

**AUDITOR GENERAL'S DEPARTMENT
COMPENDIUM OF SPECIAL AUDITS AND INVESTIGATIONS REPORT
ON SELECTED PUBLIC SECTOR ENTITIES
FOR THE CALENDAR YEAR 2016**



The Auditor General is appointed by the Governor General and is required by the Constitution, Financial Administration and Audit Act, other sundry acts and letters of engagement, to conduct audits at least once per year of the accounts, financial transactions, operations and financial statements of central government ministries and departments, local government agencies, statutory bodies and government companies.

The Department is headed by the Auditor General, Pamela Monroe Ellis, who submits her reports to the Speaker of the House of Representatives in accordance with Section 122 of the Constitution of Jamaica and Section 29 of the Financial and Administration and Audit Act.

This report was prepared by the Auditor General's Department of Jamaica for presentation to the House of Representatives.



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Vision

Our vision is to promote a better country through effective audit scrutiny of Government operations

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Foreword

In accordance with Section 29 of the Financial Administration and Audit (FAA) Act, the Auditor General may undertake special audits based on requests from stakeholders, including members of Parliament (MP). These audits are consistent with the Department's mission to 'ensure that public sector financial transactions and other operations comply with the wishes of Parliament, relevant laws and regulations, and are conducted with due regard to economy, efficiency, effectiveness, the environment and the avoidance of fraud'.

Six special audits were undertaken for 2016 calendar year, as detailed below.

No.	Entity	Audit Topic
1	Urban Development Corporation	UDC's Divestment of the Oceana Hotel Complex
2	Ministry of Finance and the Public Service	MoFPS lease of sections of the Oceana Hotel Complex ground floor for use by the Accountant General's Department (AGD) and renovation works
3	Ministry of Finance and the Public Service	Noranda Bauxite Limited's - Expired Letter of Credit
4	Ministry of Labour and Social Security	Corporate Governance
5	Aeronautical Telecommunications Limited	Corporate Governance
6	INSPORTS	Corporate Governance

These audits identified weak governance practices and breaches of the Public Bodies Management & Accountability (PBMA) Act, GoJ Corporate Governance and Accountability Frameworks, Government Procurement Guidelines and Circulars issued by the Ministry of Finance and the Public Service (MoFPS). We estimated financial exposure of \$1.33 billion on the public coffers due to poor governance decisions and \$313 million in respect of breaches of the PBMA Act and GoJ Procurement Guidelines.

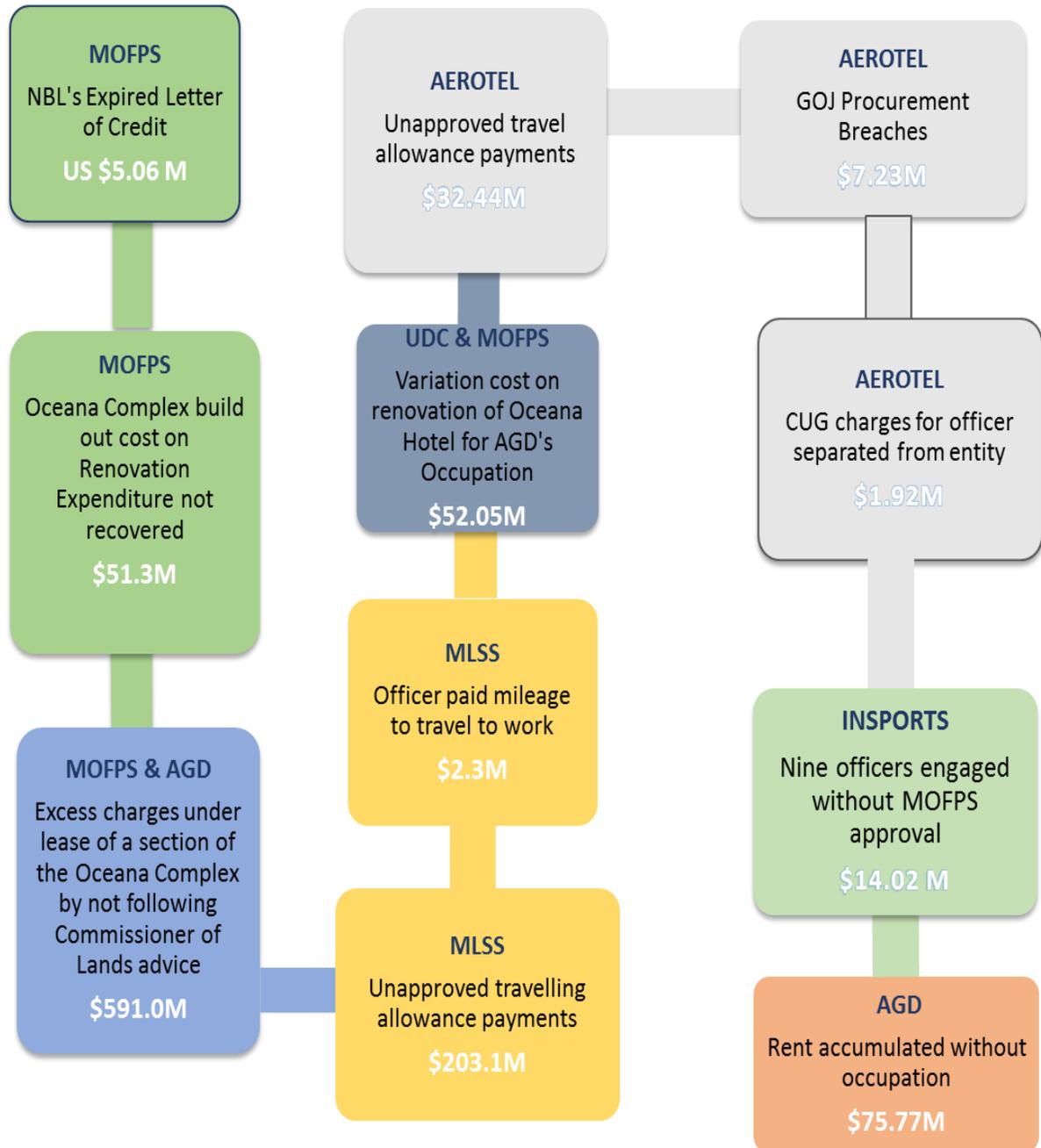
This report aims to positively contribute to public financial management and improve corporate governance, transparency and accountability in government operations. Therefore, the Permanent Secretaries and the Board of Directors of the selected entities are encouraged to consider the recommendations for implementation.

I wish to express my sincere thanks to the Management and staff of the entities for the cooperation and assistance given to the audit team.



Pamela Monroe Ellis, FCCA, FCA, CISA
Auditor General

Public Expenditure Exposure



Part One

UDC's Divestment of Oceana Hotel Complex

Executive Summary

The Urban Development Corporation (UDC) was established by the UDC Act (1968), to plan orderly development in designated areas across the island. The Act also empowers UDC to acquire, manage and dispose of lands; construct and maintain roads and buildings; provide and maintain car parks, piers, public parks and gardens.

We conducted a special audit to determine whether UDC's disposal of the Oceana Hotel Complex and the lease of the Jamaica Conference Centre Multi-Storey Car Park (JCC-MSCP) accorded with UDC's Estate Management Policy and Guidelines.

The key findings of the audit are summarized below.

Key Findings

Breaches of divestment procedures in disposal of Oceana Hotel Complex

- UDC used a valuation dated August 2011 as a basis to assess offers in September 2013 during the divestment process of the Oceana Hotel Complex.** Section 5.2.6(c) of UDC's Estate Management Policy and Guideline (January 10, 2012)¹ stipulated that UDC shall obtain two (2) market valuations before the sale/lease of any asset². The valuations should be at the date of advertisement and/or sale, not to be older than twelve months. Whereas the Hotel Complex was advertised for sale on August 18, 2013³, the latest valuation UDC had in its possession was two years old.

In September 2016, UDC responded that:

A valuation at this stage in 2013 would not be feasible as there was further deterioration including compromised air quality and mould growing throughout the building. To obtain valuation in light of further and clear depreciation would not be feasible as this was not sought after or prime real estate.

Source: UDC's letter to AuGD dated September 14, 2016 in response to draft report.

¹ Prepared by UDC's DGM- Legal Services, authorized by the General Manager and approved by the Board of Directors

² Section 3.2 of the Estate Management Policy and Guideline define assets as property including building, land, equipment and tools owned by the Urban Development Corporation and/or its subsidiaries.

³ Subsequent advertisements were placed on August 21, 23 & 28, 2013

We were unable to determine how UDC satisfied itself as to the current market price, given the fact that the last valuation was conducted in August 2011.

2. **UDC breached the terms of divestment as outlined in the Requests for Proposals (RFP) by considering bids that did not provide all the mandatory information; this casted doubt on the objectivity of the decision making process .** The RFP stated that interested purchasers/developers must provide the following information to the UDC: offer price, schematic development of proposed development plans, projected timeframe for the completion of the development (within 3-5 years), and evidence of financial capability to acquire the property and adequately fund the proposed redevelopment. None of the four bidders met the criteria to provide all the requested mandatory information. Bidder No.4 in particular proposed a partnership arrangement -in keeping with UDC's advertisement-setting out the financial contribution of the prospective investors, which would involve a mix of equity and debt financing. UDC deemed this bid non-responsive as the bid document did not include a specific offer price. Conversely, UDC commenced negotiations with Bidder No. 1 although the bid documents provided no evidence of the bidder's financial capacity and proposed development plans, as evidenced by the non-presentation of schematic drawings.

No.	Bidder	Bid Information NOT provided in Proposal
1	Bidder No. 1	i. Demonstration of financial capacity provided ii. Schematic Drawings
2	Bidder No. 2	iii. Demonstration of financial capacity provided
3	Bidder No. 3	iv. Schematic Drawings
4	Bidder No. 4	i. Offer price ii. Schematic Drawings

Source: AuGD's review of bid documents

3. **Evidence of UDC's evaluation of proposals against the criteria outlined in the Request for Proposals (RFP) was not presented for audit scrutiny.** UDC informed prospective bidders that their proposals would be evaluated based on six criteria, namely: completeness of proposal, project feasibility and marketability, capability and the track record of the Developer, appropriateness of proposed use, community benefit and net return to the UDC. UDC indicated that they were unable to locate the minutes and evaluation sheet to support the analysis done by the Planning and Development Committee. Consequently, we could not assess the due diligence undertaken.
4. **UDC made a decision to lease the adjoining Jamaica Conference Centre Multi-Storey Car Park (JCC-MSCP) to the successful bidder of the Oceana Hotel Complex, without opening up the packaged opportunity to all bidders in breach of its own policy. UDC negotiated**

the lease with the bidder after accepting the bid and included it as a condition of the sale of the Hotel. On May 29, 2014, UDC's Board approved the sale of the Oceana Hotel Complex for \$385 million and the lease of the JCC-MSCP for 25 years, with an option to renew for a further 25 years. On August 18, 2014, Cabinet approved the sale of the Oceana Hotel Complex along the terms agreed by the UDC Board. The terms were formalised in the agreement for sale dated December 1, 2014, between Kingston Waterfront Hotel Company Limited (subsidiary of UDC) and the successful bidder. The inclusion of the lease arrangements for the car park subsequent to the deadline for the submission of bids would have denied existing and prospective bidders the opportunity to reflect the value of the packaged opportunity. Consequently, the process lacked transparency and UDC may have denied itself the benefit of obtaining better offers.

Though the request for the use of the car park was made by the successful bidder based on the assessed feasibility of the proposed Hotel and the need for parking space, UDC should have engaged a competitive tender process in keeping with its own Estate Management Policy and Guidelines. Section 5.2.6 (b) of UDC's policy states that any unsolicited proposal received by the Corporation for an asset⁴ to be divested which has not yet been advertised, shall be treated as a premature application and shall not be evaluated until the asset has been advertised. The lease agreement requires the payment of \$15 million over the first 10 years, with the remaining 15 years, subject to a market rate review. We noted that for the financial year ended March 2015, UDC realised a profit of \$9.9 million (16.5 per cent increase over the prior year), therefore if all remains equal, \$99 million would have been realised over 10 years, resulting in a possible loss of \$84 million (\$99M-\$15M) in profits on the Lease arrangement.

Further, we noted that in the sub-lease agreement signed between the Sub-Lessor and the Commissioner of Lands on behalf of the AGD, the Sub-Lessor⁵ will earn \$7.5 million per annum from subletting a part (70 out of 552 spaces) of the car park to the AGD. The Sub-Lessor will pay UDC \$1.5 million, and realize a surplus of \$6 million (\$7.5M-\$1.5M) per annum from this government entity alone, excluding revenue from other sub-tenants and expenditure to be borne by the Sub-Lessor.

UDC indicated that the Board made a considered decision to forego optimum revenue for the first ten years in exchange for capital improvement to the existing structure and increased cash flow from the 11th year onward based on a review of the lease amount.

