

OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Report of Investigation

Conducted into the Lease of Properties by the Development Bank of Jamaica (DBJ) to the Hon. Mr. Michael Hylton, OJ, QC, the former Solicitor General of Jamaica, and to NationGrowth MicroFinance Limited, a Company of which Mr. Aubyn Hill, a former Director of DBJ, is a Director

Office of the Prime Minister

EXECUTIVE SUMMARY

The Investigation into the Development Bank of Jamaica's Lease of Properties was initiated by the Office of the Contractor-General (OCG) on 2008 March 5¹.

The Investigation was undertaken pursuant to the provisions that are contained in Section 4 (1) of the Contractor General Act (1983), and in the exercise of the statutory and discretionary powers of investigation that are reserved to a Contractor General by Sections 15 (1) and 16 of the Act.

The OCG's Investigation in this matter was prompted by certain written allegations, dated 2008 January 2, that were made by Mr. Edwin McKie, who is a Director of the Development Bank of Jamaica (hereinafter referred to as the "DBJ").

Mr. McKie's allegations and concerns were forwarded to the OCG, by the Office of the Prime Minister, at the direction of the Prime Minister, under cover of a letter which was dated February 27, 2008.

Mr. McKie stated, *inter alia*, that he had become "...very concerned about the terms of two Lease Agreements drawn up by the management of DBJ". The leases, he said, had raised "some very important questions".

¹ Letter from OCG to DBJ initiating Investigation

One of the properties to which Mr. McKie had alluded was leased by the DBJ to the Hon. Mr. Michael Hylton, OJ, QC, the former Solicitor General of Jamaica. The other property had been leased by the Jamaica Development Bank (JDB) to NationGrowth MicroFinance Limited, a company which Mr. McKie alleged is “*controlled principally by the former Chairman of NIBJ (National Investment Bank of Jamaica) and a former director of DBJ, Aubyn Hill*”².

It is critically important to note, at the very outset, that although the DBJ and the JDB are separate and distinct entities under the law, both entities have, at all material times, maintained a “*common Board of Directors and Management Team*”³.

Further, by way of a Management Agreement which was entered into between the JDB and the National Development Bank of Jamaica (NDB) on 1988 July 12, the JDB appointed NDB to manage its “*operations*” and the NDB accepted the appointment effective as at 1987 February 1⁴. The NDB and the Agricultural Credit Bank of Jamaica (ACB) were subsequently merged to form the DBJ, effective 2000, April 1, in consequence of which the DBJ, at all material times, has since managed the affairs of the JDB.

In response to a formal written request for information, which was made by the OCG, by way of letter dated 2008 March 5, to the Managing Director of the DBJ, Mr. Milverton Reynolds, the DBJ provided the OCG with the following correspondence, among others:

- Inter-office Memoranda;
- The Lease Agreement between the DBJ and Mr. Michael Hylton⁵;
- The Lease Agreement between the JDB and NationGrowth MicroFinance Limited (a company in which Mr. Hill is a Director and the same company in which Mr. McKie has alleged that Mr. Hill has a controlling interest)⁶;

² DBJ’s Inter Office Memorandum, dated January 2, 2008, from Edwin McKie to Joseph M. Matalon, Chair, DBJ

³ Answers given in letter, dated 2008 October 14, from Mr. Milverton Reynolds, Managing Director, DBJ, to the OCG, in response to questions posed in OCG letter, dated 2008 October 13

⁴ Management Agreement between JDB and NDB

⁵ Lease Agreement between the DBJ and the Hon. Mr. Michael Hylton, OJ, QC

⁶ Lease Agreement between the JDB and NationGrowth MicroFinance Limited

- The Minutes of Board Meetings and Special Board Meetings, and a Status Report for November 2007.

During the course of the Investigation, several additional requisitions for information were directed by the OCG to the DBJ, and were complied with.

The Investigation was guided by clearly defined Terms of Reference and Methodologies which were used to inform the Findings and the Recommendations which are contained herein.

The Findings of the Investigation revealed that two separate Expressions of Interest from First Global Bank⁷ and Paymaster Jamaica Limited⁸ were received by the DBJ on 2007 May 2 and 2007 May 28 respectively, with respect to certain JDB owned premises which are located at 51 St. Lucia Avenue in New Kingston.

However, in letters from Mr. Milverton Reynolds to First Global Bank and Paymaster Jamaica Limited, it was stated that neither of the Expressions of Interest was considered as the DBJ was unable to commit to any new arrangements at that time since the subject “... *premises are owned by the Jamaica Development Bank which we are in the process of winding up*”⁹.

The DBJ, however, gave other reasons to the OCG for not considering the Expressions of Interest of Paymaster Jamaica Limited and First Global Bank.

In its letter of 2008 March 13, the DBJ advised the OCG, *inter alia*, that “... *In respect of Paymaster we have evidence to indicate that the company is less than diligent in honouring its debt obligations hence, they were not considered. Our understanding from First Global Bank is that they were particularly interested in only the ground floor, and subsequently found more suitable space which met their specific requirement*”¹⁰.

⁷ Expression of Interest from First Global Bank Ltd to DBJ

⁸ Expression of Interest from Paymaster Ltd to DBJ

⁹ Letter from Milverton Reynolds (DBJ) to Paymaster Ltd dated June 14, 2007

Letter from Milverton Reynolds to First Global Bank Ltd. Dated July 4, 2007

¹⁰ DBJ Letter to the OCG dated March 13, 2008

In a further letter to the OCG, which was dated 2008 October 14, the DBJ re-asserted its explanations of 2008 March 13 and added that “*It would not have been prudent for the Board to allow the building to remain unoccupied, given the current disposition of some persons to squat on people’s property. NationGrowth Finance Limited was the preferred Lessee at the time*”.

The DBJ’s allegation regarding Paymaster Jamaica Limited’s apparent lack of diligence in “*honouring its debt obligations*”, appears to be a comment which was related to certain arrangements which had been entered into between Paymaster Jamaica Limited and the former National Investment Bank of Jamaica (NIBJ), the general particulars of which are captured, *inter alia*, in the Minutes of the Board Meetings of the DBJ of 2007 January 30 and 2007 February 27.

The leases of the subject DBJ and JDB properties to the Hon. Mr. Michael Hylton and to NationGrowth MicroFinance Limited, respectively, were both undertaken as commercial arrangements at agreed rental rates which were in keeping with comparable market rates.

The OCG, in the absence of any written evaluation on the subject matter, has, however, been unable to determine the merit, if any, upon which the subject properties were leased to Mr. Michael Hylton and to the NationGrowth MicroFinance Limited.

Whilst the OCG has seen evidence of an Expression of Interest emanating from Mr. Aubyn Hill, it has not, however, seen, nor has it been provided with, any evidence which would definitively indicate how Mr. Hylton became aware of the subject property which was leased to him.

Correspondence that was received from the Managing Director of the DBJ revealed that “*...we cannot state definitively how Mr. Hylton came into information that the area currently being rented by him... was available for rental.*”¹¹

There is no doubt that the referenced leases should have been put to public competitive tender to mitigate, *inter alia*, against the possibility of a perceived conflict of interest in their grant and their negotiation.

¹¹ Email from Mr. M. Reynolds to the OCG dated October 2, 2008

Be that as it may, one very stark conclusion can be drawn from the facts which have been revealed by this Investigation: The execution of the JDB lease with NationGrowth MicroFinance Limited has raised very grave questions about the merit and propriety of the transaction.

This is particularly so because Mr. Hill, a then Director of the DBJ and the JDB, was permitted to make a presentation to a specially convened meeting of the DBJ Board, on 2007 August 31, as regards a DBJ related business proposal in which he had a personal interest.

One key component of Mr. Hill's presentation was a suggestion that "*space for his (proposed business) Kingston Office by [sic] made available at St. Lucia Avenue offices*" – a direct reference to the same JDB office building at 51 St. Lucia Avenue in respect of which the First Global Bank and Paymaster Jamaica Limited had previously submitted Expression of Interests/offers on 2007 May 2 and 2007 May 28, respectively, and which Expression of Interests/offers were rejected by the DBJ by way of letters which were respectively dated 2007 July 4, 2007 and 2007 June 14.

The Hill presentation was, therefore, not only highly irregular and improper but it was one which flagrantly contravened, *inter alia*, the normal processes that were established by the DBJ itself for the submission, evaluation and approval of such business proposals.

A review of the Minutes of the Board Meetings and Special Board Meetings of the DBJ also revealed that Mr. Aubyn Hill was present at both DBJ Board Meetings, of 2007 January 30 and 2007 February 27 – the same meetings at which Paymaster Jamaica Limited's "*debt obligations*" were discussed.

