity was advertised and/or publicized, and the medium through which same was done;*
- ii. The procurement methodology, if any, which was employed to select suitable/qualified Operator(s);*
- iii. The name(s) and title(s) of the person(s) who was/were involved in the Contractor selection process at the NIF and/or the Ministry of Labour and Social Security. The date(s) on which the listed contract(s) was/were awarded to the Contractors;*
- iv. The value of the contract to the Blue Diamond Hotels and Resort;*
- v. The approval(s) which was/were received from the respective authority (ies), for the referenced contract;*



- vi. *Details of the eligibility criteria which was employed;*
- vii. *Details of the evaluation criteria and process which was utilized by the NIF and/or the Ministry of Labour and Social Security;*
- viii. *Whether a formal Tender Document was prepared by the NIF and/or the Ministry of Labour and Social Security and communicated to prospective bidders in respect of the captioned contract. If yes, please provide a copy of same.*
- ix. *Copies of all correspondence between the NIF and/or the Ministry of Labour and Social Security and the respective Contractor(s).*

*If you had responded ‘no’ to any of the foregoing questions, please indicate the reason for same. Please also provide documentary evidence, where possible, to substantiate your responses.”<sup>33</sup>*

In response to the foregoing, Mr. McIntosh, by way of his sworn response of April 30, 2013, stated as follows:

**“There was a tender process to seek a long term lessee for the hotel. However, because of the urgent need to re-open the hotel in time to meet the start of the 2011/2012 winter tourist season, (as expressed by MOT), there was no formal tender process to identify an interim manager/operator.”**

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<sup>33</sup> OCG Statutory Requisition which was dated April 5, 2013, which was sent to Mr. Alvin McIntosh.



- I. *No, as there was no formal tender process, given the urgent need to secure the short term operator.*
  
- II. **Four applicants were assessed for the interim management of the hotel. Blue Diamond was the only one of the four who indicated a willingness to accept an Agreement for short term period of six (6) month.**
  
- III. *Alvin McIntosh, Permanent Secretary, MLSS; Audrey Deer-Williams, Senior Director, Investments, NIF; Ludlow Bowie, Director, Real Estate/Property Management, NIF.*
  
- IV. *The rent payable to by BDH is the only contract sum to which the NIF can relate. This amount was US\$ 500,000 for the initial six month period. During the extension, the rental was increased to \$1.3M per annum. The full contract value cannot be determined until a final audit of the accounts is complete. The audit is due within ninety (90) days of the termination of the Term.*
  
- V. **The Agreements were approved by Cabinet ...[by way of] Cabinet Decision No. 31/11 dated August 15, 2011 and No. 32/11 dated August 22, 2011**
  
- VI. **BDH, the operator, is an overseas company. Having received Cabinet approval to operate the**



*hotel, they sought and were registered with the National Contracts Commission.*

VII. *As previously advised, BDH was selected from one of four candidates who were willing to enter into an interim management agreement ...*<sup>34</sup> (OCG Emphasis)

It is also instructive to note that Mr. McIntosh, in his aforementioned sworn response, informed the OCG that a formal Tender Document was not prepared by the NIF and/or the Ministry of Labour and Social Security and thereafter communicated to prospective bidders in respect of the subject contract.

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<sup>34</sup> Sworn response of Mr. Alvin McIntosh which was received on April 30, 2013.



## Special Note

### Current Status

It is instructive to note that both the process for the intended Divestment and the Interim Operation Agreement for the Braco Resort Hotel have been, from as early as 2011, subjected to the routine monitoring of the OCG, pursuant to its monitoring mandate. In this regard, it was revealed, by way of a letter which was dated June 18, 2013, and which was received from Mrs. Audrey Deer Williams, Senior Director, Investments, that the “...*Operating Agreement with the Blue Diamond Hotels & Resorts Inc. was terminated effective May 31, 2013, [and that the NIF and the Blue Diamond Hotel] ...are currently finalizing various termination matters*”.<sup>35</sup>

In the referenced letter of June 18, 2013, the OCG was also informed by Mrs. Deer-Williams that the NIF was “...*currently in negotiations with Melia Hotels International (Melia) for the operation of the hotel under a management Agreement. It was further stated in the referenced letter that Melia will manage and operate the Hotel on behalf of the NIF and that the terms of the Agreement are still being negotiated between the parties*”.

It is also instructive to note that the OCG was further informed, by way of a letter which was dated January 9, 2014, and which was sent by Mrs. Audrey Deer-Williams that a Management Agreement had been signed between Melia Hotels International and the Commissioner of Lands, the Accountant General, and NIF Resort Management Co. Limited.