Recommendation

The Urban Development Corporation should adhere to Government's guidelines and its Estate Management Policy and Guidelines. UDC should honour the terms of Requests for Proposals (RFP) given to prospective bidders and advise of any material changes in order to ensure fair competition and transparency in its divestment process.

⁴ Section 3.2 of the Estate Management Policy and Guideline define assets as property including building, land, equipment and tools owned by the Urban Development Corporation and/or its subsidiaries.

⁵ The Lessee becomes the Sub-Lessor in a subletting arrangement.

Background

- 1.1** On August 18, 2014, Cabinet approved the sale of the Oceana Hotel Complex to a private investor for \$385 million and the lease of the Jamaica Conference Centre Multi Storey Car Park (JCC-MSCP) for 25 years, with an option to renew for a further 25 years. The complex, which was formerly owned by the Urban Development Corporation (UDC) through its subsidiary, Kingston Waterfront Hotel Company Limited (KWHCL) is situated in downtown Kingston, adjacent to the Jamaica Conference Centre (JCC). The complex comprises 12 floors with a ground floor of 6,722.4 square metres (72,360 square feet) and operated as a hotel until June 1997, when it was leased to the Ministry of Health (MOH), for office space. During the period of lease, UDC experienced challenges in collecting lease payments, which affected its ability to maintain the building at an acceptable standard.

Divestment of the Oceana Hotel Complex

- 1.2** In May 2008, May 2009 and June 2012, UDC invited proposals for the acquisition of the Complex; however, no bids were received. In November 2012, the National Health Fund (NHF), a portfolio entity of the lessee (MOH), expressed an interest in purchasing the Complex for \$350 million. In March 2013, Cabinet approved the offer, subject to completion of negotiations regarding the terms and conditions of the sale between UDC and NHF. A draft Sale Agreement was submitted to the Ministry of Health (MOH) for signature and payment of deposit by May 2013. UDC, by way of correspondence dated Wednesday, August 14, 2013, informed the Legal Officer at MOH that:

In the circumstances we wish to advise that unless we hear from you and receive the signed contract with the required deposit by the close of business at 4:00PM on Friday, August 30, 2013, we will consider that you are no longer interested and deem the offer to purchase withdrawn.

Source: UDC's letter to Ministry of Health dated August 14, 2013.

- 1.3** In August 2013, UDC took the decision to invite expressions of interest to purchase the Complex and placed a public advertisement on August 18, 2013 in that regard. Prospective investors were given a deadline of 4:00 PM, Friday August 30, 2013, which coincided with the deadline given to the MOH in UDC's letter.
- 1.4** UDC presented an email dated August 26, 2013, from the UDC chairman indicating that based on discussions with the NHF chairman, the sale would not proceed due to lack of funds.
- 1.5** By way of correspondence dated January 9, 2017, UDC indicated to us that, "the Oceana Building was a white elephant and a drain on the Corporation's resources, there was the need to re-enter the market as quickly as possible."

UDC did not conduct a timely valuation of Oceana Complex to aid in divestment

1.6 We requested evidence that UDC conducted valuations of the Complex to aid in determining its physical state and market value, prior to requesting offers for proposal in August 2013. UDC presented three valuations from two chartered (valuation) surveyors, however, the latest valuation UDC had in its possession was dated August 2011, which was two years prior to the date of advertisement (**Figure 1**).

Figure 1: Valuation reports (2010-2016)

Date of Valuation Report/Inspection	Valuer	Market Value
August 2011	Valuer 1	\$380M - \$400M
August 2010/July 2010	Valuer 1	\$360M - \$380M
September 2010	Valuer 2	\$659M

Source: AuGD's Summary of valuations of the Hotel Complex.

1.7 UDC developed an Estate Management Policy and Guidelines to govern all lands and buildings owned by or in control of the Corporation. Section 5.2.6(c) of UDC's Estate Management Policy and Guideline (January 10, 2012)⁶ stipulated that UDC:

shall obtain two (2) market valuations before the sale/lease of any asset⁷. The valuations should at the date of advertisement and/or sale, not to be older than twelve months

Source: UDC's Estate Management Policy.

1.8 Accordingly, UDC breached its own policy, as the Complex was later advertised on August 18, 2013⁸, and the Sales Agreement was dated December 1, 2014.

1.9 UDC indicated that another valuation would not be feasible, as the Complex had experienced further deterioration, subsequent to the latest valuation. However, we noted that one Valuer, who gave an opinion between 2010 and 2011, reflected an increase in value despite the deterioration of the building (**Figure 1**). We were therefore unable to determine how UDC satisfied itself as to the market value, given the fact that the last valuation was conducted two years ago, in August 2011.

⁶ Prepared by UDC's DGM- Legal Services, authorized by the General Manager and approved by the Board of Directors

⁷ Section 3.2 of the Estate Management Policy and Guideline define assets as property including building, land, equipment and tools owned by the Urban Development Corporation and/or its subsidiaries.

⁸ Subsequent advertisements were done on August 21, 23 & 28, 2013

- 1.10** Consistent with Section 5.3.5 of UDC's Estate Management Policy and Guidelines, UDC prepared an Information Memorandum as part of the package for prospective investors to aid in submitting their proposal. Background to the RFP states that:

The Urban Development Corporation seeks to engage investors for the sale of the Oceana Hotel Complex with the objective of facilitating the redevelopment of the property within the current scope of works for the redevelopment of the Kingston Waterfront.

Special consideration will be given to investors with the objective of rehabilitating the building to its original use as a hotel. This is synonymous with our conceptual development plan, which would integrate the property within the proposed conference, financial, leisure and diplomatic district within the downtown Kingston area.

Source: UDC's Information Memorandum dated August 2013.

- 1.11** We saw no evidence that MOH communicated with UDC, subsequent to the receipt of the demand letter dated August 14, 2013. However, email correspondence dated August 26, 2013 from UDC's Chairman indicated that the Chairman of NHF had advised that the purchase was being cancelled for lack of funds.
- 1.12** Following the closure of the offer, UDC received four bids (**Figure 2**).

Figure 2 – Summary of Proposals Received – August 2013

Proposer	Terms of Offer	Details of Offer
Proposal 1	Purchase	US\$4 million (JMD \$407.8 million) ⁹
Proposal 2		
<ul style="list-style-type: none"> • Option 1 • Option 2 	Purchase with limited joint venture Purchase with limited joint venture	\$385 million plus 20% profits \$360 million plus 10% profits
Proposal 3	Purchase	\$320 million
Proposal 4	Public Private Partnership	Raise capital of US\$100M Shareholding as follows: GoJ (UDC) Equity – US\$6M (properties) PSWG – US\$6M Private/International – US\$6M IPO – US\$22M

Source: AuGD's Summary of Proposals for purchase of the Hotel Complex.

Proposal 1 – Bidder 1

- 1.13** The investor offered to purchase the Complex for US\$4 million to develop a *first class* business hotel with approximately 236 rooms, 38 serviced apartments, and up to 65 offices. In addition, the Investor offered an unsolicited bid for the Forum Hotel, without detailing consideration. Review of the Board Minutes of September 18, 2013, showed that

⁹ Using weighted average BOJ selling rate for August 2013 USD\$ - JMD\$101.95

UDC endorsed the recommendation from the Planning and Development Committee that the Complex be sold to Bidder 1 for US\$4 million.

Proposal 2 – Bidder 2

1.14 This investor proposed the purchase of 100 per cent interest in the Complex along with a minimum of 150 parking spaces. The Investor proposed two options for joint venture arrangement with UDC to convert the existing hotel complex into condominium apartments¹⁰ along with the provision of commercial space on the lower floors, for sale. Option 1 would require UDC to agree to the development of the proposed project by selling the complex for \$385 million, plus 20 per cent of profits from the proposed project.

Figure 3 – Option 1 (Step by Step)

Consideration	Details
Purchase Price of \$385 million	<ol style="list-style-type: none"> 1. Deposit of \$38.5 million paid on the signing of the purchase and sales agreement 2. Once the project is considered viable and the investors are willing to proceed, UDC would register a first mortgage on the title of the Complex equal to the purchase price less the deposit 3. Proposed development will be secured by the mortgage until the remainder of the purchase price has been repaid out of the sales proceeds 4. Investors would form a company with a minimum capital of \$50 million, with some of the initial capital used for preliminary design approvals and marketing of the project 5. Develop a marketing programme to pre-sell a minimum 60 per cent of the condominium apartments 6. Upon attaining the sales target, financing would be arranged using interim bank financing to finance the construction 7. Prior to the advance from the construction lender, UDC shall postpone and subordinate its first mortgage to the construction lenders security
20 per cent of the profits from the limited joint venture	<ol style="list-style-type: none"> 1. In order to repay the mortgage, UDC will receive an agreed percentage of the sales price of each apartment and commercial space when the transfer of strata titles to purchasers occur

Source: AuGD's Summary of Proposals for purchase of the Hotel Complex.

1.15 Option 2 would require UDC to agree to the development of the proposed project by selling the complex for \$360 million, plus 10 per cent of profits realised from the proposed project.

Figure 4 – Option 2 (Step by Step)

Consideration	Details
Purchase Price of \$360 million	<ol style="list-style-type: none"> 1. Deposit of \$36 million paid on the signing of the purchase and sales agreement 2. Second deposit of \$324 million within 30 days following a notice from UDC that vacant possession of the Complex is available
10 per of the profits from the proposed development	<ol style="list-style-type: none"> 1. Final payment of the purchase price , 10 per cent of the profits realised from the project would be paid once the auditors of the company confirm that the project is 95 per cent complete

Source: AuGD's Summary of Proposals for purchase of the Hotel Complex.

¹⁰ One-bedroom, two-bedroom and three-bedroom units on floors 3 to 12

Proposal 3 – Bidder 3

1.16 The investor offered to purchase the Complex for \$320 million to establish a National Centre for Animation, Gaming and Visual effects. The Centre would occupy office space on two floors, residential units on another two floors, and the remaining floors occupied by the Ministry of Health (MOH). The Investors estimated that total project would cost of \$456 million (US\$4.47M), which includes construction cost (\$120M) and 5 per cent transaction cost (\$16M) to acquire the building. Funding for the renovated Complex would be obtained by the issuance of \$387.6 million in urban renewal bonds and \$68.4 million in equity from the investors. The proposal indicated that the Investor's interest was subject to the findings of a due diligence exercise¹¹, surveyors' report, the Ministry of Health remaining as a long term tenant and the final approval of the investors and Board of Directors.

Proposal 4 – Bidder 4

1.17 The investor submitted a proposal for the establishment of a public private partnership for the regeneration of Kingston. This involved the development of various UDC properties, including Oceana Hotel, Victoria Pier, Kingston Mall Shops, Port Royal and New Parking Garages¹². The Investor proposed that GoJ/UDC enter into a memorandum of understanding leading to a public private partnership, wherein various government owned properties in Downtown Kingston would be sold in return for equity in the partnership (to the value of its real estate US\$6 million). The proposal would require the GoJ to:

- i. facilitate the construction of a cruise ship pier on the Kingston side of the harbour;
- ii. plan for development of Port Royal as an attraction will be developed along with long term lease of the required building to allow for the agreed renovation/restoration to proceed;
- iii. an application for a casino license for Kingston and Port Royal approved

1.18 The Investors proposed to fund the project through a mix of equity and debt valued at US\$100 million (Figure 5). The proposal also projected direct employment of 7,633 over a ten-year period.

¹¹ UDC allow the purchaser to enter the property for purposes of making such investigations, inspections, surveys and studies as purchaser deems necessary or desirable to evaluate the property.

¹² Comprised various companies and civic organizations.

Figure 5 – Proposal 4

Consideration	Share		Project	Breakout
UDC – real estate	15%	US\$6M	Construction of the Victoria Cruise Ship Pier – Kingston side of the harbour	US\$15M
PSWG	15%	US\$6M	Restoration of Oceana Hotel – renovate the second floor to accommodate reception/immigration zone for cruise ship passengers	US\$30M
Private Sector and international Agencies	15%	US\$6M	Renovation of the Kingston Mall Shops	US\$15M
IPO subscribers	55%	US\$22M	Develop a multi-storey Parking Garage	US\$15M
TOTAL EQUITY	100%	US\$40M	Develop Port Royal as an attraction	US\$10M
DEBT				
Loan financing		US\$60M		
			Other	US\$15M ¹³
Total Proposed Equity and Loans		US\$100M		US\$100M

Source: AuGD's summary of Proposal 4

1.20 Evidence of UDC's evaluation of proposals against the criteria outlined in the Request for Proposals (RFP) was not presented for audit scrutiny. UDC indicated that they were unable to locate the minutes and evaluation sheet to support the analysis done by the Planning and Development Committee. Consequently, we could not assess the due diligence undertaken.

1.21 The Terms of Divestment as outlined in the Requests for Proposals (RFP) had stated that interested purchasers/developers **must**¹⁴ provide the following information to the UDC: offer price, schematic development of proposed development plans, projected timeline for the completion of the development (within 3-5 years), and evidence of financial capability to acquire the property and adequately fund the proposed development. As shown in the table below, the four bidders did not provide all the requested mandatory information, such as the demonstration of financial capacity and schematic drawings.

