



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Conducted into the Proposal to Divest the Government of Jamaica's Forty-Five Percent (45%) Stake in Jamalco

Ministry of Science, Technology, Energy & Mining (MSTEM)
Formerly Ministry of Energy & Mining (MEM)

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EXECUTIVE SUMMARY

On 2010 June 1, 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 proposal to divest the Government of Jamaica's (GOJ's) forty-five percent (45%) stake in JAMALCO.

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

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

The OCG's decision to commence its formal Investigation followed upon the failure and/or refusal of the then Ministry of Energy and Mining (MEM)¹ to undertake the divestment of the referenced shares through a structured, OCG monitored competitive process. The MEM also failed to secure, for examination by the OCG, details regarding a British Virgin Island (BVI) registered entity, Port Reliant Limited, which has been represented as the 'exclusive agent' of Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Ltd. (hereinafter referred to as 'Hongfan').

The OCG, by way of a Media Release, which was dated 2010 May 17, which was entitled ***“OCG HAS GRAVE CONCERNS ABOUT DEAL TO DIVEST GOJ's 45% STAKE IN JAMALCO TO HONGFAN – DEMANDS CRITICAL INFORMATION FAILING WHICH IT RECOMMENDS DEAL SHOULD BE SHELVED – POSSIBILITY OF MAJOR OCG INVESTIGATION”***, highlighted certain grave concerns, *inter alia*, that were rooted in at least five (5) major considerations which, when taken together, raised very serious questions for the OCG regarding the public's interest, transparency, value for money, competition, conflicts of interest, propriety and the merit and impartiality of the prospective contract award to Hongfan.

The OCG's considerations were as follows:

1. The fact that the proposed equity divestment was not put to public competitive tender by the GOJ but was, instead, directly negotiated with Port Reliant Limited and/or Hongfan over a period of at least one (1) year.
2. The fact that certain indicative representations were made to the OCG by the former Permanent Secretary in the MEM, Ms. Marcia Forbes, and by Mr. Howard Mitchell, the former Chairman of the Jamaica Bauxite and Mining (JBM) and Bauxite and Alumina Trading Company Limited (BATCO), in a meeting which was convened at their request, and purportedly at the direction of the then Prime Minister, the Hon.

¹ For the purpose of this Report the designation Ministry of Energy and Mining (MEM), which is now the Ministry of Science, Technology, Energy and Mining (MSTEM), are used throughout. Any reference to the MEM would now fall under the renamed Ministry – MSTEM.

Bruce Golding, at the OCG, on 2009 April 24. The referenced meeting was with respect to the GOJ's then prospective business arrangements with both Hongfan and Port Reliant Limited.

Among the representations which were made to the OCG by Ms. Marcia Forbes and Mr. Howard Mitchell, in the referenced meeting, were the following:

1. *"The GOJ is in the process of engaging Hongfan, a Chinese registered trading entity, to sell to it, an initial amount of alumina and possibly to enter into a further twenty (20) year commercial agreement for the sale of alumina futures.*
2. *The GOJ is also pursuing the prospect of negotiating an agreement with Hongfan for it to either purchase the GOJ's equity in Jamalco and/or to have it finance the upgrade of the Jamalco alumina refinery facility.*
3. *Port Reliant has brokered an alumina sale deal which is to be executed between the GOJ and Hongfan. Port Reliant expects to be compensated at a commission rate of 1.5% in respect of the contract sum for the initial alumina sale transaction, which is valued at approx. US\$600 Million, as well in respect of a prospective twenty (20) year alumina futures sale agreement.*
4. *Hongfan is, however, unwilling to pay the agreed commission directly to Port Reliant and was insisting that its contract payment to the GOJ should be "grossed up" and that the GOJ should then pay the referenced commission to Port Reliant.*
5. *...Port Reliant has Principals and/or Shareholders who are Jamaicans and that Port Reliant has only three (3) years prior experience in business. Two of the names that were called, in the foregoing regard, were Mr. Gary Hoo [sic] and Mr.*

Raymond Chang, who, Mr. Mitchell stated, was the brother of Jamaican Businesswoman Mrs. Thalia Lyn.”²

3. The fact that following the said meeting of 2009 April 24, the then Contractor General, Mr. Greg Christie, by way of a letter, which was dated 2009 April 27, and which was addressed to Ms. Marcia Forbes, the then Permanent Secretary in the MEM, and copied to the former Prime Minister of Jamaica, the Hon. Bruce Golding, Mr. James Robertson, former Minister of Mining and Energy, and Mr. Howard Mitchell, the then Chairman of the Jamaica Bauxite and Mining (JBM) and Bauxite and Alumina Trading Company Limited (BATCO), documented the said representations and conveyed to the GOJ the OCG’s strong concerns regarding the matter, as follows:

“The OCG would like to place upon record its concerns regarding the information as presented above, and wishes to register its intention to formally investigate the proposed commercial arrangements should they be consummated as presently structured.

While we are sensitive to the fact that this matter is of significant national import, we have found the process, whether real or prospective, as articulated by yourself and Mr. Howard Mitchell, to be highly irregular and devoid of transparency and we have advised you accordingly. Among our primary concerns are the following:

(a) “The GOJ may indirectly be paying two commissions – one to Port Reliant and another to Hongfan – this having regard to the fact that Hongfan may not own the capacity to smelt alumina and, consequently, must sell the purchased GOJ alumina to an entity which has that capacity.”

(b) “One of the fundamental tenets of the GOJ’s Procurement Policy – value for money – cannot be determined given that there appears, inter alia, to have

² OCG’s Letter to Ms. Marcia Forbes, former Permanent Secretary in the MEM, which was dated 2009 April 27.

been no transparency or competition in the GOJ's engagement of Port Reliant and Hongfan."

(c) "The OCG has been presented with no documentation regarding the proposed transactions but yet its input, guidance and/or advice, however notional, was sought regarding the matter."

(d) "All the particulars of the agent, Port Reliant, and the Chinese entity, Hongfan, have not been fully disclosed... Port Reliant's business experience, particularly in the area of alumina trading, as well as its time and place of incorporation and its beneficial ownership, as represented by you and/or Mr. Mitchell, are among some of the matters which are of particular concern to the OCG."

(e) "Another area of concern for the OCG is the issue regarding the potential which exists for conflicts of interest, particularly having regard to identity of some of the individuals who are involved in the overall transaction and the past and/or present business or private relationships that they have or have had with each other."

6. "You have asserted that Hongfan is unwilling to pay the proposed commission directly to Port Reliant, but is willing to "gross up" the contract payments in an amount which is equivalent to the commission. This, of all of our stated concerns, raises very serious possibilities for a finding of irregularity and/or impropriety as regards the transaction. Further, there is a possibility that the GOJ could be embarrassed in the event that the transaction is found to be illegal and/or otherwise questionable, by the Government of China."

4. The fact that the GOJ, notwithstanding the foregoing, decided to proceed with the prospective sale of its equity in Jamalco to Hongfan and has so intimated in its

responses to the OCG's Statutory Requisitions, which were dated 2010 March 29 and 2010 April 22, respectively.

5. The fact that Port Reliant Limited refused to make a fulsome due-diligence disclosure to the GOJ regarding itself, its agency agreements with Hongfan, its historical business activities and its beneficial ownership.

Indeed, in a letter to the then Permanent Secretary in the MEM, Ms. Marcia Forbes, which was dated 2010 May 5, and signed by one "*Joseph Chang, Director, Port Reliant Limited*", Mr. Chang not only challenged the jurisdiction of the OCG in the matter, but contradicted certain representations which were made to the OCG by Mr. Howard Mitchell and Ms. Marcia Forbes on 2009 April 24, by asserting that "*Port Reliant has no Jamaican officers, principals, shareholders or beneficiary shareholders*" and that "*Ray Chang*" had no involvement with the company. Writing on a Port Reliant Limited letterhead, which bore a Hong Kong address, Mr. Chang has also advised the GOJ that "*Port Reliant is a BVI (British Virgin Islands) company*".

The OCG, by way of letters, which were dated 2010 May 11 and 13, respectively, to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, and the then Solicitor General, Mr. Douglas Leys, reiterated its concerns regarding the proposed deal between Hongfan and the GOJ, particularly in light of (a) certain conflicting material statements which were made to the OCG by senior GOJ Officials regarding the genesis of the transaction, (b) the continuing lack of clarity with respect to the involvement and/or association of Port Reliant Limited in the matter, and its curious and inexplicable refusal to provide certified documentary evidence about itself and its beneficial ownership and (c) that despite the suspicious circumstances which were raised by the OCG, the GOJ was prepared to proceed with the transaction.

The OCG, by way of its aforementioned Media Release of 2010 May 17, also stated, *inter alia*, the following:

“In the OCG’s most recent communications to the GoJ, via letters which were respectively dated May 11 and 13, 2010 to the MEM Permanent Secretary and the Solicitor General, the Contractor General has reiterated the OCG’s concerns regarding the proposed deal with Hongfan, particularly in light of the continuing lack of clarity about Port Reliant’s involvement in the matter and its curious and inexplicable refusal, to date, to provide certified documentary evidence about itself and its beneficial ownership.

The Contractor General, who is no stranger to international bauxite and alumina industry deals, having served as Alpart’s and Kaiser Bauxite’s Corporate, Commercial, Government and Legal Affairs Country Director for several years, and as Kaiser Aluminum’s Global Commodities Business Unit’s Vice President and Assistant General Counsel for three (3) years, has adopted a resolute position regarding the matter.

Mr. Christie, a commercial, corporate and international law attorney, who was also one of the lead Kaiser Aluminum executives who structured and negotiated the consummation of Kaiser’s successful divestment, in 2004, of its equity in the local Kaiser Bauxite and Alpart joint ventures, has agreed to give the Solicitor General until “May 31, 2010” to advise the MEM Permanent Secretary “as to how we (the GoJ) can best get this company (Port Reliant) to comply with your (the OCG’s) requests”.

The OCG has cautioned the GoJ that if the requested information is not fully forthcoming from Port Reliant, it, the GoJ, in the public’s interest, should shelve the deal. *If the GoJ fails to heed the OCG’s recommendation, the OCG will forthwith launch a major Investigation into the matter and will use the full force of its quasi-judicial powers to secure all pertinent facts and bring them within the public domain.*

The OCG, which is an Independent Anti-Corruption Commission of the Parliament of Jamaica, is already on public record in warning against what it has long observed to be an emerging and potentially dangerous and corruption enabling trend, on the part

of the GoJ, in awarding Government contracts to or through privately held business entities which are organized in off-shore jurisdictions and of which very little, if anything, is publicly known about their business activities or their beneficial owners.

Reproduced, hereunder, are portions of the text of the Contractor General's letter of May 13, 2010 to the Solicitor General. The letter was copied to the Prime Minister, the current Permanent Secretary in the MEM, Mrs. Hilary [sic] Alexander, Mining and Energy Minister James Robertson and the Cabinet Secretary.

*"The OCG believes that the public interest ideals of transparency, value for money and competition in Government contracting would demand that the Government of Jamaica (GoJ) **must**, at a minimum, take all requisite and due diligence steps to secure the subject information from Port Reliant Limited.*

This should be done particularly in light of (a) the initial disclosures and representations which were made to the OCG, by Mr. Howard Mitchell and former Permanent Secretary Mrs. Marcia Forbes, in their meeting of April 24, 2009 with the OCG, and (b) the fact that the GoJ's Privatization Policy clearly specifies that these "transactions are to be arms-length".

The OCG feels obliged to emphasize that the issues with which we are now contending would not have occurred had the GoJ subjected the sale of the referenced equity to an open, competitive and transparent tender process.

Instead, what we now have before us is the potential sale of a major public asset which is not only mired in suspicion, but which is evidently being undermined by a 3rd party enterprise (Port Reliant) which seems to believe that it should be able to dictate to the Government and the OCG.

If, therefore, Hongfan and/or Port Reliant Limited are not willing to fully disclose the subject or any other relevant information to the GoJ, as a pre-contract or tender condition or qualification, then the GoJ should have the option of simply advising Hongfan and/or Port Reliant Limited that they may wish to seek alternative business opportunities elsewhere.

The referenced practices are highly undesirable and are definitely not in the public interest. They should be strenuously resisted and objected to in the strongest possible terms.”

The MEM, published a News Release, which was dated 2010 May 20, and which was entitled **“RE: AGREEMENT TO DIVEST GOJ 45% STAKE IN JAMALCO”**, in response to the foregoing OCG Media Release, and stated, *inter alia*, the following:

“It is important to remind that Clarendon Alumina Production (“CAP”), a wholly owned Government of Jamaica (“GOJ”) company, and the 45% shareholder in Jamalco, has been operating at a loss over a number of years. Arising from Agreements entered into between 2000/2002, under which the GOJ secured loans against future supplies of alumina, the GOJ has found itself in a position where it has to be repaying loans borrowed by CAP and paying CAP’s contribution of the expenses incurred in the operations of Jamalco. To date, CAP has incurred a debt of approximately USD400M (J\$36 billion).

Within the context of the recent negotiations with the IMF, it became imperative, and a matter of urgency, for the GOJ to successfully divest the shares in CAP. The GOJ was required to discontinue its obligations to fund entities which were a significant drain on the public purse, a fact that has been highlighted in public statements on the state of the Jamaican bauxite industry...

*The proposed “multi-billion dollar” transaction with Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Limited (“Hongfan”) has been cited by experts in the industry as a most favourable transaction in terms of the purchase price payable to the GOJ and the proposed expansion of the Jamalco plant. **It is significant to note that the transaction can only take effect if Alcoa, the 55% co-owner of Jamalco, is unable to or unwilling to match the offer made by Hongfan.***

The OCG, in his [sic] letter of April 27, 2009, cautioned against consummation of the commercial arrangements “as presently structured.” The caution was well accepted and the commercial arrangement arrived at with Hongfan in March 2010, does not contain any of the elements raised/discussed or contemplated by the Contractor General in his said letter.

The GOJ has not engaged Hongfan to sell alumina on the GOJ’s behalf. Further, Port Reliant had **not** brokered any alumina sale deal between the GOJ and Hongfan. As told to the OCG, with the support of documentary evidence, Port Reliant acted as the exclusive agent of Hongfan in the transaction to purchase the shares in CAP. As exclusive agent to Hongfan, Port Reliant facilitated communication between the negotiating teams for both the GOJ and Hongfan and tended to organizational logistics. The GOJ, at no time whatsoever, paid or agreed to pay any commission, fee or expense to either Port Reliant or Hongfan; and the GOJ is not in any contractual or other arrangement with Port Reliant.

Neither Mr. Raymond Chang nor Mr. Howard Mitchell participated or took any part in the negotiation of the March 2010 agreement negotiated between the GOJ and Hongfan. Mr. Howard Mitchell recused himself from all discussions or involvement relating to the sale of CAP immediately upon the Contractor General’s letter of April 27, 2009. The GOJ negotiating team, as approved by Cabinet, included representatives of the Ministry of Finance and the Public Service, MEM, CAP, the Development Bank of Jamaica, and the Office of the Solicitor General... ” (OCG’s Emphasis)

In response to the foregoing MEM's media release, the OCG issued a second Media Release on 2010 May 26, which was entitled "**CONTRACTOR GENERAL WRITES TO MINISTRY OF ENERGY AND MINING TO CHALLENGE ITS MEDIA RELEASE ON THE DIVESTMENT OF GOJ'S 45% STAKE IN JAMALCO**". The referenced OCG Media Release embodied a copy of a letter which was sent by the OCG to Mrs. Hillary Alexander, Permanent Secretary, MSTEM, on the said date. The referenced letter which was embodied in the OCG Media Release stated, *inter alia*, the following:

"...I trust that my letter finds you well during this difficult and challenging time in our nation's history.

We acknowledge receipt of your Media Release of Thursday, May 20, 2010, which was emailed to the Office of the Contractor General (OCG), at the close of business on Friday, May 21, under cover of a letter which was signed by you. Your Release, which we assume was intended for ultimate consumption by the Jamaican Taxpayer, represents an interesting attempt by the Ministry of Energy and Mining (MEM) to obfuscate the real issues which are the subject of the OCG's contentions in this matter.

As you are very much aware, the OCG's primary contention is that the proposed multi-billion dollar Government of Jamaica (GOJ)/Port Reliant/Hongfan contract award is not one which was borne out of an open, competitive and transparent tender process. Indeed, to date, you have failed to provide to the OCG an acceptable explanation for your Ministry's aberrant and potentially damaging conduct in not putting this major asset divestment to public competitive tender. It is, therefore, not surprising that your Release has totally avoided any reference to this preeminent issue.

The OCG is also gravely concerned that the entire matter is one which is mired in a shroud of suspicious circumstances which has raised very serious questions about the probity of the proposed transaction. Consequently, the sworn disclosure of the full

particulars regarding Port Reliant Limited, its beneficial owners and the terms of its involvement in the transaction has been demanded by the OCG.

We have taken especial note of the extensive references which you have made in your Release about the ‘drain on the public purse’ that CAP’s (Clarendon Production Alumina’s) debt of J\$36 Billion has become. We have also noted your allusion to the fact that the recently concluded GOJ/IMF Stand-By Agreement has made no provision for the continued servicing of this debt.

While the OCG is acutely aware of the referenced constraints, we must, however, respectfully caution you that neither of these two considerations gives you, your Ministry or the GOJ a licence to bypass those of the Government contract award principles which are mandated by Section 4 (1) of the Contractor General Act.

The law on the matter is crystal clear and you are bound by it. Government contracts must be “awarded impartially and on merit” and “in circumstances ... which ... do not involve impropriety or irregularity”, and it is the OCG that is empowered to make this final determination – not you, the MEM or unspecified ‘experts in the industry’.

We would also like to bring to your attention the fact that the said two considerations, which, it appears, you have introduced to direct the Media’s attention away from your Ministry’s questionable actions, are the same two considerations which the GOJ had pointed to in support of the recent Air Jamaica privatization/divestment. That divestment, however, unlike yours, was subjected to a competitive tender process.

Indeed, the Minister of Finance and the Public Service, the Hon. Audley Shaw – the custodian of the very IMF Agreement on which you are now seeking to rely to assuage your actions – has publicly extolled the fact that Air Jamaica, despite its heavy operating losses, its legacy debt burdens and the demands of the IMF, was quite properly privatized via a public competitive tender process. Minister Shaw has also

spoken with deep conviction about the need for the GOJ to conform to international best practices in the award of Government contracts.

Last, but by no means least, you might also wish to recall that the Prime Minister of Jamaica, the Hon. Bruce Golding, has only just recently given his solemn assurances to the Jamaican People that his Administration will re-commit itself to the principles of good governance in Government and hold public officials accountable for their misdeeds.

It is in light of all of the foregoing, therefore, that we would again respectfully urge you to carefully consider your Ministry's past and prospective actions in this matter and ensure that the lawful and statutory Requisitions and Recommendations of the OCG are heeded.

As the matter is one which has very significant and far-reaching implications for both the Taxpayers and the Government of Jamaica, my letter to you, in the public interest, will be placed forthwith in the public domain.”³

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, responded to the referenced OCG Media Release, by way of a letter which was dated 2010 May 27, and stated, *inter alia*, the following:

“...Given several issues which you continue to reference in your correspondence and media releases, we are to advise that the entire matter was referred to the Offices of the Attorney General for review.

For the record, the Ministry wishes again to clarify, as follows:

³ OCG Media Release of 2010 May 26, which was entitled “**CONTRACTOR GENERAL WRITES TO MINISTRY OF ENERGY AND MINING TO CHALLENGE ITS MEDIA RELEASE ON THE DIVESTMENT OF GOJ'S 45% STAKE IN JAMALCO.**”

1. *At all times, the transaction was undertaken with the advice and participation of representatives of the Ministry of Finance and the Public Service, the Ministry of Energy and Mining, the Development Bank of Jamaica, Clarendon Alumina Production Limited (CAP), and the Office of the Solicitor General, as you have already been advised.*
2. *The transaction was duly considered and approved by the Cabinet.*
3. *This proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*
4. *The OCG has already been advised that the Government of Jamaica has no contractual relationship with Port Reliant in the captioned matter...*

To reiterate, Port Reliant is not a party to the Agreement for the Sale of CAP Shares which in effect divests the Government of Jamaica's forty five percent (45%) share in Jamalco. As far as we are aware, Port Reliant has no legal or beneficial interest in the transaction between the GOJ and Hongfan, beyond their role as agent for Hongfan.

5. *The decision of the Government to enter into the Agreement for the Sale of CAP Shares with Hongfan, was taken after careful consideration of all the circumstances. Given the current realities of the bauxite and alumina industry, the GOJ has a duty to ensure that new investments in the sector can be sustained, taking into account market demand, and access to such markets.*

In this regard, it is important to note that Hongfan has the support of large Chinese consumers of alumina, who have assured a ready market. The Company similarly has the support of major Chinese financiers. Given the fallout from closures of the plants caused by highly unfavourable market

conditions, and the serious and negative impact on the Jamaican economy, access to the Chinese market is a strategic response to enhance the long term viability of the local bauxite and alumina industry.

As shown by valuations already submitted to your offices, the offer received from Hongfan represents value for money...

6. **We remind that the intention to divest was widely communicated in the public domain,** *including in the international bauxite and alumina industry news reports.*

Given also the attending press coverage of the visits to Jamaica by the prospective Chinese investors, and their meetings with the policy directorate, the GOJ Negotiating Team, Alcoa, Jamalco, and members of the diplomatic community, as well as other press reports, there is no basis for the allegation of secrecy...

7. *We are obliged to reiterate that the proposed transaction is aligned to and is supportive of government's policy to divest loss-making assets. Timing is also critical and must take into account the state of the market at any particular time, as well as, government's own financing requirements, including the possibility of reducing the national debt and/or attracting capital investment..."⁴*

In light of the information which was communicated to the OCG, by certain senior Public Officials of the MEM, the OCG's concerns were heightened with respect to the divestment process which was being employed and which would form the basis to enter into an agreement with Hongfan.

⁴ Letter from Permanent Secretary in response to the OCG Media Release, which was dated 2010 May 27.

Based upon the representations which were made to the OCG, and the information which it had in its possession regarding the subject divestment, *inter alia*, same seemed to have been shrouded in suspicions of a (a) conflict of interest; (b) lack of transparency; (c) lack of fairness; (d) lack of competition; and (e) breach of the applicable GOJ Privatization Policy and Procedures (Ministry Paper #34) and the Contractor General Act.

Consequently, these allegations and inferences, *inter alia*, raised several concerns for the OCG, especially in light of the perceived absence of an adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the Act requires, *inter alia*, that GOJ contracts should be awarded “*impartially and on merit*” and that the circumstances of such award should “*not involve impropriety or irregularity*”.

The OCG was also guided by the expressed provisions which are contained in Section 21 of the Contractor General Act. Section 21 specifically mandates that a Contractor General shall consider whether he has found, in the course of his Investigation, or upon the conclusion thereof, evidence of a breach of duty, misconduct or criminal offence on the part of an officer or member of a Public Body and, if so, to refer same to the competent authority to take such disciplinary or other proceedings as may be appropriate against that officer or member.

The Findings of the OCG’s Investigation into the proposal to divest the GOJ’s forty-five percent (45%) stake in Jamalco are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG, during the course of the Investigation.

Summary of Key Findings

1. The OCG found that Dr. the Hon. Carlton Davis, O.J. CD., in his then capacity as the Chairman of the JBI, met with representatives from Port Reliant Limited from as early as 2007 March.
2. The OCG found that Hongfan had made an offer in 2007 December to the then Minister of Energy, Mr. Clive Mullings, to, *inter alia*, provide the GOJ with US\$600,000,000.00 to finance the GOJ's share of the Jamalco expansion.
3. Mr. Clive Mullings, former Minister of Energy, advised the OCG, in his response which was dated 2011 January 24, that *"In 2008, Port Reliant's principals, Mr. Joe Chang and Mr. Gary Ho approached the Ministry of Energy, Mining and Telecommunications as it then was, expressing an interest in purchasing Bauxite. Meetings were held with them, including the Permanent Secretary, Dr. Jean Dixon, Mr. Howard Mitchell who was Chairman of BATCO, Mr. Glen Watson, Legal Officer, the Chairman of Clarendon Alumina Partners and other persons..."*⁵

It is instructive to note that Mr. Mullings indicated, in his sworn testimony to the OCG, that he was neither aware of the proposal to divest the Government of Jamaica's (GOJ's) 45% shares in Jamalco to Hongfan nor had any knowledge of Port Reliant Limited's involvement in same. He further indicated that after April 2008, he had no dealings with Port Reliant Limited as the Ministry was split and he had only retained the Energy portfolio.

4. The OCG found that a Letter of Intent was signed between Hongfan, Port Reliant Limited and Mr. Howard Mitchell, in his then capacity as the Chairman of BATCO, on 2008 May 28, with the intention to initiate official negotiations, which had purportedly commenced from 2008 April 7, with Hongfan and Port Reliant Limited, and which was

⁵ Response from Mr. Clive Mullings, former Minister of Energy, which was dated 2011 January 24. Response #3

geared towards entering into an agreement with the GOJ to accomplish the ‘Jamaica Alumina Project’. The OCG notes that the referenced Letter of Intent outlined, *inter alia*, the following:

- (a) That based upon meetings between Hongfan and Port Reliant Limited, it was Port Reliant Limited which had arranged the visit of the then Chairman of BATCO, Mr. Howard Mitchell, to Hongfan, on 2008 April 7, to initiate official negotiations.
- (b) That “*Hongfan with the advice and assistance of Port Reliant intends to enter into an agreement with the GOJ through the agency of Batco to accomplish the Jamaica Alumina Project...*”
- (c) That the parties expressed, *inter alia*, their intent to be as follows:

“Hongfan hereby confirms its interest and intent to participate in the Jamaica Alumina Project, as a financial organizer and promoter, and to organize a banking syndicate/consortium under Hongfan’s name to provide the amount of not less than...US\$600,000,000.00...by way of a loan on terms to be agreed on by Hongfan and the GOJ for the Jamaica Alumina Project.

Hongfan has indicated its willingness and ability to assist Batco with the construction of a 300,000-kilowatt thermal power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica’s National grid.

Hongfan, as and when terms are agreed will establish a Finance Committee to commence promoting the Jamaica Alumina Project, Hongfan further desires to establish an arrangement to enter into long-term contracts of up to twenty (20) years for the acquisition of Alumina from Jamaica through

Batco's agency and is prepared to credit the value of such contracts against the proposed loan. *In the event that Batco can source current supplies in the amount of 200,000 tons of alumina, Hongfan is desirous of purchasing same on terms to be agreed.*"⁶ (OCG's Emphasis)

(d) The Letter of Intent also 'explained' that the "...discussions referred to in the Preamble have commenced on April 7, 2008, and are regarded as the first official meeting and included any previous conversations between the parties. The parties agreed that the discussions shall continue for four (4) months from the signing of Letter of Intent."

(e) The Letter of Intent outlined as an "obligation" that "The Parties agree that Port Reliant will be Hongfan's exclusive agent for the Jamaica Alumina Project." The OCG noted that the phrase "during the period of this letter of Intent" was handwritten and was represented to be inserted after "The Parties agree that" to which a signature, that seemingly represented that of Mr. Howard Mitchell, was affixed.

5. Based upon certain representations which were made and the supporting documentation which was provided to the OCG by the Hon. Bruce Golding, the former Prime Minister of Jamaica, the OCG found that Hongfan made certain propositions in 2008 and 2009, which included (a) the proposal to purchase the GOJ's 45% Shares in Jamalco, which was considered as 'stage one' of certain "Jamaican Projects" which was said to have been outlined in a 'Term Sheet' (b) a willingness to assist BATCO with the construction of a 300,000KW power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica's national grid; and (c) for BATCO to negotiate an alumina supply agreement with Hongfan for a minimum of 200,000 tonnes of alumina to be delivered within an agreed period of time.

⁶ Letter of Intent which was signed on 2008 May 28, between Hongfan, Port Reliant Limited and Mr. Howard Mitchell, then Chairman, BATCO.

6. The OCG found, by way of an email correspondence of 2008 August 6, which was sent from Mr. Joseph Chang, Director, Port Reliant Limited, to Ms. Sancia Templar, for and behalf of the GOJ, *inter alia*, the following:
 - i. That Mr. Joseph Chang expressed that “*Hongfan is a substantial Chinese metals trading company we’re partnering with and Port Reliant Ltd. is our company.*”
 - ii. That Mr. Joseph Chang expressed that it “*...is a win, win situation – the Chinese get a long-term supply of alumina, Jamaica gets a new energy source and diversifies alumina sales lessening dependence.*”
 - iii. That it was subsequent to meeting with Dr. Carlton Davis in 2007 March, who informed both himself and Mr. Gary Ho, representative of Port Reliant Limited of “*... the US\$1.2 billion Jamalco expansion, which would yield an additional 1.5 million tonnes of alumina per annum. He suggested that the GOJ’s share of this additional output (up to 50% of the expanded Jamalco output) could be allocated to the investor that would be willing to finance the GOJ’s share of the expansion costs,*” that Hongfan made an offer in 2007 December.
 - iv. That the then Chairman of BATCO, Mr. Howard Mitchell, visited Hongfan in China in April 2008. Mr. Joseph Chang indicated that “*...no real progress was made until the Chairman of BATCO visited Hongfan...*”
7. That Hongfan made certain proposals to the GOJ in the meeting of 2009 February 9, which included, *inter alia*, the following:
 - i. That “*Hongfan indicated that it will be able to take at least 200,000 tonnes of alumina beginning April for the rest of the year.*”

- ii. That Hongfan indicated an interest in securing long-term supply of alumina for at least 20 years and also alluded to the fact that they were prepared to look at certain options which included (a) “*Virtual Ownership of CAP’s share of JAMALCO*”, (b) an ‘Orthodox purchase’ i.e. a percentage of the London Metal Exchange; (c) cash cost without ownership; and (d) the alumina/caustic soda barter at a later date.
8. The OCG found that several agreements, which included a Letter of Intent, a Term Sheet and Confidentiality Agreements, were signed between the GOJ and Hongfan/Port Reliant Limited with respect to discussions surrounding Hongfan’s willingness to provide funding of up to US\$600M, for what was termed as ‘Jamaica Projects’ to assist in the bauxite and alumina sector. The OCG found that discussions ensued between the GOJ and Hongfan with respect to a long-term direct investment for a period of at least 20 years.
9. That a Term Sheet was signed on 2009 February 13, between the then Prime Minister of Jamaica, the Hon. Bruce Golding and the Chairman and Chief Executive Officer of Hongfan, Mr. Yan Tiejun.

The OCG found that the GOJ, through CAP and JBM, as at 2009 February 13, had a preliminary understanding with Hongfan regarding future relationship, *inter alia*, as follows:

- i. That the GOJ, through its nominated representatives, and Hongfan, through Port Reliant Limited of Hong Kong, People’s Republic of China, its exclusive agent, will work together to identify projects for the development and continued operations of the Industry, which was intended to facilitate Hongfan’s participation for a period of at least 20 years.

- ii. That Hongfan will provide funding of up to US\$600M to execute certain projects in Jamaica. The understanding was that the funds would be made available in three (3) tranches of US\$200M each but would be, however, subject to negotiations and finalizing of the contractual terms relating to their disbursement and repayment to Hongfan.
- iii. That the GOJ, through JBM, CAP and BATCO, will work together to negotiate and finalise an alumina agreement with Hongfan.
- iv. That at the time of the signing of the Term Sheet (2009 February 13), the understanding was that for a period of 120 days from the date thereof, neither the GOJ nor Hongfan would enter into agreements with any other participant in the Industry with respect to the “*Jamaican Projects*”.

10. The OCG also found the following to be of significant import as it regards the signing of the Term Sheet:

- i. That the notion behind the preparation of the Term Sheet, in keeping with the sworn testimony of Ms. Marcia Forbes, former Permanent Secretary, MEM, emanated from a proposition which was made by Hongfan and Port Reliant Limited, upon their insistence for the GOJ to signal its interest in the investment.
- ii. That according to Ms. Marcia Forbes, the former Permanent Secretary in the MEM, the Term Sheet was required to be negotiated and worded to the satisfaction of the former Prime Minister, the Hon. Bruce Golding. This was purported to be undertaken by a team which comprised of Mr. Hugh Hart, then Advisor to the PM; Mr. Howard Mitchell, then Chairman of the JBM and BATCO; Dr. Carlton Davis, then Chairman of JBI; and Ms. Sonia Mitchell of

JBI. Ms. Forbes also indicated that the referenced Prime Minister was not entirely comfortable with Hongfan and Port Reliant Limited.

- iii. That according to current Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, the Term Sheet was not a direct product of the ‘proposed transaction’ but rather, was considered to be an “...*initiative which led to the sharing of information that that [sic] after an extended period, apparently resulted in Hongfan’s clear offer for the purchasing of the shares.*”
- iv. The OCG found that Hongfan, subsequent to the signing of the Term Sheet, submitted an offer, which was dated 2009 March 11, to purchase the GOJ’s 45% shares in Jamalco, as “*stage one of the Jamaican Projects*”, which based upon the Term Sheet, the understanding was that Hongfan would work together with the GOJ to identify projects for the development and continued operations of the alumina industry in Jamaica.

11. The OCG found that two (2) Confidential Agreements were signed between the GOJ, one with CAP and the other with JBM, and Port Reliant Limited, and Hongfan, in the case of the Agreement with JBM.

12. The OCG found that an “***Agreement for Purchase of Shares***”, which was dated and entered into on 2010 March 18, was signed between the GOJ, CAP and Hongfan.

In summary, the terms of the ‘*Agreement for Purchase of Shares*’ are that Hongfan would (a) pay US\$240M for the 45% CAP shares; (b) assume CAP’s alumina supply obligations to Glencore which is estimated at approximately US\$175M; (c) deposit a sum of US\$92M, to CAP, for working capital support; and (d) pursue a substantial expansion of the Jamalco facility subject to availability of bauxite reserves.

13. The OCG found that the GOJ, through the then MEM, did not conduct any form of a competitive bidding process, prior to the signing of the 2010 March 18 Agreement, to ensure value for money in the divestment of the GOJ 45% shareholding in Jamalco.

It is instructive to note, however, that the Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, in her response to the OCG, stated, *inter alia*, that “...the bauxite and alumina industry consists of, relatively, few players who, in general, do not depend on any formal process to become aware of developments, or avail themselves of opportunities, within the industry. Communication is often undertaken by direct/indirect contact or discussions with or among their representatives or agents.”

14. The OCG found that the GOJ had been in receipt of another offer from Glencore International AG, by way of a letter which was dated 2010 March 17, to purchase the GOJ’s 45% CAP shares in Jamalco. The OCG was, however, advised by Permanent Secretary Hillary Alexander that the letter was received by the then MEM on 2010 March 19 and was revised on 2010 March 26.

Interestingly, the OCG found that Glencore International AG, the entity with which the GOJ is currently negotiating, had submitted several offers to the GOJ. In point of fact, the then Minister, informed the Cabinet of Jamaica, that an offer from Glencore was rejected in 2008 “...due, in part, to the terms of attendant loan arrangements and a valuation which was conducted at a time of a global financial crisis and has a most unfavourable result.”

In this regard, the OCG found that although the letter was dated one day prior to the signing of the “*Agreement for Purchase of Shares*” on 2010 March 18, it was reportedly received one day after the consummation of the Agreement.

15. The OCG found that the GOJ has a history with Glencore International AG as it relates to a 10-year Alumina Supply Agreement which was consummated between the

referenced parties. In point of fact, the OCG was advised, *inter alia*, that “*In 2000 Bauxite and Alumina Trading Company of Jamaica (“BATCO”), as exclusive selling agents for CAP, borrowed US\$125 initially from Glencore AG which was refinanced through 10-year Notes issued at 10.48% on international capital markets...The arrangement was supported by a 10-year Alumina Supply Agreement to Glencore AG...and the Notes were repaid through the proceeds of the alumina sales.*”

16. The OCG found that Mr. Winston Hayden, General Manager, CAP, had conducted a comparative evaluation in 2010 April of the initial offer which was received by Glencore International AG, which was dated 2010 March 17, and that of Hongfan, based upon the Agreement of 2010 March 18.

The OCG found that the GOJ considered the offer by Glencore International AG to be “*...less favourable... than the offer made by Hongfan...*”

17. The OCG found that the MEM undertook two (2) valuations, as follows:

- i. March 2009 – Valuation prepared by the international firm of Worley Parsons of Australia.

The Valuation which was undertaken by Worley Parsons which became effective on 2008 June 30, and which was prepared to assess the fair market value of the operations on a discounted cash flow basis revealed, *inter alia*, that the discounted cash flow calculations were “*...based on oil prices derived from a forward loading curve quotation dated September 17th however based on an oil price quotation from the same source received on September 4th, the discounted cash flow calculation returned a valuation of negative USD235million - a decrease of some USD300million...*”

- ii. December 2009 - a business valuation of CAP was undertaken by Mr. Winston Hayden, General and Financial Manager, CAP, for the purposes of guiding discussions/negotiations in relation to the contemplated divestment. The business valuation came to a determination of USD\$220M as the market value of the shares.

The OCG was further advised by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG of 2010 May 5, that prior to the Agreement for the divestment of the shares, “...PriceWaterhouseCoopers was requested to provide a professional opinion on the referenced business valuation, with a view of determining whether it provided an accurate or fairly accurate price for the shares. PriceWaterhouseCoopers, in its limited critique of the business valuation, cited a value ranging from a low of US \$120M to US \$358M...”⁷

- 18. The OCG found that the GOJ and Alcoa Minerals of Jamaica LLC, pursuant to a Joint Venture Agreement which was dated 1988 March 1, initially had a 50:50 shareholding ownership in Jamalco. However, up to and including the consummation of the “*Agreement for Purchase of Shares*”, the OCG found that based upon a Letter of Agreement between Jamalco and Alcoa, which was dated 2007 March 30, the interest was adjusted to 45:55, with Alcoa holding the majority share, subject to final determination by Jamalco.

The OCG found that the ‘*Agreement for Purchase of Shares*’ was not to be consummated until Alcoa, pursuant to its Right of First Refusal under the Joint Venture Agreement between CAP and Alcoa of 2002, had indicated a failure or refusal to match or improve upon the terms of the ‘*Agreement for Purchase of Shares*’.

- 19. The OCG found that based upon the representations which were made to it on 2009 April 24, in a meeting which was convened at the OCG, with the former Permanent

⁷ Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 May 5. Response #2

Secretary, Ms. Marcia Forbes and the former Chairman of JBM and BATCO, Mr. Howard Mitchell, the subject divestment could not proceed in the way the commercial arrangements were being undertaken and the manner in which the transaction had been originally structured.

20. The OCG found that Port Reliant Limited, which was reported as being the exclusive agent of Hongfan, was established in the British Virgin Islands (BVI).

Of note, Mr. Joseph Chang, Director, Port Reliant Limited, informed the GOJ that none of the officers, principals, shareholders or beneficial shareholders are Jamaicans. Mr. Joseph Chang's also asserted that Mr. Raymond Chang, who was identified as his brother and Consultant to Port Reliant Limited, is neither an officer, principal, shareholder nor beneficial shareholder of Port Reliant Limited.

21. The OCG found that Mr. Howard Mitchell, then Chairman of JBM and BATCO, served as the Chairman of the Board of the Company of the Island Grill Chain, a company owned by Mrs. Thalia Lyn, the sister of both Mr. Raymond Chang and Mr. Joseph Chang.

22. The OCG found that Mr. Howard Mitchell and a "*Gladstone Chang*" are Directors of the company, Corrpak (St. Lucia) Limited and Shareholders in Shareholders of Corrpak Jamaica Limited.

The OCG found that the referenced company was incorporated prior to the negotiations which were being undertaken between Mr. Mitchell, in his capacity as Chairman of the JBM and BATCO, and Mr. Joseph Chang, Director of Port Reliant Limited - the brother of Mr. Raymond Chang.

Having regard to the foregoing information and Mr. Howard Mitchell's assertion that "*Joseph Chang's brother, Mr. G. Raymond Chang is my close friend and business*

partner... ”⁸, the OCG found that Mr. Raymond Chang’s full name is Gladstone Raymond Chang.

It is instructive to note, that Mr. Howard Mitchell, in his sworn response to the OCG, asserted that Mr. Raymond Chang asked him “...*on more than one occasion questions related to the progress of the negotiations... ”⁹*

23. That as at the time of the meeting with the OCG, which was convened on 2009 April 24, the arrangements/deal between Hongfan and the GOJ was apparently “*going ‘sour’*”, as suggested by former Permanent Secretary, Ms. Marcia Forbes, based upon several reasons, which included (a) the fact that the GOJ had no alumina to supply Hongfan, (b) a proposition by Hongfan for the GOJ to pay Port Reliant Limited a commission fee, and (c) an apparent mistrust on the part of Hongfan which had developed against the GOJ as a result of the GOJ’s having certain discussions with Minimetals, a competitor of Hongfan, which informed Hongfan of such discussions and had proposed to ‘broker’ the deal with Hongfan and the GOJ.
24. That the former Permanent Secretary in the MEM, Ms. Marcia Forbes, advised the OCG that the former Prime Minister of Jamaica, the Hon. Bruce Golding, had expressed certain concerns regarding the manner in which Mr. Joseph Chang, Director, Port Reliant Limited, wanted to conduct the negotiations.

In point of fact, Ms. Forbes described Mr. Joseph Chang’s treatment of the GOJ as a “*banana republic*”, that is, one of a dictatorship/exploitative relationship. She explained that as a result, the former Prime Minister had expressed his discomfort, particularly with respect to the signing of the Term Sheet.

⁸ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #7

⁹ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #9(vi)

25. That the GOJ had considered preparing a status report, regarding Hongfan, to the National Contracts Commission (NCC) to request an endorsement to utilise the Sole Source Procurement Methodology. This seems to have been considered on the basis of the proposition for the GOJ to pay Port Reliant Limited a commission fee as in the email of 2009 April 25, from Ms. Marcia Forbes, former Permanent Secretary, MEM, to the Hon. Bruce Golding, it was suggested that once approval was received from the NCC, then “... *HF cannot pay them directly and that Ja will not breach Chinese [sic] law/reg. if it pays.*”

It should be noted, however, that Ms. Forbes in her sworn testimony to the OCG, which was dated 2010 June 29, stated that the referenced status report was not prepared, as Port Reliant Limited, which was required to supply the Ministry with evidence that (a) Hongfan could not pay them directly and (b) that Jamaica would not be in breach of Chinese laws if it pay, did not provide same.

26. Mrs. Hillary Alexander, Permanent Secretary, MSTEM, by way of a letter to the OCG, which was dated 2010 May 27, in an effort to clarify certain positions of the GOJ with respect to the subject divestment, stated, *inter alia*, that the “... *proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*”¹⁰

Based upon the foregoing, the referenced Permanent Secretary implied that Hongfan’s offer was considered by the GOJ to be “an unsolicited proposal”. Upon the OCG’s query of same, the Permanent Secretary, in her sworn response of 2010 July 14, stated, *inter alia*, that “*From a perusal of documents which came to my attention subsequent to my letter of May 27, 2010, I am unable to say that the offer was unsolicited in the strictest meaning of the word, in light of the history of the involvement with Hongfan.*”

¹⁰ Letter from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 May 27. No. 3

27. The OCG found that due diligence was conducted by the GOJ via a variety of approaches by several Public Officials/Officers into (a) Hongfan's offer and (b) Hongfan's suitability to purchase the GOJ's shares, as follows:

- i. The GOJ in 2009 March had conducted due diligence exercises into the suitability of Hongfan, as an entity, to which the GOJ could divest its shares. The OCG was informed that due diligence exercises were also conducted by the GOJ into Hongfan to determine (a) the legitimacy of the entity; (b) knowledge about the incorporation and beneficial shareholders, directors, employees, officers and principals; (c) the agency agreement between Port Reliant Limited and Hongfan; and (d) financial capabilities.
- ii. That several meetings and discussions were held to facilitate the due diligence process with certain Chinese officials and institutions which included, *inter alia*, the China Development Bank, the National Development and Reform Commission, the China Aluminium Corporation of China, representatives of Hongfan, and representatives of Port Reliant Limited namely, Mr. Joseph Chang and Mr. Gary Ho.
- iii. That BATCO conducted a formal due diligence exercise into Hongfan through a UK based company, China Company Research Services Limited, which undertakes due diligence services/research into Chinese corporations/entities. A report which was submitted by the referenced company outlined, *inter alia*, that (a) the legal scope of the company as being licensed for export/import trading; (b) Mr. Yan Teijen is the Executive Director and General Manager of the company; and (c) the entity was incorporated to a Limited Liability Company on 2007 November 8.
- iv. In general, Hongfan was considered a small company in China, compared to companies such as CHALCO. However, the OCG was advised that Hongfan's

success factor was based upon “...*the explicit involvement of CHALCO, as the major off-taker and the CDB as a major financier. The confirmation of the support of these two entities will be the likely determinant of the NDRC support for HF’s acquisition of the CAP shares.*”

28. The OCG found that although Port Reliant Limited, as communicated by Hongfan, was an agent, acting on its behalf, with respect to the alumina and bauxite investment in Jamaica, the GOJ did not conduct any formal due diligence process into the operations of the company and its members’ capabilities as it regards alumina and bauxite. In point of fact, the OCG was advised by the former Permanent Secretary in the MEM, that any information obtained with respect to Port Reliant Limited was done by verbal communication.

Based upon a review of certain documents and representations which have been made to the OCG, the OCG found the following:

- i. That Port Reliant Limited is a British Virgin Island company specifically established to facilitate investment opportunities internationally from China.
- ii. That the former Permanent Secretary, Ms. Marcia Forbes, indicated that based upon several meetings and email correspondence with Mr. Joseph Chang, Mr. Gary Ho and other Hongfan representatives, she **learnt** that Mr. Joseph Chang, **Mr. Ray Chang** and Mr. Gary Ho, represented Port Reliant Limited.
- iii. That the majority of the discussions, intentions expressed and negotiations were held between Port Reliant Limited and the respective GOJ representatives from as early as 2007.
- iv. That Port Reliant Limited reportedly functioned to (a) obtain and disseminate information to Hongfan, (b) provide translation services, (c) facilitate

discussions between GOJ and Hongfan; and (d) offer logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.

Of note, the OCG found, based upon certain representations which were made, that there seemed to have been a general belief by certain Government Officials/Officers that on the basis that the GOJ had no agreement with Port Reliant Limited, but rather Hongfan, it was not a necessity for the GOJ to conduct any form of a due diligence exercise on the business capabilities and suitability of Port Reliant Limited.

29. The OCG found that as it regards the request of Hongfan for the GOJ to pay Port Reliant Limited a commission *“from the Consideration paid by Hongfan”*, no payment was made to Port Reliant Limited.

Of significant import, the matter was brought to the attention of the Solicitor General and the OCG, which, in both instances, advised the GOJ against paying any monies to Port Reliant Limited.

30. The OCG found that the Solicitor General advised, as follows:

- a. *“There are no fee arrangements mentioned in the Hongfan letter and in particular, the payment of fees to Port Reliant by the GOJ. Port Reliant has no agency or other relationship with the GOJ.*
- b. *If Port Reliant were to act on behalf of the GOJ, it would have had to satisfy the relevant procedures under the Contractor General’s Act and the Government’s Procurement Guidelines.*
- c. *The GOJ has no contractual or other relationship with Port Reliant which would justify the payment of any fees on behalf of Hongfan.*

- d. *Any monies received by the GOJ from Hongfan pursuant to the transaction would be public revenues and payment of any fees from such revenues to Port Reliant in the absence of a legal and commercial basis would be wholly unauthorized.”*

It is instructive to note that the OCG, by way of a letter which was dated 2009 April 27, in which the OCG expressed, *inter alia*, its concern that “*You have asserted that Hongfan is unwilling to pay the proposed commission directly to Port Reliant, but is willing to ‘gross up’ the contract payments in an amount which is equivalent to the commission. This, of all of our stated concerns, raises very serious possibilities for a finding of irregularity and/or impropriety as regards the transaction. Further, there is a possibility that the GOJ could be embarrassed in the event that the transaction is found to be illegal and/or otherwise questionable, by the Government of China.*”

31. The OCG found that the GOJ, through its representatives, held and attended several meetings with Hongfan, Port Reliant Limited, amongst other persons and entities of interest, and that on several occasions a Jamaican delegation visited China to garner information, particularly with respect to the suitability of Hongfan proposing an interest in the subject divestment, as follows:

- i. The visit in 2009 March was reported to be in an effort to explore all possible options to maintain production to the maximum extent possible, and to ensure the long-term development and growth of the industry, at which time certain propositions were expressed to the Chinese for consideration.
- ii. The 2010 November to 2011 January visit was reportedly related to (a) the downturn in the bauxite and alumina sector and efforts to re-open a number of local plants that closed in or about 2007/2008, (b) attracting new investments and stimulate growth in the sector and (c) a need to find effective measures to deal with the losses faced by CAP as a result of the fixed prices under the

forward sale contracts, which included attempts to divest CAP and discussions with Hongfan in this regard.

- iii. The visits in 2010 May and (2010 June to New York) was reportedly based upon the GOJ being invited by Alcoa to observe certain discussions surrounding Alcoa's right in an effort to determine whether any proposed buyer of the shares was deemed a suitable business partner for joint ownership of Jamalco. The OCG was informed that the discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.

32. That the former Minister sought the approval of the Cabinet of Jamaica on 2010 February 8, to divest the GOJ's shareholding in Jamalco. The OCG found that approval was subsequently granted by the Cabinet of Jamaica for the referenced divestment. In addition, the OCG found that the Cabinet was advised of, *inter alia*, the following:

- i. That since 2008, the divestment of CAP was explored with at least four (4) entities, inclusive of Hongfan. Of note, however, the divestment was not put to a competitive bidding process prior to the consummation of the "*Agreement for Purchase of Shares*" of 2010 March 18.
- ii. That the DBJ was in the process of contracting PriceWaterhouseCoopers or such other independent valuers to perform a final valuation of CAP's shareholding in Jamalco or to certify the valuation which was conducted by Mr. Winston Hayden, General Manager, CAP.
- iii. That the purchase price which was proposed by Hongfan of US\$332M was found to be insufficient to discharge CAP's debts.

- iv. That based upon a breakdown of CAP's debts which was presented to the Cabinet, as at 2009 December 31, CAP's debt amounted to US\$384,280,000.00.
33. The Cabinet, by way of its Decision No. 10/10, which was dated 2010 March 15, stated, *inter alia*, that the divestment process be halted until the Valuation Report was received from PricewaterhouseCoopers. The OCG also noted that the Valuation Report was received by PricewaterhouseCoopers on 2010 March 17, one day prior to the consummation of the '*Agreement for Purchase of Shares*' which was entered into between the GOJ, Hongfan and CAP on 2010 March 18.
34. The OCG found that the "*Agreement for Purchase of Shares*", which was signed between the GOJ and Hongfan, on 2010 March 18, was terminated on 2010 December 6, on the basis that Hongfan failed to have performed in accordance with certain above-mentioned terms and conditions of the Agreement.
35. The OCG found, by way of a Cabinet Submission 568/MEM 55/10, which was signed by Mr. James Robertson, former Minister of the MEM, and which was dated 2010 November 24, that "...*Glencore (again), by letters of October 20 and 28, 2010, made an "unsolicited revised firm offer in respect of CAP's 45% interest in Jamalco"*
36. The OCG found that the Cabinet, by way of Cabinet Decision No. 44/2010, which was dated 2010 November 29, "...*gave preliminary consideration to...a proposal for the divestment of the Government of Jamaica's 100% shareholding in Clarendon Alumina Production Limited (CAP) to Glencore International AG.*"

The Cabinet, however, decided, *inter alia*, that "...*the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares, subject to the failure of Hongfan to effect completion of the Agreement of 18 March 2010 for the purchase of the shares.*"

The OCG, therefore, noted that during the period in which Hongfan was being requested by the MEM to perform in accordance with the terms and conditions of the “*Agreement for Purchase of Shares*” of 2010 March 18, the Cabinet was being requested, by the MEM, to consider an offer which was proposed by Glencore International AG. The Cabinet, however, decided that the submission should be withdrawn by the MEM and requested that negotiations with Glencore International AG were to be entered into subject to the failure of Hongfan to effect completion of the referenced “*Agreement for Purchase of Shares*”.

37. Quite interestingly, the OCG found, by way of the referenced Cabinet Submission of 2010 November 24, that the former Minister of the MEM, Mr. James Robertson, informed the Cabinet of Jamaica, that both the Ministry of Finance and the Attorney General’s Department had offered its “no objection” for the GOJ to utilise the Sole Source Procurement Methodology for the subject divestment.

The referenced Minister also asserted that the NCC had advised that “*...the matter of the divestment of government assets falls outside its portfolio responsibilities,*” and that the OCG “*...proffered a contrary opinion and, apparently, supports the use of the standard procurement methodology for the divestment of Government assets. In the enquiries of the transaction with Hongfan he made reference to the use of the open tender methodology for the divestment of assets.*”

It is instructive to note that despite the foregoing, and what seems to be the furthest from the truth, the OCG has always held the position, and as outlined in its letter of 2009 April 27 to the former Permanent Secretary in the MEM, that one of the fundamental tenets of the GOJ’s Procurement Policy is “value for money” which cannot be determined where there is no transparency or competition in the GOJ’s engagement.

Further, the OCG in its respective Media Releases, which were dated 2010 May 20 and 26, publicly announced its position. In particular, in the former Media Release, the OCG pronounced, *inter alia*, that “...*the issues with which we are now contending would not have occurred had the GoJ subject the sale of the referenced equity to an open, competitive and transparent tender process.*” (OCG’s Emphasis)

The foregoing in no way proffers a support of the “*standard procurement methodology*”, as suggested by the former Minister, for the divestment of Government state owned assets, as such transactions are required to be undertaken pursuant to the provisions of the GOJ Privatization Policy and Procedures (Ministry Paper #34).

38. The OCG found that subsequent to the termination of the “*Agreement for Purchase of Shares*” between the GOJ and Hongfan, the GOJ entered into negotiations with Glencore International AG with respect to the acquisition of the GOJ shares in Jamalco.

Conclusions

Based upon the sworn testimonies and documentary evidence which were received from several Public Officials/Officers, former and present, within the MEM, BATCo, CAP, among other Government Entities, and representatives of same which are/were involved in and/or associated with the subject divestment, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that the divestment process which was employed by the GOJ, through the MEM, with respect to the GOJ’s 45% CAP shares in Jamalco, was irregular, and, therefore, contravened Section 4 of the Contractor General Act.
2. The OCG has concluded that there was no formal competitive bidding process which was undertaken by the GOJ, prior to it [the GOJ] entering into an “*Agreement for Purchase of*

Shares” on 2010 March 18 with Hongfan with respect to the GOJ’s 45% CAP shares in Jamalco. In this regard, the OCG has concluded that the GOJ, through the MEM, breached Section 4 of Ministry Paper #34, in its failure to advertise the captioned divestment.

3. Further and in keeping with Ministry Paper #34, the OCG has concluded the following with respect to the “*Agreement for Purchase of Shares*” which was signed between the GOJ, Hongfan and CAP on 2010 March 18:
 - i. That two (2) valuations were conducted on behalf of the GOJ to determine the disposal price. The first valuation was undertaken by Worley Parsons and the second was prepared internally by CAP, in which a ‘limited critique’ from PricewaterhouseCoopers was obtained by CAP on 2010 March 17, one (1) day prior to the signing of the “*Agreement for Purchase of Shares*”.
 - ii. That equal opportunity was not given to other prospective purchasers in the Industry. To compound the matter, the OCG has found that the divestment opportunity was not advertised and it was taken for granted by the GOJ that other players in the industry were aware of the GOJ’s intent to divest its holdings in the company.

In point of fact, the OCG found that Hongfan was purportedly selected subsequent to the GOJ’s receipt of an “*unsolicited meritorious proposal*” from the referenced company.

Despite the foregoing, the OCG also found that at least one other prospective bidder, with whom the GOJ had been in discussions with previously, submitted a proposal to Mr. Hugh Hart, Attorney-at-Law and then Special Advisor to the GOJ, by way of a letter which was dated 2010 March 17, and which was signed as having been received on 2010 March 19.

- iii. That there existed a conflict of interest situation particularly between Mr. Howard Mitchell, the then Chairman of BATCO and JBM, and Mr. Joseph Chang, Director, Port Reliant Limited, and Mr. Raymond Chang, Consultant for Port Reliant Limited, with respect to the close personal and business relationships which subsisted among the individuals, respectively.

In point of fact, the OCG has concluded that the conflict of interest situation emanated from 2008 January, the period in which Mr. Howard Mitchell indicated that Mr. Joseph Chang “...approached me in my capacity as Chairman of the JBM and BATCo expressing an interest on behalf of...Chinese investors in Jamaica’s bauxite and alumina industry.”

Further, Mr. Mitchell indicated that Mr. Raymond Chang, asked him “on more than one occasion questions related to the progress of the negotiations...”

Mr. Howard Mitchell also advised the OCG, *inter alia*, that (a) he has known Mr. Joseph Chang since 1988, (b) Mr. Raymond Chang is his close friend and business partner and (c) Mrs. Thalia Lyn, Mr. Joseph’s Chang sister, is his friend since 1986. It is also the case that Mr. Mitchell served as the Chairman of the Board of the Company of the Island Grill Chain, a company in which Mrs. Thalia Lyn is the owner.

- iv. That the divestment was reportedly publicized by the GOJ, in the print media, upon the consummation of the “*Agreement for Purchase of Shares*”.
4. The OCG has concluded that, on 2010 February 8, the Cabinet of Jamaica approved the request of the former Minister of the MEM, Mr. James Robertson, to proceed with the divestment of the GOJ’s 45% CAP shares in Jamalco.

5. The OCG has concluded that the genesis of the discussions pertaining to Jamalco, as an opportunity for investment, was in 2007 March, at which time a meeting was held with representatives of Port Reliant Limited and Dr. Carlton Davis, the then Chairman of JBI.

The OCG found that subsequent to the initial meeting in 2007, certain other former GOJ Officials, which included Mr. Howard Mitchell and Mr. Clive Mullings, were approached by Hongfan and Port Reliant Limited, in which several meetings and discussions were facilitated in 2008 and several propositions were made by, and/or for and on behalf of, Hongfan, with respect to investing in the alumina and bauxite industry in Jamaica.

6. The OCG has concluded that an agency relationship existed between Hongfan and Port Reliant Limited, in which Port Reliant Limited reportedly functioned to, *inter alia*, (a) obtain and disseminate information to Hongfan, (b) provide translation services, (c) facilitate discussions between GOJ and Hongfan, and (d) offer logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.
7. The OCG was advised by the Permanent Secretary in the MEM that the value of the shares in Jamalco was assessed against (a) the total value of the consideration payable to the GOJ by Hongfan; (b) the monetary value owing to Glencore; and (c) the Working Capital support of US\$92M which was to be deposited for use in the operations of the facility.

In this regard, the OCG concludes that the valuation of Jamalco, at that time, prior to the signing of the “*Agreement for Purchase of Shares*” on 2010 March 18, would have been based upon the final assessment, by way of the ‘limited critique’ of the business valuation which was undertaken by CAP, that was prepared by PricewaterhouseCoopers, which cited the value of the shares ranging from a low of US\$120M to US\$358M.

8. The OCG has concluded that the GOJ did not directly enter into any agreements with Hongfan based upon the signing of the Term Sheet which was consummated by the former Prime Minister of Jamaica and Hongfan on 2009 February 13.

The OCG found that the signing of the Term Sheet was based upon discussions regarding the possible participation by Hongfan in the bauxite and alumina industry and a future relationship between the parties.

In point of fact, Ms. Marcia Forbes, the former Permanent Secretary in the MEM, indicated that the Term Sheet was not a direct product of the “*Agreement for Purchase of Shares*” but rather, was considered to be an “...*initiative which led to the sharing of information that that after an extended period, apparently resulted in Hongfan’s clear offer for the purchasing of the shares.*”

Therefore, the OCG has concluded that the signing of the Term Sheet was to hold Hongfan to its commitments/propositions with respect to (a) discussions surrounding Hongfan’s willingness to provide funding of up to US\$600M; (b) identifying projects for the development and continued operations of the Industry, what was coined the “Jamaica Projects”, which was to facilitate Hongfan’s participation for a period of at least 20 years; (c) the commencement of negotiations between JBM, CAP and/or BATCo, and the use of best efforts to finalise an alumina supply agreement with Hongfan for a minimum of 200,000 tonnes of alumina which was to be delivered between March 2009 and December 2009, or such other period as may be agreed upon; and (d) allowing Hongfan to enter into agreements, for a period of 120 days, with any other participant in the industry with respect to the “*Jamaican Projects*”.

9. The OCG has concluded, based upon Hongfan’s proposition to the GOJ, and subsequent negotiations, which were embedded in the “*Agreement for Purchase of Shares*”, which was consummated on 2010 March 18, that Hongfan agreed, subject to certain conditions, to purchase the GOJ shares for a total of US\$332M which was comprised of, amongst other

arrangements, (a) the payment of US\$240M to the GOJ, and (b) a payment of US\$92M to be used as cash flow support.

10. Having regard to (a) the business relationship between Mr. Howard Mitchell and Mr. Raymond Chang; (b) the absence of evidence to suggest that this business relationship was declared to the GOJ; and (c) the fact that Mr. Howard Mitchell advised the OCG that Mr. Raymond Chang, on more than one occasion, questioned him with respect to the progress of the negotiations, the OCG has concluded that there was a clear conflict of interest situation which subsisted between both individuals.

Such is the case that the relationship between both individuals subsisted during the discussion and negotiations phases which preceeded the consummation of the “*Agreement for Purchase of Shares*” on 2010 March 18, with respect to the GOJ’s shareholding in Jamalco.

Based upon the sworn and documentary evidence which has been provided to the OCG during the course of its Investigation, the OCG has been led to the foregoing conclusion despite Mr. Howard Mitchell’s assertion that he removed himself from the process in 2009 May.

11. The OCG has also concluded that Mr. Howard Mitchell, having known the fact circumstances of his association with Mr. Raymond Chang, should not have assisted, been involved in and/or associated with the divestment process, in any way. The involvement of Mr. Howard Mitchell, under the prevailing circumstances amounts to a clear breach of Ministry Paper #34, which stipulates, *inter alia*, that “...parties with likely conflicting interests will not be invited to assist the process in any way.”
12. The OCG is unable to definitively state whether **all** the directors, shareholders, beneficial owners and persons with an interest in Port Reliant Limited had played an active part in

Hongfan's interest in purchasing the GOJ's shareholding in Jamalco, as the GOJ did not conduct a formal due diligence process into the referenced entity.

However, based upon the review of several sworn testimonies, supporting documentation, correspondence, amongst other things, the OCG has concluded that the representatives of Port Reliant Limited, who had some involvement in and/or association with Hongfan's proposition to purchase the GOJ's 45% CAP shares in Jamalco, were Mr. Joseph Chang, Mr. Gary Ho and Mr. Raymond Chang.

The OCG has concluded that Mr. Raymond Chang represented Port Reliant Limited as a Consultant. In point of fact, this was indicated by his brother Mr. Joseph Chang to Ms. Marcia Forbes, former Permanent Secretary in the MEM, by way of an email which was dated 2009 April 27, that "**Ray Chang is a consultant to Port Reliant.** Ray is Chairman of the Board of Directors of CI Fund Management Inc. He is also a private equity investor with extensive management, operational and investment experience in North America, China and the Caribbean."

The OCG has also concluded that it was Mr. Joseph Chang, in his capacity as a Director of Port Reliant Limited, who was the point person between the GOJ and Hongfan, as Port Reliant Limited was held out by Hongfan to be its "exclusive agent".

13. The OCG has concluded that the GOJ had only conducted due diligence into the legitimacy and suitability of Hongfan, as an entity to which the GOJ could divest its shares, and not into the *bona fides* of Port Reliant Limited, as the agent of Hongfan and the "investment vehicle", as asserted by Hongfan, to proceed with the arrangements/agreements which were made between the GOJ and Hongfan. The role of Port Reliant Limited was also outlined in the 'Term Sheet' which was entered into on 2008 March 28, in which the GOJ agreed that "Port Reliant will be Hongfan's exclusive agent for the Jamaica Alumina Project."

The OCG found, and based upon the sworn testimony of Ms. Marcia Forbes, former Permanent Secretary, MEM, that the GOJ sought to clarify information with respect to the “agency agreement” between Port Reliant and Hongfan. It is instructive to note that Ms. Marcia Forbes, indicated that the information was clarified “...Later via word of mouth from Joseph Chang and Gary Ho, the agency agreement became evident. This was later corroborated by representatives from Hongfan when GOJ officials tried to deal directly with Hongfan and not through Port Reliant...”

The OCG has concluded that the failure of the GOJ to conduct a proper due diligence into the incorporation and operations of Port Reliant Limited contributed to the overall conflict of interest situation which arose having regard to Mr. Howard Mitchell, former Chairman of the JBM and BATCO, being involved in and affiliated with the subject divestment process, against the background of Mr. Mitchell’s testimony which has disclosed, *inter alia*, particular private interests which he shared with Mr. Raymond Chang, Consultant of Port Reliant Limited. Further, Mr. Howard Mitchell, informed the OCG that Mr. Raymond Chang asked him “...on more than one occasion questions related to the progress of the negotiations. I presume that his interest arose because Joseph Chang is his brother.”

14. The OCG found that the CEO of Hongfan, Mr. Yan Teijun, by way of a letter which was dated 2009 March 18, expressed to the former Minister, Mr. James Robertson, that “*Port Reliant Limited (“Port Reliant”) is Hongfan’s exclusive agent for Transaction. As a condition of the Transaction, Hongfan is requesting GOJ to pay, on Hongfan’s behalf Port Reliant certain fees (“Fee”) from the Consideration paid by Hongfan. The Fee payable to Port Reliant shall be calculated as a percentage of Consideration. The percentage rate shall be: 1.5% for spot purchase of alumina; 50% for equity, Virtual Equity and loan facilities; and, 1.5% for long-term purchase contracts of alumina. Port Reliant Fee shall be payable in U.S. Dollars in the form of a wire transfer by GOJ. Fee shall be paid automatically upon each payment or draw down of the Transaction.*”

The OCG concludes that the GOJ, subject to consultation with the OCG and the Solicitor General of Jamaica, rejected the above-mentioned proposition which was made by Hongfan, to the GOJ, to pay Port Reliant Limited a commission, for which it was reportedly suggested by Hongfan that the contract payment be ‘grossed-up’ to facilitate such an arrangement.