The 2007 August 31 Special DBJ Board Meeting was convened "*at short notice*" primarily, it appears, to present an opportunity to Mr. Hill and his colleague, a Ms. Deborah Williams, to advance his Expression of Interest to the DBJ Board, to build a business partnership agreement between the DBJ and his own then proposed company, People's MicroFinance Limited and,

further, to lease the referenced property at 51 St. Lucia Avenue, in respect of which First Global Bank and Paymaster Jamaica Limited had previously expressed an interest¹².

It is instructive to note that Mr. Hill and his colleague completed their presentation to the former Board and then recused themselves from the remaining deliberations of the Special Board Meeting by leaving the Meeting. However, before leaving the Meeting, Mr. Hill responded to certain questions and issues, regarding his presentation, which had been raised by persons who were present.

All of these circumstances have undoubtedly raised, *inter alia*, a perceived conflict of interest on the part of then Director, Mr. Aubyn Hill.

Mr. Hill's presentation was protested by at least one DBJ Management representative who was present at the Board Meeting as well as by certain members of the Board who queried, *inter alia*, whether the proposed business transaction would be perceived as being at 'arms length'.

Indeed, certain Board Members made protestations and/or raised concerns to the then Chairman of the Board and then Cabinet Secretary, Dr. the Hon. Carlton Davis, OJ, CD, against the evident irregularity of Mr. Hill's personal presentation to the Board in respect of his personal proposed business dealings with the DBJ and the JDB.

However, despite these protestations and/or concerns, some of which were made after Mr. Hill and Ms. Williams left the Meeting, Dr. Davis expressed the opinion, *inter alia*, in Mr. Hill's presence, "*that the Board should take a decision in principle*" in respect of the matter. The Chairman's wishes were eventually satisfied.

In the circumstances, the former Chairman of the DBJ Board, Dr. the Hon. Carlton Davis, and those members of the former Board of the DBJ who were (1) present at the DBJ Board Meeting of 2007 August 31, and who permitted Mr. Hill, while he was a sitting DBJ and JDB Board Member, to use his position as a Director to make a presentation to the Board regarding certain

¹² As disclosed by the Minutes of the Meeting

DBJ and JDB related business proposals in which he had a personal interest, and/or who (2) supported the decision of the Board, *inter alia*, to approve, ‘*in principle*’, the DBJ’s investment in People’s MicroFinance Limited, despite the numerous queries and concerns that had been raised, can be deemed to have (a) acted negligently in the discharge of their responsibilities as DBJ and JDB Directors, and/or (b) abused their authorities and offices as Directors of the DBJ and the JDB and/or (c) breached their respective duties of trust to the Banks and/or (d) breached their respective fiduciary or statutory duties to the Banks.

It is critical to record that the presentation that was made by Mr. Aubyn Hill and his colleague to the DBJ Board, was also made in **direct** contravention of the provisions of Section 17 (2) of the Public Bodies Management and Accountability Act and Section 4 (4) of the Jamaica Development Bank Act

Section 17 (2) of the Public Bodies Management and Accountability Act provides that, “A director who is directly or indirectly interested in any matter which is being dealt with by the board- (a) shall disclose the nature of his interest at a board meeting; (b) **shall not take part in any deliberation of the board with respect to that matter.**” (OCG emphasis).

Section 4 (4) of the Jamaica Development Bank Act provides that “A director who is directly or indirectly interested in a contract made or proposed to be made by the Bank (a) shall disclose the nature of his interest; and (b) **shall not take part in any deliberation or decision of the Bank with respect to that contract.**” (OCG emphasis).

Further, it is instructive to record that Sections 6 and 17 (1) of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, Mr. Hill, a then sitting DBJ and JDB Director, would not have been permitted to make his personal presentation directly to the DBJ Board nor would he have been permitted to respond to questions asked or issues raised during the course of his presentation.

Further, the Board would not, in such circumstances, particularly having regard to the many protestations and/or concerns that were raised, have considered the matter nor voted “*in principle*” thereon.

Section 6 of the Public Bodies Management and Accountability Act provides as follows:

“6. Every board shall-

(a) take such steps as are necessary-

(i) for the efficient and effective management of the public body;

(ii) to ensure the accountability of all persons who manage the resources of the public body;

(b) develop adequate information, control, evaluation and reporting systems within the body;

(c) develop specific and measurable objectives and performance targets for that body”.

Section 17 of the Public Bodies Management and Accountability Act provides as follows:

17- (1) “Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-

(a) act honestly and in good faith in the best interests of the public body; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.

Section 25 of the Public Bodies Management and Accountability Act provides as follows:

25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-

(a) section 4 (acquisition of shares and payment of dividends);

(b) section 5 (exercise of borrowing powers);

(c) section 6 (corporate governance);

(d) section 14 (general duties of auditors);

(e) section 15 (failure to furnish information to auditor);

(f) section 20 (levels of emoluments);

(g) section 21 (restriction on formation of new companies),

the Court may exercise any of the powers referred to in subsection (2).

(2) The Court may-

(a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or

(b) grant an injunction restraining that person from engaging in conduct described in subsection (1).

(3) In exercising its powers under this section the Court shall have regard to-

(a) the nature and extent of the default;

(b) the nature and extent of any loss suffered by any person as a result of the default;

(c) the circumstances of the default;

(d) any previous determination against the person concerned.

(4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto.

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. This provision mandates a Contractor General to consider whether he has found, in the course of his Investigation, or on the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate.

Additionally, the Contractor General is also required, in all such instances, to lay a special report thereon before Parliament.

In the premises, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General on the basis that there is evidence which is recorded herein which would suggest that there was, *inter alia*, a clear and unambiguous breach of duty specifically on the part of (a) Mr. Aubyn Hill, a former Director of the DBJ and the JDB, (b) Dr. the Hon. Carlton Davis, the former Chairman of the DBJ and the JDB, and (c) the former Boards of Directors of the DBJ and the JDB and/or one or more of their members, all in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act and/or Section 4 (4) of the Jamaica Development Bank Act.

The matter is being referred to the Attorney General particularly, *inter alia*, in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act and Section 4 (4) of the Jamaica Development Bank Act.

Additionally, the matter is being referred to the Attorney General for consideration as to what actions, if any, may be pursued against any of the offending former DBJ and JDB Board Directors, having regard to all of the circumstances of the case.

Notwithstanding the foregoing, the OCG must place upon record the fact that Mr. Hill's proposal, as was presented in the Special Board Meeting of 2007 August 31, was not accepted in its entirety. The DBJ equity investment component of his proposal was subsequently rejected by the new DBJ Investment and Finance Committee at a meeting on 2007 December 6, on the stated basis that the original assumptions that were associated with the earlier proposal had changed.

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

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

1. The lease agreement which was entered into by the JDB with the then DBJ and JDB Director, Mr. Aubyn Hill, on behalf of NationGrowth MicroFinance Limited, cannot be considered to have been concluded at “*arms length*”. It is the considered view of the OCG that in the interest of transparency and probity, leases of this nature should have been put to public tender and must, in all such future cases, be put to public competitive tender. Had this been done in the instant case, all known and unknown interested parties would have had an equal opportunity to submit their respective proposals for the rent or lease of the referenced properties.

Invitations for the Submission of Expressions of Interest, for any future proposed leases, must include, at a minimum, an objective and common set of criteria. All Expressions of Interest should be evaluated by the Management of the DBJ, using the said criteria, prior to the seeking of any Board approval regarding the granting or award of any leases. Such evaluations and subsequent recommendations for awards must be **written** and the particulars thereof fully documented.

2. All future and intended DBJ and JDB leases should be reviewed and approved by the DBJ and JDB Board of Directors prior to execution and grant.
3. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.

4. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
5. The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future.
6. Finally, the OCG believes that it is timely to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a

second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

As an aside, there is a simple but effective acid test that all Public Servants may wish to be guided by in the discharge of their public functions. It is one that was advanced by DBJ Board Member, Mr. Edwin McKie, in his 2008 January 2 Inter-Office Memorandum to the DBJ Board Chairman, Mr. Joseph M. Matalon, in the instant matter. This is what Mr. McKie had to say:

“One way to determine whether our actions are above aboard is to ensure that if they were publicized we would be able to justify them”.

INTRODUCTION

The Office of the Prime Minister (OPM), under cover of a letter which was dated 2008 February 27, forwarded to the Office of the Contractor-General (OCG), a DBJ Inter Office Memorandum, dated 2008 January 2, from Mr. Edwin McKie, a Director at the DBJ, to Mr. Joseph Matalon, the current Chairman of the DBJ. The Memorandum was ‘*blind copied*’ by Mr. McKie to the Prime Minister, the Hon. Bruce Golding, MP.

The OPM letter, which was addressed to the Contractor General and signed by the Executive Secretary to the Hon. Prime Minister, advised that “*The Prime Minister has requested that the attached correspondence written by Mr. Edwin McKie in regard to DBJ’s lease of properties (i.e. the Memorandum) be copied to your attention*”.