1.22 For example, UDC commenced negotiations with the highest ranked bidder (US\$4 million).

Rank	Bidder	Bid Information <u>NOT</u> provided in Proposal
1 st	Bidder No. 1	i. Demonstration of financial capacity ii. Schematic Drawings not provided
2 nd	Bidder No. 2	i. Demonstration of financial capacity
3 rd	Bidder No. 3	i. Schematic Drawings
4	Bidder No. 4 ¹⁵	i. Offer price ii. Schematic Drawings

Source: AuGD's review of bid documents

¹³ The remaining US\$15M comprise value of UDC properties (US\$6M), management and promotional fees (US\$4M) and loan interest (year 1-2) of US\$5M.

¹⁴ AuGD emphasis

¹⁵ UDC informed bidder that the proposal did not include an offer price for consideration and will be considered pending the outcome of evaluations on the other proposals received.

- 1.23 Bidder No.4 in particular proposed a partnership arrangement -in keeping with UDC's advertisement- setting out the financial contribution of the prospective investors, which would involve a mix of equity and debt financing. UDC deemed this bid non-responsive as the bid document did not include a specific offer price.
- 1.24 The bid documents provided by Bidder No. 1 had no evidence of the bidders' financial capacity and proposed developed plans as evidenced by the non-presentation of schematic drawings. Nonetheless, UDC management recommended that the proposal from Bidder No. 1 be accepted, as the purchase price was the highest received and the proposed development concept was in line with UDC's intent for the building to return to its original use as a hotel. By way of correspondence dated October 8, 2013, the bidder subsequently withdrew the proposal, citing funding challenges.
- 1.25 Following the withdrawal of the proposal by the highest bidder, UDC informed the second highest bidder by way of letter dated October 8, 2013, that the proposal was being reviewed. Based on Board submission¹⁶, UDC's management indicated preference had been given to Option 2 as it represented a direct sale and would reduce UDC's risk exposure. On November 20, 2013, UDC's Board approved the sale for \$360 million and for the Complex to be redeveloped into condominiums and commercial space.

The Board directed that the Legal Department should review the conditions of the sale as they were deemed to be stringent. The Board also directed that the Chairman should close off on the negotiations. It was also agreed that in the event that negotiations fail, the next highest bidder should be offered the sale at \$320 million.

Source: UDC's Board Minutes dated November 20, 2013.

- 1.26 Subsequent to the communication of the Board's decision, the approved Bidder sought to modify the proposal by increasing the purchase price by \$25 million to \$385 million, and removing the 10 per cent profit participation. On December 18, 2013, UDC's Board accepted the increased offer of \$385 million.

UDC's Decision to Lease the JCC-MSCP as a condition of the Sale of the Hotel

- 1.27 The successful bidder acknowledged the value of the Car Park to the proposed operation of Complex as per letter dated November 22, 2013 to UDC. The Bidder stated that: *"The car park is an integral and essential part of the acquisition of the property. It is inconceivable that anyone could operate the building or gain approval from the KSAC without the parking. No one can operate a 220,000 square feet facility without appropriate infrastructure, which most critically is parking. It must be considered a part of the Oceana Property"*. By way of letter dated March 19, 2014, UDC in seeking the portfolio Minister's non-objection to the lease of the JCC-MSCP and the sale of the Oceana Hotel Complex as a single transaction, stated that:

¹⁶ dated November 10, 2013

It is essential that the Oceana Hotel is sold with confirmed arrangements for the parking garage as the re-development of the hotel is **not**¹⁷ feasible without this arrangement.

Source: UDC's letter to the Office of the Prime Minister dated March 19, 2014.

- 1.28** On May 29, 2014, UDC Board approved the sale of Oceana Hotel Complex for \$385 million and the lease of the 552 space JCC Multi Storey Car Park for 25 years, with an option to renew for a further 25 years. On August 18, 2014, Cabinet approved the sale of the Oceana Hotel Complex along the terms agreed by the UDC Board.
- 1.29** The lease agreement requires an initial payment of \$15 million for the first ten years, with the remaining 15 years, subject to review based on an agreed economic model. UDC received the amount as an upfront payment in January 2015. Section 12 of the lease agreement also states that the Lessee would make capital improvement to the existing structure in lighting, elevators, signage and security facilities.
- 1.30** Kingston Waterfront Hotel Company Limited (subsidiary of the UDC) and the successful bidder agreed that the signing of the lease of the Parking Facility, JCC-MSCP, would be contemporaneous with the signing of the sale agreement (dated December 1, 2014) of the Oceana Hotel Complex. However, UDC did not consider the improved value of the Hotel Complex, given the inclusion of the lease agreement, which was contingent upon agreeing to acquire the Complex. We noted that valuation reports received by UDC made reference to the fact that the building provides on-site parking for approximately 10 vehicles and this was considered in arriving at a value.
- 1.31** UDC indicated that the agreed lease payment of \$1.5 million per annum for ten years represented 6 per cent of the **estimated** gross annualised base revenue of \$25 million during the negotiation process. This was based on its analysis of the revenue up to 2012/13 and the existing contractual arrangements for parking. However, we noted that the parking facility's performance when comparing the net profit to the annual Revenue for the 2012/13 and 2014/15 financial years was 46 per cent. In 2015, UDC realised a profit of \$9.9 million, therefore if all remains equal, \$99 million would have been realised over 10 years, resulting in a possible loss of \$84 million (\$99M-\$15M) in profits on the Lease arrangement (Figure 7).

Figure 7 – AuGD's Financial Analysis of the JCC Car Park Lease

Net Profit from the JCC Car Park	Ten year Projection (\$)	Lease amount (\$)	Estimated Profits Foregone (\$)
Financial Year 2014			
8.5 million	85 million	15 million	70 million
Financial Year 2015			
9.9 million ¹⁸	99 million	15 million	84 million

¹⁷ UDC emphasis

¹⁸ This represent 10 months of income for Financial Year ended March 31, 2015. Possession was transferred to KPHL on February 1, 2015.

Source: AuGD's analysis of UDC's accounts and Lease Agreement.

- 1.32** The lease arrangement with adjoining JCC-MSCP was not subjected to competitive tender in contravention of UDC's Estate Management Policy and Guideline. Section 5.2.6 (b) of UDC's policy states that any unsolicited proposal received by the Corporation for an asset¹⁹ to be divested which has not yet been advertised, shall be treated as a premature application and shall not be evaluated until the asset has been advertised. The inclusion of the lease arrangements for the car park subsequent to the deadline for the submission of bids would have denied existing and prospective bidders the opportunity to reflect the value of the packaged opportunity. UDC's Estate Management Policy stipulates that the selection of assets for privatization must be announced to the public by way of advertisements. Also, UDC did not conduct any assessment, whether in-house or independent, of the market or lease value for the JCC-MSCP.
- 1.33** Further, UDC indicated that the Board made a considered decision to forego optimum revenue for the first ten years in exchange for capital improvement to the existing structure and increased cash flow from the 11th year onward based on a review of the lease amount.
- 1.34** We also noted that in the sub-lease agreement signed between the Sub-Lessor and the Commissioner of Lands on behalf of the AGD, The Sub-Lessor²⁰ will earn \$7.5 million per annum from subletting a part (70 out of 552 spaces) of the car park to AGD. The Sub-Lessor will pay UDC \$1.5 million for the entire parking lot, and realize a surplus of \$6 million (\$7.5-\$1.5M) per annum from this government entity alone, excluding revenue from other sub-tenants and expenditure to be borne by the Sub-Lessor. Further, UDC may also have a challenge in regaining control of the Parking Facility after the effluxion of 25 or 50 years on the lease, considering that the purchase and operation of the Complex is dependent on the simultaneous lease of the Parking Facility.

¹⁹ Section 3.2 of the Estate Management Policy and Guideline define assets as property including building, land, equipment and tools owned by the Urban Development Corporation and/or its subsidiaries.

²⁰ The Lessee becomes the Sub-Lessor in a subletting arrangement.

Part Two

MoFPS lease of sections of the Oceana Hotel Complex ground floor for use by Accountant General's Department (AGD) and renovation works

Executive Summary

The Accountant General's Department (AGD) is an operational Department within the Ministry of Finance and the Public Service (MoFPS) and is charged with facilitating and reporting the flow of funds within the public sector. The AGD is responsible for the management and custodianship of the Consolidated Fund, which is the principal instrument of parliamentary control of public monies. This includes (but not limited to) the responsibility for the collection, safekeeping and proper disbursements of all monies due to and payable from the Consolidated Fund.

We conducted a special audit to determine whether proper due diligence was conducted in relation to MoFPS' lease of sections of the ground floor of the Oceana Hotel Complex and whether subsequent renovation works were done in accordance with procurement and other Government regulations.

The subsequent rental of the Complex and parking stalls, led by the Ministry of Finance and the Public Service (MoFPS) for office accommodation by the Accountant General's Department (AGD) and the resulting renovation works were also examined. The key findings of the audit are summarized below.

Key Findings

Lease arrangements

- 1. The Ministry of Finance and the Public Service (MoFPS) agreed to pay 77.4 per cent and 39 per cent more for rent and parking spaces respectively, on AGD's behalf, against the Commissioner of Lands' advice.** However, given that the MoFPS cannot sign lease agreements, the Commissioner of Lands was indemnified from all liabilities associated with the signing of the agreement. The Commissioner of Lands recommended a rental rate between \$950 and \$1,000 per square foot per annum. In addition, the Commissioner recommended parking rates of \$4,500 for uncovered and \$6,500 for covered parking per month. However, the MoFPS agreed to a rental rate of \$1,774 and parking rate of \$9,030. This decision will cost the government an additional \$591 million over the lease term when compounded at 7.5 per cent as agreed in the lease. In June 2016, MoFPS informed the Public Administration and Appropriations Committee (PAAC) that the lease was negotiated within the context that Justice Square was required urgently and previous attempts to locate suitable alternative premises proved unsuccessful. Further, the Ministry indicated that international funding of \$7.5 billion would be lost if the AGD did not relocate from the current premises by the end of 2016 to facilitate the Justice Square Project. To date, the

AGD has not relocated; the leased premises remain unoccupied and \$75.77 million have been accumulated in rent up to February 2017.

Renovations works

2. On March 14, 2016, MoFPS and the Contractor signed an agreement for the construction build-out of the Accountant General's Department offices valued at \$400.09 million²¹. The works were scheduled to commence on April 1, 2016, with expected completion on July 31, 2016. However, inadequate planning resulted in variation costs of \$52.05 million or 13 per cent of the contract sum and the payment of \$9.2 million for time over run, as at January 27, 2017. It was disclosed that a complete set of construction drawings were not submitted to the bidders at the time of tender, to allow for proper costing of the renovation works. This resulted in variation costs of \$44.79 million, while the remaining \$7.26 million was to level the uneven floor. Section 1.5.3 of the Government Procurement Guidelines, indicates that for contracts in excess of \$300 million, cumulative variations in excess of 10 per cent will require National Contracts Commission (NCC) endorsement and Cabinet's approval. No approval was obtained for these variations. As at January 27, 2017, we noted that \$285.43 million (or 63 per cent) of the total value of works have been completed. UDC indicated that the project is scheduled for completion by March 31, 2017.

Recommendation

In light of the negative financial exposure arising from the leasing arrangements, the GoJ must review its property leasing policy to minimise its risk exposure from future lease arrangements undertaken by MDAs. The policy must provide clarity regarding the role of MDA versus the role of the Commissioner of Lands, in order to eliminate inconsistencies in applications.

²¹ including a contingency sum of \$20 million and \$9 million provisional sum for increases in material and labour costs

AGD's Lease of a section of the Hotel Complex

- 2.1** The Accountant General's Department (AGD), a department of the MoFPS, currently occupies 20,683 square feet of space at the Public West Building located on 13 King Street, since 1994. Over the years, MoFPS sought suitable office space to house the AGD, due to various reasons, including structural problems with the building. However, MoFPS indicated that the common prohibitive factor was the cost of the build-out in addition to the purchase price²². Further, the Ministry of Justice (MOJ) and the Court of Appeal identified the Public West Building for the Justice Square Redevelopment Project.
- 2.2** By way of letter dated January 29, 2015, MoFPS indicated an interest to lease a section of the ground floor of Oceana Hotel Complex to house the AGD's offices. By way of correspondence dated June 17, 2015, the Commissioner of Lands recommended a rental rate of between \$950 and \$1,000 (excluding maintenance) per square foot per annum. The Commissioner also advised that parking fees should not exceed \$4,500 for uncovered and \$6,500 for covered parking per month.
- 2.3** On June 19, 2015, sections of the ground floor (51,253 square feet) were leased from the new owners for the AGD. The agreement stipulated a rental of \$1,610 per square foot per annum and a parking rate of \$8,400 per month for each of the allotted 70 parking spaces. MoFPS indicated that due to delays in engaging a Contractor to undertake renovation works, the lease agreement was amended in April 2016 with an increased rental of \$1,774 to commence May 1, 2016, and \$9,030 for each parking space. MoFPS agreed to accept the owner's revised offer and by way of letter dated June 22, 2015, MoFPS under the signature of the Director General (MoFPS), agreed to indemnify the Commissioner of Lands.