15. The OCG found that Hongfan, up to 2009, had expressed an interest in acquiring the GOJ’s 45% shareholding in Jamalco. This was subject to Alcoa’s Right of First Refusal and/or its acceptance of the sale of the shares.

The OCG concludes that the shareholding in Jamalco was a 45:55 split, in which the GOJ owned 45% and Alcoa the 55% majority of the shares.

16. The OCG has concluded that the GOJ was aware of at least four (4) possible interests in the alumina and bauxite industry for the purchase of the GOJ’s shareholding in Jamalco and, therefore, had the necessary information and resources to conduct a competitive divestment process in keeping with Ministry Paper #34.

The OCG noted Permanent Secretary Hillary Alexander’s assertion, in her letter of 2010 May 5, in which she stated that *“Note is taken of your comment that the reference principle was not followed by a failure to advertise the divestment of the asset. Be assured, however, that the Agreement for the divestment of the assets was arrived at in good faith after careful considerations of all issues involved. These include the value of the assets; the fact that the intent to divest was widely known in the local and international bauxite industry; and that it was evident, from discussions with other potential purchasers and relevant industry personnel, that the Government was unlikely to receive more favourable terms and conditions for the purchase of the asset.”*

The OCG is of the considered opinion that the divestment of government-owned assets cannot be based upon ‘good faith’ and upon the assumption that the GOJ’s intent to divest is widely known within the international industry.

The OCG contends that an ‘intent’ to divest does not constitute or communicates an actual divestment process, nor the parameters of same, and, as such, the OCG concludes that the circumstances surrounding the consummation of an Agreement between the GOJ and Hongfan did not in any way promote equal opportunity, transparency and fairness in the privatisation process to ensure that the best value is obtained within the market.

In point of fact, the former Minister of the MEM, Mr. James Robertson, informed the Cabinet of Jamaica that since 2008, the divestment of CAP was explored with at least four (4) entities, inclusive of Hongfan. Notwithstanding this, and based upon the compendium of facts, the OCG found no evidence to suggest that any of the other three (3) entities were required by the GOJ to provide any proposals in 2010, for evaluation, along with Hongfan’s proposal which was evaluated by the appointed ‘GOJ Team’.

The OCG concludes that the GOJ has not provided any justified reason for its failure to conduct the subject divestment process on a competitive basis and in an open and transparent manner and, as a result, the consummation of the Agreement with Hongfan and the entire transaction has been mired in suspicion surrounding the probity of same. This occurrence is further compounded by the fact that the GOJ was in receipt of a second offer which was submitted by Glencore International AG, one day after the Agreement with Hongfan was consummated.

17. The OCG has concluded that the “*Agreement for Purchase of Shares*”, which was signed between the GOJ and Hongfan on 2010 March 18, was terminated on 2010 December 6, by the GOJ, on the basis that Hongfan had contravened certain terms and conditions which were set out in the Agreement.

In point of fact, the Cabinet of Jamaica was advised by the then Minister in the MEM, *inter alia*, that Hongfan had failed to (a) pay the Deposit into the Escrow Account; (b) obtain a banker's guarantee for the payment of the balance of the Purchase Price, and (c) obtain the approval of the Chinese Authorities for the consummation of the Agreement.

18. The OCG has concluded that based upon the review of certain Cabinet Submissions which were submitted by the then Minister in the MEM, there was a clear misconstruction with respect to the procedures which are required to be employed for the divestment of government state-owned assets and the procedures which govern the GOJ Public Sector Procurement Procedures.

The OCG found that the offer by Hongfan was inferred to be that of an "unsolicited proposal".

Of note, Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to an OCG Media Release, which was dated 2010 May 27, in defence of the divestment process which was employed by the MEM, with respect to Hongfan's offer, stated that the "*...proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*"

Upon the OCG's query of same, the Permanent Secretary, in her sworn response of 2010 July 14, stated, *inter alia*, that "*From a perusal of documents which came to my attention subsequent to my letter of May 27, 2010, I am unable to say that the offer was unsolicited in the strictest meaning of the word, in light of the history of the involvement with Hongfan.*"

The OCG concludes that the subject divestment cannot in any way be compared to that of procurement and, as such, the GOJ Public Sector Procurement Procedures, would not have been applicable. The applicable procedure which governs the GOJ's privatization process

is provided for under Ministry Paper #34, which makes no interconnection with the GOJ Procurement Procedures or for the acceptance of an ‘unsolicited proposal’ pursuant to the Sole Source/Direct Contracting Procurement Procedures, which is provided for in the GOJ Public Sector Procurement Procedures.

The OCG, however, would like to reiterate its position that **all** divestment of GOJ state-owned assets are required to be contracted via an open, transparent and competitive process to ensure that such awards are impartial and based on merit.

19. The OCG has also concluded, based upon the nature of the offer and the history of the GOJ’s involvement in the negotiation of the said offer, that the offer which was proposed by Hongfan, and which led to the signing of the “*Agreement for Purchase of Shares*”, could not have been based upon that of an ‘unsolicited proposal’, as suggested by the MSTEM’s Permanent Secretary, Mrs. Hillary Alexander.

It should be noted that the divestment of CAP’s shares was included on the first list of enterprises/activities/assets which were approved for privatization to be governed under Ministry Paper #34. Of note, however, is that the principles under the said policy “...stressed that this list does not constitute an invitation for investors to apply for the enterprises at this time...Premature applications can only be acknowledged, and it must be stressed that there should be no expectations that privatization will be accomplished with undue or reckless speed considering that it is the fiduciary responsibility of government to find the best optimal mix of transferring the risk to the private sector and maximizing the proceeds whilst conducting the process competently and expeditiously.”

The OCG, therefore, concludes that Hongfan’s offer to the GOJ was simply an application to purchase the subject enterprise and not an ‘unsolicited proposal’, as was suggested. Further, and in light of the fact that Hongfan was not the only entity within the alumina and bauxite industry that had expressed an interest in the GOJ’s 45% shares in Jamalco, there

was no obligation on the part of the GOJ to accept the proposal which was submitted by Hongfan.

20. The OCG has concluded that the Cabinet, the DBJ, the Ministry of Finance and the Public Service and the MEM, have contravened Ministry Paper #34 in their facilitation of contracting with Hongfan to purchase the GOJ's shares in Jamalco, without ensuring that the Government state-owned divestment opportunity was advertised and that the transaction was arms-length and equal opportunity be given to all possible investors in the market.

21. The OCG has concluded that even with the current divestment process, which is undergoing negotiations between the GOJ and Glencore International AG, there is either a misunderstanding or misconception, on the part of the MEM, of the appropriate methodology to be used for the divestment of state-owned assets. This conclusion is founded upon the basis that the Permanent Secretary, Mrs. Hillary Alexander, by way of a letter to the NCC, which was dated 2010 November 23, requested “...*permission to utilize the Sole Source and/or Direct Contracting Procurement Methodology for the divestment of the shares in CAP to Glencore on the terms and conditions as agreed by Cabinet.*”

The OCG noted that the NCC advised the MEM that, *inter alia*, there was a “...*Divestment Policy, which they were not privy to and agreed that the matter was not a procurement issue, which was outside the remit of the NCC.*”

The OCG noted that although, by way of Cabinet Submission 567/MEM 55/10, which was dated 2010 November 24, Mr. James Robertson indicated to the Cabinet of Jamaica that the Ministry of Finance and Planning and the Attorney General's Department had “*offered no objection*” to the use of the Sole Source Procurement Methodology for the subject divestment process, the Cabinet decided that “...*the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares...*” and withdrew the Submission.

In light of the foregoing, and having regard to the Findings and Conclusions which are discussed in greater detail in this Report, the OCG has respectfully made the following considered Recommendations.

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)

1. The OCG remains concerned that the **unsolicited proposal** mechanism is a corruption enabling device and does not promote competition, transparency and openness in the sale of state-owned assets. Further, the **unsolicited proposal** mechanism is primarily a provision which is outlined in the GOJ’s Public Sector Procurement Procedures and is, therefore, not an appropriate methodology for divestment opportunities, especially without certain institutional safeguards to ensure probity.

It is the OCG’s considered position that all divestments are to be undertaken and tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place with due care, on the basis that each Public Body, and pursuant to Ministry Paper #34, or any other relevant policy or guideline replacing same in its application, has a fiduciary responsibility to competently and expeditiously find the best optimal mix of transferring risk to the private sector and maximizing proceeds.

2. The OCG recommends that all Ministers, Permanent Secretaries, Heads of Agencies, Public Officers, Accounting and Accountable Officers should pay keen attention to, and ensure compliance with, Ministry Paper #34, or any other relevant policy or guideline

replacing same in its application, in the divestment of state-owned assets, and inform themselves of the differences in the procedures, policies and methodologies for privatization/divestment, as opposed to the GOJ Public Sector Procurement Procedures.

3. The OCG recommends that there must be a strengthening of the relevant due diligence systems which are employed by Public Bodies, upon the receipt of applications/offers which are received by investors and to ensure that there is a high level of scrutiny in such divestment processes which are being undertaken by Public Bodies.

The OCG is of the considered opinion that communication with investors are not to be undertaken outside of a formal process, as this will affect the probity, fairness and transparency which is required to ensure that value for money is obtained.

4. The OCG in no way challenges the fact that the GOJ's shareholding in CAP is a burden on the economy. Nonetheless, the OCG recommends that where there is a likely opportunity to maximise the potential gains from the sale of a State asset, due care and diligence must be exercised in an objective, open and transparent manner by the divesting entity to ensure that this is undertaken.

Accordingly, it is the recommendation of the OCG that when Public Bodies are divesting State assets, a thorough analysis of the value of the asset and of *all* of the factors which are likely to impact the possible proceeds of its sale, should be considered so as to ensure the realization of maximum gains.

5. In instances where a member of the Public Body Board or any other Public Official/Officer finds himself/herself in a probable conflict of interest scenario, it is recommended that the individual not only makes the necessary and principled disclosures with the intent to remove himself/herself from the conflict of interest situation, but also withdraws entirely from the process, whether divestment or otherwise.

6. Finally, the OCG would like to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, 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.

TERMS OF REFERENCE

Primary Objectives

The primary aim of the OCG's Investigation was to determine, *inter alia*, whether there was compliance with the provisions of the Contractor General Act (1983) and the applicable Government of Jamaica (GOJ's) Privatization Policy and Procedures - Ministry Paper #34, in the divestment process which was employed by the then Ministry of Energy and Mining (MEM) to divest the GOJ's 45% stake in Jamalco to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Ltd. (hereinafter referred to as 'Hongfan') and/or Port Reliant Limited.

Specific Objectives

The Investigation also had the following specific objectives:

- i. To identify the process(es) which was/were employed by the MEM and/or by anyone acting on its behalf, in the negotiation and/or contemplation of the arrangements and consummation of any Agreement(s) with Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf;
- ii. To ascertain whether there were any breaches of the Government's Privatization Policy and Procedures and/or any other applicable legislations on the part of the MEM and/or any other Public Body, regarding any aspect of the negotiations which were undertaken and/or the consummation of a contract with Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf;
- iii. To ascertain what attempts, if any, were made by the MEM, to ensure that a fair market value is realized for the GOJ's 45% shares in Jamalco;

- iv. To ascertain the methodology(ies) which has/have been employed by the MEM and/or anyone acting on its behalf, in arriving at the value of the GOJ's 45% shares in Jamalco;
- v. To ascertain whether the circumstances surrounding the negotiation(s), agreement(s) and/or contract(s) with Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf, was fair, impartial, transparent and devoid of irregularity or impropriety pursuant to the provisions of the Contractor General Act;
- vi. To ascertain whether there was merit to the arrangements which were contemplated by the GOJ with Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf, and the agreement(s) which was/were entered into between the said parties, amongst any other person and/or entity;
- vii. To ascertain the full particulars of all arrangements which have been contemplated, discussed and/or negotiated by the GOJ with Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf, regarding the subject divestment;
- viii. To ascertain the overall circumstances surrounding the negotiation(s) and the agreement(s) which was/were contemplated between the GOJ and Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf, and to identify the Authorities that had negotiated and/or approved same;
- ix. To ascertain whether there is any *prima facie* evidence that would suggest impropriety on the part of any individual and/or entity involved in, or associated with, the subject divestment process;
- x. To ascertain whether there is any *prima facie* evidence that would suggest a conflict of interest on the part of any Public Official and/or Officer (former and present), in the negotiations and/or the consummation of an agreement(s) between the GOJ, Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf; and

- xi. To ascertain whether any other legislations, particularly the Companies Act, the Public Bodies Management and Accountability Act, the Financial Administration and Audit Act, were in any way violated in the process of negotiation and/or the award of a contract to Hongfan, Port Reliant Limited and/or any other person and/or entity having an interest in the referenced divestment process.

METHODOLOGY

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

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

(OCG Emphasis)

At the commencement of its Investigation on 2010 June 1, the OCG undertook a preliminary review of several documents which were obtained. This was done in an effort to inform the direction of the Investigation as well as to determine the most efficacious method by which to proceed.

The Terms of Reference of the OCG’s Investigation regarding the proposal to divest the GOJ’s forty-five percent (45%) stake in Jamalco were primarily developed in accordance with those of the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilized throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by the applicable Privatization Policy and Procedures (Ministry Paper #34), the Contractor General Act, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

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

It is also instructive to note that letters were directed on 2010 June 1, by the Contractor General, to the former Prime Minister of Jamaica, the Hon. Orette Bruce Golding, the former Minister of Mining and Energy, Mr. James Robertson, and the Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, to formally advise them of the commencement of the OCG’s Investigation into the proposal to divest the GOJ’s forty-five percent (45%) stake in Jamalco.

A preliminary set of Requisitions/Questionnaires, which were dated 2010 June 9, was sent by the Contractor General to both the former and current Permanent Secretary in the then MEM, Ms. Marcia Forbes and Mrs. Hillary Alexander, respectively, and the Cabinet Secretary, Ambassador Douglas Saunders. It is also instructive to note that the OCG also requisitioned the former Prime Minister of Jamaica, the Hon. Orette Bruce Golding, by way of a Statutory Requisition, which was dated 2010 September 8, in an effort to ascertain the extent of his involvement and/or association with the subject divestment.

Further Requisitions/Questionnaires were directed to other Public Officials/Officers, and other persons and/or entities that were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancies in the information which was supplied by the Respondents.

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

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

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

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

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

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

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

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

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

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

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

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

(a) in a voluntary declaration; or

(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force, shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.

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

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

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

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

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

“Every person who –

- (a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or
- (b) without lawful justification or excuse –
- i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or
 - ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or
- (c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,

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

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

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

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

1. The following Public Officials/Officers were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
 - (a) Ambassador Douglas Saunders, Cabinet Secretary, Office of the Cabinet;
 - (b) Mrs. Hillary Alexander, Permanent Secretary, MSTEM;
 - (c) Mr. Parris Lyew-Ayee, Executive Director, Jamaica Bauxite Institute (JBI);
 - (d) Mr. Winston Hayden, General Manager, Clarendon Alumina Production Limited (CAP);
 - (e) Mr. Coy Roache, Managing Director, Bauxite and Alumina Trading Company of Jamaica Limited (BATCO); and
 - (f) Dr. Carlton Davis, in his capacity as the former Chairman of the JBI.

2. The following former Public Officials/Officers were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
 - (a) The Hon. Orette Bruce Golding, former Prime Minister of Jamaica;
 - (b) Mr. James Robertson, former Minister of Mining and Energy;
 - (c) Ms. Marcia Forbes, former Permanent Secretary, MEM;
 - (d) Mr. Glenford Watson, former Senior Legal Officer, MEM;
 - (e) Mr. Peter Millingen, former Chairman, CAP;

- (f) Mr. Howard Mitchell, former Chairman of BATCO and the JBM; and
 - (g) Mr. Clive Mullings, the former Minister of Mining, Energy and Telecommunications and the MEM.
3. A Follow-up Requisition/Questionnaire, requesting clarification on certain issues, was directed by the OCG to the following Public Official:
- (a) Ambassador Douglas Saunders, Cabinet Secretary, Office of the Cabinet; and
 - (b) Mrs. Hillary Alexander, Permanent Secretary, MSTEM.
4. The following individuals were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:
- (a) Mrs. Thalia Lyn, Business Owner, Company of the Island Grill Chain.
5. The OCG also extended a formal invitation for the below mentioned entities to supply information with regard to its Investigation:
- (a) Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Limited (Hongfan); and
 - (b) Port Reliant Limited.

The OCG's Letters of Invitation, which were dated 2010 December 23, and 2011 January 4, respectively, were directed to Mr. Yan Tiejun, Chairman, Hongfan and Mr. Joseph Chang, Director, Port Reliant Limited.

The OCG has not been in receipt of a response from any of the referenced entities to its Letters of Invitation.

6. A detailed review of the **sworn** certified statements, supporting documents and the records which were provided by the Respondents to the OCG's Requisitions was undertaken.

FINDINGS

The Genesis of the OCG's Enquiry into the Sale of Jamalco

On 2009 April 24, a meeting was convened, at the OCG, upon the request of Mr. Howard Mitchell, the then Chairman of BATCO and JBM, which was also attended by Ms. Marcia Forbes, the then Permanent Secretary in the MEM, with respect to the subject divestment.

Subsequent to the referenced meeting, the OCG, by way of a letter which was dated 2009 April 27, wrote to Ms. Marcia Forbes, the then Permanent Secretary in the MEM, outlining, *inter alia*, (a) the substance of the primary representations, as the OCG understood them to be, that were made by Mr. Mitchell and herself and (b) the concerns which the OCG had regarding the prospective commercial arrangements which then appeared to have been on the table.

The referenced OCG letter provided a summary of the representations which were made in the referenced meeting by Mr. Howard Mitchell and the then Permanent Secretary, as follows:

1. *The global economic crisis has negatively impacted the Jamaican economy and there has been a significant fall-out in the Jamaica Bauxite and Alumina Sector. The Government of Jamaica (GOJ) has been seeking new and/or alternative markets for the alumina production which it receives from its equity participation in the Jamalco and/or Windalco joint-venture operations.*
2. *The GOJ is in the process of engaging Hongfan, a Chinese registered trading entity, to sell to it, an initial amount of alumina and possibly to enter into a further twenty (20) year commercial agreement for the sale of alumina futures.*
3. *The GOJ is also pursuing the prospect of negotiating an agreement with Hongfan for it to either purchase the GOJ's equity in Jamalco and/or to have it finance the upgrade of the Jamalco alumina refinery facility.*

4. *It was unclear to the OCG as to whether Hongfan processes alumina. However, during the meeting, you did state that it was your belief that Hongfan owns alumina smelters.*
5. *In May 2008, a Jamaican delegation went to China to explore an arrangement which was initiated by a marketing agent, Port Reliant, for the sale of alumina by the GOJ to Hongfan.*
6. *Port Reliant has brokered an alumina sale deal which is to be executed between the GOJ and Hongfan. Port Reliant expects to be compensated at a commission rate of 1.5% in respect of the contract sum for the initial alumina sale transaction, which is valued at approx. US\$600 Million, as well [sic] in respect of a prospective twenty (20) year alumina futures sales agreement.*
7. *Hongfan is, however, unwilling to pay the agreed commission directly to Port Reliant and is insisting that its contract payment to the GOJ should be 'grossed up' and that the GOJ should then pay the referenced commission to Port Reliant.*
8. *The Hongfan proposal has presented several concerns for yourselves and the GOJ.*
9. *In response to a direct question, Mr. Mitchell advised the OCG that Port Reliant has Principals and/or Shareholders who are Jamaicans and that Port Reliant has only three (3) years prior experience in business. Two of the names that were called, in the foregoing regard, were Mr. Gary Hoo [sic] and Mr. Raymond Chang, who, Mr. Mitchell stated, was the brother of Jamaican Businesswoman Mrs. Thalia Lyn.*
10. *The GOJ has sought the opinion of the Solicitor General regarding the proposed transactions and has submitted all requisite documentation to him for his review. The Solicitor General has advised that the proposed agreement is "above board" but that the GOJ should ensure that the applicable Procurement Guidelines and Procedures are strictly adhered to.*

11. *No documents, regarding the proposed transactions, were produced by you to the OCG.*
12. *Dr. Carlton Davis, a member of the GOJ Team that visited China, was asked to speak with the Chair of the National Contracts Commission (NCC), the Hon. Ms. Shirley Tyndall, regarding the best way forward on the matter.*
13. *In response to a direct question, you advised the meeting that Dr. Davis was no longer the Chairman of the Jamaica Bauxite Institute (JBI) and that his tenure had ended at the end of March 2009. You further advised that although a new JBI Chairman had not yet been appointed, a Cabinet Submission had been drafted regarding the matter and is still being discussed.”¹¹*

In the referenced letter of 2009 April 27, the OCG also placed upon the record its concerns regarding the information as presented above, and further indicated its intention to formally investigate the proposed commercial arrangements should they be consummated based upon the foregoing structure.

The OCG’s primary concerns were documented in the referenced OCG letter, as follows:

1. *The GOJ may indirectly be paying two commissions – one to Port Reliant and another to Hongfan – this having regard to the fact that Hongfan may not own the capacity to smelt alumina and, consequently, must sell the purchased GOJ alumina to an entity which has that capacity.*
2. *One of the fundamental tenets of the GOJ’s Procurement Policy – value for money – cannot be determined given that there appears, inter alia, to have been no transparency or competition in the GOJ’s engagement of Port Reliant and Hongfan.*

¹¹ Letter from the OCG to the then Permanent Secretary in the MEM, which was dated 2009 April 27, following discussions which were had in the meeting of 2009 April 24.

3. *The OCG has been presented with no documentation regarding the proposed transactions but yet its input, guidance and/or advice, however notional, was sought regarding the matter.*
4. *All the particulars of the agent, Port Reliant, and the Chinese entity, Hongfan, have not been fully disclosed. However, Port Reliant's business experience, particularly in the area of alumina trading, as well as its time and place of incorporation and its beneficial ownership, as represented by you and/or Mr. Mitchell, are among some of the matters which are of particular concern to the OCG.*
5. *Another area of concern for the OCG is the issue regarding the potential which exists for conflicts of interest, particularly having regard to [sic] identity of some of the individuals who are involved in the overall transaction and the past and/or present business or private relationships that they have or have had with each other.*
6. *There appears to be some arrangement, which is related to the proposed financing for the alumina plant upgrade and/or the alumina purchase agreement or agreements, which exists between the Government of China and Hongfan and in respect of which the OCG is not clear. If, however, there is any such agreement, the conditionalities, inter alia, of the loan agreement between Hongfan and the Government of China would need to be reviewed thoroughly along with the existing laws which regulate agency participations in such transactions. The review should be undertaken to determine, inter alia, the legal implications for the GOJ to proceed with the referenced transaction or transactions.*
7. *You have asserted that Hongfan is unwilling to pay the proposed commission directly to Port Reliant, but is willing to 'gross up' the contract payments in an amount which is equivalent to the commission. This, of all of our stated concerns, raises very serious possibilities for a finding of irregularity and/or impropriety as regards the transaction. Further, there is a possibility that the GOJ could be embarrassed in the event that the*

transaction is found to be illegal and/or otherwise questionable, by the Government of China.

8. *You had expressly represented to the OCG that Dr. Carlton Davis was no longer the Chairman of the JBI and that he is currently a member of the proposed alumina sale negotiating team. We are, therefore, unaware as to the official capacity in which Dr. Davies [sic] is involved in this matter, particularly in light of the fact that you are advised that he is to hold discussions with the Chair of the NCC regarding the matter.*

We have cautioned you that any “discussions” between Dr. Carlton Davies [sic] and the Chair of the NCC could be viewed as being improper and/or irregular, particularly in light of (a) the fact of the foregoing, (b) both Mr. Davies [sic] and the NCC Chair are partners in a private consultancy business enterprise, the formation of which was publicly announced by both parties, (c) official Public Body submissions and/or queries to the NCC should be properly executed in writing, particularly in light of the fact that the NCC Chair has no power or authority under law to bind the NCC and (d) on April 24, 2009, the very day of our meeting with you, the OCG received the JBI’s 2009 First Quarter QCA Report under cover of letter which was signed by the JBI’s Executive Director, Mr. Parris A. Lyew-Ayee, and dated April 23, 2009. It is instructive to note and to record that the letter was copied to “Dr. Carlton E. Davies” in the capacity as “Chairman, JBI”. This information fundamentally contradicts your clear representation, made to the OCG, that Dr. Davis’ tenure, as the Chairman of the JBI, has ended as at the end of March 2009.”¹²

In light of the foregoing concerns, the OCG, in the referenced letter, urged the GOJ not to proceed with the referenced transaction in the way that it had originally been structured.

¹² Letter from the OCG to the then Permanent Secretary in the MEM, which was dated 2009 April 27.

History of ‘Discussions’ between the GOJ and Hongfan/Port Reliant Limited

The OCG, in an effort to have a full understanding of the business relationship, if any, between the GOJ and Hongfan and/or Port Reliant Limited, formally requisitioned several Public Officials/Officers in the GOJ. The respective Public Officials/Officers, given their roles and responsibilities, were required to provide fulsome testimony of the extent of their knowledge, involvement in and/or association with the referenced entities, if any, prior to the offer(s) which was/were proposed by Hongfan, with respect to the divestment of the GOJ’s 45% CAP shares in Jamalco.

The OCG deemed it prudent to requisition the former Prime Minister of Jamaica, the Hon. Bruce Golding, regarding the proposal to divest the GOJ’s 45% CAP shares in Jamalco, based upon certain information that was received pertaining to a meeting which was allegedly convened between himself and certain representatives of Port Reliant Limited regarding the proposed deal.

In this regard, the OCG, by way of its Statutory Requisition of 2010 September 8, questioned, *inter alia*, the depth of involvement and/or association which the former Prime Minister had with respect to the referenced divestment process, and his overall knowledge of same.

The OCG was advised by the former Prime Minister of Jamaica, the Hon. Bruce Golding, in his response to the OCG’s Statutory Requisition, which was dated 2010 October 20, that Hongfan had made a previous offer to purchase the referenced shares in CAP, which were held by the GOJ, in 2007 December, to the then Minister of Energy, Mining and Telecommunications, Mr. Clive Mullings.

The former Prime Minister, in his referenced response stated, *inter alia*, the following:

“The first contact I am aware of between the GOJ/MEM and Zhuhai Hongfan since I assumed office in 2007, is from an e-mail of August 6, 2008 from Joseph Chang to

Sancia Templer which asserts that Zhuhai Hongfan made an offer in December 2007 to Honourable Clive Mullings, then Minister of Energy, Mining and Telecommunications. Zhuhai Hongfan offered to provide US\$600M to the GOJ to finance CAP's share of a Jamalco expansion and a spot contract to purchase 200,000 tons of alumina per year from 2008 onwards...

The e-mail asserts that the offer from Zhuhai Hongfan was preceded by a meeting between Dr. Carlton Davis, Mr. Joseph Chang and Mr. Gary Ho of Port Reliant in March 2007 and that during the meeting Port Reliant was informed of Jamalco's expansion and the opportunity for investment. I am however unable to confirm the accuracy of these assertions."¹³ (OCG's Emphasis)

It must be noted that the Hon. Bruce Golding, the former Prime Minister of Jamaica, provided a copy of the aforementioned email of 2008 August 6 from Mr. Joseph Chang to Mrs. Sancia Templer, which stated, *inter alia*, the following:

*"Please find attached a **LOI signed between BATCO, Hongfan and Port Reliant. Hongfan is a substantial Chinese metals trading company we're partnering with and Port Reliant Ltd. is our company.** A brief chronology would be helpful to understanding this transaction. **It is a win, win situation – the Chinese get a long-term supply of alumina, Jamaica gets a new energy source and diversifies alumina sales lessening dependence.***

This transaction began in earnest in March 2007, when Gary Ho and I met with Dr. Carlton Davis to discuss the availability of alumina for Chinese buyers. Dr. Davis informed us of the US\$1.2 billion Jamalco expansion, which would yield an additional 1.5 million tonnes of alumina per annum. He suggested that the GOJ's share of this additional output (up to 50% of the expanded Jamalco output) could be

¹³ Response from the Hon. Bruce Golding, former Prime Minister of Jamaica, dated 2010 October 20. Response #11

allocated to the investor that would be willing to finance the GOJ's share of the expansion costs.

On this basis, Gary took this information back to China and to Hongfan.

Only after ensuring that financing was available did Hongfan prepare an offer. After the election we presented the proposal to the new Minister of Mining in December 2007. The key points of Hongfan's proposal were as follows:

- Hongfan will provide US\$600,000,000...to the GOJ to finance their share of the Jamalco expansion.
- In return Hongfan wanted a long-term contract to be allocate [sic] the GOJ's share of the expanded output and a spot contract to purchase up to 200,000 tons of alumina per year from 2008 onwards until the expanded production in [sic] place.

We met with the Minister again in March this year, but no real progress was made until the Chairman of BATCO visited Hongfan in China in April 2008. During the course of these meetings we learned that the Jamalco project was in question; however there was a possibility of an alternative project. As part of the investment, Hongfan expressed their willingness to finance a new coal fired generator (to be used to provide energy to the alumina companies) – which could provide a source of alumina. Hongfan agreed in principle to a 300MW power plant to be built for the purpose of the alumina expansion and also to supply electricity to the grid to meet demand from the rest of the country. Pausing here, 300MW is over one third of Jamaica's existing generating capacity, and would probably resolve much of the energy requirement of Jamaica over the next few years. I should also note that it was during this trip that we also introduced BATCO and Ambassador McCook to the Chairman of China Aluminum (CHALCO) in Beijing, China.

*After these face-to-face meetings, there were several positive developments. **The aforementioned Letter of Intent was signed in June 2008 and on July 2, 2008 Hongfan provided a Bank Letter attesting to their credit worthiness and capability to complete the project. The LOI specifically states Hongfan's intention to provide up to US\$600 million in financing to the GOJ and Hongfan's willingness to assist with the 300MW generator.** The Bank Letter was provided by Construction Bank of China; Construction Bank is the second largest Chinese bank with assets over RMB\$5 Trillion.*

The market environment is changing globally, however, Hongfan still stands ready to provide the aforementioned funds to support the expansion of alumina production in Jamaica (i.e. coal fired generator) in return for a long-term alumina contract; the availability of spot alumina will greatly enhance their ability to expedite the project. However, given the market situation and the amount of time that has already passed since their first proposal, Hongfan needs a formal counter proposal as quickly as possible.” (OCG's Emphasis)

Based upon the foregoing, the OCG found, *inter alia*, the following:

1. That in 2007 December, subsequent to a meeting which was held in 2007 March between Dr. Carlton Davis, for and on behalf of the GOJ, and representatives of Port Reliant Limited, particularly, Mr. Gary Ho and Mr. Joseph Chang, Hongfan made an offer to the former Minister of Energy, Mining and Telecommunications, Mr. Clive Mullings, to provide the GOJ with US\$600,000,000 to finance their (the GOJ) share of the Jamalco expansion.

In accordance with the aforementioned email of 2008 August 6, Hongfan requested that the GOJ grant them the opportunity to finance the GOJ's share of the Jamalco expansion. The OCG found that in return, they (Hongfan) wanted “...a long-term contract to be allocate [sic] the GOJ's share of the expanded output and a spot contract

to purchase up to 200,000 tons of alumina per year from 2008 onwards until the expanded production [sic] in place.”

2. In the referenced email, which was sent by Mr. Joseph Chang, Director, Port Reliant Limited, Mr. Chang expressed that Port Reliant Limited was “*partnering with*” Hongfan, which is a Chinese metals trading company.
3. The OCG also found that Hongfan believed this to be a win-win situation for them and the GOJ in that the Chinese would get “... *a long-term supply of alumina, Jamaica gets a new energy source and diversifies alumina sales lessening dependence.*”
4. That a Letter of Intent was signed between BATCO, Hongfan and Port Reliant Limited.
5. That the then Chairman of BATCO, Mr. Howard Mitchell, visited Hongfan in China in April 2008. That the referenced email revealed that Mr. Joseph Chang indicated that “...*no real progress was made until the Chairman of BATCO visited Hongfan...*”

The OCG found that by way of the referenced email of 2008 August 6, Mr. Mitchell informed Hongfan that the Jamalco project was in question, but that there was the possibility of an alternative project. It was on this premise that Hongfan, as a part of its investment proposal, made certain propositions which included, *inter alia*, (a) a willingness to finance a new coal fired generator (to be used to provide energy to the alumina companies) – which could provide a source of alumina; (b) an agreement in principle, for a 300MW power plant to be built for the purpose of the alumina expansion; and (c) to supply electricity to the grid to meet demand from the rest of the country.

The OCG also issued Statutory Requisitions to Mr. Clive Mullings, the former Minister of Energy, Mining and Telecommunications and the MEM and Dr. Carlton Davis, in his then

capacity as the Chairman of the JBI, amongst others. The referenced Requisitions were dated 2010 December 23, respectively.

Mr. Clive Mullings advised the OCG, in his response which was dated 2011 January 24, that **“In 2008, Port Reliant’s principals, Mr. Joe Chang and Mr. Gary Ho approached the Ministry of Energy, Mining and Telecommunications as it then was, expressing an interest in purchasing Bauxite. Meetings were held with them, including the Permanent Secretary, Dr. Jean Dixon, Mr. Howard Mitchell who was Chairman of BATCO, Mr. Glen Watson, Legal Officer, the Chairman of Clarendon Alumina Partners and other persons whose names now escape me.”**¹⁴ (OCG’s Emphasis)

It is instructive to note that Mr. Mullings indicated that he was neither aware of the proposal to divest the Government of Jamaica’s (GOJ’s) 45% shares in Jamalco to Hongfan nor did he have any knowledge of Port Reliant Limited’s involvement in same. Mr. Mullings further indicated that after 2008 April, he had no dealings with Port Reliant Limited as the Ministry was split and he had only retained the Energy portfolio.

Dr. Carlton Davis, in his capacity as the former Chairman of the JBI, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 17, stated, *inter alia*, that he **“...first became aware of possible ‘Chinese’ interest in CAP’s share of the JAMALCO facilities from the former Minister of Energy and Mining, Mr. Clive Mullings, sometime in 2008, I think. It was at a meeting, in Kingston, on February 9, 2009, to which I was invited that I recognised that Zhuhai Hongfan was one of the, or the Chinese interested party.”**¹⁵ (OCG’s Emphasis)

Dr. Davis provided the OCG with an email correspondence which was sent by him to the Hon. Bruce Golding, the then Prime Minister of Jamaica, and which was dated 2009 February 9. The referenced email correspondence reportedly briefed the then Prime Minister on a meeting

¹⁴ Response from Mr. Clive Mullings, former Minister of MEM, which was dated 2011 January 24. Response #3

¹⁵ Response from Dr. Carlton Davis, the former Chairman of JBI, which was dated 2011 January 17. Response #1

which was held between certain GOJ Officials and representatives of Hongfan on 2009 February 9.

The referenced email correspondence stated, *inter alia*, the following:

“Dear Prime Minister,

Laurie Broderick asked that I brief you on the above.

The position is as follows:

- 1. Hongfan indicated that US\$600 million is available in three equal tranches to the GOJ for investment in alumina and other projects including electricity generation.*

There was no indication in respect of interest rate and term for the loan further and better particulars are expected from Hong Fan [sic] on Wednesday (along with matters in a ‘Term Sheet’)

- 2. Hongfan indicated that it will be able to take at least 200,000 tonnes of alumina beginning April for the rest of the year.*

My comments: Ewarton is currently operating at a rate that would produce approximately 275,000 tonnes between April and December. I have suggested to Coy Roache that without ‘giving away our hand’ he should find out from UCRusal what it would cost them to keep the plant idle for the rest of the year. It is important to know this figure the possibility of securing the alumina from Ewarton for sale to Hang Fan [sic] would be enhanced if we could deduct the ‘standing cost’ UCRusal would have borne. The problem is Hong Fan [sic] is prepared to pay the market price which currently...at US\$168 per tonne vs a current cash cost of over US\$300 per tonne.

3. *Hong Fan indicated an interest in securing long [sic] term supply of alumina (at least 20 years and it is prepared to look at one of the following options:*
 - (a) Virtual Ownership of CAP's share of JAMALCO*
 - (b) 'Orthodox purchase' –ie a percentage of the London Metal Exchange (I indicated our concerns about the limitations of this index in this new global environment)*
 - (c) On the basis of cash cost without ownership*
 - (d) They were willing to look at alumina/caustic soda barter at a later date.*

My comment. In response to their specific question on the position of the supply to Glencore, I indicated that we would seek to negotiate to cancel the contracts with that company. They were also informed that CAP's 45% share is 637,500 tonnes per annum.

They indicated that they are one of the most important players in the aluminium market in China and that they welcomed the opportunity to be involved here. They hope that through the arrangements which we discussed Jamaica/Chinese cooperation can be enhanced.

The steps proposed by them are as follows:

- (a) Draft Term Sheet to be provided [sic] us on Wednesday*
- (b) Term Sheet to be signed hopefully at meeting with you on Friday*
- (c) Conclude long-term supply contract within 4 months*

Joseph Chang is to be their exclusive agent and they wish to have that stated in the 'Term Sheet'.

They wish a 6-months exclusivity period to conclude the long term supply arrangements [sic] (although they are confident matters can be concluded well within the 4-month period referred to earlier... ”¹⁶

Further, Dr. Carlton Davis, in his response to the OCG’s Statutory Requisition, which was dated 2011 January 17, also explained, *inter alia*, that “Following this meeting, **the matter of the Company’s possible participation was discussed at a meeting in Montego Bay on February 13, 2009 and formed part of a so-called Term Sheet signed by the Prime Minister, and the Chairman and CEO of Zhuhai Hongfan, Mr. Yan Tiejun**...Subsequent to this meeting, a Jamaican delegation, of which I was a member visited China to hold meetings with various Chinese interests, including Zhuhai Hongfan. At the meeting with Zhuhai Hongfan, the Delegation was presented with a proposal to acquire CAP’s assets for at least 20 years in the sum of US\$275 million...I was not privy to any amendment of this proposal, or new proposals (although I heard that a new one was made).”¹⁷ (OCG’s Emphasis)

Based upon the foregoing, the OCG found the following to be of significant interest:

1. That Mr. Clive Mullings, in his then capacity as the Minister of Energy, Mining and Telecommunications, indicated that the principals of Port Reliant Limited, Mr. Gary Ho and Mr. Joseph Chang, approached the GOJ in 2008 expressing an interest to purchase bauxite.
2. That several meetings were held between senior GOJ Officials and representatives of Hongfan and according to Dr. Carlton Davis, Mr. Joseph Chang, Director, Port Reliant Limited, “...is to be their [Hongfan’s] exclusive agent and they wish to have that stated in the ‘Term Sheet’.”

¹⁶ Email correspondence from Dr. Carlton Davis, former Chairman of the JBI, which was sent to the Hon. Bruce Golding, the former Prime Minister of Jamaica, and which was dated 2009 February 9.

¹⁷ Response from Mr. Carlton Davis, former Chairman of the JBI, which was dated 2011 January 17. Response #1

3. That Dr. Carlton Davis, former Chairman of the JBI, indicated that he first learnt about Hongfan's interest in "...CAP's share of the JAMALCO facilities from the former Minister of Energy and Mining, Mr. Clive Mullings, sometime in 2008."
4. That Mr. Clive Mullings indicated that he had no further dealings with Port Reliant Limited after 2009 April due to a change in his Ministerial portfolio responsibilities.
5. That Dr. Carlton Davis, by way of an email correspondence which was dated 2009 February 9, indicated that he briefed the Hon. Bruce Golding, the then Prime Minister of Jamaica, on the discussions which were held in a meeting on 2009 February 9, that "*Hongfan indicated that US\$600 million is available in three equal tranches to the GOJ for investment in alumina and other projects including electricity generation.*"
6. That subsequent to the referenced meeting, it was agreed that a 'Term Sheet' be drafted and signed, with the intention for same to be followed by a long-term contract between the GOJ and Hongfan within a 4-month period.
7. That Hongfan made certain proposals to the GOJ in the meeting of 2009 February 9, which included, *inter alia*, the following:
 - i. That "*Hongfan indicated that it will be able to take at least 200,000 tonnes of alumina beginning April for the rest of the year.*"
 - ii. That Hongfan indicated an interest in securing a long-term supply of alumina for at least 20 years and also alluded to the fact that it was prepared to look at certain options which included (a) "*Virtual Ownership of CAP's share of JAMALCO*", (b) an 'Orthodox purchase' i.e. a percentage of the London Metal Exchange; (c) cash cost without ownership; and (d) the alumina/caustic soda barter at a later date.

It is instructive to note that Mr. Coy Roache, Managing Director, BATCO, in his sworn response to the OCG, which was dated 2011 January 26, stated, *inter alia*, that “*Port Reliant as agent for Zhuhai Hongfan approached JBM/BATCO for the sale of alumina, but no alumina was available as the production capacity of CAP and JBM was contracted out. Eventually they proposed the purchase of CAP and JBM’s 7% of Winalco was married to CAP’s 45% of Jamalco as the JBM’s 7% of a lost making and eventually closed Winalco plant by itself had negative value as it had no positive cash flow. While there was talk about marrying both assets, JBM was involved in providing due diligence information only on Winalco’s operation. As soon as the disposal of JBM’s 7% was decoupled from the CAP sale, JBM took no further part in the deliberations of the CAP’s assets...*”¹⁸

¹⁸ Response from Mr. Coy Roache, Managing Director, BATCO, which was dated 2011 January 26. Response #1

History of Agreements/Arrangements between the GOJ and Hongfan and Subsequent Negotiations

Upon the review of information which was received during the course of its investigation, the OCG found that several propositions were made to the GOJ by Hongfan, from as early as 2007, and that certain discussions were held and agreements conceded between the parties.

In an effort to ascertain the extent of such discussions, arrangements and/or agreements, if any, which were negotiated, agreed upon and/or consummated, the OCG by way its Statutory Requisitions, enquired into the extent of the involvement, knowledge and association of certain Government Officials and/or Public Officers with the propositions which were made by Hongfan and/or Port Reliant Limited.

The OCG, in its Statutory Requisition to the former Prime Minister of Jamaica, the Hon. Bruce Golding, on 2010 September 8, posed, *inter alia*, the following questions:

1. *“What is the extent of your knowledge of the proposal to divest the Government of Jamaica’s (GOJ’s) forty-five percent (45%) share in Jamalco to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (hereinafter referred to as Zhuhai Hongfan)? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.*
2. *What is the extent of your knowledge of Port Reliant Ltd.’s involvement in the proposal to divest the GOJ’s forty-five percent (45%) share in Jamalco to Zhuhai Hongfan? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.*
3. *What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Zhuhai Hongfan, which was previously and/or is currently being contemplated? Please provide a comprehensive statement to*

this question and provide documentary evidence, where possible, to substantiate your assertions/responses.

4. *What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Port Reliant Ltd., which was previously and/or is currently being contemplated? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses”.*¹⁹

The Hon. Bruce Golding, in his response to the OCG, which was dated 2010 October 20, stated, *inter alia*, the following:

Response to Question No. 1

“In January 2010, I received a copy of the offer letter from Zhuhai Hongfan to Mr. Peter Millingen, Chairman of CAP, under cover of a letter from Mr. Milton Samuda, Zhuhai Hongfan’s Attorney-at-Law for the purchase of GOJ’s shares in CAP. The offer letter was copied to Honourable James Robertson and Permanent Secretary Mrs. Hillary Alexander. Cabinet authorized the negotiations of an agreement under the oversight of the Ministry of Energy and Mining...On March 18, 2010, after extensive discussions and negotiations, the (GOJ) and Zhuhai Hongfan signed a Share Purchase Agreement for the sale of the shares in CAP. Zhuhai Hongfan was represented in the negotiations by its agent Port Reliant Ltd; Attorneys at law Gordon McGrath, and Samuda & Johnson...In summary, the terms of the Share Purchase Agreement required Zhuhai Hongfan to pay US\$240M to the GOJ for the shares; assume CAP’s unfavorable alumina supply obligations to Glencore AG; and provide cash flow support to CAP of US\$92M. It required retention by the GOJ of CAP’s existing debts except for CAP’s US\$200M notes for a specified period. This

¹⁹ OCG’s Statutory Requisition to the Hon. Bruce Golding, former Prime Minister of Jamaica, which was 2010 September 8. Questions #1-4

agreement was subject to Alcoa's right of first refusal to match the terms of the sale. This was considered to be an attractive offer given (a) the valuation of the subject assets (b) global market conditions (c) the disadvantageous long term alumina supply arrangements to which CAP was obligated.” (OCG's Emphasis)

Response to Question No. 2

“Please see answer to question 1. By letter dated June 19, 2009 addressed to Honourable James Robertson, Mr. YAN Tiejun, Chairman and CEO of Zhuhai Hongfan confirmed Port Reliant as agents of Zhuhai Hongfan...”

Response to Question No. 3

“(3A). I signed a non binding Term Sheet on behalf of the GOJ with Zhuhai Hongfan on February 13, 2009. The Term Sheet set out Zhuhai Hongfan's interest in participating in the bauxite and alumina sector in Jamaica (Jamaica Projects). Both parties committed during a period of 120 days to developing opportunities for Zhuhai Hongfan's long term direct investment in the bauxite and alumina sector for a period of at least 20 years. Zhuhai Hongfan indicated their willingness to provide funding of up to US\$600M for the Jamaica Projects which would be undertaken. The Term Sheet also allowed for BATCo to negotiate an alumina supply agreement with Zhuhai Hongfan for a minimum of 200,000 tonnes of alumina to be delivered within an agreed period of time. No project or sale of alumina resulted from this Term Sheet...”

“(3B). In March 2009 Zhuhai Hongfan through its agent Port Reliant made an offer to the GOJ for a ‘virtual equity’ transaction which would see Zhuhai Hongfan providing funding to the GOJ at the onset, to secure a long term supply of alumina at cost and consideration of rights over GOJ's CAP shares. This offer to invest in CAP was seen by Hongfan as stage one of the ‘Jamaica Projects’ described in the Term Sheet. This transaction was not consummated...”

(3C). In January 2010 Zhuhai Hongfan offered to purchase the GOJ's 7% share of West Indies Alumina Company (Winalco) held by Jamaica Bauxite Mining Ltd. Zhuhai Hongfan proposed a total consideration of US\$35M. No agreement resulted from this offer...

(3D). I am also aware of a Letter of Intent which was signed in May 2008 between Zhuhai Hongfan, Port Reliant and BATCo for a period of four (4) months. The Letter of Intent spoke to Zhuhai Hongfan's interest and intention to participate in the Jamaica Alumina Project, as a financial organizer and promoter and to provide a loan for not less than US\$600M towards these projects. Zhuhai Hongfan also indicated its willingness to assist BATCO with the construction of a 300,000KW power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica's national grid. No agreement resulted from this Letter of Intent... ” (OCG's Emphasis)

Response to Question No. 4

“The only agreements prospective or otherwise between the GOJ and Port Reliant Ltd., of which I am aware are:

(4A). See response to question 3

(4B). In February 2008, a Confidentiality Agreement was signed between Clarendon Alumina Production Limited (CAP) and Port Reliant. CAP and Port Reliant agreed to provide each other with confidential and propriety information for the purpose of evaluating whether Port Reliant would participate in an alumina purchase or investment/financial transaction with CAP. Following the May 2008 Letter of Intent, Zhuhai Hongfan assumed these obligations in its capacity as Port Reliant's principal. No transaction resulted between CAP and Port Reliant...

(4C). In March 2009 Zhuhai Hongfan requested that the GOJ pay a commission to its agent Port Reliant on Zhuhai Hongfan's behalf in relation to a proposed long term purchase of alumina by Zhuhai Hongfan as contemplated by the Term Sheet described at 3A. Zhuhai Hongfan further proposed that contract payments to the GOJ be 'grossed up' to facilitate the payment of the commission. After consultation with the Contractor General and the Solicitor General, Zhuhai Hongfan was advised that the GOJ could not agree to such arrangement. No commission was paid and no alumina sale deal was consummated.²⁰ (OCG's Emphasis)

The OCG found that several agreements, which included a Letter of Intent, a Term Sheet and Confidentiality Agreements, were signed between the GOJ and Hongfan/Port Reliant Limited with respect to discussions surrounding Hongfan's willingness to provide funding of up to US\$600M, for what was termed as 'Jamaica Projects' to assist in the bauxite and alumina sector. The OCG also found that discussions ensued between the GOJ and Hongfan with respect to a long-term direct investment for a period of at least 20 years.

Based upon the sworn testimonies of the former Prime Minister, the OCG found that Hongfan made certain propositions between 2008 and 2010, which included, *inter alia*, the following:

- i. A proposal to purchase the GOJ's 45% shares in Jamalco was made by Hongfan. The OCG noted that this was considered as 'stage one' of certain 'Jamaica Projects' and was said to have been outlined in a 'Term Sheet', which was signed by the former Prime Minister of Jamaica and Hongfan;
- ii. A willingness to assist BATCO with the construction of a 300,000KW power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica's national grid; and

²⁰ Response from the Hon. Bruce Golding, former Prime Minister of Jamaica, which was dated 2010 October 20. Responses #1-4

- iii. That the Term Sheet allowed for BATCO to negotiate an alumina supply agreement with Hongfan for a minimum of 200,000 tonnes of alumina to be delivered within an agreed period of time.

Letter of Intent

Mr. Coy Roache, Managing Director, BATCO, in his response to the OCG, which was dated 2011 January 26, provided a copy of the Letter of Intent which was purportedly consummated between Hongfan, Port Reliant Limited and BATCO. The referenced Letter of Intent was signed by a representative of Hongfan and Mr. Howard Mitchell, acting for and on behalf of BATCO, on 2008 May 28.

The referenced document outlined, *inter alia*, the following:

1. That based upon meetings between Hongfan and Port Reliant Limited, it was Port Reliant Limited which had arranged the visit of the Chairman of BATCO, Mr. Howard Mitchell, to Hongfan, on 2008 April 7, to initiate official negotiations.
2. That “*Hongfan with the advice and assistance of Port Reliant intends to enter into an agreement with the GOJ through the agency of Batco to accomplish the Jamaica Alumina Project...*”
3. That the parties expressed, *inter alia*, their intent as follows:

“Hongfan hereby confirms its interest and intent to participate in the Jamaica Alumina Project, as a financial organizer and promoter, and to organize a banking syndicate/consortium under Hongfan’s name to provide the amount of not less than...US\$600,000,000.00...by way of a loan on terms to be agreed on by Hongfan and the GOJ for the Jamaica Alumina Project.”

Hongfan has indicated its willingness and ability to **assist Batco with the construction of a 300,000-kilowatt thermal power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica's National grid.**

Hongfan, as and when terms are agreed will establish a Finance Committee to commence promoting the Jamaica Alumina Project, Hongfan further desires to establish an arrangement to enter into long-term contracts of up to twenty (20) years for the acquisition of Alumina from Jamaica through Batco's agency and is prepared to credit the value of such contracts against the proposed loan. In the event that Batco can source current supplies in the amount of 200,000 tons of alumina, Hongfan is desirous of purchasing same on terms to be agreed."²¹ (OCG's Emphasis)

4. The Letter of Intent also 'explained' that the "...discussions referred to in the Preamble have commenced on April 7, 2008, and are regarded as the first official meeting and included any previous conversations between the parties. The parties agreed that the discussions shall continue for four (4) months from the signing of Letter of Intent."
5. The Letter of Intent outlined as an "obligation" that "The Parties agree that Port Reliant will be Hongfan's exclusive agent for the Jamaica Alumina Project." The OCG noted that the phrase "during the period of this letter of Intent" was handwritten and inserted after "The Parties agree that" to which a signature that seemingly resembled that of Mr. Howard Mitchell's, was affixed.

It is instructive to note that Mr. Joseph Chang, Director, Port Reliant Limited, sent an email correspondence to Mr. Winston Hayden, General Manager, CAP, and copied Mr. Coy Roache, Managing Director, BATCO; Mr. Howard Mitchell, the then Chairman of BATCO; Mr. Peter Millingen, Chairman, CAP; Mr. Clive Mullings, former Minister of the MEM, amongst others, on 2008 February 14.

²¹ Letter of Intent which was signed on 2008 May 28, by a representative of Hongfan and Mr. Howard Mitchell, then Chairman, BATCO.

The referenced email correspondence stated, *inter alia*, the following:

“Further to our meetings of Tuesday February 12 and Wednesday February 13, I reiterate our positions as follows:

- We stand ready to purchase on a forward basis all available alumina production currently owned by the Government of Jamaica (265,000 tons per annum from 2013 through 2015 and 637,500 tons per annum beginning in 2016), if a minimum of 200,000 tons of alumina per annum from 2008 through 2012 can be provided via a time swap. Other terms and conditions are negotiable. We will consider alternative structures including an investment in Clarendon Alumina Partners for this transaction.*
- To start the working relationship immediately, we will purchase any amount of alumina available on a spot basis.*
- We stand ready to provide up to US\$600 million to the Government of Jamaica for the Jamalco expansion.*
- We will proceed with negotiations on both the forward purchase and the Jamalco expansion simultaneously.*
- We have received your confidentiality agreement. Upon execution of this agreement, you will provide the information requested on January 16 within five working days...”*

Based upon the foregoing, the OCG found that a Letter of Intent was signed on 2008 May 28, with the intention to initiate official negotiations, which had purportedly commenced from 2008 April 7, with Hongfan and Port Reliant Limited, and which was geared towards entering into an agreement with the GOJ to “...accomplish the Jamaica Alumina Project and to achieve the objections...” which were set out in the said Letter of Intent.

The Term Sheet

The OCG found that prior to the meeting of 2009 April 24, which was held between representatives of the MEM and the OCG, the GOJ, through the MEM, had discussions with ‘Hongfan’ which resulted in the signing of a ‘Term Sheet’ on 2009 February 13, between the GOJ and Hongfan. The referenced ‘Term Sheet’ was signed by the then Prime Minister of Jamaica, the Hon. Bruce Golding and the Chairman and Chief Executive Officer of Hongfan, Mr. Yan Tiejun.

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG, which was dated 2010 July 14, provided the OCG with a copy of a letter, which was dated 2009 February 3, from Hongfan to the former Prime Minister of Jamaica, the Hon. Bruce Golding, which stated, *inter alia*, the following:

“I am writing to confirm that Hongfan remains interested in sourcing a long-term supply of alumina from Jamaica. As such we are prepared to provide a funding facility of up to US\$600,000,000.00 to the Government of Jamaica to purchase equity in or alumina from Alpart, Jamalco and/or Windalco. As a sign of good faith, we are prepared to negotiate a spot purchase of up to 200,000 tons immediately.

Our esteemed agent, Port Reliant Limited, has arranged for us to visit Jamaica over the period 11 to 13 of February, I look forward to meeting with your Excellency and Minister Smith during our visit and to starting a long-term mutually beneficial relationship.”²²

Upon a review of the referenced Term Sheet, the OCG found that further to discussions which were held between the GOJ, CAP and Hongfan, the following arrangements, *inter alia*, were agreed upon between the named parties:

²² Letter from Mr. Yan Tiejun, Chairman and Chief Executive Officer, Hongfan, to the former Prime Minister of Jamaica, the Hon. Bruce Golding, which was dated 2009 February 3.

“PREAMBLE:

WHEREAS Hongfan is interested in participating in the bauxite and alumina sector in Jamaica (hereinafter referred to as the “Industry”).

AND WHEREAS the GOJ participates directly in the Industry through two wholly owned commercial enterprises Clarendon Alumina Production Limited (“CAP”) and Jamaica Bauxite Mining Limited (“JBM”).

AND WHEREAS the GOJ and Hongfan wish to develop opportunities for Hongfan’s direct investment in the bauxite and alumina sector.

NOW THIS MEMORANDUM WITNESSETH as follows:

1. UNDERSTANDING

The GOJ and Hongfan have entered into discussions regarding the possible participation by Hongfan in the Industry and, having reached a preliminary understanding about certain important principles concerning their future relationship, this Term Sheet records these principles as a framework for future activities and discussions.

2. PROJECTS

The GOJ, through its nominated representatives and Hongfan, through Port Reliant Limited of Hong Kong, People’s Republic of China, its exclusive agent, will work together to identify projects for the development and continued operations of the Industry (hereinafter referred to as the “Jamaica Projects”) which will facilitate Hongfan’s participation for a period of at least 20 years.

3. FUNDING

Hongfan will provide funding of up to ...US\$600M...to execute the Jamaica Projects. These funds will be made available in three tranches of US\$200M each and are subject to the negotiations and finalizing of the contractual terms relating to their disbursement and repayment to Hongfan including, but not limited to the type of arrangement, interest rate repayment periods and security for repayment.

4. ALUMINA SUPPLY

In addition to the Jamaica Projects, the GOJ, through JBM, CAP or its exclusive sales agent, Bauxite and Alumina Trading Company of Jamaica Limited, a wholly owned Government company (hereinafter referred to as "BATCO") will negotiate and use best efforts to finalise an alumina supply agreement to Hongfan for a minimum of 200,000 tonnes of alumina to be delivered between March 2009 and December 2009, or such other period as maybe agreed.

5. NEGOTIATIONS

For a period of one hundred and twenty (120) days from the date hereof, without prior written notice each to the other neither party will enter into agreements with any other participant in the Industry with respect to the Jamaican Projects, save and except that the GOJ, JBM, CAP and BATCO may have discussions with any existing participant or stakeholder in the Industry...

6. GOOD FAITH

Each of the parties will act in good faith and will do all such acts, matters and things as are necessary to give full effect and to perform all of its obligations under this Term Sheet. Nonetheless, it is understood and agreed that, prior to the signing of any of the agreements contemplated, there should be no significant deterioration in global economic conditions or the international credit markets in the reasonable opinion of either party.

7. LEGAL EFFECT

The parties acknowledge that this Term Sheet is an expression of their present understanding and intention only and is not binding upon any of them with respect to the contemplated transactions. Any such transaction is subject to the negotiation, execution and delivery of mutually satisfactory definitive agreements approved by the applicable governmental and corporate authorities. The decision to proceed with the execution and implementation of legally binding agreements will be in the sole discretion of each party. In the event any party chooses not to proceed, it may do so without liability to the other.

8. APPLICABLE LAW

*It is intended that all parties will make best good faith efforts to conclude an agreement within one hundred and twenty (120) days of the date of execution of this agreement. **The terms of this Term Sheet shall be governed, construed, interpreted, enforced and the relations between the parties determined in accordance with the laws of Jamaica.***

9. TERM and WITHDRAWAL

***This Term Sheet shall continue in force for a period of six (6) months which may be extended by agreement of the Parties until the completion of any contractual agreements then being negotiated.** No party may withdraw from this agreement without first giving to the other one (1) month notice of such withdrawal... ”²³ (OCG’s Emphasis)*

The OCG, in its respective Statutory Requisitions to the former Permanent Secretary in the then MEM, Ms. Marcia Forbes, and the current Permanent Secretary, Mrs. Hillary Alexander, which were both dated 2010 June 9, posed the following questions with respect to the Term Sheet:

²³ Term Sheet signed by the then Prime Minister of Jamaica, the Hon. Bruce Golding and the Chairman and Chief Executive Officer in ‘Hongfan’, Mr. Yan Tiejun, on 2009 February 13.

“The GOJ, on February 13, 2009, signed a Term Sheet with Zhuhai Hongfan to “...work together to identify projects for the development and continued operations...” of the alumina and bauxite sector. Having regard to the foregoing, please provide the following particulars and answers to the respective questions:

- i. The genesis of the Term Sheet;*
- ii. The particulars and circumstances relating to the negotiation and signing of the Term Sheet;*
- iii. The date(s) on which negotiation with regard to the same was undertaken;*
- iv. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who negotiated and approved the referenced Term Sheet;*
- v. The name(s) and title(s) of the other individual and/or entity(ies) which was/were involved in the negotiations which led to the signing of the Term Sheet;*
- vi. The name(s) and title(s) of the agent(s), official(s), officer(s), and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd. and/or anyone acting on their behalf who participated in the negotiations and/or discussion;*
- vii. What are the projects which have been (a) identified and (b) undertaken pursuant to the referenced Term Sheet?*
- viii. Where projects are identified, by you, please provide the particulars, inclusive of the date(s) of commencement for each project;*

- ix. *Is the pending sale of the GOJ's forty-five (45%) share in Jamalco a product of the referenced Term Sheet? If so, please provide the particulars and circumstances relating to the same;*
- x. *Any other relevant particulars which are pertinent to the discussions, negotiations and execution of the referenced Term Sheet.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*²⁴

Ms. Marcia Forbes, in her sworn response to the OCG's Statutory Requisition, which was dated 2010 June 29 stated, *inter alia*, the following:

“Response: This was really on the insistence of Port Reliant/Hongfan as a way of signaling GOJ's interest in the investment proposal and importantly, it seemed, for Hongfan to use for their own purposes...

Response: The Prime Minister was not keen on signing. I believe he felt that the negotiations were still too open. He did not appear to be entirely comfortable with Port Reliant/Hongfan. The tentative tone of the document...should be noted. There was a bit of 'horse trading' to modify the wording to make it palatable for the PM to agree to sign and for Port Reliant/Hongfan to be satisfied.

Going from memory, Mr. Hugh Hart (Advisor to the PM), Howard Mitchell (JBM/Batco), Dr. Carlton Davis (Chair, JBI) and Sonia Mitchell (JBI) were the primary ones on the GOJ's team who sorted out the wording of the document.

²⁴ Statutory Requisitions to the former Permanent Secretary in the then MEM, Ms. Marcia Forbes, and the current Permanent Secretary, Mrs. Hillary Alexander, which were dated 2010 June 9. Questions #20

*The negotiations and signing took place around the time of the visit of the VP China to Jamaica as well as Jamaica's hosting of an international metals conference at the Ritz Carlton Hotel in Montego Bay. **Port Reliant/Hongfan appeared to want to somewhat 'bask in the profile of these two events'. I remember Joseph Chang wanting us to arrange access to the conference for him and generally pressuring for the Hongfan team to be treated as 'VIPs'...***

***Response:** The Term Sheet was signed 13th February, 2009...*

***Response:** I believe Mr. Hugh Hart (Advisor to the PM), Mr. Howard Mitchell (Chair, JBM/Batco), Mrs. Sonia Mitchell (Lawyer, JBI) and Dr. Carlton Davis (Chair, JBI) were the main persons on the GOJ's team who sorted out the wording of the document.*

Mr. Millingen (Chair, CAP), Mr. Winston Hayden (CAP), Mr. Coy Roach (JBM/Batco), Mr. Parris Lyew-Ayee and Mrs. Marcia Forbes (Permanent Secretary) played less important roles, as I remember it...

***Response:** The names and titles of the GOJ representatives, as detailed...immediately above. Further clarification of this can be had from the MEM file.*

Gary Ho and Joseph Chang represented Port Reliant/Hongfan in the negotiations and wording of the term sheet.

Minister of Mining & Telecommunications, Derrick Smith, flew down from [sic] the signing ceremony and left soon thereafter...

***Response:** Using my 'Things to do' list... as a memory aide, the following persons were present at the signing of the Term Sheet. I do not remember there being any changes to this.*

Hongfan: **Mr. Yan, Chairman & CEO**
 Mr. Huo, CFO
 Mr. Gao, Deputy Manager Alumina Dept.

Chalco: **Mr. Li, Head of Trading**
 Ms. Han (I believe she was the interpreter)

Port Reliant **Mr. Gary Ho**
 Mr. Joseph Chang...

Response: *Up to the time I demitted office, no project was signed off on and none undertaken, as far as I was aware... ”²⁵ (OCG’s Emphasis)*

Mrs. Hillary Alexander, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14, stated the following:

*“(i) From documents perused, **the genesis of the Term Sheet arose out of a letter of February 3, 2009, from Hongfan to GOJ, stating that it had US\$600M, available in three tranches, to invest in alumina sector and other projects, including electricity generation. This, apparently, led to a series of discussions, as to the form of arrangements/investments and related conditions, and culminated in the Term Sheet**...*

*(ii) As stated above, **the Term Sheet appears to be founded in an expression of interest, from Hongfan, to source a long-term supply of alumina from Jamaica and to negotiate spot purchases.** From the records seen, it appears that this led to a series of discussions with Hongfan as to the most appropriate transactions to pursue to satisfy the requirements of Hongfan and the desire of the GOJ to have new investments in the sector.*

²⁵ Response from Ms. Marcia Forbes, former Permanent Secretary, MEM, which was dated 2010 June 29. Response #20

It appears that, consequent to take the discussions among the parties, the idea of a Term Sheet setting out prospective arrangements emanated from Hongfan ...

(iii) The following dates appear from the record seen:

February 3, 2009; February 9, 2009; February 13, 2009

(iv) From the documents seen, it appears that the following persons had an involvement in the negotiation and/or finalization of the Term Sheet.

Mrs. Marcia Forbes

Dr. Carlton Davis

Mr. Hugh Hart

Mr. Howard Mitchell

Mr. Peter Millingen

Mr. Winston Hayden

Mr. Douglas Leys

Ms. Sonia Mitchell

I am unable to say if other individuals were involved in the preparation/negotiation of the Term Sheet.

(v) Please see response to 20 (iv) above.

(vi) Bill Huo – Chief Financial Officer, Hongfan

Gary Ho – Director, Port Reliant

Joseph Chang – Director, Port Reliant [sic]

*(vii) **I am not aware that any project was identified and undertaken pursuant to the Term Sheet.***

(ix) [sic] See response at (vii) above.

(x) **The proposed transaction is not a project which was, specifically, identified under the Term Sheet but it could be described as an indirect product of the Term Sheet.**

*This statement is made within the context of the discussions which appear to have flowed from the Term Sheet as the parties tried to arrive at a suitable arrangement by which Hongfan could participate in the local alumina sector and secure long term supply of alumina. **It was this Term Sheet initiative which led to the sharing of information that that [sic] after an extended period, apparently resulted in Hongfan's clear offer for the purchasing of the shares.***” (OCG’s Emphasis)

Based upon the foregoing, the OCG found that the GOJ, through CAP and JBM, as at 2009 February 13, had a preliminary understanding with Hongfan regarding future relationship, *inter alia*, as follows:

- i. That the GOJ, through its nominated representatives, and Hongfan, through Port Reliant Limited of Hong Kong, People’s Republic of China, its exclusive agent, would work together to identify projects for the development and continued operations of the Industry, which was intended to facilitate Hongfan’s participation for a period of at least 20 years.
- ii. That Hongfan proposed to provide funding of up to US\$600M to execute certain projects in Jamaica. The understanding was that the funds would be made available in three (3) tranches of US\$200M each but would, however, be subjected to negotiations and the finalization of the contractual terms relating to the disbursement of funds and repayment to Hongfan.
- iii. That the GOJ, through JBM, CAP and BATCO, would work together to negotiate and finalise an alumina agreement with Hongfan.