The referenced Memorandum, from Mr. McKie, raised concerns, *inter alia*, “*about the terms of two lease Agreements drawn up by the management of DBJ.*”

The principal concerns that were raised in the Inter Office Memorandum were as follows:

Lease to NationGrowth Micro Finance Limited

- “*Nationgrowth is controlled principally by the former Chairman of NIBJ and a former director of DBJ, Aubyn Hill. This fact should be well known to the management as they were engaged in negotiating with Aubyn Hill over the possible investment by the DBJ in that company. Moreover, in the August meeting Mr. Hill had raised the possibility of his company occupying the Saint Lucia Avenue premises. There is nothing in the minutes to indicate that the Board had approved this.*”
- “*As Mr. Hill had been a director of the company and had demitted, or was in the process of demitting office, the question that arises is whether the rental of 51 St. Lucia Avenue, to his Company, was conducted at sufficient arms’ length so that it can now be maintained. Was the rental a commercial rental? Are the terms normal for a transaction of this nature? Did the*

management not feel that a lease of this nature to a director or retiring director required special consideration and Board approval?”

Lease of Office Space to Mr. Michael Hylton

- *“Similar questions can be asked about the lease of 1,384 sq. ft. on the Upper Mezzanine to the former Solicitor General, Mr. Michael Hylton. This lease was dated August 24, 2007. At that time Mr. Hylton was Solicitor General, and the Government’s principal law officer. Did the management satisfy itself that the lease was an arms’ length transaction? Were these premises rented on commercial terms? Is it usual in a commercial lease for more than two years not to include provisions for increase of the rent? Is it usual in commercial leases to include the monthly maintenance charge in the rent?”*

An Investigation into the matter was, thereafter, initiated by the Office of the Contractor-General (OCG) on 2008 March 5¹³, pursuant to the provisions that are contained in Section 4 (1) of the Contractor General Act (1983) and in the exercise of the discretionary powers of investigation that are reserved to a Contractor General by Sections 15 (1) and 16 of the Act.

The OCG, by way of letter which was dated 2008 March 5, requested that the DBJ provide certain critical information to the OCG by 2008 March 20. The DBJ, by way of letter, dated 2008 March 13, satisfied the OCG’s requisition.

TERMS OF REFERENCE

- Determine the merit of the concerns that were raised by Mr. McKie, in the Memorandum dated 2008 January 2, to the Chairman of the DBJ Board;
- Determine if the leases were entered into, *inter alia*, in compliance with the requirements of Section 4 (1) of the Contractor General Act (1983).

¹³ Letter from OCG to DBJ initiating Investigation

METHODOLOGY

The documents that were submitted to the OCG by the Development Bank of Jamaica (DBJ), on 2008 March 25, were reviewed by the OCG to inform the Findings, Conclusions and Recommendations that are embodied herein.

The following documents, and other associated documentation, that were submitted with them, were reviewed:

- Correspondence between the DBJ and First Global Bank;
- Correspondence between DBJ and Paymaster Jamaica Ltd;
- DBJ Inter-Office Memoranda;
- Minutes of Board Meetings for the period 2007 January to 2008 January;
- Minutes of Special Board Meetings for the period 2007 May to 2007 October;
- Correspondence between DBJ and the Chartered Land Surveyors Allison Pitter & Company;
- Status Report dated 2007 November regarding the DBJ to the Directors;
- Lease Agreement between DBJ and Michael Hylton;
- Lease Agreement between JDB and NationGrowth MicroFinance Limited.

Additionally, the OCG also reviewed the following documents:

- Minutes of DBJ Investment and Finance Committee Meeting of 2007 December 6;
- Letter, at the hand of Mr. Milverton Reynolds, Managing Director – DBJ, dated 2008 September 29, to the OCG;
- Email, at the hand of Mr. Milverton Reynolds, Managing Director – DBJ, dated 2008 October 1, to the OCG;
- Email, at the hand of Mr. Milverton Reynolds, Managing Director – DBJ, dated 2008 October 2, to the OCG;
- Letter, at the hand of Mr. Milverton Reynolds, Managing Director – DBJ, dated 2008 October 14, to the OCG;

- Management Agreement, entered into between the JDB and the NDB, dated 1988 July 12;
- Emails, at the hand of Sheron Henry – DBJ, dated 2008 October 14, to the OCG.

The evidence that was gleaned by the OCG from the foregoing documentation and, in particular, the written and incontrovertible evidence that was documented, *inter alia*, in the Official Minutes of the DBJ’s Special Board Meeting of 2007 August 31, was deemed sufficient and adequate to enable the OCG to arrive at those of its Findings and Conclusions that have been documented herein.

It is instructive to note the following provisions of the Contractor General Act which, among others, govern the conduct of the formal Investigations of a Contractor General:

Section 17 (1) of the Contractor General Act

Section 17 (1) of the Act prescribes the power of a Contractor General to “*adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, (to) obtain information from such person and in such manner and make such enquires as he thinks fit*”.

Section 17 (2) of the Contractor General Act

Section 17 (2) of the Act provides that “*Nothing in this Act shall be construed as requiring a Contractor General to hold any hearing and no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor General*”.

Section 18 (1) of the Contractor General Act

Section 18 (1) of the Act prescribes, *inter alia*, the power of a Contractor General, “*at any time, (to) require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be the possession or under the control of that officer, member or other person*”.

FINDINGS

Lease of Property

By way of letter, which was dated 2008 March 5, the OCG requested that the DBJ provide specific information on the lease of properties by the DBJ to Mr. Aubyn Hill and to the former Solicitor General, the Hon. Mr. Michael Hylton, OJ, QC.

The DBJ responded by way of letter, which was dated 2008 March 13, indicating that two ‘*expressions of interest*’ were received from the First Global Bank and Paymaster Jamaica Limited, for the JDB’s St. Lucia Avenue property. Based upon the correspondence that was reviewed, the property under consideration and to which the ‘*expressions of interest*’ referred are, in actuality, located at 51 St. Lucia Avenue¹⁴.

The letter of 2008 March 13 also indicated that, “*There was no expression of interest for the property leased to the former Solicitor General.*” This, it should be noted, was a reference to another property which was owned by the DBJ and which is located at 11A to 15 Oxford Road. The letter also stated that “*There are no invitations of Expression of Interest on the referenced matters*” – those matters being specific to the lease of properties to Mr. Aubyn Hill (in actuality, to NationGrowth MicroFinance Limited) and to Mr. Michael Hylton.

It is also important to note that the letter of 2008 March 13 unequivocally stated that, “*We have no written evaluation of Expressions of Interest on the referenced matters.*”

A review of the documents that were provided by the DBJ revealed that the property that was leased to Hon. Mr. Michael Hylton, OJ, QC, was executed by the DBJ as lessor, whereas the property that was leased to NationGrowth MicroFinance Limited, was executed by the JDB as lessor. The JDB/NationGrowth MicroFinance Limited lease was executed by Dr. the Hon. Carlton Davis and Mr. Milverton Reynolds, acting on behalf of the JDB, whereas the Michael

¹⁴ Refer to Email from Mr. Milverton Reynolds dated 2008 October 1

Hylton/DBJ lease was executed by Mr. Milverton Reynolds and Mr. Wayne Whittingham, acting on behalf of the DBJ.

As has been previously stated, it is critically important to note that although the DBJ and the JDB are separate and distinct entities under the law, both entities have, at all material times, maintained a “*common Board of Directors and Management Team*”¹⁵.

Further, by way of a Management Agreement which was entered into between the JDB and the National Development Bank of Jamaica (NDB) on 1988 July 12, the JDB appointed NDB to manage its “*operations*” and the NDB accepted the appointment effective as at 1987 February 1¹⁶. The NDB and the Agricultural Credit Bank of Jamaica (ACB) were subsequently merged to form the DBJ, effective 2000, April 1, in consequence of which the DBJ, at all material times, has since managed the affairs of the JDB.

This was confirmed by the DBJ in writing to the OCG, on 2007 October 14, when it stated that “*We confirm that DBJ has assumed the functions of the NDB under the Management Agreement made between Jamaica Development Bank (JDB) and NDB. We also confirm that we have not assumed the liabilities of JDB. Please be guided accordingly. Sheron Henry.*”

A review of the documents that were provided to the OCG, by the DBJ, also revealed that the two Expressions of Interest for the 51 St. Lucia Avenue property, that were received by the DBJ, were received from First Global Bank Limited and Paymaster Jamaica Limited on 2007 May 2 and 2007 May 28, respectively.¹⁷

By way of letter, which was dated 2007 May 28, Paymaster Jamaica Limited wrote to the DBJ making an offer to lease and/or to purchase premises that were located at 8 St. Lucia Avenue, and proposed an initial annual rental rate of \$650.00 per sq. ft., excluding maintenance and service. (NB. In actuality, the proper address was 51 St. Lucia Avenue).