The Ministry of Finance and Planning accepts the terms and conditions of the said Addendum to the lease agreement, despite the written objections of the Commissioner of Lands and further indemnifies and holds harmless the Commissioner of Lands from any and all liabilities associated with the acceptance of the said terms and conditions after the signing of the addendum to the lease agreement. The extent of indemnification is limited to the representation made by the Commissioner of Lands.

Source: MoFPS Letter of Indemnity to Commissioner of Lands dated April 25, 2016.

- 2.4** Recognizing that the rental rates would not be in conformity with the Commissioner of Lands recommendation, MoFPS provided another letter of indemnity signed by the Financial Secretary dated April 25, 2016 to the Commissioner of Lands, to allow for signing of the Addendum. This letter absolved the Commissioner from any and all liabilities associated with the acceptance of the said terms and conditions.
- 2.5** Prior to signing the Addendum, MoFPS engaged the services of a chartered surveyor/real estate dealer at a cost of \$83,880 to determine the current market rate and maintenance and parking charges (per stall) of the Hotel Complex. Review of the valuation report indicated market rate for rental of \$1,582.10 per square foot, and \$1,220 for the

²² The MoFPS was considering purchasing a location, prior to pursuing leasing arrangements.

maintenance charge and \$7,000 and \$7,500 respectively, for uncovered and covered parking. This opinion, even though it was higher than the Commissioner's recommendation was still less than the actual agreement between the AGD and the new owners.

- 2.6** The project managers, UDC, estimated that leasehold improvements to enable occupancy by AGD would cost \$459.25 million. The lease agreement²³ stipulates that all leasehold improvement immediately becomes the property of the Lessor. We were unable to determine whether MoFPS conducted a cost benefit analysis to determine value for money based on the agreed price and value of leasehold improvements.
- 2.7** MoFPS also agreed to delete Section 11.03 (iii) of the lease agreement dated June 19, 2015, which obligated the Landlord to:
- i. demolish all walls (except structural walls and columns), existing ceiling and flooring²⁴, and
 - ii. pay cash allowance of \$1000 per square foot of rentable space not previously built out²⁵.
- 2.8** The deletion of the cash allowance clause equates to \$51.3 million being given up by the MoFPS²⁶. MoFPS indicated that the deletion of the cash allowance was to offset the Lessor's rental loss due to the change in commencement date from October 15, 2015 to May 1, 2016. However, we noted that the addendum provided for a 10 per cent increase in rent, given the change in commencement date.
- 2.9** In June 2016, MoFPS informed the Public Administration and Appropriations Committee (PAAC) that the lease was negotiated within the context that Justice Square was required urgently and previous attempts to locate suitable alternative premises proved unsuccessful. Further, the Ministry indicated that international funding of \$7.5 billion would be lost if the AGD did not relocate from the current premises by the end of 2016 to facilitate the Justice Square Project.
- 2.10** We estimate that the MoFPS acceptance of the offer by the owner, coupled with other amendments, have resulted in a negative budgetary impact of \$643.83 million (**Figure 8**).

²³ Section 1.02 (xi) defines Leasehold improvements, which means all items generally considered as leasehold improvements, excluding trade fixtures but including without limitation all installations, alterations and additions from time to time made, erected or installed in the Demised Premises by or on behalf of the Lessee, or any previous occupant of the Demised Premises or any portion thereof including, without limitation, all partitions however affixed and whether or not moveable, heating, ventilation and air conditioning systems, facilities and equipment, light fixtures, internal stairways and doors, and floor, wall and ceiling coverings, counters, cabinets, shelves and built-in furniture and furnishings, and any items not normally considered Lessee's Trade Fixtures.

²⁴ Lessee recognizes that the space is to be occupied will be completely free of all walls (except structural walls and columns) without ceiling and without final floor covering in order to allow the Lessee to install its ceiling and flooring to exactly suit its layout.

²⁵ Lessor will provide to the Lessee a cash allowance of \$1000 per square foot of rentable area to allow the Lessee to cover the cost of the Lessee building out the ceiling and floor to suit the Lessee's requirement. The cash allowance will be paid to the Lessee on the commencement date of the lease.

²⁶ \$1000 times 51,253 square feet

Figure 8 – MoFPS decisions vs. Commissioner of Lands Recommendation

Terms & Conditions	Commissioner of Lands recommended rate	Addendum to lease agreement (June 19, 2015) executed on April 29, 2016	Variance / Budgetary impact (\$)
Rental rate (per square foot) [Lease amount over lease term]	\$950-\$1,000 \$725.08M	\$1,774 \$1,286.29M	561.21 M ¹
Parking rate (per stalls) [Parking fees over lease term]	\$4,500 - \$6,500 \$77.24M	\$9,030 \$107.30M	30.06 M ²
Terms and Conditions	Lease Agreement (June 19,2015)	Addendum to lease agreement (June 19, 2015) executed on April 29, 2016	
Limited Free Parking	Free parking for 70 leased stalls during the first two months of the Lease term	Deleted	1.26M
Section 11.03 (iii)	Cash Allowance Clause	Deleted	\$51.3M
Section (D) (B) (vi)	i. Air Conditioning plant will be provided to supply the Demised Premises ii. The Lessee shall be responsible for all duct work installation from the discharge outlet of the plant to suit the Lessee's layout	i. Air Conditioning plant will be provided to supply the Demised Premises with chilled water iii. Lessee shall be responsible for all new duct work and air handling equipment as required to suit	-
TOTAL			643.83 M

Source: AuGD's review of documents relating to the lease

Notes:

1. The higher rate of the Commissioner's recommendation was used in the calculation.
2. The covered parking rate was used as majority of the parking facility is covered.

Renovation of the Ground Floor

2.11 As per agreement dated July 15, 2015, UDC was contracted by MoFPS, as project manager for the build-out of the AGD's offices. The Project Manager invited bidders to tender for the renovation works, with an initial bid submission deadline of December 03, 2015, subsequently extended to December 17, 2015. During the interim, the Project Manager submitted five addenda to the bid documents covering the period November 12, 2015 to December 9, 2015.

2.12 Cabinet and the NCC granted approval on February 4, 2016 and February 15, 2016 respectively, for the renovation of a section of the ground floor.

UDC records showed that four bids were received, as under:

Figure 9 – Analysis of Bids

Options	Bid Price (\$M)	Evaluation
Bidder No. 1	295.68	Deemed non responsive due to failure to include and price the revised Mechanical Services, Electrical Works, Fire Protection System, Air Conditioning and Ventilation System and Plumbing as per instructions issued in Addendum No. 4 dated December 03, 2015. No evidence was provided to confirm that this Bidder signed the Addenda to the initial tender.
Bidder No. 2	400.09	Evaluated
Bidder No. 3	510.33	Bidder disqualified for failure to submit in bid package that contains a valid copy of TCC and NCC registration
Bidder No. 4	518.9	Evaluated

Source: AuGD’s review of bid documents

2.13 UDC subsequently recommended that the contract be awarded to Bidder No. 2, for \$400.09 million, with a contract period of four months after the date of possession.

Renovation contract incurring time overrun of three months

2.14 The renovation works was only 39 per cent complete with time overrun in excess of three months, as at October 21, 2016. On March 14, 2016, MoFPS and the Contractor signed a contract for the construction/build-out of the Accountant General’s Department Offices valued at \$400.09 million²⁷. The works were scheduled to commence on April 1, 2016, with expected completion on July 31, 2016. However, as at January 27, 2017, \$285.43 million (or 63 per cent) of the total value of works have been completed. UDC indicated that the project is scheduled for completion by March 31, 2017. As a consequence, AGD accumulated \$75.77 million up to February 2017 on the lease since the commencement of the lease without occupation.

2.15 Review of MoFPS and UDC records, highlighted that delays in the completion of the works were mainly due to the timing of orders as well as variations. This resulted in time overrun and payment of extension of time allowance of \$9.2 million.

2.16 MoFPS approved variations to the contract totalling \$52.05 million; \$7.26 million to level the uneven floor, while the remaining \$44.79 million was attributable to increased costs due to the failure of the project manager (UDC) to supply the Contractor with detailed drawings and information to allow for proper pricing of electro-mechanical items. UDC indicated that this was a requirement as per Addendum No. 4, dated December 03, 2015 to the tender documents. UDC reported that:

²⁷ including a contingency sum of \$20 million and \$9 million provisional sum for increases in material and labour costs

...following a detailed investigation of the correspondences, which transpired during the tender stage, it was confirmed that the Contractor did not receive a full set of Construction Drawings such as the drawings for the Fire Protection system, the Air Conditioning and Ventilation System and the Security system at the time of Tender.

Source: Letter from UDC to MoFPS dated August 17, 2016.

- 2.17** Approved variations totalled \$52.05 million (or 13 per cent) of the contract sum. Section 1.5.3 of the Government Procurement Guidelines, indicates that for contracts in excess of \$300 million, cumulative variations in excess of the 10 per cent will require National Contracts Commission (NCC) endorsement and Cabinet approval. No approval was obtained for these variations.

Part Three

Noranda Bauxite Limited's Expired Letter of Credit

Executive Summary

The Ministry of Finance and the Public Service (MoFPS) has overall responsibility for developing the Government's fiscal and economic policy framework; collecting and allocating public revenues and playing an important role in the socio-economic development of the country in creating a society in which each citizen has every prospect of a better quality of life. The objectives of the Ministry include the creation of an environment that will promote sustainable economic growth, and to effectively manage the national budget and administer policies for the sound financial management of public funds.

In accordance with a request from the Opposition Spokesman on Finance, we conducted a special audit to determine whether the circumstances surrounding the issuance of a letter of credit (LOC) by Noranda Bauxite Limited to the Government of Jamaica were consistent with best practices. The key findings of the audit are summarized below.

Key Findings

1. Arising from a dispute between the Government of Jamaica (GoJ) and Noranda Bauxite Limited (NBL), an Interim Agreement was signed on June 9, 2015, to allow NBL to continue exporting bauxite pending the completion of arbitration proceedings. The Agreement required the payment of US\$3.75 per metric tonne in cash and US\$1.25 per metric tonne in irrevocable LOCs' issued to the GoJ and payable on the termination of this Agreement. On December 18, 2015, the Arbitration Tribunal ruled in favour of the GoJ, and awarded the sum of US\$12.6 million representing bauxite levy to be paid by NBL.
2. **The Ministry of Finance and the Public Service (MoFPS) did not make a timely and compliant request on NBL's irrevocable letter of credit, leading to its expiration and delay in recovery of US\$5.06 million²⁸.** On January 25, 2016, four days prior to the expiration of the LOC, the MoFPS made a drawdown request to an overseas bank. However, the bank did not honour the request due to the Ministry's failure to submit the required sight draft and the beneficiary statement. This was communicated in a letter from the overseas bank dated January 28, 2016, but stamped as received by the Office of the Financial Secretary on February 01, 2016, after the LOC expiry date of January 29, 2016.

²⁸ Exchange rate of \$121.37 as at January 29, 2016, translates to JA\$614,081,952.82

3. Subsequently, on February 8, 2016, Noranda Aluminium Holding Corporation (parent company) filed for Chapter 11 Bankruptcy in the USA and the GoJ submitted the claim to the Court for an amount of US\$23.5 million, which included levy payable, interest of US\$1.2 million, and other outstanding taxes and awards.
4. The MoFPS informed us that the new owners of NBL agreed to repay the \$5.06 million as a part of a larger debt repayment over an eight-year period.

Recommendation

The MoFPS should design and implement procedures to govern the monitoring of Letters of Credit issued to the Government of Jamaica (GoJ). These procedures should include clear lines of responsibility over these Letters and should also provide for sanctions to minimise the recurrence of these incidence of negligence.

The Ministry subsequently indicated that it has implemented mechanisms to monitor the arrangements under which letters of credit received by the Ministry are processed and actioned.

Interim Agreement

- 3.1** On September 30, 2004, the Government of Jamaica (GoJ) and Saint Ann Bauxite Limited²⁹ signed an Establishment Agreement, which outlined the terms under which bauxite will be produced by the company and the minimum Levy rate of US\$5. Section 6.01 (c) (ii) of the Establishment Agreement states that:

The minimum production levy per metric tonne is determined at the LMEP³⁰ of US\$1,325 per metric tonne and shall escalate from US\$5 per metric tonne in direct proportion to increases in LMEP.

Source: Establishment Agreement between GoJ and St. Ann Bauxite Ltd. dated September 30, 2004.

- 3.2** On August 31, 2009, Noranda Bauxite Limited (NBL)³¹ acquired beneficial interest in Saint Ann Bauxite Company from Century Aluminium Company. As a consequence of the purchase, GoJ and the NBL signed an Amendment to the Establishment Agreement³² on June 24, 2010. The Amendment provided for an adjustment to the Bauxite Levy rate covering the period September 2009 to December 2014.