- iv. That at the time of the signing of the Term Sheet (2009 February 13), the understanding was that for a period of 120 days from the date thereof, neither the GOJ nor Hongfan would enter into agreements with any other participant in the Industry with respect to the “*Jamaican Projects*”.
- v. That the rationale behind the preparation of the Term Sheet, in keeping with the sworn testimony of Ms. Marcia Forbes, former Permanent Secretary, MEM, emanated from a proposition which was made by Hongfan and Port Reliant Limited, upon their insistence for the GOJ to signal its interest in the investment.
- vi. That according to Ms. Marcia Forbes, the former Permanent Secretary in the MEM, the Term Sheet was required to be negotiated and worded to the satisfaction of the former Prime Minister, the Hon. Bruce Golding. This was purportedly undertaken by a GOJ Team which was comprised of Mr. Hugh Hart, then Advisor to the PM; Mr. Howard Mitchell, then Chairman of the JBM and BATCO; Dr. Carlton Davis, then Chairman of JBI; and Ms. Sonia Mitchell of JBI. Ms. Forbes also indicated that the referenced Prime Minister was not “...*entirely comfortable with Port Reliant/Hongfan*”.
- vii. That the representatives of Port Reliant Limited who were integral in the negotiation process of the Term Sheet were Mr. Gary Ho and Mr. Joseph Chang.
- viii. That according to the current Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, the Term Sheet was not a direct product of the ‘proposed transaction’ but rather, was considered to be an “...*initiative which led to the sharing of information that that [sic] after an extended period, apparently resulted in Hongfan’s clear offer for the purchasing of the shares.*”

Hongfan's Offer subsequent to the signing of the Term Sheet

The OCG also conducted a review of a copy of a document that was entitled "***Offer to acquire the Government of Jamaica's interest in Clarendon Alumina Production***", which was dated 2009 March 11. The referenced document outlined, *inter alia*, the following:

*"The Government of Jamaica ("GOJ") through Clarendon Alumina Production ("CAP") owns 45% of JAMALCO, and has the right to 45% percent of JAMALCO's alumina production. **GOJ has entered into forward contracts with Glencore to sell their share of JAMALCO's output until 2014.** Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. ("Hongfan") is one of China largest non-ferrous metals trading companies with about 10% share of the Chinese alumina market. **Over the past five years Hongfan has purchased over 500,000 tons of Jamaican alumina from intermediaries including Glencore...***

On February 13, 2009, GOJ and Hongfan signed a Term Sheet to establish a framework for working together to identify projects for the development and continued operations of the Jamaica Alumina Industry ("Jamaica Projects"), which will facilitate Hongfan's participation for a period of at least 20 years.

Hongfan has secured US\$600 million for the Jamaica Projects and is proposing to invest in CAP as stage one of the Jamaica Projects. Investments in improvements and expansion of JAMALCO, and other alumina facilities, will follow a successful CAP transaction. The preferred structure is a "virtual equity" transaction; Hongfan will provide funding to GOJ at the onset, to secure a long-term supply of alumina at cost. Hongfan will also consider an equity purchase of GOJ's CAP shares.

Terms: Virtual Equity

1. *In stage one Hongfan will, subject to due diligence, provide up to US\$275 million (“prepayment”) to GOJ to:*
 - a. *Secure CAP’s share of JAMALCO output for a period of not less than 20 years; and,*
 - b. *Secure the early release of GOJ’s forward contracts with Glencore.*
2. *In addition to the prepayment, Hongfan will provide further funds to construct a new energy efficient power plant to supply electricity to JAMALCO and to the national grid.*
3. *In return for Hongfan’s prepayment, GOJ will provide CAP’s share of the JAMALCO alumina output at cost to Hongfan, for not less than 20 years.*
4. *GOJ will pledge to Hongfan as collateral for the prepayment:*
 - a. *CAP’s equity in JAMALCO; and,*
 - b. *Bauxite reserves*
5. *Hongfan stands ready to expedite negotiations with GOJ and commence due diligence.*

Terms: Equity Purchase

1. *In stage one Hongfan will, subject to due diligence, provide up to US\$275 million (“purchase”) to GOJ to:*
 - a. *Purchase GOJ’s equity in CAP; and,*
 - b. *Secure the early release of GOJ’s forward contracts with Glencore.*

2. *In addition to the purchase price, Hongfan will provide further funds to construct a new energy efficient power plant to supply electricity to JAMALCO and to the national grid.*
3. *Hongfan stands ready to expedite negotiations with GOJ and commence due diligence.”²⁶ (OCG’s Emphasis)*

Based upon the foregoing, the OCG found that subsequent to the signing of the Term Sheet between Hongfan and the GOJ, Hongfan submitted a proposal to purchase the 45% CAP shares in Jamalco as “*stage one of the Jamaican Projects*”. It must be recalled that the referenced Term Sheet was signed with the intent for Hongfan to work together with the GOJ to identify projects for the development and continued operations of the alumina industry in Jamaica.

It is instructive to note, based upon the referenced offer, that discussions were held between the GOJ and Hongfan with respect to how Hongfan would invest in CAP, inclusive of securing, *inter alia*, the GOJ’s equity in CAP, in which consideration was given to either a ‘virtual equity transaction’ or an ‘equity purchase’. The OCG also found that Hongfan stood ready to expedite negotiations with the GOJ.

Confidentiality Agreements

The OCG requested from other senior GOJ Officials who were involved in and/associated with the captioned divestment to indicate whether any other agreements and/or arrangements were made between the GOJ and Hongfan, during the period in which the GOJ was in continued discussions with the said entity.

The OCG, in its Statutory Requisition to Mr. Peter Millingen, Chairman, CAP, which was dated 2010 December 23, asked Mr. Millingen to indicate whether “...*Clarendon Alumina*

²⁶ Document prepared by Hongfan that was entitled “*Offer to acquire the Government of Jamaica’s interest in Clarendon Alumina Production*”, which was dated 2009 March 11.

Production Limited (CAP) signed a Confidential Agreement with Port Reliant.” Mr. Millingen, in his response to the OCG, which was dated 2011 January 28, responded in the affirmative and further indicated that the Confidentiality Agreement was signed by him, on behalf of CAP on 2008 February 21.

According to Mr. Millingen, the outcome of the Confidentiality Agreement was that *“Information was given to Port Reliant and Zhuhai Hongfan...For the protection of confidential information having regard to the Joint venture with Alcoa and based on legal advice from CAP’s attorney.”*²⁷

Upon a review of the referenced Agreement between CAP and Port Reliant Limited, the OCG noted that the Agreement was entered into, *inter alia*, (a) to provide certain confidential and proprietary information, to each other, regarding CAP and its affiliates on the one hand, and Port Reliant Limited and its affiliates on the other hand, for the *“...purposes of evaluating whether PRL [Port Reliant Limited] will participate in an alumina purchase and investment/financial transaction with CAP”*; and (b) as an inducement for CAP and Port Reliant Limited to make such confidential and proprietary information available to each other.

Based upon a review of the documents which were submitted by Mr. Coy Roache, Managing Director, BATCO, in his response to the OCG, which was dated 2011 January 26, the OCG noted that a similar Confidentiality Agreement was entered into on 2008 June 22, between JBM and Port Reliant Limited. The referenced Agreement was entered into, *inter alia*, to provide certain confidential and proprietary information of JBM and its affiliates on the one hand, and Port Reliant Limited, Hongfan and their affiliates on the other hand, to each other, for the purposes of evaluating whether Port Reliant Limited and Hongfan will participate in an alumina purchase and investment/financial transaction with JBM.

It is to be noted as well that both Confidentiality Agreements defined “Confidential Information” as *“...collectively all documents, materials, data, and other information (whether*

²⁷ Response from Mr. Peter Millingen, Chairman, CAP, which was dated 2011 January 28. Response #21

oral, written, electronic or otherwise)... any joint venture or business arrangements, any assets owned, to be acquired, or under development by [CAP/JBM], PRL or their affiliates or in connection with the Transaction, that are directly or indirectly disclosed to each other by [JBM/CAP]...(or any of their affiliates') personnel or representatives. Notwithstanding the foregoing, Confidential Information does not include (i) information which is in the public domain through no action by the receiving party in violation of this Agreement; or (ii) information which the receiving party can demonstrate was in the receiving party's possession at the time of the disclosure or is hereafter received by the receiving party from a third party and which, in each case, was not acquired by the receiving party directly or indirectly from the disclosing party's or any of its affiliates' personnel or representatives on a confidential basis or from a third party that was bound to keep such information confidential."

OCG's Preliminary Enquiry into the Jamalco Divestment

On 2010 March 26, by way of a media article which was published in the Financial Gleaner, and which was entitled "*Chinese firm bids for stake in Jamalco*", the OCG was informed of, *inter alia*, the following:

"Hong Fan [sic] Trading, a Chinese company that specialises in the production and sale of metallic elements that help to strengthen alloys, has made an offer for the government's 45 per cent [sic] share of Jamalco alumina refinery, administration sources say.

The mining and energy minister could not be immediately reached for comment, but Financial Gleaner sources say that Hong Fan is working on the deal with Ray Chang, a Jamaican-Canadian businessman, who in recent years has been scouting for opportunities here.

According to these sources, Prime Minister Bruce Golding had talks with principals of the Guangzhou-based Hong Fan during his recent official visit to China, which was followed by the signing of the memorandum of understanding (MOU) between the parties.

"Any agreement between the government and the Chinese has to have the blessing of Alcoa Minerals, Jamaica's partner in Jamalco," explained a government source, who said that Golding intends to speak about the possible deal during the budget debate.

The PM had announced, while on that visit to drum up investments for Jamaica, that he had secured business worth US\$500 million (J\$45 billion) from the Chinese.

"Under the Jamalco agreement, Alcoa has the right to match any offer made by a third party for the government's stake in the company," said the source, who asked for anonymity because he was not authorised to speak on the matter.

"We are are [sic] very excited about the possibilities of this deal, for it could mean an injection of capital in Jamalco without the government having to come up with cash which it neither has nor wishes to go to the market to raise," our source added.

Situated in Hayes, Clarendon, the 1.4 million-tonne Jamalco refinery remains in production in Jamaica, where the industry largely collapsed in the face of the global recession and the nosediving of demand for metals.

With the Chinese economy rebounding and its hunger for commodities likely to return, officials here believe that a stake by Hong Fan [sic] in Jamalco would make sense.

"The view is that there would be a market for the product, upon which you could advance the case for the expansion of the plant," said the government source.

Once equal partners, Jamalco is now owned 45 per cent by Jamaica's Clarendon Alumina Productions and 55 per cent by Alcoa.

The American firm, though always the operating partner, gained the additional 5.0 per cent equity in exchange for its financing of a 125,000-tonne Early Works Expansion project that was meant to be the precursor to a larger upgrading of the refinery.

In the middle of the decade, Alcoa and the government agreed on a US\$1-billion project to double Jamalco's capacity, but that arrangement foundered on their inability to secure the supply of LNG as a power source for the plant. The conventional oil-driven power plants would be too expensive, therefore weakening the attractiveness of the investment.

Trinidad and Tobago, which had reneged on a plan to supply the LNG has since said that it would make Jamaica a priority once new supply trains come on stream.

The Trinidadians now perceive a strategic gain in supplying cheaper energy to a Jamaica alumina plant: it could provide throughput for an alumina smelter planned for Trinidad and Tobago.

But notwithstanding the recent overtures from Port-of-Spain, the Jamaican government has also been looking for other supply sources globally.

Indeed, Ray Chang has in the past attempted to put together an LNG and compress natural gas (CNG) supply consortium for Jamaica.

"Ray might wish to revive those initiatives, if it is not already happening," an energy-sector source suggested."²⁸ (OCG's Emphasis)

Based upon the foregoing article, the OCG wrote to Mrs. Hillary Alexander, Permanent Secretary, MSTEM, on 2010 March 29, and posed the following questions:

"1. Has the Government of Jamaica (GOJ) received an offer from the Chinese company Hong Fan [sic] Trading? If yes, please advise us whether:

- a. A formal competitive bidding process was opened by the GOJ;*
- b. An Information Memorandum was prepared with clearly established evaluation criteria;*

²⁸ Media article which was published in the Financial Gleaner, and which was entitled "Chinese firm bids for stake in Jamalco", dated 2010 March 26.

- c. *An advertisement was prepared and published, for the referenced divestment; and*
- d. *Any other offer was received from any other interested Investor.*

In support of your response, please provide documentary evidence. Also, submit copies of all correspondence between Hong Fan [sic] Trading and the GOJ, including a copy of Hong Fan [sic] Trading's "offer".

2. *Was Mr. Ray Chang's service procured by the GOJ? If yes,*

- a. *How was Mr. Ray Chang's services procured?*
- b. *What is the nature of Mr. Chang's involvement and/or Terms of Reference, in the referenced Divestment Process?*
- c. *What consideration is being paid to Mr. Chang?*

If no, please advise of the following:

- d. *What is the nature of Mr. Chang's involvement in the referenced divestment?*
- e. *What is the mode and terms of his consideration for payment?*

In support of your responses, please provide documentary evidence, including all correspondences [sic] between Mr. Chang and the GOJ.

By way of a letter, dated April 27, 2009, attached for ease of reference, the Office of the Contractor-General (OCG) had written to the previous Permanent Secretary of the Ministry of Mining and Energy, Mrs. Marcia Forbes, outlining certain concerns

regarding the “Proposed Sale of Alumina by the Government of Jamaica to Hongfan, a Chinese Trading Entity, via an Agency Agreement, between the Government of Jamaica and Port Reliant.”

Please advise our Office, whether the Ministry has any intention to proceed with the transaction, as was articulated, to this Office, by the then Permanent Secretary.”²⁹

Mrs. Hillary Alexander, in her response to the OCG’s Requisition, which was dated 2010 April 12, and which was received on 2010 April 19, stated, *inter alia*, the following:

“Response

The GOJ received an offer from Zhuhai Hongfan Non-ferrous Metals and Chemicals Engineering Inc. (Hongfan) for the purchase of GOJ’s shareholding in Clarendon Alumina Production Limited (CAP).

a. **No formal competitive bidding process was opened by the GOJ.**

It should be noted, however, that the bauxite and alumina industry consists of, relatively, few players who, in general, do not depend on any formal process to become aware of developments, or avail themselves of opportunities, within the industry. Communication is often undertaken by direct/indirect contact or discussions with or among their representatives or agents.

In this regard, it was, general, knowledge in the industry that the GOJ, from as early as March 2007, was seeking to divest its shareholding in CAP, to relieve

²⁹ OCG’s Letter of Requisition which was addressed to the Permanent Secretary in the then MEM, Mrs. Hillary Alexander, on 2010 March 29. Questions # 1&2

itself of the expense of financing an operation that continues to yield negative returns to the GOJ.

b. No. But see response to a.

c. No. But see response to a. Additionally, the intent of the GOJ to divest state owned commercial entities/shareholdings has been widely communicated and reported on extensively in the media.

d. Yes.

Glencore International AG made an offer for the shares, by way of letter dated March 17, 2010 (and received by the Ministry on March 19, 2010). The offer was revised by letter dated March 26, 2010.

Further, Alcoa, pursuant to a right of last refusal for the shares (as the joint venture partner with CAP in Jamalco) has also advised informally of the indicative terms on which it could purchase the shares but continues to formally consider whether it is willing to make an offer on similar or more favourable terms than the offer made by Hongfan.

In October 2009, Far East Alumina Limited of Hong Kong made enquiries in relation to the purchasing of the shares in CAP. The entity entered into a Confidentiality Agreement with the GOJ and received and reviewed financial and other documentation of CAP but has not shown any further interest in acquiring the shares...

Response

No. **The GOJ did not procure the services of Mr. Chang (the GOJ is not aware of the involvement of Mr. Ray Chang but is aware of a Mr. Joseph Chang).**

- d. **Mr. Joseph Chang is a director of Port Reliant Limited, Hong Kong, which entity, Hongfan had advised, is its exclusive agent in the offer by Hongfan for the purchase of the shares in CAP.**
- e. **Hongfan is solely responsible for the payment of any consideration to Mr. Chang or Port Reliant Limited;** and the GOJ is not aware of the mode and terms for payment of any consideration...

Response

The Ministry is not pursuing any sale of alumina by the GOJ to Hongfan via any Agency Agreement between the GOJ and Port Reliant.³⁰ (OCG's Emphasis)

Mrs. Hillary Alexander, in her referenced response, enclosed certain supporting documentation. Upon a comprehensive review of the referenced documents, amongst others, the OCG found, *inter alia*, the following:

- A. The OCG was provided with a letter that was addressed to Mr. Joseph Chang, Director, Port Reliant, from the then Minister in the MEM, Mr. James Robertson, which was entitled "***Hongfan's Interest in Bauxite and Alumina***" and which dated 2009 May 13. The referenced letter stated, *inter alia*, the following:

³⁰ Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 April 12. Responses 1&2

“Your email of the 12th May refers.

I agree with you that we need to address and clarify any confusion that may still exist regarding this transaction...

*As previously explained to you, **Jamaica’s production share of alumina has been committed in its entirety to a third party until the years 2013 and 2015.***

We have no access to any other alumina stocks and would have to “buy back” the contract for supply of the alumina to the above third party, in order to sell spot to your client. It would only be commercially feasible for the GOJ to undertake that transaction within the context of a long term deal with a down payment or a bankable commitment. In other words the GOJ could not justify making a loss on a shipload of alumina without having income from a long term or other arrangement to compensate.

If your client is prepared to buy out the existing contracts then as we have said before... BATCo... is prepared to approach the third party to negotiate that transaction.

With regards to your request for a written explanation of our position, I am advised by both the Chairman of BATCo and my Permanent Secretary that the offer you refer to was made within the context of a concurrent long-term deal (the virtual equity transaction) and that context is reflected in the letter proposal received from your client on that date.

The transactions are linked and cannot be separated.

With regards to the issue of Fees, your client is at liberty to pay fees to whomever they wish. We see no reason why the GOJ should have to be consulted on the issue if the fees are not being deducted from its monies.

The Jamaican Government continues to be interested in negotiating a long-term virtual equity arrangement, coupled with an energy refurbishing project. It is only within this context that we can afford to attempt a revision of our existing forward purchase contracts.³¹ (OCG's Emphasis)

B. Mr. Joseph Chang, Director, Port Reliant Limited, responded to the foregoing letter on 2009 June 2, in which he stated, *inter alia*, the following:

"In view of the circumstances mentioned in your letter of May 13, we will set aside discussion of spot and focus on negotiating a long-term virtual equity/equity arrangement along with a related energy project with the Jamaican Government.

In order to move the deal forward Hongfan will use Port Reliant as the investment vehicle. Accordingly all funding for the Jamaica Projects (as defined in the Term Sheet signed on February 13) will be through Port Reliant and fees will not be an issue related to GOJ...

*These arrangements are made to resolve the outstanding issues discussed in your letter. We now need to meet to discuss the way forward.*³² (OCG's Emphasis)

C. The OCG found that three (3) other letters were written to the then Minister of Energy and Mining, Mr. James Robertson, on 2009 June 19, from Mr. Yan Tiejien, in his capacity as Chairman of Hongfan.

³¹ Letter that was addressed to Mr. Joseph Chang, Director, Port Reliant, from the then Minister in the MEM, Mr. James Robertson, which was entitled "*Hongfan's Interest in Bauxite and Alumina*" and which dated 2009 May 13.

³² Letter from Mr. Joseph Chang, Director, Port Reliant, to the then Minister of the MEM, Mr. James Robertson, which was dated 2009 June 2.

In two (2) of the referenced letters, Mr. Tiejien (a) confirmed that Port Reliant Limited was Hongfan's fully authorized exclusive agent for the bauxite and alumina investment (and trading) and payment in Jamaica, and (b) extended an invitation, on behalf of Hongfan, for a Ministerial level delegation to travel to China³³ on 2009 July 13, with a view to settle the CAP transaction, make an arrangement to reopen Windalco and to meet with the Chinese authorities and the China Development Bank.

By way of the third referenced letter, Mr. Tiejien informed the then Minister that Hongfan had arranged financing to (a) acquire a long-term supply of alumina from Jamaica over 25 years, and (b) construct new energy efficient power plants to supply the associated alumina plants and the national grid. Mr. Tiejien further indicated that Hongfan was targeting an alumina supply of not less than 1.6 million tonnes per year for 25 years and that based upon recent negotiations with the GOJ, Hongfan was proposing the following to advance the Projects:

- (1) *"Within one week of receiving the preliminary due diligence materials requested last week, **Hongfan will through its exclusive authorized agent Port Reliant Limited submit an offer to purchase GOJ's interest in CAP unencumbered by any liens, liabilities and obligations.** These due diligence materials are essential to prepare the offer. The transaction price to be agreed by the parties thereafter.*

- (2) *The purchase of said shares referred to in (1) above is subject to GOJ obtaining from Alcoa, Glencore and any other relevant parties the release of its entitlement of alumina, currently 637,500 tonnes per annum, to Hongfan as provided for in the 1988 Joint Venture Agreement between GOJ and Alcoa, and the Glencore Alumina Supply Agreements dated 6 July 2000 and 1 August 2002, and other Agreements.*

³³ Letter, which was dated 2009 June 19, indicated that the meetings were to be held in Beijing and Zhuhai.

- (3) *Hongfan is interested in acquiring and expanding WINDALCO's operations; in pursuing this opportunity Hongfan would seek the assistance of GOJ in initiating discussions with UC Rusal. GOJ has provided a plan to expand alumina production at Ewarton to 1.1 million tonnes per annum. We will investigate the Ewarton expansion plan and choose the most efficient way to increase production. Hongfan, in consultation with GOJ, will also investigate the potential for non-metallurgical alumina from Kirkvine; and*
- (4) *Subject to successful acquisition of CAP and of WINDALCO, Hongfan will construct new energy efficient power plant(s) to supply electricity to JAMALCO, WINDALCO and the national grid. Hongfan recognizes the need for alternative energy in Jamaica and will cooperate with GOJ to achieve this.*³⁴

It is instructive to note that the letter also indicated, *inter alia*, that although Hongfan's objective was to secure the supply of 1.6 million tonnes of alumina over the 25 year period, it was an investment which would require several transactions which were to be consolidated as one proposal, in which "*...the first offer will be the CAP investment.*"

D. Mr. Joseph Chang, Director, Port Reliant Limited, and reported agent of Hongfan, further wrote to the then Minister of Energy and Mining, Mr. James Robertson, on 2009 September 21, and stated, *inter alia*, the following:

"I am writing to renew our discussions. Further to the June 19, 2009 letters to you from Hongfan, I reiterate our interest in purchasing the Government of Jamaica's shares in Clarendon Alumina Production Limited (CAP). In addition to CAP, we remain interested in investing in other alumina ventures in Jamaica.

We will provide a framework contract with specific contract terms to GOJ shortly. There are two remaining items needed to complete this framework

³⁴ Letter from Mr. Joseph Chang, Director, Port Reliant, to the then Minister in the MEM, Mr. James Robertson, which was dated 2009 June 19.

contract. After we receive these, we will complete the framework contract for signing with GOJ in China.”³⁵

E. The OCG found that on 2009 October 1, the then Minister, Mr. James Robertson, wrote to Mr. Yan Tiejien, Chairman of Hongfan and Mr. Joseph Chang, Director, Port Reliant Limited, in which he expressed the GOJ’s willingness to continue discussions regarding Hongfan’s offer to purchase CAP, and requested that Hongfan advise of any outstanding information which may be required to complete the due diligence exercise associated with its offer and the determination of a competitive purchase price.

F. Another letter was sent on 2009 October 15 to Mr. Yan Tiejien, through Mr. Joseph Chang, in which the then Minister of Energy and Mining, Mr. James Robertson, reiterated the foregoing content which was expressed in the referenced letter of 2009 October 1, and further stated that *“In relation to your kind invitation for me to visit China, in furtherance of this transaction, please note that, upon the finalization of mutually acceptable contractual terms, I would be prepared to visit your beautiful country to effect completion of this matter and to execute any documentation, as appropriate.”³⁶*

G. Mr. Joseph Chang responded, by way of a letter that was addressed to the then Senior Legal Counsel of the MEM, Mr. Glenford Watson, which was dated 2009 October 15, providing background information on the CAP transaction which was under consideration, as follows:

- ***“On March 1, 2007, Dr. Carlton Davis first proposed to us the possibility of an investment in JAMALCO. Dr. Davis suggested that we consider a “Virtual Equity” structure, whereby an investor would pay for GOJ’s share of a***

³⁵ Letter from Mr. Joseph Chang, Director, Port Reliant Limited to the then Minister of Energy and Mining, which was dated 2009 September 21.

³⁶ Letter from Mr. James Robertson, the Minister in the MEM, to Mr. Yan Tiejien, Hongfan, and Mr. Joseph Chang, Port Reliant Limited, which was dated 2009 October 15.

JAMALCO expansion in return for GOJ's share of the output (for a finite time period).

- *We proceed with the Virtual Equity approach until October 24, 2008 when Mr. Hugh Hart, in an official meeting chaired by then Minister Derrick Smith, suggested that an equity investment structure would be a better choice. Mr. Howard Mitchell, Chairman of BATCO, strongly affirmed this.*
- *Given the above, the proposal presented to GOJ on March 11, 2009 contained Virtual Equity and Equity options. In the proposal, Hongfan's [sic] offered to secure CAP's share of JAMALCO's output for not less than 20 years ("Virtual Equity"), or to purchase GOJ's equity in CAP ("Equity").*
- ***Under a Virtual Equity structure, Hongfan would provide GOJ with substantial cash at the onset for future deliveries of alumina.*** *In the event that GOJ were [sic] unable to deliver the forward alumina, Hongfan would require alternative cash flow sources to service the transaction debt. **Thus the March 2009 proposal further stated that a Virtual Equity structure would require that GOJ provide certain collateral, specifically CAP's equity in JAMALCO and bauxite reserves.***
- ***It then became apparent from subsequent discussions with GOJ and the review of the JAMALCO documentation, that GOJ cannot provide the collateral required for a Virtual Equity transaction. The JV states that CAP's share cannot be pledged without the approval of the JV partner.*** *In the event of a default the JV partner could withhold their consent; without this consent the collateral has no value. Moreover there is no readily available structure by which bauxite could be used as collateral.*

As we have explained to GOJ, without adequate collateral a Virtual Equity structure is not possible. Therefore we propose that the transaction be structured as an equity purchase of GOJ's CAP shares.³⁷ (OCG's Emphasis)

- H. The OCG noted that on 2010 January 25, the then Minister of Energy and Mining, Mr. James Robertson, received a letter from the Vice President of the China Construction Bank, Zhuhai Branch, regarding Hongfan, which stated, *inter alia*, that “*Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (“Zhuhai Hongfan”) has been rated as AA customer of our bank with credit and loan facilities in good standing. In 2009, Zhuhai Hongfan utilized their credit facilities for over nine-figures United States dollars. Subject to due diligence, to those which meet the requirement of our bank, our bank will support Zhuhai Hongfan’s investment in the Jamaican alumina sector, including their purchase of Clarendon Alumina Production Limited...*”³⁸
- I. The OCG was provided with a copy of the “**AGREEMENT FOR PURCHASE OF SHARES**” which was dated and entered into on 2010 March 18, and which was signed between the GOJ, CAP and Hongfan.

The Agreement for the Purchase of Shares

Upon a review of the aforementioned “*Agreement for Purchase of Shares*” between the GOJ, CAP and Hongfan, the OCG found that same provided for, *inter alia*, the following:

“WHEREAS:

- A. **The GOJ is the legal and beneficial owner of the shares** listed in Schedule 1 of this Agreement (“*the Shares*”) in the share capital of the Company;

³⁷ Letter from Mr. Joseph Chang to the then Senior Legal Counsel of the MEM, Mr. Glenford Watson, which was dated 2009 October 15.

³⁸ Letter from China Construction Bank, Zhuhai Branch, to Mr. James Robertson, the then Minister of Energy and Mining, which was dated 2010 January 25.

- B. The Shares are registered in the names of the Accountant – General of Jamaica in accordance with the Crown Property (Vesting) Act and Dr. Carlton Davis as nominee of the GOJ;
- C. The Company, which is wholly owned by the GOJ is, pursuant to a Joint Venture Agreement dated March 1, 1988 initially a 50:50 owner with Alcoa Minerals of Jamaica LLC (“Alcoa”) of a bauxite and mining and refining enterprise located in Halse Hall, Clarendon conducted under the name Jamalco which is estimated currently to have a production capacity of 1,423,500 tonnes of alumina per annum. Each owner markets its share of production;
- D. The 50:50 ownership between the Company and Alcoa aforesaid, is subject to adjustments following the completion of expansion works known as the “Early Works Program” which was funded solely by Alcoa and, in accordance with the letter agreement dated 30 March 2007 between the Company and Alcoa...is anticipated to result in an adjustment of the share interest to 45% for the Company and 55% for Alcoa, but which adjustment is subject to final determination by Jamalco;
- E. The Purchaser wishes to acquire all of the Shares and for that purpose will incorporate a special investment vehicle with the name Hongfan (Jamaica) Limited (“the SIV”).
- F. The Vendor is willing to sell and transfer the Shares to the Purchaser or the SIV, subject to the terms and conditions of this Agreement.
- G. The Parties intended that upon Completion the Purchaser will be entitled to all the rights and subject to all the obligations which the Vendor now enjoys and for which the Vendor is now responsible, under the Joint Venture Agreement.

NOW IT IS HEREBY AGREED as follows...

2. Sale and Purchase of Shares

2.1. 2.1.1. *The Vendor shall sell to the Purchaser and the Purchaser (relying as the Vendor acknowledges, on the representations, warranties, undertakings, covenants and indemnities of the Vendor referred to or contained in this Agreement), shall purchase the Shares from the Vendor.*

2.1.2. *The Vendor shall cause the Registered Shareholders to execute transfers of the Shares as required by this Agreement.*

2.2. *The Vendor covenants with the Purchaser that:*

2.2.1. *the Vendor shall at its own cost give the Purchaser full and unrestricted legal and beneficial title to the Shares;*

2.2.2. *the Shares shall be sold and transferred free from Encumbrances including any which:*

(a) the Vendor does not know or could not reasonably be expected to know about; or

(b) at the time of transfer is within the actual knowledge, or is a necessary consequence of facts then within the actual knowledge, of the Purchaser;

and the transfer of the Shares to the Purchaser shall be deemed to include expressly and be made subject to all the provisions of this Clause 2.2...

3. Commencement and Efficacy of Agreement

3.1 This Agreement shall come into effect when it is signed by all the Parties and shall immediately become binding on the Parties.

3.2 The continued efficacy and the Completion of this Agreement shall be contingent on and subject to the Vendor delivering the Waiver to the Purchaser, in accordance with Clause 5.5 below and payment of the Deposit to the Vendor; and to the written approval of the Chinese Authorities as set out herein.

4. Consideration

4.1 The consideration payable by the Purchaser shall be the sum of ... (US\$332,000,000) comprising the Purchase Price for the Shares, being ... (US\$240,000,000); and the sum of ... (US\$92,000,000) (“the Specific Sum”) to establish a cash flow support fund for the Company in keeping with clause 8.3.

4.2 The Purchaser shall pay the Purchase Price as follows:

4.2.1. the sum of ... (US\$17,000,000) (“the Deposit”) in the manner provided for in clause 4.4. below, but subject to the provisions of clauses 5.10, 5.11 and 8.6. below; and

4.2.2. the sum of ... (US\$223,000,000) (“the Further Payment”) in immediate available funds shall be provided for in the manner set out in clauses 4.3. and 5.3, below and shall be paid to the Vendor on Completion in the manner provided for in the Escrow Agreement...

4.3. *The Specified Sum and the Further Payment shall be paid by the Purchaser pursuant to an undertaking by the Purchaser's Bankers provided pursuant to Clause 5.3 of this Agreement. Upon Completion ... (USD\$138,000,000) of the Further Payment shall be retained by the Vendor with the Vendor procuring the deposit of the remainder of the Further Payment and the Specific Sum with the Escrow Agent to be held and administered in accordance with the terms of the Escrow Agreement.*

4.4 *The Deposit shall be delivered in the form of an undertaking to pay the Vendor by an unconditional banker's draft made payable to the Vendor or by wire transfer from the Purchaser's Bankers or the Purchaser's nominee to a bank account in Jamaica as designated in writing by the Vendor:*

4.4.1. *by the First Target Date if the Vendor obtains the Waiver within twenty-one (21) days of the date of this Agreement; or*

4.4.2. *within seven (7) days of the Vendor delivering the Waiver if such delivery takes place after the First Target Date; and*

subject to the receipt of written approval from the Chinese Authorities...

5. **Conditions**

5.1 Conditions Precedent to Completion: *The obligation of the Purchaser to complete the purchase of the Shares on the terms set out in this Agreement are conditional based upon the following matters being completed, obtained and where appropriate, delivered.*

5.2. *By the First Target Date*

5.2.1. *the Vendor delivering to the Purchaser's Attorneys-at-Law actual documentation relating to or written evidence of:*

(a) all necessary Ministerial, Cabinet and other final approvals for the sale of the Shares pursuant to applicable legislation or regulations in Jamaica including but not limited to the Public Bodies Management and Accountability Act;

(b) the passing at meetings of the Boards of Directors of the Company and the Purchaser of resolutions approving the actions required by the Company in accordance with this Agreement;

(c) a copy of the 2002 Expansion Agreement setting out the fiscal regime applicable to the Company and Alcoa and a written commitment from the Vendor to the Purchaser that the Company will be accorded a regime which is no less favourable than that granted to any other bauxite or alumina producer;

(d) subject to clause 4.5 confirmation from the GOJ that all transfer taxes and stamp duties payable in respect of the sale of the Shares have been waived;

(e) written confirmation from the Vendor that in respect of the Shares there exists no other rights of first refusal or similar rights in any third party other than Alcoa;

(f) the undated written resignation of the directors of the Company appointed by the Vendor; and

(g) audited Financial Statements for the Company for the year ended 31st March, 2009.

(h) copies of the Mining Leases;

(i) copies of all alumina supply agreements/arrangements to which the Company is a party;

(j) a schedule detailing the Co-Tenancy Assets;

(k) the Disclosure Letter; and

(l) copies of all agreements (including side letter agreements), between the Company and Alcoa relating to Jamalco...

5.3. The Purchaser delivering to the Vendor within ninety (90) days of the signing of this Agreement a Letter of Commitment from the Purchaser's Bankers that, subject to the written approval from the Chinese Authorities as well as the completion of the Due Diligence Exercise to the satisfaction of the Purchaser...the Purchaser's Bankers will pay to the Vendor the aggregate amount of the Further Payment and the Specific Sum in one unconditional banker's draft made payable to the Accountant General or by a single wire transfer from the Purchaser's Banker's to the account of the Accountant General for further transfer to the Escrow Agent in accordance with Clause 5.4.2 of this Agreement.

5.4. By the:

5.4.1. Second Target Date:

(a) The Vendor delivering to the Purchaser's Attorneys-at-Law:

(i) a report from the Jamaica Bauxite Institute giving the estimate of the available reserves of bauxite existing in the area covered by the Mining Lease(s); and

(ii) copies of all reports and data whatsoever on the Jamalco reserves that are in the possession of the Company or the GOJ.

(b) The Purchaser delivering to the Vendor written approval from the Chinese Authorities.

5.4.2. *Third Target Date:*

(a) The Purchaser or the Purchaser's Bankers delivering to the Vendor for the deposit with the Escrow Agent, the aggregate amount of the Further Payment and the Specific Sum in one unconditional banker's draft made payable to the Accountant General or by a single wire transfer from the Purchaser's Bankers to the account of the Accountant General for further transfer to the Escrow Agent...

(b) Provided the Purchaser's Nominee having full access to the records and books of the Company and of Jamalco completing due diligence enquiries into the financial, legal, environmental and other affairs of the Company and Jamalco within the Due Diligence Period ("the Due Diligence Exercise").

5.5. The Vendor shall have up to ninety (90) days after the signing of the Agreement in which to provide the Purchaser with the Waiver, however the Vendor will use its best endeavours to obtain the Waiver prior to the First Target Date...

- 5.9 *Notwithstanding any provision of this Agreement, it is understood and agreed that the Purchaser shall not be required to complete this Agreement in the event that as a result of the Due Diligence Exercise mentioned at clause 5.4.2. (b) the Purchaser discovers any matter which is material in effect and which, reasonably, negatively or may negatively affect the long-term viability of the business or operation of the Company and/or the Jamalco. In such event, the Purchaser may terminate this Agreement by fourteen (14) days notice in writing to the Vendor.*
- 5.10. *If the Purchaser fails to complete pursuant to clause 5.9. and 5.4.1(b) above, then any money paid by the Purchaser pursuant to clause 4.4. above shall be refunded to the Purchaser with interest as the Agreed Rate or if failure to complete is due to the wilful default of the Vendor an interest rate of sixteen percent (16%) per annum at simple interest shall apply to the Deposit instead of the Agreed Rate.*
- 5.11. *If the Purchaser fails to complete due to the breach or wilful default of the Purchaser, the Deposit shall be forfeited and the Vendor shall be at liberty upon giving notice to the Purchaser, to sell the Shares to a third party with no further reference to the Purchaser...*

8. **Completion**

- 8.1. *Save and except as otherwise provided herein, Completion shall take place at the Ministry of Energy and Mining...on the Completion Date as may be agreed in writing by the Parties...*
- 8.2. *On Completion the Purchaser shall assume the management and control of the Company.*

- 8.3. *The Parties specifically agree to provide in the Escrow Agreement that the Specific Sum should be released to the Purchaser on Completion. The Vendor shall not have any claim for or interest in any portion of the Specific Sum. Pursuant to the terms of the Escrow Agreement, the Purchaser shall ensure that the Specific Sum is immediately deposited to or remains in an interest bearing account to be established with either the SIV's or the Company's commercial bankers and designated the "Cash Flow Support Fund" which will be used by the Company, if necessary, to satisfy its initial cash flow requirements.*
- 8.4. *Within ninety (90) days of the date of Completion, the Vendor shall provide the Purchaser with audited Financial Statements for the company for the period 1st April, 2009 to 31st March, 2010 and with in-house Financial Statements for the period 1st April 2010 to Completion and the Purchaser shall co-operate fully with the Vendor in order to facilitate this.*
- 8.5. *The Parties specifically agree that in the event that the transaction is not completed the Escrow Agent shall immediately release the Escrowed Funds in accordance with the terms of the Escrow Agreement...*
- 8.6. *If the failure to complete is due to no fault of the Purchaser, the Vendor shall at its sole option (a) pay to the Purchaser a cash refund of the Deposit plus interest at the Agreed Rate within thirty (30) days from such failure, or (ii) the Purchaser shall have the right to purchase at "production cost" to be determined in accordance with Schedule 7, a quantity of alumina...equivalent in value to the Deposit plus interest, such interest being calculated from the date the Deposit was paid to the Vendor until the date(s) of alumina shipment(s), at the Agreed Rate...*

- 8.7. *The Parties expressly agree that the Un-Retained Assets shall not be retained by the Company and, therefore, shall not pass to the Purchaser on Completion unless otherwise agreed by the Vendor.*
- 8.8. *Upon Completion, the Parties specifically agree that the Purchaser shall assume the liabilities and obligations...in respect of all alumina supply and related agreements entered into by the Company prior to Completion set out in Schedule 3A and the Purchaser, or the Purchaser through the SIV shall ensure that the said Obligations are fulfilled accordingly.*
- 8.9. *The Purchaser agrees to indemnify the Vendor for the failure to perform the said Obligations, and will hold the Vendor harmless for any claims that arise therefrom...*

14. **Variations in Writing**

This Agreement may only be varied by instrument in writing signed by each of the Parties hereto...

16. **Default ...**

- 16.4 *In the event a Default on the part of the Purchaser arising **prior** to the Completion Date is incapable of being cured or the Defaulting Party fails to cure or to take reasonably expedient action to cure the Default within such time period referred to in clause 16.2, then the GOJ shall be entitled to terminate this Agreement by notice in writing and shall forfeit the Deposit and any sums paid to it pursuant to this Agreement.*

17. **Termination**

17.1 *The Purchaser shall have the right to terminate this Agreement in accordance with clauses 5.9. and 16.3.*

17.2 *The Vendor shall have the right to terminate this Agreement in accordance with clauses 5.11. and 16.4...³⁹*

Based upon the foregoing, the OCG found the following to be of significant interest:

1. That the GOJ, through the MEM, did not conduct any form of a competitive bidding process, prior to the signing of the 2010 March 18 Agreement, to ensure value for money in the divestment of the GOJ 45% shareholding in Jamalco.
2. That the GOJ received another offer to purchase the GOJ's 45% CAP shares in Jamalco from a company, Glencore International AG, by way of a letter which was dated 2010 March 17. The Permanent Secretary, Mrs. Hillary Alexander, however, advised the OCG that the letter was received by the Ministry on 2010 March 19 and was revised on 2010 March 26.
3. That based upon the sworn testimony of Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, the GOJ did not procure the services of Mr. Raymond Chang.
4. That based upon the sworn testimony of Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, the GOJ was not aware of Mr. Raymond Chang's involvement in the divestment process.
5. That Mr. Joseph Chang, Director of Port Reliant Limited, was the principal representative of Port Reliant Limited with whom the GOJ had discussions.

³⁹ The "Agreement for Purchase of Shares" which was dated and entered into on 2010 March 18.

6. That Hongfan was required to be solely responsible for the payment of any consideration to Mr. Joseph Chang or Port Reliant Limited, to which the Permanent Secretary indicated that the “...GOJ was not aware of the mode and terms of payment of any consideration.”
7. That Mr. Joseph Chang indicated that it was Dr. Carlton Davis, former Chairman of the JBI, in 2007 March, who had first proposed to Port Reliant Limited “...the possibility of an investment in Jamalco”. Mr. Joseph Chang further stated that Dr. Davis suggested that they consider a ‘virtual equity’ structure, that is, where an investor would pay for the GOJ’s share of a Jamalco expansion in return for GOJ’s share of the output.
8. That Mr. Joseph Chang indicated that the “virtual equity” approach was under consideration until 2008 October 24, when Mr. Hugh Hart suggested that an equity divestment structure would be a better choice, which was affirmed by Mr. Howard Mitchell.
9. That up to, and including, 2009 May 13, the former Minister of the MEM, Mr. James Robertson, indicated that “Jamaica’s production share of alumina has been committed in its entirety to a third party until the year 2013 and 2015.”
10. That a proposition was made by the former Minister of the MEM, Mr. James Robertson, to Mr. Joseph Chang of Port Reliant Limited, as to whether Hongfan was willing to “...buy out the existing contracts then...BATCO...is prepared to approach the third party to negotiate that transaction.”
11. That Mr. Joseph Chang advised Mr. James Robertson, the former Minister of the MEM, that with respect to Hongfan moving forward with the ‘deal’, Port Reliant Limited was the “investment vehicle” and, as such, all funding for the Jamaican Projects was to be made through Port Reliant Limited and that “...fees would not be an issue relating to the GOJ.”

12. That the GOJ and Alcoa Minerals of Jamaica LLC, pursuant to a Joint Venture Agreement which was dated 1988 March 1, initially had a 50:50 shareholding ownership in Jamalco. However, up to and including the consummation of the “*Agreement for Purchase of Shares*”, the OCG found that based upon a Letter of Agreement between Jamalco and Alcoa, which was dated 2007 March 30, the interest was adjusted to 45:55, with Alcoa holding the majority share, subject to final determination by Jamalco.
13. That the Agreement was consummated on the terms that Hongfan wished to “...*acquire all of the Shares and for that purpose will incorporate a special investment vehicle with the name Hongfan (Jamaica) Limited (“the SIV”)*” and that the GOJ was “...*willing to sell and transfer the Shares to the Purchaser or the SIV, subject to the terms and conditions of this Agreement.*”

Compliance with Ministry Paper #34

In keeping with the provisions of Ministry Paper #34, all divestments are required to adhere to the GOJ’s Privatization Policy and Procedures. In this regard, highlighted hereunder are certain provisions of Ministry Paper #34, as follows:

“The following general principles will govern the conduct of the privatization process.

- *the selection of items to be privatized will be announced to the public by way of advertisement;*
- *the concept of market-economic valuation will apply in establishing the disposal price and more than one valuation must be obtained;*
- *transactions are to be arms-length and equal opportunity will be given to all except where special foreign exchange requirements are a feature of privatization or where special arrangements are being made for employees;*

- *as far as possible, parties with likely conflicting interests will not be invited to assist the process in any way.*
- *public announcements will be made when an item is privatized.*⁴⁰

The OCG wrote to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, on 2010 April 22, following upon a review of the “*Agreement for Purchase of Shares*” which was consummated on 2010 March 18 between the Government of Jamaica, Hongfan and CAP, amongst other documents, and indicated, *inter alia*, the following observations in keeping with certain privatization principles which are detailed in the applicable Ministry Paper #34:

- (1) ***“the selection of items to be privatized will be announced to the public by way of advertisements.”***

The divestment of the referenced asset was not advertised. The Government of Jamaica (GOJ) on receipt of an unsolicited offer, pursued negotiations with Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (Hongfan) which have culminated into a Purchase of Shares Agreement. This is in contravention of the referenced principle.

- (2) ***“the concept of market-economic valuation will apply in establishing the disposal price and more than one valuation must be obtained;”***

In a letter, dated the 21st day of October 2009, from the Ministry of Energy and Mining (MEM) to the Development Bank of Jamaica (DBJ), the co-ordinating and implementing agency for privitisation activities, the Ministry upon instructing DBJ to meet with representatives from Hongfan and Port Reliant Limited, advised DBJ of the following:

⁴⁰ Section 4 of the GOJ’s Privatization Policy and Procedures (Ministry Paper #34).

“It is anticipated that the issue of price will be an item for discussion and we are keen to ensure that, if the offer is accepted, the country receives the best value for the shares.”

The OCG is unable to verify whether the second principle was adhered to, based upon the documents submitted. Accordingly, please state whether a valuation was conducted to ascertain the market-economic value of the shares? If yes, provide documentary evidence to support same.

Further, please state the monetary value being paid exclusively for the shares, pursuant to Clause 4 – Consideration, of the Agreement for Purchase of Shares.

- (3) “transactions are to be arms-length and equal opportunity will be given to all except where special foreign exchange requirements are a feature of privatization or where special arrangements are being made for employees;”**

The OCG is unable to verify whether the foregoing principle was adhered to and/or was relevant to the referenced divestment based upon the documents submitted. Please advise the OCG of the adherence to and the extent of the applicability of the foregoing principle to the referenced transaction.

- (4) “as far as possible, parties with likely conflicting interest will not be invited to assist the process in any way.”**

In order to ascertain the foregoing, the OCG hereby requests information with respect to Port Reliant Limited, Hongfan’s exclusive authorized dealer represented by Messrs. Joseph Chang and Gary Ho.

The information should include, at a minimum, the following:

- a. *Details of the legal constitution of the Company, providing particulars of its incorporation documents (inclusive of date and place of incorporation) its principals, its shareholders and its beneficial shareholders;*
- b. *A detailed historical analysis of the business activities of Port Reliant Limited;*
- c. *A copy of the Agency or Brokerage Agreement between Hongfan and Port Reliant Limited; and*
- d. *A copy of the Agency or Brokerage Agreement between Hongfan and Port Reliant Limited specific to the referenced divestment.*

(5) “public announcements will be made when an item is privatized.”

*As evidenced in an article entitled “Alcoa gets 90 days for counter offer, **PM confirms deal with Hongfan for Jamlco [sic] stake**” published in the **Daily Gleaner dated April 21, 2010**, public announcement of the referenced divestment was made in accordance with the foregoing principle.”⁴¹*

It is instructive to note that upon a review of the above-mentioned letter of 2009 October 21, from the former Minister of the MEM, Mr. James Robertson to Mr. Milverton Reynolds, Managing Director, Development Bank of Jamaica (DBJ), the OCG found that the DBJ was advised of the following:

“I have been advised that members of the Hongfan Group of China and representatives of Port Reliant Limited (Hongfan’s agent) are currently in the island to hold discussions on a number of investments/business opportunities, including the Bauxite

⁴¹ Letter from the OCG to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 April 22.

Industry...they specifically wish to advance discussions on Hongfan's offer to purchase the Government's share in Clarendon Alumina Production Limited...

It is anticipated that the issue of price will be an item up for discussion and we are keen to ensure that, if the offer is accepted, the country receives the best value for the shares.

The Prime Minister has accepted a proposal that you lead a team consisting of representatives from the Ministry of Finance and the Public Service, the Attorney General's Department, Development Bank of Jamaica, Clarendon Alumina Production Limited and the Ministry of Energy and Mining, to pursue the discussions with Hongfan, with a view of arriving at a suitable recommendation for Cabinet's consideration.

In the interim, the Ministry of Finance and the Public Service will be formally requested to expedite the due diligence process in this matter..." (OCG's Emphasis)

For the record, the OCG would like to clarify that the Development Bank of Jamaica (DBJ), which has replaced the National Investment Bank of Jamaica (NIBJ), in accordance with Ministry Paper #34, now functions "*...as the Central implementing agency for privatization has the administrative and operational responsibility for effecting privatization in accordance with the broad objectives and principles underlying the programme.*"⁴²

Ministry Paper #34 also outlines that it is for the NIBJ (now DBJ) to conduct the privatization of each enterprise, activity or asset and that the said body is to employ an enterprise team led by the then NIBJ (now DBJ) personnel, officers from appropriate Ministries and selected external consultants.

⁴² Section 6 of Ministry Paper #34, Privatization Policy and Procedure.

Further, and based upon the date of the referenced letter to the DBJ, the OCG found that the MEM made contact with the DBJ to “co-ordinate and implement” the privatization of the GOJ’s shares in CAP before the “*Agreement for Purchase of Shares*” was signed on 2010 March 18.

It is instructive to note that Mrs. Hillary Alexander responded to the OCG’s letter on 2010 May 5, in which she stated, *inter alia*, the following:

- (1) ***“The selection of items to be privatized will be announced to the public by way of advertisements.”***

Note is taken of your comment that the reference principle was not followed by a failure to advertise the divestment of the asset. Be assured, however, that the Agreement for the divestment of the asset was arrived at in good faith after careful consideration of all issues involved. *These included the value of the asset; the fact that the intent to divest was widely known in the local and international bauxite industry; and that it was evident, from discussions with other potential purchasers and relevant industry personnel, that the Government was unlikely to receive more favourable terms and conditions for the purchase of the asset.*

- (2) ***“the concept of market-economic valuation will apply in establishing the disposal price and more than one valuation must be obtained;”***

*In relation to the question whether a valuation was conducted to ascertain the market-economic value of the shares, **please be advised that a valuation was conducted in March 2009 by the international firm of Worley Parsons, of Australia. Worley Parsons arrived at a discounted cash flow valuation of negative USD 235M (as at September 2008).***

In December 2009, a business valuation of CAP was undertaken by the General and Financial Manager of CAP, for the purposes of guiding discussions/negotiations in relation to the contemplated divestment. The business valuation came to a determination of USD 220M as the market value of the shares.

Prior to the Agreement for the divestment of the shares, PriceWaterhouseCoopers was requested to provide a professional opinion on the referenced business valuation, with a view of determining whether it provided an accurate or fairly accurate price for the shares. **PriceWaterhouseCoopers, in its limited critique of the business valuation, cited a value ranging from a low of US \$120M to US \$358M...**

In relation to the request to be advised of the “monetary value” to be “paid exclusively for the shares”, it is assumed that the reference is to the cash value to be paid under the Agreement with Hongfan for the shares. If this assumption is correct the “monetary value” would be US\$240M.

The total value being paid for the shares, however, cannot exclude the value of the supply obligations (approximately US\$170M) Hongfan will assume as a result of existing forward sales obligations held by CAP. These forward sales obligations refer to contractual arrangements under which GOJ received advanced payments for future supplies. Hongfan has agreed to fulfil these future supplies without any rebate or refund obligations (of the advanced payments already received) on the part of the GOJ.

- (3) ***“transactions are to be arms-length and equal opportunity will be given to all except where special foreign exchange requirements are a feature of privatization or where special arrangements are being made for employees;”***

The OCG has asked to be advised of the “adherence to and the extent of the applicability of the foregoing principle to the referenced transaction” and the Ministry is hereby confirming the adherence to the said principle. The transaction was negotiated at arms length. Further, the GOJ did not favour any potential purchaser of the shares. Equal opportunity was afforded to all potential purchasers with the exception of Alcoa limited [sic], by virtue of its contractual right of first/last refusal under the Joint Venture Agreement and other related Agreements with CAP.

(4) “As far as possible, parties with likely conflicting interest will not be invited to assist the process in any way.”

In order to ascertain the foregoing, the OCG has requested information “with respect to Port reliant [sic] Limited, Hongfan’s exclusive authorized dealer represented by Messrs. Joseph Chang and Gary Ho”. The information, it was stated, should include, at a minimum, the following:

- a. details of the legal constitution of the Company, providing particulars of its incorporation documents (inclusive of date and place of incorporation), its principle, its shareholders and its beneficial shareholders;*
- b. a detailed historical analysis of the business activities of Port Reliant Limited;*
- c. a copy of the Agency or Brokerage Agreement between Hongfan and Port Reliant Limited; and*
- d. a copy of the Agency or Brokerage Agreement between Hongfan and Port Reliant Limited specific to the referenced divestment.*

The Ministry / GOJ is not aware of and has no reason to believe that there is or was any conflict of interest among or affecting any of the parties (CAP/GOJ),

Hongfan, Port Reliant) to the Agreement entered into with Hongfan for the purchase of GOJ's shares in CAP. The GOJ has been advised and do verily believe that none of the personnel who participated in this transaction as a representative of one party held any relationship with or obligation to another party to the transaction.

Port Reliant has submitted information in relation (a) but with reference to the information requested at (b) through to (d), inclusive, Port Reliant has advised that the information is of a confidential nature between Port Reliant and the related contracting parties and, as such, Port Reliant is unable to disclose the information...⁴³(OCG's Emphasis)

Subsequent to the foregoing response, the OCG received a copy of a letter from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 May 5, that was submitted to the MEM by Mr. Joseph Chang, Director, Port Reliant Limited, and which stated, *inter alia*, the following:

"Per your letter of May 3, 2010, we have been advised by counsel that the Office of the Contractor General ("OCG") does not have jurisdiction over the transaction since it does not fall within the definition of "government contract". Moreover most of the information requested is bound by confidentiality agreements which prohibit disclosure to third parties. Nevertheless in the spirit of cooperation we provide the following:

- *Port Reliant Limited ("Port Reliant") is a BVI company specifically established to facilitate investment opportunities internationally from China*
- *Port Reliant is Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited's ("Hongfan's") exclusive agent for Jamaica*
- **Port Reliant has no Jamaican officers, principals, shareholders or beneficiary shareholders**

⁴³ Response which was received from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, on 2010 May 5.

- *In reference to the Gleaner article of March 26, 2010, Chinese firm bids for stake in Jamalco, Ray Chang is not an officer, principal, shareholder or beneficiary shareholder of Port Reliant...*⁴⁴ (OCG's Emphasis)

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

1. That the divestment of the 45% CAP shares in Jamalco was not advertised as per the provisions of Ministry Paper # 34.
2. That based upon the assertion of Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, the GOJ had no reason to believe that *“there is or was any conflict of interest among or affecting any of the parties (CAP/GOJ), Hongfan, Port Reliant) to the Agreement entered into with Hongfan for the purchase of GOJ's shares in CAP.”*
3. That the *“...GOJ has been advised and do verily believe that none of the personnel who participated in this transaction as a representative of one party held any relationship with or obligation to another party to the transaction.”*
4. That Port Reliant Limited, agent of Hongfan, was established in the British Virgin Islands (BVI). The OCG found that Mr. Joseph Chang also informed the GOJ that none of the officers, principals, shareholders or beneficial shareholders of Port Reliant Limited are Jamaicans.
5. The OCG has noted Mr. Joseph Chang's assertion that Mr. Raymond Chang is neither an officer, principal, shareholder nor beneficial shareholder of Port Reliant Limited.

⁴⁴ Letter from Mr. Joseph Chang, Director, Port Reliant Limited, to the MEM, which was dated 2010 May 5.

MEM's Valuation Reports of CAP's 45% Shares in Jamalco

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG, which was dated 2010 May 5, provided a copy of, *inter alia*, certain Valuation Reports which were reportedly prepared for and on behalf of the GOJ, as it regards CAP's 45% shares in Jamalco.

Upon a review of the referenced Valuation Reports, the OCG found, *inter alia*, the following:

1. A Report which was prepared by Worley Parsons, which was entitled "*Clarendon Alumina Production Ltd Jamalco Asset Valuation*", and which was dated 2009 March 30.

The referenced Report outlined in its "*Summary of Principle Findings*", the following, amongst other things:

"The effective date of this valuation is June 30, 2008...We have attempted to assess the fair market value of the operations on a discounted cashflow basis. Many assumptions were made with the key assumptions for the valuation calculations..."

This valuation is being provided at a time of volatile world financial markets and in particular there has been significant recent volatility in prices of both oil and alumina, and the future forecast values for these commodities have a profound effect on the valuation as compared with what may have been calculated at any time over the last several years. There are therefore corresponding limitations on the accuracy of this valuation.

The alumina price used in the valuation obtained from analysts Brook Hunt and Associates is generally derived from assumptions used in their supply/demand balance forecasts for both aluminium metal and alumina...

Whilst the estimated life of the asset is greater than 20 years, the uncertainty of the forecast cash flows and projected commodity prices increases with the length of the projected period. We have therefore made our discounted cash flow calculations on the basis of a 20 year period with any residual value of the enterprise assumed to be offset by closure costs...

Based upon the key assumptions...the discounted cash flow calculations returned a present value of the enterprise of USD153million. A sensitivity analysis for this calculation was carried out generally using a +/- 10% range on the predominant operating cost inputs and the alumina price. The results of the sensitivity analysis...indicated a significant range of enterprise value around a +/- 10% alumina price range...

The discounted cash flow calculations is based on oil prices derived from a forward loading curve quotation dated September 17th however based on an oil price quotation from the same source received on September 4th, the discounted cash flow calculation returned a valuation of negative USD235million - a decrease of some USD300million. This is reflective of the current extreme volatility in world markets...

The discounted cash flow calculations assumes the Jamalco enterprise will continue to operate as it currently operates and will not react to market cost pressures. A review of options for changing the enterprise business case has not been carried out...however there may be a number of opportunities to improve the value of the Jamalco enterprise.

At this time and in consideration of all the above without further evaluation it is believed the valuation for the overall Jamalco enterprise is a nominal positive value. The quantum of this value will depend upon:

- *The relative motivations of buyer and seller;*
- *The ability of the buyer to positively influence the future performance of the asset; and*
- *The strategy and expectations of both buyer and seller with regard to alumina and energy price exposure.*

Worley Parsons does not have an independent view on the linkage between aluminium and energy pricing. Input was sought from Brook Hunt on this subject...they concluded that the correlation was weak...⁴⁵

2. An Internal Report that was prepared by CAP, which was entitled “*Valuation of the Company’s Shares*”, and which was dated 2010 February. The referenced Report outlined, *inter alia*, the following:

“Clarendon Alumina Production has been valued from two perspectives:

Option 1

The first looks at the Company as a going concern. The administrative structure and Balance Sheet with the accumulated tax loss asset and the debt portfolio are carried forward...

The present value of Clarendon Alumina Production shares under Option 1 is a negative US\$62 million...

Option 2

The second option assumes that the acquiring entity purchases CAP’s shares after its debt has been discharged and the tax loss benefit removed from the

⁴⁵ The “*Summary of Principle Findings*” of Report which was prepared by Worley Parsons which was entitled “*Clarendon Alumina Production Ltd Jamalco Asset Valuation*” and which was dated 2009 March 30.

Balance Sheet. It also assumes that a new head office infrastructure is established by the new owners.

The net present value of the Company under option 2 is UD [sic] \$220 million...⁴⁶

3. The Report which was prepared by PriceWaterhouseCoopers, and which was entitled “*Limited Critique of a Valuation of the Government of Jamaica’s Shareholding in Clarendon Alumina Production Limited*”, that was submitted under the cover of a letter which was dated 2010 March 17, outlined, *inter alia*, the following:

“The purpose of this limited critique is to provide our comments and observations with respect to the Original Report submitted to Cabinet. Accordingly, it should not be construed as our considered conclusion of value or an endorsement of the conclusion set out in the Original Report. The limited critique does not contain all adjustments that may have been found necessary had we conducted a valuation of the shares. Accordingly, if we were to conduct a valuation of the shares, we may arrive at a conclusion of value that is materially different from the Original Report or adjusted value arrived at herein given the increased scope of work, level of analyses and corroboration of information that would be required to conduct same. Please note that PriceWaterhouseCoopers are the independent auditors of CAP and Jamalco...

It is our understanding that CAP’s equity comprises ordinary shares of which GOJ is the beneficial owner. CAP’s primary business is the sale of alumina produced by Jamalco, a cost-sharing venture, between CAP and Alcoa Minerals of Jamaica...

⁴⁶ Internal Report that was prepared by CAP, which was entitled “*Valuation of the Company’s Shares*”, and which was dated 2010 February.

We observed that the following significant key assumptions were used in arriving at the conclusion of value in the Original Report:

- a. A new owner of the business would not be entitled to utilise existing accumulated tax losses brought forward (approximately US\$276 million as at 31 March 2009);*
- b. The conclusion of value does not take into consideration any expansion of the refinery capacity beyond the existing capacity of 1.42 million metric tonnes. No major capital expenditure has been considered during the 20 year projected period;*
- c. The refinery would achieve 100% capacity utilisation during the projected period and CAP would be able to sell its allocated portion of alumina (637,500 metric tonnes per year);*
- d. The existing debt of the Company will be transferred to GOJ;*
- e. Inflationary adjustments to expenses in US dollars will be minimal on the basis that any significant local inflation would be compensated for by a devaluation of the local currency;*
- f. Depreciation charges approximates to capital allowances for tax purposes;*
- g. The forecasted alumina price is 13% of the average of forecasted aluminium prices from various sources over the projection period for the excess of its output over that required to fulfil forward contracts. The forward contract price is used for output to be sold under forward contract arrangements.*

- h. A new owner would incur higher administration expenses than CAP's current levels. This is based on the reasoning that a new owner would not have the benefit of certain government services/resources available at their disposal; and*
- i. There would be minimal value beyond the 2029 projection horizon...*

Valuation Issues

Concept of value

The Original Report did not explicitly state the definition of value used...However based upon our discussion with the General and Financial Manager it is our understanding that the valuation was based on the fair market value concept.

Depreciation

In the Original Report, the depreciation charge was understated because no depreciation was computed brought forward net book values.

The impact of including this depreciation on value is an increase in value of approximately US\$11 million.

Working Capital

In the Original Report, there was an assumption that there would be no working capital requirement during the 20 year projected period.

A computation of working capital requirements using 2009 as a base year and holding the payable, receivable and inventory days constant would result in a decrease in value of approximately US\$8 million.

Discount rate

We observe that a discount rate/cost of equity of 9% was utilized in the Original Report.

However, we are of the view that a higher discount rate would be more appropriate when taking into consideration factors such as country risk, market risk, commodity price risk, and CAP's minority position in Jamalco. Use of a 12% discount rate would result in a decrease in value of approximately US\$122 million.

Terminal value

We observe that no terminal value was computed for operations beyond the 20 year projection period...While we understand the difficulty in quantifying the terminal value, we believe its inclusion could materially affect the valuation...

Sensitivity analysis

We observed that in deriving the conclusion of value, no sensitivity analysis was conducted. This is a typical test conducted to test the impact on value from changes in key value drivers/assumptions. Accordingly, the impact of the varying the assumed alumina prices was assessed by applying a low and high price range, based on BATCO and Royal Bank of Scotland quotes, respectively. While we did not validate these sources, the impact of this analysis has been

included herein. The value would range from a low of US\$120 million to a high of US\$358 million, respectively under the low and high price scenarios.

Conclusion

...the adjustments or use of alternative assumptions to those used in the Original Report...if applied, would have adjusted the value in the Original Report to US\$179 million and would result in a range of value of approximately US\$120 million to US\$358 million...⁴⁷ (OCG's Emphasis)

It is also instructive to note that Mr. Winston Hayden, General Manager, CAP, in his response to the OCG's Statutory Requisition, which was dated 2011 January 20, advised the OCG that the business valuation exercise was led by him. Mr. Hayden also informed the OCG of, *inter alia*, the following:

"...I used technical information available from the Jamalco performance and planning data and which was reviewed and set out with the assistance of Mr. Worrell Lyew You, Director of Projects Monitoring at the Jamaica Bauxite Institute. I also used, where applicable, background technical information that Jamalco made available to Worley Parsons in a valuation exercise conducted in about August 2008 and reflected in their report dated March 2009.

Mrs. Nicola Mighty Dorman, CAP's accountant prepared financial tables using information from CAP's financials, the Jamalco capital (long term) budget, assumptions arrived at from the exercise Mr. Lyew You and I conducted and the loan and other arrangements affecting CAP. This was done with my guidance.

⁴⁷ The Report which was prepared by PriceWaterhouseCoopers, and which was entitled "*Limited Critique of a Valuation of the Government of Jamaica's Shareholding in Clarendon Alumina Production Limited*", of the CAP's business valuation, that was submitted under the cover of a letter, which was dated 2010 March 17.

I received further assistance from Mr. Peter Llewellyn, Computer Operator/Statistical Assistant of the Jamaica Bauxite Institute. This was substantially in the form of assistance using computer software to calculate results based on information provided by me.

The alumina market assumptions were arrived at using primarily information provided by Mr, Kassim Morrison, Market Analyst of BATCO. The information he provided was from various industry sources that had published projections.

*Price projections provided by Mr. Michael Mitchell, Senior Market Analyst of the Jamaica Bauxite Institute were also used.*⁴⁸

Based upon the foregoing, the OCG found that the MEM undertook two (2) valuations, as follows:

- i. March 2009 – Valuation prepared by the international firm of Worley Parsons of Australia.

The Valuation which was undertaken by Worley Parsons which became effective on 2008 June 30, and which was prepared to assess the fair market value of the operations on a discounted cash flow basis revealed, *inter alia*, that the discounted cash flow calculations were “...based on oil prices derived from a forward loading curve quotation dated September 17th however based on an oil price quotation from the same source received on September 4th, the discounted cash flow calculation returned a valuation of negative USD235million - a decrease of some USD300million...”