¹⁵ Answers given in letter, dated 2008 October 14, from Mr. Milverton Reynolds, Managing Director, DBJ, to the OCG, in response to questions posed in OCG letter, dated 2008 October 13

¹⁶ Management Agreement between JDB and NDB

¹⁷ Letter from DBJ dated 2008 March 13

First Global Bank Limited did not make an offer but expressed an interest in entering into negotiations with the DBJ to lease the said JDB St. Lucia Avenue premises on a long term basis, commencing 2007 July 1. First Global Bank also requested that the DBJ provide them with a proposal to this effect as soon as possible.

Neither of the offers and/or Expressions of Interest was accepted by the DBJ. The basis of the DBJ's non-acceptance was that the *"...premises are owned by the Jamaica Development Bank which we are in the process of winding up. A final decision has not been taken on the disposal of the assets of the JDB and as a consequence we are not in a position to commit to a new arrangement at this time."*¹⁸

Both Paymaster Jamaica Limited and First Global Bank Limited were informed of this position by DBJ by way of letters which were dated 2007 June 14 and 2007 July 4, respectively.

A letter from the DBJ to the OCG, dated 2008 March 13, has, however, *prima facie*, contradicted the reasons for not leasing the St. Lucia Avenue property to Paymaster Jamaica Limited and First Global Bank.

The referenced DBJ letter to the OCG stated, *inter alia*, that *"In respect of Paymaster we have evidence to indicate that the company is less than diligent in honouring its debt obligations hence, they were not considered. Our understanding from First Global Bank is that they were particularly interested in only the ground floor, and subsequently found more suitable space which met their specific requirement."*

In a further letter to the OCG, which was dated 2008 October 14, the DBJ re-asserted its explanations of 2008 March 13 and added that *"It would not have been prudent for the Board to allow the building to remain unoccupied, given the current disposition of some persons to squat on people's property. NationGrowth Finance Limited was the preferred Lessee at the time"*.

¹⁸ Letters dated 2007 July 4 and 2007 June 14

The DBJ's allegation regarding Paymaster Jamaica Limited's apparent lack of diligence in "honouring its debt obligations", appears to be a comment which was related to certain arrangements which had been entered into between Paymaster Jamaica Limited and the former National Investment Bank of Jamaica (NIBJ), the general particulars of which are captured, *inter alia*, in the Minutes of the Board Meetings of the DBJ of 2007 January 30 and 2007 February 27.

Details of the Leases to NationGrowth MicroFinance Limited and Mr. Michael Hylton

The table below summarises some of the key details of the Lease Agreements that were entered into between the JDB and the NationGrowth MicroFinance Limited and between the DBJ and the Hon. Mr. Michael Hylton.

Property Address	Lessee/Lessor	Date of Lease	Total sq.ft	Rental/ sq.ft. Annually (\$)	Rental annually (\$)	Term / Years	Comments*
51 St. Lucia Ave. Kgn 5	NationGrowth MicroFinance Limited. Aubyn Hill / JDB	Nov.1, 2007	6,124	\$575.00	3,521,300.00	5	Lease does not include maintenance cost
11A-15 Oxford Road (Vol.343 Fol.88 Vol.322 Fol.73 Vol.339 Fol.8 Vol. 453Fol.53)	Michael Hylton / DBJ	Aug. 24,2007	1,382	\$1,440.00	1,990,080.00	3	Lease includes maintenance and 4 parking spaces

*Findings of the OCG

With reference to the lease that was ultimately granted to NationGrowth MicroFinance Limited, a DBJ Inter-Office Memorandum, dated 2008 January 10, from the DBJ Managing Director to the new Chairman of the DBJ Board, Mr. Joseph M. Matalon, specified that, "...the rental charged is that obtainable on the market" taking into account the following:

- a. Age and condition of the building at the time of the lease;
- b. Lack of parking facilities and elevators;
- c. An undertaking that the Lessee would have the full responsibility of maintaining the building.

It is to be noted that the Inter-Office Memorandum to the Chairman stated explicitly that, *“It is precisely because of the fact that Mr. Hill was a Director that extra care was taken to ensure that the transaction was conducted above board and which could withstand severest of scrutiny.”*¹⁹ The referenced Inter-Office Memorandum also stated that, *“We concede that Mr. Hill was a ‘connected person’ so to speak, but the (former) Board was aware of it. However, it is our considered opinion that the JDB has in no way been jeopardized.”*

The records reveal that the rental that was obtained from NationGrowth MicroFinance is one that is of a commercial nature and that the DBJ was guided by a rate sheet that was prepared by Chartered Land Surveyors, Allison Pitter & Company, for rental chargeable on properties within the area.

It is also noted in the Inter-Office Memorandum that intense negotiations took place with Mr. Hill prior to a rental charge being settled and agreed upon between NationGrowth MicroFinance Limited and the DBJ.

In the same Inter-Office Memorandum, the DBJ also asserted that, *“The lease was prepared by the Legal Department of the DBJ, and it is the view of the Senior Legal Counsel that the terms are quite normal for transactions of this nature.”*²⁰

¹⁹ Inter-Office Memorandum dated 2008 January 10. Response # 2

²⁰ Inter-Office Memorandum dated 2008 January 10. Response # 4

In respect of the cost of the lease to the Hon. Mr. Michael Hylton, it was stated by the Managing Director of the DBJ, in the Inter-Office Memorandum of 2008 January 10, that, “*Mr. Hylton is not a connected person to the Bank and no concessionary rate was given. The terms of the lease were negotiated on a commercial basis and the rental rate is competitive with rates being charged in the commercial area of New Kingston.*”

The Inter-Office Memorandum also noted that the following additional factors were considered in the granting of the lease to Mr. Hylton:

- a. The proposed use of the property (law offices);
- b. The duration of the lease (3 years);
- c. The lessee’s ability to pay the rent;
- d. The lessee’s willingness to underwrite some of the costs of the renovations;
- e. The lessee’s ability to take up immediate occupancy of the property.

In a letter, which was dated 2007 January 25, the Chartered Land Surveyors, Allison Pitter & Company, advised DBJ “*on current rentals in typical office buildings in the New Kingston area...*” The referenced letter also revealed that the research that was engaged in by Allison Pitter & Company had unearthed the following, as per the table overleaf:

Allison Pitter's & Company Rate Sheet

Property Address	Net Rental/ sq.ft. Annually (\$)	Service Charge per sq.ft	Remarks*
Pan Jam , Knutsford Blvd.	792.00- 910.80	\$726.00	5,000- 10,000 sq. ft space
First Caribbean Knutsford Blvd.	942.65		Approx. 34,050 sq. ft
The Towers 25 Dominica Dr.	500.00	675.00	Negotiated late 2006
L.O.J. H.Q. Barbados Ave.	710.00	957.00	Inclusive of electricity
Island Life Bldg. St. Lucia. Ave	660.00- 726.00	627.00	
Jampro Bldg. Trafalgar Rd.	462.00	462.00	To re-negotiate in April 2007
I.C.W.I. Bldg.	600.00- 700.00	850.00	
Mutual Life Bldg. Oxford Rd.	660.00-792.00	530.00	Approx. 7000 sq. ft. and larger
14 Dominica Dr.	627.00		Stand alone 2-storey building- 5,400 sq. ft.
2 Trafford Rd.	792.00		Negotiated late 2006 with 5% annual increase

Minutes of Regular and Special Meetings of the Board of Directors of the DBJ

A review, *inter alia*, of the DBJ Board of Directors Regular and Special Meeting Minutes, revealed that Dr. the Hon. Carlton Davis. OJ, CD, the then Cabinet Secretary, was the Chairman of the DBJ Board during the period 2007 January 30 to 2007 October 31.

A new Board, chaired by Mr. Joseph M. Matalon, was appointed effective 2007 November 1, following after the 2007 September 3 National General Political Elections. The members of the Board pre-2007 November 1 and post-2007 October 31 are as follows²¹:

Members of the Previous Board	Members of the Board Appointed 2007 November 1
Dr. Carlton Davis, Chairman	Joseph Matalon, Chairman
Milverton Reynolds (Managing Director)	Milverton Reynolds (Managing Director)
Dr. Wesley Hughes	Dr. Wesley Hughes
Ann-Marie Rhoden	Ann-Marie Rhoden
Sancia Bennett-Templer	Richard Chen
Eifert Daley	Barrington Chisholm
Imani Duncan	Barclay Ewart
Albert Gray	Paul Lalor
Myrtle Halsall	Ed Mckie
Aubyn Hill	Errol Powell
Tasha Manley	Grantley Stephenson
Richard Sadhi	Dr. Dhiru Tanna
Pastor Neville Wright	Dr. Diana Thorbourne
Wayne Whittingham (Company Secretary)	

²¹ As advised by Mr. Milverton Reynolds, Managing Director, DBJ, in letters to the OCG, dated 2008 March 13 and 2008 September 29. Also confirmed by letter, dated 2007 October 29, at the hand of the Prime Minister, the Hon. Bruce Golding, MP.