Period	Amended Production Levy Rate	LMEP
2012 – 2014	US\$3.50	US\$2,500 or above
	US\$3.00	US\$2,100 but under US\$2,500
	US\$2.50	under US\$2,100
2009 – 2011	US\$2.50	-

- 3.3** In January 2015, Jamaica Bauxite Institute (JBI), acting on behalf of the GoJ, resumed calculation of bauxite levy payable in accordance with the Establishment Agreement (September 2004). By way of correspondence dated January 6, 2015, NBL informed JBI that correspondence under the signature of the Honourable Minister of Science, Technology, Energy and Mining (MSTEM) extended the levy arrangements beyond December 31, 2014.

Acting on the advice of the JBI and pursuant to Section 47 of the Mining Act, I hereby amend Special Mining Lease 165 to accommodate your above application on condition that:

- 1 800,000 Dry Metric Tonnes (DMT) are made available to Glencore International AG annually within the period 2014 to 2017; and

²⁹ As at September 2004, the company was 50 per cent beneficially owned by Century Aluminum Company and Noranda Aluminum Incorporated

³⁰ London Metal Exchange price – average of the three months' seller price for 99.7 per cent purity aluminum in US dollars per metric ton quoted by the London Metal Exchange

³¹ Pursuant to a securities purchase agreement with the investors dated August 3, 2009

³² GoJ, acting through the Minister of Finance and Planning and the Minister of Mining and Energy and Saint Ann Bauxite Limited, known as Noranda Bauxite Limited (NBL)

- 2 The Establishment Agreement dated September 1, 2009 be amended to reflect that clauses 6.02 (a) (Capital Investment Programme), 6.02(c) (Application Levy) and 7.01 (Royalty) are extended beyond December 31, 2014.

Source: Letter from Ministry of Science, Technology, Energy and Mining to NBL dated December 13, 2013.

- 3.4** JBI determined the levy rate to be US\$6.34 for calendar year 2015, based on the minimum bauxite levy rate of US\$5 in accordance with the Establishment Agreement. This resulted in a dispute between the Government of Jamaica (GoJ) and Noranda Bauxite Limited (NBL), and on June 9, 2015, an Interim Agreement was signed to allow NBL to continue exporting bauxite pending the completion of arbitration proceedings. The Agreement required the payment of US\$3.75 per metric tonne in cash and US\$1.25 per metric tonne in irrevocable letters of credit (LOC) issued to the GoJ and payable on the termination of this Agreement³³.

Letters of Credit

- 3.5** On June 24, 2015, an overseas financial institution issued to the MoFPS an irrevocable Standby Letter of Credit (LOC) for an amount not exceeding US\$2.5 million. The LOC document indicated an expiry date of January 29, 2016 and indicated that '*partial drawings were permitted*'.
- 3.6** Over the period July 2015 to December 2015, the overseas financial institution submitted six amendments to the initial LOC addressed to the Ministry of Finance for the attention of the Financial Secretary. Review of the LOC documents showed that the Office of the Financial Secretary acknowledged receipt of Amendment 5 and Amendment 6 and directed these to the Legal Services Unit (LSU) for necessary action. As at December 9, 2015, the guaranteed amount totalled \$5.06 million (**Figure 10**).

Figure 10 – Noranda Bauxite Limited Letter of Credit and its amendments

Agreement	LOC Date	Guaranteed Amount (US\$)	Received by OFS - MoFPS (as per affixed stamp)
Letter of Credit	June 24,2015	2,547,953.75	Not provided
Amendment 1	July 14,2015	2,945,625.00	July 16,2015
Amendment 2	August 10,2015	3,350,368.75	Not provided
Amendment 3	September 8,2015	3,906,265.00	Sept 10, 2015
Amendment 4	October 7,2015	4,434,298.75	Not provided
Amendment 5	November 9,2015	4,818,392.50	Nov 11, 2015
Amendment 6	December 9,2015	5,059,586.25	Dec 14, 2015

Source: AuGD's compilation of Information from the Letters of Credit

³³ Section 3 of the Interim Agreement (Levy Payments on Account)

- 3.7 On December 18, 2015, the Arbitration Tribunal ruled in favour of the GoJ, and awarded the sum of US\$12.6 million to be paid by NBL (**Figure 11**). NBL was also required to pay \$163.4 million, which represents two-thirds of the Tribunal costs of \$245.1 million. The Tribunal also concluded that the regime for 2015 and beyond had not been contractually determined, but remained to be negotiated.

Figure 11 – Tribunal Award

	US\$	US\$
Levy Payable 2015		27,795,180
Levy Paid		
• Cash	16,837,760	
• Letters of Credit	5,059,586	(21,897,346)
Levy Outstanding – 2015		5,897,834
Letters of Credit	5,059,586	
Levy Owning – 2014	1,653,617	6,713,203
Tribunal Award		12,611,037

Source: AuGD's compilation of the Jamaica Bauxite Institute Accounting Information & Tribunal Award

- 3.8 On January 15, 2016, MoFPS sent a demand letter to NBL requesting a payment of US\$14.8 million, which included US\$12.6 million owed in bauxite levy based on the Tribunal award. The submission of the demand letter was in accordance with the terms of the irrevocable letter of credit, which required the MoFPS to request payment from NBL at least five days, before drawing down on the LOC.

GoJ has made written demand delivered to NBL for payment of such unpaid amount represented by the drawing requested herewith at least five days prior to GoJ making this drawing, and NBL has failed to pay such amount to GoJ.

Source: *Letter of Credit dated June 24, 2015.*

- 3.9 On January 25, 2016, four days before to the expiration of the LOC, MoFPS made a drawdown request to the overseas financial institution, indicating that the GoJ has made written demand for unpaid amounts represented by the letter of credit and its amendments, which was not honoured by NBL. The letter stated that MoFPS had:

Enclosed original LOC and amendments, save and except the amendment for August 2015, which we will send shortly and wish to draw down on the full sum represented by the LOC and amendments.

Source: *Letter of Overseas Financial Institution dated January 25, 2016.*

- 3.10** We reviewed the letter from the overseas financial institution dated January 28, 2016, stamped as received by the Financial Secretary on February 01, 2016. The letter stated that MoFPS did not include the sight draft and the beneficiary statement. The LOC document stated:

The letter of credit is available by your draft(s) at sight drawn on an overseas financial institution³⁴, accompanied by the following documents:

1. The original letter of credit and all amendments, if any thereto.
2. Beneficiary's dated statement signed by an authorised officer of the Government of Jamaica on letterhead.

Source: Letter of Credit dated June 24, 2015.

- 3.11** Based on the non-submission of the documents, the overseas financial institution did not honour the request. The Ministry has subsequently indicated that it has implemented mechanisms to monitor the arrangements under which letters of credit received by the Ministry are processed and actioned.

Subsequent Events

- 3.12** On February 8, 2016, Noranda Aluminium Holding Corporation filed for Chapter 11 Bankruptcy in the USA and the GoJ had until August 30, 2016, to file a claim in the Bankruptcy court. The GoJ submitted the claim within the stipulated time frame. Outlined in the claim to the Court is an amount of US\$23.5 million, which included levy payable, interest of US\$1.2 million, and other outstanding taxes and awards as outlined in the Proof of Claim to a US Bankruptcy Court. Correspondence from the Attorney General's Chambers in January 2017 indicated that:

The Missouri Bankruptcy Court approved the sale of the Debtors' (Noranda Aluminium, Inc. and its affiliated companies) upstream business including Noranda Bauxite Limited (NBL) and the Gramercy Refinery on 21 October 2016.

As a result of the Auction, NBL and the new purchaser entered into an Amended and Restated Asset Purchase Agreement providing for a secured note with a principal amount equal to US\$24,430,000, representing US\$2,930,000 more than the consideration initially offered by the Purchaser under the Stalking Horse Agreement.

The new owner's binding Letter of Intent with the GoJ requires them to pay the outstanding debt of US\$12.6 million for levy owed for 2014 and 2015 to the extent that this is not paid to the GoJ by the trust fund.

Source: Email from Attorney General's Department to AuGD dated January 16, 2017.

³⁴ Bank address and other details redacted

- 3.13** Our review of the binding letter of intent presented by the MoFPS outlining partnership terms between the new owner and the Government of Jamaica accepted and agreed as of October 24, 2016, highlighted an initial 25 year term subject to renewal. The agreement also states:

Section 1.1 - This may require the issue of a new Special Mining Lease as the existing Special Mining Lease held by NBL which is to be transferred to **new owner** and/or the new JV partnership has less than the period remaining.

Section 3.1 – Net of any recovery in the Noranda Bankruptcy, the **new owner** will repay the US\$12.6 million in overdue levy in phases with an initial up-front payment of US\$1.0 million annually for the first 4 years, followed by annual payments of US\$2.15 million without interest thereon for a further 4 years until the sum is repaid. In the event of a sale of **the business** prior to repayment in full of this amount, the **new owner** will pay the unpaid amount upon such sale.

Source: Letter of Intent dated October 24, 2016.

Part Four

Corporate Governance - MLSS

Executive Summary

The vision of the Ministry of Labour and Social Security (MLSS) is to contribute to national development through the provision of efficient and effective labour and social security services within the context of a globalised economy. MLSS is also mandated to promote a stable industrial climate through tripartite dialogue; ensure the highest standards of occupational safety and health at the workplace; facilitate increased access to employment and effectively manage social protection programmes including those for groups with special needs such as households below the poverty line, the elderly and persons with disabilities.

The audit sought to ascertain whether payments of travelling allowances, mileage allowances and toll accorded with the Civil Service Establishment Act and the MoFPS circulars, and that the internal controls and accounting systems were adequate and operating efficiently and effectively. The key findings of the audit are summarized below.

Key Findings

- 1. MLSS did not obtain the requisite approval from the Ministry of Finance and the Public Service (MoFPS) to pay travelling allowance to 367 (60 per cent) of the 609 officers in receipt of this allowance. Nonetheless, MLSS paid travelling allowances to these employees, resulting in unauthorized payments totalling \$203.1 million for the 2015/2016 financial year.** Our review also found that three employees were paid travelling allowances contrary to their letters of employment or contracts, resulting in overpayment of \$5.4 million for January 2009 to May 2016. The MLSS subsequently received approval for the payment of travelling allowance to one employee from September 10, 2016, therefore the overpayments to this employee prior to the effective date still remains. MLSS's failure to obtain the requisite approval for the payment of travelling allowance not only breached the Civil Service Establishment Act but also undermined governance principles of accountability and transparency. MLSS indicated it has written to the MoFPS since 2013, seeking approval for these positions, and is still awaiting a response.
- 2. Further, MLSS approved the payment of travelling allowances on expired declarations to four officers totalling \$887,890 for the period, April 2015 to January 2016.** MoFPS guidelines require annual renewal of declarations permitting travelling officers to use motor vehicles they do not own in performing their official duties; and this arrangement must not be extended beyond three (3) continuous years. MLSS did not maintain a listing of travelling officers who use this facility to allow periodic reviews. Accordingly, the MLSS cannot properly assess whether officers are eligible to claim on these motor vehicles. We

found that the declaration for the four officers expired in September 2014 and on May 31, 2015 but the MLSS continued to make payments up to January 2016. Despite this breach, the senior accounting staff members certified and approved these payments, without checking the status of the vehicles. The Ministry subsequently indicated that it is currently engaging an entity to develop a system that creates alerts when documents expire.

3. **MLSS made payments of \$2.3 million for mileage and toll to a staff member to attend work between June 2014 and January 2016, contrary to the Staff Orders for the Public Service.** The staff member was reassigned to Kingston from the Clarendon Parish Office. Whereas the MLSS sought the requisite approval from the MoFPS for the payments, no approval was received for the period June to December 2014, and as such, mileage and toll payments amounting to \$716,250 were unapproved.

We found that the Permanent Secretary approved the payment of mileage to and from Clarendon and Kingston before receiving approval from the MoFPS, which was not obtained until March 30, 2015. In this regard, the MoFPS gave approval with effect from January 2, 2015, for the officer to be paid mileage for the distance travelled between the Officer's substantive place of work in Clarendon and the place of work in Kingston or, his residence and the Kingston location whichever is less.

Recommendation

The MLSS should take steps to recover all unauthorised payments as well as payments made on expired declarations. If not recovered, the responsible officers may be required to make good the full amount of the loss.