- ii. December 2009 - a business valuation of CAP was undertaken by Mr. Winston Hayden, General and Financial Manager, CAP, for the purposes of guiding

⁴⁸ Response from Mr. Winston Hayden, General Manager, CAP, which was dated 2011 January 20. Response #9

discussions/negotiations in relation to the contemplated divestment. According to the Permanent Secretary in the MEM, *“The business valuation came to a determination of USD\$220M as the market value of the shares.”*

The OCG was further advised by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG, which was dated 2010 May 5, that prior to the Agreement for the divestment of the shares, *“...PriceWaterhouseCoopers was requested to provide a professional opinion on the referenced business valuation, with a view of determining whether it provided an accurate or fairly accurate price for the shares. PriceWaterhouseCoopers, in its limited critique of the business valuation, cited a value ranging from a low of US \$120M to US \$358M...”*⁴⁹

⁴⁹ Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 May 5. Response #2

Affiliations between Mr. Howard Mitchell, Mr. Raymond Chang, Mr. Joseph Chang and Mrs. Thalia Lyn

Further to the previously mentioned Gleaner article of 2010 March 26, which was entitled “*Chinese firm bids for stake in Jamalco*”, and which suggested that “*Hong Fan is working on the deal with Ray Chang*”, the OCG, in an effort to ascertain the veracity of same, requisitioned several other former Public Officials/Officers to testify whether they were aware of and/or had any discussions with a Mr. Raymond Chang, regarding Hongfan’s proposed offer to purchase the 45% CAP Shares in Jamalco.

The OCG, in its Statutory Requisition to Dr. Carlton Davis, in his capacity as the former Chairman of the JBI, which was dated 2010 December 23, posed the following question:

“Did you, at any point in time, have any discussion with Mr. Raymond Chang and/or Mr. Joseph Chang with regard to an alumina purchase deal which was to be undertaken by the GOJ? If yes, please provide the following particulars and answers to the respective questions:

- i. The particulars and circumstances surrounding the discussion(s);*
- ii. The date(s) on which the discussion(s) with regard to the same was/were undertaken;*
- iii. State who initiated contact with regard to the discussion(s);*
- iv. State whether you formally met with Mr. Raymond Chang and/or Mr. Joseph Chang and the date(s) on which such a meeting was convened in each instance;*
- v. The name(s) and title(s) of the individual(s) who were present for such discussions;*

- vi. *The actions which were taken by the GOJ and/or the MEM subsequent to such discussions;*
- vii. *State on whose behalf were Mr. Raymond Chang and/or Mr. Joseph Chang acting in the referenced discussions;*
- viii. *State whether there were any discussions with regard to Port Reliant and detail the nature of such discussions and the circumstances relating to the same;*
- ix. *State whether you gave instructions to any GOJ Official and/or Officer with regard to initiating follow-up contact and/or negotiations with Mr. Raymond Chang and/or Mr. Joseph Chang. If yes, please provide full particulars of the same and the name(s) and title(s) of the person(s) to whom such instructions was/were issued;*
- x. *Any other relevant particulars which are pertinent to the discussions.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁵⁰

Dr. Carlton Davis, in his capacity as the former Chairman of JBI, in his response to the OCG's Statutory Requisition, which was dated 2011 January 17, stated the following:

"I have no recollection of any discussion with Mr. Raymond Chang in regard to alumina purchase. As I have indicated earlier Mr. Joseph Chang was involved in meetings with Zhuhai Hongfan."⁵¹

⁵⁰ OCG's Statutory Requisition to Dr. Carlton Davis, in his capacity as the former Chairman of the JBI, which was dated 2010 December 23. Question #19

⁵¹ Response from Dr. Carlton Davis, the former Chairman of JBI, which was dated 2011 January 17. Response # 19

It is instructive to note that Dr. Davis also advised the OCG, in his referenced response, of the following:

“I know Mr. Raymond Chang as a prominent and wealthy Jamaican Canadian. We have had discussions a few times in respect of his interest in agricultural and agro-industrial businesses as well as an interest he had in transporting natural gas in the compressed form (CNG).

I cannot recall when I first had a conversation with him but I know I did have a breakfast meeting with him in Toronto in December 2006, where I was attending a forum put on by Jamaica National Building Society.

I know, though I was not involved in the discussions, that he gave JBI a plant nursery.

I have met Joseph Chang at various times since I began my periodic involvement in the discussions between the Government of Jamaica and Zhuhai Hongfan. I may have met him before but I cannot recall. He would call me from time to time particularly in seeking to understand the concept of ‘virtual equity’ in respect of Zhuhai Hongfan acquiring CAP’s equity in JAMALCO...⁵² (OCG’s Emphasis)

The OCG also asked other Public Officials/Officers, inclusive of Mr. Peter Millingen, Chairman, CAP; Mr. Glenford Watson, then Senior Legal Counsel, MEM; and Mr. Parris Lyew-Ayee, Executive Director, JBI, of their awareness of Mr. Raymond Chang and whether he was in any way involved in and/or associated with the GOJ’s proposal to divest CAP’s 45% share in Jamalco.

Mr. Parris Lyew-Ayee, Executive Director, JBI, in his sworn testimony to the OCG, which was dated 2011 February 3, indicated that Mr. Raymond Chang, Mr. Joseph Chang and Mrs. Thalia

⁵² Response from Dr. Carlton Davis, the former Chairman of the JBI, which was dated 2011 January 17. Response # 24

Lyn are his cousins. However, Mr. Lyew-Ayee informed the OCG, *inter alia*, that “*I discuss only family matters with my cousins...*”⁵³

It is also instructive to reiterate that Mr. Howard Mitchell, former Chairman of JBM and BATCO, in the meeting with the OCG which was held on 2009 April 24, and which was formally communicated to the former Permanent Secretary, Ms. Marcia Forbes, by way of a letter which was dated 2009 April 27, had advised the OCG, *inter alia*, that “*...Port Reliant has Principals and/or Shareholders who are Jamaicans and that Port Reliant has only three (3) years prior experience in business. Two of the names that were called, in the foregoing regard, were Mr. Gary Hoo [sic] and Mr. Raymond Chang, who, Mr. Mitchell stated, was the brother of Jamaican Businesswoman Mrs. Thalia Lyn.*”⁵⁴

Mr. Howard Mitchell, who was asked a similar question with respect to his awareness of Mr. Raymond Chang, in his response to the OCG, which was dated 2010 October 11, identified Mr. Raymond Chang and Mr. Joseph Chang as the brothers of Mrs. Thalia Lyn, business owner of the Company of the Island Grill Chain.

Mr. Mitchell advised the OCG that he was the Chairman of the Board of the Company of the Island Grill Chain and had offered legal advice to Mrs. Thalia Lyn regarding the establishment of same.

Mr. Howard Mitchell, in his referenced response to the OCG, also indicated that (a) he was introduced to Mr. Joseph Chang by his sister, Mrs. Thalia Lyn, with whom he has had a friendship since 1986, (b) that he has known Mr. Joseph Chang since 1988 and (c) that though he had never had a business relationship with Mr. Joseph Chang, he “*may have given him legal advice or performed minor legal services for him from time to time.*”⁵⁵

⁵³ Response from Mr. Parris Lyew-Ayee, Executive Director, JBI, which was dated 2011 February 3. Response #24(b)

⁵⁴ Letter from the OCG to the then Permanent Secretary in the MEM, which was dated 2009 April 27, following discussions which were had in the meeting of 2009 April 24.

⁵⁵ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #25

In regard to Mr. Mitchell's knowledge and/or association with Mr. Raymond Chang, he advised the OCG, *inter alia*, that *"I have known Gladstone Raymond Chang since the latter part of 1964. We were schoolmates...I consider G. Raymond Chang to be one of my closest personal friends and continue to be associated with him in a number of business ventures."*⁵⁶

Further, Mr. Howard Mitchell advised the OCG, that he *"...first knew of Joseph Chang's involvement with Port Reliant in or about January of 2008...**when he approached me in my capacity as Chairman of the JBM and BATCo expressing interest on behalf of (their unnamed) Chinese investors in Jamaica's bauxite and alumina industry.** I was introduced socially to Mr. Gary Ho by Mr. Joseph Chang sometime in 2008. He was then introduced as a Hong Kong businessman with strong investor contacts who was visiting Jamaica to explore its investment potential. Subsequently, I think in March 2009, it was disclosed to me that he was a Principal in Port Reliant Ltd."*⁵⁷ (OCG's Emphasis)

Of note, however, Mr. Howard Mitchell, in his referenced sworn response to the OCG, also stated, *inter alia*, that *"I am not aware of and have no knowledge of Mr. Raymond Chang's involvement in this matter save and except...two emails, dated April 8, 2009 from Gary Ho to Hugh Hart and copied to Ray Chang; and from Ray Chang to Howard Mitchell and copied to Gary Ho and Joe Chang. The emails referenced a "deadlocked" situation between the GOJ and Hongfan/Port Reliant and put forward the need for meeting to resolve the deadlock. **I also recollect being asked by Mr. Raymond Chang on more than one occasion questions related to the progress of the negotiations. I presume that his interest arose because Joseph Chang is his brother.**"*⁵⁸ (OCG's Emphasis)

Upon a review of certain email correspondence which were submitted by the former Permanent Secretary, Ms. Marcia Forbes, in her response to the OCG's Statutory Requisition, which was

⁵⁶ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #25(a)

⁵⁷ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #7(ii)

⁵⁸ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #9(vi)

dated 2010 June 29, the OCG noted that two (2) other email correspondence were sent from Mr. Gary Ho of Port Reliant Limited, regarding Hongfan's offer, and which were copied to, amongst other persons, Mr. Raymond Chang, as follows:

1. An email, which was dated 2009 March 29, sent from Mr. Gary Ho to Mr. Hugh Hart and which was copied to Mr. Joseph Chang, Dr. Carlton Davis, Ms. Marcia Forbes, "Mr. Ray Chang", et. al., and which was captioned "Re: Hong Fan Offer and Next Steps" stated the following:

"Dear Hugh,

We're working with HF over the weekend on a response to your email which outlined your sides' thinking. A critical piece of missing information needed urgently for our response is the price for the 500,000 tonnes of spot alumina. I confirm that our offer price is US\$155/tonne (the same as we offered to you in Beijing), we need your acceptance of this price now. Then we will respond with our proposed steps etc. for the long-term transaction (virtual equity) very quickly."

2. Email, which was dated 2009 March 31, sent from Mr. Gary Ho to Mr. Hugh Hart and which was copied to "Ray Chang", Mr. Howard Mitchell, Ms. Marcia Forbes, Dr. Carlton Davis, Mr. Joseph Chang, et. al., and was captioned "Re: Hong Fan Offer and Next Steps (Priority)". The referenced email correspondence detailed Hongfan's proposal, and stated, *inter alia*, the following:

"Further to your mail dated 25 March 2009 and my mail to you dated 29 March 2009, based on our internal discussions I am now writing to set out our proposed procedure for completion of the alumina spot and long-term transactions.

I start by confirming the main points of our discussion in Beijing. One, we are prepared to buy spot alumina immediately (“Spot Purchase”) to support the Jamaican alumina sector whilst we negotiate a long-term alumina supply agreement. Two, we are proposing to acquire CAP to secure a long-term supply of alumina (“CAP Transaction”). Three, after the Spot Purchase and CAP Transaction are completed, we will consider other projects that secure additional long-term supplies of alumina and/or lower the cost of production (“Other Projects”).

More than US\$600 million (“Transaction Funds”) has been secured for the CAP Transaction and for Other Projects. Our objective is to obtain not less than 40 million tonnes alumina (in addition to the spot alumina mentioned in (1) below) within a period of not more than 25 years. The funding for the Spot Purchase is separate from the Transaction Funds.

The immediate prerequisite is to complete the Spot Purchase Order so that we will establish the trading relationship straightaway.

(1) SPOT PURCHASE – the purchase of 500,000 tonnes of alumina for delivery within calendar year 2009.

We have lower cost alternative suppliers for spot, however we are ready to sacrifice in the short-term for the long-term positioning. The Spot Purchase can be completed in a matter of days, we expect the CAP Transaction will require 12 to 18 weeks to complete including a quick due diligence.

We are prepared to commit to the Spot Purchase to maintain the on-going operation of Jamalco, on the condition that we are granted a 6-month exclusivity on GOJ’s alumina holdings (i.e., GOJ’s equity in CAP and in Windalco), to secure our position throughout the due diligence. Next steps:

- *Written acceptance of our offer price of US\$155/tonne for 500,000 tonnes of alumina*
- *Written acceptance of our exclusivity requirement on GOJ's CAP and Windalco shares*
- *Confirmed Purchase Order with specific terms and conditions as suggested by Hongfan*
- *Issuance of Letter of Credit*

(2) CAP TRANSACTION – securing GOJ's 45% share of Jamalco (637,500 tonnes of alumina p.a.) through either a “virtual equity” or equity transaction

As stated in our March 11, 2009 offer, “Hongfan will, subject to due diligence, provide up to US\$275 million (“prepayment”) to GOJ to : a) Secure CAP's share of JAMALCO output for a period of not less than 20 years; and b) Secure the early release of GOJ's forward contracts with Glencore.”

Regarding the financing for the CAP Transaction, our banker's are standing by to address your questions. We will provide further support once exclusivity is secured and confirmed terms are agreed. Next steps:

- *Hongfan provides bank contact information*
- *Agree on the form and details of the support/structure required to give comfort: to GOJ that the “definitive steps involving both Glencore and Alcoa” may proceed; and, to Hongfan that the payments to Alcoa, Glencore and Port Reliant required to complete the CAP Transaction are fulfilled*
- *GOJ provides their response to Hongfan's offer, among the core items to address is GOJ's preferred structure for the transaction. In Beijing Hongfan presented two structures, virtual equity and equity; GOJ must now state their position*
- *GOJ provides Glencore's acceptance of the proposal and their requirements*

- *GOJ advises on: 1) Alcoa's plans to keep Jamalco open and if so at what level of production, and/or 2) Alcoa's plan on disposing its equity in Jamalco*
- *Achieve agreement on terms and conditions*
- *Hongfan conduct due diligence*
- *Agree and sign on contract*
- *Funding and payment to the transaction parties – Alcoa, Glencore, GOJ, Port Reliant*

3) OTHER PROJECTS – to secure additional long-term supplies of alumina and to reduce the cost of production

We will subject to due diligence consider other projects that secure more long-term supplies of alumina, in addition to the 637,500 tonnes p.a. from the CAP Transaction, and reduce the cost of production of the alumina supplies that have been secured. Industry sources suggest that Alcoa has a strong intention to close down Jamalco or dispose its shares. Subject to agreement with Alcoa, we would consider acquiring additional alumina from Jamalco using an approach similar to the CAP Transaction.

We would also consider an energy project that would lower the cost of production at Jamalco....As I mentioned to you in earlier emails, we are pressed for time to complete the spot purchase and the transactions mentioned above. A decision has to be made within this week.”

The OCG has noted that the subsequent responses to the email correspondence of 2009 March 31 and 2009 April 1, respectively, which were sent by Mr. Hugh Hart to Mr. Gary Ho, were not copied to Mr. Raymond Chang.

Nevertheless, based upon the information which was shared in the referenced email correspondence from Mr. Gary Ho to Mr. Hugh Hart, which detailed Hongfan's propositions to the GOJ, it is apparent that Mr. Raymond Chang was provided with sufficient information and,

therefore, had knowledge of the offer which was submitted by Hongfan for both the Spot Purchase of Alumina and the proposed purchase of the 45% CAP shares in Jamalco.

It is instructive to note that the former Prime Minister, the Hon. Bruce Golding, in his, response to the OCG of 2010 October 20 stated, *inter alia*, the following:

*“I am aware that Mr. Raymond Chang is a brother of Mr. Joseph Chang who is a representative of Port Reliant. I met with them at their request on April 22, 2009. The discussions focused on Zhuhai Hongfan’s proposed commission payment to Port Reliant by the GOJ; Zhuhai Hongfan’s spot purchase of alumina; and the proposed virtual equity investment in CAP. **In a subsequent e-mail from Raymond Chang he acknowledged that the commission matter would be referred to the OCG and the spot purchase of alumina and investment in CAP would have to be discussed with representatives of the GOJ/MEM team.** I am not aware of any further involvement by Mr. Raymond Chang.”*⁵⁹(OCG’s Emphasis)

Interestingly, the then Contractor General of Jamaica, Mr. Greg Christie, received a telephone call on the night of 2009 May 14 at approximately 9:22 p.m. from Mrs. Thalia Lynn, the sister of both Mr. Joseph Chang and Mr. Raymond Chang. By way of a File Note which was written on 2009 May 15, the Contractor General advised of, *inter alia*, the following:

*“**...Mrs. Lynn [sic] told me that she was reluctantly calling me on a business matter which related to her two brothers who are involved in a proposed alumina purchase deal which is to be undertaken by the Government of Jamaica. Mrs. Lynn [sic] said that her brothers had met with the Prime Minister regarding matters concerning the proposed deal and he had advised them that he had instructed the Mining Permanent Secretary and Mr. Howard Mitchell, the Chairman of JBM and BATCO, to meet with the Contractor General on the matter. She said that she was told that both***

⁵⁹ Response from the Hon. Bruce Golding, former Prime Minister of Jamaica, which was dated 2010 October 20. Response #10(vii)

persons had met with me and that her brothers wanted to know what the concerns I had about the matter so that they could address them. I told Mrs. Lynn [sic] that I am bound by confidentiality rules which prevented me from discussing the matter with her or with her brothers. I, however, confirmed that I had met with the Mining Permanent Secretary and Mr. Howard Mitchell and had subsequently written to them on the matter and that I would suggest that either her or her brothers may wish to contact either or both of these persons to be guided regarding the matter.”⁶⁰ (OCG’s Emphasis)

Based upon the foregoing, and in a further attempt to ascertain the relationships between Mr. Howard Mitchell, Mr. Joseph Chang, Mr. Raymond Chang, Mrs. Thalia Lyn and their possible involvement and/or affiliation with the referenced divestment, the OCG requisitioned Mrs. Thalia Lyn on 2011 April 21.

In its referenced Statutory Requisition to Mrs. Thalia Lyn, the OCG posed, *inter alia*, the following questions:

1. “What is the extent of your knowledge of the proposal to divest the Government of Jamaica’s (GOJ’s) forty-five percent (45%) share in Jamalco to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (hereinafter referred to as Zhuhai Hongfan)? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.
2. What is the extent of your knowledge of Port Reliant Ltd.’s involvement in the proposal to divest the GOJ’s forty-five percent (45%) share in Jamalco to Zhuhai Hongfan? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.

⁶⁰ File Note written by the Contractor General of Jamaica on 2009 May 15, regarding telephone conversation with Mrs. Thalia Lyn, owner of the Company of the Island Grill Chain and sister of both Mr. Raymond Chang and Mr. Joseph Chang.

3. *What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Zhuhai Hongfan, which was previously and/or is currently being contemplated? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.*

4. *What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Port Reliant Ltd., which was previously and/or is currently being contemplated? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.”⁶¹*

Mrs. Thalia Lyn, in her response to the OCG, which was dated 2011 May 9, stated, *inter alia*, the following:

*“I have no knowledge of any of the matters the subject of your Requisition/Questions Nos. 1 to 4 save and except that **I knew that my brother Joseph Chang intended to get involved in some way with the divestment of the Government’s Shares in Jamalco.**”⁶²*

(OCG’s Emphasis)

It is instructive to note that Mrs. Thalia Lyn, in her response to the OCG, confirmed making contact with the Contractor General by way of a telephone conversation, in which she stated, *inter alia*, that “...**the purpose of which was intended to be a character reference for my brother Joseph Chang** who does not reside in Jamaica and would therefore be unknown to the Contractor General. I do not remember the date or other contents of that telephone conversation which I considered to be innocuous, and **the telephone call was not made on**

⁶¹ OCG’s Statutory Requisition to Mrs. Thalia Lyn, which was dated 2010 April 21. Questions #1-4

⁶² Response from Mrs. Thalia Lyn, which was dated 2011 May 9. Response #1

behalf of anyone other than my brother Joseph Chang who was the only other person who knew of same. I have no documentary evidence in relation thereto.”⁶³ (OCG’s Emphasis)

Of note, Mrs. Lyn also confirmed her social and business relationship with Mr. Howard Mitchell and indicated that she became acquainted with Mr. Gary Ho of Port Reliant Limited through her brother, Mr. Joseph Chang.

It is instructive to note that Mr. Howard Mitchell, in his sworn response to the OCG, which was dated 2010 October 11, stated that *“I am not aware of and have no knowledge of Mrs. Thalia Lyn having any involvement, whether direct or otherwise in the negotiations/discussions with Hongfan/Port Reliant **save and except emails of September 24th and 25th 2008 (Joseph Chang/Marcia Forbes) which made reference to Joseph Chang being referred to Marcia Forbes by Thalia Lyn.**”*⁶⁴ (OCG’s Emphasis)

It is instructive to note that Mr. Howard Mitchell, informed the OCG, in his referenced sworn testimony that he *“...took no further part in these discussions or spoke to any of the issues arising subsequent to May 2009 as I withdrew from the matter entirely consequent upon a meeting with the Contractor General.”*⁶⁵

The OCG, received a copy of the referenced email of 2008 September 24, from the former Permanent Secretary, Ms. Marcia Forbes, in her response to the OCG, which was dated 2010 June 29. The referenced email from Mr. Joseph Chang to Ms. Marcia Forbes, and which was copied to Mr. Gary Ho, stated, *inter alia*, that **“I have been referred to you by my sister Thalia Lyn and am writing to introduce myself and a US\$600,000,000 alumina/energy project that my firm, Port Reliant Ltd., has been working on with the Ministry of Mining and Batco. This is a matter of great urgency as almost one year has passed since our proposal was first**

⁶³ Response from Mrs. Thalia Lyn, which was dated 2011 May 9. Response #2

⁶⁴ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #9(ix)

⁶⁵ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #1

*presented and we still have not received answers to several key questions...*⁶⁶(OCG's Emphasis)

It is instructive to note that Mr. Howard Mitchell, former Chairman of JBM and BATCO, in his response to the OCG's Statutory Requisition, which was dated 2011 October 11, further advised the OCG that **"...Joseph Chang's brother, Mr. G. Raymond Chang is my close friend and business partner..."**⁶⁷ (OCG's Emphasis)

The referenced assertion by Mr. Howard Mitchell was in fact corroborated by the OCG which, during the course of the discharge of its statutory mandate was in possession of documentation which spoke to the business relationship which existed between Mr. Howard Mitchell and Mr. Raymond Chang. In this regard, the documentation which was provided to the OCG advised that Mr. Raymond Chang and Mr. Howard Mitchell had a registered entity in St. Lucia, known as *"CorrPak (St. Lucia) Limited"*.

It must be noted that by way of a Jamaica Gleaner article, which was entitled ***"Box Plant investment paying off for Corpak [sic]"***, and which was published on 2006 October 27, the OCG found that *"Corrpak was created in 2004 as the manufacturing arm of Commercial Holdings Limited (CHL). **Corrpak and CHL are owned by Mitchell, majority shareholder Charles Lym who started CHL in 1971, and Canadian business mogul, G. Raymond Chang...**"* (OCG's Emphasis)

The OCG conducted a company search on the Office of the Registrar Companies of Jamaica website on 2011 December 28, and found active two (2) companies, as follows:

1. Corrpak Jamaica Limited; and
2. Corrpak (St. Lucia) Limited.

⁶⁶ Email from Mr. Joseph Chang to Ms. Marcia Forbes, and which was copied to Mr. Gary Ho, which was dated 2008 September 24.

⁶⁷ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #7

The Directors of Corrpak Jamaica Limited are as follows:

- James Chen
- Charles Lym (ceased)
- Colin Lym (ceased)
- Martin Lym (ceased)
- Norma Lym (ceased)
- Geoffrey Messado
- Howard Mitchell

The Shareholders of Corrpak Jamaica Limited are as follows:

- Corrpak (St. Lucia) Limited
- Charles Lym (ceased)
- Norma Lym (ceased)

The Directors of Corrpak (St. Lucia) Limited are as follows:

- Gladstone Chang
- Howard Mitchell

Upon review of the information from the Registrar of Companies of Jamaica website, the OCG found the following:

1. There were no available particulars regarding the shareholders, beneficial or otherwise of Corrpak (St. Lucia) Limited.
2. A copy of the St. Lucia Certificate of Incorporation of Corrpak (St. Lucia) Limited, which bore an incorporation date of 2006 August 10.

3. That the company, Corrpak Jamaica Limited, had an incorporation date of 1971 May 11.
4. That the company nature of Corrpak (St. Lucia) Limited is detailed on the referenced website as “Management Consultants”.
5. That Corrpak (St. Lucia) Limited had an ‘incorporation date’ in Jamaica of 2006 August 28.

Ms. Marcia Forbes, in her response to an OCG Requisition, which was dated 2010 June 29, provided the OCG with a copy of an email correspondence, which was dated 2009 April 27, that was sent by Mr. Joseph Chang to Mr. Howard Mitchell, and which was copied to the Cabinet Secretary, Dr. Carlton Davis and herself, amongst others.

Interestingly, the referenced email correspondence stated, *inter alia*, that “**Ray Chang is a consultant to Port Reliant.** *Ray is Chairman of the Board of Directors of CI Fund Management Inc. He is also a private equity investor with extensive management, operational and investment experience in North America, China and the Caribbean.*” (OCG’s Emphasis)

Having regard to the foregoing, the OCG found the following to be of significant interest:

1. That Mr. Gladstone Raymond Chang is the brother of Mr. Joseph Chang, and consultant to Port Reliant Limited. It is instructive to reiterate that via letter of 2010 May 5, Mr. Joseph Chang informed Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, that “...*Ray Chang is not an officer, principal, shareholder or beneficiary shareholder of Port Reliant Limited.*”
2. That Mr. Joseph Chang is the Director of Port Reliant Limited and has been identified by several GOJ Officials/Officer as the representative of Port Reliant Limited with whom they have been communicating with respect to the offer which was proposed by Hongfan to purchase the 45% CAP shares in Jamalco.

3. That the former Prime Minister, the Hon. Bruce Golding, held a meeting with Mr. Joseph Chang and Mr. Gladstone Raymond Chang, on 2009 April 22, in which discussions were reported to have ensued around (a) Hongfan's proposed commission payment to Port Reliant Limited by the GOJ, (b) Hongfan's spot purchase of alumina and (c) the proposed virtual equity investment in CAP.
4. That Mrs. Thalia Lyn reportedly contacted the Contractor General on 2009 May 14, for and on behalf of her brother, Mr. Joseph Chang, Director of Port Reliant Limited, regarding the position of the OCG with respect to the meeting which was held between the OCG, the then Permanent Secretary, Ms. Marcia Forbes and Mr. Howard Mitchell, the then Chairman of JBM and BATCO, on 2009 April 24.
5. That Mr. Howard Mitchell, the former Chairman of JBM and BATCO, has a close personal and business relationship with both Mr. Gladstone Raymond Chang and Mrs. Thalia Lyn.
6. That Mr. Howard Mitchell, then Chairman of JBM and BATCO, expressed that he served as the Chairman of the Board of the Company of the Island Grill Chain, a company owned by Mrs. Thalia Lyn, the sister of both Mr. Gladstone Raymond Chang and Mr. Joseph Chang.
7. That Mr. Howard Mitchell indicated that he took no further part in any discussions relating to Jamalco as at 2009 May, subsequent to a meeting which was held with the Office of the Contractor General.
8. That Mr. Howard Mitchell and a "*Gladstone Chang*" are Directors of the company, Corrpak (St. Lucia) Limited and Shareholders in Shareholders of Corrpak Jamaica Limited.

The OCG found that the referenced company was incorporated prior to the negotiations which were being undertaken between Mr. Mitchell, in his capacity as Chairman of the JBM and BATCO, and Mr. Joseph Chang, Director of Port Reliant Limited - the brother of Mr. Gladstone Raymond Chang.

9. That Mr. Howard Mitchell indicated that Mr. Gladstone Raymond Chang asked him *“...on more than one occasion questions related to the progress of the negotiations...”*⁶⁸

10. The OCG found that the GOJ, having conducted due diligence and being aware of the fact that at least one other entity had expressed an interest in purchasing the 45% CAP shares in Jamalco, failed to undertake any form of competitive bidding prior to the offer which was received by Hongfan.

However, it is instructive to note that the Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, in her response to the OCG, which was dated 2010 April 12, stated, *inter alia*, that *“...the bauxite and alumina industry consists of, relatively, few players who, in general, do not depend on any formal process to become aware of developments, or avail themselves of opportunities, within the industry. Communication is often undertaken by direct/indirect contact or discussions with or among their representatives or agents.”*⁶⁹

It is instructive to also reiterate the statement from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which has indicated that the GOJ had no reason to believe that there was any conflict of interest amongst any of the parties to the Agreement which was entered into with Hongfan for the purchase of the 45% CAP shares in Jamalco. She further asserted that the GOJ *“...has been advised and do verily believe that none of the personnel who participated in*

⁶⁸ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #9(vi)

⁶⁹ Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG's Requisition, which was dated 2010 April 12, and which was received on 2010 April 19.

this transaction as a representative of one party held any relationship with or obligation to another party to the transaction... ”⁷⁰

However, contrary to the Permanent Secretary’s foregoing assertions and the purported findings of the GOJ, the OCG found, based upon the sworn testimonies, that the perception of a conflict of interest is not totally removed from the current matter due to the following:

1. That Mr. Howard Mitchell recused himself from the matter subsequent to 2009 May. However, by then, meetings, discussions, negotiations and agreements had already been convened and formalised between the GOJ, Hongfan and Port Reliant. In point of fact. Mr. Howard Mitchell is signatory to at least one such agreement, namely, the Letter of Intent, which was signed on 2008 May 28.
2. That Mr. Gladstone Raymond Chang, with whom Mr. Howard Mitchell has had a personal and ongoing business relationship, was held out as a ‘Consultant’ for Port Reliant Limited.
3. That the OCG has seen evidence of at least one email which was dated 2009 March 31, and which was copied to Mr. Gladstone Raymond Chang regarding the “*Hong Fan Offer and Next Steps (Priority)*”.
4. That Mr. Howard Mitchell, in his sworn testimony advised the OCG that he had no knowledge of Mr. Gladstone Raymond Chang’s involvement in the matter, save and except for two emails dated 2009 April 8. Mr. Mitchell also advised in his sworn response that “*I also recollect being asked by Mr. Raymond Chang on more than one occasion questions related to the progress of the negotiations.*”

⁷⁰ Response which was received from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, on 2010 May 5.

The Divestment Process – Hongfan/Port Reliant Offer

The OCG, in an effort to garner a better understanding of the business interactions, which were ongoing at the time, between the GOJ, Hongfan, Port Reliant Limited and/or any other party involved in and/or affiliated with the subject divestment, initially requisitioned both the former and current Permanent Secretary in the then MEM, Ms. Marcia Forbes and Mrs. Hillary Alexander, respectively, on 2010 June 9.

The OCG, in its referenced Statutory Requisition, posed the following questions, amongst others, to both individuals:

“What is the extent of your knowledge of the proposal to divest the Government of Jamaica’s (GOJ’s) forty-five percent (45%) share in Jamalco to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (hereinafter referred to as Zhuhai Hongfan)? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.”⁷¹

Ms. Marcia Forbes, in her response to the referenced OCG Statutory Requisition, which was dated 2010 June 29, stated, *inter alia*, the following:

“...Up to the time of demitting office as Permanent Secretary in the Ministry of Energy and Mining on August 31, 2009, to the best of my knowledge, there was no sign-off regarding divestment of the GOJ’s 45% share in Jamalco to Zhuhai Honfan...This was being explored as one option for relieving the GOJ of the financial burden imposed on it through its ownership of shares in Jamalco via Clarendon Alumina Production (CAP). Negotiations did, however, meet a hump sometime mid-2009 when Port Reliant/Hongfan failed to properly respond to requests by the GOJ for more detailed and substantiated information regarding these two entities.”

⁷¹ OCG Statutory Requisition which was dated 2010 June 9 to the former and current Permanent Secretary in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes. Question #1

...Based on correspondence from Mr. Joseph Chang, Hongfan through Port Reliant had approached the GOJ with a number of investment proposals from as far back as 2007...

Per notes of a mid-March 2009 meeting in Zug, Switzerland with representatives of Glencore...the GOJ explored with Glencore how it could take advantage of Hongfan's proposal to invest in the bauxite/alumina industry.

...In early March 2009 a team, selected by the Prime Minister and mandated by him to travel to China to explore and find solutions to avert the devastation of shut-down of Jamaica's bauxite/alumina industry, visited China...

In trying to hammer out an actual contract with Hongfan/Port Reliant there were nagging issues pertaining to the financial arrangements as well as to the bona fides of Hongfan. Toward seeking to ensure transparency, in particular regarding payment of a commission to Port Reliant, Mr. Howard Mitchell, Chairman JBM/BATco and I, of our own volition...met with the OCG on April 24, 2009.

...Our desire to meet and talk with the Contractor General (CG) was driven by the need to ensure that the proposed offer from Hongfan through Port Reliant could withstand public scrutiny and not become mired in controversy...

...To my certain knowledge, when Mr. Mitchell and I met with the OCG there was no engagement of either Port Reliant or Hongfan...

The charge by the CG of no competition appears to disregard timing and context of Hongfan's proposals to the GOJ and that the GOJ, to the best of my knowledge, did not solicit any engagement of Hongfan/Port Reliant. Subsequent to the Hongfan/Port Reliant offer, the GOJ did through its March 2009 team to China make every effort to interest other parties in investing its 45% share of Jamalco. There were no takers!!!

Despite failure to sign-off on a deal with Hongfan/Port Reliant, the GOJ continued to negotiate since effectively ‘there was no other game in town’ at that time. The GOJ was desperate to unburden itself of the financial obligations of CAP and to assist the survival of the bauxite/alumina industry in Jamaica.

*...To the best of my knowledge, at August 2009 when I resigned as Permanent Secretary, the relationship with Hongfan had ground to a stalemate from several weeks earlier. Requests by me, as guided by the lawyer at the Jamaica Bauxite Institute, for Hongfan to provide further and better particulars to satisfy the GOJ were not forthcoming. Additionally, **the Government stance at that time was that it could not and would not pay Port Reliant any commission.***

However, having been told by the Minister of Energy and Mining sometime in July that he was receiving calls from Mr. Joseph Chang, I am aware that there were talks between these two individuals. I was, however, neither privy to nor informed of the nature of their discussions.”⁷² (OCG’s Emphasis)

Mrs. Hillary Alexander, in her response to the foregoing questions, which was dated 2010 July 14, stated, *inter alia*, the following:

“I am aware that the Government of Jamaica (“GOJ”) and Zhuhai Hongfan (“Hongfan”) executed a Share Purchase Agreement, on March 18, 2010, for the sale of the GOJ 100% shares in Clarendon Alumina Production Ltd (“CAP”). With this purchase, Hongfan would replace the GOJ as the approximately 45% beneficial owner of Jamalco.

*In a nutshell, **the terms of the Share Purchase Agreement are that Hongfan will pay US\$240M for the shares; plus assume CAP’s alumina supply obligations to Glencore***

⁷² Response from Ms. Marcia Forbes, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29.
Response #1

(estimated at approximately US \$175M); and deposit a sum of US \$92M for working capital support for CAP. Hongfan has also undertaken to pursue a substantial expansion of the Jamalco facility subject to availability of bauxite reserves.

The GOJ and Hongfan are authorised to consummate the Share Purchase Agreement if Alcoa fails to match or improve upon the agreed terms, by electing not to pursue the Right of Last Refusal for the shares, which Alcoa enjoys under the term of the Joint Venture Agreement and Letter Agreement of 2002 between CAP and Alcoa. Alcoa advised, by letter of June 23, 2010, that it will not exercise the option to purchase the CAP shares and has requested that the transaction with Hongfan be completed within 90 days (from the date of its letter of June 23, 2010) in keeping with the terms of the Joint Venture between CAP and Alcoa.

The proposal to divest the CAP shares was pursued against the background of the adverse impact the GOJ's ownership of CAP has and continues to create, on the GOJ's fiscal situation, given that CAP continues to operate at a loss.

Additionally, the changed circumstances in the local alumina sector, as a result of the world economic and financial crisis, manifested itself with the decision by UC RUSAL and its affiliates to close the Ewarton, Kirkvine and Alpart. Alcoa had also intimated that it had no market for its share of the alumina production at JAMALCO and would therefore have to close the plant, although this proposal was, eventually, not pursued.

In the circumstances, Cabinet gave approval for the divestment of the CAP shares to Hongfan...⁷³ (OCG's Emphasis)

⁷³ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG's Statutory Requisition, which was dated 2010 July 14. Response #1

Mrs. Hillary Alexander, in her response to the referenced OCG Statutory Requisition, enclosed, amongst other documents, a copy of the above-mentioned letter of 2010 June 23. The referenced letter from Mr. Franklin L. Feder, President, Alcoa, was addressed to the then Minister of the MEM, Mr. James Robertson, regarding ***“MEM Notice of Proposed Sale of Shares of Clarendon Alumina Production Limited dated March 24, 2010”*** and stated, *inter alia*, the following:

*“With regard to your above referenced letter in which you formally provided notice to Alcoa Minerals of Jamaica LLC (“AMJ”) of the Government of Jamaica’s (“GoJ”) intention to divest itself of 100% of its shareholding in Clarendon Alumina Production Ltd. (“CAP”) to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (“Hongfan”) pursuant to the terms of your Agreement for Purchase of Shares dated March 18, 2010 (the “APS”), I am hereby notifying the GoJ that **AMJ will not make an offer to acquire CAP.** Please bear in mind that **the decision not to exercise our option to acquire the CAP shareholding is contingent upon your closing occurring within 90 days of this letter, that there will not be any change to the price or other terms and conditions of the APS, and that Hongfan will legally undertake at closing to be bound by all of the Joint Venture agreements.***

*While AMJ has determined not to exercise its rights pursuant to Section 7.01(f) of the Joint Venture Agreement dated March 1, 1988 (the “JV Agreement”), as amended, AMJ is not waiving any of its other rights under the JV Agreement, including without limitation those conditions in Section 7.01(f) providing that “...any proposed transferee must be acceptable to the non-transferring member, which acceptance shall be in writing and shall not be unreasonably withheld.” **The GoJ should not consider this letter as written acceptance by AMJ of Hongfan as an acceptable acquirer of CAP, but only as an indication of our intention not to exercise our rights to acquire CAP pursuant to the offer expressed in your March 24 letter.***

*As I have shared with you in discussions...we seek to satisfy a number of objectives in this process. **Firstly, we must be assured of the suitability of Hongfan as an owner of CAP, both from the perspective of it being a responsible financial partner, and from the point of view that we understand that we share with Hongfan a common view of the vision and values for Jamalco.** Without this, managing and operating Jamalco will be in jeopardy.*

A second important purpose for our meeting has been to clarify the GoJ's vision of its future support for Jamalco and the bauxite mining and alumina refining industry in Jamaica in the form of future mineral rights as well as laws and regulations that will foster a responsible supply of competitively priced energy for our industry. We hope that this will lead to a framework agreement between the GoJ, CAP (under Hongfan ownership), and AMJ which will memorialize these important issues and become effective upon the closing of the divestiture of CAP.

Our efforts to accomplish all of these goals are continuing and we hope to memorialize definitive agreements reflecting these aspirations in the near future. At that time, I believe we will be in a position to indicate in writing to the GoJ that Hongfan is acceptable to AMJ as a transferee of the GoJ's shareholding in CAP."⁷⁴ (OCG's Emphasis)

The OCG, in its referenced Statutory Requisition of 2010 June 9, also posed the following questions:

"What is the extent of your knowledge of Port Reliant Ltd.'s involvement in the proposal to divest the GOJ's forty-five percent (45%) share in Jamalco to Zhuhai

⁷⁴ Letter from Mr. Franklin L. Feder, President, Alcoa, to the then Minister of the MEM, Mr. James Robertson, regarding "**MEM Notice of Proposed Sale of Shares of Clarendon Alumina Production Limited dated March 24, 2010**".

*Hongfan? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.*⁷⁵

Mrs. Hillary Alexander, in her response to the foregoing question, which was dated 2010 July 14, stated, *inter alia*, the following:

*“Port Reliant served as the exclusive agent for Hongfan in the transaction to divest the CAP shares. From documents seen and advice received, **Port Reliant, as Hongfan’s agent, obtained and disseminated information to Hongfan, provided translation services; facilitated discussions between GOJ and Hongfan; and offered logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.**”⁷⁶ (OCG’s Emphasis)*

Ms. Marcia Forbes, in her response to the foregoing question, which was dated 2010 June 29, stated, *inter alia*, the following:

“I first heard of Hongfan and Port Reliant via a September 24, 2008 email from Mr. Joseph Chang. In that correspondence he provided details of his “firm” Port Reliant’s investment offer to the Government of Jamaica...

Of note is that I saw his sister, Mrs. Thalia Lyn, at a reception hosted by the Chinese Embassy...She told of her brother’s desire to do business with Jamaica and the seeming disinterest by the GOJ. Knowing how desperately Jamaica needed investments, I suggested she asked her brother to bring the matter to my attention...

I understood it to be that Port Reliant was acting on behalf of Hongfan with respect to Hongfan’s investment interests in Jamaica...

⁷⁵ OCG Statutory Requisition, which was dated 2010 June 9 to the former and current Permanent Secretaries in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes. Question #2

⁷⁶ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14. Response #2

Over the period of my meetings and discussions with the representatives of Port Reliant and Hongfan from September 2008 to July/August 2009, their investment interests seemed somewhat fluid...Not all their requests could be accommodated...

The Term Sheet dated 13th February, 2009 ... detailed Hongfan's investment interests at that time. It specifically spoke to Hongfan providing "funding of up to ... (US\$600M) to execute the Jamaica Projects. These were defined as falling within the "bauxite and alumina sector in Jamaica"...

There was no agreement as to how Port Reliant, as 'middle-men', would/could be compensated for their efforts since during my time as Permanent Secretary what they were proposing was rejected as unacceptable to the GOJ.⁷⁷ (OCG's Emphasis)

Based upon the foregoing, the OCG found the following to be of significant import:

1. In summary, the terms of the 'Agreement for Purchase of Shares' are that Hongfan would (a) pay US\$240M for the 45% CAP shares; (b) assume CAP's alumina supply obligations to Glencore which is estimated at approximately US\$175M; (c) deposit a sum of US\$92M for working capital support for CAP; and (d) pursue a substantial expansion of the Jamalco facility subject to the availability of bauxite reserves.
2. That the 'Agreement for Purchase of Shares' was not to be consummated until Alcoa, pursuant to its Right of First Refusal under the Joint Venture Agreement between CAP and Alcoa of 2002, had indicated a failure or refusal to match or improve upon the terms of the 'Agreement for Purchase of Shares'.

The OCG found that Alcoa had expressed their refusal to exercise the option to purchase the CAP shares on 2010 June 23, and requested that the transaction with

⁷⁷ Response from Ms. Marcia Forbes, in her response to the OCG's Statutory Requisition, which was dated 2010 June 29.
Response #2

Hongfan be completed within 90 days from the date of its letter, in keeping with the terms of the referenced Joint Venture Agreement.

3. That the former Permanent Secretary, Ms. Marcia Forbes also had a discussion with Mrs. Thalia Lyn regarding the conduct of business with Mr. Joseph Chang, the brother of Mrs. Lyn, and the GOJ's seemingly disinterest in same. Ms. Forbes indicated that she suggested that Mrs. Lyn should ask "*...her brother to bring the matter to my attention.*"
4. That Port Reliant Limited, was an agent of Hongfan in regard to the "Jamaica Projects", and reportedly functioned to (a) obtain and disseminate information to Hongfan, (b) provide translation services, (c) facilitate discussions between GOJ and Hongfan; and (d) offer logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.
5. That at the time, Hongfan had made a request for the GOJ to pay Port Reliant Limited a commission. The OCG was advised that the Government's stance was not to pay Port Reliant Limited any form of a commission.

Expressed concerns regarding the arrangements/agreements between the GOJ and Hongfan/Port Reliant Limited

The OCG, in its respective Statutory Requisitions to Mrs. Hillary Alexander, Permanent Secretary, MSTEM, and the former Permanent Secretary in the MEM, Ms. Marcia Forbes, which were dated 2010 June 9, posed the following questions in an effort to have a full understanding of any arrangement(s) and/or agreement(s) which may have been executed between the GOJ and Hongfan and/or Port Reliant Limited:

*"What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Zhuhai Hongfan, which was previously*

and/or is currently being contemplated? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses.

*What is the extent of your knowledge of **any other** agreement and/or arrangement, prospective or otherwise, between the GOJ and Port Reliant Ltd., which was previously and/or is currently being contemplated? Please provide a comprehensive statement to this question and provide documentary evidence, where possible, to substantiate your assertions/responses”.*⁷⁸

Mrs. Hillary Alexander, in her response to the first question, which was dated 2010 July 14, stated, *inter alia*, the following:

“I am not aware of any other agreement that is currently being contemplated between GOJ and Zhuhai Hongfan. In relation to previous agreement/arrangement, prospective or otherwise, from the records at the Ministry or information (recently) provided to the Ministry, I am aware of the following:

- i. Letter of Intent (dated May 28, 2008 as advised) and Supplementary Deed of November 25, 2008, among Bauxite and Alumina Trading Company of Jamaica Ltd (BATCO), Hongfan and Port Reliant, regarding investments in Alumina and expansion of the alumina industry in Jamaica... **I am advised that the Letter of Intent arose out of discussions involving Mr. Howard Mitchell, as Chairman of BATCO, Hongfan and Port Reliant on or about April 7, or 8, 2008, when Mr. Mitchell visited Japan on business and vacationed in China.** As advised, the meetings were proposed by Port Reliant upon learning that Mr. Mitchell would be present in China.*

⁷⁸ OCG Statutory Requisition which was dated 2010 June 9 to the former and current Permanent Secretary in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes. Question #3&4

I am not aware of any investment or transaction arising from the Letter of Intent or Supplementary Deed.

- ii. *Discussions relating to agreement for supply of alumina but no agreement entered into. From documents perused, it appears that Hongfan, on a number of occasions proposed the “spot” purchase of alumina of approximately 200,000 tonnes per month between the period March 2009 to December 2009. I have not seen any evidence that this materialized. Similarly, there were also proposals, by Hongfan, for the purchase of supplies of alumina on a long -term basis but, again, I have not seen any evidence and do not have any reason to believe that such arrangements were entered into or consummated. I have also been advised that no supply agreement was consummated with Hongfan...*
- iii. *Term Sheet dated February 13, 2009, speaking to pursuit of investments in the alumina and energy sectors.*
- iv. *Discussions relating to a “virtual” equity transaction. From the documents seen, this arrangement would have resulted in Zhuhai Hongfan becoming entitled to CAP’s share of the alumina supplies from the Jamalco refinery, at cost, in return for an agreed monetary sum payable to the GOJ. It appears that no details of such an arrangement were ever arrived at and a “virtual” equity transaction was not finalized or entered into...*
- v. *Hongfan has offered to purchase the GOJ’s seven percent shareholding in Windalco. Preliminary discussions were held with Hongfan on the issue but the matter is not being pursued currently... ”⁷⁹*

⁷⁹ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14. Response #3

Mrs. Alexander, in her response to the second question, further indicated the following:

“I am not aware of any other agreement that is currently being contemplated between GOJ and Port Reliant. In relation to previous agreement/arrangement, prospective or otherwise, from the records at the Ministry or information provided to the Ministry, in response to the Office of the Contractor-General, I am aware of the following:

- i. *Confidentiality Agreement between CAP and Port Reliant, dated February 8, 2008, for CAP to share relevant information with Port Reliant for the purpose of evaluating whether Port Reliant would participate in an alumina purchase and investment transaction with CAP. On the basis of e-mail dated September 25, 2008, from Joseph Chang to the former Permanent Secretary in the Ministry of Mining and Telecommunications, it appears that during this period, Port Reliant had previously presented Hongfan to the GOJ as the potential investor in Jamalco...*

- ii. *As appears from the records, **there was discussion about the GOJ being the party to make the actual payment of any fee/commission to Port Reliant.** There is documentation representing, however, that **Hongfan was to be responsible for the payment although the GOJ was being asked to make same on Hongfan’s behalf.** No evidence I have seen suggest that the GOJ agreed to any such arrangement. After appropriate consultation, **Port Reliant was advised that GOJ could not agree to such an arrangement and consider the issue of payment of commission/fee a matter that needed no further reference to the GOJ...**⁸⁰ (OCG’s Emphasis)*

Ms. Marcia Forbes, in her response to both of the foregoing questions, which was dated 2010 July 14, stated, *inter alia*, the following:

⁸⁰ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14. Response #4

“I heard that Hongfan/Port Reliant were in dialogue with Minister Karl Samuda regarding investments in the ICT sector and in particular the proposed ICT Park at Caymanas. I have no further evidence or knowledge of this.”⁸¹

The OCG, in its Statutory Requisition to the former Minister of the MEM, Mr. James Robertson, which was dated 2010 December 23, posed the following question:

“Did you, at any point in time, raise any concerns with regard to any agreement and/or arrangement, which was contemplated, negotiated and/or discussed, with Zhuhai Hongfan and/or Port Reliant Ltd.?”

If yes, please provide a comprehensive statement detailing the following:

- (a) The particulars of the prospective agreement and/or arrangement in respect of which you raised and/or expressed concern;*
- (b) The concerns which were raised and/or expressed by you;*
- (c) The date(s), time(s), place(s) and manner in which the concerns were raised and/or expressed;*
- (d) The nature and full particulars of the concerns which were raised and/or expressed by you;*
- (e) The name(s) and title(s) of the person(s) to whom you raised and/or expressed the concerns;*

⁸¹ Response from Ms. Marcia Forbes, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Responses # 3&4

(f) *The actions which were taken by the GOJ and/or the MEM to address the concerns which were raised and/or expressed by you;*

(g) *Any other relevant particulars which are pertinent to the concerns which were raised and/or expressed by you.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁸²

Mr. Robertson, in his sworn response to the OCG, which was dated 2011 January 24, stated the following:

“Yes.

(a) Upon joining the Ministry in April 2009, I became aware of a proposal from Hongfan to “gross up” any consideration to be paid to the GOJ so as to enable the GOJ to pay Port Reliant’s commission. (b) I advised that the payment of commission or any money to Port Reliant was to be undertaken by Hongfan as Port Reliant was its exclusive agent and, therefore, Hongfan, in communicating with the GOJ, did not need to make any further reference to its payment to Port Reliant.

(b) By letter dated May 13, 2009...

(c) Please see (b) above.

(d) Mr. Yan Tiejun, Chief Executive Officer of Hongfan

⁸² OCG’s Statutory Requisition to the former Minister of the MEM, Mr. James Robertson, which was dated 2010 December 23. Question #10.

(e) As stated at (b) and (c) above, I wrote (on behalf of the GOJ) to Hongfan advising them that there was no further need to reference payments due to Port Reliant in any communication with the GOJ, as such payments were between Hongfan and Port Reliant.”⁸³

Dr. Carlton Davis, former Chairman of JBI, was asked a similar question, and in his response to the OCG, which was dated 2011 January 17, he indicated that he had expressed the following concerns with respect to the arrangement/agreement which was contemplated, negotiated and/or discussed by the GOJ with Hongfan and Port Reliant Limited:

*“Yes I did so variously. Persons who participated in the meeting between the NDRC⁸⁴ and the Government of Jamaica in Montego Bay in February, 2009 would have been aware of NDRC’s skepticism... **It should be noted that NDRC has to approve Chinese State Companies’ participation in ventures such as the one contemplated by Zhuhai Hongfan in the acquisition of CAP’s share of JAMALCO.** The Delegation which visited China in March 2009 would have got [sic] the same impression from the meeting with NDRC in Beijing; and my assessment that NDRC was not so favourably disposed was well known. This, despite CHALCO’s’s [sic] continued verbal expression of support.*

*On my second visit to China I again formed the impression that the NDRC was less-than-enthusiastic and I indicated as much in my summary account of the visit to China and communicated this view to the PS MEM... Sometime after I returned, Mr. Hugh Hart called me and said that he was requested by the Prime Minister to specifically ask me to give my impressions of the November 2009 visit. **I told him that it was my view that NDRC remained sceptical [sic] about Zhuhai Hongfan’s capacity; and that CHALCO remained non-specific about the nature of its cooperation with Zhuhai Hongfan.***

⁸³ Response from Mr. James Robertson, former Minister of the MEM, which was dated 2011 January 24. Response #10

⁸⁴ National Development and Reform Commission of China.

Further to that, in the Final Report of the Bauxite and Alumina Task Force, which I wrote (and which was submitted to the Prime Minister in February 2010 and the Minister of Energy and Mining and the Permanent Secretary a few weeks later), I made specific mention of the doubts in the minds of some of us about Zhuhai Hongfan's capacity to acquire CAPs [sic] assets and meet its obligations in the JAMALCO Joint Venture...

I believe the Government understood the concerns about Zhuhai Hongfan but hoped that the Company would be backed by more formidable Chinese Government Companies or Institutions.⁸⁵ (OCG's Emphasis)

The OCG conducted a review of a document which was submitted by Dr. Carlton Davis, which was entitled "***Note of Meeting between HPM Bruce Golding and Mr. Mu Hong, Vice Chairman of the National Development and Reform Commission of China***". The referenced "*Note*" indicated that the referenced meeting was held on 2009 February 14, in which it was reported that upon an enquiry of Hongfan by the former Prime Minister, the Hon. Bruce Golding, the Vice Chairman stated, *inter alia*, that "**...Hongfan was a local (i.e. not national) Chinese company that they were not very familiar with.** He said that if the GOJ contemplated entering into a strictly purchasing arrangement with them, then it should not matter. However, if the GOJ wished to get involved with production and upstream activities, then it should stick with the big companies."⁸⁶ (OCG's Emphasis)

Dr. Davis further enclosed a copy of a document which was entitled "*Visit to China*" which was dated 2009 November 30, and which represented certain of his conclusions, inclusive of the following:

⁸⁵ Response from Dr. Carlton Davis, the former Chairman of JBI, which was dated 2011 January 17. Response #10

⁸⁶ Document received from Dr. Carlton Davis, former Chairman of JBI, in response to the OCG's Statutory Requisition which was dated 2011 January 17.

1. That he met with and exchanged views with, the Chinese Metals Company, CHINALCO/CHALCO, the National Development and Reform Commission (NDRC) and Hongfan.
2. That the China Development Bank was willing to support investments in the specific CAP/Jamalco project in which Hongfan had a direct interest.
3. That the China Development Bank had indicated three (3) reasons for wanting to work with Jamaica, namely: *“(a) China represents a large market for our alumina exports although the shipping cost from Jamaica was mentioned as a factor to consider; (b) Jamaica had good ‘institutional capacity’ in the alumina and energy sectors, among others; and (c) China Development Bank would be a source of financing to ‘fill the gap caused by the world economic and financial crisis.’”*
4. That the NDRC noted the importance of alumina and energy to the Jamaican economy and indicated that *“... ‘CHINALCO/CHALCO and MINMETALS are capable of executing such projects as we are contemplating while smaller players may have problems in the process; they are aware of Hong Fan’s [sic] interest in Jamaica and it would support the Company in its business with Jamaica; if the cooperation is not a big one it would be much easier to realise.’ In light of the foregoing it would seem to me that an active role by CHINALCO/CHALCO would enhance the prospects of CDB and NDRC supporting Hong Fan in the CAP/JAMALCO project...”*

Dr. Davis, in a report which was prepared, and identified, by him as a *“Final Report of the Bauxite and Alumina Task Force”* which he indicated was submitted to the former Prime Minister, the Hon. Bruce Golding, in 2010 February, and the Minister of Energy and Mining and the Permanent Secretary, stated, *inter alia*, the following:

1. That there were possibly three Chinese companies, one major (CHALCO), one middle rank (Minmetals) and one fledging (Hongfan), which should be considered with respect to the CAP/Jamalco divestment.
2. That of three named companies, Hongfan was the only one which had shown any serious interest in participating in the near-to-medium term, however, he was of the opinion that the “...*financial capacity to do so is a moot question.*”
3. That Mr. Davis was of the opinion that whatever is done “*Alcoa is kept interested in staying in Jamaica.*”

It is instructive to note that Ms. Marcia Forbes, former Permanent Secretary in the MEM, in her response to the OCG, which was dated 2010 June 29 stated that there were certain concerns which were raised/expressed by the former Prime Minister of Jamaica, the Hon. Bruce Golding, as follows:

“Response: While I cannot give you specific details of time and place, it was clear to me that the Prime Minister always appeared somewhat wary of the Port Reliant/Hongfan proposals. He did not seem convinced of their ability to access the amount of money they proposed to have to invest. He was also quite concerned when the issue of paying Port Reliant surfaced...”

Response: In addition to (a) immediately above, I specifically remember the Prime Minister’s concerns regarding signing the aforementioned Term Sheet. He was decidedly uncomfortable about this.

The Prime Minister, as too did Howard Mitchell and I, had concerns with the manner in which Joseph Chang seemed to want to conduct the negotiations. ‘A banana republic’, these are my words but I believe they describe how I think the PM felt about Chang’s treatment of the GOJ...

Response: The PM raised general concerns over the period October, 2008 to January, 2009 regarding the bona fides and credibility of Hongfan.

In February, 2009 when the matter of the Term Sheet came up, he was decidedly uncomfortable.

My recollection is that it was the Prime Minister who asked for the Solicitor General to be [sic] comment on Port Reliant's request for commission payment by the GOJ.

While I was not aware that the Prime Minister had issued any instructions for discussion with the OGC [sic] regarding Port Reliant's/Hongfan's proposals or their payment schedule, he seemed generally perturbed about how Port Reliant's/Hongfan [sic] wanted to proceed.

In recognition of these concerns as well as our own, Howard Mitchell and I (Marcia Forbes) took it upon ourselves (this is how I perceived our meeting with the OCG) to arrange, through Howard, what I thought was an 'informal meeting' with the OCG...

Response: Responses to Items (a), (b) and (c) immediately above have detailed as much as I can remember on this matter...

Response: I cannot say specifically but do know that in various meetings with the Prime Minister and others on the negotiating team, he expressed concerns both in words as well as by his body language about Port Reliant/Hongfan...

Response: I believe it may have been the Prime Minister himself who suggested getting an opinion from the Solicitor General on the payment plan as proposed by Port Reliant/Hongfan. This was done.

In recognition of the Prime Minister's concerns as well as our own, Howard Mitchell and I (Marcia Forbes) took it upon ourselves (this is how I perceived our meeting with the OCG) to arrange, through Howard's instrumentality, what I thought was an 'informal meeting' with the OCG.

I remember we kept this very quiet based on vehement objection by others on the team (the PM is not included as a team member) when the idea of a meeting with the OCG was mooted...

***Response:** My April 25, 2009 email update to the Prime Minister...following the meeting with the OCG was my way of helping to assure the PM that the matter was being handled professionally. Please note that the status report to the NCC which was mentioned in that email correspondence was not done. It was based on the proviso that Port Reliant would supply the ministry with evidence that Hongfan could not pay them directly and "that Ja will not breach Chinese (sic) law/reg. if it pays." That was not forthcoming.*

*While breach of Jamaican law was not mentioned in the email, it goes without saying that this was front of mind for me. Up to the time I demitted office, it was clear to me (based on correspondence from the Solicitor General and the Contractor General) that unless changes were made to its proposed approach, the offer from Port Reliant/Hongfan would not pass the litmus test of transparency.*⁸⁷ (OCG's Emphasis)

Ms. Forbes also provided the OCG with a copy of the above-mentioned email of 2009 April 25, which stated, *inter alia*, the following:

"HPM, Howard and I had an 'informal meeting' with OCG yesterday and are being guided by their comments.

⁸⁷ Response from Ms. Marcia Forbes, former Permanent Secretary in the MEM, which was dated 2010 June 29. Response #21

- 1) *We will ask for substantiating written evidence from HF as to why they cannot pay Port Reliant directly.*

- 2) *Coming out of my meeting with Joseph Chang yesterday we will prepare a counter offer to HF as to how Jamaica would like to see the deal proceed. Joseph believes there is a lack of clarity on this. We do not agree but will put our preferred position in writing.*

- 3) **A full status report re HF will be prepared and submitted to NCC requesting them to approve sole source arrangement with Port Reliant** -- *once we ascertain that HF cannot pay them directly and that Ja will not breach Chinese [sic] law/reg. if it pays.*

- 4) *From all indications at this time, the deal seems to be going 'sour': --*
 - * HF seems to want spot alumina (even a few shiploads) as show of good faith. We have no alumina.*

 - * Continued Communication with Mark Lu of Minmetals seems to have bred mistrust. Mark is very close to HF and apparently informs them of such discussions. It is reported that Mark suggested to HF that he could broker the deal on their behalf, cutting out Port Reliant.*

 - * HF's continued insistence on wanting spot purchase before agreeing to virtual equity.*

 - * Recalcitrance to HF to pay Port Reliant directly...⁸⁸(OCG's Emphasis)*

⁸⁸ Email correspondence from Ms. Marcia Forbes, former Permanent Secretary in the MEM, to the former of Prime Minister of Jamaica, the Hon. Bruce Golding, which was dated 2009 April 25.

Based upon the foregoing, the OCG found the following to be of significant interest:

1. That the former Permanent Secretary in the MEM, Ms. Marcia Forbes, advised the OCG that the former Prime Minister of Jamaica, the Hon. Bruce Golding had expressed certain concerns regarding the manner in which Mr. Joseph Chang, Director, Port Reliant Limited, wanted to conduct the negotiations.

In point of fact, Ms. Forbes described Mr. Joseph Chang's treatment of the GOJ as a "banana republic", that is, one of a dictatorship/exploitative relationship. She explained that as a result, the former Prime Minister had expressed his discomfort, particularly with respect to the signing of the Term Sheet.

2. That as at the time of the meeting with the OCG, which was convened on 2009 April 24, the arrangements/deal between Hongfan and the GOJ was apparently "going sour", as suggested by former Permanent Secretary, Ms. Marcia Forbes, based upon several reasons, which included (a) the fact that the GOJ had no alumina to supply Hongfan, (b) a proposition by Hongfan for the GOJ to pay Port Reliant Limited a commission fee, and (c) an apparent mistrust on the part of Hongfan, which had developed against the GOJ as a result of the GOJ having certain discussions with Minmetals, a competitor of Hongfan, which had informed Hongfan of the said discussions and had proposed to 'broker' the deal with Hongfan and the GOJ.
3. That the GOJ had considered preparing a status report, regarding Hongfan, to the National Contracts Commission (NCC) to request an endorsement to utilise the Sole Source Procurement Methodology. This seems to have been considered on the basis of the proposition for the GOJ to pay Port Reliant Limited a commission fee as in the email of 2009 April 25 from Ms. Marcia Forbes, former Permanent Secretary, MEM, to the Hon. Bruce Golding, she suggested that once approval was received from the NCC, then "... HF cannot pay them directly and that Ja will not breach Chinese [sic] law/reg. if it pays."

It should be noted, however, that Ms. Forbes in her sworn testimony to the OCG, which was dated 2010 June 29, stated that the referenced status report was not prepared, as Port Reliant Limited, which was required to supply the Ministry with evidence that (a) Hongfan could not pay them directly and (b) that Jamaica would not be in breach of Chinese laws if it pay, did not provide same.

It is instructive to note that Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG which was dated 2010 July 14 advised the OCG of, *inter alia*, the following:

1. *"It has been a matter of 'high policy' based on the analysis of the international aluminium market, to secure Chinese involvement in the local bauxite and alumina industry. It was this view which led to the involvement of the Chinese Company MINMETALS, in the alumina joint venture project, with Century Aluminum.*
2. *The changed circumstances in the local alumina sector, as a result of the world economic and financial crisis, manifested itself with the decision by UCRUSAL and its affiliates to close the Ewarton, Kirkvine and Alpart and Alcoa had also intimated that it had no market for its share of the alumina production at JAMALCO and would therefore have to close the plant.*

The involvement of the Chinese became more urgent in these circumstances, and the priority was to secure a short-to-medium term market to enable (with CAP's share of the production) the Jamalco plant to operate.

Hong Fan [sic] was, apparently, just one of the possibilities, to fill this gap. It is within this context that meetings were held, not only with Hong Fan [sic], but with, China's leading aluminium Company, CHALCO, but also MINMETALS.

Meetings were also held with the China Development Bank and the National Development Reform Commission, the powerful state body which must approve investments by Chinese Government owned Companies, like CHALCO and Minmetals. CHALCO gave strong support to Hong Fan [sic] but indicated that they would not be directly involved.

3. *I am advised that only Hong Fan [sic], of all the Chinese aluminium firms, continued in a focused and committed manner to show an interest in any direct involvement in the Jamaican bauxite and alumina industry.”⁸⁹*

Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG which was dated 2010 July 14, also provided the OCG with a “*Business News Americas*” article that was published on 2009 December 28, which was entitled “*Govt aims to divest shares in Clarendon Alumina*”, and which outlines, *inter alia*, the following:

“Jamaican Prime Minister Bruce Golding announced that the government intends to divest its stake in Clarendon Alumina Production (CAP) due to accumulated debt, government information service JIS reported.

“We are looking at the option of divesting the shares that the government has and to see to what extent we can offset the amount that is owed for our share of capital investment, offset that debt and have it liquidated,” Golding said.”

⁸⁹ Response from Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 July 14. Response #30

The ‘Unsolicited Meritorious Proposal’

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, by way of a letter to the OCG, which was dated 2010 May 27, in an effort to clarify certain positions of the GOJ with respect to the subject divestment, stated, *inter alia*, that the “... *proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*”⁹⁰

The OCG would like to point out, based upon the assertion of Mrs. Hillary Alexander, that the matter is one of privatization and would not fall under the provisions of the GOJ Procurement Procedures as an “*unsolicited meritorious proposal*”. It should be noted that all GOJ Privatization matters are governed by the Privatization Policy and Procedures (Ministry Paper #34).

The then applicable GOJ Public Sector Procurement Procedures (2008 December), made provision under *Section S-2040*, that, *inter alia*, in order for the use of the Sole Source Procurement Methodology to be justified, a Procuring Entity would have to be in receipt of “...*an unsolicited proposal that it considers meritorious.*”

It is, therefore, instructive to note that there was no requirement for the MEM to seek any form of an approval from the NCC, to utilize the Sole Source/Direct Contracting Procurement Methodology, with respect to the subject divestment; it is, however, a requirement, pursuant to Ministry Paper #34, to receive an approval from the Cabinet of Jamaica.