The OCG will continue to monitor the aforementioned process pursuant to its mandate under the Contractor General Act.

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<sup>35</sup> Letter which was dated June 18, 2013, which was received from Mrs. Audrey Deer-Williams.



## SUMMARY OF FACTS

1. The NIF had invited and received Expressions of Interest from seven (7) Hotel Operators, which included six (6) entities that were interested in leasing or managing the property and one (1) entity that had proposed to purchase the property.
2. The Valuation Report which was dated April 2011, and which was prepared by NAI Jamaica: Langford and Brown estimated that the current market value of the subject property was in the amount of US\$24,000,000.00.
3. A second Valuation Report which was dated November 14, 2011, and which was prepared by Allison Pitter and Co. estimated that the value of the Hotel was in the amount of between US\$34,000,000.00 – US\$36,000,000.00.
4. The Cabinet, by way of Decision No. 31/11, which was dated August 15, 2011, gave its approval for the Divestment of the Braco Resort Hotel.
5. Based upon a Cabinet Submission that was referenced as “No.../MLSS/09/2011”, which was dated August 15, 2011 and submitted by the former Minister of Labour and Social Security, Mr. Pearnell Charles, it was stated that the NIF was in discussion with two (2) entities, namely the Blue Diamond Hotels and Resorts and Karisma Hotels and Resorts as it regards the interim management of the Braco Resort Hotel. The said document also stated that both entities had provided undertakings that detailed proposals would be provided.
6. The Ministry of Labour and Social Security recommended the engagement of Blue Diamond Hotels and Resorts to manage/operate the Braco Resort Hotel for six (6) months commencing on November 1, 2011. The Cabinet, thereafter, approved the recommendation for the interim management of the said Hotel for a period of six (6) months.



7. The OCG was provided with a copy of an Evaluation Form, by the NIF, which indicated that four (4) entities had been evaluated for the 'short-term management' of the Barco Resort Hotel. The OCG has, however, seen no evidence to indicate that an evaluation criteria was utilized to assess the proposals, or the process which was utilized to invite participation in the procurement opportunity.
8. The four (4) companies that were evaluated for the 'short-term management' of the Braco Resort Hotel were (a) Karisma Hotels and Resort Corporation Ltd., (b) Blue Diamond Hotels and Resorts, (c) Desires Hotel, and (d) H10 by Ocean Hotels.
9. The Agreement for the Operation of the Hotel was entered into on February 2, 2012, between the Commissioner of Lands, the Accountant General and Blue Diamond Hotels and Resorts. The Agreement, whilst exhibiting an effective date of February 1, 2012 was duly signed by the relevant parties and notarized by a Notary Public on January 3, 2012.
10. The company, Blue Diamond Hotels and Resorts became registered with the National Contracts Commission (NCC) on February 15, 2012. It must be noted that February 15, 2012, represents the first and only occasion on which the entity gained NCC registration. Additionally, and of equal importance is the fact that the entity became registered with the NCC subsequent to the date on which the contract was in fact awarded.
11. The NIF failed to undertake a formal tender procedure in compliance with the GOJ procurement procedures, as it regards the Operating Agreement that was established with the Blue Diamond Hotels and Resorts.
12. The Operating Agreement with the Blue Diamond Hotels and Resorts Inc. came to a conclusion on May 31, 2013.



## CONCLUSIONS

Based upon the documents which have been reviewed, as well as the sworn testimonies which have been received from the Ministry of Labour and Social Security, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that the contract which was awarded to the Blue Diamond Hotels and Resorts for the Operation of the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny), was in breach of Section 4 of the Contractor General Act and the then applicable GOJ Handbook of Public Sector Procurement Procedures (GHPPP, October 2010).

The OCG is of the considered opinion that the procurement process which was undertaken by the NIF and/or the Ministry of Labour and Social Security, in respect of the Operating Agreement with the Blue Diamond Hotels and Resorts for the Braco Resort Hotel (formerly Breezes Rio Bueno, Trelawny), was in contravention of the legitimate and duly constituted procedures which are provided for in the then applicable (GHPPP, October 2010).

2. The OCG has concluded that the breaches of the (GHPPP, October 2010), included, *inter alia*, the following:
  - a. The NIF and/or the Ministry of Labour and Social Security acted in contravention of the provisions which are provided for in Section 1 of Volume 2 of the (GHPPP, October 2010) by failing to employ a formal tender process, prior to the entering into of the Operating Agreement.