Travelling Allowance Payments at the Ministry of Labour & Social Security

- 4.1** The MLSS which was established in 1938 as an employment Bureau, evolved to its present structure. Functions undertaken by the Ministry are the administration of NIS, Public Assistance, PATH, The Abilities Foundation of Jamaica, Jamaica Council for Persons with Disabilities and the National Council for Senior Citizens. As a result of these functions, the Ministry achieves its objectives through the efforts of its own labour force, some of whom are required to be mobile to ensure that the functions and responsibilities of the various units and departments are efficiently executed. These officers are paid travelling allowances and mileage in the execution of their duties. Notwithstanding, the proper approvals were not received for the payment of these allowances.
- 4.2** Section 11.2 of the Staff Orders (2004) stipulates that travelling allowance is granted to meet expenses actually incurred in the performance of official duties. Holders of positions requiring travel should neither be out of pocket, nor should they derive financial benefits beyond their direct costs. The MLSS employs travelling officers to execute its core functions and mandate. The type of travelling allowance attached to a particular post is determined by the MoFPS based on travel patterns that have been established and submitted for approval. However, the MoFPS dictates that there are some positions that automatically carry travelling allowance as highlighted in its Circular No.18, dated September 15, 2015. Previous circulars promulgated a similar position. The MLSS currently has pays travelling allowance to 609 officers of which 60 per cent have not been approved by MoFPS. The payment of travelling allowance is directed by the Human Resources Department.

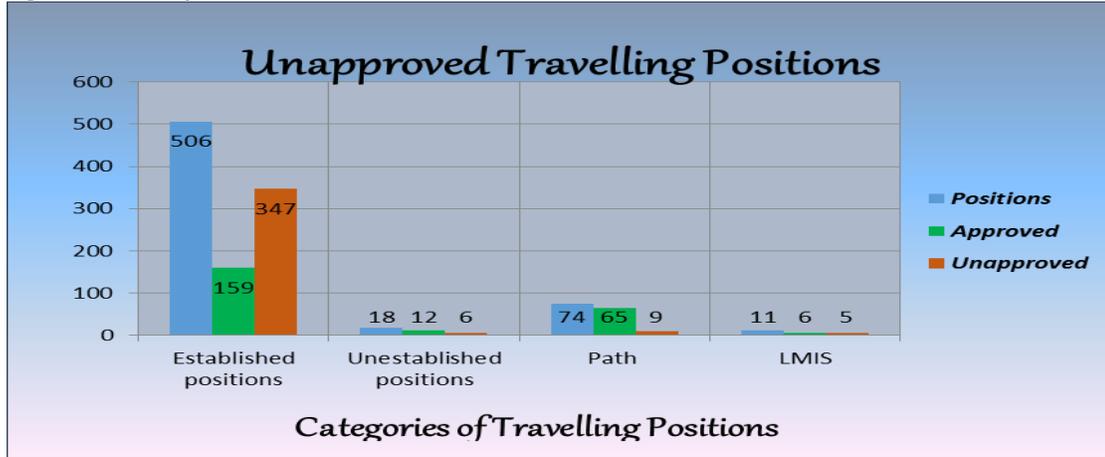
Travelling Allowance

- 4.3** **We found that the MoFPS did not approve 60 per cent of travelling allowance payments at the MLSS, resulting in \$203.1 million in unauthorized payments annually.** Our review disclosed that MLSS did not obtain the requisite approval from the MoFPS to pay travelling allowances to 367 (60 per cent) of the 609 officers in receipt of travelling allowances. We noted that officers in established positions accounted for 56 per cent of travelling allowance payments that were not approved. Arising from this, MLSS made unauthorized payments of approximately \$203.1 million to the 367 officers or 71 per cent of the travel related payments were not approved for the 2015/2016 financial year. However, both the Programme of Advancement through Health and Education (PATH) and the Labour Market Information Programme (LMIP) in aggregate revealed a higher number of approval as travelling allowance was approved for 71 of the 85 officers.
- 4.4** Additionally, three (3) employees who held the positions of Messenger, Office Attendant and Social Worker were being paid travelling allowances contrary to their letters of employment or contracts, resulting in overpayment of \$5.4 million for January 2009 to May 2016. The MLSS subsequently received approval for the payment of travelling allowance to one employee from September 10, 2016, therefore the overpayments to this employee prior to the effective date still remains. MLSS' failure to obtain the requisite approval for

the payment of travelling allowance not only breached the Civil Service Establishment Act but also, undermines the accountability process.

- 4.5 MLSS has since indicated that as recent as 2013, the Ministry wrote to the MoFPS seeking retroactive approval for the 367 positions and is still awaiting a response (Figure 12).

Figure 12 – Analysis of Travel Positions



Source: AuGD’s analyses of MoFPS approval documentation for MLSS.

- 4.6 MLSS approved the payment of travelling allowances on expired declarations to four officers totalling \$887,890 for the period, April 2015 to January 2016. MoFPS guideline requires annual renewal of declarations permitting travelling officers to use a motor vehicle he/she does not own in performing his/her official duties; and this arrangement must not be extended beyond three (3) continuous years. We found that the declaration for the four officers expired in September 2014 and on May 31, 2015 but the MLSS continued to make payments up to January 2016. Despite this breach, the senior accounting staff members certified and approved these payments, without checking the status of the vehicles.
- 4.7 Further, MLSS did not maintain a listing of travelling officers who use this facility to allow periodic reviews. As such, this restricts the MLSS’s ability to properly assess whether officers are eligible to claim on these motor vehicles. The Ministry subsequently indicated that it is currently engaging an entity to develop a system that creates alerts when documents expire.
- 4.8 In addition, an officer continued to receive travelling allowance on a vehicle that was transferred to another individual resulting in \$48,344.81 in overpayment. We found that a Mazda Demio, used by a Social Services Administrator to obtain travelling allowance was transferred on December 15, 2015. This vehicle was not owned by the Officer but an approved declaration dated April 7, 2015, was seen on file to facilitate use of the vehicle to perform official duties. Evidence of notification to the Human Resource Unit regarding the transfer/disposal was not seen on the Officer’s file. The Officer subsequently claimed travelling allowance for the months of December 2015 and January 2016 using this vehicle, resulting in an overpayment of \$48,344.81. To date, the overpaid amount has not been recovered, and the MLSS informed us that the Officer is currently on interdiction. MLSS did

not present documentary evidence for us to verify this representation, despite our requests. Further, the overpayment may increase with evidence of the interdiction orders.

- 4.9** MLSS reassigned a Parish Manager (SEG 1) from the Clarendon Parish Office to the Overseas Employment Centre in Kingston for the period April 28, 2014 to March 31, 2015. The Officer was again transferred to act in a higher post as Policy Analyst (GMG/SEG 2) in the Child Labour Unit with effect from January 2, 2015. On the latter transfer, the MoFPS approved the payment of mileage to and from his place of business, i.e., from Clarendon to Kingston, despite working in Kingston where the Overseas Employment Centre would become the officer's new base. Whereas the MLSS sought the requisite approval from the MoFPS for the payments, no approval was received for the period June to December 2014, and as such, mileage and toll payments amounting to \$716,250 were unapproved.
- 4.10** The payment of mileage was not in keeping with the Staff Orders and the MLSS did not obtain prior MoFPS' approval for this deviation. Subsequently, the MoFPS gave retroactive approval in March 2015, with effect from January 2, 2015 for the officer to be paid mileage for the distance travelled between the Officer's substantive place of work in Clarendon and the place of work in Kingston or, his residence and the Kingston location whichever is less. Consequently, the Officer received mileage and toll payments totalling \$2.3 million for the financial years 2014/15 and 2015/16. We noted that the payments ended during our audit in January 2016. Notwithstanding this, the MLSS request to the MoFPS was not supported by financial estimates or timelines. Additionally, no evidence was presented indicating that the MoFPS' considered the financial impact of the open-ended approval, which could have allowed for indefinite payments of mileage from Clarendon to Kingston and return. In this regard, both the MLSS and MoFPS failed to protect the government's interest.

Part Five

Corporate Governance - AEROTEL

Executive Summary

Aeronautical Telecommunications Ltd, (AEROTEL) a subsidiary of Jamaica Civil Aviation Authority (JCAA) since June 1998, is responsible for the maintenance of all aeronautical, communication, navigation and surveillance systems (CNS). AEROTEL also provides maintenance and other support services to a number of other clients, including the Jamaica Defence Force (JDF), Airports Authority of Jamaica (AAJ) and the National Meteorological Service.

AEROTEL governance practices and financial operations are subject to the Public Bodies Management & Accountability (PBMA) Act, GoJ Corporate Governance and Accountability Frameworks and applicable guidelines issued by the Ministry of Finance and the Public Service (MoFPS).

We conducted a special investigation to determine whether AEROTEL governance practices, including procurement were in keeping with the applicable laws and regulations.

The key findings of the audit are summarized below.

Key Findings

- 1. Between January 2012 and December 2015, AEROTEL paid \$32.44 million in Travelling Allowances to 16 members of staff without MoFPS approval.** This was in breach of Section 20 of the PBMA Act, which indicates that in relation to emoluments payable to staff of a public body, the Board shall act in accordance with guidelines issued from time to time by the Minister responsible for the Public Service. AEROTEL's failure to obtain the Minister's approval not only breached the Government's guidelines but also undermined the transparency and accountability process and has resulted in unauthorized payments.
- 2. AEROTEL paid \$1.92 million in Closed User Group (CUG) charges for 23 months after Chairman's separation from the entity.** In February 2012, the Chairman of AEROTEL demitted office and the CUG mobile phone was not recovered immediately on his departure. The Chairman used the phone for 23 months after demitting office and accumulated approximately \$2 million in charges, which was paid by AEROTEL. These improper payments were not initially detected despite being subjected to three levels of approval, which includes certifying and authorising officers (Senior accounting staff) and the cheque signatories (Director of Finance and another Director). Further, AEROTEL did not establish pre-set limits on its CUG plans during the period January 2012 to April 2015.

3. Additionally, the company's CUG policy, which was created in February 2012 was not approved by the Board until May 2015. The pre-set limits outlined in the policy, however, exceeded those set out in the Ministry of Finance and the Public Service (MoFPS) Circular No. 35 dated November 9, 2012 for three users. AEROTEL did not seek the requisite approval from the Financial Secretary for these users. A total of six users incurred charges in excess of the MoFPS' guideline totalling \$279,967 for the period January 2012 to December 2015. AEROTEL indicated that it has a highly mobile work force that is heavily reliant on mobile voice and data services and its limits were set based on historical usage and the need to increase operational efficiency.

4. **AEROTEL did not adhere to the GoJ's Procurement Guidelines for a generator costing approximately \$7.23 million.** We found that the procurement of a generator for \$7.23 million was not done in the competitive manner required by the Procurement Guidelines, as AEROTEL did not open the procurement opportunity to all eligible suppliers. Further, AEROTEL advanced the supplier \$3.61 million or 50 per cent of the contract sum, two weeks after signing the agreement without obtaining the requisite guarantee or security to protect the Government's interest.

Recommendations

1. Management should strictly adhere to the Government's guidelines for the payment of travelling allowances and the use of CUG phones and seek approval from the MoFPS for the payment of travelling allowances to the 16 Officers.
2. Overpayments should be calculated and recovered from the officer overpaid or the responsible Officer. Additionally, a mechanism should be implemented to recover company property when Board members demit office.
3. Where payments made outside the Government's guidelines are not recovered, this may lead to surcharge of the responsible officers, as these payments would be deemed unauthorized, and also considered to be overpayments.

Corporate Governance Breaches at the Aeronautical Telecommunications Ltd.

AEROTEL's governance practices were inconsistent with the Public Bodies Management & Accountability (PBMA) Act and Ministry of Finance and the Public Service Circulars

- 5.1** In March 2016, it was reported that the Chairman of AEROTEL who demitted office in February 2012, accumulated CUG charges in excess of \$1 million, which is of concern to our office. This raised concerns on the governance practices at AEROTEL and specifically the control environment. Therefore, we conducted an investigation into the governance practices at AEROTEL, which is in line with our mission to conduct independent audits and make reports to improve the use of public resources.
- 5.2** **AEROTEL paid \$32.44 million in Travelling Allowances to 16 members of staff without MoFPS approval, over the four-year period, January 2012 to December 2015.** This was in breach of Section 20 of the PBMA Act, which indicates that in relation to emoluments payable to staff of a public body, the Board shall act in accordance with guidelines issued from time to time by the Minister responsible for the Public Service. AEROTEL's failure to obtain the Ministry's approval not only breached the Government's guidelines but also undermined the transparency and accountability process and resulted in unauthorized payments.
- 5.3** **AEROTEL paid \$1.92 million in CUG charges for 23 months after Chairman's separation from the entity.** In February 2012, the Chairman of AEROTEL demitted office and the CUG mobile phone was not recovered immediately. The Chairman used the phone for 23 months after demitting office and accumulated approximately \$2 million in charges, which was paid by AEROTEL. These improper payments were not initially detected despite being subjected to three levels of approval, which include certifying and authorising officers (Senior accounting staff) and the cheque signatories (Director of Finance and another Director). Further, we found that AEROTEL did not establish preset limits on its CUG plans during the period January 2012 to April 2015. Additionally, the company's CUG policy, which was created in February 2012, was not approved by the Board until May 2015. The pre-set limits outlined in the policy, however, exceeded those set out in the MoFPS Circular no. 35 dated November 9, 2012 for three users. AEROTEL did not seek the requisite approval from the Financial Secretary for these users. A total of six users incurred charges in excess of the MoFPS' guideline totalling \$279,967 for the period January 2012 to December 2015. AEROTEL indicated that it has a highly mobile work force that is heavily reliant on mobile voice and data services and its limits were set based on historical usage and the need to increase operational efficiency.
- 5.4** In June 2016, after incurring legal fees of \$250,000, AEROTEL's Lawyers applied to the Supreme Court for a *Notice of Discontinuance* against the former Chairman. AEROTEL indicated that the company had exhausted all options to collect the sums and further pursuit through legal processes would be futile.