However, based upon the applicable Ministry Paper #34, there is no provision for the use of an “*unsolicited meritorious proposal*”. Of import is the fact that Ministry Paper #34 indicated that for enterprises/activities/assets which are approved for privatization, “...*it is a fiduciary responsibility of government to find the best optimal mix of transferring risk to the private*

⁹⁰ Letter from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 May 27. No. 3

sector and maximizing the proceeds whilst conducting the process competently and expeditiously.”

In point of fact, applications/proposals, in keeping with Ministry Paper #34, are required to be perused by the Development Bank of Jamaica, the then National Investment Bank of Jamaica (NIBJ), the central implementing agency for privatization in Jamaica, until an advertisement to solicit investors was published.

Further, the OCG has evidenced a letter, which was dated 2009 October 21, and which was sent from the then Minister in the MEM, Mr. James Robertson, to the DBJ, with respect to the subject divestment. However, and based upon the compendium of facts, the subject divestment was not advertised prior to the signing of the “*Agreement for Purchase of Shares*” was consummated on 2010 March 18.

It is, therefore, instructive to note that Ministry Paper #34 provides, *inter alia*, that “*Applications will not be entertained...until an advertisement to solicit investors has been placed in the press. Premature applications can only be acknowledged, and it must be stressed that there should be no expectations that privatization will be accomplished with undue or reckless speed...*”

The OCG has, therefore, found that the MEM, the Cabinet and the DBJ, has contravened Ministry Paper #34 in their failure to ensure that the subject divestment was advertised to solicit suitable investors.

The OCG, in its Statutory Requisition to the Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, which was dated 2010 June 9, posed the following question:

“In your letter to the OCG, which was dated May 27, 2010, you implied that the proposed transaction with Zhuhai Hongfan was as a result of an “...unsolicited and meritorious proposal”, which was submitted to the GOJ and/or the MEM. Having

regard to the foregoing, kindly provide the following information and, where possible, provide documentary evidence to substantiate your assertions/responses:

- i. The date(s) on which the GOJ and/or the MEM received the referenced “unsolicited and meritorious proposal”;*
- ii. The manner and/or nature of the medium of communication which was utilised;*
- iii. The name(s) and title(s) of the individual(s) and/or entity(ies) that submitted such a proposal to the GOJ and/or the MEM;*
- iv. The circumstances relating to the GOJ’s and/or the MEM’s receipt of such a proposal;*
- v. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who was/were in receipt of such a proposal;*
- vi. The name(s) and title(s) of the Zhuhai Hongfan and/or Port Reliant Ltd. official(s), officer(s), employee(s) and/or anyone acting on their behalf who interacted with the GOJ and/or the MEM with regard to the proposal;*
- vii. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who was/were involved in the assessment and/or evaluation of the referenced proposal;*
- viii. The criteria by which GOJ and/or the MEM evaluated and assessed the proposal;*
- ix. The terms and conditions of the referenced proposal;*

- x. *Any other relevant particulars that are pertinent to the GOJ's and/or the MEM's receipt of the referenced unsolicited proposal.*⁹¹

Mrs. Hillary Alexander, in her response to the question, which was dated 2010 July 14, stated, *inter alia*, the following:

“Answer

II.

- (i) *From a perusal of documents which came to my attention subsequent to my letter of May 27, 2010, I am unable to say that the offer was unsolicited in the strictest meaning of the word, in light of the history of the involvement with Hongfan.* *The reference, however, related to a firm and unequivocal offer to purchase the GOJ CAP shares which offer was received January 15, 2010...*
- (ii) *Mail*
- (iii) *Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering under the signature of Mr. Yan Tiejun, Chairman and CEO.*
- (iv) *It is my understanding that previous discussion relating to an appropriate arrangement under which Hongfan could invest into the Jamaican bauxite industry had failed to arrive at any definitive understanding and was no longer being pursued after November, 2009, until the time of unequivocal offer by the firm. The parties, apparently, could not settle on an agreed way forward given issues such as third party's consents, GOJ existing supply*

⁹¹ OCG Statutory Requisition which was dated 2010 June 9 to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM. Questions #11

obligations, existing GOJ Bonds/guarantee arrangements, among other things.

I am to assume from Hongfan's offer of 15.1.10 that the entity, nonetheless, maintained its interest in investing in the Jamaica alumina industry and accessing supplies of alumina; and that this led to the clear and definitive offer to purchase the shares in CAP.

- (v) *Mr. Peter Millingen, Chairman of CAP.*
- (vi) *Mr. Yan Tiejun, Chairman and CEO of Port Reliant.*
- (vii) ***The proposal was assessed and evaluated by the GOJ negotiating team but the evaluation process was led by Mr. Winston Hayden.*** *Other members of the negotiating assessment team were Mr. Peter Millingen, Mr. Milverton Reynolds, Ms. Pamela McLaren (on behalf of Dr. Wesley Hughes) of the Ministry of Finance, Ms. Sonia Mitchell, Legal Counsel of CAP, Cheryl Lewis/Michelle Forbes of the Solicitor General's Chambers (and on behalf of the Solicitor General), Glenford Watson, Senior Legal Counsel of MEM.*
- (viii) ***The value of the shares was assessed against the total value of the consideration payable to the GOJ, by Hongfan, (US \$240M); plus the monetary value of the GOJ liabilities to be taken over by Hongfan (the alumina supply obligations owing to Glencore as a result of certain forward sales contract and valued at US \$175M); plus Working Capital support of US \$92M to be deposited for use in the operations of the Jamalco facility.***

The approximate value of the shares was determined by reference to (a) Worley Parsons Valuation on CAP of March 2009, which placed the value

of the shares, in September 2008, at negative US \$235M (b) Valuation dated February 2010, by Mr. Winston Hayden, General and Financial Manager (CAP) which valued CAP at negative US\$62M as a going concern and at US\$220M assuming discharge of CAP's debts and its tax loss benefits; and a Formal Opinion into the value of the shares, dated March 17, 2010, by PriceWaterhouseCoopers, which put the value of the shares within a range of a low of US \$120M and a high of US \$358M...

- (ix) **The offer was for a total consideration of US \$332M comprised of US \$240M to the GOJ, and a payment to CAP of US \$92M to be used as cash flow support and included Hongfan undertaking to assume the GOJ supply obligations to Glencore at an approximate value of US\$175M. Subsequent negotiations included Hongfan carrying CAP's US\$220M Bond for 24 months.**⁹² (OCG's Emphasis)

The OCG, in its referenced Statutory Requisition to the Permanent Secretary in the MEM, which was dated 2010 June 9, also posed the following question:

*“Please provide a **Comprehensive Executive Summary** detailing the due diligence process which was undertaken by the GOJ and/or the MEM with respect to the “unsolicited and meritorious proposal” which was submitted by Zhuhai Hongfan. The summary should include the following information:*

- i. *The date(s) on which the due diligence exercise was undertaken;*
- ii. *The valuation which was undertaken to determine the value of the GOJ's forty-five percent (45%) share in Jamalco;*

⁹² Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG's Statutory Requisition, which was dated 2010 July 14. Response #11

- iii. *The name(s) of the individual(s) and/or entity(ies) who undertook the valuation;*
- iv. *The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who was/were involved in the due diligence process;*
- v. *The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who (a) made any recommendation with regard to the structure of any arrangement and/or agreement with Zhuhai Hongfan and (b) approved the arrangement(s) and/or agreement(s);*
- vi. *The particulars relating to the assessment of the agency agreement(s) between Port Reliant Ltd. and Zhuhai Hongfan;*
- vii. *The particulars relating to the assessment of the financial and other capacities of Zhuhai Hongfan to fulfill its obligation under any arrangement and/or agreement which is/was being contemplated;*
- viii. *Any other relevant particulars with respect of the due diligence process which was undertaken.*
*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁹³

Mrs. Hillary Alexander, in her response to the foregoing question, which was dated 2010 July 14, also stated, *inter alia*, the following:

“Answer

12.

⁹³ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14. Response #12

- (i) *Given the history of the involvement with Hongfan, certain aspects of the due diligence into Hongfan's financial ability to successfully invest in the local alumina industry preceded the formal offer of January 15, 2010 and was undertaken between November 22 - 27, 2009 and in or about February, 2010.*
- (ii) (a) *Worley Parsons valuation on CAP of March 2009, which placed the value of the shares, in September 2008, at negative US\$235M; (b) Valuation dated by Mr. Winston Hayden, General and Financial Manager (CAP) which valued CAP at negative US\$62M as a going concern and at US\$220M assuming discharge of CAP's debts and its tax loss benefit; and a Formal Opinion into the value of the shares, dated March 17, 2010, by PriceWaterhouseCoopers, which put the value of the shares within a range of a low of US\$120M and a high of US\$358M*
- (iii) *See answer to (ii) above.*
- (iv) *Ambassador Courtenay [sic] Rattray; Permanent Secretary Hillary Alexander; and Mr. Peter Millingen conducted due diligence activities into the offer of January 15, 2010. Mr. Kassim Morrison in relation to the due diligence exercise into Hongfan requested of China Company Research Services Ltd.*
- (v) *Please see names and titles of the members of the negotiating team as set out in the response to question 11(vii).*
- (vi) *I am not aware of any details relating to the assessment of the agency agreement between Port Reliant and Hongfan except, as advised, that the terms require Hongfan to pay any compensation or fee earned by Port Reliant.*
- (vii) *Rated AA by China Construction Bank; member of a group of companies with a total asset base of RMB 3.6 billion at or about December 2009 and a net profit*

of RMB 42,497,000 at the end of 2008; financing commitment/support from China Development Bank; supported by the Aluminium Corporation of China... ”⁹⁴

Ms. Marcia Forbes, the former Permanent Secretary in the MEM, was asked a similar set of questions. In her response, which was dated 2010 June 29, she stated, *inter alia*, that “...*Hongfan approached the GOJ with an investment offer which...was presented as far back as 2007. The nature of this investment interest evolved with time to eventually a March 2009 offer...*”⁹⁵

Ms. Marcia Forbes, further indicated that the proposal which was submitted by Hongfan was “*carefully studied and responded to by various attorneys at law representing the GOJ and its agencies, either directly or through the office of the Permanent Secretary. These included Solicitor General Douglas Leys, Mr. Hugh Hart, Advisor to the HPM, Mr. Howard Mitchell, Chairman of JMB/Batco, Mrs. Sonia Mitchell, JBI/CAP...*”, amongst others. She further indicated that the proposal was evaluated and assessed on “*...probity, transparency and value for money...*”⁹⁶

Ms. Forbes advised the OCG that a part of the due diligence was undertaken during the 2009 March visit to China, in which “*...the team was introduced to some of Hongfan’s business ventures (restaurant, night club). We were able to make on the face of it assessment of the level of capital investment in these enterprises...Additionally, **that visit made it clear that top Chinese officials were familiar with Hongfan.***”⁹⁷ (OCG’s Emphasis)

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

⁹⁴ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 July 14. Response #12

⁹⁵ Response from Ms. Marcia Forbes, former Permanent Secretary in the then MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Responses # 11(vi)

⁹⁶ Response from Ms. Marcia Forbes, former Permanent Secretary in the then MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Response # 11(vii)

⁹⁷ Response from Ms. Marcia Forbes, former Permanent Secretary in the then MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Response # 12(viii)

1. That Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, advised the OCG that she was unable to say that “...the offer was unsolicited in the strictest meaning of the word, in light of the history of the involvement with Hongfan...”
2. That the proposal which was submitted by Hongfan was evaluated by an established GOJ negotiating team, which was led by Mr. Winston Hayden, General and Financial Manager, CAP.
3. That the value of the shares in Jamalco was assessed against (a) the total value of the consideration payable to the GOJ by Hongfan; (b) the monetary value owing to Glencore; and (c) the Working Capital support of US\$92M which was to be deposited for use in the operations of the facility.
4. That the offer for consideration was a total of US\$332M which was comprised of (a) US\$240 to the GOJ, and (b) a payment to CAP of US\$92M to be used as cash flow support. The OCG was also advised by Mrs. Hillary Alexander that the offer included an undertaking by Hongfan to assume the GOJ supply obligations to Glencore at an approximate value of US\$175M and that, based upon subsequent negotiations, Hongfan proposed to carry CAP’s US\$220M Bond for a period of 24 months.
5. That a due diligence process was conducted by the GOJ, via a variety of approaches, by several Public Officials/Officers into (a) the offer and (b) Hongfan, through China Research Services Limited.

The OCG was informed that due diligence exercises were conducted by, amongst others, Ms. Marcia Forbes, former Permanent Secretary in the MEM and Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, Mr. Howard Mitchell, former Chairman – JBM/BATCO, Mr. Peter Moses, Mr. Peter Millingen, Citibank, Mr. Hugh Hart, Advisor to the PM, Ambassador Courtney Rattray, GOJ’s Ambassador to China, Mr. Parris Lyew-Ayee, JBI, and Mrs. Sonia Mitchell, Attorney-at-Law, JBI.

The Initiation of Negotiations between the GOJ and Hongfan and the GOJ's Due Diligence Process

Hongfan

The OCG, in its Statutory Requisition to the current and former Permanent Secretaries in the MEM, which were dated 2010 June 9, posed the following questions.

“Who, and/or what entity(ies) initiated contact with Zhuhai Hongfan? Please provide the following information and, where possible, provide documentary evidence to substantiate your assertions/responses.

- i. The genesis of the relationship between Zhuhai Hongfan and the GOJ and/or the MEM;*
- ii. The rationale and purpose for initiating contact in regard to the same;*
- iii. The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact;*
- iv. The circumstances relating to the GOJ's and/or the MEM's initial contact with Zhuhai Hongfan;*
- v. The date(s) on which such interactions took place;*
- vi. The name(s) and title(s) of the GOJ and/or the MEM Official(s) who was/were approached and was/were involved in the discussions relating to the same;*

- vii. *The name(s) and title(s) of the Zhuhai Hongfan's agent(s), official(s), employee(s) and/or anyone acting on their behalf who was/were involved in the discussions relating to the same;*
- viii. *The manner and/or nature of the medium of communication which was utilised;*
- ix. *The terms and conditions of any agreement(s) and/or arrangement(s) which was/were discussed and/or negotiated with Zhuhai Hongfan;*
- x. *The particulars of any agreement(s) and/or arrangement(s) which was/were agreed to with Zhuhai Hongfan;*
- xi. *Any other relevant particulars that are pertinent to the initial contact with Zhuhai Hongfan.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*⁹⁸

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG's Statutory Requisition, which was dated 2010 July 14, stated the following:

"I am unable to say how or who initiated contact with Hongfan or if anyone initiated the contact with Hongfan on behalf of the GOJ.

(i) The e-mail of September 25, 2008 (Joseph Chang to Marcia Forbes) implies that the genesis of the relationship between the GOJ and Zhuhai Hongfan began in December 2007 when Port Reliant and/or Zhuhai Hongfan presented a proposal for investment in

⁹⁸ OCG Statutory Requisitions to the former and current Permanent Secretary in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes, which were dated 2010 June 9, respectively. Question #13

the Jamalco expansion to the former Minister with portfolio responsibilities. I am unable to speak to the accuracy of this assertion.

(ii) I am unable to speak to the rationale and purpose for initiating contact with Zhuhai Hongfan save and except the implication in the mail referenced at 13(i) above that the genesis of the relationship between the GOJ and Zhuhai Hongfan was a proposal being presented from Zhuhai Hongfan to invest in the expansion of Jamalco.

(iv) The reference email implies that Port Reliant, through Joseph Chang, initiated the relationship between GOJ and Hongfan.

(v) See answers to (i) – (iii) above

(vi) The reference e-mail speaks to an interaction in or about December 2007. I am unable to speak to the accuracy of this information.

(vii) The referenced e-mail implies that the Honourable Clive Mullings, former Minister with portfolio responsibility, was the GOJ official involved in the discussions. I am unable to speak to the accuracy of this information.

(viii) The said e-mail implies Gary Ho and Joseph Chang of Port Reliant.

(ix) It appears from the email that this may have been by way of an oral presentation.

It appears from the email that the terms and conditions of the Agreement discussed were:

Hongfan will provide US\$600,000,000 (Six Hundred Million United States Dollars) to the GOJ to finance their share of the Jamalco expansion. In return, Hongfan wanted a long-term contract to allocate the GOJ's share of the expanded output and a spot

contract to purchase up to 200,000 tons of alumina per year from 2008 onwards until the expanded production is in place.

(x) I am not aware and have no knowledge that any agreement or arrangements were agreed to arising from this discussion. Mr. Joseph Chang's said e-mail stated that in March 2008, Port Reliant (Joseph Chang/Gary Ho) met with the former Minister Mullings and there was "no progress towards receiving a response to the proposal."⁹⁹

It is instructive to note that Ms. Marcia Forbes, former Permanent Secretary in the MEM, in her sworn response directed the OCG to an email correspondence which was dated 2008 September 24, which was sent to her from Mr. Joseph Chang. Upon a review of the referenced email, the OCG found that Mr. Joseph Chang informed Ms. Forbes of the particulars of the Hongfan/Port Reliant Limited proposal to Jamaica for investment and indicated the information which was needed to proceed with the said proposal.

The OCG, however, noted that in the referenced email Mr. Joseph Chang expressed, *inter alia*, that "Port Reliant has **partnered** with a Chinese metals and minerals firm, Hongfan Ltd., **to invest in the expansion of alumina production in Jamaica...**"¹⁰⁰ (OCG's Emphasis)

The OCG, in its Statutory Requisitions to the respective former and current Permanent Secretaries in the then MEM, which were dated 2010 June 9, also posed the following question:

*"Please provide a **Comprehensive Executive Summary** detailing your knowledge of Zhuhai Hongfan. The summary should include the following information:*

- i. The due diligence process which was undertaken by the GOJ and/or the MEM with regard to determining the legitimacy of Zhuhai Hongfan.;*

⁹⁹ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 July 14. Response #13

¹⁰⁰ Email correspondence from Mr. Joseph Chang, Director, Port Reliant Limited, to Ms. Marcia Forbes, former Permanent Secretary in the MEM, which was dated 2008 September 24.

- ii. *Your knowledge about the beneficial shareholders, directors, employees, officers, and principals of Zhuhai Hongfan.*
- iii. *Your knowledge about the historical business activities of Zhuhai Hongfan;*
- iv. *Your knowledge about the incorporation particulars of Zhuhai Hongfan;*
- v. *Your knowledge about the agency agreement between Port Reliant Ltd. and Zhuhai Hongfan.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*¹⁰¹

Ms. Marcia Forbes, the former Permanent Secretary, MEM, in her response to the foregoing questions, which was dated 2010 June 29, stated, *inter alia*, the following:

(i) Due Diligence Process Undertaken by the GOJ/MEM re Legitimacy of Hongfan

- *The Chairman of JBM/Batco asked banker, Peter Moses, to run a check on Hongfan...*
- *Jamaica's Ambassador to China was asked to investigate the status of China Construction Bank of which Hongfan reported being a customer...*
- *....emails over April 27 and 28, 2009 regarding further information from Joseph Chang on Port Reliant and Hongfan...*

ii) Knowledge about the beneficial shareholders, directors, employees, officers, and principals of Zhuhai Hongfan

¹⁰¹ OCG Statutory Requisition which was dated 2010 June 9 to the former and current Permanent Secretaries in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes. Question #6

- ...discussions with the GOJ and Government of China officials and meetings with Hongfan and Port Reliant representatives, I learnt about Zhuhai [sic] Hongfan.
- **Based upon several meetings with and correspondence from Joseph Chang, Gary Ho and Hongfan representatives, I learnt that the following persons represented:**
 - a. **Port Reliant – Joseph Chang, Ray Chang, Gary Ho...**

iii) Knowledge about the historical business activities of Zhuhai Hongfan

...discussions with GOJ and Govt. of China officials, Port Reliant and Hongfan representatives (as detailed in answers to earlier questions) also provided information about Hongfan. Additionally please see ... a description of Hongfan by its Chief Financial Officer, Bill Huo.

iv) Knowledge about the incorporation particulars of Zhuhai Hongfan

Similar response as per items (ii) and (iii) above.

v) Knowledge about the agency agreement between Port Reliant Ltd. and Zhuhai Hongfan

A relationship between Port Reliant and Hongfan was initially communicated to me...from Joseph Chang. Later via word of mouth from Joseph Chang and Gary Ho, the agency agreement became evident. This was later corroborated by representatives from Hongfan when GOJ officials tried to deal directly with Hongfan and not through Port Reliant... ”¹⁰²

¹⁰² Response from Ms. Marcia Forbes, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Responses # 6

Mrs. Hillary Alexander, in her response, which was dated 2010 July 14, stated, *inter alia*, the following:

“Answer

6.

(1) The due diligence process included:

(a) Fact finding meetings and consultations, into Hongfan’s bona fides and financial capabilities, being undertaken by various GOJ officials with relevant Chinese officials and financial institutions. Ambassador Courtenay Rattray, Jamaica’s ambassador to China, undertook extensive discussions, in this regard. Meetings and consultations, as to Hongfan’s suitability as an entity to which the GOJ could divest the shares, were held with the National Development and Reform Commission (NDRC,(an arm of the State Council).

The National Development and Reform Commission (NDRC) is a macroeconomic management agency which operates as an organ of the State Council, that is, the Cabinet, which studies and formulates policies for economic and social development, maintains a balance of economic aggregates and guides the overall economic system restructuring and the sustainable development of industry, including that of the energy sector.

China Development Bank (Second largest bank world-wide and prospective financier of Hongfan’s investment in Jamalco); and the Aluminium Corporation of China (the largest aluminium company in China, which is State owned and providing support to Hongfan in the planned acquisition of the shares and participation in Jamalco)...

(b) Formal due diligence process/enquiry undertaken by China Company Research Services Limited, a UK based company which provides due diligence

services/research into Chinese corporations/entities...

- ii. *My knowledge as to the beneficial shareholders, directors, employees, officers and principals of Zhuhai Hongfan is as disclosed by the result of the due diligence exercise ...*
- iii. *My knowledge about the historical business activities of Zhuhai Hongfan is as disclosed by the result of the due diligence exercise ...*
- iv. *My knowledge about the incorporation particulars of Zhuhai Hongfan is as disclosed by the result of the due diligence exercise ...*
- v. *I have no knowledge about the agency agreement between Port Reliant and Zhuhai Hongfan save and except as disclosed by letter dated June 19, 2009 from Zhuhai Hongfan which stated that Port Reliant is Hongfan's "fully authorized exclusive agent for the bauxite and alumina investment (and trading) and payment in Jamaica..."¹⁰³ (OCG's Emphasis)*

The current Permanent Secretary, Mrs. Hillary Alexander, in her referenced response to the OCG's Statutory Requisition, also enclosed the following supporting documentation, amongst others, to substantiate the due diligence which was undertaken by the then MEM:

1. A copy of a Report which was prepared by China Company Research Services Ltd., which was produced for a Mr. Kassim Morrison of the BATCO, and which was dated 2010 December 27. The referenced Report outlined, *inter alia*, the following information regarding Hongfan:

- i. That the company is licensed for export/import trading.

¹⁰³ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG's Statutory Requisition, which was dated 2010 July 14. Response #6

- ii. That the legal business scope or legal specification of what the company is licensed to do is: *“Wholesale and retail of petroleum (excluding refined oil), steel products, minerals, electronic products, agricultural products; self operated and acting as an agent of import and export of products and technologies, excluding those operated by State designated companies or prohibited by the State; processing with import materials, counter trade and entrepot trade.”*

- iii. That the Director of Hongfan is Mr. Yan TeiJun and that the Shareholders in the company are as follows:
 - a. Original Shareholders: 1) Ms. Liang JinZhi with a 12% investment in the company valuing RMB 1,200,000; and 2) Mr. Yan Teijun with a 88% investment in the company valuing RMB 8,800,000.

 - b. On 2007 November 18, with increased share capital, the ownership structure changed to: 1) Ms. Liang JinZhi with a 12% investment in the company valuing RMB 36,000,000; and 2) Mr. Yan Teijun with a 88% investment in the company valuing RMB 46,400,000.

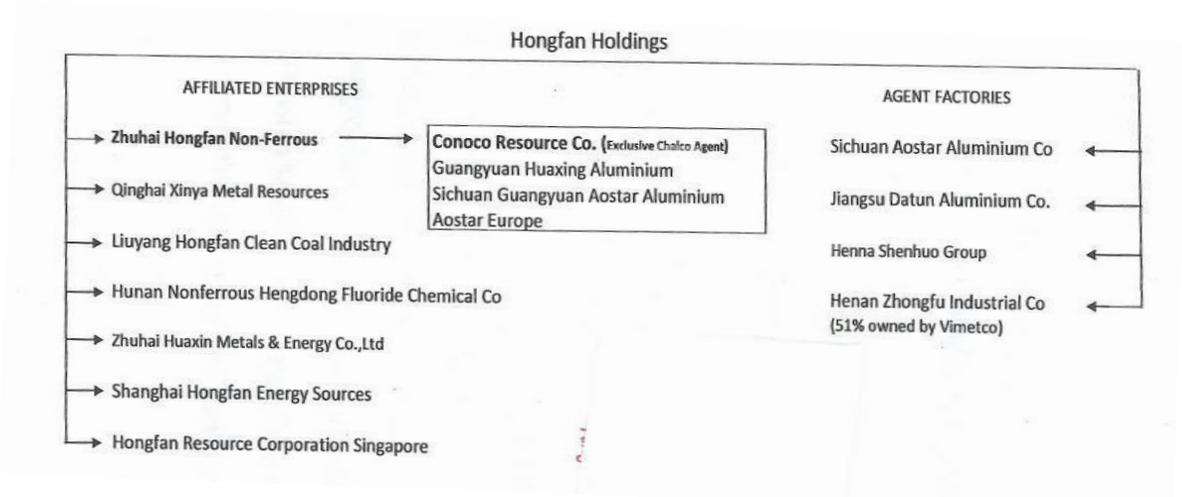
 - c. On 2007 November 8, share capital was reduced and ownership changed to Hongfan Holdings Co. Ltd., with 100% investment in the company valuing RMB 30,000,000.00.

- iv. A summary of the company’s activities indicated, *inter alia*, that *“...Hongfan Holdings is a conglomerate owning 16 companies involved in the fields of fluoride materials, bauxite, alumina oxide, electrolytic aluminium, aluminium material, etc...It works with a large number of domestic and foreign enterprises. These include (in no particular order) Norsk Hydro, Glencore, Chinalco, Henan Shenhua, Jiangsu Datun Alumina, Zhongfu Aluminum, Shanxo Huaze Aluminium & Power Co. Ltd and others.”*

- v. A Financial Account was attached to the report which outlined the “*Total Liabilities and Owners’ Equity*” of Hongfan as at the end of the years of 2006, 2007 and 2008. The OCG noted that in 2008, Hongfan’s “*Total Liabilities and Owners’ Equity*” totalled RMB 661,499,000 and the Net Profit totalled RMB 42,497,000.
2. A document entitled “**Due Diligence Report Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering**” was also submitted which indicated that the due diligence report was taken from websites associated with Hongfan, and which outlined, *inter alia*, the following information:
- i. *Hongfan Holdings, founded in 1992, is located in Zhuhai City...*
 - ii. ***Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Incorporated was founded in 1999.***
 - iii. *The company operates as a subsidiary of Hongfan Group Holdings Limited.*
 - iv. *Its executive officers are:*
 - a. *Mr. Yan Tiejun – Chairman & CEO of Zhuhai Hongfan Non-Ferrous*
 - b. *Mr. Bill Huo – Chief Financial Officer of Hongfan Holdings Group*
 - c. *Mr. Gao Rui - Deputy Mngr., Alumina Dept*
 - v. *Between 2002 and 2007, Hongfan has imported 1.8mln MT of alumina, of which 1 mln MT was between 2006 and 2007. Imports were down in 2008 due to increase local production. They have also imported 4mln MT of bauxite...*
 - vi. *It’s business scope includes various kinds of resources and products such as non-ferrous metals, ferrous metals, rare metals, chemical raw materials, and petro-chemicals.*
 - vii. *It mainly deals in metals such as copper, aluminium, lead, zinc, and steel. **However, it is also active in alumina**, iron ore, coal, and coke, including petroleum coke, heavy oil, aluminium floride, synthetic cryolite and potassium fluorborate.*

- viii. *Hongfan handles over 250,000 metric tons of aluminium ingots annually. The company's plant in Southwest China, with an annual production of 60,000 metric tons, is a joint-venture with a primary aluminium smelter whose brand is listed on the London Metal Exchange.*
- ix. *Hongfan is an agent of import and export for the Aluminium Company of China (CHALCO)...*
- x. *At present, Hongfan Holdings has invested in more than 10 enterprises, and achieved sales revenue of RMB 10 billion (USD~1.5billion) during 2008.*
- xi. *It enjoys good cooperation with many multinationals in the world and has a long term stable business relationship with over 100 large state-owned enterprises in China.*
- xii. *It is the **exclusive agent** of four large alumina smelters in China for their import and export.*
 - a. *Sichuan Aostar Alumina Co., Ltd. – 250,000MT*
 - b. *Jiangsu Datun Aluminium Co., Ltd. – 110,000MT*
 - c. *Henan Zhongfu Industrial Co., Ltd. – 80,000MT*
 - i. *Note: Henan Zhongfu Industrial Co., Ltd. is a 51% owned subsidiary of Vimetco, N.V.*
 - 1. *Vimetco's 2007 report lists short-term facilities that Vimetco used finance its working capital and investment needs in China of which Zhuhai Hongfan was owed USD13,133,000 at a fixed rate of 6.7%...*
 - d. *Chongqing Dongsheng Aluminium Incorporated Co., Ltd – 60,000MT...*
- xiii. *Hongfan Group uses two main vehicles for their investments:*
 - a. *Zhuhai Hongfan Nonferrous is used for productive assets*
 - b. *Hongfan International is used for trading.*

The due diligence report also included a copy of a diagram entitled “*HONGFAN HOLDINGS RELATIONSHIP TREE*” which was exhibited as follows:



3. A Report was submitted to the OCG which was entitled ***“Report on Jamaica’s Delegation to China for Meetings with: Zhuhai Hongfan (HF) and Port Reliant Representatives; the China Development Bank; CHALCO; and the National Development and Reform Commission”*** and which was dated 2009 November 22-27.

The referenced Report indicated that a Jamaican Delegation travelled to China to (a) ascertain or clarify the nature of Hongfan Group’s (HF) interest in and investment in the alumina sector in Jamaica and, specifically, in CAP; (b) the “credentials” of the Hongfan Group to undertake the proposed investment; (c) gain a better understanding of the financial backing available to HF to support this investment through the major Chinese banks, and (d) ascertain the level of support for the project that could be reasonably expected from the National Development and Reform Commission (NDRC).

The referenced Report indicated that the Jamaican Delegation consisted of the following persons:

1. Mr. James Robertson – in his capacity as the then Minister of Energy and Mining;
2. Ambassador Courtenay Rattray;

3. Mrs. Hillary Alexander – Permanent Secretary in the then MEM;
4. Mr. Peter Millingen – then Chairman, CAP; and
5. Dr. Carlton Davis – then Chairman, Bauxite and Alumina Task Force.

Upon a review of the referenced Report, the OCG noted that in the ‘meetings’ which were held with Hongfan, the following, *inter alia*, were discussed:

1. “...the President at the HF headquarters in Zhuhai provided clarification as to the nature of the proposed investment – that of an **equity** holding and not a Joint Venture with the GOJ. HF noted that the involvement of the NDRC and CDB were of strategic importance to realising HF’s proposed investment.”
2. The relationship between the Aluminium Corporation of China (CHALCO) and Hongfan was outlined, in which it was stated, *inter alia*, that “China Development Bank is one of Chalco’s largest creditors, and is therefore keen for Chalco to be involved in a strong project. Chalco’s support to the project was reaffirmed, and HF indicated that:
 - **Chalco is (likely) to be the off-taker for the entire life of the project.** This position is clearly dependent on the finalisation of outstanding matters re HF’s acquisition of the interest in CAP and
 - The (Draft) Term Sheet and framework contract will be prepared by December/January for review...”
3. The overall conclusions of the Report, were as follows:
 - “HF has stated clearly that their intention is a straightforward acquisition of CAP and a valuation to determine the market value will have to be undertaken. They propose to have a draft framework agreement and Term Sheet for discussion by mid-end December, 2009.

- *HF has indicated that they are also interested in acquiring other interests – i.e. Rusal’s share in Kirkvine & Ewarton; and in electricity/power generation.*
- *A critical success factor will be the explicit involvement of CHALCO, as the major off-taker and the CDB as a major financier. The confirmation of the support of these two entities will be the likely determinant of the NDRC support for HF’s acquisition of the CAP shares.*
- *As a part of the continuing due diligence exercise, a review of the HF audited financial statement will be necessary.*
- *It will be important to explore the co-generation possibilities, as this will enhance the project feasibility, efficiency and consequently positively impact the ROI.*
- *CDB is very interested in pursuing interests in Jamaica, as our development partner. They have significant capital for investment and pursue a business model that is aligned to Jamaica’s thrust to promote private sector investments that will not require a sovereign guarantee...*
- *CHALCO is supportive of the HF acquisition and is prepared to be involved as the major off-taker; however, the exact nature of their involvement needs further clarification – which should become evident within the next 6 weeks.*
- *The NDRC was supportive of HF; it is also clear in its assertion that the choice of partner should, (logically) be driven by the scale and scope of the project. Therefore the clear implication is that the CDB and Chalco involvement are key success factors in achieving NDRC “sign-off” and support.”*

The OCG also noted that the ***“Report on Jamaica’s Delegation to China for Meetings with: Zhuhai Hongfan (HF) and Port Reliant Representatives; the China Development Bank; CHALCO; and the National Development and Reform Commission”*** indicated that Port Reliant Limited was present at the meeting which was held between the Jamaican Delegation and CHALCO.

It is instructive to note that Mrs. Hillary Alexander, in her referenced response to the OCG, provided a letter from CHALCO to Mr. Peter Millingen, former Chairman of CAP, which was dated 2010 February 4, which stated, *inter alia*, that “...*Chalco Trading and Zhuhai Hongfan have been close partners for many years, both in China and internationally. We are very supportive of Zhuhai Hongfan’s investments in Jamalco and Windalco...*”

Based upon the foregoing, the OCG found the following to be of significant import:

- i. That the GOJ, in 2009 March, had conducted due diligence exercises into the suitability of Hongfan, as an entity, to which the GOJ could divest its shares. The OCG was informed that due diligence exercises were also conducted by the GOJ into Hongfan to determine (a) the legitimacy of the entity; (b) knowledge about the incorporation and beneficial shareholders, directors, employees, officers and principals; (c) the agency agreement between Port Reliant Limited and Hongfan; (d) financial capabilities.
- ii. That several meetings and discussions were held to facilitate the due diligence process with certain Chinese officials and institutions which included, *inter alia*, the China Development Bank, the National Development and Reform Commission, the China Aluminium Corporation of China, representatives of Hongfan, and representatives of Port Reliant Limited namely, Mr. Joseph Chang and Mr. Gary Ho.
- iii. That the former Permanent Secretary, Ms. Marcia Forbes, indicated that based upon several meetings and email correspondence with Mr. Joseph Chang, Mr. Gary Ho and

other Hongfan representatives, she **learnt** that Mr. Joseph Chang, **Mr. Ray Chang** and Mr. Gary Ho, represented Port Reliant Limited.

- iv. That BATCO conducted a formal due diligence exercise into Hongfan through a UK based company, China Company Research Services Limited, which undertakes due diligence services/research into Chinese corporations/entities. A report which was submitted by the referenced company outlined, *inter alia*, that (a) the company is licensed for export/import trading, (b) Mr. Yan Teijen is the Executive Director and General Manager of the company; and (c) the entity was incorporated as a Limited Liability Company on 2007 November 8.
- v. In general, Hongfan was considered a small company in China, compared to companies such as CHALCO. However, the OCG was advised that Hongfan's success factor was based upon "*...the explicit involvement of CHALCO, as the major off-taker and the CDB as a major financier. The confirmation of the support of these two entities will be the likely determinant of the NDRC support for HF's acquisition of the CAP shares.*"

Port Reliant Limited

Among the supporting documents which were submitted by Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response to the OCG of 2010 July 14, was a letter from Mr. Yan Tiejun, Chairman, Hongfan, to Mr. James Robertson, the former Minister of Mining and Energy, which was dated 2009 June 19. In the referenced letter, Mr. Tiejun communicated to the former Minister that he was writing to confirm "**...that Port Reliant Limited is our fully authorized exclusive agent for the bauxite and alumina investment (and trading) and payment in Jamaica.**"¹⁰⁴ (OCG's Emphasis)

¹⁰⁴ Letter from Mr. Yan Tiejun, Chairman, Hongfan to Mr. James Robertson, former Minister of the MEM, which was dated 2009 June 19.

The OCG questioned both the current and former Permanent Secretary in the then MEM, by way of its respective Statutory Requisitions, which were dated 2010 June 9, with respect to their knowledge of Port Reliant Limited, as a business entity acting as an ‘agent’ for Hongfan, an entity having an interest in the divestment of the GOJ shares. The following questions were posed to both individuals:

*“Please provide a **Comprehensive Executive Summary** detailing your knowledge of Port Reliant Ltd. The summary should include the following information:*

- i. The due diligence process which was undertaken by the GOJ and/or the MEM with regard to determining the legitimacy of Port Reliant Ltd.;*
- ii. Your knowledge about the beneficial shareholders, directors, employees, officers, and principals of Port Reliant Ltd.;*
- iii. Your knowledge about the historical business activities of Port Reliant Ltd.;*
- iv. Your knowledge about the incorporation particulars of Port Reliant Ltd.;*
- v. Your knowledge about the agency agreement(s) between Port Reliant Ltd. and Zhuhai Hongfan.*

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”¹⁰⁵

¹⁰⁵ OCG Statutory Requisition, which was dated 2010 June 9, to the former and current Permanent Secretaries in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes. Question #7

Ms. Marcia Forbes, the former Permanent Secretary in the MEM, in her response to the OCG, which was dated 2010 June 29, stated, *inter alia*, the following:

- i. ***“The due diligence process which was undertaken by the GOJ and/or the MEM with regard to determining the legitimacy of Port Reliant Ltd.***

I am not aware of any due diligence on this company. When I learnt of Port Reliant the company was already quite well-known to several GOJ officials who had been engaged in discussions with its representatives prior to me joining the civil service.

- ii. ***Knowledge about the beneficial shareholders, directors, employees, officers, and principals of Port Reliant Ltd***

Such information as I have of Port Reliant was provided by Joseph Chang, Gary Ho and Hongfan...

- iii. ***Knowledge about the historical business activities of Port Reliant Ltd.***

My knowledge of Port Reliant’s business activities is based on what I heard word of mouth from Howard Mitchell and what was written by Joseph Chang...regarding the historical business activities of Port Reliant Ltd.

- iv. ***Knowledge about the incorporation particulars of Port Reliant Ltd.***

I have no memory/knowledge about the incorporation particulars of Port Reliant Ltd.

- v. ***Knowledge about the agency agreement(s) between Port Reliant Ltd. and Zhuhai Hongfan.***

...To my certain knowledge Hongfan did send correspondence indicating its agency agreement with Port Reliant. This would be on the Hongfan File at MEM.”¹⁰⁶

Ms. Forbes provided the OCG with a copy of an email correspondence between herself and Mr. Joseph Chang, Director, Port Reliant Limited, which she indicated had informed her of Port Reliant Limited’s business activities, as follows:

1. Email from Ms. Marcia Forbes to Mr. Joseph Chang, which was dated 2009 April 27, in which she asked “*Joseph, can you elaborate on Port Reliant’s track record? I believe this is one area where clarification is being sought, especially with respect to bauxite/alumina trading.*”
2. Email from Mr. Joseph Chang, in his response on even date, to the email correspondence of 2009 April 27, which stated the following:

*“Our core competences are in investment and finance in North America and China. The best elaboration of our alumina sector capability is the fact that we have brought the investor, Hongfan to the table. Moreover **GOJ’s first introduction to China Aluminium senior management was arranged by us in April 2008, when their Chairman was introduced to Batco’s Chairman in Beijing.***

Team members’ experience includes buyout, debt restructuring, audit, tax, special project engagements (relating to mining, milling and smelters) for international metals and mining companies...” (OCG’s Emphasis)

3. A third email correspondence was highlighted by Ms. Marcia Forbes as being the source of information on Port Reliant Limited. The referenced email correspondence,

¹⁰⁶ Response from Ms. Marcia Forbes, the former Permanent Secretary in the then MEM, which was dated 2010 June 29. Response #7

which was dated 2009 April 27, was from Mr. Joseph Chang to Mr. Howard Mitchell, former Chairman, JBM and BATCO.

The referenced email stated, *inter alia*, that “...Port Reliant is a transaction company specifically established to facilitate investment opportunities in the Jamaica alumina sector from China. Port Reliant is the exclusive agent for Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited (Hongfan) for Jamaica...Among Port Reliant’s functions are identifying, presenting, and negotiating with prospects for the purpose of securing spot and long-term supplies of alumina. Other Port Reliant functions include due diligence, and on-going advisory and support services...” (OCG’s Emphasis)

Based upon the foregoing email correspondence, the OCG found the following to be of significant import:

1. That the former Permanent Secretary, Ms. Marcia Forbes requested information from Port Reliant Limited on 2009 April 27, regarding the entities track record.

Of note, this was subsequent to the meeting which was held between Ms. Forbes, Mr. Howard Mitchell, former Chairman of JBM and BATCO, and the OCG, on 2009 April 24, and the date of the OCG’s Letter to the Permanent Secretary, as it regards the discussions which were held in the referenced meeting and certain OCG concerns.

2. That the Director of Port Reliant Limited indicated that “GOJ’s first introduction to China Aluminium senior management was arranged by us in April 2008, when their Chairman was introduced to Batco’s Chairman in Beijing.” **Of note, the Chairman was Mr. Howard Mitchell.**
3. That the Director of Port Reliant Limited informed both Ms. Marcia Forbes and Mr. Howard Mitchell that Port Reliant Limited was specifically established to facilitate

Jamaican alumina investments from China, in which its functions include “...identifying, presenting, and negotiating with prospects for the purpose of securing spot and long-term supplies of alumina” and “...due diligence, and on-going advisory and support services.”¹⁰⁷

Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, when questioned about the verification measures which were undertaken by the GOJ, as it regards Port Reliant Limited, advised the OCG, in her response which was dated 2010 July 14, of, *inter alia*, the following:

“Answer 7.

(i) I am not aware of any due diligence process which was undertaken by the GOJ and/or the MEM with regard to determining the legitimacy of Port Reliant given that Port Reliant was the agent of Hongfan and not the GOJ or the MEM and, to the best of my knowledge, has not received any payment or incentive from the GOJ or the MEM in relation to any transaction of which I am aware.

(ii) My knowledge about the beneficial shareholders, directors, employees, officers and principals of Port Reliant is as disclosed in letter dated May 5, 2010...

(iii) My knowledge about the historical business activities of Port Reliant is as disclosed in Investment and Advisory Capability Statement, provided by Port Reliant on May 31, 2010...

(iv) My knowledge about the incorporation particulars of Port Reliant are as disclosed in letter dated May 5, 2010 ...

(v) I have no knowledge about the agency agreement between Port Reliant and Zhuhai Hongfan save and except as disclosed by letter dated June 19, 2009 from Zhuhai

¹⁰⁷ Email correspondence from Mr. Joseph Chang to Mr. Howard Mitchell, former Chairman, JBM and BATCO, which was dated 2009 April 27.

Hongfan which stated that Port Reliant is the exclusive agent of Hongfan for bauxite and alumina investment and payment in Jamaica.”¹⁰⁸

It is instructive to reiterate the contents of the aforementioned letter of 2010 May 5 from Mr. Joseph Chang, Director, Port Reliant Limited, to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which states, *inter alia*, the following, in regard to Port Reliant Limited:

“...we provide the following:

- *Port Reliant Limited (“Port Reliant”) is a BVI company specifically established to facilitate investment opportunities internationally from China*
- *Port Reliant is Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited’s (“Hongfan”) exclusive agent for Jamaica*
- *Port Reliant has no Jamaican officers, principals, shareholders or beneficiary shareholders*
- *...Ray Chang is not an officer, principal, shareholder or beneficiary shareholder of Port Reliant”.*¹⁰⁹

The OCG, in an effort to ascertain whether any other Public Officials/Officers had undertaken any form of due diligence on Port Reliant Limited and/or was aware of any such due diligence exercise being undertaken, posed a similar question, as referenced above, to several other Public Officials/Officers in their respective Requisitions.

The former Prime Minister of Jamaica, the Hon. Bruce Golding, in his response to the OCG’s Requisition, which was dated 2010 October 20, advised the OCG that *“I am not aware of any due diligence done on Port Reliant since Port Reliant only acted as Zhuhai Hongfan’s agent.”*¹¹⁰

¹⁰⁸ Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 July 14. Response #7

¹⁰⁹ Letter from Mr. Joseph Chang, Director, Port Reliant Limited, to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 May 5.

¹¹⁰ Response from the former Prime Minister of Jamaica, the Hon. Bruce Golding, dated 2010 October 20. Response #6

The former Prime Minister also indicated that *“My knowledge about the beneficial shareholders, employees, officers and principals of Port Reliant is limited to the details provided in a letter dated May 2010, from Joseph Chang to Hillary Alexander, Permanent Secretary, MEM. I was previously advised that Mr. Joseph Chang and Mr. Gary Ho represented Port Reliant...”*¹¹¹

It is instructive to note that Mr. Glenford Watson, the then Senior Legal Officer, MEM, in his response to the OCG, which was dated 2011 January 25, indicated that he was not aware of any due diligence which was undertaken in relation to Port Reliant and further stated that *“...the GOJ was not in any contractual relationship with Port Reliant and bore no liability for the activities of Port Reliant.”*¹¹²

The OCG was also advised by Mr. Peter Millingen, Chairman of CAP, and Mr. Winston Hayden, General Manager, CAP, in their respective responses of 2011 January 28 and 2011 January 20, that they were not aware of any due diligence which was undertaken in relation to Port Reliant Limited.

Mr. Coy Roache, Managing Director, BATCO, in his response to the OCG, which was dated 2011 January 26, asserted that his knowledge of *“...Port Reliant Limited is limited to the meeting with two principals to discuss the sale of alumina and JBM’s 7% of Windalco. They are Gary Ho and Joseph Chang.”*¹¹³

Mr. Roache also indicated that *“No due diligence was done for Port Reliant as we had no financial transaction or envisaged any relationship which would need such exercise. We get enquires for the supply of alumina on a regular basis from all over the world and we would not*

¹¹¹ Response from the former Prime Minister of Jamaica, the Hon. Bruce Golding, dated 2010 October 20. Response #6

¹¹² Response from Mr. Glenford Watson, the then Senior Legal Officer, MEM, which was dated 2011 January 25. Response #6

¹¹³ Response from Mr. Coy Roache, Managing Director, BATCO, which was dated 2011 January 26. Response #6

do due diligence on each enquiry. The due diligence would naturally be done when a sale is eminent.”¹¹⁴

Based upon the foregoing representations, the OCG found that although Port Reliant Limited, as communicated by Hongfan, was an agent, acting on its behalf, with respect to the alumina and bauxite investment in Jamaica and payment, the GOJ did not conduct any formal due diligence process into the operations of the company and its members capabilities as it regard alumina and bauxite. In point of fact, the OCG was advised by the former Permanent Secretary in the then MEM, that any information obtained with respect to Port Reliant Limited was done by verbal communication.

The OCG found that as the authorised agent of Hongfan, the majority of the discussions, intentions expressed and negotiations were held between Port Reliant Limited and the respective GOJ representatives from as early as 2007.

Based upon the various representations to the OCG, there seemed to have been a general belief by certain aforementioned Government Officials/Officers, that it was not a necessity for the GOJ to conduct any form of a due diligence exercise on the business capabilities and suitability of Port Reliant Limited on the basis that the GOJ had no agreement with Port Reliant Limited, but rather Hongfan.

Role of Port Reliant Limited

The OCG, in its Statutory Requisition to the then Minister of Energy and Mining, Mr. James Robertson, which was dated 2010 December 23, posed the following question, in a further attempt to understand the working relationship, if any, between the GOJ and Port Reliant Limited, as the agent of Hongfan:

¹¹⁴ Response from Mr. Coy Roache, Managing Director, BATCO, which was dated 2011 January 26. Response #6

“Who, and/or what GOJ entity(ies) and/or Official(s) initiated contact with Port Reliant Ltd.? To the best of your knowledge please provide the following information and, where possible, provide documentary evidence to substantiate your assertions/responses.

- i. Detail whether, at any point in time, there was and/or is a relationship of any kind between the GOJ and/or the MEM and Port Reliant Ltd.;*
- ii. The genesis of the relationship, if any, between Port Reliant Ltd. and the GOJ and/or the MEM;*
- iii. The rationale and purpose for initiating contact in regard to the same;*
- iv. The name(s) of the entity(ies) and/or individual(s) and the title(s) of the individual(s) who initiated contact;*
- v. The circumstances relating to the GOJ’s and/or the MEM’s initial contact with Port Reliant Ltd.;*
- vi. The date(s) on which such interactions took place;*
- vii. The name(s) and title(s) of the GOJ and/or the MEM Official(s) who was/were approached and was/were involved in the discussions relating to the same;*
- viii. The name(s) and title(s) of the Port Reliant Ltd.’s official(s), employee(s) and/or anyone acting on their behalf which was/were involved in discussions relating to the same;*
- ix. The manner and/or nature of the medium of communication which was utilised;*

- x. *The terms and conditions of the agreement(s) and/or arrangement(s) which was/were discussed, negotiated and contemplated with Port Reliant Ltd.;*
- xi. *The reasons and/or rationale for the involvement of Port Reliant Ltd. in the said discussions and/or negotiations;*
- xii. *Any other relevant particulars that are pertinent to the initial contact with Port Reliant Ltd.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.*¹¹⁵

The former Minister of Energy and Mining, in his response to the OCG's Statutory Requisition, which was dated 2011 January 24, stated, *inter alia*, in very general terms, that he had "...no personal information on which to make a declaration on this issue." Mr. Robertson also indicated that "*I have no personal knowledge of this but **I am of the view that Port Reliant's, being staffed by directors who spoke english and mandarin and understood the local business sector as well as the Chinese business industry, may have been considered as suitable to act as a facilitator or coordinate Hongfan's investments/involvement in the local bauxite and alumina sector.***"¹¹⁶ (OCG's Emphasis)

Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to a similar question which was posed by the OCG, which was dated 2010 July 14, stated that she had "...no knowledge of what entity initiated contact with Port Reliant or that any person or entity initiated contact with Port Reliant."¹¹⁷

¹¹⁵ OCG Statutory Requisition to the former Minister of Energy and Mining, Mr. James Robertson, which was dated 2010 December 23. Question #12

¹¹⁶ Response from Mr. James Robertson, former Minister of Energy and Mining, which was dated 2011 January 24. Response #12(ix)

¹¹⁷ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 July 14. Response #14

However, Mrs. Hillary Alexander made reference to (a) the e-mail of 2008 September 25 which asserted that Mr. Gary Ho and Mr. Joseph Chang met in 2007 March with Dr. Carlton Davis to discuss the availability of alumina for Chinese buyers, (b) the Confidentiality Agreement in 2008 February, and (c) the Letter of Intent, which was also executed in 2008 between BATCO, Hongfan and Port Reliant Limited, as evidence of the genesis of the relationship between the GOJ and Port Reliant Limited.

It is instructive to note that Ms. Marcia Forbes, former Permanent Secretary, MEM, in her response to the OCG, which was dated 2010 June 29, indicated that although she was unaware of the genesis of the relationship between the GOJ and Port Reliant Limited, the reason and rationale for the involvement of Port Reliant Limited was on the basis that *“Port Reliant was appointed by Hongfan to represent its interests to the GOJ...Efforts by the GOJ and its representatives to deal directly with Hongfan were rebuffed with instructions from them for communication to be directed through Port Reliant.”*¹¹⁸

The OCG, in its Statutory Requisition to Mr. James Robertson, the then Minister of Energy and Mining, which was dated 2010 December 23, posed the following question:

“Did Port Reliant Ltd. broker an alumina sale deal between the GOJ and/or the MEM and Zhuhai Hongfan? If yes, to the best of your knowledge, please provide the following particulars and answer the respective questions:

- i. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and Officer(s) who was/were a part of the negotiations and/or discussions;*
- ii. The date(s) of the negotiations and/or discussions;*
- iii. The circumstances relating to the same;*

¹¹⁸ Response from Ms. Marcia Forbes, former Permanent Secretary, MEM, which was dated 2010 June 29. Response # 14(xi)

- iv. *The outcome of the negotiations and/or discussions;*
- v. *The particulars with regard to the same;*
- vi. *The circumstances surrounding Port Reliant Ltd.'s involvement in such negotiations and/or discussions;*
- vii. *The name(s) and title(s) of the agent(s), official(s), officer(s) and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd., and/or anyone acting on their behalf, who participated in the negotiations and/or discussions;*
- viii. *State whether there was any discussion with regard to the payment of a commission to Port Reliant Ltd. by the GOJ, the MEM and/or Zhuhai Hongfan. If yes, please provide the circumstances and the particulars surrounding the same;*
- ix. *State on whose behalf Port Reliant Ltd. was acting in the referenced negotiations and/or discussions;*
- x. *Any other relevant particulars that are pertinent to the referenced negotiations and/or discussions.*

If no, to the best of your knowledge, please state whether Port Reliant Ltd. negotiated, discussed and/or contemplated any other arrangement and/or agreement between the GOJ, the MEM, Zhuhai Hongfan and/or Port Reliant Ltd. If yes, please provide the following particulars and answer the respective questions:

- i. *The nature of the arrangement(s) and/or agreement(s) which was/were negotiated, discussed and/or contemplated;*

- ii. *The name(s) and title(s) of the GOJ and/or the MEM Official(s) and Officer(s) who was/were a part of the negotiations, discussions and/or contemplation;*
- iii. *The date(s) of the negotiations and/or discussions;*
- iv. *The circumstances relating to the same;*
- v. *The outcome of the negotiations and/or discussions;*
- vi. *The particulars with regard to the same;*
- vii. *The circumstances surrounding Port Reliant Ltd.'s involvement in such negotiations and/or discussions;*
- viii. *The name(s) and title(s) of the agent(s), official(s), officer(s) and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd., and/or anyone acting on their behalf, who participated in the negotiations and/or discussions;*
- ix. *State whether there was any discussion with regard to the payment of a commission by the GOJ, the MEM and/or Zhuhai Hongfan to Port Reliant Ltd. If yes, please provide the circumstances and the particulars surrounding the same;*
- x. *State on whose behalf Port Reliant Ltd. was acting in the referenced negotiations and/or discussions;*
- xi. *Any other relevant particulars that are pertinent to the referenced negotiations and/or discussions.*

*Please provide documentary evidence in support of your response and/or any assertions made.*¹¹⁹

Mr. James Robertson, the former Minister of Energy and Mining, in his response to the OCG's Statutory Requisition, which was dated 2011 January 24, stated, *inter alia*, the following:

“(a) I am not aware of Port Reliant brokering an alumina sale deal between the GOJ/MEM and Hongfan and have no reason to believe that this is so.

(b) *Save for the Agreement ... and ... in relation to Hongfan obtaining “virtual” equity over CAP’s shares in Jamalco, I am not aware of or cannot recall any other agreement or arrangement involving Port Reliant.*

(i) *Please see 14(b) above.*

(ii) *Please see response ... in relation to discussions of a “virtual” equity transaction and proposals for the sale of alumina (draft Alumina Sale Agreement).*

(iii) *Honourable Carlton Davis*

Honourable Hugh Hart

Marcia Forbes

Peter Millingen

Howard Mitchell

Sonia Mitchell

Glenford Watson

¹¹⁹ OCG Statutory Requisition to the former Minister of Energy and Mining, Mr. James Robertson, which was dated 2010 December 23. Question #14

- (iv) *My recollection is that such negotiations and/or discussions took place, intermittently, between the period December 2007 and September 2009.*
- v) *My understanding is that Hongfan was seeking opportunities to invest or become involved in the local and alumina industry, with the hope of realizing alumina for shipment to China.*
- vi) *To the best of my knowledge, the discussions, of which I am aware, did not result in any agreement or arrangement between the parties.*
- vii. *My recollection is that Port Reliant participated in the discussions/negotiations as the exclusive agent for Hongfan.*
- viii. *I am aware of Messrs. Gary Ho and Joseph Chang.*
- xi. *Please see response to question 10 above.*
- x. *Port Reliant was acting on behalf of Hongfan in the negotiations/discussions.”¹²⁰ (OCG’s Emphasis)*

It is instructive to note that the OCG also posed a similar question to both the former and current Permanent Secretaries in the then MEM, Ms. Marcia Forbes and Mrs. Hillary Alexander, which were dated 2010 June 9, respectively.

Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG, which was dated 2010 July 14, stated that based upon the records, the discussions between the GOJ and Port Reliant Limited “... *did not result in any agreement or arrangement between the*

¹²⁰ Response from Mr. James Robertson, former Minister of Energy and Mining, which was dated 2011 January 24. Response #14

parties save and except (a) the Letter of Intent dated May 28, 2008...extended by Supplementary Deed of November 25, 2008; (b) and Term Sheet of February 13, 2009."¹²¹ The OCG noted that the Letter of Intent was extended to 2009 February 24.

Ms. Marcia Forbes, the former Permanent Secretary, in her response to the OCG, which was dated 2010 June 29, indicated that "...no such deal was brokered while she served as Permanent Secretary."¹²²

Based upon the foregoing sworn testimonies, the OCG found the following:

1. That Port Reliant Limited was perceived as participating in discussions/negotiations as the 'exclusive agents' of Hongfan. Of note, the former Minister of the MEM, Mr. James Robertson informed the OCG that he was not aware of Port Reliant Limited 'brokering' an alumina sale deal between the GOJ and Hongfan.
2. No due diligence exercise was undertaken by the GOJ with respect to the business suitability of Port Reliant Limited, as the agent of Hongfan, being involved in and associated with the possible investment of the GOJ to divest its shares in CAP to Hongfan.
3. There were reportedly no agreements which were consummated between the GOJ and Port Reliant Limited except the Letter of Intent of 2008 May 28, which was extended by Supplementary Deed and the Term Sheet of 2009 February 13, which were entered into for and on behalf of Hongfan.
4. That the outcome of all discussions, negotiations and subsequent agreements between the GOJ and Port Reliant were for and on behalf of Hongfan in their quest to invest in the alumina industry "*with the hope of realizing alumina for shipment to China.*"¹²³

¹²¹ Response from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 July 14. Response #16

¹²² Response from Ms. Marcia Forbes, the former Permanent Secretary in the then MEM, which was dated 2010 June 29. R.response #16

The Payment of Fees to Port Reliant Limited

In an effort to determine the veracity of the allegation that the contract payments to Hongfan were ‘grossed up’ to facilitate the proposed commission for Hongfan’s agent, Port Reliant Limited, the OCG, in its Requisition to the former Minister of Energy and Mining, Mr. James Robertson, which was dated 2010 December 23, posed the following questions:

“It has been asserted that Zhuhai Hongfan was unwilling to pay the proposed commission directly to Port Reliant Ltd., but was willing to “gross up” the contract payments in an amount which was equivalent to the commission. If the foregoing assertion is true, to the best of your knowledge, please provide the following particulars and answers to the respective questions:

- i. The particulars relating to the same;*
- ii. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who was/were privy to this disclosure;*
- iii. The name(s) and title(s) of the GOJ and/or the MEM Official(s) and/or Officer(s) who held the relevant discussions with regard to the same;*
- iv. The name(s) and title(s) of the individual(s) who made the disclosure to the GOJ and/or the MEM;*
- v. The circumstances relating to the disclosure;*

¹²³ Response from Mr. James Robertson, former Minister of Energy and Mining, which was dated 2011 January 24. Response #14

- vi. *The impact of such a disclosure on the prospective agreements and/or arrangements which was being negotiated, discussed and contemplated by the GOJ and/or the MEM;*
- vii. *The actions which were taken by the GOJ and/or the MEM subsequent to such a disclosure;*
- viii. *The reason and rationale for a commission payment being made to Port Reliant Ltd.;*
- ix. *The name(s) and title(s) of the agent(s), official(s), officer(s) and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd. and/or anyone acting on their behalf who was privy to such a disclosure and/or who made the disclosure;*
- x. *Any other relevant particulars that are pertinent to the referenced disclosure.*

*Please provide documentary evidence in support of your response and/or any assertions made.*¹²⁴

Mr. Robertson, in his response to the OCG's Statutory Requisition, which was dated 2011 January 24, stated, *inter alia*, the following:

"Answer

- i. *I am unable to speak to particulars relating to the request for the GOJ to pay a commission to Port Reliant but, **by letter of March 18, 2009, from Hongfan to the***

¹²⁴ OCG Statutory Requisition to the former Minister of Energy and Mining, Mr. James Robertson, which was dated 2010 December 23. Question #15

Honourable Derrick Smith, former Minister with portfolio responsibilities, Hongfan requested that the GOJ pay to Port Reliant, on Hongfan's behalf, certain fees from the Consideration to be paid by Hongfan in relation to a proposed long-term purchase of alumina supplies...

- ii. *It appears that the following persons were or may have been privy to the request for the GOJ to pay the fees to Port Reliant, on behalf of Hongfan.*

Honourable Derrick Smith, former Minister with portfolio responsibilities

Honourable James Robertson, Minister of Energy & Mining

Honourable Carlton Davis, former Chairman JBI

Douglas Leys, QC, Solicitor General

Mr. Greg Christie, Contractor General

Marcia Forbes, former Permanent Secretary with portfolio responsibilities

Howard Mitchell, Chairman of BATCO/JBM

Paris Lyew-Ayee, Executive Director - JBI

- iii. *It appears that the following individuals participated or may have participated in the discussions with regard to same.*

Mr. Douglas Leys

Mr. Greg Christie

Mrs. Marcia Forbes

Mr. Howard Mitchell

- iv. *As stated in response to (i) above, the MEM and/or GOJ was advised of the request for the payment of the fees in a letter of March 18, 2009, from Hongfan to the Honourable Derrick Smith, former Minister with portfolio responsibilities.*

- v. *Please see responses to (i) and (iv) above in relation to the circumstances under which the GOJ was made aware of the request for the payment of the fees.*
- vi. *From the documents seen, the request for the payment of the fees by GOJ led to a breakdown/deadlock and or stay in the prospective agreements and/or arrangements which were being discussed by the GOJ and/or the MEM.*
- vii. *From the documents seen, the following actions were taken by the GOJ/MEM:*
- (a) ***the matter was referred to the Solicitor General for his opinion and he offered an opinion, dated April 14, 2009, that there was no legal basis on which such a fee could be paid by the GOJ to Port Reliant.***
- (b) ***Consultation was held with the Contractor General, Mr. Greg Christie, on April 24, 2009, as to the appropriate nature of such a proposal and the Contractor General responded by letter of April 27, 2009 that such an arrangement would be irregular and ought not to be pursued by the GOJ/MEM.***
- (c) ***By way of letter dated May 13, 2009, as Minister with portfolio responsibility I formally rejected the request for the payment of fees by the GOJ by advising Port Reliant (Joseph Chang) that there was no need for the GOJ to be consulted on the payment of fees by Hongfan to any party if the fees are not being deducted from monies belonging to the GOJ.***

*I am advised and to the best of my knowledge **no fees and or commission have been paid by the GOJ/MEM to Port Reliant or any party acting on behalf of Port Reliant in this matter.** This view is supported by Hongfan's letter of June 2, 2009, which stated, inter alia, **"in order to move the deal forward Hongfan will use Port Reliant as the investment vehicle. Accordingly all funding for the Jamaica Projects (as defined in the Term Sheet signed on February 13)***

will be through Port Reliant [sic] and fees will not be an issue related to the GOJ...

- viii. *I am not aware and to the best of my knowledge no commission payment or fee has been paid by GOJ to Port Reliant. I am also not aware of any commission payment being made to Port Reliant.*
- ix. *I believe that Mr. Yan Tiejun of Hongfan; Mr. Joseph Chang and Mr. Gary Ho of Port Reliant were privy to and/or advised the GOJ of the request for the payment of the fees to Port Reliant.*¹²⁵ (OCG's Emphasis)

Mr. Robertson, in his foregoing response to the OCG's Statutory Requisition, provided the OCG with a copy of the referenced letter of 2009 March 18, which he has asserted was the means by which he became aware of Hongfan's request "...that the GOJ pay to Port Reliant, on Hongfan's behalf, certain fees from the Consideration to be paid by Hongfan"¹²⁶.

The referenced letter from the Chairman & CEO of Hongfan, Mr. Yan Tiejun, and which was addressed to the Hon. Derrick Smith, in his capacity as the then Minister of Mining and Telecommunications, stated, *inter alia*, the following:

"Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. ("Hongfan") is prepared to provide a funding facility of up to US\$750 million ("Funding Facility") for alumina projects to the Government of Jamaica, its ministries, companies or agencies ("GOJ") and, enter into a long-term alumina purchase agreement for alumina from Alpart, Jamalco and/or Windalco or others for a target alumina supply of 40 million tons over a period of not more than 25 years subject to conditions ("Transaction"). Transaction includes providing loan facilities, purchasing equity, purchasing long-term

¹²⁵ Response from Mr. James Robertson, former Minister of Energy and Mining, which was dated 2011 January 24. Response #15

¹²⁶ Response from Mr. James Robertson, former Minister of Energy and Mining, which was dated 2011 January 24. Response #15

production capacity (“Virtual Equity”), spot and future trading or other transactions where value is exchanged between Hongfan and GOJ. Consideration is the total value paid by Hongfan for Transaction (“Consideration”).

Consideration already includes the fees to Port Reliant.

For the purposes of pursuing long-term alumina cooperation and to build a solid foundation for the above-mentioned Transaction. Hongfan in addition to the Funding Facility agrees to buy up to 500,000 tons of alumina on a spot basis.

Port Reliant Limited (“Port Reliant”) is Hongfan’s exclusive agent for Transaction. As a condition of the Transaction, Hongfan is requesting GOJ to pay, on Hongfan’s behalf Port Reliant certain fees (“Fee”) from the Consideration paid by Hongfan. The Fee payable to Port Reliant shall be calculated as a percentage of Consideration. The percentage rate shall be: 1.5% for spot purchase of alumina; 5.0% for equity, Virtual Equity and loan facilities; and, 1.5% for long-term purchase contracts of alumina. Port Reliant’s Fee shall be payable in U.S Dollars in the form of a wire transfer by GOJ. Fee shall be paid automatically upon each payment or draw down of the Transaction.” (OCG’s Emphasis)

The OCG had posed a similar question to both the current and former Permanent Secretaries in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes, by way of their respective Requisitions, which were dated 2010 June 9.