Section 1 of Volume 2 of the (GHPPP, October 2010) stipulates the general procedures for the procurement of goods, general services and works.



The NIF and/or the Ministry of Labour and Social Security acted in contravention of Section 1.2 of Volume 1 of the (GHPPP, October 2010), in its failure to employ a formal tender process in keeping with the provisions of Section 1 of Volume 2 of the (GHPPP, October 2010). It is instructive to note that Section 1.2 of the GHPPP outlines the ambit and scope of the application of the provisions of the said procedures.

- b. The OCG has concluded that the NIF and/or the Ministry of Labour and Social Security failed to employ and to prepare and issue a formal Tender Document with detailed specifications which should have adequately indicated (a) the specific requirements of the procuring entity, (b) a clear description of the services which were required, (c) the eligibility and responsiveness requirements, (d) the evaluation methodology and criteria and (e) other specific particulars with respect to the referenced procurement which would aptly assist the prospective bidders in the drafting of their Proposals.

The foregoing amounts to a breach of Section 1.1.1 of the (GHPPP, October 2010) which provides, as follows:

*“...Procuring Entities provide: (a) technical specifications that are drafted to permit the widest possible competition; and (b) formal bidding documents that are fair, non-restrictive, comprehensive and clearly describe the criteria and method for evaluation and selection of the successful Bidder...”*

It is instructive to note that, Mr. Alvin McIntosh, the Permanent Secretary, disclosed, *inter alia*, to the OCG, that Proposals, in the captioned regard, were ‘*discreetly solicited*’ and that a Tender Document/Bidding Document was not prepared or



utilized, by the NIF in respect of the subject contract for the operation of the Braco Resort.

- c. Having regard to the OCG's finding that the Blue Diamond Hotels and Resorts is a private overseas company, it is important to note that, Section 1.3.2.1 of the (GHPPP, October 2010) requires that foreign contractors participating in GOJ procurement be registered with the NCC prior to the award of contract.

Based upon the aforementioned, and further to the OCG's finding that a contractual agreement was entered into with the Blue Diamond Hotels and Resorts, prior to the entity's registration with the NCC; the OCG concludes, with emphasis, that the contractual agreement was entered into prior to the Blue Diamond Hotels and Resorts obtaining NCC Registration and as such the NIF and/or the Ministry of Labour and Social Security breached Section 1.3.2.1 of the (GHPPP, October 2010).

3. The OCG has concluded that the Agreement for the Interim Management/Operation of the Braco Resort and Hotel was entered into on February 2, 2012, between the Commissioner of Lands, the Accountant General and the Blue Diamond Hotels and Resorts. The referenced Agreement was duly signed and notarized on January 3, 2012 and became effective on February 1, 2012.
4. The OCG has concluded, based upon its review of the NCC's Contractor Registration files, the material substance of which has been noted, herein, that the Blue Diamond Hotels and Resorts became registered as an approved Government contractor, on February 15, 2012. The date of February 15, 2012, represents the first occasion on which the entity became registered with the NCC.
5. Owing to issues concerning the lack of transparency attending this matter, in terms of the absence of certain procurement requirements, the OCG is unable to determine the specific procurement methodology which was employed by the NIF as it regards the



captioned contractual agreement. This is further compounded by the fact that the NIF and/or the Ministry of Labour and Social Security failed to employ a formal tender process in respect of the Operating Agreement with the Blue Diamond Hotels and Resorts.

The matter is further compounded by certain conflicting disclosures which were made by Mr. Alvin McIntosh, the Permanent Secretary, in his responses to the OCG.

It is instructive to note that by way of a correspondence which was dated June 8, 2011, Mr. McIntosh informed the OCG, on the one hand that “...*the decision was taken to discretely solicit expressions of interest from suitably qualified industry operators. Expressions of interest were sought from those companies who had the financial and market strength to quickly occupy a position in the property...*” Further, and on the other hand, **Mr. McIntosh subsequently informed the OCG, by way of his sworn response of April 30, 2013, that he was aware of an Unsolicited Proposal which was submitted to the NIF and, in particular, to Mrs. Audrey Deer Williams, Senior Director, Investments, NIF, by the Blue Diamond Hotels and Resorts, in respect of the operation of the Braco Resort Hotel.**

The OCG, therefore, concludes that the aforementioned statements raise serious concerns and questions about the merit of the procurement process which was undertaken by the NIF in the captioned regard.