5.5 Additionally, AEROTEL did not implement a mechanism to ensure that the costs of private calls were borne by the caller as is required by MoFPS Circular No.25 dated November 9, 2012. Three employees who were assigned post-paid CUG phones incurred roaming charges amounting to \$102,979 over the period 2012 to 2014, while on vacation leave (Appendix 15). AEROTEL provided evidence that \$54,511 was recovered, leaving a balance of \$48,469. AEROTEL indicated that its Senior Managers remain on call and in contact whilst on leave, and will utilise voice and especially data roaming services as may be necessary to provide supervision, advice and support for critical aviation technology maintenance services.

AEROTEL's circumvents GOJ Procurement Guidelines

5.6 AEROTEL circumvented the GoJ's procurement guidelines in procuring a generator costing approximately \$7.23 million. We found that the procurement of a generator, costing \$7.23 million, was not open to competitive tender as required by the procurement guidelines. Section A8.1.1 of the procurement guidelines stipulates that contracts in the range of \$5 million to \$15 million requires local competitive bidding. However, AEROTEL utilized the limited tender method in the selection of a company, contracted to supply a generator for \$7.23 million. Further, AEROTEL advanced the supplier \$3.61 million or 50 per cent of the contract sum, two weeks after signing the agreement without obtaining the requisite guarantee or security to protect the Government's interest in accordance with the Government Procurement Guidelines.³⁵

³⁵ Paragraph A7.6.3, states that: "The Procuring Entity may offer Advance Payment in respect of goods and general services where the circumstances of the particular procurement merit such a payment. These payments shall be no more than 50% of the procurement sum. In such cases, an Advance Payment Security shall be provided as a guarantee against contractor's default. Security can be in the form of a Bank Guarantee or irrevocable Letter of Credit for an amount equal to the advance payment, and is usually redeemable on demand."

Part Six

Corporate Governance - INSPORTS

Executive Summary

Vision 2030 National Development Plan (NDP) recognises sports as one of the industries, which will contribute to Jamaica having an internationally competitive industry structure. The Institute of Sports (INSPORTS) is critical, given that its mandate is *“to unearth talent and facilitate the development of sport in schools and communities while channelling the talent into national sport development programmes in order to develop athletes to world class standards.”* INSPORTS focuses on development in six sporting disciplines, namely; track and field, football, netball, cricket, baseball and basketball.

In November 2011, I tabled in Parliament a special audit report on INSPORTS, which highlighted various corporate governance deficiencies, improper payment of emoluments and procurement breaches. However, a subsequent special audit review revealed that the concerns raised, have persisted. This report comprises the findings of the special audit, which revealed weaknesses in INSPORTS corporate governance, financial and operational practices, which contributed to a break down in internal controls, thereby increasing INSPORTS’ risk exposure. The audit covered the financial years 2012/13 to 2014/15. The audit revealed a number of deficiencies, which have since been brought to the attention of the management of INSPORTS, and the portfolio Ministry of Culture, Gender, Entertainment and Sport (MCGES).

The key findings are outlined below.

Key Findings

Corporate Governance

INSPORTS’ Governance Practices were inconsistent with the Public Bodies Management & Accountability (PBMA) Act, Corporate Governance and Accountability Frameworks and Ministry of Finance and the Public Service Circulars.

- 1. INSPORTS breached various sections of the PBMA Act, despite assurances given to the Public Accounts Committee (PAC) in July 2013, to comply with the requirements of the Act.** INSPORTS did not prepare and submit to the responsible Minister, the required quarterly, half-yearly and annual reports, in breach of Section 23 of the Public Bodies Management and Accountability (PBMA) Act. INSPORTS is yet to implement our recommendation to prepare and/or submit, without undue delay, to the portfolio Minister all outstanding annual reports and audited financial statements for tabling in

the Houses of Parliament. INSPORTS has never submitted Annual Reports, and the last audited financial statement prepared was for the financial year 1991/1992. INSPORTS, by its non-submission of the statutory Annual Report and Audited Financial Statements for 23 years, has deprived the portfolio Ministry and Parliament of its oversight function regarding the financial and operational performance. INSPORTS failure not only breached the Law, but is worrying from a fiduciary responsibility position, given that its accounting records showed that for the six-year period 2005-06 to 2010-11, total revenues amounted to \$1.4 billion, while expenditure totalled \$1.5 billion.

While INSPORTS' Board established a Finance and Audit Committee, it did not engage an Internal Auditor to undertake the necessary review of internal controls as part of its corporate governance responsibility. The lack of proper controls of financial management, including maintenance of accounting records also contributed to INSPORTS' inability to enable the preparation of financial statements for the last 23 years.

2. **INSPORTS Board did not develop “specific and measurable objectives and performance targets” as required by Section 6(1) (c) of the PBMA Act.** INSPORTS did not include any performance targets in the Operational Plan for 2012-13. INSPORTS outlined 27 performance targets, in its 2013-14 Operational Plan, for the promotion and development of seven sporting disciplines. However, there was no evidence such as minutes or annual reports, to indicate that INSPORTS assessed the achievement of targets set for sports promotion and development. Hence, we could not assess whether these targets were achieved or whether the outcomes informed its 2014-15 Operational plan. Therefore, we were unable to ascertain how INSPORTS satisfies itself that: it is fulfilling its mandate to develop sports in schools and communities; and contributing to the achievement of the Vision 2030 National Strategy for sports development in Jamaica.
3. **INSPORT's Board operated without a Charter³⁶, while its sub-committees did not have in place terms of reference (TOR) to define the roles and responsibilities of the directors, including their responsibilities for corporate governance, as required by the GoJ Corporate Governance Framework.** The oversight of INSPORTS operations was impaired by the failure of the Board and its sub-committees, to convene regular meetings to effectively direct and monitor the strategic and financial operations of INSPORTS. For example, during the financial year 2015-16, the Board only met twice, in May and October 2015 and the Board met seven times in each of the financial years 2013-14 and 2014-15 and six times in 2012-13. To its credit, INSPORTS Board established the Corporate Governance and Human Resource sub-committees in 2013 and a Finance and Audit Committee in 2012. However, we found no evidence that the Finance and Audit Committee met or took action to protect the financial assets and report on the effectiveness of the administrative and accounting controls despite its fiduciary duty to do so.

³⁶ Recommended Practice No. 1 (PRINCIPLE 2 -ROLES AND RESPONSIBILITIES OF THE BOARD)

4. **Between June 2013 and February 2015, INSPORTS re-engaged the services of nine retired officers without the prior approval of the Ministry of Finance and the Public Service (MoFPS) as required by Section 20 of the PBMA Act and MoFPS Guidelines.** The officers were engaged with annual salaries and travelling allowances totalling \$14.02 million. We observed that it was not until February 25, 2015 that the Administrative Director sought approval from the MoFPS for engagement of the officers. INSPORTS sought approval in February 2015 and MoFPS granted retroactive approval for four of the nine officers in March 2015.

The new Board to govern the operation of the Institute has been in place since July 2016. An official meeting with the Board was held in July 2016. Immediate training and capacity building will be delivered to the new Board of Directors in relation to the Corporate Governance Framework and other relevant GoJ legal frameworks, policies and procedures. Institution of Board Charter, establishment of requisite Sub Committee as well as terms of reference for all sub-committees will also be incorporated.

Source: Letter from MCGES (Portfolio Ministry) dated May 24, 2016 in response to AuGD draft report.

Weaknesses in Internal Controls

INSPORTS did not employ strong systems of internal controls over its accounting, financial and human resource practices.

5. **INSPORTS failed to develop and implement adequate standard operational procedures (SOPs) and procedural manuals to guide the administration of its financial and human resource management activities.** At the time of our audit, INSPORTS Financial Policies and Procedures Manual and the Human and Resource Manual were in draft. This may have contributed to a general lack of accountability and transparency over the purchase of goods and services whereas an approved document would have demanded the required level of enforcement. INSPORTS did not provide adequate documentation to support 116 cheque payments totalling \$2.03 million made during the period March 2013 to May 2014. Also, INSPORTS failed to present to us vouchers in relation to payments made during 2015-16. Further, weaknesses in the maintenance of accounting records at INSPORTS prevented us from analysing the Institute's outstanding payables and statutory returns. For example, INSPORTS failed to present a schedule of aged payables and outstanding statutory payments despite repeated requests.
6. **INSPORTS did not implement a proper inventory management system to account for the receipt and storage of sporting gears.** INSPORTS provided data, which showed that over the period, April 2012 and October 2015, the Institute purchased sporting gears valuing \$12 million for distribution to various sports clubs, schools and other community

organisations. INSPORTS noted that it also received sponsorship in the form of sporting gears from corporate Jamaica. However, INSPORTS was unable to state the level of inventory, as there was no inventory management system to account for the receipt, storage and distribution for items purchased and those received through donations. We also noted that INSPORTS did not have in place, a system to account for all tickets distributed to patrons for admission to sporting events held at the National Stadium.

A Corrective Action Plan is being developed to address the weaknesses identified. This included drafting manuals including a Human Resource Manual, Inventory Policies and Procedures Manual, Ticket Distribution and Gate Receipts Procedures Manual. The financial policies and procedures manual will be improved where appropriate. The current inventory management system has been improved in keeping with the AGD's recommendations and the distribution register has been amended to include the pertinent information recommended by the AGD. A form, which can act as a stores record is to be used to document all goods purchased or donated, and an officer of the Agency has been assigned responsibility to ensure these records are kept and management will periodically monitor them. Additionally, an update of the inventory was done of the sports gear bought by the entity and all donations since the audit have been issued. The draft Inventory Policies and Procedures Manual is awaiting approval.

Source: Source: Letter from MCGES dated May 24, 2016 (Portfolio Ministry) in response to AuGD draft report.

Recommendation

INSPORTS need to take immediate steps to comply with the requirements of the PBMA Act in accordance with the AuGD's earlier recommendations. INSPORTS should make every effort to implement internal controls in order to address the current financial and operational deficiencies and improve its Governance practices.

Introduction

Background

- 6.1** The Institute of Sports Limited (INSPORTS) was established on April 1, 1978 and falls under the portfolio responsibility of the Minister of Sports as such is now under the Ministry of Culture, Gender, Entertainment and Sport (MCGES). The operation of INSPORTS is managed by a 15-member Board of Directors and is guided by the Companies Act Jamaica, Financial Administrative and Audit (FAA) Act, the Public Bodies Management and Accountability Act (PBMA), GoJ Corporate Governance Framework for Public Bodies and other applicable laws and regulations governing the operations of Ministries Departments and Agencies (MDAs).

INSPORTS mandate

- 6.2** INSPORTS mandate *“is to unearth talent and facilitate the development of sport in schools and communities while channelling the talent into national sport development programmes in order to develop athletes to world class standards.”*

Governance at INSPORTS

- 6.3** The Board's role is to oversee the management and governance of INSPORTS in ensuring transparency and accountability in the operational and financial activities of the entity. Section 6 of the PBMA Act requires boards of public bodies to, ‘take such steps as are necessary, for the efficient and effective management of the public body; ensure the accountability of all persons who manage the resources of the public body; develop adequate information, control, evaluation and reporting systems within the body; and develop specific and measurable objectives and performance targets for that body.’

Poor Governance and Monitoring

INSPORTS failed to submit required reports to responsible Minister

- 6.4** We found that INSPORTS did not prepare and submit to the responsible Minister, the required quarterly, half-yearly and annual reports, in breach of the Public Bodies Management and Accountability (PBMA) Act. Section 23 of the PBMA Act as well as

Parts II and III of the Second Schedule, outline the detailed information to be provided to the responsible Minister to allow for proper oversight and accountability.

- 6.5** Further, INSPORTS has not caused to be prepared, audited financial statements for 23 years, in breach of Section 3 of the PBMA Act. The last audited financial statement was for the financial year 1991/1992. Audited financial statements are the main source of accountability of management's performance and provide reasonable assurance over the accuracy of financial statements.
- 6.6** INSPORTS' failure to prepare audited financial statements was the subject of our special audit report (dated November 2011), which recommended that INSPORTS should prepare and submit, without undue delay, to the portfolio Minister all outstanding annual reports and audited financial statements for tabling in the Houses of Parliament. INSPORTS has not engaged the service of an external auditor to be able to submit audited financial statements to ensure compliance with the PBMA Act. The inaction by INSPORTS management and the Board have deprived the portfolio Ministry and Parliament of its oversight function regarding the financial and operational performance. INSPORTS failure not only breached the Law, but is worrying from a fiduciary responsibility position, given that its accounting records showed that for the six-year period 2005-06 to 2010-11, total revenues amounted to \$1.4 billion, while expenditure totaled \$1.5 billion.