Ms. Marcia Forbes, the former Permanent Secretary, in her response to the foregoing question, which was dated 2010 June 29, stated, *inter alia*, that “*There was such talk...but this was rejected by the GOJ...*”¹²⁷ She further indicated that letters were drafted in 2009 May and June for the Minister’s signature and which stated the GOJ’s position with respect to the payment of fees to Port Reliant Limited and the status of Hongfan’s proposal.

¹²⁷ Response from Ms. Marcia Forbes, the former Permanent Secretary, MEM, which was dated 2010 June 29. Response #18

The former Permanent Secretary also provided the OCG with certain supporting documentation. The OCG noted that in an email correspondence, dated 2009 April 27, from Mr. Joseph Chang to Mr. Howard Mitchell, which was copied to Ms. Forbes, and captioned “*Fee and Port Reliant Questions*”, the following, *inter alia*, was stated:

“The payment of commissions is customary and legal in China as elsewhere in the world provided that the parties agree on terms. I cannot cite a specific document that says commissions are legal, however commissions are included in their tax code among lists of taxable “proceeds and income”, and hence permissible. According to the fees letter dated March 18, 2009 (“Letter”), “Port Reliant Limited...is Hongfan’s exclusive agent for Transaction. As a condition of the Transaction, Hongfan is requesting GOJ to pay, on Hongfan’s behalf, Port Reliant certain fees (“Fee”) from the Consideration paid by Hongfan.” All parties are aware of the Fee, this is not a case of hidden commissions...

As the Fee is included in the Consideration, it can only be paid when the bank has provided the funding at the closing of the Transaction. Note that Hongfan further states in the Letter that “Fee shall be paid automatically upon each payment or draw down of the Transaction.

*Hongfan has clearly agreed to the Fee. **They have requested “GOJ to pay, on Hongfan’s behalf, Port Reliant certain fees...from the Consideration paid by Hongfan”. The settlement of the Fee in this manner is more convenient for Hongfan...**”¹²⁸ (OCG’s Emphasis)*

Mrs. Hillary Alexander, the Permanent Secretary in the MSTEM, in her response to the foregoing question, which was dated 2010 July 14, stated, *inter alia*, the following:

¹²⁸ Email correspondence from Mr. Joseph Chang to Mr. Howard Mitchell, which was dated 2009 April 27.

“Answer...

- (i). I am unable to speak to the particulars relating to the request for the GOJ to pay a commission to Port Reliant but by letter of March 18, 2009, from Hongfan to the Honourable Derrick Smith, former Minister with portfolio responsibilities, Hongfan requested that the GOJ pay to Port Reliant, on Hongfan’s behalf, certain fees from the Consideration to be paid by Hongfan in relation to a proposed long-term purchase of alumina supplies...*

- (ii). From the documents seen (some of which only recently came into the possession of the MEM), it appears that the following persons were or may have been privy to the request for the GOJ to pay the fees to Port Reliant, on behalf of Hongfan.*
 - a. Honourable Derrick Smith, former Minister with portfolio responsibilities Honourable James Robertson, Minister of Energy & Mining Honourable Hugh Hart, Special Advisor to the Honourable Prime Minister (bauxite and energy matters)*
 - b. Dr. the Honourable Carlton Davis, former Chairman JBI*
 - c. Douglas Leys, QC, Solicitor General*
 - d. Mr. Greg Christie, Contractor General*
 - e. Marcia Forbes, former Permanent Secretary with portfolio responsibilities*
 - f. Howard Mitchell, Chairman of BATCO/JBM*
 - g. Parris Lyew-Ayee, Executive Director – JBI*

- (iii). From the documents seen it appears that the following individuals participated or may have participated in the discussions with regard to same.*
 - a. Douglas Leys*
 - b. Greg Christie*

c. Marcia Forbes

d. Howard Mitchell

I have seen emails or letters written or copied to the individuals set out at (ii) above but I am unable to say if they all participated in the “relevant discussions” with regard to this matter.

(iv). As stated in response to (i) above, the MEM and/or GOJ was advised of the request for the payment of the fees in a letter of March 18, 2009 from Hongfan to the Honourable Derrick Smith, former Minister with portfolio responsibilities.

(v). Please see responses to (i) and (iv) above in relation to the circumstances under which the GOJ was made aware of the request for the payment of the fees.

(vi). From the documents seen, the request for the payment of the fees by GOJ led to a breakdown/deadlock and or stay in the prospective agreements and/or arrangements which were being discussed by the GOJ and/or the MEM.

(vii). From the documents seen, the following actions were taken by the GOJ/MEM:

(a) the matter was referred to the Solicitor General for his opinion and he offered an opinion dated April 14, 2009 that there was no legal basis on which such a fee could be paid by the GOJ to Port Reliant...

(b) consultation was held with the Contractor General, Mr. Greg Christie, on April 24, 2009, as to the appropriate nature of such a proposal and the Contractor General responded by letter of April 27, 2009 that such an arrangement would be irregular and ought not to be pursued by the GOJ/MEM...

(c) Minister Robertson, by way of letter dated May 13, 2009...formally rejected the request for the payment of fees by the GOJ by advising Port Reliant (Joseph Chang) that there was no need for the GOJ to be consulted on the payment of fees by Hongfan to any party if the fees are not being deducted from monies belonging to the GOJ.

I am advised and to the best of my knowledge no fees and or commission have been paid by the GOJ/MEM to Port Reliant or any party acting on behalf of Port Reliant in this matter. This view is supported by Hongfan's letter of June 2, 2009, which stated, *inter alia*, "in order to move the deal forward Hongfan will use Port Reliant as the investment vehicle. Accordingly all funding for the Jamaica Projects (as defined in the Term Sheet signed on February 13) will be through Port Reliant and fees will not be an issue related to GOJ."...

(viii). *I am not aware and to the best of my knowledge, no commission payment or fee has been paid by GOJ to Port Reliant. I am also not aware of any commission/payment being made to Port Reliant.*

(ix). *From the documents seen (some of which only recently came into the possession of the Ministry) Mr. Yan Tiejun of Hongfan; Mr. Joseph Chang, Mr. Gary Ho of Port Reliant; and Mr. Ray Chang of Port Reliant or acting on behalf of Port Reliant, were privy to and/or advised the GOJ of the request for the payment of the fees to Port Reliant.*¹²⁹ (OCG's Emphasis)

The Permanent Secretary, in her referenced response, provided the OCG with certain supporting documents pertaining to the proposition by Hongfan to pay Port Reliant Limited a commission, as follows:

¹²⁹ Response from Mrs. Hillary Alexander, the Permanent Secretary in the MSTEM, which was dated 2010 July 14. Response #18

1. A copy of a letter which was dated 2009 April 14, from the Attorney General's Chambers, to Ms. Marcia Forbes, former Permanent Secretary in the MEM, regarding "*Hongfan Offer and Next Steps*", which outlined, *inter alia*, the following:

*"...One particular issue has arisen however, which have put the parties in deadlock and threatens to jeopardize the entire transaction...**Hongfan has requested receipt of a written commitment from the GOJ that the Port Reliant fees will be paid; namely a fee of 1.5% on the Spot Purchase transaction with the fee being deducted from the spot price as well as the fees related to the prepayment amount and long term supply of alumina. Port Reliant is apparently the broker who helped put the transaction together.** Hongfan wishes to have written confirmation from the GOJ of acceptance of Hongfan's offer stating that it will, "agree to carry out, on Hongfan's behalf, the fee arrangements contained in Hongfan letter." The Hongfan letter, I have been made to understand, is a letter to the GOJ dated March 11, 2009... Interestingly, it does not contain any proposals as to the payment of fees as contended for by Hongfan...*

On that basis, it is clear that the fee proposal which is now being introduced is a new term, which the GOJ will have to consider before if [sic] it contemplates paying the same. In considering the payment of these fees, the GOJ will have to bear in mind the following facts. If it agrees to the Hongfan offer, it will be agreeing to a fixed dollar amount to be paid in respect of the spot purchase price of alumina, as well as the payment of up to US\$275m as prepayment for the supply of alumina by CAP for a period of not less than 20 years.

I am not sure on the written instructions what role Port Reliant plays in the transaction. It however appears from conversation and deduction that they played the role of middlemen or brokers for the transactions...** The GOJ however has no relationship with Port Reliant on the instructions. They were not asked by the GOJ to put this transaction together...**It would appear from these instructions and from the

background that Hongfan has the responsibility for the payment of these fees but is asking the GOJ to make these payments on its behalf.

The GOJ, if it chooses to do so will have considerable difficulties justifying this expenditure. **Apart from the fact that there was no transparency in the selection of Port Reliant as middleman and the procurement issue that this would raise, is the fact that the GOJ would have to account for the expenditure of these fees.** The moneys to be received from Hongfan would be public revenues and any expenditure from such sums would have to be justified by the GOJ. Since there is no contractual relationship between the GOJ and Port Reliant, it would be difficult for the GOJ to claim that it was making these payments on behalf of Hongfan...It would be highly inappropriate for the GOJ to make the payment in these circumstances, as there is no basis commercially or legally for it to do so...

Conclusion

Based on the foregoing I advise as follows:

- a. There are no fee arrangements mentioned in the Hongfan letter and in particular, the payment of fees to Port Reliant by the GOJ. Port Reliant has no agency or other relationship with the GOJ.
- b. If Port Reliant were to act on behalf of the GOJ, it would have had to satisfy the relevant procedures under the Contractor General's Act and the Government's Procurement Guidelines.
- c. The GOJ has no contractual or other relationship with Port Reliant which would justify the payment of any fees on behalf of Hongfan.

- d. Any monies received by the GOJ from Hongfan pursuant to the transaction would be public revenues and payment of any fees from such revenues to Port Reliant in the absence of a legal and commercial basis would be wholly unauthorized.”*
2. A copy of a letter from Mr. James Robertson, former Minister of the MEM, which was addressed to Mr. Joseph Chang, which was dated 2009 May 13, stated, *inter alia*, that “...your client is at liberty to pay fees to whomever they wish. We see no reason why the GOJ should have to be consulted on the issue if the fees are not being deducted from its monies.”
3. A copy of a letter from Mr. Joseph Chang, Director, Port Reliant Limited, which was addressed to Mr. James Robertson, former Minister of the MEM, which was dated 2009 June 2, stated the following:

“In view of the circumstances mentioned in your letter of May 13, we will set aside discussion of spot and focus on negotiating a long-term virtual equity/equity arrangement along with a related project with the Jamaican Government.

In order to move the deal forward Hongfan will use Port Reliant as the investment vehicle. Accordingly all funding for the Jamaica Projects (as defined in the Term Sheet signed on February 13) will be through Port Reliant and fees will not be an issue related to GOJ.”

It is instructive to note that the payment of a commission to Port Reliant Limited was brought to the attention of the OCG on 2009 April 24, when Ms. Marcia Forbes, former MEM Permanent Secretary, and Mr. Howard Mitchell, former Chairman of the JBM/BATCO, met with the OCG on the captioned divestment.

Subsequent to the foregoing meeting, the OCG wrote to the former Permanent Secretary, by way of a letter which was dated 2009 April 27, in which the OCG expressed, *inter alia*, its concern that “*You have asserted that Hongfan is unwilling to pay the proposed commission directly to Port Reliant, but is willing to ‘gross up’ the contract payments in an amount which is equivalent to the commission. This, of all of our stated concerns, raises very serious possibilities for a finding of irregularity and/or impropriety as regards the transaction. Further, there is a possibility that the GOJ could be embarrassed in the event that the transaction is found to be illegal and/or otherwise questionable, by the Government of China.*”

The following questions were also posed by the OCG to both the current and former Permanent Secretaries in the then MEM, Mrs. Hillary Alexander and Ms. Marcia Forbes, by way of their respective Requisitions, which were respectively dated 2010 June 9.

“Please state whether a payment(s) of commission(s) was/were ever contemplated, discussed and/or negotiated by the GOJ and/or the MEM with Port Reliant Ltd. and/or Zhuhai Hongfan with regard to any GOJ agreement and/or arrangement. If yes, please provide the following information and, where possible, provide documentary evidence to substantiate your assertions/responses:

- i. The rationale and purpose for contemplating, discussing and/or negotiating such payment(s) of commission to Port Reliant Ltd.;*
- ii. The date(s) on which payment(s) was/were contemplated, discussed and/or negotiated;*
- iii. The particulars relating to contemplation, discussions and/or negotiations of the payment(s);*

- iv. *The name(s) and title(s) of the person(s) who was/were involved in the negotiations and/or discussions of the payment(s) of commission to Port Reliant Ltd.;*
- v. *The name(s) and title(s) of the person(s) who agreed to the payment(s) of commission to Port Reliant Ltd.;*
- vi. *Any other relevant particulars which are pertinent to the discussions and/or negotiations of commission payment(s) to Port Reliant Ltd.*

Please provide documentary evidence, where possible, to substantiate your assertions/responses.”

It is instructive to note that both Mrs. Alexander and Ms. Forbes indicated in their respective responses that they were not aware of any payment of a commission being negotiated or agreed upon between the GOJ and Port Reliant Limited.

The OCG was informed that a proposition was made by Hongfan for the GOJ to pay Port Reliant Limited a commission “*from the Consideration paid by Hongfan*”. As such, advice was sought from the OCG and the Solicitor General with respect to same. Of significant import is that in both instances, the GOJ was advised against paying any monies to Port Reliant Limited.

Having regard to the foregoing sworn testimonies, the OCG found that no monies were paid to Port Reliant Limited, by the GOJ, with respect to the subject divestment.

Discussions, Meetings, and Other Assemblies with the Chinese, Hongfan and Port Reliant Limited

The OCG, in an effort to ascertain the circumstances which led to the purported “*unsolicited proposal*” which was utilized as the basis upon which to enter into an “*Agreement for Purchase of Shares*” for the GOJ 45% shares in Jamalco, with Hongfan, enquired into the particulars of certain discussions, meetings, negotiations and/or otherwise, which were held between the GOJ, Hongfan, Port Reliant Limited and/or any other person and/or entity acting on their behalf.

Upon a review of several sworn testimonies and documentary evidence which the OCG received from certain Public Officials/Officers who were requisitioned during the course of the Investigation, the OCG found that the GOJ held and attended several meetings with Hongfan, Port Reliant Limited, amongst other persons and entities of interest, and that on several occasions a Jamaican delegation visited China to garner information, particularly with respect to the suitability of Hongfan which had proposed an interest in the subject divestment.

Of note, Mr. Coy Roache, Managing Director, BATCO, in his response to the OCG, which was dated 2011 January 26, advised the OCG that meetings were held with Mr. Joseph Chang and Mr. Gary Ho of Port Reliant Limited on “*February 12th and 13th, 2008, September 24 and October 24, 2008.*”¹³⁰

Meetings in China

The OCG in its Statutory Requisition, which was addressed to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, and which was dated 2010 June 9, posed the following question:

¹³⁰ Response from Mr. Coy Roache, Managing Director, BATCo, which was dated 2011 January 26. Response #14

“Did the GOJ and/or the MEM send an official delegation to China in May 2008 to discuss and/or negotiate any agreement and/or arrangement with Zhuhai Hongfan and/or Port Reliant Ltd.?”

(a) If yes, please provide the following particulars and answer the respective questions:

- i. Who and/or what entity arranged the trip?*
- ii. The name(s) and title(s) of the individual(s) who were a part of the GOJ and/or the MEM official delegation;*
- iii. The date(s) of the trip(s);*
- iv. The circumstances relating to the same;*
- v. The outcome of the negotiations and/or discussions;*
- vi. The particulars with regard to the same;*
- vii. The name(s) and title(s) of the agent(s), official(s), officer(s) and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd., and/or anyone acting on their behalf, with whom the GOJ official delegation met and/or interacted with;*
- viii. Any other relevant particulars that are pertinent to the referenced trip.*

(b) If no, please state whether any representative of the GOJ and/or the MEM made any trips to China, during the last three (3) years, to discuss and/or negotiate any

agreement and/or arrangement with Zhuhai Hongfan and/or Port Reliant Ltd. If yes, please provide the following particulars and answer the respective questions:

- i. Who and/or what entity arranged the trip(s)?*
- ii. The name(s) and title(s) of the individual(s) who were a part of the GOJ and/or the MEM official delegation;*
- iii. The date(s) of the trip(s);*
- iv. The circumstances relating to the same;*
- v. The outcome of the negotiations and/or discussions;*
- vi. The particulars with regard to the same;*
- vii. The name(s) and title(s) of the agent(s), official(s), officer(s) and employee(s) from Zhuhai Hongfan and/or Port Reliant Ltd., and/or anyone acting on their behalf, with whom the GOJ official delegation met and/or interacted with;*
- viii. Any other relevant particulars that are pertinent to the referenced trip(s).*

Please provide documentary evidence in support of your response and/or any assertions made. ¹³¹

¹³¹ OCG's Statutory Requisition to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 June 9. Question #15

Mrs. Hillary Alexander, in her response to the foregoing question, which was dated 2010 July 14, also stated, *inter alia*, the following:

“No. I am advised that a May 2008 visit did not relate to any agreement and/or negotiation with Hongfan and/or Port Reliant.

(b) Yes...

Trip #1

Date: March 6 – March 16, 2009 in China

Delegation included:

Marcia Forbes, former Permanent Secretary, MEM

Ambassador Douglas Saunders, Cabinet Secretary

Hugh Hart, Special Advisor to the Prime Minister

Parris Lyew-Ayee, Executive Director, JBI

Dr. Carlton Davis, Chairman, JBI

Howard Mitchell, Chairman, BATCO/JMB [sic]

I am not privy to details regarding this trip, other than a copy of a letter from Ambassador Saunders to Ambassador Rattray (unsigned) and copied to the MEM in September 2009.

Of note is that Minister James Robertson did not assume portfolio responsibilities for Energy until April 6, 2010.

Trip #2

i. Who and/or what entity arranged the trip?

Answer:

The Ministry of Energy and Mining, through the Office of the Permanent Secretary, in collaboration with the Ministry of Foreign Affairs and Foreign Trade; and at the invitation of Zhuhai Hongfan. The trip was approved by the Cabinet Secretary and on behalf of the HPM.

ii. *Date of trip?*

November 22 – 27, 2009 ...

iii. *Circumstances relating to same;*

iv.

v. *Outcome of discussions;*

vi. *The particulars with regard to the same.*

CHALCO is of strategic importance to the acceleration of the re-start of the bauxite industry and attraction of investment in the sector. As the major off-taker of alumina, their backing of HF was seen to be a critical success factor in actualising this and any other interests; the support of the China Development Bank (CDB) as a major financier, would further assure the support of the Chinese authorities, including the NDRC, to support for Jamaican projects.

As the MEM was advised, financing for the proposed transaction was to be undertaken with support from the China Development Bank, reported as being among the largest international bank worldwide with assets in excess of that of the World Bank.

Please see trip report prepared by MEM and submitted to HPM in December, 2009...

vii. *Names and Titles:*

...the November 2009 visit to China was comprised as follows:

- *Honourable James Robertson, Minister, MEM*
- *Peter Millingen, Chairman, Clarendon Alumina Production*
- *Hillary Alexander, Permanent Secretary, MEM*
- *Dr. Carlton E. Davis, Chairman, Jamaica Bauxite and Alumina Task Force*
- *Ambassador Courtenay Rattray, Ambassador to China, MFAFT*

The Jamaican delegation met, in the course of the week, with:

- *Mr. Yan Teijun, President, Zhuhai Hongfan*
- *Mr. Bill Huo, Chief Finance Officer, hongfan*
- *Mr. Gary Ho, Port Reliant*
- *Joseph Chang, Port Reliant*
- *Mr. Luo Jianchuan , President of the Aluminium Corporation of China (Chalco)*
- *Mr. Zhao Jinhua, Vice President*

Trip # 3:

Date: January 31 –February 6, 2010

- i. Who and/or what entity arranged the trip?*

Answer:

The trip was arranged and coordinated by the Office of the Prime Minister, through the offices of the Permanent Secretary, Ms. Onika Miller, in collaboration with the Ministry of Foreign Affairs and Foreign Trade

- ii. Names and titles of individuals who were part of the GOJ and/or the MEM Official Delegation:*

Answer:

Delegation members and other public officials attending these discussions led by the HPM, and briefing sessions in this respect included the following:

- *Minister Kenneth Baugh – Deputy Prime Minister and Minister of Foreign Affairs and Foreign Trade*
- *Minister Karl Samuda – Minister of Industry, Investment and Commerce*
- *Ms. Onika Miller, Permanent Secretary, Office of the Prime Minister*
- *Ms. Hillary Alexander, Permanent Secretary, Ministry of Energy and Mining*
- *Mr. Christopher Zacca – Special Advisor to the HPM, Office of the Prime Minister*
- *Ambassador Courtenay Rattray – Jamaica’s Ambassador to China*
- ***Mr. Peter Millingen joined the discussion, but was not a part of the Official Delegation***

iii. Date(s) of trip (s)

January 31, 2010 – February 6, 2010

iv. The circumstances relating to same:

BACKGROUND - OFFICIAL DELEGATION to CHINA REGARDING INVESTMENT AND DIVESTMENT OPPORTUNITIES:

In line with the intent of the GOJ policy to facilitate the ongoing rationalization and reform of Jamaica’s public bodies in the medium term, the Ministry of Energy and Mining, in partnership with the Ministry of Foreign Affairs and Foreign Trade (MFAFT) and the Ministry of Investment, Industry and Commerce (MIIC), has sought to attract investment, especially the Bauxite and Alumina and Energy Sectors, and the

divestment of non-performing and/or non-core assets that present a significant drain on public finances.

This has been a clear priority of this administration and has informed the work of the MEM. The government approach is based, inter alia, on the priority principle of reducing public debt, particularly through divesting of commercial entities that may be more efficiently managed by the private sector; and plans to this effect were expected to be actively pursued within the upcoming fiscal year, as referred to in the agreement between the GOJ.

In terms of divestment and investment opportunities, China is viewed as a logically good partner, for three reasons:

- 1. China represents a large market for export of alumina and bauxite*
- 2. China has good institutional capacity in mining, refineries, power generation, solar, hydro and the application of such advanced technologies would enable these industries in Jamaica to become more productive and more competitive internationally*
- 3. China has the ability to provide financing, particularly after the global financial crisis, shrinking capital markets and the decrease in lending by the major international banks.*

China, conversely, even after the crisis, has been less affected, with its large and increasing reserves of foreign exchange. Clarendon Alumina Partners (CAP) is considered a prime candidate for divestment. The entity is heavily indebted as a result of pre-existing long-term contractual arrangements entered into between 2000/2002. The GOJ had secured loans against future supplies of alumina, resulting in an inability to take advantage of positive changes in the world market prices of alumina. CAP also continues to have an obligation to fund critical infrastructure development in Jamalco. It was proposed to utilise funds from a sale of the shares to pay down a portion of the

increasing CAP debt. The provisions required to fund these losses and service the CAP debts could not be sustained, and could not have been accommodated in the economic programme of the IMF. There was also the pressing need to avoid any adverse consequences for the country's credit ratings, which would have been occasioned should there have been a default in the globally traded CAP bonds.

Between November – December 2009, discussions had been held with senior officials of the China Development Bank, National Development and Reform Commission (NDRC) as well as CHALCO, regarding an expression of interest by Zhuhai Hongfan Ltd. to purchase the GOJ 45% shares in Clarendon Alumina Production (CAP)...

The February meeting in China was intended to present investment opportunities in Jamaica, generally; with respect to investment in the bauxite and alumina sector, and to clarify the role of the major offtaker, CHALCO in the proposed Hongfan purchase of the CAP shares, and to more clearly ascertain the level of support for any such transaction by the Chinese Authorities and the major Chinese financiers put forward by Hongfan.

(v) and (vi) Outcome and particulars of discussions:

A courtesy call and luncheon was held on February 2, 2010, attended by some members of the GOJ delegation, Mr. Millingen and representatives of Hongfan and CHALCO.

In general discussions, **CHALCO indicated that they valued their partnership with Hongfan, and viewed the company's proposed investment in Jamaica as one that would be positive for both Jamalco and Hongfan.** They were aware [sic] the high-quality bauxite reserves of Jamaica; the accessibility and ease of mining; strategic location of the country; and noted the cost of energy as a central issue. The

introduction of natural gas (LNG) was seen as a positive move for the industry as it would greatly improve the efficiency of production; and China is experienced in high-quality investment in energy.

General information was shared regarding CHALCO's background, as an international company listed on the NY Stock Exchange. It is China's largest alumina and primary aluminium producer and near top producer of alumina in the world.

Hongfan was viewed by them as an influential and strong company in China, with which they had an extended relationship; and was of the opinion that it was a good time to pursue their investment in Jamaica, as this could be conducive to a significant expansion of the bauxite and alumina sector.

Hongfan reiterated their intent for a sustainable equity investment in Jamaica and their commitment to pursue the investment in Jamaica.

An invitation for a team (Hongfan and Chalco) to visit Jamaica as soon as possible was made, to continue to explore areas of long-term cooperation, and to pursue the formalisation/finalisation of the proposed investment agreement.

It was noted that Jamaica was interested primarily in alumina production. As such, the provision of a more cost-efficient energy solution was critical to Jamaica's development in this area, and Chalco may wish to explore this in the future.

Trip # 4

Date: May 7 – 11, 2010 to China

Delegation:

Honourable James Robertson, Minister, MEM

Glenford Watson, Legal Counsel, MEM
 Cheryl Lewis, Legal Counsel, Solicitor General's Office
 Peter Millingen, Chairman, CAP
 Winston Hayden, General Manager, CAP

Trip # 5

Date: June 6 – 8, 2010 to New York

Delegation:

Honourable James Robertson, Minister, MEM
 Glenford Watson, Legal Counsel, MEM
 Cheryl Lewis, Legal Counsel, Solicitor General's Office
 Peter Millingen, Chairman, CAP

See table for easy reference:

DATES	LOCATION	GOJ's REPRESENTATIVES
March 6 – March 16, 2009	China	Marcia Forbes, former Permanent Secretary, MEM Amb. Douglas Saunders, Cabinet Secretary Hugh Hart, Special Advisor to the Prime Minister Parris Lyew-Ayee, Executive Director, JBI Carlton Davis, Chairman, JBI Howard Mitchell, Chairman, BATCO/JMB
November 22 – 27, 2009	China	James Robertson, Minister, MEM Hillary Alexander, Permanent Secretary, MEM Peter Millingen, Chairman, CAP Carlton Davis, Chairman, JBI
January 31 – February 6, 2010	China	As a part of the Prime Minister's Delegation: Hillary Alexander, Permanent Secretary, MEM (details of delegation listed above) ----- Peter Millingen, Chairman, representing CAP, but not a part of the official delegation
May 7 – 11	China*: To facilitate the continuation of the due diligence process between Alcoa and Hongfan	James Robertson, Minister, MEM Glenford Watson, Senior Legal Counsel, MEM Cheryl Lewis, Legal Counsel, Solicitor Generals' Office Peter Milingen [sic], Chairman, CAP Winston Hayden, General Manager, CAP
June 6 – 8, 2010	New York* To facilitate the continuation of the due diligence process between Alcoa and Hongfan	Re CAP's Divestment James Robertson, Minister, MEM Glenford Watson, Senior Legal Counsel, MEM Cheryl Lewis, Legal Counsel, Solicitor General's Office Peter Millingen, Chairman, CAP

***Note that in May 7 – 11 and June 6 – 8, 2010 the MEM attended at the invitation of Hongfan and/or Alcoa, only to facilitate the continuation of the due diligence process between Hongfan and Alcoa in relation to Alcoa’s right of last refusal and assessment of Hongfan as an acceptable business partner.** *The GOJ team was not involved at those times in any negotiations, but observed and assessed the discussion, for its own purpose.*”¹³² (OCG’s Emphasis)

It is instructive to note that Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, was unable to provide the OCG with a reason for the visit in 2009 March as she was not privy to the details regarding same. However, Dr. Carlton Davis, in his response to the OCG which was dated 2011 January 17, advised the OCG that “...*the visit provided some useful insights in the views of the Chinese Government, and its relevant Agencies in respect of alumina and energy cooperation and, in particular, the role of Zhuhai Hongfan.*”¹³³

Dr. Davis further directed the OCG to a document that was enclosed in his response, which was entitled “***Framework for Jamaica – China Cooperation in Bauxite & Alumina***”, and which was dated 2009 February 27, in which he indicated that the purpose of the visit was to explore “...*all possible options to maintain production to the maximum extent possible and to ensure the long-term development and growth of the industry which is so important to the country.*”¹³⁴ The referenced document outlined the following propositions which the GOJ indicated it would have liked the relevant agencies and/or aluminum firms of China to consider, as follows:

1. “*Purchase of all or a substantial proportion of the Government’s equity in the Jamalco refinery. Currently, it has alumina supply contracts with Glencore International AG for its share of the alumina from the refinery but if there is an interest by a Chinese entity to acquire its equity it is confident that it can negotiate an ‘exit’ strategy with Glencore.*”

¹³² Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 July 14. Response #15

¹³³ Response from Dr. Carlton Davis, the former Chairman of JBI, which was dated 2011 January 17. Response #7

¹³⁴ Document submitted to the OCG by Dr. Carlton Davis which was entitled “*Framework for Jamaica – China Cooperation in Bauxite & Alumina*”.

2. *The purchase of alumina on a short to medium-term basis which the Government would seek to source from one or more of the plants which are operating below their production capacities.*
3. *Work with the Government and the private sector players in the industry in investing in modern electricity and steam-generating systems based on either natural gas or coal as an alternative to fuel oil, producing steam for the alumina refineries and selling excess power to the national grid. This would enhance the efficiency and cost effectiveness of the alumina operations, provide needed additional power to the national grid, and ensure a profitable power generation project.*
4. *Facilitate the supply of caustic soda from China to the Jamaican alumina operations at competitive price, to a market which requires around 400,000 tonnes per year.*¹³⁵

Further, Mr. Glenford Watson, former Senior Legal Officer, MEM, in his response to the OCG's Statutory Requisition, which was dated 2011 January 25, informed the OCG that further to the trips which were reported by Mrs. Hillary Alexander, as outlined above, there was also a trip to London on 2010 October 14, which was attended by himself, Mr. James Robertson, former Minister of the MEM, and Mr. Peter Millingen, Chairman of CAP.

In addition, the former Minister of the MEM, Mr. James Robertson, in his response to the OCG, which was dated 2011 January 24, whilst confirming the referenced trips, also gave a rationale for attending same, as follows:

“To the best of my knowledge, the circumstances relating to the travel in November 2009 and January 2010, relate to the downturn in the bauxite and alumina sector and efforts to re-open a number of local plants that closed in or about 2007/2008 and to attract new investments and stimulate growth in the sector. Additionally, there was a

¹³⁵ Document submitted to the OCG by Dr. Carlton Davis which was entitled “*Framework for Jamaica – China Cooperation in Bauxite & Alumina*”, and which was dated 2009 February 27.

need to find effective measures to deal with the losses faced by CAP as a result of the fixed prices under the forward sale contracts. Such measures included attempts to divest CAP and discussions with Hongfan in this regard.

The travel of May 2010 and June 2010 related, specifically, to the proposed divestment of the CAP shares to Hongfan and discussions surrounding Alcoa's right to determine whether any proposed buyer of the shares is deemed a suitable business partner for joint ownership of Jamalco. The discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.

The GOJ was requested to attend as facilitators to these discussions as Alcoa considered that it required the presence of the GOJ for all such discussions as its contractual relationship resided with the GOJ.

The travel to New York also included a meeting between the GOJ and Alcoa to discuss certain issues relating to the operations of Jamalco, including mounting debts owing to Alcoa, by CAP, as CAP's share of the production costs in Jamalco; and the threat by Alcoa to issue a Notice of Default under the Joint Venture Agreement. Following discussions, Alcoa adjusted its position.

The travel to London in September 2010 was to meet with Alcoa to discuss the forward sales contracts and the adverse financial effect they were causing CAP; as well as the obstruction they posed in the finalization of the divestment to Hongfan. Hongfan wanted certain adjustments to the supply schedule for the alumina due to Glencore; and the GOJ wanted to renegotiate the fixed price components of the said contracts. Consequently, there were several meetings involving the GOJ, Alcoa and Hongfan; and the GOJ and Alcoa. ”¹³⁶

¹³⁶Response from the former Minister of the MEM, Mr. James Robertson, which was dated 2011 January 24. Response #7

The OCG notes the difference in the dates which were provided by Mr. Glenford Watson, former Senior Legal Officer, MEM, and Mr. James Robertson, former Minister of the MEM, with regard to the trip to London in 2010.

Based upon the foregoing, the OCG found that between 2009 March and 2010 May, representatives of the GOJ travelled to China on four (4) different occasions based upon the following reasons:

- i. The visit in 2009 March was reportedly undertaken in an effort to explore all possible options to maintain production to the maximum extent possible and to ensure the long-term development and growth of the industry, in which certain propositions were expressed to the Chinese for consideration.
- ii. The visits in 2010 May and (2010 June to New York) were reportedly based upon the GOJ being invited by Alcoa to observe certain discussions surrounding Alcoa's right in an effort to determine whether any proposed buyer of the shares was deemed a suitable business partner for joint ownership of Jamalco. The OCG was informed that the discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.
- iii. The 2010 November to 2011 January visit was reportedly related to (a) the downturn in the bauxite and alumina sector and efforts to re-open a number of local plants that closed in or about 2007/2008, (b) attracting new investments and stimulate growth in the sector and (c) a need to find effective measures to deal with the losses faced by CAP as a result of the fixed prices under the forward sale contracts, which included attempts to divest CAP and discussions with Hongfan in this regard.

The former MEM Minister’s explanation in Parliament regarding GOJ’s decision to sell its 45% shares in Jamalco to Hongfan

Upon a review of The Hansard of 2010 June 8, the OCG found that upon its decision to launch an Investigation into the proposed sale of the GOJ’s 45% share in Jamalco, Mr. James Robertson, the then Minister of Energy and Mining, presented a Statement in Parliament, in which he stated, *inter alia*, the following:

“...There are two important considerations that have guided the proposed transaction. Firstly, the government’s 45% ownership in JamalCo through Clarendon Alumina Production had become a costly burden which the Jamaican taxpayers could no longer bear. The problems began in 2000 when CAP was unable to meet its share of operational cost and proceeded to borrow US\$125 million initially from Glencore, as an advance which was repaid by a US\$125 million loan secured from the international capital markets. US\$55 million of this amount was diverted to help the government to finance its budget.

In 2002, a further US\$65 million was borrowed from Glencore to meet CAP’s share of plant expansion cost. In 2006 a further US\$200 million was secured from the international capital markets, US\$69 million of which was used to repay the balance on the US\$125 million loan, US\$126 million to settle further debts that CAP had accrued and US\$5 million toward working capital.

The loans from Glencore were repayable through a 10-year alumina supply contract, with more than a half of the supply at a fixed price and the remainder pegged to the equivalent of 12 ¼ % of the price of alumina on the London Metal Exchange.

Sharp increases in the price of oil and caustic soda led to a situation where the cost of production far exceeded the price we were receiving under these arrangements...

The huge drop in alumina prices caused by the recession without a commensurate fall in oil prices further aggravated the dilemma. At the end of 2008 we were losing [sic] over US\$130 on every ton of alumina produced, incurring losses on CAP's operations at an average rate of US\$10 million per month.

As the debt piled up and CAP was unable to make its payment, the Government was required to make good on the payments. In fact, in October 2008 Alcoa issued to CAP a formal notice of default. The seriousness of this cannot be overlooked as it would have impacted the US\$200 million globally traded bonds with grave implications for all GOJ sovereign bonds...Between 2007 and 2010 the Government, through the Ministry of Finance and the PetroCaribe Fund, has had to pump approximately US\$250 million to meet CAP's obligations to JamalCo. CAP's current indebtedness stands at just under US\$400 million. Under the IMF Agreement the Government could not continue to finance these losses...The Government had to divest its shares in JamalCo.

The second issue relates to the selection of Hongfan as the preferred bidder. Divesting our shares in JamalCo involves much more than simply selling an asset. There are strategic considerations that have to be weighed carefully to determine what is in the best long-term interest of Jamaica's alumina industry. China, with its fast-growing economy, is the largest market for alumina. In addition, the selection of a buyer for our shares had to take into account the need to maintain and strengthen the partnership with Alcoa which owns 55% of the shares of JamalCo...

Hongfan had expressed an interest in acquiring our JamalCo shares in 2008. The Government spent considerable time conducting due diligence on the company.

The company founded in 1992, controls or has significant investment in a number of alumina plants in China...

Hongfan's interest was maintained through 2009...Its offer includes not only a substantial price commensurate with independent valuation but the assumption by Hongfan of the costly supply contracts which are responsible for a substantial part of the accumulated losses and some of which run until 2013...

The agreement which was approved by Cabinet has not yet been consummated, as under the joint venture agreement between CAP and Alcoa, Alcoa has the right of first refusal and has until the end of June to exercise that option...¹³⁷

It is instructive to note that subsequent to the then Minister's Statement, members of the Opposition posed several questions in relation to the subject matter and answers were provided by the then Minister of the MEM, amongst others, as follows:

***“Mr. MICHAEL PEART:** Mr. Speaker, could the Minister state what were the procedures in advertising the assets for disposal...*

***Mr. ROBERTSON:** Mr. Speaker, Hongfan's interest was put to Cabinet...The plant was not advertised. I have already stated clearly that the market and the conditionalities that existed here would not have allowed for that, Mr. Speaker.*

***The SPEAKER:** So the answer, it was not advertised...*

***Mr. M. PEART:** If the asset was not advertised, Mr. Speaker, in what way were [sic] two entities approached, what procedure was followed? Because in the Minister's statement it clearly states that they had Hongfan and one other bidder. How did these bidders come to be...*

***Mr. ROBERTSON:** Mr. Speaker, I indicated that Hongfan had shown an interest from 2008 in acquiring the Jamalco shares. Their first approach I believe...was for the*

¹³⁷ The Hansard, 2010 June 8.

purchase of alumina. In the other position I believe the other interested party is a party that had interest in the supply contracts...

Mr. PAUWELL: *...Mr. Speaker...I know the Minister mentioned that there is a right of first refusal and that that time line expires the end of June. In light of the investigation taking place, will...that contract be halted until the Contractor General has completed his findings?*

Mr. WARMINGTON: *Not at all.*

Mr. ROBERTSON: *Mr. Speaker, the Government has entered into a legally binding contract and we will not be halting the contract...we...will be cooperating fully with the Contractor General...*

Mr. BUNTING: *Through you, Mr. Speaker, I would like to ask the Minister three questions. The first, is a company called Port Reliant Limited now or in the past playing a role in this transaction?*

Mrs. [sic] ROBERTSON: *The Government has not entered into any contract with a company by the name of Port Reliant Limited.*

Port Reliant Limited is the exclusive agent to Hongfan, the company that the Government has entered into a contract with...

Mr. BUNTING: *...Is there any agent or other party to whom a commission or a fee of any type is being paid to, in this transaction whether being paid out of the fee, whether implicitly or explicitly?*

Mr. ROBERTSON: *The answer, Mr. Speaker, to that question is, no.*

Mr. BUNTING: Finally, Mr. Speaker, will the Minister say which company performed the independent valuation of the assets on behalf of the Government?

Mr. ROBERTSON: Mr. Speaker, from memory I believe that it was Price Waterhouse...¹³⁸ (OCG's Emphasis)

Having regard to the foregoing, and based upon representations which were made by the then Minister of the MEM, the OCG found that the divestment was not advertised, however, the then Minister indicated that approval was received from the Cabinet of Jamaica.

¹³⁸ The Hansard of 2010 June 8.

Approval Process – Proposal from Hongfan to purchase 45% CAP Shares in Jamalco

It is instructive to note that the privatization process, in keeping with Ministry Paper #34, outlines the procedures for approval which are required to be adhered to in the conduct of the privatization of Public Assets, *inter alia*, as follows:

“STRUCTURE

CABINET has overall responsibility for the approval and review of the privatization programme and policy...

THE NATIONAL INVESTMENT BANK OF JAMAICA, as the Central implementing agency for privatization has the administrative and operational responsibility for effecting privatization in accordance with the broad objectives and principles underlying the programme.

The privatization of each enterprise/activity/asset will be conducted by the NIBJ which will employ an enterprise team led by NIBJ personnel, officers from appropriate Ministries and selected external consultants.

The privatization process can be long and complex and typically, would require the NIBJ engaging in:

- *gathering financial and other information about the targeted enterprise/activity/asset.*
- *identifying practical means to overcome barriers to completing a transaction.*
- *valuing the enterprise and/or asset.*
- *proposing an appropriate modality for consideration of the Cabinet.*
- ***inviting bids from the general public through media advertisement.***
- ***screening prospective investors.***

- *conducting negotiations with selected applicants.*
- *recommending offers for the approval of Cabinet.*
- *after Cabinet approval, overseeing the completion of legal and other arrangements to effect the handover of the enterprise/activity/asset.*

LIST OF ENTERPRISES/ACTIVITIES/ASSETS APPROVED FOR PRIVATIZATION

Applications will not be entertained by NIBJ until an advertisement to solicit investors has been placed in the press. Premature applications can only be acknowledged, and it must be stressed that there should be no expectations that privatization will be accomplished with undue or reckless speed considering that it is a fiduciary responsibility of government to find the best optimal mix of transferring risk to the private sector and maximizing the proceeds whilst conducting the process competently and expeditiously...”

It is instructive to note that the operations, assets and liabilities of the then National Investment Bank of Jamaica (NIBJ) were amalgated with the Development Bank of Jamaica (DBJ) on 2006 September 1. In such regard, the operations of the then NIBJ, pursuant to the provisions of Ministry Paper #34, are now undertaken by the DBJ.

The OCG found that on 2010 February 8, Mr. James Robertson, the then Minister of MEM, submitted to the Cabinet of Jamaica, Cabinet Submission MEM 05/2010, which was entitled **“DIVESTMENT OF THE GOVERNMENT OF JAMAICA’S SHAREHOLDING IN JAMALCO”**. The referenced Cabinet Submission stated, *inter alia*, the following:

“PURPOSE

- 1.0. *Cabinet is being asked to approve the divestment of the Government’s shareholding in JAMALCO. This shareholding is held by the state-owned company, Clarendon Alumina Production Limited...*

BACKGROUND

2.0. ...

3.0. *Since 2008, the divestment of CAP has been explored both as a sale of shares and a sale of assets with the following entities:*

- i. *Glencore AG;*
- ii. *Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Inc (through its Agent Port Reliant Limited) (“Hongfan”);*
- iii. *Far East Limited;*
- iv. *China Institute of Strategy and Management*

4.0. **Offers were received from the entities listed at (i) and (ii) in Paragraph 3.0, with the offer from Glencore being rejected in 2008 due, in part, to the terms of attendant loan arrangements and a valuation which was conducted at a time of a global financial crisis and had a most unfavourable result.** *The explorations with the last two entities are at early stages.*

ISSUES

5.0. **The offer for the acquisition of CAP’s shares which has been submitted by Hongfan was received on January 14, 2010...** *The offer is currently being considered by the Divestment Team and being clarified with Hongfan...*

6.0. **In 2008 Worley Parsons conducted a valuation of CAP’s interest in the JAMALCO operation.** *The prevailing production environment was very hostile, especially given the historically high prices at which JAMALCO had to purchase major inputs such as fuel oil and caustic soda. Additionally, plant efficiencies were comparatively low and production costs high with alumina being produced at well over US\$300.00 per tonne. Consequently, the valuation was fairly negative. However, since January of 2009, the plant has recovered dramatically. Production costs have been reduced by a third and production volumes have increased by*

25%...Given this positive transformation, CAP has deemed it prudent to set aside the Worley Parsons valuation, which had been shaped by the dismal conditions that existed in 2008 when it had been conducted.

7.0. As an initial benchmark for the negotiations, an interim report was conducted by CAP's General and Financial Manager...

7.2 The Development Bank of Jamaica (DBJ) is in the process of contracting PriceWaterHouseCoopers or such other independent valuator to perform a final valuation of CAP's shareholding in JAMALCO or to certify the interim valuation which was conducted by Mr. Winston Hayden. This process is projected to be completed by March 28, 2010.

SUMMARY OF HONGFAN'S OFFER

8.0. Hongfan's offer, among other things, requires CAP's shares to be sold free of encumbrances and CAP's liabilities to be discharged from its books.

9.0. Hongfan has offered a purchase price of US\$240M for the shares. Hongfan has also committed to lodge US\$92M into an account at a commercial bank in Jamaica. This sum is to be used to meet JAMALCO's production charges after completion of the sale.

9.1 The purchase price offered by Hongfan is insufficient to discharge CAP's debts...

10.0. Two of the debts mentioned at Paragraph 9.1...have Government Guarantees...These are the US\$200M Bond, and the US\$65M Glencore Loan (with a current balance of US\$34M). The redemption costs of these two loans may exceed the purchase price being offered by Hongfan; and the estimated cost of redeeming the Bond is US\$26M. Arrangements will also have to be made with

respect to the discharge or novation¹³⁹ to another entity of the remaining debts. Additionally, the possibility of redeeming the principal amount of the Bond at a discount will be examined...

11.0. A central requirement for Hongfan's offer is the waiving of applicable transfer tax and stamp duty charges by the Government of Jamaica.

ALCOA AND THE DIVESTMENT OF CAP'S SHARES

12.0. Clarendon Alumina Production Limited's (CAP) joint venture partner in JAMALCO, Alumina Company of America (ALCOA) is currently owed approximately US\$13M in respect of production charges and they have indicated that contemplation is being given the issue to Default Notice to CAP. As indicated in previous submissions, such a Default Notice would result in ALCOA having the option of taking CAP's alumina for its own account or acquiring a portion of CAP's interest in JAMALCO. The 'threat' of this action makes it imperative for the Divestment Team to conclude an arrangement in the shortest possible time frame as a default could result in cross default of other Government loan facilities.

13.0. It is to be noted that ALCOA's consent will be required for the divestment to be completed; ALCOA must be offered First Refusal and/or accept the sale of the shares.

CONSULTATIONS

14.0. ...

RECOMMENDATIONS

15.0. In consideration of the foregoing, Cabinet is being asked to:

¹³⁹ Footnote in Cabinet Submission which states "This is a situation in which a partner in debt is released from an agreement and another partner replaces him on the same terms and conditions with an obligation to assume and honour the debt."

- 15.1 *Approve the divestment of CAP's interest in JAMALCO during 2010 whether by way of an equity transfer or an asset transfer.*
- 15.2 *Give approval for a valuation of CAP's shareholding in JAMALCO to be conducted, with the objective of said valuation being used as a benchmark for the purchase price in the sales negotiations.*
- 15.3 *Agree to have arrangements made with the approval of the Ministry of Finance and the Public Service (MOFPS) to discharge, novate, or otherwise service the debts currently being carried on CAP's books.*
- 15.4 *Agree to the undertaking of further negotiations in respect of the Hongfan offer and any other offer for CAP's interest in JAMALCO and the execution of any relevant document further to said negotiations provided that the form and term and conditions of any such document are approved by the Attorney General/Solicitor General.*
- 15.5 *Agree that subject to final approval by Cabinet of any sale arrangement being recommended, the Minister of Finance and the Public Service being authorized to agree to a waiver of applicable transfer tax and stamp duty, if he deems it necessary.”¹⁴⁰ (OCG's Emphasis)*

The OCG further reviewed a document, amongst other financial information enclosed, regarding CAP and Jamalco, that was attached to the referenced Cabinet Submission, which was entitled **“ESTIMATED VALUE – CLARENDON ALUMINA PRODUCTION...VALUATION OF CAP'S 45% EQUITY IN THE JAMALCO OPERATION”**, and which was dated 2010 January. The referenced document was prepared by CAP, and outlined, *inter alia*, that “...the present value of the Clarendon Alumina

¹⁴⁰ Cabinet Submission MEM 05/2010, which was entitled **“DIVESTMENT OF THE GOVERNMENT OF JAMAICA'S SHAREHOLDING IN JAMALCO”**, which was dated 2010 February 8.

Production's 45% interest in the JAMALCO operation is US\$233...The valuation period used is twenty years, applying discounted cash flow calculations over the period, at 9% cost of capital, with the assumption that the residual value of the facility is used to offset closing costs...¹⁴¹

A breakdown of CAP's Loan/ Debt Profile as at 2009 December 31, was outlined as follows:

“...CAP's LOAN/DEBT PROFILE

<i>Note: OTHER DEBTS DUE AS AT 31.12.2009</i>	<i>US\$'000</i>
<i>JAMALCO Arrears</i>	<i>16,378.00</i>
<i>Accountant General</i>	<i>4,105.00</i>
<i>Accrued Loan Interest:</i>	
<i>PetroCaribe Loan – US\$102M</i>	<i>9,188.00</i>
<i>BATCO Loan - US\$12.275</i>	<i>103.00</i>
<i>US\$200M Bond</i>	<i>2,262.00</i>
<i>Royalty due for 2009</i>	<i>1,516.00</i>
<i>Jamaica Bauxite Mining – Price Adjustment Re:</i>	
<i>BATCO/JBM Alumina Supply Agreement</i>	<i>896.00</i>
<i>BATCO Payables – (Expenses paid on CAP's behalf)</i>	<u><i>819.00</i></u>
<i>TOTAL</i>	<u><u><i>35,267.00</i></u></u>
 <i>DEBT GRAND TOTAL</i>	 <u><u><i>384,280.00</i></u></u>

¹⁴¹ Document submitted to The Cabinet, which was attached to the referenced Cabinet Submission, which was entitled “ESTIMATED VALUE – CLARENDON ALUMINA PRODUCTION...VALUATION OF CAP'S 45% EQUITY IN THE JAMALCO OPERATION”, and which was dated 2010 January.

Also attached to the referenced Cabinet Submission was a letter, which was dated 2010 January 14, from Mr. Yan Tiejun, Chairman and CEO, Hongfan, to Mr. Peter Millingen, Chairman, CAP, which stated, *inter alia*, the following:

“Subject to contract, we are please to offer to purchase the Government of Jamaica’s (“GOJ”) shares of Clarendon Alumina Production Limited (“CAP”). As you are aware we are well advanced in the financing process with China Development Bank.

Subject to due diligence, we are proposing a total consideration of US\$332 million comprised of US\$240 million to the GOJ and, a payment to CAP of US\$92 million to be used as cash-flow support. We expect that the liabilities of CAP will be removed before completion using some of the consideration to GOJ...

Our attorney’s Samuda & Johnson are currently preparing a suggested draft contract...We are available immediately to commence negotiations towards expeditiously concluding a definitive agreement.”¹⁴²

The Cabinet, by way of its Decision No. 5/10, which was dated 2010 February 8, stated, *inter alia*, the following:

“The Cabinet had before it Submission No. 84/MEM-5/10 in connection with the divestment of the Government of Jamaica’s shareholding in JAMALCO, held by the State-owned company Clarendon Alumina Production Limited (CAP).

The Submission provided information on financial difficulties experienced by CAP, particularly in relation to its operational and debt servicing costs; CAP’s joint venture partnership with ALCOA in JAMALCO; sums owed by CAP to ALCOA; and the technical performance of the JAMALCO refinery.

¹⁴² Letter from Mr. Yan Tiejun, Chairman and CEO, Hongfan, to Mr. Peter Millingen, Chairman, CAP, which was dated 2010 January 14.

The Submission provided further information on the exploration of options for the divestment of CAP, both as a sale of shares and as a sale of assets; the offers received for the divestment of the shares; and the preferred offer from Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Inc. (Hongfan)...

The Minister of Finance and the Public Service said that the debt profile must be amended to reflect the totality of debt incurred by CAP, including advances from the Ministry of Finance and the Public Service.

After consideration, the Cabinet approved the recommendations...¹⁴³

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

1. That the former Minister sought the approval of the Cabinet of Jamaica on 2010 February 8 to divest the GOJ's shareholding in Jamalco. The OCG found that approval was subsequently granted by the Cabinet of Jamaica for the referenced divestment.
2. That the Cabinet of Jamaica was advised by the referenced Minister of, *inter alia*, the following on 2010 February 8:
 - i. That since 2008, the divestment of CAP was explored with at least four (4) entities, inclusive of Hongfan. Of note, however, the divestment was not put to a competitive bidding process prior to the consummation of the "*Agreement for Purchase of Shares*" of 2010 March 18.
 - ii. That the DBJ was in the process of contracting PriceWaterhouseCoopers or such other independent valuers to perform a final valuation of CAP's shareholding in Jamalco or to certify the valuation which was conducted by Mr. Winston Hayden, General Manager, CAP.

¹⁴³ Cabinet Decision No. 5/10, which was dated 2010 February 8.

- iii. That the purchase price which was proposed by Hongfan of US\$332M was found to be insufficient to discharge CAP's debts.
- iv. That based upon a breakdown of CAP's debts which was presented to the Cabinet, as at 2009 December 31, CAP's debt amounted to US\$384,280,000.00.

The OCG found that a second Cabinet Submission (MEM 07/2010) which was dated 2010 March 11, was submitted to the Cabinet by Mr. James Robertson, the then Minister of Mining of Energy, and which was entitled ***"DIVESTMENT OF THE GOVERNMENT OF JAMAICA'S SHAREHOLDING IN CLARENDON ALUMINA PRODUCTION LIMITED"***.

Upon a review of the foregoing Cabinet Submission, the OCG found, *inter alia*, that subsequent to the approval of the Cabinet via Cabinet Decision No. 05/10, the MEM *"...assembled a divestment team to pursue the subject divestment and undertake the related matters. The team is comprised of representatives from MEM, CAP, the Chambers of the Solicitor General, the Development Bank of Jamaica, Jamaica Bauxite Institute and is being assisted by representatives of the MFPS..."*¹⁴⁴

The referenced Cabinet Submission also stated, *inter alia*, the following:

"3.0 ISSUE – Divestment of CAP

..Alcoa has been served with notice of the unsolicited offer by Hongfan for the purchase of the GOJ shares in CAP.

¹⁴⁴ Cabinet Submission (MEM 07/2010), which was entitled ***"DIVESTMENT OF THE GOVERNMENT OF JAMAICA'S SHAREHOLDING IN CLARENDON ALUMINA PRODUCTION LIMITED"*** and which was dated 2010 March 11.

Alcoa has advised that until the definitive terms and conditions of the offer are settled and binding, it cannot formally advised [sic] the GOJ of its intent or lack thereof to match the offer by Hongfan.

*Alcoa has indicated informally, however, that its best offer would be to assume CAP's obligation to supply alumina to Glencore at the estimated value of US\$190M. Alcoa would also require a commitment, from GOJ, of an alternative energy supply to the Heavy Fuel Oil now in use for base load generation of electricity. Further, **GOJ would be required to strip CAP of its debts prior to any purchase of the shares by Alcoa.** Alcoa has also indicated that it would leave an option for the Government to re-join the partnership at a later date.*

*In brief, **Cabinet is being advised that Alcoa has indicated, informally, that it is not likely to match the Hongfan offer. Alcoa has indicated that it has no intention of opposing/obstructing any favourable offer to GOJ, for the shares in CAP, and has expressed a desire to meet with Hongfan, in China, as part of a due diligence exercise...***

3.4 Hongfan

*...**Hongfan made an unsolicited offer for the purchase of GOJ's shareholding in CAP. The offer from Hongfan, following negotiations, is now embodied in a draft Agreement for Purchase of Shares by Hongfan Holdings Limited, Hongfan's parent company...**Cabinet is being asked to note, however, a summary of the terms of the Agreement as set out below*

- a) *The sale price for the shares is US\$240M. An additional US\$92M is to be deposited on completion to provide cash flow support;*

- b) *The payment of a deposit of US\$17M which can be utilised by the Government, subject to receipt of a waiver or consent by Alcoa in accordance with its right of first refusal to the shares. **In the event that the Agreement is not consummated, by reason other than the breach or wilful default of the Purchaser, this money, at an interest rate of 8.5%, is to be repaid by way of alumina supplies at cost beginning in 2011 but subject to availability, given the current supply agreements;***
- c) ***The balance of the purchase price of US\$223M is to be paid by way of an undertaking to an Escrow Agent and is to be issued, within thirty (30) days of the execution of the Agreement, with sufficient funds to be released after approximately two hundred and forty (240) days. This treatment is to facilitate the compromise or settlement of CAP's US\$200M Bond and the balance to be paid on completion; The Escrow Agent is required to be a Chinese bank;***
- d) *The current draft of the Agreement allows a time line of approximately three (300) [sic] days for completion;*
- e) *CAP's actual ownership interest in Jamalco of approximately 45% has not yet been finalized but it will be based on an entitlement of 637,500 tonnes;*
- f) *The relevant authorities in China have the right to withhold their approval of the transaction up to ninety (90) days after execution;*
- g) *CAP is required to be stripped of its Liabilities (This is more specifically addressed at item 5 of the Submission). The GOJ, however, retains the benefits of the more than US\$275M income tax losses being carried on CAP's books and GOJ performance Guarantees issued in respect of CAP or an indemnity by the new owners in the event that Glencore does not consent to releasing the GOJ from these Guarantees;*

- h) *The GOJ, its agencies and CAP are required to deliver a number of documents within the first ninety (90) days, generally required as part of disclosures on the company and Jamalco. They include, however, Transfer Instruments, cancelled Share Certificates and new Share Certificates issued but unstamped and undated to be held by the Escrow Agent;*
- i) *The Agreement sets out the intention for the buyers to have Jamalco commit to an expansion which would double the size of the plant from 1.42M tonnes per year to approximately 3M tonnes per year. It also includes providing an energy solution and an estimated investment of US\$1.2Bn. The Government is committing, in accordance with its usual procedures, to support this expansion and provide reserves, if available.*
- j) *The warranties, representations and indemnities given on both sides are customary for this type of transaction. It is to be noted, however, that the Government is not being held liable in respect of any claim made for actions by Jamalco which are within the normal scope of the operations;*
- k) *The Government retains the risk of the operations until Completion of the sale transaction, including in the event of uninsured damage to the Plant;*
- l) ***On Completion the Hongfan will assume CAP's obligations to supply Glencore with alumina under its current contracts which run to 2015. These include the two contracts with the unfavourable fixed price component which are expected to be completed in 2013;***
- m) ***The proposed Agreement with Hongfan allows for the termination of the sale, by Hongfan, in the event that the Government is unable to successfully remove the US \$200M – 8.5% Bond as a CAP obligation. Hongfan has advised that this is a necessary requirement of its financiers. The Divestment Team is seeking to have the option extinguish if less than [sic] 80% of the value***

of the Notes remain outstanding on CAP's books at the date set for completion of the sale Agreement with Hongfan. Negotiations continue on this issue; and

- n) *Upon execution of the Agreement, the GOJ will be precluded from conducting negotiations for the sale of the shares with any party except Hongfan and Alcoa, during the period set for completion.*

*Hongfan proposes to have this Agreement signed in Jamaica on Thursday, March 18, 2010. **The Agreement will be made expressly subject to whether Alcoa exercises an option to match the offer and acquire the shares, pursuant to the right of first refusal...***

The Divestment Team has been advised that an early signing date is required to have the financiers continue holding the investment funds for Hongfan.

Additionally, the early signing date would allow for GOJ to give Alcoa notice of the definitive terms of the offer, thereby, allowing for the commencement of the ninety (90) days notice period to which Alcoa is entitled, in accordance with the right of first refusal...

RECOMMENDATIONS

9.0 *In consideration of the foregoing, Cabinet is being asked to:*

9.1 *Approve the divestment of the Government of Jamaica's shares in Clarendon Alumina Production Limited to Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., substantially in accordance with the terms and conditions of the attached draft Agreement for Sale and Purchase of Shares, provided that the Agreement is made, subject to ALCOA Ltd failing to offer identical or improved terms and conditions for the purchase of the said shares, in accordance with any applicable right of first refusal Alcoa enjoys;*

- 9.2 *alternatively, and subject to ALCOA LTD offering identical or improved terms and conditions to the terms and conditions set out in the draft Agreement for Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., approve the divestment of the Government of Jamaica's shares in Clarendon Alumina Production Limited to Alcoa Ltd.;*
- 9.3 *approve the execution by the Minister of Energy and Mining and any other relevant official, acting on behalf of the Government of Jamaica, of the Agreement for Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., and all relevant Agreements or commitments subject to the approval by the Attorney General/Solicitor General and, where applicable, the MFPS, of the terms and conditions of the Agreement for Sale and Purchase of Shares and all other Agreements or commitments;*
- 9.4 *alternatively, and subject to the provisions of 9.1 and 9.2 above, approve the execution by the Minister of Energy and Mining and any other relevant official, acting on behalf of the Government of Jamaica, of an Agreement for Sale and Purchase of Shares with ALCOA Ltd and all relevant Agreements or commitments subject to the approval by the Attorney General/Solicitor General and, where applicable, the MFPS, of the terms and conditions of the Agreement for Sale and Purchase of Shares and all other Agreements or commitments;*
- 9.5 *recommend that the MFPS makes suitable arrangements to discharge, novate or otherwise deal with the outstanding financial obligations of Clarendon Alumina Production Limited in a manner that will facilitate the transfer of the Government of Jamaica's shareholdings in Clarendon Alumina Production Ltd., in accordance with the terms and conditions of the draft Agreement for the Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc.,*

- 9.6 *approve the waiver of applicable transfer tax and stamp duty by the Minister of Finance and the Public Service in keeping with the terms of the draft Agreement for Sale and Purchase of Shares; and*
- 9.7 *require the relevant agencies of Government, as set out in the Agreement for Sale and Purchase of Shares, to supply the information and other data required under the said Agreement.” (OCG’s Emphasis)*

The Cabinet, by way of its Decision No. 10/10, which was dated 2010 March 15, stated, *inter alia*, the following:

*“...In light of the concerns and challenges highlighted, **the Cabinet reviewed possible alternative options which would advance the divestment process and resolve the issues raised. The issue of the outstanding valuation of CAP’s shareholding was also discussed, in terms of the importance of a current valuation to the divestment process.***

After considerations, the Cabinet:

- (i) *agreed that the divestment must be effected in a manner which did not negatively impact the economic programme and the 2010/2011 Budget, and did not result in a call on the Budget;*
- (ii) ***instructed that the divestment process must not proceed until the valuation was received;***
- (iii) ***instructed that the Development Bank of Jamaica therefore be advised of the need for the valuation to be expedited;***
- (iv) *authorized the Prime Minister, in consultation with the Minister of Energy and Mining, the Minister of Finance and the Public Service and the Attorney*

General and Minister of Justice, to approve the divestment transaction if all the critical issues were resolved; and instructed that the Prime Minister be appraised of the progress of the matter by Wednesday of that week (17 March).” (OCG’s Emphasis)

It is instructive to note that the OCG found that the Cabinet decided on 2010 March 15, that the divestment process should be halted until the Valuation Report was received from PricewaterhouseCoopers. The OCG also noted that the Valuation Report was received by PricewaterhouseCoopers on 2010 March 17, one day prior to the consummation of the ‘Agreement for Purchase of Shares’ which was entered into between the GOJ, Hongfan and CAP on 2010 March 18.

The OCG noted that after the referenced ‘Agreement for Purchase of Shares’ was signed, the former Minister, by way of a Cabinet Note, which was dated 2010 March 24, informed the Cabinet of, *inter alia*, the following:

“SIDE LETTER

A side letter dated March 18, instant, under the signature of Hongfan’s Chairman and CEO, Mr. Yan Tiejun, notes that ‘the Government of Jamaica (GOJ), acting through the Office of the Prime Minister and the Ministry of Energy and Mining, have agreed to sell its shareholding in Clarendon Alumina Production Ltd. (CAP) to Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Inc. (Hongfan).’ It further notes that ‘Pursuant to Clause 4.4 of the Share Purchase Agreement and in accordance with terms and conditions the parties agree that Hongfan is to pay to the GOJ a Deposit of... (US\$17,000,000.00).’ ...

The payment of the US\$17,000,000.00 deposit is subject to the approval of the Chinese authorities. As Hongfan is unable to provide a definitive timeframe within which the approval will be obtained, it is proposing to pay CAP an advance of the Deposit by

way of an unconditional bank draft or by immediately available funds by wire transfer.

SUMMARY OF THE AGREEMENT FOR PURCHASE OF SHARES

1. *Hongfan is to pay ... (US\$332M) for the GOJ's interest (shares) in the JAMALCO Joint Venture. This amount is broken into two portions:*
 - i. *US\$240M representing the sale price for the shares, and*
 - ii. *An additional US\$92M ('the Specific Sum') to which the GOJ will have no recourse [sic]. It will be deposited in a special account with the new owners on completion of the sale agreement and is meant to establish a cash flow support fund for the company.*

2. *The payment of a deposit of US\$17M which can be utilised by the Government is subject to receipt of a waiver or consent by ALCOA in accordance with their right of first refusal. In the event that the Agreement is not consummated, this money at an interest rate of 8.5% is to be repaid by way of alumina supplies at cost beginning in 2011, but subject to availability given the current alumina supply agreements.*
 - i. *This disbursement is officially subject to the approval of the Chinese Authorities, but Hongfan has agreed to advance the funds if the waiver/consent is received prior to receipt of that approval.*

3. *The balance of payment on the purchase price of the shares, approximately US\$223M (US\$240M – US\$17M) is to be paid by way of an undertaking to an Escrow Agent issued within the first 30 days. The Escrow Agent is required to be a Chinese bank.*

4. *There is a time line of up to 224 days for completion of the purchase agreement, but this can be shortened based on the time within which ALCOA responds, which is up to 90 days. Under the ALCOA right of first refusal agreement completion is required to take place within 180 days of the offer being put to ALCOA.*
5. *CAP's actual ownership interest in JAMALCO of approximately 45% has not yet been finalized. However, it will be based on an entitlement of 637,500 tonnes of alumina per annum given the Plant's current annual capacity of 1.42M tonnes.*
6. *The Chinese authorities have the right to withhold their approval of the transaction currently up to 90 days after execution.*
7. *CAP is required to be stripped of all its liabilities, except the US\$200M Bond. However, the GOJ retains the benefit of the more than US\$275M income tax losses being carried on CAP's books and GOJ performance Guarantees issued in respect of CAP or an indemnity by the new owners in the event that Glencore does not consent to releasing the GOJ from these Guarantees.*
8. *The GOJ has given up to 25 months after Completion to settle the US\$200M Bond. In that regard, an amount of US\$80M will be held in escrow subject to the settlement or compromise of the Bond.*
 - i. *The Ministry of Finance and the Public Service (MOFPS) has undertaken to make provisions for settling the Bond during the next 2 fiscal years.*
9. *The GOJ, its agencies and CAP are required to deliver a number of documents within the first 90 days. These documents are generally required as part of disclosures on the company and JAMALCO, and include Transfer Instruments,*

cancelled Share Certificates and new Share Certificates issued but unstamped and undated to be held by the Escrow Agent.