6. Notwithstanding the challenge resulting from the noted premature termination of the Lease Agreement between the NIF and the SuperClubs Group, the OCG concludes that the actions taken by the NIF and/or the Ministry of Labour and Social Security in (a) discretely soliciting expressions of interest and (b) failing to employ a formal tender process in its undertakings with the Blue Diamond Hotels and Resorts, raises concerns as it regards the level of transparency and governance which was brought to bear upon the subject procurement process.



Additionally, it is the considered opinion of the OCG that the aforesaid actions of the NIF and/or the Ministry of Labour and Social Security violates the spirit and intent of the GOJ's Procurement policy which advocates and seeks to promote a procurement process and system which is aligned with international best practices and promotes fair competition in the award of government contracts.

7. In relation to the noted disclosure of an Unsolicited Proposal which was allegedly submitted by the Blue Diamond Hotels and Resorts to representatives of the NIF in the captioned regard, the OCG has noted, the following :

- i. That based upon a Cabinet Submission referenced as No.../MLSS/09/2011, which was submitted by the former Minister of Labour and Social Security, Mr. Parnel Charles, it was revealed that the NIF was in discussion with two (2) entities Karisma Hotels and Resorts and the Blue Diamond Hotels and Resort, as it regards the feasibility of entering into an Interim Management Agreement.
- ii. That, it was disclosed in a Cabinet Submission referenced as No.../MLSS/10/2011, which was dated August 19, 2011, and submitted by the then Minister of Labour and Social Security, Mr. Parnel Charles, that the Ministry of Labour and Social Security recommended the engagement of Blue Diamond Hotels and Resorts to manage and operate the captioned Hotel for a period of six months commencing on November 1, 2011 and ending on April 30, 2012. It was further stated that Blue Diamond Hotels and Resorts was selected from a number of entities that were considered.

Having regard to the foregoing, the OCG is of the view that there is an inconsistency between the aforementioned statements as it regards the procurement process which was undertaken in respect of the subject



Agreement. The inconsistency lies in whether the procurement was undertaken subject to the receipt of an unsolicited proposal or as a result of the selection process from which Blue Diamond Hotels and Resorts was ‘selected from a number of entities’, as indicated above.

8. The OCG has concluded that the referenced Agreement was approved by the Cabinet of Jamaica, by way of Cabinet Decisions referenced as No. 31/11 and No. 32/11, which were dated August 15, 2011 and August 22, 2011, respectively.
9. The OCG has concluded that the process which was employed by the Ministry of Labour and Social Security and/or NIF, as it regards the Operation Agreement with the Blue Diamond Hotels and Resorts for the Braco Resort Hotel, was irregular and compromised the level of transparency with which the process was administered.

The OCG notes based upon representations which were made by the Permanent Secretary, Mr. Alvin McIntosh, as well as a document which was entitled ‘*APENDIX I National Insurance Fund Braco Resort Hotel, Braco, Trelawney Evaluation of Proposals for Short Tern Management*’, that “*Four Applicants were assessed for the interim management of the hotel*”.

It is, however, instructive to note that having regard to the absence of a formal tender process and, in particular, a Tender Receival Form, a formal Tender Document, and/or a letter inviting the submission of Proposals, the OCG is unable to verify the actual number of bids which were received by the NIF, and the actual criteria which was employed in the NIF’s assessment of the bids.

10. The OCG has seen no evidence to indicate that the captioned procurement was submitted to a Procurement Committee and/or an Evaluation Committee for its review and approval.



In the foregoing regard, the abovementioned actions and inactions of the NIF and/or the Ministry of Labour and Social Security were improper, irregular and inappropriate as they circumvented the process as defined by the then GOJ Procurement Guidelines and runs counter to the principles of good corporate governance.



## **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 therefore of the result of that Investigation and make such Recommendations as he considers necessary in respect of the matter which was investigated.*” (OCG’s Emphasis)

Having regard to the foregoing, the OCG now posits the following recommendations:

1. Whilst the OCG recognizes the overarching difficulties which were stated to have been experienced by the NIF, as a result of the premature termination of its Lease Agreement with the SuperClubs Group, the OCG must, nonetheless, recommend and encourage the NIF to ensure that transactions involving the use of state resources and funds are conducted in a transparent manner to ensure, amongst other things, the integrity of the process.

The OCG’s recommendation is premised on its findings that there were several breaches of the procurement guidelines, by the NIF and/or the Ministry of Labour and Social Security, in respect of the Operation Agreement with the Blue Diamond Hotels and Resorts for the Braco Resort Hotel.