The Ministry is actively considering the reassignment of an officer from another Agency within the Portfolio of the Ministry who has the requisite skills and track record to act as a project manager to oversee the delivery of up to date financials and annual reports for INSPORTS.

Source: Letter from MCGES (Portfolio Ministry) dated May 24, 2016.in response to AuGD draft report.

- 6.7** The absence of the related plans and reports may impact the monitoring arrangements by the portfolio Ministry as outlined in the Cabinet-approved Corporate Governance Framework. Principle 15 states that:

The Permanent Secretaries as chief advisors to the Ministers are required to monitor performance against expected results, manage risks and advise/inform the Minister accordingly on Public Bodies, which operate within the portfolio responsibility of the Ministry. They also ensure coordination among Public Bodies within the Ministry's portfolio, which enhances policy coherence. They should know what is happening in the Public Bodies in order to assess whether the strategic objectives of the Ministry are being met through the Public Bodies.

Source: GoJ Corporate Governance Framework.

6.8 INSPORTS has not submitted any Board Minutes to the Permanent Secretary in compliance with Decision 17 of the Cabinet approved GoJ Accountability Framework for Senior Officers (January 2010).

INSPORTS Board’s failure to meet regularly denies the entity the benefit of efficiencies to be derived from proper oversight

6.9 The Board’s role is to oversee the management and governance of INSPORTS in ensuring transparency and accountability in its operational and financial activities, as required by the GoJ Corporate Governance Framework for Public Bodies and the PBMA Act. However, this oversight responsibility may be impaired as the Board failed to hold regular meetings. We found that since the start of the financial year 2015-16, the Board has only met twice in May and October 2015. The Board met seven times in each of the financial years 2013-14 and 2014-15 and six times in 2012-13. (Figure 13).

Figure 13 Number of Board and sub-committee meetings held (Mar-12 to Oct-15)

Year	Months	No.
2015-16	May, October	2
2014-15	April; May; June; July; October; November, March	7
2013-14	May; July; August; September; November; December; January.	7
2012-13	April; May; June; January; February, March	6
Total		22

Note: *INSPORTS did not provide the minutes for meetings reportedly held March, May and Oct. 2015

Source: AuGD’s analysis of board minutes and information provided by INSPORTS

6.10 In addition, the Board is operating without a Charter³⁷, while its sub-committees did not have terms of reference to define the roles and responsibilities of the directors, including their responsibilities for corporate governance, as required by the GoJ Corporate Governance Framework. We observed that the Board complied with the recommended practice of the Corporate Governance Framework to establish appropriately constituted sub-committees to give oversight of specialized functions. The Board established a finance and audit committee in 2012 and corporate governance and human resource committees in 2013. However, the Board did not develop the required Terms of References for the committees, as required by the Corporate

³⁷ Recommended Practice No. 1 (PRINCIPLE 2 -ROLES AND RESPONSIBILITIES OF THE BOARD)

Governance Framework³⁸. In addition, we found that the sub-committees did not convene regular meetings to provide effective oversight and strategic management to INSPORTS. INSPORTS did not provide the minutes of meetings of the sub-committees, for the period March 2012 to October 2015, despite request. We observed that the minutes of Board meetings³⁹ made references to only three meetings of the Corporate Governance Committee and one meeting of the Human Resource Committee.

- 6.11** We found no evidence that the committee, which is critical to providing effective oversight of INSPORTS' financial and internal control activities, has ever met.

Section 9(1) of the PBMA Act states among other things that the audit committee shall: *“advise the board on practices and procedures which will promote productivity and the quality and volume of service; the extent to which the objects of the public body are being achieved; and the adequacy, efficiency and effectiveness of the accounting and internal control structure and systems of the public body.”* The inactivity of the Board and its sub-committees denied proper oversight and scrutiny of INSPORTS internal control activities and may have contributed to the inefficiencies in the maintenance of accounting records and absence of evidence of the achievement of key performance targets.

The new Board to govern the operation of the Institute has been in place since July 2016. Management also indicated that an official meeting with the Board was held in July 2016 but was not able to confirm whether other meetings have been held.

Source: Letter from MCGES (Portfolio Ministry) dated May 24, 2016 in response to AuGD draft report.

INSPORTS did not provide the necessary evidence to substantiate the achievement of sports development targets

- 6.12** INSPORTS Board did not develop specific and measurable objectives and performance targets, as required by Section 6(1) (c) of the PBMA Act. INSPORTS did not include any performance targets in the Operational Plan for 2012-13. INSPORTS outlined 27 performance targets, in its 2013-14 Operational Plan, for the promotion and development of seven sporting disciplines. However, there was no evidence such as minutes or annual reports, to indicate that INSPORTS assessed the achievement of targets set for sports promotion and development. Hence, we could not assess whether these targets were achieved or whether the outcomes informed its 2014-15 Operational plan. INSPORTS' inability to provide sufficient relevant data of its operational performance outcomes prevented us from assessing its achievement of the targets set for sports development for 2012-13 and 2013-14. In addition, we found no evidence

³⁸ Recommended Practice No. 4 (PRINCIPLE 8: BOARD COMPOSITION) states that: “A Terms of Reference should be developed for each Board Committee.”

³⁹ Board Minutes: February 20, 2013, December 12, 2013, January 29, 2014 and March 12, 2014.

that individual sports officers were assigned specific sports development target in order to achieve the overall targets as outlined in the 2013-14 Operational Plan. Sporting officers are required to, among other things, evaluate and monitor activities and projects using performance indicators and maintain records and produce written reports. However, INSPORTS failed to ensure that sports officers periodically track, measure and report on the outcomes of sporting programmes. Therefore, we were not certain as to how INSPORTS satisfies itself that: it is fulfilling its mandate to develop sports in schools and communities; and contributing to the achievement of the Vision 2030 National Strategy for sports development in Jamaica.

INSPORTS engaged nine retired officers without prior approval of the MoFPS

6.13 Between June 2013 and February 2015, the Administrative Director re-engaged the services of nine retired officers. The officers were contracted on annual salaries and travelling allowances totalling approximately \$14 million (**Figure 14**). The prior approval of the MoFPS was not obtained for the engagement of the officers and the payment of the related emoluments, as required by section 20 of the Public Bodies Management and Accountability (PBMA) Act and Ministry of Finance and the Public Service Circular No. 1626 dated April 06, 2010.

6.14 We observed that it was not until February 25, 2015, that the Administrative Director sought approval from the MoFPS for the engagement of the officers. MoFPS approval was obtained via letter dated March 6, 2015, granted approval for four of the officers to be employed with effect from April 1, and September 1, 2015 (**Figure 14**).

Figure 14 Contract Officers engaged prior to Board and MoFPS approval

Employee Name	Date of Contract	Date MoFPS Approval w.e.f	Salary	Travelling
Sports Officer 1	2-Jun-13	none	724,992	514,500
Sports Officer 2	26-Jun-13	1-Sep-15	724,992	514,500
Sports Officer 3	26-Jun-13	none	724,992	514,500
Sports Officer 4	27-Jun-13	1-Sep-15	724,992	514,500
Sports Officer 5	2-Jan-14	none	861,788	514,500
Sports Officer 6	21-Jan-14	none	861,788	514,500
Sports Coordinator 7	16-Jun-14	1-Sep-15	1,631,171	514,500
International Relations Administrator	10-Feb-14	none	1,499,251	514,500
Sports Officer 8	16-Feb-15	1-Apr-15	1,631,171	514,500
Total remuneration per annum			9,385,137	4,630,500

Internal Control Weaknesses

Section 6(1)(b) of the PBMA Act requires that every board develop adequate information, control, evaluation and reporting systems within the body. Further, Section 6(1)(a)(i) of the PBMA Act require Boards to take such steps as are necessary for the efficient and effective management of the public body.

- 6.15** Consistent with the Law, we expect that the INSPORTS Board should provide strategic direction to ensure that adequate systems are in place for the efficient and effective management of government resources and ensure that management:
- i. Develop appropriate SOPs and procedural manuals to guide the management and efficient utilisation of financial, human and other resources;
 - ii. Implement internal controls over all assets, such as fixed assets, inventory and cash;
 - iii. Prepare Accounting records, such as Payment and Journal Vouchers, Receipt/Ticket Books, Cash Book, General Ledger and Accounts Receivables and Payables.

INSPORTS failed to implement strong internal controls over its operations

- 6.16** We found that INSPORTS failed to employ strong systems of internal controls over its accounting, financial and operational practices to safeguard the Institute's assets from misuse. The prolonged weaknesses in the control systems, opens the Institute to material errors and other irregularities, which may go undetected for a considerable period. In addition, these weaknesses in the control system also impaired the proper oversight by the Board and the portfolio Ministry.

Absence of appropriate SOPs and procedural manuals

- 6.17** INSPORTS failed to develop and implement adequate standard operational procedures (SOPs) and procedural manuals to guide the administration of its financial and human resource management activities.

The Financial Policies and Procedures Manual to aid in improving the controls processes at the Institute has since been updated. Further, the Human Resource Manual has been prepared and is awaiting review and approval.

Source: Letter from MCGES (Portfolio Ministry) in response to AuGD draft report dated May 24, 2016.

INSPORTS not maintaining proper accounting records for payables

- 6.18** INSPORTS has in place the requisite payment / journal voucher and receipt books to account for expenditure and income earned. Funds lodged into, and expenses made from, designated bank accounts, were reconciled on a monthly basis, with Cash Book maintained by INSPORTS. Ledgers should also be maintained detailing current and non-current assets, amounts owed (liabilities) and capital/reserves held by INSPORTS. However, weaknesses in the maintenance of accounting records at INSPORTS prevented us from analysing the Institute's outstanding payables and statutory returns. For example, INSPORTS failed to present a schedule of aged payables and outstanding statutory payments despite repeated requests. This information should be maintained by INSPORTS and form part of the standard accounting and financial records.
- 6.19** The lack of proper controls of financial management, including maintenance of accounting records has contributed to INSPORTS inability to prepare financial reports to enable preparation of audited financial statements for the last 23 years. The absence of audited financial statements prevented the Board from benefiting from a formal review to provide assurance of the accuracy of the reported revenues and expenditure.

Supporting documentation for payments was insufficient

- 6.20** We reviewed a sample of 321 payment vouchers for the purchase of goods and services over the three-year period March 2013 to May 2014 totalling \$7.5 million. We were unable to sufficiently verify 116 payments totalling \$2.03 million, which underscores the deficiencies in controls previously identified. We observed that 79 of these payments, totalling \$1.2 million, were reportedly made to individuals for services provided at sporting events, such as security, rental of equipment, work at sports programme and field maintenance. However, these payments were only supported either by personal bills or letters signed by the sports coordinators/officers requesting payments. We were unable to determine the validity of the payments as the letters and bills were not presented with requisite information .
- 6.21** For example, a payment of \$35,000 was made to an individual to provide security services at INSPORTS Primary School Championships. However, the personal bill, supporting the payment described the nature of the service as, *“to provide security service for seven (7) games at different venues at \$5,000 five thousand each.”* Details of the date, time and venues of the seven games were not provided. The payment was not supported with evidence of an attendance schedule to verify that the service was provided on a given date. Therefore, we were not able to determine the seven games for which the payments were made.
- 6.22** We also found that payments of \$7,500 were being made to three employees of INSPORTS on a weekly basis for the production of identification cards for sporting

events. Evidence of formal arrangements for this additional remuneration for the production of identification cards was not presented for review. The payments were made on the basis of letters from an Officer, which stated the nature of the payment as, *“assistance with the ID production for ALL INSPORTS related activities.”* The three individuals were paid sums totalling \$180,000 between March and April 2013. Our sample did not include a review of payments made during 2015-16, as INSPORTS did not present the requested vouchers.

Poor inventory management over purchased and donated sporting gears

- 6.23** INSPORTS provided data, which shows that over the period, April 2012 and October 2015, the Institute purchased sporting gears valuing \$12 million for distribution to various sports clubs, schools and other community organisations. The Institute noted that it also received sponsorship in the form of sporting gears from corporate Jamaica. However, INSPORTS was unable to state the quantum of donated items, as there was no inventory management system to account for the receipt, storage and distribution of these items. This is in breach of MoFPS Circular No. 12 dated August 7, 2001, which requires the maintenance of proper stores records for recording the purchase and issuing of all stock.
- 6.24** We also observed that sporting items such as baseball and sports gears were haphazardly stored in a room referred to as ‘the stores’. INSPORTS did not provide details of the type, amount and value of the sporting gears stored in the room. The manner in which the sporting gears were stored prevented us from conducting a complete count. The absence of proper records may prevent INSPORTS from identifying incidents of theft or misappropriation. We also noted that INSPORTS did not have in place, a system to account for all tickets distributed to patrons for admission to sporting events held at the National Stadium.