The OCG's perusal of the Minutes of the 68th and 69th Meetings of the Board of Directors of the DBJ, held on 2007 January 30 and 2007 February 27, respectively, indicate that the Board deliberated on matters regarding Paymaster Jamaica Limited's financial status. The records also indicate that the then incumbent DBJ and JDB Director, Mr. Aubyn Hill, was present at both meetings.

The Minutes of the Special Meeting of the Board of Directors of the DBJ, that was held on 2007 August 31, seven months after the Board deliberated upon Paymaster Jamaica Limited's financial status, revealed that the incumbent Director, Mr. Aubyn Hill, made a presentation to the said Board, seeking its approval for joint financing for his own and then proposed company, People's MicroFinance Limited, for which he would have a 51% equity, alongside the equity of other investors, inclusive of a request of a \$25M (approximately a 16% equity stake) capital investment on the part of the DBJ.

Further, the Minutes of the Special Meeting of the Board of Directors of the DBJ, revealed that Mr. Hill "...suggested that space for his Kingston Office by [sic] made available at St. Lucia Avenue offices." It must be noted that the referenced property at the St. Lucia Avenue offices was the same office building for which the First Global Bank and Paymaster Jamaica Limited had previously submitted an Expression of Interest/offer on 2007 May 2 and 2007 May 28, respectively.

After the completion of the presentation by Mr. Hill, the Minutes revealed that, "*The General Manager, Credit, expressed the view that he was having difficulty with the figures being presented and requested that these be submitted to enable the Bank's management, in carrying out its assessment, to quantify the sweat/intellectual equity for both the CEO Designate, and the promoter, Mr. Hill.*

The Chairman opined"*that the Board should take a decision in principle.*"

It must be noted, that prior to the Board's continued deliberations regarding Mr. Hill's proposal for financing and the proposed lease of the office building at St. Lucia Avenue, Mr. Hill recused himself from the meeting. However, in regard to the Lease of Property, it is evident that Mr. Hill was aware of the difficulties that Paymaster Jamaica Limited was experiencing.

At that same meeting of 2007 August 31, DBJ's "*Director Halsall questioned if there was a conflict of interest given that Mr. Hill, the promoter, is also a director of the Board of the DBJ. In supporting Director Halsall, the General Manager, Credit, questioned whether it could be viewed that Director Hill used his influence as a director to get his project approved.*

In response, the Corporate Secretary advised that as he had had similar concerns he had checked the Articles of Incorporation, however, there was nothing to suggest from this preliminary review that the DBJ could not enter into a contract with a director. He advised that he would be making more exhaustive checks.

Director Wright queried what would be the perception given that the DBJ is a government institution and suggested that the DBJ should ensure that the arrangement is "arms length".

The Chairman noted the concerns of the members and requested that the management work out these areas of concern."

The Minutes also revealed that, "*The General Manager, Credit, stated that in the normal course of business, management should have assessed the proposal prior to it being presented to the Board.*"

As is evident from the Minutes, the General Manager, Credit, was adverting to the proper procedure that should be followed before the Board grants approval to such financing ventures, that is, first submitting the proposal to DBJ's management team for assessment and then to the Board for consideration and approval.

As evidenced by the Minutes, this was not done and the former Chairman, Dr. Carlton Davis, took an unusual, ill-advised and improper step of stating that the Board should nonetheless take a decision, albeit one “*in principle*”.

The DBJ Board, is noted, in the Minutes of 2007 August 31, as having approved in principle, the DBJ’s investment of \$25M in the People’s MicroFinance Limited on the condition that:

- (1) the International Finance Corporation takes an equity position in the company and;
- (2) management works out the details of the investment in the best interest of the DBJ and the project and bring back same to the Board.

DBJ’s Managing Director, in response to the OCG’s requisition of 2008 March 5, stated by way of letter which was dated 2008 March 13, that, “*There is no evidence of Board approval for the Lease of property at St. Lucia Avenue as decisions to lease the premises owned by us are not usually submitted to the Board for approval and is usually left to Management to negotiate the best terms possible*”.

In the referenced letter, Mr. Reynolds placed upon the record the fact that in response to the OCG’s letter of 2008 March 5, and further to decisions taken in a special meeting of the DBJ’s Audit Committee, “*It was agreed that for all future leases, expressions of interest should be invited and evaluated and then presented to the Board for approval.*”

Conformity with the Contractor General Act.

Section 4(1) (a) of the Contractor-General Act provides as follows:

“Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament --

- a. to monitor the award and the implementation of government contracts with a view to ensuring that –
- i. such contracts are awarded impartially and on merit;
 - ii. the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;
- without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;”

In keeping with the aforementioned provisions of the Act, the OCG undertook to assess the propriety of the transactions involving the Hon. Mr. Michael Hylton and Mr. Aubyn Hill *vis-a-vis* NationGrowth MicroFinance Limited.

Given the highly unusual circumstances under which Mr. Hill and his colleague, Ms. Deborah Williams, acting on behalf of a proposed entity – People’s MicroFinance Limited – that was to later become NationGrowth MicroFinance Limited, made his proposal to the DBJ, it can be inferred that due to Mr. Hill’s position on the Boards of both the DBJ and the JDB, he and his associate were granted what could be termed ‘*special privileges*’ in respect of accessing and making a presentation to the DBJ Board.

The above inference is underscored by Mr. Reynold’s declaration to the current Chairman of the DBJ Board that, “***The Board in our opinion sets policy direction within which the Management is to operate. Normally, Leases are not usually submitted to the Board for approval and it is usually left to management to negotiate the best terms possible.***”²² (*emphasis added*)

According to correspondence that was received from the DBJ, the lease with NationGrowth MicroFinance Limited, which was executed on 2007 November 1, was the only aspect of Mr. Hill’s presentation to the DBJ Board which “*was formally accepted or executed.*”²³ It must be

²² Inter-Office Memorandum dated 2008 January 10- Response # 1

²³ Letter from Mr. M. Reynolds dated 2008 September 29 to the OCG

noted that **NationGrowth MicroFinance Limited**” is the entity/company through which Mr. Hill sought to formalize the proposal with the DBJ.

The above information suggests that the initial consideration and audience that was given to Mr. Hill and, consequently, to NationGrowth MicroFinance Limited, was irregular and in the circumstance could be perceived as a conflict of interest.

By definition, a conflict of interest “*arises where a public officer has a private or personal interest sufficient to appear to influence or to appear to be capable of influencing, the objective exercise of his official duties.*”²⁴ This definition, among other things, is one of the bases upon which the OCG has critiqued the circumstances which surround the DBJ’s award of the subject lease to NationGrowth MicroFinance Limited.

Given the fact that there was no formal Expression of Interest extended to the open market-place, publicly or otherwise, and no written evaluations of Expressions of Interest, the ineluctable conclusion that must be drawn is that the grant of this lease was not impartial and that there are grave questions as to whether the entire transaction was one which was done on merit.

Under the circumstances, the OCG is not in a position to state that the grant of a lease to NationGrowth MicroFinance was awarded on an objectifiable basis of merit.

Conflict of Interest, Abuse of Office and Breach of Duty

Whilst the OCG’s Terms of Reference was initially specific to the lease agreements that were executed between the Jamaica Development Bank (Lessor) and NationGrowth MicroFinance Limited (Lessee) and the Development Bank of Jamaica (Lessor) and the Hon. Mr. Michael Hylton (Lessee), the OCG, during the course of its Investigation, unearthed certain information, which at a minimum, causes grave concerns in respect of the evident impropriety, irregularity

²⁴ Draft National Contracts Commission (NCC) Conflict of Interest Statement, dated 2006 January 23, for Inclusion in the Government Procurement Procedures Handbook (GPPH)

and the application of merit and fairness which have been disclosed in the conduct of the transaction between the DBJ and one of its then Directors, Mr. Aubyn Hill.

The ‘*Minutes of Special Meeting of the Board of Directors of the Development Bank of Jamaica Limited held on Friday, August 31, 2007*’, reveals that the meeting had, amongst other things, two specific and ***clearly*** identified purposes. The purposes of the meeting, as referenced and articulated within the ‘Minutes’ under the heading “PURPOSE OF MEETING”, were as follows:

1. Proposed Equity Investment in People’s MicroFinance Limited;
2. Mavis Bank Coffee Factory Limited.

A review of the 2007 August 31 Minutes of the Special DBJ Meeting revealed that the Meeting was convened “*at short notice*”. The Minutes also revealed that “*The Chairman advised that the proposal was for small business people to benefit from the establishment of this micro finance company*”, meaning Mr. Hill’s then proposed People’s MicroFinance Limited.²⁵

Following this statement by the Chairman, the Minutes further revealed that, “*Director Hill advised that when the Chairman raised the matter at the last meeting of the Board, he had just come from another institution where he had been discussing the business plan for the formation of a micro-finance institution which he had been developing over the last twelve months.*”

It is instructive to note that at the outset of the meeting, Mr. Aubyn Hill introduced a Miss Deborah Williams, the Executive Director of Micro Finance Services Limited as the “*CEO designate of his new Company, People’s MicroFinance Limited*”, and requested her to make the presentation to the Board.