The procurement breaches which have been identified include, *inter alia*, (a) the failure to utilize a formal tender process, (b) the failure to draft tender specifications and the failure to prepare a Tender Document/RFQ in the solicitation of bids, (c) the failure to prepare a Tender Evaluation Report, and (d) the failure to strictly adhere to the procedures for the procurement of goods, general services and works, as articulated in the then applicable (GHPPP, October 2010).



Instructively, the OCG cautions that pursuant to Section 40 of the Public Sector Procurement Regulations (2008), the breaches and contraventions of the procurement guidelines, which have been identified herein, amount to a criminal offence and carries with it sanctions, upon conviction in a Resident Magistrate's Court, of a fine not exceeding one thousand dollars and/or to imprisonment for a term not exceeding three (3) months or to both such fine and imprisonment.

2. The OCG feels compelled to recommend that the Accounting and Accountable Officers of the NIF and/or the Ministry of Labour and Social Security, in going forward, should ensure scrupulous compliance with the now revised and applicable Handbook of Public Sector Procurement Procedures (GHPPP, May 2012), which came into effect on May 14, 2012, particularly, with respect to the following matters:

- (a) Enforcing and administering the mandate, roles and responsibilities of the Procurement Committee and, in particular, the constitution of the said Committee, the oversight which it provides to the evaluation of tenders, and the proper maintenance of procurement records, in light of the provisions which are stipulated under Sections 2.2.5 and 2.2.5.1, Volume 1 of 4 of the (GHPPP, May 2012);
- (b) Promoting the utilization of competent and specialized personnel with adequate knowledge and training in procurement as is mandated under Section 2.3, Volume 1 of 4 of the (GHPPP, May 2012);
- (c) Observing and conforming to the general provisions which govern the procurement of Goods, Works and General as is laid out in Section 1, Volume 2 of 4 of the (GHPPP, May 2012);
- (d) Observing the provisions which highlight the eligibility and qualification requirements which ought to be satisfied to validate the participation of a



contractor in the GOJ procurement process, which are detailed in Section 1.3 of Volume 2 of 4 of the (GHPPP, May 2012);

- (e) Observing and conforming to the provisions which govern the requirement for NCC registration for contractors wishing to participate in the GOJ Public Sector procurement as detailed in Section 1.3.1 of Volumes 2 of the (GHPPP, May 2012).
  - (f) Observing and conforming to the provisions which govern the utilization and treatment of Unsolicited Proposals, as specified in Section 1.2 of Volumes 2 of the (GHPPP, May 2012).
  - (g) Promoting competition in the procurement process, whilst ensuring that NIF's procurement opportunities are open to all appropriately registered and qualified contractors, in conformance with the requirements which are detailed in Section 1.1.2 of Volume 2 of 4 of the (GHPPP, May 2012).
3. The OCG encourages Public Bodies to pay specific attention to the provisions which are detailed in the (GHPPP, May 2012) which provides specific provisions for 'Business Sensitive and other related procurements, in circumstances where the Public Body must take advantage of business opportunities that may impact the financial viability and core business of the procuring entity.
  4. The OCG recommends that in instances where a Public Body has identified that there is a breach of the procurement procedures, the responsible Agency should seek to remedy the said breach in an expeditious and effective manner as opposed to continuing the implementation of the project in violation of the applicable GOJ Public Sector Procurement Procedures, the Regulations and/or other governing laws.



5. The OCG strongly recommends that the Accounting and Accountable Officers of the NIF and/or the Ministry of Labour and Social Security, should be more proactive in the procurement activities of Public Bodies and ensure that contracts which are awarded are done in a manner which is consistent with the full application of the Procurement Guidelines and must be, and appear to be, awarded fairly, impartially and without any form of irregularity and/or impropriety, pursuant to Section 4 of the Contractor General Act.
6. It is recommended that frequent compliance reviews of the accounting, procurement and public administration management practices at the NIF be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service.
7. The OCG recommends that in accordance with, *inter alia*, the Public Bodies Management and Accountability Act and the Financial Administration and Audit Act, the Cabinet, Accounting and Accountable Officers and Members of the Board of Directors of Public Bodies, should, at all times, ensure that the principles of good corporate governance are adhered to and promoted within the Public Sector.

In this regard, the OCG is of the considered opinion that within the respective organizations of the Public Sector, there should be adequate 'check and balance' mechanisms which are designed to promote transparency, integrity and probity in the management and administration of the affairs of the State.