10. The Agreement for Purchase of Shares sets out the intention for the buyers to have JAMALCO commit to an expansion which would double the size of the plant from its current 1.42M tonnes per year to approximately 3M tonnes per year. It also includes providing an energy solution and an estimated investment of US\$1.2Bn.

i. The Government is committing, in accordance with its usual procedures, to support this expansion and provide reserves, if available.

11. The Agreement provides various warranties, representations and indemnities on the side of the Purchaser and the Vendor, which are customary for this type of transaction. However, it is to be noted that the GOJ is not being held liable in respect of any claims made for actions by JAMALCO which are within the normal scope of the operations.

12. The GOJ retains the risk of the operations until completion of the purchase agreement, including in the event of uninsured damage to the Plant.

i. A submission on CAP's request to purchase in-fill insurance to reduce the extent of its exposure (deductible) under the ALCOA-purchased insurance plan for the Joint Venture's assets and operations will be presented once the Ministry of Finance and the Public Service (MOFPS) furnishes the MEM with its comments on the draft submission.

13. On completion of the purchase agreement the new owners will assume CAP's obligations to supply Glencore with alumina under its current contracts which run to 2015. This includes the two contracts with the unfavourable fixed price component which are expected to be completed on 2013.

- i. *Hongfan has undertaken to indemnify the Government if it fails to meet the supply obligations to Glencore.*

CONCLUSION

The purchase price offered by Hongfan, plus the associated terms and conditions are deemed to be reasonable.

Should ALCOA raise no objection to the sale, the divestment will serve to strengthen the Bauxite and Alumina Sector. This will be particularly so if the proposed expansion of the plant's production capacity and the improvement of its energy efficiency are effected."

The Cabinet, by way of Decision 13/10, which was dated 2010 April 6, stated, *inter alia*, the following, with respect to the aforementioned Cabinet Note:

*"The Prime Minister advised of a proposal from Glencore, covering existing obligations to supply the company (Glencore) with alumina and payment of up to 50% of the CAP Bond subject to cheaper alternative fuel sources. **He said that the Glencore offer was some US\$191 million, in comparison to the Hongfan offer of US\$240 million; and the essential difference between the offers was that Glencore would pay another US\$100 million if cheaper energy were supplied.** He pointed out, however, that the benefits from the Glencore proposal would be realizable over the long-term and were linked to market and other conditions, while the Hongfan offer would provide immediate financial and other benefits, allowing payout of the US\$40 million remaining on the Glencore loan and retirement of the CAP Bond.*

The Prime Minister indicated that the proposal should be presented to the Contractor-General for review. *In this regard, he instructed that the Cabinet Secretary*

review the Contractor-General Act and advise him regarding the provisions for disclosure of information that could prejudice commercial activities.

The Cabinet noted the information provided.” (OCG’s Emphasis)

Other Offers for the Purchase of the 45% CAP shares in Jamalco

Having regard to certain information which was brought to the attention of the OCG, it was reported that at least one other offer was received by the MEM, in regard to the subject divestment.

The OCG, in its Statutory Requisition of 2010 June 9, to both the former and current Permanent Secretaries in the then MEM, Ms. Marcia Forbes and Mrs. Hillary Alexander, respectively, posed the following question:

*“It has been reported that the GOJ and/or the MEM received at least one other offer for the purchase of its forty-five percent (45%) share in Jamalco. Having regard to the foregoing, kindly provide (a) copies of all documents which detail the evaluation of **all** the offers which were received and (b) the particulars relating to the other offers which were received by the GOJ and/or the MEM.”¹⁴⁵*

The former Permanent Secretary, Ms. Marcia Forbes, in her response, which was dated 2010 June 29 stated, *inter alia*, that “At some point there was talk of Glencore AG bailing out of the GOJ by relieving it of the troubled CAP...I am not aware that there was an actual offer from Glencore to purchase GOJ’s 45% share in Jamalco.”¹⁴⁶

Mrs. Hillary Alexander, Permanent Secretary, MSTEM, in her response which was dated 2010 July 14, indicated that offers were raised by Alcoa and Glencore International AG, and further appended a copy of the initial offer which was submitted by Glencore International AG, and which was dated 2010 March 17.

¹⁴⁵ OCG Statutory Requisition to Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 June 9. Question #16&17

¹⁴⁶ Response from Ms. Marcia Forbes, former Permanent Secretary in the then MEM, in her response to the OCG’s Statutory Requisition, which was dated 2010 June 29. Response # 17

Glencore's initial Offer to Purchase the GOJ's 45% shares in Jamalco

The OCG found that Glencore International AG wrote to Mr. Hugh C. Hart, Attorney-at-Law, Hart Muirhead Fatta, by way of a letter which was dated 2010 March 17, and which was entitled "*Firm offer in respect of the Government of Jamaica's 45% interest in Jamalco*".

The OCG noted that a copy of the referenced letter, which was submitted to the OCG by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, was signed as having been received on 2010 March 19.

The referenced letter stated, *inter alia*, the following:

"Further to our various discussions regarding the GoJ's interest in Jamalco...please find Glencore's firm offer to the GoJ for Glencore to acquire the GoJ's entire interest in Jamalco.

On the basis of the due diligence information we have received to date and assuming a production allocation of a minimum of 637'500 mt of alumina annually, we are able to offer a headline purchase price of US\$466 mm for the 45% interest on a debt free/cash free basis.

The headline purchase price would be divided into the following components:

- 1. US\$175 mm would be allocated to pay for the cost to terminate the various alumina supply contracts between GoJ entities and Glencore in respect of alumina sourced from Jamalco. This termination cost exists because the price payable by Glencore under the various contracts, which were agreed many years ago, is substantially below the price Glencore would need to pay to replace this tonnage in the market today.*

2. *US\$41 mm as set off the balance outstanding on loans owned by the GoJ and GoJ entities to Glencore.*
3. *US\$100 mm in aggregate in the form of annual payments to the GoJ to cover 50% of the principal repayments under the US\$200 mm CAP bond obligation.*
4. *A further US\$100 mm in aggregate in the form of annual payments to the GOJ to cover the remaining 50% of the principal repayments under the US\$200 mm CAP bond obligation if the result of X in below formula is above 260 for each calendar year proceeding the required capital repayment on the US\$200 mm CAP bond...*
5. *\$50 mm cash payment to the GoJ in the event Jamalco converts it [sic] energy source to gas or coal in the next 10 years and this provides Jamalco with a cost advantage...*

In summary, this firm proposal allows the GoJ to satisfy its strategic requirements to exit from its investments in Jamalco and deal with the alumina off-take contracts while at the same time substantially reducing its debt repayment obligations. In addition the proposal allows the GoJ to receive a substantial payment in the event Jamalco converts to a more competitive energy source.

Our firm offer would be conditional on the below material items:

- a) *Satisfactory completion of our due diligence;*
- b) *Signing of detailed documentation including customary representations and warranties for a transaction of this nature;*
- c) *The GoJ committing to make available acceptable additional bauxite reserves to Jamalco in the case where the North Manchester reserves cannot competitively be processed by the Jamalco plant without major capital investment;*
- d) *No transfer or stamp duty taxes on implementation of the transaction and agreement on an acceptable future fiscal regime in respect of the interest in*

Jamalco that will include a 20 year tax holiday in respect of corporation tax, withholding tax, bauxite levies and bauxite royalties;

- e) Alcoa not exercising its right of refusal over the interest in Jamalco;*
- f) Closing and effective date of June 30, 2010; and*
- g) Final approval of Glencore's board of directors...*

*We would be ready to move quickly to implement this offer should the GoJ decide to proceed on these terms.*¹⁴⁷

It is instructive to note that the foregoing offer was dated one (1) day prior to the date on which the “*Agreement for Purchase of Shares*” was entered into between the GOJ, Hongfan and CAP, which was dated 2010 March 18, but was not received until after the referenced agreement was signed.

The OCG, in its Requisition to Mr. Peter Millingen, Chairman, CAP, which was dated 2010 December 23, also requested that Mr. Millingen provide the OCG with a sworn testimony of his knowledge of any other offers which were received and the particulars of same. Mr. Millingen, in his response, which was dated 2011 January 28, stated, *inter alia*, the following:

*“An offer was received by Glencore by letter dated March 17, 2010... There is an interest by Glencore which is now being contemplated. **Also, there was an offer by Alcoa what they termed “hypothetical offer” by way of a presentation on the 28th of January 2010** as follows:-*

- (i) **Alcoa would supply 100% of CAP's and Windalco's alumina to Glencore which they valued for US\$190M for CAP's 45% interest giving the reason that CAP's NPV was less than the US\$190M.***

¹⁴⁷ Glencore International AG wrote to Mr. Hugh C. Hart, Attorney-at-Law, Hart Muirhead Fatta, by way of a letter which was dated 2010 March 17.

Provided that inter alia there was an energy solution and that future legislation should not negatively impact an economic solution, that is if they convert the plant to coal they should not be met with a carbon tax and that the shortfall then owed to Alcoa must be settled in 60 days.

- (ii) *That even if they converted to coal, they could not commit to an expansion. There were one or two other enquiries which I cannot recall.”¹⁴⁸*

It is instructive to note that the GOJ has a history with Glencore International AG as it relates to a 10-year Alumina Supply Agreement which was consummated between the referenced parties. By way of a letter that was signed by Ms. Sonia Mitchell, Legal Officer, CAP, which was dated 2008 March 26, and which was addressed to Mr. Hugh Hart, Hart Muirhead Fatta, Attorneys-at-Law, the OCG found the following:

“Reference is made to the discussion yesterday lead by the Honourable Prime Minister during which he advised that you had been appointed his Special Adviser with respect to Clarendon Alumina Production Limited (“CAP”) and requested our complete co-operation with you.

Accordingly, I enclose herein summaries of the legal arrangements affecting CAP’s income and expenditure currently and in the medium term. I have added updates where necessary to provide the current picture.

1. ***In 2000 Bauxite and Alumina Trading Company of Jamaica (“BATCO”), as exclusive selling agents for CAP, borrowed US\$125 initially from Glencore AG which was refinanced through 10-year Notes issued at 10.48% on international capital markets...The arrangement was supported by a 10-year Alumina Supply Agreement to Glencore AG...and the Notes were repaid through the proceeds of the alumina sales.***

¹⁴⁸ Response from Mr. Millingen, Chairman, CAP, which was dated 2011 January 28. Response #16

The Notes were redeemed on or about February 28, 2007 from the proceeds of a Bond issue in November 2006...and steps were since taken to have Alumina Enterprises Limited wound up. However, the Government of Jamaica...Guarantee (which was issued in favour of Glencore pursuant to which the GOJ undertook, among other things, to ensure that BATCO and CAP fulfilled their obligations under the Alumina Supply Agreement), the Alumina Supply Agreement and Agency Agreement (between CAP and BATCO) remain in effect.

2. ***In 2002 Jamaica Bauxite Mining Limited (“JBM”) entered into a US\$65M loan arrangement with Glencore AG with the repayments being made from the proceeds of a 10-year Alumina Supply Agreement of alumina from JBM and CAP...It is to be noted that pursuant to these arrangements both JBM and BATCO/CAP are obliged to offer Glencore the right of last refusal for any additional tonnes of alumina to which they may become entitled.***¹⁴⁹

The OCG further noted that Mr. Winston Hayden, General Manager, CAP, had conducted a comparative evaluation of the initial offer which was received by Glencore International AG and that of Hongfan. Mr. Hayden prepared a formal report which was entitled “**COMPARATIVE EVALUATION [sic] OF PROPOSALS (HONGFAN VS. GLENCORE)**” and which was dated 2010 April. The referenced document outlined, *inter alia*, the following:

“Evaluation

The study arrives at the following values comparing the offer contained in Glencores [sic] letter of March 17, 2010 with the terms of the Agreement dated March 18, 2010, between the Government of Jamaica and Hongfan.

¹⁴⁹ Letter that was signed by Ms. Sonia Mitchell, Legal Officer, CAP, to Mr. Hugh Hart, Hart Muirhead Fatta, Attorneys-at-Law, which was dated 2008 March 26.

The Hongfan Offer

The Net Present Value of the offer to the Government of Jamaica is estimated at US\$236.8 Million.

The Glencore Offer

Basis 1

*(a) Without considering concessions requested by Glencore and there is **no expansion** of Jamalco and assuming that the requested tax concessions are not applicable to this option, the Net Present Value (NPV) of the option is estimated at **US\$187.3 Million**. **With an energy upgrade completed at the end of 2013 the NPV is estimated at US\$227.6 Million.***

This assumes that the LME cash price and the price of oil vary with projections in CAP's valuation study.

*If income tax relief is applied the net present value is at **Negative US\$93M (Negative US\$50M) if the energy upgrade takes place***

*(b) If the commodity prices are **not varied** from current levels (without tax concession) the NPV is an estimated **US\$122.7 Million; US\$163 Million if the energy upgrade takes place.***

Basis 2

Assuming the expansion of Jamalco is carried out and tax concessions proposed as the basis of a firm offer are granted, reflecting the impact of an expansion by 1.4 million tonnes per annum and implementation of a new energy plant:

*The Net Present Value (NPV) of the offer is Negative **US\$403 Million**. This is heavily impacted by the loss of Royalty on additional tonnes produced, concession of taxes on income from increased efficiency on existing capacity and taxes conceded on additional tonnage. The study does not consider the domino effect of tax concessions that might be sought by other producers.*

Second \$100M – Payment Threshold

The 50% target Payment will be payable at the current price of oil should the LME cash price average reach 2,594.

Concluding Comment

The considerations of the cash flow impact payments on the GOJ fiscal programme and the Government’s policy position on waivers are not measured in the study. However, it needs to be acknowledged that these considerations would place the Glencore offer at a further disadvantage.

The methodology used in the assessment relies heavily on inputs and assumptions set out in a valuation of CAP’s shares documented by the Company in a study dated February 2010 and presented to the Divestment Committee.

It interprets the main terms of (a) an agreement entered into by the Government of Jamaica and Hongfan on March 18, 2010 and, (b) the terms set out in a letter of March 17, 2010 from Glencore to Mr. Hugh Hart... ”¹⁵⁰

It is instructive to highlight that based upon the date of the referenced document of 2010 April, which was prepared by Mr. Hayden, the comparative evaluation was undertaken after the GOJ had already signed the “*Agreement for the Purchase of Shares*”, on 2010 March 18, with Hongfan.

¹⁵⁰ Formal Report which was entitled “**COMPARATIVE EVALUATION [sic] OF PROPOSALS (HONGFAN VS. GLENCORE)**” and which was prepared by Mr. Winston Hayden, General Manager, CAP, which was dated 2010 April.

Cessation of the Agreement between Hongfan/Port Reliant Limited and the GOJ

The OCG was advised by the former Minister of the MEM, Mr. James Robertson, in his sworn response, which was dated 2011 January 24, that “*The proposed Agreement with Hongfan is no longer being pursued by the GOJ.*”¹⁵¹

Mr. Glenford Watson, the former Legal Counsel, MEM, in his response to the OCG, which was dated 2011 January 25, stated, *inter alia*, that “*...Following a series of discussion relating to the forward sales agreement and the need for certain adjustment, the desire for management control by Alcoa notwithstanding any future reduction of Alcoa shareholding, and certain proposed amendment to the March 18, 2010 Agreement, the Agreement was not consummated and was subsequently terminated.*”¹⁵²

Upon a review of Cabinet Submission 568/MEM 55/10, which was signed by Mr. James Robertson, former Minister of the MEM, and which was dated 2010 November 24, the OCG found that the Cabinet was advised of, *inter alia*, the following:

“3.5 Breach of Agreement

*Cabinet is being advised that subsequent to the signing of the Agreement, there have been several meetings and activities to facilitate completion but these have not borne the desired results; and **Hongfan has failed to perform its definitive obligations under the Agreement. Specifically, it has failed to pay the Deposit into the Escrow Account; obtain a bankers guarantee for the payment of the balance of the Purchase Price; and obtain the approval of the Chinese Authorities for the consummation of the Agreement.***

¹⁵¹ Response from the former Minister of the MEM, Mr. James Robertson, which was dated 2011 January 24. Response #38

¹⁵² Response from Mr. Glenford Watson, the former Legal Counsel, MEM, which was dated 2011 January 25. Response #38

Hongfan has cited the following factors as the main reasons for the failure to perform under the Agreement: (i) the need for amendments to the Agreement, which amendments have not yet been agreed with the GOJ; (ii) the need for amendments to the Alumina Supply Agreements with Glencore, which amendments Hongfan have not yet been agreed with Glencore; (iii) the need for Alcoa's unequivocal acceptance of Hongfan as a suitable business partner in JAMALCO, which acceptance is yet to be formally granted as Alcoa contends that Hongfan has not given all the assurances required for this approval; and (iv) the fact that the Chinese Authorities have still not approved the Agreement as the Authorities are awaiting the satisfactory conclusion of the matters at (i) to (iii), inclusive.

3.5.1 Cabinet is being advised that all discussions and assessment indicate that the Alumina Supply Agreements could serve as a disincentive to the divestment of the shares as any purchaser would have very limited access to alumina prior to the fulfillment of the supply obligations by CAP. Additionally, Alcoa's right of determination of a suitable business partner could present sufficient uncertainties or issues to frustrate any transaction for the purchasing of the shares. This is, particularly so, if the intended purchaser is not a large and internationally reknown operator in the bauxite and alumina industry.

Notwithstanding, the GOJ was obliged, on September 16, 2010, to serve Hongfan with a preliminary notice to perform its outstanding obligations or take some firm and definitive actions towards the performance of same or the GOJ would have no option but to terminate the Agreement. In response, Hongfan made some positive efforts towards performance but the obligations under the Agreement were still not satisfied. Consequently, the GOJ served a final notice on November 16, 2010 giving Hongfan fourteen days to perform the outstanding obligations and effect completion of the Agreement; otherwise the

GOJ would treat the Agreement as being terminated at the expiration of the period.

Hongfan, on November 18, 2010, responded with a promise to pay the Deposit into an Escrow Account by December 31, 2010; and advised that the Chinese Authorities would approve the transaction and the payment of the Purchase Price after receipt of an amended Agreement.

3.5.2 Hongfan's response is considered a positive development. It does not, however, contain sufficient specifics and timelines to give any certainty that the Agreement would be duly consummated within the shortest possible time, to provide sufficient relief, to the GOJ, of the burden of CAP's financial obligations. *In this regard, it should be noted that the GOJ has given a commitment (to the IMF) to fully divest the shares by the ending of the current fiscal year, March 2011 ...*

The GOJ is, also, not in favour of a number of the proposed amendments and it cannot be said with any certainty that there will be consent to the Agreement being amended *(which Hongfan has now put forward as a pre-condition to Completion).*

*Cabinet is being advised that, in the circumstances of the foregoing, **the GOJ, by letter of November 22, 2010, has re-stated its intention to consider the Agreement as having being [sic] terminated by December 6, 2010, in the absence of performance, by Hongfan, of all outstanding obligations on or before the said date.***”(OCG's Emphasis)

It must be noted that attached to Cabinet Submission MEM 58/10, which was dated 2010 December 20, was a letter, that was signed by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, and Mr. Peter Millingen, then Chairman of CAP, which was dated 2010

November 16, and which was addressed to Mr. Yan Tiejun, Chairman and CEO, Hongfan. The referenced letter expressed, *inter alia*, the following:

“Reference is made to previous correspondence on this matter and, in particular our letter of September 16, 2010. By said letter, Hongfan’s attention was directed to its failure to comply with certain obligations arising from the Agreement for Purchase of Shares (“The Agreement”) of March 18, 2010, and advised that the Government of Jamaica (GOJ) would reserve the option to treat the Agreement as terminated, if the breaches were not cured within a [sic] 14 days of the said letter.

We note, with regret, that to date the breaches remain, as Hongfan has failed to:

- 1. Secure the approval for the transaction from the Chinese authorities;*
- 2. pay the Deposit; and*
- 3. procure a banker’s undertaking for the payment of the Further Payment and the Specific Sum;*

In your most recent correspondence of November 5, 2010, you requested that Clarendon Alumina Production (CAP) forward your proposal for the restructuring of supply contracts to Glencore. Further to this, we are advised that your proposal was rejected.

In the circumstances of the foregoing, we regret to advise that the GOJ will have no option but to treat the Agreement between GOJ and Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Inc. as being terminated at the expiration of fourteen (14) days from the date hereof, without further notice or reference to Hongfan...”¹⁵³

¹⁵³ Letter that was signed by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, and Mr. Peter Millingen, then Chairman of CAP, to Mr. Yan Tiejun, Chairman and CEO, Hongfan, which was dated 2010 November 16.

Based upon the foregoing, the OCG found that the “*Agreement for Purchase of Shares*”, which was signed between the GOJ and Hongfan on 2010 March 18, was terminated on 2010 December 6, upon the basis that Hongfan failed to have performed in accordance with certain of the afore-mentioned terms and conditions of the referenced Agreement.

Current Status of the Divestment of the GOJ's Shareholding in Jamalco

Upon a review of the Minutes of the National Contracts Commission (NCC), which was dated 2010 November 24, the OCG found, *inter alia*, the following:

“The Commission considered a letter dated 2010 November 23 from the Permanent Secretary in the Ministry of Energy and Mining requesting permission to utilize the Sole Source and/or Direct Contracting Procurement Methodology for the divestment of the shares in Clarendon Alumina Production (CAP) to Glencore on the terms and conditions as agreed by Cabinet.

Mr. Glenford Watson, Actg. Chief Technical Director in the Ministry of Mining and Energy attended on the Commission in order to provide additional information.

Mr. Watson reported that the divestment of Government assets was not governed by the standard procurement procedures as, during divestment, the GoJ was not procuring goods, works or services. However, issues such as policy considerations might be relevant during the divestment of assets.

The Ministry of Mining advised that the opinion of the Solicitor General was that divestment of assets falls outside the remit of the Contractor General and the standard procurement methodology.

The Commission noted that there was a Divestment Policy, which they were not privy to and agreed that the matter was not a procurement issue, which was outside the remit of the NCC.” (OCG's Emphasis)

The OCG was further advised by way of Cabinet Submission 568/MEM 55/10, which was signed by Mr. James Robertson, former Minister of the MEM, and which was dated 2010 November 24, that the Cabinet was advised of, *inter alia*, the following:

“3.6 Glencore

Glencore has expressed considerable reservation with the transaction between the GOJ and Hongfan for the purchase of the shares, citing doubts as to Hongfan’s intent or ability to supply the alumina due until 2015 under the Alumina Supply Agreements. Discussions were held to provide Glencore with the required degree of assurance but the discussions were inconclusive.

3.6.1 *Glencore, for its part, has also expressed an interest in purchasing the shares in CAP. A 2008, expression of interest was not pursued by the GOJ due, in part, to the terms of attendant loan arrangements. Additionally, a valuation which was conducted at a time of the global financial crisis did not support proceeding with the divestments of the shares at that time.*

3.6.2 *By letter of March 26, 2010, Glencore made an offer for the purchase of the shares. The offer was analyzed by the GOJ financial team and was considered to be less favourable, to the GOJ, than the offer made by Hongfan.* *Further, the offer was subject to a number of conditions that the GOJ could not have satisfied. In any event, the offer expired on June 30, 2010.*

Cabinet is being advised that Glencore (again), by letters of October 20 and 28, 2010, made an “unsolicited revised firm offer in respect of CAP’s 45% interest in Jamalco”. *Copies of these letters are attached hereto for ease of reference but the salient terms of the offer are:*

<i>Headline Purchase Price:</i>	<i>US\$435M</i>
<i>Settled by:</i>	
<i>Termination of Alumina Supply Agreements:</i>	<i>US\$175M</i>
<i>Cash payment at closing:</i>	<i>US\$60M</i>
<i>Payment for conversion to gas:</i>	<i>US\$100M</i>

Payment for expansion to 2.8mm mt per annum (of alumina) US\$100M

In its offer, Glencore has given a commitment to invest “significantly in Jamalco to substantially enhance its competitive position by converting its energy source to natural gas” and to further invest in “the plant to double its production capacity to over 2.8 million metric tonnes per annum.”

Glencore estimated the investment “would be in excess of US\$1billion in the Jamaican economy with many indirect benefits for Jamaica”.

3.6.3 *Cabinet is being advised that it is possible that negotiations with Glencore could result in a removal of, or substantial amendments to, the conditions attached to the payment of the US\$200M of the Purchase Price.*

3.6.4 *Cabinet is being advised further that, in the circumstances of the offer received and given (i) the serious obstruction to the divestment of the shares caused by the Alumina Supply Agreement (which, unless varied by Glencore, would prevent a purchaser of the shares from getting any meaningful supply of alumina prior to 2016); and (ii) the fact that Glencore is a highly successful and internationally reknown company operating in the bauxite and alumina industry and could not reasonably be rejected by Alcoa as a suitable business partner, it is highly strategic and prudent to pursue negotiations, with Glencore, for the sale of the shares.*

3.7 Valuation

...PriceWaterhouseCoopers would be asked to update its Formal Opinion into the value of the shares, prior to the execution of any agreement for the sale of the shares to Glencore.

4.0 CONSULTATIONS

4.1 *Ministry of Finance and the Public Service*

The Ministry of Finance and the Public Service (“MFPS”) was consulted on the proposal to pursue the divestment of the CAP’s shares to Glencore (in the event Hongfan fails to complete the Agreement) by using the Sole Source or Direct Contracting Procurement Methodology, on the bases of the urgent need for the divestment of the shares and Glencore’s unsolicited offer. The MFPS has offered no objection to this approach for the divestment of the CAP’s shares...

4.2 *Chambers of the Attorney General*

The Chambers of the Attorney General was consulted on proposal to pursue the divestment of the CAP’s shares to Glencore (in the event Hongfan fails to complete the Agreement) by using the Sole Source or Direct Contracting Procurement Methodology, on the bases of the urgent need for the divestment of the shares and Glencore’s unsolicited offer. The Chambers of the Solicitor General has offered no objection to the use of the Sole Source or Direct Contracting Procurement Methodology for the divestment of the shares in CAP...

4.3 *National Contracts Commission*

A long prevailing view is that the divestment of Government assets was not governed by the standard procurement procedures as, during divestment, the GOJ is not procuring goods, works or services; further, issues such as policy considerations may be of relevance during the divestment of assets. The opinion of the Chambers of the Solicitor General is that divestment of government assets falls outside the remit of the Contractor General and is a matter for the policy

directorate...

The Contractor General has proffered a contrary opinion and, apparently, supports the use of the standard procurement methodology for the divestment of Government assets. In the enquiries of the transaction with Hongfan he made reference to the use of the open tender methodology for the divestment of assets.

Cabinet is being advised that, in the circumstances of the differing opinion, and in the interest of transparency, the Ministry of Energy and Mining consulted with the NCC and requested that it considered all the matters set out above and approved the utilization of the Sole Source or Direct Contracting Procurement Methodology for the divestment of the shares in CAP to Glencore, on such terms and conditions as agreed by Cabinet.

The NCC advised that the matter of the divestment of government assets falls outside its portfolio responsibilities.

5 RECOMMENDATION

Having regard to all the matters set out above, and, in particular, (a) the urgent need for the divestment of the shares; and (b) Glencore's unsolicited offer, Cabinet is being asked to approve:

- i. **the utilization of the Sole Source or Direct Contracting methodology for the divestment of the Government of Jamaica's ("GOJ") one hundred percent (100%) shareholding in Clarendon Alumina Production Ltd. ("CAP"), to Glencore International AG. ("Glencore"), on such terms and conditions to be agreed by Cabinet.**

- ii. that the divestment to Glencore would be subject to the failure of Hongfan to effect Completion of the Agreement of March 18, 2010;
and
- iii. *that the negotiations with Glencore are to be undertaken by a small team of representatives from the Ministry of Energy and Mining, Clarendon Alumina Production Limited, the Development Bank of Jamaica and the Chambers of the Attorney General with technical support from the Ministry of Finance and the Public Service, Jamaica Bauxite Institute and such resource personnel as may be considered necessary from time to time.*¹⁵⁴ (OCG's Emphasis)

The OCG noted that attached to the foregoing Cabinet Submission was a copy of a letter from the MOFPS that was addressed to Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 November 23, and which stated that *"The Ministry of Finance and Public Service ("MFPS") offers no objection to MEM/Divestment Secretariat pursuing the divestment of the CAP's shares to Glencore (in the event Hongfan fails to complete the Agreement). This is on the bases of (a) the urgent need for the divestment of the shares and (b) Glencore's unsolicited offer."*

Interestingly, the OCG notes the assertion by the former Minister of Energy and Mining, in the foregoing Cabinet Submission, as it regards the OCG's position, in which the Minister has incorrectly stated, *inter alia*, that the "...Contractor General has proffered a contrary opinion and, apparently, supports the use of the standard procurement methodology for the divestment of Government assets. In the enquiries of the transaction with Hongfan he made reference to the use of the open tender methodology for the divestment of assets."

¹⁵⁴ Extracts from Cabinet Submission 568/MEM 55/10, which was signed by Mr. James Robertson, former Minister of the MEM, and which was dated 2010 November 24.

Despite the foregoing, and what seems to be the furthest from the truth, the OCG has always held the position, and as outlined in its letter of 2009 April 27 to the former Permanent Secretary in the MEM, that one of the fundamental tenets of the GOJ's Procurement Policy is "value for money" which cannot be determined where there is no transparency or competition in the GOJ's engagement.

Further, the OCG in its respective Media Releases, which were dated 2010 May 20 and 26, publicly announced its position. In particular, in the former Media Release, the OCG pronounced, *inter alia*, that "...the issues with which we are now contending would not have occurred had the GoJ subject the sale of the referenced equity to an **open, competitive and transparent tender process**." (OCG's Emphasis)

The foregoing in no way proffers a support of the "*standard procurement methodology*", as suggested by the former Minister, for the divestment of Government state owned assets, as such transactions are required to be undertaken pursuant to the provisions of the GOJ Privatization Policy and Procedures (Ministry Paper #34).

It is instructive to note that by way of Cabinet Decision No. 44/2010, which was dated 2010 November 29, the OCG found the following:

"The Cabinet gave preliminary consideration to Submission No. 568/MEM – 55/10 on a proposal for the divestment of the Government of Jamaica's 100% shareholding in Clarendon Alumina Production Limited (CAP) to Glencore International AG.

*The Cabinet noted the comments of the Ministry of Finance and the Public Service, the Attorney General's Chambers and the National Contracts Commission; **and decided that the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares, subject to the failure of Hongfan to effect completion of the Agreement of 18 March 2010 for the purchase of the shares.***

The Cabinet therefore decided that the Submission should be withdrawn from the Agenda and a new Submission presented, accordingly.” (OCG’s Emphasis)

The OCG noted that during the period in which Hongfan was being requested by the MEM to perform in accordance with the terms and conditions of the “*Agreement for the Purchase of Shares*” of 2010 March 18, the Cabinet was being requested by the MEM to consider an offer which was proposed by Glencore International AG. The Cabinet, however, decided that the submission should be withdrawn by the MEM and requested that negotiations with Glencore International AG were to be entered into subject to the failure of Hongfan to effect completion of the referenced “*Agreement for Purchase of Shares*”.

Upon a review of several Cabinet Submissions and Decisions, which provided to the OCG, subsequent to the termination of the referenced Agreement between Hongfan and the GOJ, the OCG found that the Cabinet, by way of Decision No. 15/2011, which was dated 2011 April 3, after consideration, gave approval to the recommendations to divest the assets owned by CAP in Jamalco to Glencore International AG.

The OCG continues to monitor the current divestment process and negotiations which are underway with respect to the purchase of the GOJ’s shareholding in Jamalco.

TIMELINE OF KEY EVENTS

TIMELINE	OCCURRENCE	OCG's OBSERVATION
2007 March	Meeting which was held between Dr. Carlton Davis, for and on behalf of the GOJ, and representatives of Port Reliant Limited, particularly, Mr. Gary Ho and Mr. Joseph Chang.	Hongfan made an offer to Mr. Clive Mullings, the former Minister of Energy, Mining and Telecommunications, to provide the GOJ with US\$600,000,000 to finance the GOJ's share of the Jamalco expansion.
2008 February 14	Email from Mr. Joseph Chang, Director, Port Reliant Limited, to Mr. Winston Hayden, General Manager, CAP, and copied Mr. Coy Roache, Managing Director, BATCO; Mr. Howard Mitchell, the then Chairman of BATCO; Mr. Peter Millingen, Chairman, CAP; Mr. Clive Mullings, former Minister of the MEM, amongst others.	<p>The OCG found that two (2) meetings were held, prior to the subject email, on the 12th and 13th, and that the email correspondence was to sent to reiterate the positions of Port Reliant Limited, which included:</p> <ul style="list-style-type: none"> • <i>"...to purchase on a forward basis all available alumina production currently owned by the Government of Jamaica (265,000 tons per annum from 2013 through 2015 and 637,500 tons per annum beginning in 2016), if a minimum of 200,000 tons of alumina per annum from 2008 through 2012 can be provided via a time swap. Other terms and conditions are negotiable. We will consider alternative structures including an investment in Clarendon Alumina Partners for this transaction."</i> • <i>"...stand ready to provide up to US\$600 million to the Government of Jamaica for the Jamalco expansion."</i> • <i>"We have received your confidentiality agreement. Upon execution of this agreement, you will provide the information requested on January 16 within five working days."</i>
2008 February 21	Confidential Agreement which was signed by Mr. Peter Millingen, former Chairman, CAP, and Port Reliant Limited, in which <i>"Information was given to Port Reliant and Zhuhai Hongfan...For the protection of confidential information having regard to the Joint venture with Alcoa and based on legal advice from CAP's attorney."</i>	Upon a review of the referenced Agreement between CAP and Port Reliant Limited (PRL), the OCG noted that the Agreement was entered into, <i>inter alia</i> , (a) to provide certain confidential and proprietary information of CAP and its affiliates on the one hand, and PRL and its affiliates on the other hand, to each other for purposes of evaluating whether PRL would participate in an alumina purchase and investment/financial transaction with CAP; (b) as an inducement for CAP and PRL to make such confidential and proprietary information available to each other; and (c) for and in consideration of the promises and the mutual covenants and agreements contained in the Agreement and for other goods and valuable consideration, the receipt, sufficiency and adequacy of which are acknowledged by the parties.

2008 March 26	Letter that was signed by Ms. Sonia Mitchell, Legal Officer, CAP, and which was addressed to Mr. Hugh Hart, Hart Muirhead Fatta, Attorneys-at-Law.	<p>The referenced letter indicated, <i>inter alia</i>, the following:</p> <p><i>“In 2000 Bauxite and Alumina Trading Company of Jamaica (“BATCO”), as exclusive selling agents for CAP, borrowed US\$125 initially from Glencore AG which was refinanced through 10-year Notes issued at 10.48% on international capital markets...The arrangement was supported by a 10-year Alumina Supply Agreement to Glencore AG...and the Notes were repaid through the proceeds of the alumina sales...”</i></p> <p><i>In 2002 Jamaica Bauxite Mining Limited (“JBM”) entered into a US\$65M loan arrangement with Glencore AG with the repayments being made from the proceeds of a 10-year Alumina Supply Agreement of alumina from JBM and CAP...It is to be noted that pursuant to these arrangements both JBM and BATCO/CAP are obliged to offer Glencore the right of last refusal for any additional tonnes of alumina to which they may become entitled.”</i></p>
2008 April	In 2008, Port Reliant’s principals, Mr. Joe Chang and Mr. Gary Ho approached the Ministry of Energy, Mining and Telecommunications as it then was, expressing an interest in purchasing Bauxite.	Mr. Clive Mullings, the former Minister of Energy, Mining and Telecommunications, indicated that he had no dealings with Port Reliant Limited after 2008 April as the Ministry was split and he had only retained the Energy portfolio.
2008 May 28	Letter of Intent, which was signed between Hongfan, Port Reliant Limited and Mr. Howard Mitchell, the then Chairman of BATCO.	The OCG found that the Letter of Intent was extended by a Supplementary Deed of 2008 November 25.
2008 June	A Letter of Intent was signed between BATCO, Hongfan and Port Reliant Limited.	<p>The Letter of Intent outlined, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> • That based upon meetings between Hongfan and Port Reliant Limited, it was Port Reliant Limited which had arranged the visit of the then Chairman of BATCO, Mr. Howard Mitchell, to Hongfan, on 2008 April 7, to initiate official negotiations. • That <i>“Hongfan with the advice and assistance of Port Reliant intends to enter into an agreement with the GOJ through the agency of Batco to accomplish the Jamaica Alumina Project...”</i> • That <i>“The Parties agree that Port Reliant will be Hongfan’s exclusive agent for the Jamaica Alumina Project.”</i>

		<ul style="list-style-type: none"> • “Hongfan hereby confirms its interest and intent to participate in the Jamaica Alumina Project, as a financial organizer and promoter, and to organize a banking syndicate/consortium under Hongfan’s name to provide the amount of not less than...US\$600,000,000.00...by way of a loan on terms to be agreed on by Hongfan and the GOJ for the Jamaica Alumina Project...”
2008 June 22	A Confidentiality Agreement which was signed between JBM and Port Reliant Limited.	<p>The OCG found that this Confidentiality Agreement was similar to the one signed between CAP and Port Reliant Limited on 2008 February 21.</p> <p>The referenced Agreement was entered into, <i>inter alia</i>, to provide certain confidential and proprietary information of JBM and its affiliates on the one hand, and Port Reliant, Hongfan and their affiliates on the other hand, to each other, for purposes of evaluating whether Port Reliant Limited and Hongfan will participate in an alumina purchase and investment/financial transaction with JBM.</p>
2008 August 6	Email correspondence from Mr. Joseph Chang, Director, Port Reliant Limited to Mrs. Sancia Templar, for and on behalf of the GOJ.	<p>The OCG found that attached to the referenced email was a copy of a Letter of Intent which was signed between BATCO, Hongfan and Port Reliant Limited.</p> <p>In the referenced email, the OCG found, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> • That a Letter of Intent was signed between BATCO, Hongfan and Port Reliant Limited. • That Port Reliant Limited was ‘partnering with’ Hongfan, which is a Chinese metals trading company. • That the then Chairman of BATCO, Mr. Howard Mitchell, visited Hongfan, in China, in April 2008. • That in 2007 December, subsequent to a meeting which was held in 2007 March between Dr. Carlton Davis, for and on behalf of the GOJ, and representatives of Port Reliant Limited, particularly, Mr. Gary Ho and Mr. Joseph Chang, Hongfan made an offer to the former Minister of Energy, Mining and Telecommunications, Mr. Clive Mullings, to provide the GOJ with US\$600,000,000 to finance the GOJ’s share of the Jamalco expansion.
2008 September 24	Email correspondence from Mr. Joseph Chang, Director, Port Reliant Limited, to Ms. Marcia Forbes, former Permanent Secretary in the MEM, which was copied to Mr. Gary Ho of	The referenced email stated, <i>inter alia</i> , that “ <u>I have been referred to you by my sister Thalia Lyn and am writing to introduce myself and a US\$600,000,000 alumina/energy project that my firm, Port Reliant Ltd., has been working on with the Ministry of Mining and Batco. This is a matter of great urgency as almost one year has passed</u> ”

	Port Reliant Limited.	<p><i>since our proposal was first presented and we still have not received answers to several key questions...”</i></p> <p>The OCG also noted that in the referenced email, Mr. Joseph Chang expressed that ““<i>Port Reliant has <u>partnered</u> with a Chinese metals and minerals firm, Hongfan Ltd., <u>to invest in the expansion of alumina production in Jamaica...</u></i>”</p>
2009 February 9	Meeting which was held between certain GOJ Officials and representatives of Hongfan.	<p>Dr. Carlton Davis indicated that he “...<i>first became aware of possible ‘Chinese’ interest in CAP’s share of the JAMALCO facilities from the former Minister of Energy and Mining, Mr. Clive Mullings...</i>” and that it was in the meeting that he recognized that Hongfan was one of the Chinese interested parties.</p> <p>Hongfan made certain proposals to the GOJ in the referenced meeting which included, <i>inter alia</i>, that (i) “<i>Hongfan indicated that it will be able to take at least 200,000 tonnes of alumina beginning April for the rest of the year,</i>” and (ii) Hongfan indicated an interest in securing long-term supply of alumina for at least 20 years and also alluded to the fact that they were prepared to look at certain options which included (a) “<i>Virtual Ownership of CAP’s share of JAMALCO</i>”, (b) an ‘Orthodox purchase’ i.e. a percentage of the London Metal Exchange; (c) cash cost without ownership; and (d) the alumina/caustic soda barter at a later date.</p>
2009 February 13	Meeting which was held in Montego Bay.	<p>Dr. Carlton Davis informed the OCG that in the referenced meeting, “...<i>the matter of the Company’s possible participation was discussed...and formed part of a so-called Term Sheet signed by the Prime Minister, and the Chairman and CEO of Zhuhai Hongfan, Mr. Yan Tiejun...Subsequent to this meeting, a Jamaican delegation, of which I was a member visited China to hold meetings with various Chinese interests, including Zhuhai Hongfan...</i>”</p>
2009 February 13	‘Term Sheet’ which was signed between the then Prime Minister of Jamaica, the Hon. Bruce Golding, and the Chairman and Chief Executive Officer of Hongfan, Mr. Yan Tiejun.	<p>Ms. Marcia Forbes, former Permanent Secretary, MEM, indicated that the Term Sheet emanated from a proposition which was made by Hongfan and Port Reliant, upon their insistence for the GOJ to signal its interest in the investment.</p> <p>According to the current Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, the Term Sheet was not a direct product of the ‘proposed transaction’ but rather, was considered to be an “...<i>initiative which led to the sharing of information that that [sic] after an extended period, apparently resulted in Hongfan’s clear offer for</i></p>

		<i>the purchasing of the shares.”</i>
2009 February 14	Meeting which was held between the former Prime Minister, the Hon. Bruce Golding, and the Chairman of the National Development and Reform Commission of China.	By way of “ <i>Note of Meeting between HPM Bruce Golding and Mr. Mu Hong, Vice Chairman of the National Development and Reform Commission of China</i> ”, Dr. Carlton Davis indicated that upon an enquiry of Hongfan by the former Prime Minister, the Hon. Bruce Golding, the Vice Chairman stated, <i>inter alia</i> , that “ <u>...Hongfan was a local (i.e. not national) Chinese company that they were not very familiar with.</u> He said that if the GOJ contemplated entering into a strictly purchasing arrangement with them, then it should not matter. However, if the GOJ wished to get involved with production and upstream activities, then it should stick with the big companies.”
2009 March	GOJ Delegation to China	The visit was reported to be in an effort to explore all possible options to maintain production to the maximum extent possible and to ensure the long-term development and growth of the industry, in which certain propositions were expressed to the Chinese for consideration.
2009 March 11	Offer from Hongfan to acquire the Government of Jamaica’s interest in Clarendon Alumina Production, which was prepared subsequent to the signing of the Term Sheet.	The OCG noted that the Offer indicated, <i>inter alia</i> , as follows: <ol style="list-style-type: none"> 1. That the signing of the Term Sheet was to establish a framework for working together to identify projects for the development and continued operations of the Jamaica Alumina Industry (“Jamaica Projects”), which would facilitate Hongfan’s participation for a period of at least 20 years. 2. That discussions were held between the GOJ and Hongfan with respect to how the 45% CAP shares in Jamalco should be invested, in which consideration was given to either a ‘virtual equity transaction’ or an ‘equity purchase’. 3. That Hongfan stood ready to expedite negotiations on the proposals as outlined in its Offer to the GOJ.
2009 March 18	Letter from Hongfan to Mr. Derrick Smith, former Minister with portfolio responsibilities.	The referenced letter stated, <i>inter alia</i> , the following: <p>“<i>Port Reliant Limited (“Port Reliant”) is Hongfan’s exclusive agent for Transaction. As a condition of the Transaction, <u>Hongfan is requesting GOJ to pay, on Hongfan’s behalf Port Reliant certain fees (“Fee”) from the Consideration paid by Hongfan.</u> The Fee payable to Port Reliant shall be calculated as a percentage of Consideration. The percentage rate shall be: 1.5% for spot purchase of alumina; 5.0% for equity, Virtual Equity and loan facilities; and, 1.5% for long-term purchase contracts</i>”</p>

		<i>of alumina. Port Reliant's Fee shall be payable in U.S Dollars in the form of a wire transfer by GOJ. Fee shall be paid automatically upon each payment or draw down of the Transaction."</i>
2009 March 30	Valuation Report which was prepared by Worley Parsons which was entitled " <i>Clarendon Alumina Production Ltd Jamalco Asset Valuation</i> ".	The reference Report indicated, <i>inter alia</i> , the following: <ol style="list-style-type: none"> 1. That the effective date of this valuation is June 30, 2008. 2. That the discounted cash flow calculations was based on oil prices derived from a forward loading curve quotation, which was dated September 17th, however based on an oil price quotation from the same source received which was on September 4th, the discounted cash flow calculation returned a valuation of negative USD235million - a decrease of some USD300million.
2009 April 14	Solicitor General's Opinion regarding Hongfan's request of the GOJ for the payment of a commission to Port Reliant Limited.	The referenced Opinion concluded, <i>inter alia</i> , the following: <ol style="list-style-type: none"> a. "<i>There are no fee arrangements mentioned in the Hongfan letter and in particular, the payment of fees to Port Reliant by the GOJ. Port Reliant has no agency or other relationship with the GOJ.</i>" b. "<i>If Port Reliant were to act on behalf of the GOJ, it would have had to satisfy the relevant procedures under the Contractor General's Act and the Government's Procurement Guidelines.</i>" c. "<i>The GOJ has no contractual or other relationship with Port Reliant which would justify the payment of any fees on behalf of Hongfan.</i>" d. "<i>Any monies received by the GOJ from Hongfan pursuant to the transaction would be public revenues and payment of any fees from such revenues to Port Reliant in the absence of a legal and commercial basis would be wholly unauthorized.</i>"
2009 April 22	The former Prime Minister, the Hon. Bruce Golding, held a meeting with Mr. Joseph Chang and Mr. Raymond Chang.	The OCG was informed by the former Prime Minister that the discussions ensued around (a) Hongfan's proposed commission payment to Port Reliant Limited by the GOJ, (b) Hongfan's spot purchase of alumina and (c) the proposed virtual equity investment in CAP.
2009 April 24	Meeting held at the OCG with the former Chairman of the JBM and BATCO, Mr. Howard Mitchell and the former Permanent Secretary, Ms. Marcia	Based upon the information which was brought to the attention of the OCG, in particular, the practices of the GOJ in the selection of Hongfan, the OCG, by way of letter which was dated 2009 April 27, <i>inter alia</i> , urged the GOJ not to proceed with the referenced transaction in the

	Forbes, regarding the GOJ's decision to enter into an agreement with Hongfan to purchase the 45% CAP shares in Jamalco.	way it had been originally structured.
2009 April 27	OCG's Letter to Ms. Marcia Forbes, the then Permanent Secretary in the MEM.	The referenced letter outlined, <i>inter alia</i> , (a) the substance of the primary representations, as the OCG understood them to be, that were made by Mr. Mitchell and the referenced Permanent Secretary and (b) the concerns which the OCG had regarding the prospective commercial arrangements which then appeared to have been on the table.
2009 April 27	Email from Ms. Marcia Forbes, former Permanent Secretary, MEM, to Mr. Joseph Chang, Director, Port Reliant Limited.	In the referenced email correspondence, Ms. Forbes asked Mr. Joseph Chang the following: <i>"Joseph, can you elaborate on Port Reliant's track record? I believe this is one area where clarification is being sought, especially with respect to bauxite/alumina trading."</i>
2009 April 27	Email from Mr. Joseph Chang, Director, Port Reliant Limited, in his response to an email correspondence from Ms. Marcia Forbes, former Permanent Secretary, MEM, on even date.	Mr. Joseph Chang, in the referenced email, stated the following: <i>"Our core competences are in investment and finance in North America and China. The best elaboration of our alumina sector capability is the fact that we have brought the investor, Hongfan to the table. Moreover GOJ's first introduction to China Aluminium senior management was arranged by us in April 2008, when their Chairman was introduced to Batco's Chairman in Beijing.</i> <i>Team members' experience includes buyout, debt restructuring, audit, tax, special project engagements (relating to mining, milling and smelters) for international metals and mining companies..."</i>
2009 April 27	Email correspondence from Mr. Joseph Chang, Director, Port Reliant Limited, to Mr. Howard Mitchell, former Chairman, JBM and BATCO.	The referenced email stated, <i>inter alia</i> , that <u>"...Port Reliant is a transaction company specifically established to facilitate investment opportunities in the Jamaica alumina sector from China. Port Reliant is the exclusive agent for Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited (Hongfan) for Jamaica...Among Port Reliant's functions are identifying, presenting, and negotiating with prospects for the purpose of securing spot and long-term supplies of alumina. Other Port Reliant functions include due diligence, and on-going advisory and support services..."</u>
2009 May	Mr. Howard Mitchell, former Chairman, JBM and BATCO, informed the OCG, in his sworn	

	statement which was dated 2010 October 11, that he withdrew himself from discussions and did not speak to any issues arising, subsequent to the meeting of 2009 April 24.	
2009 May 13	Letter from the then Minister in the MEM, Mr. James Robertson, to Mr. Joseph Chang, Director, Port Reliant, which was entitled <i>“Hongfan’s Interest in Bauxite and Alumina”</i> .	This letter was indicated to have been written in response to a letter of 2009 May 12 from Mr. Joseph Chang. The OCG noted that the letter addressed, <i>inter alia</i> , the GOJ’s position with respect to entering into negotiations regarding the proposed virtual equity arrangement, and made clear that <i>“With regards to the issue of Fees, your client is at liberty to pay fees to whomever they wish. We see no reason why the GOJ should have to be consulted on the issue if the fees are not being deducted from its monies.”</i>
2009 May 14	Mrs. Thalia Lyn, business owner of the Company of the Island Grill Chain and the sister of both Mr. Joseph Chang and Mr. Raymong Chang, telephoned the Contractor General of Jamaica, Mr. Greg Christie, at approximately 9:22 p.m.	The Contractor General, by way of a File Note, which was prepared on 2009 May 15, indicated that Mrs. Thalia Lyn indicated, <i>inter alia</i> , that <i>“...she was reluctantly calling...on a business matter which related to her two brothers who are involved in a proposed alumina purchase deal which is to be undertaken by the Government of Jamaica. Mrs. Lynn [sic] said that her brothers had met with the Prime Minister regarding matters concerning the proposed deal and he had advised them that he had instructed the Mining Permanent Secretary and Mr. Howard Mitchell, the Chairman of JBM and BATCO, to meet with the Contractor General on the matter. She said that she was told that both persons had met with me and that her brothers wanted to know what the concerns I had about the matter so that they could address them...”</i> Of note, Mrs. Thalia Lyn, in her sworn response to the OCG, which was dated 2011 May 9, stated, <i>inter alia</i> , that <i>“...the telephone call was not made on behalf of anyone other than my brother Joseph Chang who was the only other person who knew of same...”</i>
2009 June 2	Mr. Joseph Chang, Director, Port Reliant Limited, responded to letter of 2009 May 13 from the GOJ.	The referenced letter stated, <i>inter alia</i> , the following: <i>“...we will set aside discussion of spot and focus on negotiating a long-term virtual equity/equity arrangement along with a related energy project with the Jamaican Government.</i> <i>In order to move the deal forward Hongfan will use Port Reliant as the investment vehicle. Accordingly all funding for the Jamaica Projects (as defined in the Term Sheet signed on February 13) will be through Port Reliant and</i>

		<i>fees will not be an issue related to GOJ...</i> ”
2009 June 19	The OCG found that three (3) letters were written to the then Minister of Energy and Mining, Mr. James Robertson, from Mr. Yan Tiejien, in his capacity as Chairman of Hongfan.	<p>In two (2) of the referenced letters, Mr. Tiejien (a) confirmed that Port Reliant Limited was Hongfan’s fully authorized exclusive agent for the bauxite and alumina investment (and trading) and payment in Jamaica, and (b) extended an invitation on behalf of Hongfan for a Ministerial level delegation to travel to China on 2009 July 13, to settle the CAP transaction, make an arrangement to reopen Windalco and to meet with the Chinese authorities and the China Development Bank.</p> <p>By way of the third referenced letter, Mr. Tiejien made certain proposals and informed the then Minister that Hongfan had arranged financing to (a) acquire a long-term supply of alumina from Jamaica over 25 years, and (b) construct new energy efficient power plants to supply the associated alumina plants and the national grid. Mr. Tiejien further indicated that Hongfan was targeting an alumina supply of not less than 1.6 million tonnes per year for 25 years.</p> <p>It is instructive to note that the letter also indicated, <i>inter alia</i>, that though Honfan’s objective was to secure the supply of 1.6 million tonnes of alumina over the 25 year period, it was an investment which would require several transactions which were to be consolidated as one proposal, in which “...the first offer will be the CAP investment.”</p>
2009 September 21	Letter from Mr. Joseph Chang, Director, Port Reliant Limited, to the then Minister of Energy and Mining, Mr. James Robertson.	The OCG noted that the letter was reportedly written further to letters of 2009 June 19, in an effort to renew certain discussions, in which Mr. Chang reiterated Hongfan/Port Reliant’s interest “... in purchasing the Government of Jamaica’s shares in Clarendon Alumina Production Limited (CAP). In addition to CAP, we remain interested in investing in other alumina ventures in Jamaica...” The letter also informed the GOJ that Hongfan/Port Reliant would provide a framework contract with specific terms to the GOJ.
2009 October 1	The then Minister in the MEM, Mr. James Robertson, wrote to Mr. Yan Tiejien, Chairman of Hongfan and Mr. Joseph Chang, Director, Port Reliant Limited	The former Minister of the MEM, in the referenced letter, expressed the GOJ’s willingness to continue discussions regarding Hongfan’s offer to purchase CAP, and requested that Hongfan advise of any outstanding information which may be required to complete the due diligence exercise associated with its offer and the determination of a competitive purchase price.
2009 October 15	Letter from the then Minister of Energy and Mining, Mr. James Robertson, to Mr. Yan Tiejien,	The former Minister of the MEM reiterated the content which was expressed in the letter of 2009 October 1, and further stated that “ <i>In relation to your kind invitation for</i>

	through Mr. Joseph Chang.	<i>me to visit China, in furtherance of this transaction, please note that, upon the finalization of mutually acceptable contractual terms, I would be prepared to visit your beautiful country to effect completion of this matter and to execute any documentation, as appropriate.”</i>
2009 October 15	Letter from Mr. Joseph Chang which was addressed to the then Senior Legal Counsel, Mr. Glenford Watson, MEM, providing background information on the CAP transaction.	<p>The letter indicated, <i>inter alia</i>, the following:</p> <ul style="list-style-type: none"> • <u>“On March 1, 2007, Dr. Carlton Davis first proposed to us the possibility of an investment in JAMALCO. Dr. Davis suggested that we consider a “Virtual Equity” structure, whereby an investor would pay for GOJ’s share of a JAMALCO expansion in return for GOJ’s share of the output (for a finite time period)...</u> • <i>We proceed with the Virtual Equity approach until October 24, 2008 when Mr. Hugh Hart, in an official meeting chaired by then Minister Derrick Smith, suggested that an equity investment structure would be a better choice. Mr. Howard Mitchell, Chairman of BATCO, strongly affirmed this.”</i>
2009 October 21	Letter from the then Ministry of Energy and Mining (MEM) to the Development Bank of Jamaica (DBJ).	<p>The OCG found that the Ministry consulted the DBJ with respect to the privatization of the GOJ’s shares in CAP and, upon instructing DBJ to meet with representatives from Hongfan and Port Reliant Limited, advised DBJ of the following:</p> <p><i>“It is anticipated that the issue of price will be an item for discussion and we are keen to ensure that, if the offer is accepted, the country receives the best value for the shares.”</i></p> <p>On this basis, the OCG wrote to the Permanent Secretary on 2010 April 22, seeking to ascertain, <i>inter alia</i>, whether the best value for the shares was obtained.</p>
2009 November 22-27.	A Report was submitted by Mrs. Hillary Alexander, Permanent Secretary, MSTEM, to the OCG, which was entitled <i>“Report on Jamaica’s Delegation to China for Meetings with: Zhuhai Hongfan (HF) and Port Reliant Representatives; the China Development Bank; CHALCO; and the National Development and Reform Commission”</i> .	The referenced Report indicated, <i>inter alia</i> , that a Jamaican Delegation travelled to China to (a) ascertain or clarify the nature of Hongfan Group’s (HF) interest in and investment in the alumina sector in Jamaica and specifically in CAP; (b) the “credentials” of the Hongfan Group to undertake the proposed investment; (c) gain a better understanding of the financial backing available to HF to support this investment through the major Chinese banks, and (d) ascertain the level of support for the project that could be reasonably expected from the National Development and Reform Commission (NDRC).