The records indicate that Miss Deborah Williams presented a case study of Micro Finance Services Limited which is described as “*a not for profit institution.*”

²⁵ Minutes of the DBJ Special Board Meeting

It is noted that, “*Mr Hill advised that the People’s MicroFinance Limited was a for profit institution which was slated to commence operations in September 2007...*” and indicated that, “*... on completion of his presentation, he along with Miss Williams, would withdraw from the meeting to allow members an opportunity to discuss the matter and take a decision.*”

Mr. Hill’s presentation to the Board of Directors of the DBJ for the establishment of a micro finance company, included advising the Board that, “*...this project was a public/private sector partnership which would commence with a capital base of \$100M.*”

The presentation by Mr. Hill was such, as revealed by the Minutes, that, “*Mr. Hill requested that, as a shareholder, DBJ allow the company to occupy a part of the PC Banks’ space at a nominal rental.*” Mr. Hill subsequently cited reasons to qualify the instant proposal. Further it is noted that Mr. Hill, “*... also suggested that space for his Kingston Office by [sic] made available at St. Lucia Avenue offices.*”

The records revealed that the presentation by Mr. Hill included a delineation of the proposed composition of the seven (7) investors who would invest equity, as follows:

1. 2 individual investors - \$20M each
2. 1 individual investor - \$5M
3. DBJ - \$25M
4. Aubyn Hill \$35M plus sweat equity for a total of 51%”
5. Miss Deborah Williams - 4% Equity
6. International Finance Corporation – 5 % Equity

During the presentation, and prior to Mr. Hill and his associate, Ms. Williams, leaving the Meeting, the following concerns and/or queries, at a minimum, were raised:

- “*The General Manager, Credit expressed the view that he was having difficulty with the figures being presented and requested that these be submitted to enable the Bank’s*

management, in carrying out its assessment, to quantify the sweat/intellectual equity for both the CEO Designate and the promotor, Mr. Hill.”

Based upon the queries that were noted above, as well as other particulars which were presented in the Minutes, it can be inferred that there was an active discussion surrounding material issues/components of Mr. Hill’s presentation to the DBJ Board. Some of these discussions and/or deliberations ensued in the presence of Mr. Aubyn Hill, who also offered his own clarifications on the respective queries.

The OCG must also highlight the fact that prior to Mr. Hill and Miss Williams recusing themselves from the Meeting and leaving the Meeting, the then Chairman of the Board, Dr. the Hon. Carlton Davis, in the presence of Mr. Hill, “...opined that the Board should take a decision in principle.”

Even after this assertion was made by the then Chairman, Mr. Hill was still providing clarifications to queries which had arisen from his presentation – thus actively participating in the meeting’s deliberations as regards the matters which were being discussed and in which he had a personal and vested interest.

Immediately after Mr. Hill and Ms. Williams left the meeting, the then Chairman, Dr. Carlton Davis, “...advised that the Board was being asked to make a decision in principle which would allow management to work out the parameters of the investment and to advise the Board.” and expressed the view that “the CEO Designate had the necessary qualifications and experience in micro financing to make a success of the venture.”

The Minutes revealed that Director A. Gray, after expressing a willingness to support ‘anything’ which would assist small business people, advised of certain concerns, namely:

1. the cost of the sweat/intellectual equity was not known;
2. No documentation had been presented from which to garner information and so make an informed decision and which would enable the Chairman to defend the Board’s decision;

3. Based upon the presentation, he was confident that the CEO designate was very capable, however, he was unsure of the future of the operations should she demit office.

A review of the Minutes revealed that during the course of further deliberations, the following comments and/ or queries, *inter alia*, were advanced:

- A Board Director, Mrs. Halsall, “...questioned if there was a conflict of interest given that Mr. Hill, the promoter, is also a director of the Board of the DBJ.” In support of the Director, the General Manager Credit, “...questioned whether it could be viewed that Director Hill used his influence as a director to get his project approved.”
- In response, the Corporate Secretary advised, “...that as he had had similar concerns he had checked the Articles of Incorporation, however, there was nothing to suggest from this preliminary review that the DBJ could not enter into a contract with a director. He advised that he would be making more exhaustive checks.”
- Another Director, Mr. N. Wright, queried, “...what would be the perception given that the DBJ is a government institution and suggested that the DBJ should ensure that the arrangement is “arms length.”
- “The Chairman noted the concerns of the members and requested that the management work out these areas of concern. He questioned whether the sweat /intellectual equity was out of proportion and whether the DBJ’s investment of \$25 M should be worth more than the 16% being projected.”

Further, the General Manager, Credit is recorded as stating that, “... in the normal course of business, management should have assessed the proposal prior to it being presented to the Board.”

Of serious import is the statement that was made by the then Chairman, Dr. the Hon. Carlton Davis, as is evidenced by the Minutes of the Board meeting, that, “...*the DBJ was taking a risk and advised, in response to a query from director Gray, that DBJ was not at the stage where it could give consideration to a grant component.*”

Thereafter, and as can be evinced from the Board Meeting Minutes, the Board approved, in principle, the investment of \$25M in the People’s MicroFinance Limited “...*on condition that (i) the International Finance Corporation takes an equity position in the company and (ii) management works out the details of the investment in the best interest of the DBJ and the project and bring back same to the Board.*”

It is evident, from the Minutes of the Special Board Meeting, that some of the Board Members in attendance had significant concerns regarding the manner in which Mr. Hill’s proposal was being treated, and that the manner in which the proposal was tabled was not in keeping with the standard procedures of the DBJ.

The OCG, in the conduct of its Investigation, found no record of Micro-Finance Services Limited and/or People’s Microfinance Limited as registered companies and/or businesses in the Companies Office of Jamaica Database. However, NationGrowth MicroFinance Limited is listed in the Companies Office of Jamaica Database as having been incorporated on 2007 September 10.

The Companies Office of Jamaica records reveal that Mr. Hill is a Director of NationGrowth MicroFinance Limited. Mr. Hill is not listed as a shareholder of NationGrowth MicroFinance Limited.

The OCG has seen no evidence to date on which to conclude that Mr. Hill is a Director and/or Shareholder in Business Today Corporation, a St. Lucian based company, which, alongside a Mr. Lancelot Raynor, are the only listed shareholders of NationGrowth MicroFinance Limited.

It must be noted that the Lease Agreement between the JDB and NationGrowth MicroFinance Limited specifically indicates that the permitted use of the property is “*For the purpose of Micro Financing.*”

Further, the OCG must place upon the record the fact that Mr. Hill’s proposal, as was presented in the Special Board Meeting of 2007 August, was not accepted in its entirety, as the equity investment component was rejected by the new DBJ Investment and Finance Committee at a meeting of 2007 December 6.

The Minutes of the Investment and Finance Committee Meeting of 2007 December 6 has revealed that a number of original assumptions which were included in Mr. Hill’s presentation of 2007 August had changed: The identified changes include²⁶:

1. the Chief Executive Officer is now Mr. Curven Whyte, and not Miss Deborah Williams;
2. the increase in the number of shareholders had reduced DBJ’s shareholding resulting in DBJ’s representation on the Board being reduced to one Director. DBJ’s request for a fixed seat on the Board has not been agreed;
3. the increase in the capital base from \$100M and seven (7) investors to \$198M and nineteen (19) investors.

After deliberation on the matter, and having noted that the current proposal was different from that which had been approved in principle by the previous Board, the request that was made by NationGrowth MicroFinance Limited was declined.

²⁶ Minutes of the DBJ Investment and Finance Committee Meeting Held on Thursday, December 6, 2007. Page 8

CONCLUSION

Although the DBJ and the JDB are separate and distinct entities under the law, both entities have, at all material times, maintained a common Board of Directors and Management Team.

Further, by way of a Management Agreement which was entered into between the JDB and the National Development Bank of Jamaica (NDB) on 1988 July 12, the JDB appointed NDB to manage its “operations” and the NDB accepted the appointment effective as at 1987 February 1²⁷. The NDB and the Agricultural Credit Bank of Jamaica (ACB) were subsequently merged to form the DBJ, effective 2000, April 1, in consequence of which the DBJ, at all material times, has since managed the affairs of the JDB.