2010 January	The former Prime Minister, the Hon. Bruce Golding, indicated that he received a copy of the offer letter from Hongfan to Mr. Peter Millingen, Chairman of CAP, under cover of a letter from Mr. Milton Samuda, Zhuhai Hongfan's Attorney-at-Law for the purchase of the GOJ's shares in CAP.	
2010 January 14	Letter from Mr. Yan Tiejun, Chairman and CEO, Hongfan, to Mr. Peter Millingen, Chairman, CAP, which was dated 2010 January 14.	<p>The referenced letter states, <i>inter alia</i>, the following:</p> <p><i>“Subject to contract, we are please to offer to purchase the Government of Jamaica’s (“GOJ”) shares of Clarendon Alumina Production Limited (“CAP”). As you are aware we are well advanced in the financing process with China Development Bank.</i></p> <p><i>Subject to due diligence, we are proposing a total consideration of US\$332 million comprised of US\$240 million to the GOJ and, a payment to CAP of US\$92 million to be used as cash-flow support. We expect that the liabilities of CAP will be removed before completion using some of the consideration to GOJ...</i></p> <p><i>Our attorney’s Samuda & Johnson are currently preparing a suggested draft contract...We are available immediately to commence negotiations towards expeditiously concluding a definitive agreement.”</i></p>
2010 January 25	Letter from the Vice President of the China Construction Bank, Zhuhai Branch, to the then Minister of Energy and Mining, Mr. James Robertson, regarding Hongfan.	The referenced letter stated, <i>inter alia</i> , that <i>“Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. (“Zhuhai Hongfan”) has been rated as AA customer of our bank with credit and loan facilities in good standing. In 2009, Zhuhai Hongfan utilized their credit facilities for over nine-figures United States dollars. Subject to due diligence, to those which meet the requirement of our bank, our bank will support Zhuhai Hongfan’s investment in the Jamaican alumina sector, including their purchase of Clarendon Alumina Production Limited...”</i>
2010 February	Report prepared by Dr. Carlton Davis, former Chairman, JBI, and identified by him as a <i>“Final Report of the Bauxite and Alumina Task Force”</i>	<p>Dr. Davis indicated that the Report was submitted to the former Prime Minister, the Hon. Bruce Golding, the then Minister of Energy and Mining and the Permanent Secretary, and stated, <i>inter alia</i>, the following:</p> <ol style="list-style-type: none"> 1. That there were possibly three Chinese companies, one major (CHALCO), one middle rank (Minmetals) and one fledging (Hongfan), which should be considered

		<p>with respect to the CAP/Jamalco divestment.</p> <p>2. That although of the three named companies, Hongfan was the only one which had shown any serious interest in participating in the near-to-medium term, however, he was of the opinion that the “...<i>financial capacity to do so is a moot question.</i>”</p> <p>3. Dr. Davis was of the opinion that whatever is done “<i>Alcoa is kept interested in staying in Jamaica.</i>”</p>
2010 February	Internal Report that was prepared by Mr. Winston Hayden, General Manager, CAP, amongst others, which was entitled “ <i>Valuation of the Company’s Shares</i> ”.	<p>The Report valued CAP shares under two (2) Options as follows:</p> <p>Option 1 <i>The first looks at the Company as a going concern. The administrative structure and Balance Sheet with the accumulated tax loss asset and the debt portfolio are carried forward...</i> The present value of Clarendon Alumina Production shares under Option 1 is a negative US\$62 million...</p> <p>Option 2 <i>The second option assumes that the acquiring entity purchases CAP’s shares after its debt has been discharged and the tax loss benefit removed from the Balance Sheet. It also assumes that a new head office infrastructure is established by the new owners.</i> The net present value of the Company under option 2 is UD [sic] \$220 million...”</p>
2010 February 8	Cabinet Submission MEM 05/2010, which was entitled “ DIVESTMENT OF THE GOVERNMENT OF JAMAICA’S SHAREHOLDING IN JAMALCO ”, submitted by the former Minister of the MEM, Mr. James Robertson.	<p>The OCG found that the purpose of the Cabinet Submission was that the Cabinet was being asked to:</p> <ul style="list-style-type: none"> • “<i>Approve the divestment of CAP’s interest in JAMALCO during 2010 whether by way of an equity transfer or an asset transfer.</i>” • <i>Give approval for a valuation of CAP’s shareholding in JAMALCO to be conducted, with the objective of said valuation being used as a benchmark for the purchase price in the sales negotiations.</i> • <i>Agree to have arrangements made with the approval of the Ministry of Finance and the Public Service (MOFPS) to discharge, novate, or otherwise service the debts currently being carried on CAP’s books.</i> • <i>Agree to the undertaking of further negotiations in respect of the Hongfan offer and any other offer for</i>

		<p><i>CAP's interest in JAMALCO and the execution of any relevant document further to said negotiations provided that the form and term and conditions of any such document are approved by the Attorney General/Solicitor General.</i></p> <ul style="list-style-type: none"> • <i>Agree that subject to final approval by Cabinet of any sale arrangement being recommended, the Minister of Finance and the Public Service being authorized to agree to a waiver of applicable transfer tax and stamp duty, if he deems it necessary."</i>
2010 February 8	Cabinet Decision No. 5/10	<p>The referenced Cabinet Decision outlined, <i>inter alia</i>, the following:</p> <p><i>"The Submission provided information on financial difficulties experienced by CAP, particularly in relation to its operational and debt servicing costs; CAP's joint venture partnership with ALCOA in JAMALCO; sums owed by CAP to ALCOA; and the technical performance of the JAMALCO refinery.</i></p> <p><i>The Submission provided further information on the exploration of options for the divestment of CAP, both as a sale of shares and as a share of assets; the offers received for the divestment of the shares; and the preferred offer from Zhuhai Hongfan Non-Ferrous Metals and Chemical Engineering Inc. (Hongfan)...</i></p> <p><i>The Minister of Finance and the Public Service said that the debt profile must be amended to reflect the totality of debt incurred by CAP, including advances from the Ministry of Finance and the Public Service.</i></p> <p><i>After consideration, the Cabinet approved the recommendations..."</i></p>
2010 March 11	<p>Cabinet Submission (MEM 07/2010) which was entitled "DIVESTMENT OF THE GOVERNMENT OF JAMAICA'S SHAREHOLDING IN CLARENDON ALUMINA PRODUCTION LIMITED", and which was submitted to the Cabinet by Mr. James Robertson, the then Minister of MEM.</p>	<p>The OCG found, <i>inter alia</i>, that subsequent to the approval of the Cabinet, via Cabinet Decision No. 05/10, the MEM <i>"...assembled a divestment team to pursue the subject divestment and undertake the related matters. The team is comprised of representatives from MEM, CAP, the Chambers of the Solicitor General, the Development Bank of Jamaica, Jamaica Bauxite Institute and is being assisted by representatives of the MFPS..."</i></p> <p>The OCG found that the Cabinet was being asked to consider the following:</p> <ul style="list-style-type: none"> • <i>Approve the divestment of the Government of Jamaica's</i>

		<p><i>shares in Clarendon Alumina Production Limited to Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., substantially in accordance with the terms and conditions of the attached draft Agreement for Sale and Purchase of Shares, provided that the Agreement is made, subject to ALCOA Ltd failing to offer identical or improved terms and conditions for the purchase of the said shares, in accordance with any applicable right of first refusal Alcoa enjoys;</i></p> <ul style="list-style-type: none"> • <i>alternatively, and subject to ALCOA LTD offering identical or improved terms and conditions to the terms and conditions set out in the draft Agreement for Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., approve the divestment of the Government of Jamaica's shares in Clarendon Alumina Production Limited to Alcoa Ltd.;</i> • <i>approve the execution by the Minister of Energy and Mining and any other relevant official, acting on behalf of the Government of Jamaica, of the Agreement for Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc., and all relevant Agreements or commitments subject to the approval by the Attorney General/Solicitor General and, where applicable, the MFPS, of the terms and conditions of the Agreement for Sale and Purchase of Shares and all other Agreements or commitments;</i> • <i>alternatively, and subject to the provisions of 9.1 and 9.2 above, approve the execution by the Minister of Energy and Mining and any other relevant official, acting on behalf of the Government of Jamaica, of an Agreement for Sale and Purchase of Shares with ALCOA Ltd and all relevant Agreements or commitments subject to the approval by the Attorney General/Solicitor General and, where applicable, the MFPS, of the terms and conditions of the Agreement for Sale and Purchase of Shares and all other Agreements or commitments;</i> • <i>recommend that the MFPS makes suitable arrangements to discharge, novate or otherwise deal with the outstanding financial obligations of Clarendon Alumina Production Limited in a manner that will facilitate the transfer of the Government of Jamaica's shareholdings in Clarendon Alumina Production Ltd.,</i>
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		<p><i>in accordance with the terms and conditions of the draft Agreement for the Sale and Purchase of Shares with Zhuhai Hongfan Non-Ferrous Metals and Chemicals Engineering Inc.,</i></p> <ul style="list-style-type: none"> • <i>approve the waiver of applicable transfer tax and stamp duty by the Minister of Finance and the Public Service in keeping with the terms of the draft Agreement for Sale and Purchase of Shares; and</i> • <i>require the relevant agencies of Government, as set out in the Agreement for Sale and Purchase of Shares, to supply the information and other data required under the said Agreement.”</i>
2010 March 15	Cabinet Decision No. 10/10	<p>The OCG found that the Cabinet granted the following:</p> <ul style="list-style-type: none"> • <i>agreed that the divestment must be effected in a manner which did not negatively impact the economic programme and the 2010/2011 Budget, and did not result in a call on the Budget;</i> • <u><i>instructed that the divestment process must not proceed until the valuation was received;</i></u> • <u><i>instructed that the Development Bank of Jamaica therefore be advised of the need for the valuation to be expedited;</i></u> • <i>authorized the Prime Minister, in consultation with the Minister of Energy and Mining, the Minister of Finance and the Public Service and the Attorney General and Minister of Justice, to approve the divestment transaction if all the critical issues were resolved; and instructed that the Prime Minister be appraised of the progress of the matter by Wednesday of that week (17 March).”</i>
2010 March 17	A Report was prepared by PriceWaterhouseCoopers, which was entitled “ <i>Limited Critique of a Valuation of the Government of Jamaica’s Shareholding in Clarendon Alumina Production Limited</i> ”.	The Report concluded that “ <i>...the adjustments or use of alternative assumptions to those used in the Original Report...if applied, would have adjusted the value in the Original Report to US\$179 million and would result in a range of value of approximately US\$120 million to US\$358 million...”</i>
2010 March 17	Offer by Glencore International AG, by way of a letter to Mr. Hugh C. Hart, Attorney-at-Law, Hart Muirhead Fatta, and which was entitled “ <i>Firm offer in</i>	<p>The OCG noted that the copy of the referenced letter which was reportedly received by the Permanent Secretary in the MEM on 2010 March 19.</p> <p>The OCG noted that the offer which was provided by</p>

	<i>respect of the Government of Jamaica's 45% interest in Jamalco".</i>	Glencore International AG, indicated, <i>inter alia</i> , that "Further to our various discussions regarding the GoJ's interest in Jamalco...please find Glencore's firm offer to the GoJ for Glencore to acquire the GoJ's entire interest in Jamalco... we are able to offer a headline purchase price of US\$466 mm for the 45% interest on a debt free/cash free basis."
2010 March 18	The " Agreement for Purchase of Shares " which was dated and entered into on 2010 March 18, and which was signed between the Government of Jamaica, CAP and Hongfan.	
2010 March 24	Cabinet Note prepared by the former Minister of the MEM, Mr. James Robertson.	The referenced Cabinet Note concluded the following: <i>"The purchase price offered by Hongfan, plus the associated terms and conditions are deemed to be reasonable.</i> <i>Should ALCOA raise no objection to the sale, the divestment will serve to strengthen the Bauxite and Alumina Sector. This will be particularly so if the proposed expansion of the plant's production capacity and the improvement of its energy efficiency are effected."</i>
2010 April	Comparative Evaluation of the initial offer which was received by Glencore International AG and that of Hongfan. Mr. Winston Hayden, General Manager, CAP, prepared a formal report which was entitled " COMPARATIVE EVLUATION [sic] OF PROPOSALS (HONGFAN VS. GLENCORE) ".	
2010 April 6	Cabinet Decision 13/10, which was in response to the Cabinet Note of 2010 March 24.	The referenced Cabinet Decision stated, <i>inter alia</i> , the following: <i>"The Prime Minister advised of a proposal from Glencore, covering existing obligations to supply the company (Glencore) with alumina and payment of up to 50% of the CAP Bond subject to cheaper alternative fuel sources. He said that the Glencore offer was some US\$191 million, in comparison to the Hongfan offer of US\$240 million; and the essential difference between the offers was that Glencore would pay another US\$100 million if cheaper energy were supplied. He pointed out, however, that the benefits from the Glencore proposal would be realizable</i>

		<p>over the long-term and were linked to market and other conditions, while the Hongfan offer would provide immediate financial and other benefits, allowing payout of the US\$40 million remaining on the Glencore loan and retirement of the CAP Bond.</p> <p><u>The Prime Minister indicated that the proposal should be presented to the Contractor-General for review.</u> In this regard, he instructed that the Cabinet Secretary review the Contractor-General Act and advise him regarding the provisions for disclosure of information that could prejudice commercial activities.</p> <p><i>The Cabinet noted the information provided.”</i></p>
2010 May	GOJ Delegation to China	<p>To facilitate the continuation of the due diligence process between Alcoa and Hongfan.</p> <p>The trip was reportedly based upon the GOJ being invited by Alcoa to observe certain discussions surrounding Alcoa’s right in an effort to determine whether any proposed buyer of the shares was deemed a suitable business partner for joint ownership of Jamalco. The OCG was informed that the discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.</p>
2010 May 5	Letter from Mr. Joseph Chang, Director, Port Reliant Limited, to the MEM, regarding the OCG’s probe into Port Reliant Limited.	<p>The referenced letter stated, <i>inter alia</i>, that:</p> <ul style="list-style-type: none"> • <i>Port Reliant Limited (“Port Reliant”) is a BVI company specifically established to facilitate investment opportunities internationally from China</i> • <i>Port Reliant is Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited’s (“Hongfan’s”) exclusive agent for Jamaica</i> • <i>Port Reliant has no Jamaican officers, principals, shareholders or beneficiary shareholders</i> • <i>In reference to the Gleaner article of March 26, 2010, Chinese firm bids for stake in Jamalco, Ray Chang is not an officer, principal, shareholder or beneficiary shareholder of Port Reliant...”</i>
2010 June	GOJ Delegation to New York	<p>To facilitate the continuation of the due diligence process between Alcoa and Hongfan.</p> <p>The trip was reportedly based upon the GOJ being invited by Alcoa to observe certain discussions surrounding</p>

		Alcoa's right in an effort to determine whether any proposed buyer of the shares was deemed a suitable business partner for joint ownership of Jamalco. The OCG was informed that the discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.
2010 June 8	Statement to Parliament by the former Minister of the MEM, Mr. James Robertson.	<p>In the referenced Statement the referenced former Minister indicated, <i>inter alia</i>, the following:</p> <ol style="list-style-type: none"> 1. That two (2) important considerations had guided the transaction: <ol style="list-style-type: none"> i. "...the government's 45% ownership in JamalCo through Clarendon Alumina Production had become a costly burden which the Jamaican taxpayers could no longer bear." ii. "...the selection of Hongfan as the preferred bidder." 2. That Hongfan's offer includes "...not only a substantial price commensurate with independent valuation but the assumption by Hongfan of the costly supply contracts which are responsible for a substantial part of the accumulated losses and some of which run until 2013..." 3. That the "...agreement which was approved by Cabinet has not yet been consummated, as under the joint venture agreement between CAP and Alcoa, Alcoa has the right of first refusal and has until the end of June to exercise that option..." <p>The OCG observed, by way of The Hansard, that several Ministers posed questions with respect to the transaction. Having regard to, <i>inter alia</i>, representations which were made by the then Minister of the MEM, the OCG found that the divestment was not advertised, however, the then Minister indicated that approval was received from the Cabinet of Jamaica.</p>
2010 June 23	Letter from Mr. Franklin L. Feder, President, Alcoa, which was addressed to the then Minister of the MEM, Mr. James Robertson, regarding " MEM Notice of Proposed Sale of Shares of Clarendon Alumina	The OCG found that the GOJ notified Alcoa, on 2010 March 24, subsequent to the signing of the " <i>Agreement for Purchase of Shares</i> " which was dated 2010 March 18, of, <i>inter alia</i> , the GOJ's "...intention to divest itself of 100% of its shareholding in Clarendon Alumina Production Ltd. ("CAP") to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Inc. ("Hongfan") pursuant to the

	<i>Production Limited dated March 24, 2010</i>	<p><i>terms of your Agreement...</i></p> <p>Alcoa, in its letter of 2010 June 23, informed the GOJ that <i>“AMJ will not make an offer to acquire CAP. Please bear in mind that the decision not to exercise our option to acquire the CAP shareholding is contingent upon your closing occurring within 90 days of this letter, that there will not be any change to the price or other terms and conditions of the APS, and that Hongfan will legally undertake at closing to be bound by all of the Joint Venture agreements.”</i></p> <p>The referenced letter further indicated that same was not to be considered as a letter of acceptance as there were several objectives which needed to be satisfied. These included:</p> <ul style="list-style-type: none"> <i>• “...we must be assured of the suitability of Hongfan as an owner of CAP, both from the perspective of it being a responsible financial partner, and from the point of view that we understand that we share with Hongfan a common view of the vision and values for Jamalco.”</i> <i>• “...to clarify the GoJ’s vision of its future support for Jamalco and the bauxite mining and alumina refining industry in Jamaica in the form of future mineral rights as well as laws and regulations that will foster a responsible supply of competitively priced energy for our industry.”</i>
2010 November to 2011 January	GOJ Delegation to China	The 2010 November to 2011 January visit was reportedly related to (a) the downturn in the bauxite and alumina sector and efforts to re-open a number of local plants that closed in or about 2007/2008, (b) attracting new investments and stimulate growth in the sector and (c) a need to find effective measures to deal with the losses faced by CAP as a result of the fixed prices under the forward sale contracts, which included attempts to divest CAP and discussions with Hongfan in this regard.
2010 November 16	Letter that was signed by Mrs. Hillary Alexander, Permanent Secretary in the then MEM, and Mr. Peter Millingen, then Chairman of CAP, which was addressed to Mr. Yan Tiejun, Chairman and CEO, Hongfan.	The referenced letter expressed, <i>inter alia</i> , the failure of Hongfan to comply with certain obligations arising from the <i>“Agreement for Purchase of Shares”</i> of March 18, 2010 and advised that the GOJ would reserve the option to treat the Agreement as terminated, if the breaches were not cured within 14 days of the said letter.
2010 November 24	Meeting of the National Contracts Commission (NCC).	The OCG, upon a review of the respective Minutes of the NCC, found that the Commission considered a letter which was dated 2010 November 23, from the Permanent

		<p>Secretary in the MEM, requesting permission to utilize the Sole Source and/or Direct Contracting Procurement Methodology for the divestment of the shares in Clarendon Alumina Production (CAP) to Glencore on the terms and conditions as agreed by Cabinet.</p> <p>The OCG noted that the “...<u>Commission noted that there was a Divestment Policy, which they were not privy to and agreed that the matter was not a procurement issue, which was outside the remit of the NCC.</u>”</p>
2010 November 24	Cabinet Submission 568/MEM 55/10, which was signed by Mr. James Robertson, former Minister of the MEM	<p>The OCG found that the Cabinet was being advised that “...<u>subsequent to the signing of the Agreement, there have been several meetings and activities to facilitate completion but these have not borne the desired results; and Hongfan has failed to perform its definitive obligations under the Agreement.</u>”</p> <p>The OCG found that the GOJ served Hongfan two (2) Notices on 2010 September 16 and November 16, respectively, regarding its outstanding obligations under the Agreement.</p> <p>The Cabinet was further advised, <i>inter alia</i>, that “...<u>the GOJ, by letter of November 22, 2010, has re-stated its intention to consider the Agreement as having being [sic] terminated by December 6, 2010, in the absence of performance, by Hongfan, of all outstanding obligations on or before the said date.</u>”</p>
2010 November 29	Cabinet Decision No. 44/2010	<p>The Cabinet gave preliminary consideration to Submission No. 568/MEM – 55/10 on a proposal for the divestment of the Government of Jamaica’s 100% shareholding in Clarendon Alumina Production Limited (CAP) to Glencore International AG.</p> <p>The OCG noted that the Cabinet “<u>decided that the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares, subject to the failure of Hongfan to effect completion of the Agreement of 18 March 2010 for the purchase of the shares.</u>”</p> <p><u>The Cabinet therefore decided that the Submission should be withdrawn from the Agenda and a new Submission presented, accordingly.</u>”</p>
2010 December 6	The GOJ’s termination of the “ <i>Agreement for Purchase of Shares</i> ”, which was signed	

	between the GOJ and Hongfan on 2010 March 18, on the basis that Hongfan failed to have performed in accordance with certain above-mentioned terms and conditions of the Agreement.	
2010 December 27	Report which was prepared by China Company Research Services Ltd., and which was produced for a Mr. Kassim Morrison of the BATCO.	The OCG found that the referenced Report was prepared for BATCO as a form of due diligence into the suitability of Hongfan to purchase the GOJ shares.
2011 April 3	Cabinet Decision No. 15/2011	The OCG noted that the Cabinet granted approval to the recommendations of the referenced Cabinet Submission No. 131/MEM 06/11.

SUMMARY OF KEY FINDINGS

1. The OCG found that Dr. the Hon. Carlton Davis, O.J. CD., in his then capacity as the Chairman of the JBI, met with representatives from Port Reliant Limited from as early as 2007 March.
2. The OCG found that Hongfan had made an offer in 2007 December to the then Minister of Energy, Mr. Clive Mullings, to, *inter alia*, provide the GOJ with US\$600,000,000.00 to finance the GOJ's share of the Jamalco expansion.
3. Mr. Clive Mullings, former Minister of Energy, advised the OCG, in his response which was dated 2011 January 24, that *"In 2008, Port Reliant's principals, Mr. Joe Chang and Mr. Gary Ho approached the Ministry of Energy, Mining and Telecommunications as it then was, expressing an interest in purchasing Bauxite. Meetings were held with them, including the Permanent Secretary, Dr. Jean Dixon, Mr. Howard Mitchell who was Chairman of BATCO, Mr. Glen Watson, Legal Officer, the Chairman of Clarendon Alumina Partners and other persons..."*¹⁵⁵

It is instructive to note that Mr. Mullings indicated, in his sworn testimony to the OCG, that he was neither aware of the proposal to divest the Government of Jamaica's (GOJ's) 45% shares in Jamalco to Hongfan nor had any knowledge of Port Reliant Limited's involvement in same. He further indicated that after April 2008, he had no dealings with Port Reliant Limited as the Ministry was split and he had only retained the Energy portfolio.

4. The OCG found that a Letter of Intent was signed between Hongfan, Port Reliant Limited and Mr. Howard Mitchell, in his then capacity as the Chairman of BATCO, on 2008 May 28, with the intention to initiate official negotiations, which had purportedly commenced from 2008 April 7, with Hongfan and Port Reliant Limited, and which was

¹⁵⁵ Response from Mr. Clive Mullings, former Minister of MEM, which was dated 2011 January 24. Response #3

geared towards entering into an agreement with the GOJ to accomplish the ‘Jamaica Alumina Project’. The OCG notes that the referenced Letter of Intent outlined, *inter alia*, the following:

- (a) That based upon meetings between Hongfan and Port Reliant Limited, it was Port Reliant Limited which had arranged the visit of the then Chairman of BATCO, Mr. Howard Mitchell, to Hongfan, on 2008 April 7, to initiate official negotiations.
- (b) That “*Hongfan with the advice and assistance of Port Reliant intends to enter into an agreement with the GOJ through the agency of Batco to accomplish the Jamaica Alumina Project...*”
- (c) That the parties expressed, *inter alia*, their intent to be as follows:

“Hongfan hereby confirms its interest and intent to participate in the Jamaica Alumina Project, as a financial organizer and promoter, and to organize a banking syndicate/consortium under Hongfan’s name to provide the amount of not less than...US\$600,000,000.00...by way of a loan on terms to be agreed on by Hongfan and the GOJ for the Jamaica Alumina Project.

Hongfan has indicated its willingness and ability to assist Batco with the construction of a 300,000-kilowatt thermal power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica’s National grid.

Hongfan, as and when terms are agreed will establish a Finance Committee to commence promoting the Jamaica Alumina Project, Hongfan further desires to establish an arrangement to enter into long-term contracts of up to twenty (20) years for the acquisition of Alumina from Jamaica through

Batco's agency and is prepared to credit the value of such contracts against the proposed loan. *In the event that Batco can source current supplies in the amount of 200,000 tons of alumina, Hongfan is desirous of purchasing same on terms to be agreed.*"¹⁵⁶ (OCG's Emphasis)

(d) The Letter of Intent also 'explained' that the "...discussions referred to in the Preamble have commenced on April 7, 2008, and are regarded as the first official meeting and included any previous conversations between the parties. The parties agreed that the discussions shall continue for four (4) months from the signing of Letter of Intent."

(e) The Letter of Intent outlined as an "obligation" that "*The Parties agree that Port Reliant will be Hongfan's exclusive agent for the Jamaica Alumina Project.*" The OCG noted that the phrase "*during the period of this letter of Intent*" was handwritten and was represented to be inserted after "*The Parties agree that*" to which a signature, that seemingly represented that of Mr. Howard Mitchell, was affixed.

5. Based upon certain representations which were made and the supporting documentation which was provided to the OCG by the Hon. Bruce Golding, the former Prime Minister of Jamaica, the OCG found that Hongfan made certain propositions in 2008 and 2009, which included (a) the proposal to purchase the GOJ's 45% Shares in Jamalco, which was considered as 'stage one' of certain "Jamaican Projects" which was said to have been outlined in a 'Term Sheet' (b) a willingness to assist BATCO with the construction of a 300,000KW power plant to support the projected alumina refineries and to increase the supply of reliable electricity into Jamaica's national grid; and (c) for BATCO to negotiate an alumina supply agreement with Hongfan for a minimum of 200,000 tonnes of alumina to be delivered within an agreed period of time.

¹⁵⁶ Letter of Intent which was signed on 2008 May 28, between Hongfan, Port Reliant Limited and Mr. Howard Mitchell, then Chairman, BATCO.

6. The OCG found, by way of an email correspondence of 2008 August 6, which was sent from Mr. Joseph Chang, Director, Port Reliant Limited, to Ms. Sancia Templar, for and behalf of the GOJ, *inter alia*, the following:
 - i. That Mr. Joseph Chang expressed that “*Hongfan is a substantial Chinese metals trading company we’re partnering with and Port Reliant Ltd. is our company.*”
 - ii. That Mr. Joseph Chang expressed that it “*...is a win, win situation – the Chinese get a long-term supply of alumina, Jamaica gets a new energy source and diversifies alumina sales lessening dependence.*”
 - iii. That it was subsequent to meeting with Dr. Carlton Davis in 2007 March, who informed both himself and Mr. Gary Ho, representative of Port Reliant Limited of “*... the US\$1.2 billion Jamalco expansion, which would yield an additional 1.5 million tonnes of alumina per annum. He suggested that the GOJ’s share of this additional output (up to 50% of the expanded Jamalco output) could be allocated to the investor that would be willing to finance the GOJ’s share of the expansion costs,*” that Hongfan made an offer in 2007 December.
 - iv. That the then Chairman of BATCO, Mr. Howard Mitchell, visited Hongfan in China in April 2008. Mr. Joseph Chang indicated that “*...no real progress was made until the Chairman of BATCO visited Hongfan...*”
7. That Hongfan made certain proposals to the GOJ in the meeting of 2009 February 9, which included, *inter alia*, the following:
 - i. That “*Hongfan indicated that it will be able to take at least 200,000 tonnes of alumina beginning April for the rest of the year.*”

- ii. That Hongfan indicated an interest in securing long-term supply of alumina for at least 20 years and also alluded to the fact that they were prepared to look at certain options which included (a) “*Virtual Ownership of CAP’s share of JAMALCO*”, (b) an ‘Orthodox purchase’ i.e. a percentage of the London Metal Exchange; (c) cash cost without ownership; and (d) the alumina/caustic soda barter at a later date.
8. The OCG found that several agreements, which included a Letter of Intent, a Term Sheet and Confidentiality Agreements, were signed between the GOJ and Hongfan/Port Reliant Limited with respect to discussions surrounding Hongfan’s willingness to provide funding of up to US\$600M, for what was termed as ‘Jamaica Projects’ to assist in the bauxite and alumina sector. The OCG found that discussions ensued between the GOJ and Hongfan with respect to a long-term direct investment for a period of at least 20 years.
9. That a Term Sheet was signed on 2009 February 13, between the then Prime Minister of Jamaica, the Hon. Bruce Golding and the Chairman and Chief Executive Officer of Hongfan, Mr. Yan Tiejun.

The OCG found that the GOJ, through CAP and JBM, as at 2009 February 13, had a preliminary understanding with Hongfan regarding future relationship, *inter alia*, as follows:

- i. That the GOJ, through its nominated representatives, and Hongfan, through Port Reliant Limited of Hong Kong, People’s Republic of China, its exclusive agent, will work together to identify projects for the development and continued operations of the Industry, which was intended to facilitate Hongfan’s participation for a period of at least 20 years.

- ii. That Hongfan will provide funding of up to US\$600M to execute certain projects in Jamaica. The understanding was that the funds would be made available in three (3) tranches of US\$200M each but would be, however, subject to negotiations and finalizing of the contractual terms relating to their disbursement and repayment to Hongfan.
- iii. That the GOJ, through JBM, CAP and BATCO, will work together to negotiate and finalise an alumina agreement with Hongfan.
- iv. That at the time of the signing of the Term Sheet (2009 February 13), the understanding was that for a period of 120 days from the date thereof, neither the GOJ nor Hongfan would enter into agreements with any other participant in the Industry with respect to the “*Jamaican Projects*”.

10. The OCG also found the following to be of significant import as it regards the signing of the Term Sheet:

- i. That the notion behind the preparation of the Term Sheet, in keeping with the sworn testimony of Ms. Marcia Forbes, former Permanent Secretary, MEM, emanated from a proposition which was made by Hongfan and Port Reliant, upon their insistence for the GOJ to signal its interest in the investment.
- ii. That according to Ms. Marcia Forbes, the former Permanent Secretary in the MEM, the Term Sheet was required to be negotiated and worded to the satisfaction of the former Prime Minister, the Hon. Bruce Golding. This was purported to be undertaken by a team which comprised of Mr. Hugh Hart, then Advisor to the PM; Mr. Howard Mitchell, then Chairman of the JBM and BATCO; Dr. Carlton Davis, then Chairman of JBI; and Ms. Sonia Mitchell of JBI. Ms. Forbes also indicated that the referenced Prime Minister was not entirely comfortable with Hongfan and Port Reliant Limited.

- iii. That according to current Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, the Term Sheet was not a direct product of the ‘proposed transaction’ but rather, was considered to be an “...*initiative which led to the sharing of information that that* [sic] *after an extended period, apparently resulted in Hongfan’s clear offer for the purchasing of the shares.*”
 - iv. The OCG found that Hongfan, subsequent to the signing of the Term Sheet, submitted an offer, which was dated 2009 March 11, to purchase the GOJ’s 45% shares in Jamalco, as “*stage one of the Jamaican Projects*”, which based upon the Term Sheet, the understanding was that Hongfan would work together with the GOJ to identify projects for the development and continued operations of the alumina industry in Jamaica.
11. The OCG found that two (2) Confidential Agreements were signed between the GOJ, one with CAP and the other with JBM, and Port Reliant Limited, and Hongfan, in the case of the Agreement with JBM.
12. The OCG found that an “*Agreement for Purchase of Shares*”, which was dated and entered into on 2010 March 18, was signed between the GOJ, CAP and Hongfan.

In summary, the terms of the ‘*Agreement for Purchase of Shares*’ are that Hongfan would (a) pay US\$240M for the 45% CAP shares; (b) assume CAP’s alumina supply obligations to Glencore which is estimated at approximately US\$175M; (c) deposit a sum of US\$92M, to CAP, for working capital support; and (d) pursue a substantial expansion of the Jamalco facility subject to availability of bauxite reserves.

13. The OCG found that the GOJ, through the MEM, did not conduct any form of a competitive bidding process, prior to the signing of the 2010 March 18 Agreement, to ensure value for money in the divestment of the GOJ 45% shareholding in Jamalco.

It is instructive to note, however, that the Permanent Secretary in the MSTEM, Mrs. Hillary Alexander, in her response to the OCG, stated, *inter alia*, that “...the bauxite and alumina industry consists of, relatively, few players who, in general, do not depend on any formal process to become aware of developments, or avail themselves of opportunities, within the industry. Communication is often undertaken by direct/indirect contact or discussions with or among their representatives or agents.”

14. The OCG found that the GOJ had been in receipt of another offer from Glencore International AG, by way of a letter which was dated 2010 March 17, to purchase the GOJ’s 45% CAP shares in Jamalco. The OCG was, however, advised by Permanent Secretary Hillary Alexander that the letter was received by the then MEM on 2010 March 19 and was revised on 2010 March 26.

Interestingly, the OCG found that Glencore International AG, the entity with which the GOJ is currently negotiating, had submitted several offers to the GOJ. In point of fact, the then Minister, informed the Cabinet of Jamaica, that an offer from Glencore was rejected in 2008 “...due, in part, to the terms of attendant loan arrangements and a valuation which was conducted at a time of a global financial crisis and has a most unfavourable result.”

In this regard, the OCG found that although the letter was dated one day prior to the signing of the “*Agreement for Purchase of Shares*” on 2010 March 18, it was reportedly received one day after the consummation of the Agreement.

15. The OCG found that the GOJ has a history with Glencore International AG as it relates to a 10-year Alumina Supply Agreement which was consummated between the referenced parties. In point of fact, the OCG was advised, *inter alia*, that “*In 2000 Bauxite and Alumina Trading Company of Jamaica (“BATCO”), as exclusive selling agents for CAP, borrowed US\$125 initially from Glencore AG which was refinanced through 10-year Notes issued at 10.48% on international capital markets...The*

arrangement was supported by a 10-year Alumina Supply Agreement to Glencore AG...and the Notes were repaid through the proceeds of the alumina sales.”

16. The OCG found that Mr. Winston Hayden, General Manager, CAP, had conducted a comparative evaluation in 2010 April of the initial offer which was received by Glencore International AG, which was dated 2010 March 17, and that of Hongfan, based upon the Agreement of 2010 March 18.

The OCG found that the GOJ considered the offer by Glencore International AG to be “...less favourable... than the offer made by Hongfan...”

17. The OCG found that the MEM undertook two (2) valuations, as follows:

- i. March 2009 – Valuation prepared by the international firm of Worley Parsons of Australia.

The Valuation which was undertaken by Worley Parsons which became effective on 2008 June 30, and which was prepared to assess the fair market value of the operations on a discounted cash flow basis revealed, *inter alia*, that the discounted cash flow calculations were “...based on oil prices derived from a forward loading curve quotation dated September 17th however based on an oil price quotation from the same source received on September 4th, the discounted cash flow calculation returned a valuation of negative USD235million - a decrease of some USD300million...”

- ii. December 2009 - a business valuation of CAP was undertaken by Mr. Winston Hayden, General and Financial Manager, CAP, for the purposes of guiding discussions/negotiations in relation to the contemplated divestment. The business valuation came to a determination of USD\$220M as the market value of the shares.

The OCG was further advised by Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to the OCG of 2010 May 5, that prior to the Agreement for the divestment of the shares, “...*PriceWaterhouseCoopers was requested to provide a professional opinion on the referenced business valuation, with a view of determining whether it provided an accurate or fairly accurate price for the shares. PriceWaterhouseCoopers, in its limited critique of the business valuation, cited a value ranging from a low of US \$120M to US \$358M...*”¹⁵⁷

18. The OCG found that the GOJ and Alcoa Minerals of Jamaica LLC, pursuant to a Joint Venture Agreement which was dated 1988 March 1, initially had a 50:50 shareholding ownership in Jamalco. However, up to and including the consummation of the “*Agreement for Purchase of Shares*”, the OCG found that based upon a Letter of Agreement between Jamalco and Alcoa, which was dated 2007 March 30, the interest was adjusted to 45:55, with Alcoa holding the majority share, subject to final determination by Jamalco.

The OCG found that the ‘*Agreement for Purchase of Shares*’ was not to be consummated until Alcoa, pursuant to its Right of First Refusal under the Joint Venture Agreement between CAP and Alcoa of 2002, had indicated a failure or refusal to match or improve upon the terms of the ‘*Agreement for Purchase of Shares*’.

19. The OCG found that based upon the representations which were made to it on 2009 April 24, in a meeting which was convened at the OCG, with the former Permanent Secretary, Ms. Marcia Forbes and the former Chairman of JBM and BATCO, Mr. Howard Mitchell, the subject divestment could not proceed in the way the commercial arrangements were being undertaken and the manner in which the transaction had been originally structured.

¹⁵⁷ Response from Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, which was dated 2010 May 5. Response #2

20. The OCG found that Port Reliant Limited, which was reported as being the exclusive agent of Hongfan, was established in the British Virgin Islands (BVI).

Of note, Mr. Joseph Chang, Director, Port Reliant Limited, informed the GOJ that none of the officers, principals, shareholders or beneficial shareholders are Jamaicans. Mr. Joseph Chang's also asserted that Mr. Raymond Chang, who was identified as his brother and Consultant to Port Reliant Limited, is neither an officer, principal, shareholder nor beneficial shareholder of Port Reliant Limited.

21. The OCG found that Mr. Howard Mitchell, then Chairman of JBM and BATCO, served as the Chairman of the Board of the Company of the Island Grill Chain, a company owned by Mrs. Thalia Lyn, the sister of both Mr. Raymond Chang and Mr. Joseph Chang.

22. The OCG found that Mr. Howard Mitchell and a "*Gladstone Chang*" are Directors of the company, Corrpak (St. Lucia) Limited and Shareholders in Shareholders of Corrpak Jamaica Limited.

The OCG found that the referenced company was incorporated prior to the negotiations which were being undertaken between Mr. Mitchell, in his capacity as Chairman of the JBM and BATCO, and Mr. Joseph Chang, Director of Port Reliant Limited - the brother of Mr. Raymond Chang.

Having regard to the foregoing information and Mr. Howard Mitchell's assertion that "*Joseph Chang's brother, Mr. G. Raymond Chang is my close friend and business partner...*"¹⁵⁸, the OCG found that Mr. Raymond Chang's full name is Gladstone Raymond Chang.

¹⁵⁸ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #7

It is instructive to note, that Mr. Howard Mitchell, in his sworn response to the OCG, asserted that Mr. Raymond Chang asked him “...on more than one occasion questions related to the progress of the negotiations...”¹⁵⁹

23. That as at the time of the meeting with the OCG, which was convened on 2009 April 24, the arrangements/deal between Hongfan and the GOJ was apparently “going ‘sour’”, as suggested by former Permanent Secretary, Ms. Marcia Forbes, based upon several reasons, which included (a) the fact that the GOJ had no alumina to supply Hongfan, (b) a proposition by Hongfan for the GOJ to pay Port Reliant Limited a commission fee, and (c) an apparent mistrust on the part of Hongfan which had developed against the GOJ as a result of the GOJ’s having certain discussions with Minimetals, a competitor of Hongfan, which informed Hongfan of such discussions and had proposed to ‘broker’ the deal with Hongfan and the GOJ.

24. That the former Permanent Secretary in the MEM, Ms. Marcia Forbes, advised the OCG that the former Prime Minister of Jamaica, the Hon. Bruce Golding, had expressed certain concerns regarding the manner in which Mr. Joseph Chang, Director, Port Reliant Limited, wanted to conduct the negotiations.

In point of fact, Ms. Forbes described Mr. Joseph Chang’s treatment of the GOJ as a “*banana republic*”, that is, one of a dictatorship/exploitative relationship. She explained that as a result, the former Prime Minister had expressed his discomfort, particularly with respect to the signing of the Term Sheet.

25. That the GOJ had considered preparing a status report, regarding Hongfan, to the National Contracts Commission (NCC) to request an endorsement to utilise the Sole Source Procurement Methodology. This seems to have been considered on the basis of the proposition for the GOJ to pay Port Reliant Limited a commission fee as in the

¹⁵⁹ Response from Mr. Howard Mitchell, the former Chairman of BATCO and JBM, which was dated 2010 October 11. Response #9(vi)

email of 2009 April 25, from Ms. Marcia Forbes, former Permanent Secretary, MEM, to the Hon. Bruce Golding, it was suggested that once approval was received from the NCC, then “... *HF cannot pay them directly and that Ja will not breach Chinese [sic] law/reg. if it pays.*”

It should be noted, however, that Ms. Forbes in her sworn testimony to the OCG, which was dated 2010 June 29, stated that the referenced status report was not prepared, as Port Reliant Limited, which was required to supply the Ministry with evidence that (a) Hongfan could not pay them directly and (b) that Jamaica would not be in breach of Chinese laws if it pay, did not provide same.

26. Mrs. Hillary Alexander, Permanent Secretary, MSTEM, by way of a letter to the OCG, which was dated 2010 May 27, in an effort to clarify certain positions of the GOJ with respect to the subject divestment, stated, *inter alia*, that the “... *proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*”¹⁶⁰

Based upon the foregoing, the referenced Permanent Secretary implied that Hongfan’s offer was considered by the GOJ to be “an unsolicited proposal”. Upon the OCG’s query of same, the Permanent Secretary, in her sworn response of 2010 July 14, stated, *inter alia*, that “*From a perusal of documents which came to my attention subsequent to my letter of May 27, 2010, I am unable to say that the offer was unsolicited in the strictest meaning of the word, in light of the history of the involvement with Hongfan.*”

27. The OCG found that due diligence was conducted by the GOJ via a variety of approaches by several Public Officials/Officers into (a) Hongfan’s offer and (b) Hongfan’s suitability to purchase the GOJ’s shares, as follows:

¹⁶⁰ Letter from Mrs. Hillary Alexander, Permanent Secretary, MSTEM, which was dated 2010 May 27. No. 3

- i. The GOJ in 2009 March had conducted due diligence exercises into the suitability of Hongfan, as an entity, to which the GOJ could divest its shares. The OCG was informed that due diligence exercises were also conducted by the GOJ into Hongfan to determine (a) the legitimacy of the entity; (b) knowledge about the incorporation and beneficial shareholders, directors, employees, officers and principals; (c) the agency agreement between Port Reliant Limited and Hongfan; and (d) financial capabilities.
- ii. That several meetings and discussions were held to facilitate the due diligence process with certain Chinese officials and institutions which included, *inter alia*, the China Development Bank, the National Development and Reform Commission, the China Aluminium Corporation of China, representatives of Hongfan, and representatives of Port Reliant Limited namely, Mr. Joseph Chang and Mr. Gary Ho.
- iii. That BATCO conducted a formal due diligence exercise into Hongfan through a UK based company, China Company Research Services Limited, which undertakes due diligence services/research into Chinese corporations/entities. A report which was submitted by the referenced company outlined, *inter alia*, that (a) the legal scope of the company as being licensed for export/import trading; (b) Mr. Yan Teijen is the Executive Director and General Manager of the company; and (c) the entity was incorporated to a Limited Liability Company on 2007 November 8.
- iv. In general, Hongfan was considered a small company in China, compared to companies such as CHALCO. However, the OCG was advised that Hongfan's success factor was based upon "*...the explicit involvement of CHALCO, as the major off-taker and the CDB as a major financier. The confirmation of the support of these two entities will be the likely determinant of the NDRC support for HF's acquisition of the CAP shares.*"

28. The OCG found that although Port Reliant Limited, as communicated by Hongfan, was an agent, acting on its behalf, with respect to the alumina and bauxite investment in Jamaica, the GOJ did not conduct any formal due diligence process into the operations of the company and its members' capabilities as it regards alumina and bauxite. In point of fact, the OCG was advised by the former Permanent Secretary in the MEM, that any information obtained with respect to Port Reliant Limited was done by verbal communication.

Based upon a review of certain documents and representations which have been made to the OCG, the OCG found the following:

- i. That Port Reliant Limited is a British Virgin Island company specifically established to facilitate investment opportunities internationally from China.
- ii. That the former Permanent Secretary, Ms. Marcia Forbes, indicated that based upon several meetings and email correspondence with Mr. Joseph Chang, Mr. Gary Ho and other Hongfan representatives, she **learnt** that Mr. Joseph Chang, **'Mr. Ray Chang'** and Mr. Gary Ho, represented Port Reliant Limited.
- iii. That the majority of the discussions, intentions expressed and negotiations were held between Port Reliant Limited and the respective GOJ representatives from as early as 2007.
- iv. That Port Reliant Limited reportedly functioned to (a) obtain and disseminate information to Hongfan, (b) provide translation services, (c) facilitate discussions between GOJ and Hongfan; and (d) offer logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.

Of note, the OCG found, based upon certain representations which were made, that there seemed to have been a general belief by certain Government Officials/Officers that on the basis that the GOJ had no agreement with Port Reliant Limited, but rather Hongfan, it was not a necessity for the GOJ to conduct any form of a due diligence exercise on the business capabilities and suitability of Port Reliant Limited.

29. The OCG found that as it regards the request of Hongfan for the GOJ to pay Port Reliant Limited a commission “*from the Consideration paid by Hongfan*”, no payment was made to Port Reliant Limited.

Of significant import, the matter was brought to the attention of the Solicitor General and the OCG, which, in both instances, advised the GOJ against paying any monies to Port Reliant Limited.

30. The OCG found that the Solicitor General advised, as follows:

- a. *“There are no fee arrangements mentioned in the Hongfan letter and in particular, the payment of fees to Port Reliant by the GOJ. Port Reliant has no agency or other relationship with the GOJ.*
- b. *If Port Reliant were to act on behalf of the GOJ, it would have had to satisfy the relevant procedures under the Contractor General’s Act and the Government’s Procurement Guidelines.*
- c. *The GOJ has no contractual or other relationship with Port Reliant which would justify the payment of any fees on behalf of Hongfan.*
- d. *Any monies received by the GOJ from Hongfan pursuant to the transaction would be public revenues and payment of any fees from such revenues to Port*

Reliant in the absence of a legal and commercial basis would be wholly unauthorized.”

It is instructive to note that the OCG, by way of a letter which was dated 2009 April 27, in which the OCG expressed, *inter alia*, its concern that “*You have asserted that Hongfan is unwilling to pay the proposed commission directly to Port Reliant, but is willing to ‘gross up’ the contract payments in an amount which is equivalent to the commission. This, of all of our stated concerns, raises very serious possibilities for a finding of irregularity and/or impropriety as regards the transaction. Further, there is a possibility that the GOJ could be embarrassed in the event that the transaction is found to be illegal and/or otherwise questionable, by the Government of China.*”

31. The OCG found that the GOJ, through its representatives, held and attended several meetings with Hongfan, Port Reliant Limited, amongst other persons and entities of interest, and that on several occasions a Jamaican delegation visited China to garner information, particularly with respect to the suitability of Hongfan proposing an interest in the subject divestment, as follows:

- i. The visit in 2009 March was reported to be in an effort to explore all possible options to maintain production to the maximum extent possible, and to ensure the long-term development and growth of the industry, at which time certain propositions were expressed to the Chinese for consideration.
- ii. The 2010 November to 2011 January visit was reportedly related to (a) the downturn in the bauxite and alumina sector and efforts to re-open a number of local plants that closed in or about 2007/2008, (b) attracting new investments and stimulate growth in the sector and (c) a need to find effective measures to deal with the losses faced by CAP as a result of the fixed prices under the forward sale contracts, which included attempts to divest CAP and discussions with Hongfan in this regard.

iii. The visits in 2010 May and (2010 June to New York) was reportedly based upon the GOJ being invited by Alcoa to observe certain discussions surrounding Alcoa's right in an effort to determine whether any proposed buyer of the shares was deemed a suitable business partner for joint ownership of Jamalco. The OCG was informed that the discussions examined certain assurances required by Alcoa, of Hongfan, and certain amendments to the existing Joint Venture Agreement, between CAP and Alcoa, which were required by Hongfan.

32. That the former Minister sought the approval of the Cabinet of Jamaica on 2010 February 8, to divest the GOJ's shareholding in Jamalco. The OCG found that approval was subsequently granted by the Cabinet of Jamaica for the referenced divestment. In addition, the OCG found that the Cabinet was advised of, *inter alia*, the following:

- i. That since 2008, the divestment of CAP was explored with at least four (4) entities, inclusive of Hongfan. Of note, however, the divestment was not put to a competitive bidding process prior to the consummation of the "*Agreement for Purchase of Shares*" of 2010 March 18.
- ii. That the DBJ was in the process of contracting PriceWaterhouseCoopers or such other independent valuers to perform a final valuation of CAP's shareholding in Jamalco or to certify the valuation which was conducted by Mr. Winston Hayden, General Manager, CAP.
- iii. That the purchase price which was proposed by Hongfan of US\$332M was found to be insufficient to discharge CAP's debts.
- iv. That based upon a breakdown of CAP's debts which was presented to the Cabinet, as at 2009 December 31, CAP's debt amounted to US\$384,280,000.00.

33. The Cabinet, by way of its Decision No. 10/10, which was dated 2010 March 15, stated, *inter alia*, that the divestment process be halted until the Valuation Report was received from PricewaterhouseCoopers. The OCG also noted that the Valuation Report was received by PricewaterhouseCoopers on 2010 March 17, one day prior to the consummation of the “*Agreement for Purchase of Shares*” which was entered into between the GOJ, Hongfan and CAP on 2010 March 18.
34. The OCG found that the “*Agreement for Purchase of Shares*”, which was signed between the GOJ and Hongfan, on 2010 March 18, was terminated on 2010 December 6, on the basis that Hongfan failed to have performed in accordance with certain above-mentioned terms and conditions of the Agreement.
35. The OCG found that the Cabinet, by way of Cabinet Decision No. 44/2010, which was dated 2010 November 29, “...*gave preliminary consideration to...a proposal for the divestment of the Government of Jamaica’s 100% shareholding in Clarendon Alumina Production Limited (CAP) to Glencore International AG.*”

The Cabinet, however, decided, *inter alia*, that “...*the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares, subject to the failure of Hongfan to effect completion of the Agreement of 18 March 2010 for the purchase of the shares.*”

The OCG, therefore, noted that during the period in which Hongfan was being requested by the MEM to perform in accordance with the terms and conditions of the “*Agreement for Purchase of Shares*” of 2010 March 18, the Cabinet was being requested, by the MEM, to consider an offer which was proposed by Glencore International AG. The Cabinet, however, decided that the submission should be withdrawn by the MEM and requested that negotiations with Glencore International AG were to be entered into subject to the failure of Hongfan to effect completion of the referenced “*Agreement for Purchase of Shares*”.

36. Quite interestingly, the OCG found, by way of the referenced Cabinet Submission of 2010 November 24, that the former Minister of the MEM, Mr. James Robertson, informed the Cabinet of Jamaica, that both the Ministry of Finance and the Attorney General's Department had offered its "no objection" for the GOJ to utilise the Sole Source Procurement Methodology for the subject divestment.

The referenced Minister also asserted that the NCC had advised that "*...the matter of the divestment of government assets falls outside its portfolio responsibilities,*" and that the OCG "*...proffered a contrary opinion and, apparently, supports the use of the standard procurement methodology for the divestment of Government assets. In the enquiries of the transaction with Hongfan he made reference to the use of the open tender methodology for the divestment of assets.*"

It is instructive to note that despite the foregoing, and what seems to be the furthest from the truth, the OCG has always held the position, and as outlined in its letter of 2009 April 27 to the former Permanent Secretary in the MEM, that one of the fundamental tenets of the GOJ's Procurement Policy is "value for money" which cannot be determined where there is no transparency or competition in the GOJ's engagement.

Further, the OCG in its respective Media Releases, which were dated 2010 May 20 and 26, publicly announced its position. In particular, in the former Media Release, the OCG pronounced, *inter alia*, that "*...the issues with which we are now contending would not have occurred had the GoJ subject the sale of the referenced equity to an open, competitive and transparent tender process.*" (OCG's Emphasis)

The foregoing in no way proffers a support of the "*standard procurement methodology*", as suggested by the former Minister, for the divestment of Government state owned assets, as such transactions are required to be undertaken pursuant to the provisions of the GOJ Privatization Policy and Procedures (Ministry Paper #34).

37. The OCG found that subsequent to the termination of the “*Agreement for Purchase of Shares*” between the GOJ and Hongfan, the GOJ entered into negotiations with Glencore International AG with respect to the acquisition of the GOJ shares in Jamalco.

CONCLUSIONS

Based upon the sworn testimonies and documentary evidence which were received from several Public Officials/Officers, former and present, within the MEM, BATCo, CAP, among other Government Entities, and representatives of same which are/were involved in and/or associated with the subject divestment, the OCG has arrived at the following considered Conclusions:

1. The OCG has concluded that the divestment process which was employed by the GOJ, through the MEM, with respect to the GOJ's 45% CAP shares in Jamalco, was irregular, and, therefore, contravened Section 4 of the Contractor General Act.
2. The OCG has concluded that there was no formal competitive bidding process which was undertaken by the GOJ, prior to it [the GOJ] entering into an "*Agreement for Purchase of Shares*" on 2010 March 18 with Hongfan with respect to the GOJ's 45% CAP shares in Jamalco. In this regard, the OCG has concluded that the GOJ, through the MEM, breached Section 4 of Ministry Paper # 34, in its failure to advertise the captioned divestment.
3. Further and in keeping with Ministry Paper #34, the OCG has concluded the following with respect to the "*Agreement for Purchase of Shares*" which was signed between the GOJ, Hongfan and CAP on 2010 March 18:
 - i. That two (2) valuations were conducted on behalf of the GOJ to determine the disposal price. The first valuation was undertaken by Worley Parsons and the second was prepared internally by CAP, in which a 'limited critique' from PricewaterhouseCoopers was obtained by CAP on 2010 March 17, one (1) day prior to the signing of the "*Agreement for Purchase of Shares*".
 - ii. That equal opportunity was not given to other prospective purchasers in the Industry. To compound the matter, the OCG has found that the divestment

opportunity was not advertised and it was taken for granted by the GOJ that other players in the industry were aware of the GOJ's intent to divest its holdings in the company.

In point of fact, the OCG found that Hongfan was purportedly selected subsequent to the GOJ's receipt of an "*unsolicited meritorious proposal*" from the referenced company.

Despite the foregoing, the OCG also found that at least one other prospective bidder, with whom the GOJ had been in discussions with previously, submitted a proposal to Mr. Hugh Hart, Attorney-at-Law and then Special Advisor to the GOJ, by way of a letter which was dated 2010 March 17, and which was signed as having been received on 2010 March 19.

- iii. That there existed a conflict of interest situation particularly between Mr. Howard Mitchell, the Chairman of BATCO and JBM, and Mr. Joseph Chang, Director, Port Reliant Limited, and Mr. Raymond Chang, Consultant for Port Reliant Limited, with respect to the close personal and business relationships which subsisted among the individuals, respectively.

In point of fact, the OCG has concluded that the conflict of interest situation emanated from 2008 January, the period in which Mr. Howard Mitchell indicated that Mr. Joseph Chang "*...approached me in my capacity as Chairman of the JBM and BATCo expressing an interest on behalf of...Chinese investors in Jamaica's bauxite and alumina industry.*"

Further, Mr. Mitchell indicated that Mr. Raymond Chang, asked him "*on more than one occasion questions related to the progress of the negotiations...*"

Mr. Howard Mitchell also advised the OCG, *inter alia*, that (a) he has known Mr. Joseph Chang since 1988, (b) Mr. Raymond Chang is his close friend and business partner and (c) Mrs. Thalia Lyn, Mr. Joseph's Chang sister, is his friend since 1986. It is also the case that Mr. Mitchell served as the Chairman of the Board of the Company of the Island Grill Chain, a company in which Mrs. Thalia Lyn is the owner.

- iv. That the divestment was reportedly publicized by the GOJ, in the print media, upon the consummation of the "*Agreement for Purchase of Shares*".
4. The OCG has concluded that, on 2010 February 8, the Cabinet of Jamaica approved the request of the former Minister of the MEM, Mr. James Robertson, to proceed with the divestment of the GOJ's 45% CAP shares in Jamalco.
5. The OCG has concluded that the genesis of the discussions pertaining to Jamalco, as an opportunity for investment, was in 2007 March, at which time a meeting was held with representatives of Port Reliant Limited and Dr. Carlton Davis, the then Chairman of JBI.

The OCG found that subsequent to the initial meeting in 2007, certain other former GOJ Officials, which included Mr. Howard Mitchell and Mr. Clive Mullings, were approached by Hongfan and Port Reliant Limited, in which several meetings and discussions were facilitated in 2008 and several propositions were made by, and/or for and on behalf of, Hongfan, with respect to investing in the alumina and bauxite industry in Jamaica.

6. The OCG has concluded that an agency relationship existed between Hongfan and Port Reliant Limited, in which Port Reliant Limited reportedly functioned to, *inter alia*, (a) obtain and disseminate information to Hongfan, (b) provide translation services, (c) facilitate discussions between GOJ and Hongfan, and (d) offer logistics and planning support for the interaction (personal and telephonic) between representatives of the GOJ and Hongfan.

7. The OCG was advised by the Permanent Secretary in the MEM that the value of the shares in Jamalco was assessed against (a) the total value of the consideration payable to the GOJ by Hongfan; (b) the monetary value owing to Glencore; and (c) the Working Capital support of US\$92M which was to be deposited for use in the operations of the facility.

In this regard, the OCG concludes that the valuation of Jamalco, at that time, prior to the signing of the *“Agreement for Purchase of Shares”* on 2010 March 18, would have been based upon the final assessment, by way of the ‘limited critique’ of the business valuation which was undertaken by CAP, that was prepared by PricewaterhouseCoopers, which cited the value of the shares ranging from a low of US\$120M to US\$358M.

8. The OCG has concluded that the GOJ did not directly enter into any agreements with Hongfan based upon the signing of the Term Sheet which was consummated by the former Prime Minister of Jamaica and Hongfan on 2009 February 13.

The OCG found that the signing of the Term Sheet was based upon discussions regarding the possible participation by Hongfan in the bauxite and alumina industry and a future relationship between the parties.

In point of fact, Ms. Marcia Forbes, the former Permanent Secretary in the MEM, indicated that the Term Sheet was not a direct product of the *“Agreement for Purchase of Shares”* but rather, was considered to be an *“...initiative which led to the sharing of information that that after an extended period, apparently resulted in Hongfan’s clear offer for the purchasing of the shares.”*

Therefore, the OCG has concluded that the signing of the Term Sheet was to hold Hongfan to its commitments/propositions with respect to (a) discussions surrounding Hongfan’s willingness to provide funding of up to US\$600M; (b) identifying projects for the development and continued operations of the Industry, what was coined the *“Jamaica Projects”*, which was to facilitate Hongfan’s participation for a period of at least 20 years;

(c) the commencement of negotiations between JBM, CAP and/or BATCo, and the use of best efforts to finalise an alumina supply agreement with Hongfan for a minimum of 200,000 tonnes of alumina which was to be delivered between March 2009 and December 2009, or such other period as may be agreed upon; and (d) allowing Hongfan to enter into agreements, for a period of 120 days, with any other participant in the industry with respect to the “*Jamaican Projects*”.

9. The OCG has concluded, based upon Hongfan’s proposition to the GOJ, and subsequent negotiations, which were embedded in the “*Agreement for Purchase of Shares*”, which was consummated on 2010 March 18, that Hongfan agreed, subject to certain conditions, to purchase the GOJ shares for a total of US\$332M which was comprised of, amongst other arrangements, (a) the payment of US\$240M to the GOJ, and (b) a payment of US\$92M to be used as cash flow support.

10. Having regard to (a) the business relationship between Mr. Howard Mitchell and Mr. Raymond Chang; (b) the absence of evidence to suggest that this business relationship was declared to the GOJ; and (c) the fact that Mr. Howard Mitchell advised the OCG that Mr. Raymond Chang, on more than one occasion, questioned him with respect to the progress of the negotiations, the OCG has concluded that there was a clear conflict of interest situation which subsisted between both individuals.

Such is the case that the relationship between both individuals subsisted during the discussion and negotiations phases which preceded the consummation of the “*Agreement for Purchase of Shares*” on 2010 March 18, with respect to the GOJ’s shareholding in Jamalco.

Based upon the sworn and documentary evidence which has been provided to the OCG during the course of its Investigation, the OCG has been led to the foregoing conclusion despite Mr. Howard Mitchell’s assertion that he removed himself from the process in 2009 May.

11. The OCG has also concluded that Mr. Howard Mitchell, having known the fact circumstances of his association with Mr. Raymond Chang, should not have assisted, been involved in and/or associated with the divestment process, in any way. The involvement of Mr. Howard Mitchell, under the prevailing circumstances amounts to a clear breach of Ministry Paper #34, which stipulates, *inter alia*, that “...parties with likely conflicting interests will not be invited to assist the process in any way.”

12. The OCG is unable to definitively state whether **all** the directors, shareholders, beneficial owners and persons with an interest in Port Reliant Limited had played an active part in Hongfan’s interest in purchasing the GOJ’s shareholding in Jamalco, as the GOJ did not conduct a formal due diligence process into the referenced entity.

However, based upon the review of several sworn testimonies, supporting documentation, correspondence, amongst other things, the OCG has concluded that the representatives of Port Reliant Limited, who had some involvement in and/or association with Hongfan’s proposition to purchase the GOJ’s 45% CAP shares in Jamalco, were Mr. Joseph Chang, Mr. Gary Ho and Mr. Raymond Chang.

The OCG has concluded that Mr. Raymond Chang represented Port Reliant Limited as a Consultant. In point of fact, this was indicated by his brother Mr. Joseph Chang to Ms. Marcia Forbes, former Permanent Secretary in the MEM, by way of an email which was dated 2009 April 27, that “**Ray Chang is a consultant to Port Reliant.** Ray is Chairman of the Board of Directors of CI Fund Management Inc. He is also a private equity investor with extensive management, operational and investment experience in North America, China and the Caribbean.”

The OCG has also concluded that it was Mr. Joseph Chang, in his capacity as a Director of Port Reliant Limited, who was the point person between the GOJ and Hongfan, as Port Reliant Limited was held out by Hongfan to be its “*exclusive agent*”.

13. The OCG has concluded that the GOJ had only conducted due diligence into the legitimacy and suitability of Hongfan, as an entity to which the GOJ could divest its shares, and not into the *bona fides* of Port Reliant Limited, as the agent of Hongfan and the “*investment vehicle*”, as asserted by Hongfan, to proceed with the arrangements/agreements which were made between the GOJ and Hongfan. The role of Port Reliant Limited was also outlined in the ‘Term Sheet’ which was entered into on 2008 March 28, in which the GOJ agreed that “*Port Reliant will be Hongfan’s exclusive agent for the Jamaica Alumina Project.*”

The OCG found, and based upon the sworn testimony of Ms. Marcia Forbes, former Permanent Secretary, MEM, that the GOJ sought to clarify information with respect to the “*agency agreement*” between Port Reliant and Hongfan. It is instructive to note that Ms. Marcia Forbes, indicated that the information was clarified “*...Later via word of mouth from Joseph Chang and Gary Ho, the agency agreement became evident. This was later corroborated by representatives from Hongfan when GOJ officials tried to deal directly with Hongfan and not through Port Reliant...*”

The OCG has concluded that the failure of the GOJ to conduct a proper due diligence into the incorporation and operations of Port Reliant Limited contributed to the overall conflict of interest situation which arose having regard to Mr. Howard Mitchell, former Chairman of the JBI and BATCO, being involved in and affiliated with the subject divestment process, against the background of Mr. Mitchell’s testimony which has disclosed, *inter alia*, particular private interests which he shared with Mr. Raymond Chang, Consultant of Port Reliant Limited. Further, Mr. Howard Mitchell, informed the OCG that Mr. Raymond Chang asked him “*...on more than one occasion questions related to the progress of the negotiations. I presume that his interest arose because Joseph Chang is his brother.*”

14. The OCG found that the CEO of Hongfan, Mr. Yan Teijun, by way of a letter which was dated 2009 March 18, expressed to the former Minister, Mr. James Robertson, that “*Port Reliant Limited (“Port Reliant”) is Hongfan’s exclusive agent for Transaction. As a condition of the Transaction, Hongfan is requesting GOJ to pay, on Hongfan’s behalf Port*

Reliant certain fees (“Fee”) from the Consideration paid by Hongfan. The Fee payable to Port Reliant shall be calculated as a percentage of Consideration. The percentage rate shall be: 1.5% for spot purchase of alumina; 50% for equity, Virtual Equity and loan facilities; and, 1.5% for long-term purchase contracts of alumina. Port Reliant Fee shall be payable in U.S. Dollars in the form of a wire transfer by GOJ. Fee shall be paid automatically upon each payment or draw down of the Transaction.”

The OCG concludes that the GOJ, subject to consultation with the OCG and the Solicitor General of Jamaica, rejected the above-mentioned proposition which was made by Hongfan, to the GOJ, to pay Port Reliant Limited a commission, for which it was reportedly suggested by Hongfan that the contract payment be ‘grossed-up’ to facilitate such an arrangement.

15. The OCG found that Hongfan, up to 2009, had expressed an interest in acquiring the GOJ’s 45% shareholding in Jamalco. This was subject to Alcoa’s Right of First Refusal and/or its acceptance of the sale of the shares.

The OCG concludes that the shareholding in Jamalco was a 45:55 split, in which the GOJ owned 45% and Alcoa the 55% majority of the shares.

16. The OCG has concluded that the GOJ was aware of at least four (4) possible interests in the alumina and bauxite industry for the purchase of the GOJ’s shareholding in Jamalco and, therefore, had the necessary information and resources to conduct a competitive divestment process in keeping with Ministry Paper #34.

The OCG noted Permanent Secretary Hillary Alexander’s assertion, in her letter of 2010 May 5, in which she stated that *“Note is taken of your comment that the reference principle was not followed by a failure to advertise the divestment of the asset. Be assured, however, that the Agreement for the divestment of the assets was arrived at in good faith after careful considerations of all issues involved. These include the value of the assets; the fact*

that the intent to divest was widely known in the local and international bauxite industry; and that it was evident, from discussions with other potential purchasers and relevant industry personnel, that the Government was unlikely to receive more favourable terms and conditions for the purchase of the asset.”

The OCG is of the considered opinion that the divestment of government-owned assets cannot be based upon ‘*good faith*’ and upon the assumption that the GOJ’s intent to divest is widely known within the international industry.

The OCG contends that an ‘intent’ to divest does not constitute or communicates an actual divestment process, nor the parameters of same, and, as such, the OCG concludes that the circumstances surrounding the consummation of an Agreement between the GOJ and Hongfan did not in any way promote equal opportunity, transparency and fairness in the privatisation process to ensure that the best value is obtained within the market.

In point of fact, the former Minister of the MEM, Mr. James Robertson, informed the Cabinet of Jamaica that since 2008, the divestment of CAP was explored with at least four (4) entities, inclusive of Hongfan. Notwithstanding this, and based upon the compendium of facts, the OCG found no evidence to suggest that any of the other three (3) entities were required by the GOJ to provide any proposals in 2010, for evaluation, along with Hongfan’s proposal which was evaluated by the appointed ‘GOJ Team’.

The OCG concludes that the GOJ has not provided any justified reason for its failure to conduct the subject divestment process on a competitive basis and in an open and transparent manner and, as a result, the consummation of the Agreement with Hongfan and the entire transaction has been mired in suspicion surrounding the probity of same. This occurrence is further compounded by the fact that the GOJ was in receipt of a second offer which was submitted by Glencore International AG, one day after the Agreement with Hongfan was consummated.

17. The OCG has concluded that the “*Agreement for Purchase of Shares*”, which was signed between the GOJ and Hongfan on 2010 March 18, was terminated on 2010 December 6, by the GOJ, on the basis that Hongfan had contravened certain terms and conditions which were set out in the Agreement.

In point of fact, the Cabinet of Jamaica was advised by the then Minister in the MEM, *inter alia*, that Hongfan had failed to (a) pay the Deposit into the Escrow Account; (b) obtain a banker’s guarantee for the payment of the balance of the Purchase Price, and (c) obtain the approval of the Chinese Authorities for the consummation of the Agreement.

18. The OCG has concluded that based upon the review of certain Cabinet Submissions which were submitted by the then Minister in the MEM, there was a clear misconstruction with respect to the procedures which are required to be employed for the divestment of government state-owned assets and the procedures which govern the GOJ Public Sector Procurement Procedures.

The OCG found that the offer by Hongfan was inferred to be that of an “unsolicited proposal”.

Of note, Mrs. Hillary Alexander, Permanent Secretary in the MSTEM, in her response to an OCG Media Release, which was dated 2010 May 27, in defence of the divestment process which was employed by the MEM, with respect to Hongfan’s offer, stated that the “*...proposed transaction is not in the strictest terms a procurement matter, and the GOJ Procurement Guidelines do allow for the consideration of an unsolicited and meritorious proposal.*”

Upon the OCG’s query of same, the Permanent Secretary, in her sworn response of 2010 July 14, stated, *inter alia*, that “*From a perusal of documents which came to my attention subsequent to my letter of May 27, 2010, I am unable to say that the offer was unsolicited*

in the strictest meaning of the word, in light of the history of the involvement with Hongfan.”

The OCG concludes that the subject divestment cannot in any way be compared to that of procurement and, as such, the GOJ Public Sector Procurement Procedures, would not have been applicable. The applicable procedure which governs the GOJ’s privatization process is provided for under Ministry Paper #34, which makes no interconnection with the GOJ Procurement Procedures or for the acceptance of an ‘unsolicited proposal’ pursuant to the Sole Source/Direct Contracting Procurement Procedures, which is provided for in the GOJ Public Sector Procurement Procedures.

The OCG, however, would like to reiterate its position that **all** divestment of GOJ state-owned assets are required to be contracted via an open, transparent and competitive process to ensure that such awards are impartial and based on merit.

19. The OCG has also concluded, based upon the nature of the offer and the history of the GOJ’s involvement in the negotiation of the said offer, that the offer which was proposed by Hongfan, and which led to the signing of the “*Agreement for Purchase of Shares*”, could not have been based upon that of an ‘unsolicited proposal’, as suggested by the MSTEM’s Permanent Secretary, Mrs. Hillary Alexander.

It should be noted that the divestment of CAP’s shares was included on the first list of enterprises/activities/assets which were approved for privatization to be governed under Ministry Paper #34. Of note, however, is that the principles under the said policy “*...stressed that this list does not constitute an invitation for investors to apply for the enterprises at this time...Premature applications can only be acknowledged, and it must be stressed that there should be no expectations that privatization will be accomplished with undue or reckless speed considering that it is the fiduciary responsibility of government to find the best optimal mix of transferring the risk to the private sector and maximizing the proceeds whilst conducting the process competently and expeditiously.*”

The OCG, therefore, concludes that Hongfan's offer to the GOJ was simply an application to purchase the subject enterprise and not an 'unsolicited proposal', as was suggested. Further, and in light of the fact that Hongfan was not the only entity within the alumina and bauxite industry that had expressed an interest in the GOJ's 45% shares in Jamalco, there was no obligation on the part of the GOJ to accept the proposal which was submitted by Hongfan.

20. The OCG has concluded that the Cabinet, the DBJ, the Ministry of Finance and the Public Service and the MEM, have contravened Ministry Paper #34 in their facilitation of contracting with Hongfan to purchase the GOJ's shares in Jamalco, without ensuring that the Government state-owned divestment opportunity was advertised and that the transaction was arms-length and equal opportunity be given to all possible investors in the market.

21. The OCG has concluded that even with the current divestment process, which is undergoing negotiations between the GOJ and Glencore International AG, there is either a misunderstanding or misconception, on the part of the MEM, of the appropriate methodology to be used for the divestment of state-owned assets. This conclusion is founded upon the basis that the Permanent Secretary, Mrs. Hillary Alexander, by way of a letter to the NCC, which was dated 2010 November 23, requested "*...permission to utilize the Sole Source and/or Direct Contracting Procurement Methodology for the divestment of the shares in CAP to Glencore on the terms and conditions as agreed by Cabinet.*"

The OCG noted that the NCC advised the MEM that, *inter alia*, there was a "*...Divestment Policy, which they were not privy to and agreed that the matter was not a procurement issue, which was outside the remit of the NCC.*"

The OCG noted that although, by way of Cabinet Submission 567/MEM 55/10, which was dated 2010 November 24, Mr. James Robertson indicated to the Cabinet of Jamaica that the Ministry of Finance and Planning and the Attorney General's Department had "*offered no*

objection” to the use of the Sole Source Procurement Methodology for the subject divestment process, the Cabinet decided that “...the approach to be pursued was for the Government of Jamaica to enter into negotiations with Glencore International AG for the divestment of the shares...” and withdrew the Submission.

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)

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1. The OCG remains concerned that the **unsolicited proposal** mechanism is a corruption enabling device and does not promote competition, transparency and openness in the sale of state-owned assets. Further, the **unsolicited proposal** mechanism is primarily a provision which is outlined in the GOJ’s Public Sector Procurement Procedures and is, therefore, not an appropriate methodology for divestment opportunities, especially without certain institutional safeguards to ensure probity.

It is the OCG’s considered position that all divestments are to be undertaken and tested for propriety, legitimacy, cost-effectiveness, quality, value for money and competitiveness in the open market place with due care, on the basis that each Public Body, and pursuant to Ministry Paper #34, or any other relevant policy or guideline replacing same in its application, has a fiduciary responsibility to competently and expeditiously find the best optimal mix of transferring risk to the private sector and maximizing proceeds.

2. The OCG recommends that all Ministers, Permanent Secretaries, Heads of Agencies, Public Officers, Accounting and Accountable Officers should pay keen attention to, and

ensure compliance with, Ministry Paper #34, or any other relevant policy or guideline replacing same in its application, in the divestment of state-owned assets, and inform themselves of the differences in the procedures, policies and methodologies for privatization/divestment, as opposed to the GOJ Public Sector Procurement Procedures.

3. The OCG recommends that there must be a strengthening of the relevant due diligence systems which are employed by Public Bodies, upon the receipt of applications/offers which are received by investors and to ensure that there is a high level of scrutiny in such divestment processes which are being undertaken by Public Bodies.

The OCG is of the considered opinion that communication with investors are not to be undertaken outside of a formal process, as this will affect the probity, fairness and transparency which is required to ensure that value for money is obtained.

4. The OCG in no way challenges the fact that the GOJ's shareholding in CAP is a burden on the economy. Nonetheless, the OCG recommends that where there is a likely opportunity to maximise the potential gains from the sale of a State asset, due care and diligence must be exercised in an objective, open and transparent manner by the divesting entity to ensure that this is undertaken.

Accordingly, it is the recommendation of the OCG that when Public Bodies are divesting State assets, a thorough analysis of the value of the asset and of *all* of the factors which are likely to impact the possible proceeds of its sale, should be considered so as to ensure the realization of maximum gains.

5. In instances where a member of the Public Body Board or any other Public Official/Officer finds himself/herself in a probable conflict of interest scenario, it is recommended that the individual not only makes the necessary and principled disclosures with the intent to remove himself/herself from the conflict of interest situation, but also withdraws entirely from the process, whether divestment or otherwise.

6. Finally, the OCG would like to remind all Public Officers, inclusive of Board Members of Public Bodies, who abuse their office and authority for personal gain and/or for the benefit of others, 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.