Based upon the review of documents that were presented to the OCG by the DBJ, it is evident that neither the DBJ Board nor the JDB Board was not required to give their respective approvals for the lease, *per se*, of the properties to either the Hon. Mr. Michael Hylton, the former Solicitor General, or to NationGrowth MicroFinance Limited, of which Mr. Aubyn Hill is a listed Director and a prior Director of the DBJ and JDB Boards. This Finding was corroborated by the Managing Director, DBJ who asserted that, “... *it is usually left to management to negotiate the best terms possible.*”

Conflicting reasons have been presented as to why the DBJ did not entertain the offers and/or Expressions of Interest which had been advanced by Paymaster Jamaica Limited and the First Global Bank with respect of the subject St. Lucia Avenue premises which were subsequently leased to the NationGrowth MicroFinance Limited.

It would appear that the DBJ’s non-acceptance of Paymaster Jamaica Limited’s offer might have been predicated upon the fact that the status of Paymaster Jamaica Limited’s financial circumstances had arisen as a matter of concern to the DBJ and its Board.

²⁷ Management Agreement between JDB and DBJ

The verbal presentation that was made, at the 2007 August 31 Special DBJ Board Meeting, by the then DBJ and JDB Director, Mr. Aubyn Hill, and by his colleague, Ms. Deborah Williams, on behalf of People's MicroFinance Limited, to lease the same property for which the First Global Bank and Paymaster Jamaica Limited's offer was not accepted, represents in the view of the OCG, a perceived conflict of interest.

It is the OCG's view that Mr. Hill's expressed interest in the property at 51 St. Lucia Avenue was part and parcel of the presentation that was made by him in regard to the equity financing of his proposed company, People's MicroFinance Limited. The lease was subsequently executed by the JDB and NationGrowth MicroFinance Limited, a company in which Mr. Hill is a Director.

The lease of properties, to NationGrowth MicroFinance and to the Hon. Mr. Michael Hylton, by the JDB and the DBJ, respectively, were both undertaken as commercial arrangements at agreed rental rates which were in keeping with comparable market rates.

The OCG, in the absence of any written evaluation on the subject matter, is unable to determine the merit, if any, on which the subject properties were leased to NationGrowth MicroFinance Limited and to the Hon. Mr. Michael Hylton.

Whilst the OCG has seen evidence of an Expression of Interest from Mr. Aubyn Hill, it has not seen, nor has it been provided with, any evidence which would definitively indicate how Mr. Hylton became aware of the subject property at 11A-15 Oxford Road which was leased to him. Correspondence from the Managing Director of the DBJ revealed that "*...we cannot state definitively how Mr. Hylton came into information that the area currently being rented by him... was available for rental.*"²⁸

The OCG has concluded that these leases should have been put to public competitive tender to mitigate, *inter alia*, against the possibility of a perceived conflict of interest in their grant and their negotiation.

²⁸ Email from Mr. M. Reynolds to the OCG dated 2008 October 2

Be that as it may, one very stark conclusion can be drawn from the facts that have been revealed by this Investigation: The execution of the JDB lease with NationGrowth MicroFinance Limited has raised very grave questions about the merit and propriety of the transaction.

This is particularly so because Mr. Hill, a then Director of the DBJ and the JDB, and his colleague, Ms. Deborah Williams, were permitted to make a presentation to the DBJ Board regarding a DBJ related business proposal, as well as the proposed lease with the JDB, in which he, Mr. Hill, had a personal interest.

As regards the proposed lease with the JDB, although he, Mr. Hill, was making his presentation to a meeting of the DBJ Board, it is reasonable to deduce that he was doing so with the expectation that it would be those very Board Members who would make the decision regarding the approval of the lease, since the lease proposal had been presented by him, to the Board, as an integral component his larger DBJ-related business proposal.

The presentation was, therefore, not only highly irregular but it was one which, in so far as the business proposal was concerned, flagrantly contravened, *inter alia*, the normal processes that were established by the DBJ for the submission, evaluation and approval of business proposals.

It is instructive to note that certain Board Members made protestations and/or raised concerns to the then Chairman of the Board, Dr. the Hon. Carlton Davis, against the evident irregularity of the occurrence of Mr. Hill's presentation.

However, despite these protestations and/or concerns, and as is evidenced from the Minutes of the Board Meeting, Dr. Davis expressed the opinion, *inter alia*, in the presence of Mr. Hill, "*that the Board should take a decision in principle*" in respect of the matter. The Chairman's wishes were eventually satisfied.

It must be reiterated that a conflict of interest, “*arises where a public officer has a private or personal interest sufficient to appear to influence or to appear to be capable of influencing, the objective exercise of his official duties.*” It is noted that a conflict of interest may be deemed to exist under any of the following circumstances, *inter alia*:

- (a) Engagement in private activity similar to official functions;
- (b) Using information and/or any material gained from an official position for private gain of relatives or family members or an organization in which relatives or family members have interest;
- (c) Exploiting the status and privilege of one’s position for private gain;

Given the conceptualization of a conflict of interest, and the circumstances under which it may occur, it is the OCG’s considered view that the actions of Mr. Aubyn Hill could be equated to that of a perceived conflict of interest at the very minimum.

When the instant conflict of interest is considered in conjunction with the subversion of the DBJ’s proper processes for consideration of proposals of like nature, the OCG is led to infer and consequently conclude the following:

- (a) Mr. Aubyn Hill, via making a **verbal** and **personal** presentation to the Board of Directors, appears to have placed himself in a conflict of interest situation;
- (b) The fact that Mr. Hill was permitted to make a verbal presentation to the former DBJ Board which consequently resulted in the General Manager, Credit, placing upon the record that, “... *in the normal course of business, management should have assessed the proposal prior to it being presented to the Board*”, strongly alludes to a state of irregularity in the instant case;

- (c) Consequent upon the positions as are stated in (a) and (b) above, it is evident that Mr. Hill, via his status on the Board, was, *prima facie*, presented with an ‘*abnormal*’ and/ or ‘*privileged*’ opportunity.

Whilst the OCG notes that the proposal that was made by Mr. Hill was not accepted by the current DBJ Board, it is concluded that the entire matter is one which was nevertheless highly irregular and improper and should have not been countenanced by the Chairman of the Board, Dr. Carlton Davis, and/or by the Board itself.

The circumstances surrounding the proposal should:

1. Not have been permitted by the former Chair, nor by the Board, in the first instance, as the presentation that was made by Mr. Aubyn Hill was carried out, *inter alia*, in **direct** contravention of the provisions of Section 17 (2) of the Public Bodies Management and Accountability Act and Section 4 (4) of the Jamaica Development Bank Act;

Section 17 (2) of the referenced Act provides that, “A *director who is directly or indirectly interested in any matter which is being dealt with by the board-* (a) shall disclose the nature of his interest at a board meeting; (b) **shall not take part in any deliberation of the board with respect to that matter.**” (OCG emphasis).

Section 4 (4) of the Jamaica Development Bank Act provides that “A *director who is directly or indirectly interested in a contract made or proposed to be made by the Bank* (a) shall disclose the nature of his interest; and (b) **shall not take part in any deliberation or decision of the Bank with respect to that contract.**” (OCG emphasis).

2. Not have been allowed to continue once the noted and expressed concerns, *inter alia*, of a conflict of interest, were voiced;

3. Never be allowed to recur in the execution of the functions of any Board of Directors that is established by the Government of Jamaica to govern the operations of any Public Body.

It must be noted that during the Special Board Meeting, numerous queries and concerns were raised by members of the former Board.

In particular, it must be emphasized that these queries and/or concerns included:

- (a) The possibility of a conflict of interest;
- (b) The need for the deal between DBJ and People's MicroFinance Limited to be at '*arms length*';
- (c) A need for further and better particulars of the proposal which was the basis of Mr. Hill's presentation.

In the circumstances, the former Chairman of the DBJ Board, Dr. the Hon. Carlton Davis, and those members of the former Board of the DBJ who were (1) present at the Meeting of 2007 August 31, and who permitted Mr. Hill, while he was a sitting DBJ and JDB Board Member, to use his position as a Director to make a presentation to the Board regarding certain DBJ and JDB related business proposals in which he had a personal interest, and/or who (2) supported the decision of the Board, *inter alia*, to approve, '*in principle*', the DBJ's investment in People's MicroFinance Limited, despite the numerous queries and concerns that had been raised, can be deemed to have (a) acted negligently in the discharge of their responsibilities as DBJ and JDB Directors, and/or (b) abused their authorities and offices and/or (c) breached their respective duties of trust to the Banks and/or (d) breached their respective fiduciary or statutory duties to the Banks.

The foregoing conclusions are premised, *inter alia*, upon the concerns that were raised in the Special Board Meeting and which have previously been articulated by the OCG, as well as the relevant provisions, *inter alia*, of the Public Bodies Management and Accountability Act and the Jamaica Development Bank Act.

REFERRALS

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor General Act. This provision mandates a Contractor General to consider whether he has found, in the course of his Investigation, or on the conclusion thereof, any evidence of a breach of duty, misconduct or criminal offence on the part of an Officer or member of a Public Body, and to formally refer the matter to the appropriate person or authority that is competent to initiate such proceedings in the matter as may be deemed appropriate.

Additionally, the Contractor General is also required, in all such instances, to lay a special report thereon before Parliament.

The former Chairman of the DBJ Board, Dr. the Hon. Carlton Davis, and those members of the former Board of the DBJ who were (1) present at the DBJ Board Meeting of 2007 August 31, and who permitted Mr. Hill, while he was a sitting DBJ and JDB Board Member, to use his position as a Director to make a presentation to the Board regarding certain DBJ and JDB related business proposals in which he had a personal interest, and/or who (2) supported the decision of the Board, *inter alia*, to approve, 'in principle', the DBJ's investment in People's MicroFinance Limited, despite the numerous queries and concerns that had been raised, can be deemed to have (a) acted negligently in the discharge of their responsibilities as DBJ and JDB Directors, and/or (b) abused their authorities and offices as Directors of the DBJ and the JDB and/or (c) breached their respective duties of trust to the Banks and/or (d) breached their respective fiduciary or statutory duties to the Banks.

The presentation that was made by Mr. Aubyn Hill, himself, to the DBJ Board, also constituted an abuse of his own office as a Director of the DBJ and of the JDB and a breach of his fiduciary and statutory duties to both Banks.

Mr. Hill's presentation to the DBJ Board was made in **direct** contravention of the provisions of **Section 17 (2) of the Public Bodies Management and Accountability Act.**

Section 17 (2) of the referenced Act provides that, “A *director who is directly or indirectly interested in any matter which is being dealt with by the board-* (a) shall disclose the nature of his interest at a board meeting; (b) *shall not take part in any deliberation of the board with respect to that matter.*” (OCG emphasis).

It is also the OCG’s view that Mr. Hill’s presentation contravened the provisions of **Section 4 (4) of the Jamaica Development Bank Act.**

Section 4 (4) provides that “A *director who is directly or indirectly interested in a contract made or proposed to be made by the Bank* (a) shall disclose the nature of his interest; and (b) *shall not take part in any deliberation or decision of the Bank with respect to that contract.*” (OCG emphasis).

Further, it is instructive to record that Sections 6 and 17 (1) of the Public Bodies Management and Accountability Act impose certain specific responsibilities upon the Board of Directors of Public Bodies as well as Board Members themselves.

Had these and other responsibilities been fully discharged in the instant matter, Mr. Hill, a then sitting DBJ and JDB Director, would not have been permitted to make his presentation to the DBJ Board nor would he have been permitted to respond to questions asked or issues raised during the course of his presentation. Further, the Board would not, in such circumstances, particularly having regard to the many protestations and/or concerns that were raised, have considered the matter nor voted “*in principle*” thereon.

Section 6 of the Public Bodies Management and Accountability Act provides as follows:

“6. *Every board shall-*

(a) take such steps as are necessary-

(i) for the efficient and effective management of the public body;

(ii) to ensure the accountability of all persons who manage the resources of the public body;

(b) develop adequate information, control, evaluation and reporting systems within the body;

(c) develop specific and measurable objectives and performance targets for that body”.

Section 17 of the Public Bodies Management and Accountability Act provides as follows:

17- (1) “Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-

- (a) act honestly and in good faith in the best interests of the public body; and*
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.*

Section 25 of the Public Bodies Management and Accountability Act provides as follows:

25. (1) If the Court is satisfied on an application by the Attorney-General that any person has contravened any of the provisions of-

- (a) section 4 (acquisition of shares and payment of dividends);*
- (b) section 5 (exercise of borrowing powers);*
- (c) section 6 (corporate governance);*
- (d) section 14 (general duties of auditors);*
- (e) section 15 (failure to furnish information to auditor);*
- (f) section 20 (levels of emoluments);*
- (g) section 21 (restriction on formation of new companies),*

the Court may exercise any of the powers referred to in subsection (2).

(2) The Court may-

- (a) order the person concerned to pay to the Crown such pecuniary penalty not exceeding one million dollars; or*
- (b) grant an injunction restraining that person from engaging in conduct described in subsection (1).*

(3) In exercising its powers under this section the Court shall have regard to-

- (a) the nature and extent of the default;*

(b) the nature and extent of any loss suffered by any person as a result of the default;

(c) the circumstances of the default;

(d) any previous determination against the person concerned.

(4) If in the opinion of the Attorney General there is a contravention of section 7, 8 or 9, he may make an application to the Court and the provisions of subsections (1), (2) and (3) shall apply in relation thereto

In the premises, and pursuant to the mandatory statutory obligations which are imposed upon a Contractor General by Section 21 of the Contractor General Act, the OCG is hereby formally referring a copy of this Report to the Attorney General on the basis that there is evidence which is recorded herein which would suggest that there was, *inter alia*, a clear and unambiguous breach of duty specifically on the part of (a) Mr. Aubyn Hill, a former Director of the DBJ and the JDB, (b) Dr. the Hon. Carlton Davis, the former Chairman of the DBJ and the JDB, and (c) the former Boards of Directors of the DBJ and the JDB and/or one or more of their members, all in contravention, *inter alia*, of Sections 6 and 17 of the provisions of the Public Bodies Management and Accountability Act and/or Section 4 (4) of the Jamaica Development Bank Act.

The matter is being referred to the Attorney General particularly, *inter alia*, in light of the provisions that are contained in Sections 6, 17 and 25 of the Public Bodies Management and Accountability Act and Section 4 (4) of the Jamaica Development Bank Act.

Additionally, the matter is being referred to the Attorney General for consideration as to what actions, if any, may be pursued against any of the offending former DBJ and JDB Board Directors, having regard to all of the circumstances of the case.

RECOMMENDATIONS

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

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

1. The lease agreement which was entered into by the JDB with the then DBJ and JDB Director, Mr. Aubyn Hill, on behalf of NationGrowth MicroFinance Limited, cannot be considered to have been concluded at “*arms length*”. It is the considered view of the OCG that in the interest of transparency and probity, leases of this nature should have been put to public tender and must, in all such future cases, be put to public competitive tender. Had this been done in the instant case, all known and unknown interested parties would have had an equal opportunity to submit their respective proposals for the rent or lease of the referenced properties.

Related Invitations for the Submission of Expressions of Interest, for proposed leases, must include, at a minimum, an objective and common set of criteria. All Expressions of Interest should be evaluated by the Management of the DBJ, using the said criteria, prior to the seeking of any Board approval regarding the granting or award of any leases. Such evaluations and subsequent recommendations for awards must be **written** and the particulars thereof fully documented.

2. All future and intended DBJ and JDB leases should be reviewed and approved by the DBJ and JDB Board of Directors prior to execution and grant.

3. The OCG feels compelled to strongly recommend, again, as it has in previous Investigation Reports, that the Cabinet should move with expedition to develop and to implement a comprehensive and over-riding policy to be applicable to all Public Body Boards, to govern, restrict or prohibit, as the case may be, the award of Government contracts (or the divestment of publicly owned assets) by a Public Body, to members of its Board of Directors, or to any entity in which a Board member or a close family relative may have a pecuniary interest.
4. The OCG also respectfully recommends that all Appointees to the Board of Directors of any Public Body are duly and fully made aware of their responsibilities and obligations under the provisions that are contained, *inter alia*, in the Public Bodies Management and Accountability Act.
5. The OCG further respectfully recommends that Parliament should implement legislation to ensure that Directors of Public Body Boards who flagrantly abuse their office and/or authority and/or who fail substantially in the discharge of their fiduciary and statutory responsibilities to their Boards and, by extension, to the Taxpayers of Jamaica, are effectively barred from serving in any like capacity in the future.
6. Finally, the OCG believes that it is timely to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain, that there are circumstances in which such conduct is likely to rise to the level of a criminal act of corruption. The provisions that are contained in Section 14 (1) (b) of the Corruption Prevention Act are instructive in this regard. They provide simply that “*A public servant commits an act of corruption if he, in the performance of his public functions, does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person*”.

An act of corruption is punishable upon summary conviction in a Resident Magistrate's Court, in the case of a first offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment;

Upon conviction in a Circuit Court, an act of corruption is punishable, in the case of a first offence, to a fine not exceeding five million dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment; and in the case of a second or subsequent offence, to a fine not exceeding ten million dollars, or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

As an aside, there is a simple but effective acid test that all Public Servants may wish to be guided by in the discharge of their public functions. It is one that was advanced by DBJ Board Member, Mr. Edwin McKie, in his 2008 January 2 Inter-Office Memorandum to the DBJ Board Chairman, Mr. Joseph M. Matalon, in the instant matter. This is what Mr. McKie had to say:

“One way to determine whether our actions are above aboard is to ensure that if they were publicized we would be able to justify them”.