



## Integrity Commission

### **Report on Review of Complaint received regarding Sale of Rooms on the Beach by Montego Beach (1975) Limited to Puerto Caribe Properties Limited and the Sale of Beach Lands by the Urban Development Corporation (UDC) to the Puerto Caribe Properties Limited**

#### **Urban Development Corporation** **Ministry of Economic Growth and Job Creation**

### **Introduction**

The Office of the Contractor General, pursuant to Sections 1 and 5 of the Integrity Commission Act, 2017, has been fully subsumed into the Integrity Commission.

Section 63 (2) (b) of the Integrity Commission Act provides as follows:

*“(2) The commission established under this Act may-*

*....*

*(b) continue or do any act, thing or investigation which was pending before the appointed day.”*

In the foregoing regard, all reference hereafter to the Office of the Contractor-General (OCG) shall relate/apply to the newly established Integrity Commission.

The Office of the Contractor General (OCG), pursuant to Sections 4 and 15 of the Contractor-General Act, on November 17, 2016, commenced an Enquiry/Investigation into the Sale of Rooms on the Beach by Montego Beach (1975) Limited to Puerto Caribe Properties Limited and the Sale of Beach Lands by the Urban Development Corporation (UDC) to the Puerto Caribe Properties Limited.

Montego Beach (1975) Limited is a wholly owned subsidiary of National Hotel and Properties Limited, which is a wholly owned subsidiary of the UDC. The UDC, for the purposes of the Contractor General Act is a Public Body.

The OCG’s decision to undertake this Investigation was prompted by information which was received from an anonymous source, by the Contractor General, suggesting that the UDC was in the

process of selling Government lands to Moon Palace Jamaica Grande Hotel. The information alleged that the lands were being sold below market value.

The aforementioned allegations raised several concerns for the OCG, particularly in light of the provisions outlined in the Policy Framework and Procedures Manual for the Divestment of Government-owned Lands (2015) (The Manual). Section 2.2 of the Manual states, *inter alia*, that

*“This policy is relevant to **all** custodians of government-owned land. While mechanisms may vary, all government agencies divesting land shall adhere to the policy framework, the guiding principles and the accompanying procedures manual”.*

Section 5.2.4 (3) of the Manual sets out the procedures for land divestment, inclusive of the requirement for a valuation of the property to ascertain the current market value. Section 5.2.1 of the Manual outlines the process and the requirement to advertise divestment subject to exceptions. Section 2.2.7 of the Manual stipulates that the Government shall seek to optimise income from the divestment process subject to exceptions. Section 2.2.7 (v) of the Manual is an exception to the principle that the Government shall seek to optimise income for divestment, that is, where land is being divested for strategic purposes as determined by Government policy. Relevance has been placed on this exception by the parties and Public Bodies central to this divestment.

As it relates to ‘pricing’ for the sale of Government lands, the Manual provides that **“The government shall seek to optimize income from the divestment process” [OCG EMPHASIS]**

Whilst the OCG monitors and investigates for adherence to the applicable rules, it is also necessary to consider in each case the circumstances which surround the divestment. In this case, the OCG remains concerned about the heavily discounted pricing, a concern which was also raised in writing by the Ministry of Finance and the Public Service.

The OCG initiated its enquiry into the matter by way of letter dated November 17, 2016 to the UDC. The UDC responded by letter dated November 28, 2016, under the signature of the then Acting General Manager, Mr. Donald Hamilton, indicating that the Corporation, and Montego Beach (1975) Limited, were both in the process of divesting publicly owned lands to Puerto Caribe Properties Limited, the owner and operators of Moon Palace Jamaica Grande Hotel.

The UDC advised that it had not issued a notice of sale and that it was also unaware of any letters from persons expressing an interest in the property. The UDC, however, indicated that a) Village Resorts Limited is a tenant in occupation of the Rooms Hotel, b) the lease had an unexpired term, c) the property was not placed on the open market and, d) that discussions were conducted directly between Puerto Caribe Properties Limited and Village Resorts Limited.

## Methodology

The OCG, in the conduct of its Investigation, issued requisitions and conducted Hearings with Public Officials/Officers and other persons concerned.

Requisitions were dispatched to the following persons:

1. The Most Honourable Andrew Holness, ON, MP, Prime Minister, Office of the Prime Minister;
2. Mrs. Audrey Sewell, CD, JP, Permanent Secretary, Ministry of Economic Growth and Job Creation;
3. Mrs. Hope Blake, Deputy Financial Secretary, Ministry of Finance and the Public Service;
4. Miss Maureen Denton, Executive Director and Head of Secretariat, Economic Growth Council Secretariat, Office of the Prime Minister;
5. Mr. Donald Hamilton, Deputy General Manager – Finance and Treasury, Urban Development Corporation;
6. Dr. Damian Graham, General Manager, Urban Development Corporation;
7. Miss. Yvette Sibble, General Counsel, Urban Development Corporation; and
8. Mr. Ransford Braham, Q.C, Chairman of the Board, Urban Development Corporation.

Follow-up requisitions were also sent to selected individuals mentioned above.

Further to Section 18 of the Contractor General Act, the Contractor-General conducted Hearings with:

1. The Hon. Daryl Vaz, MP, Minister without Portfolio, Ministry of Economic Growth and Job Creation;
2. Mrs. Audrey Sewell, CD, JP, Permanent Secretary, Ministry of Economic Growth and Job Creation;
3. Mrs. Hope Blake, Deputy Financial Secretary, Ministry of Finance and the Public Service;
4. Miss Maureen Denton, Executive Director and Head of Secretariat, Economic Growth Council Secretariat, Office of the Prime Minister;
5. Mr. Donald Hamilton, Deputy General Manager – Finance and Treasury, Urban Development Corporation;
6. Dr. Damian Graham, General Manager, Urban Development Corporation; and
7. Miss. Yvette Sibble, General Counsel, Urban Development Corporation.

These Hearings were conducted on May 15, 2017, May 25, 2017, and June 13, 2017.

## Legislation and Government Policy Guidelines

The OCG's investigation took into account the following provisions outlined in the Policy Framework and Procedures Manual for the Divestment of Government-owned Lands (2015), hereinafter referred to as the Manual:

1. Section 2.2 which states, *inter alia*, that “*This policy is relevant to **all** custodians of government-owned land. While mechanisms may vary, all government agencies divesting land shall adhere to the policy framework, the guiding principles and the accompanying procedures manual.*”
2. Section 5.2.4 (3) which provides that a valuation of the property should be conducted to ascertain the current market value and Section 2.2.7 (a) which states that, subject to the exceptions, all government-owned lands shall be divested at current market value. The Manual recognises an exception to the principle that all government-owned lands are to be divested at current market value, where land “*is being divested for strategic purposes as determined by government policy*”.
3. Section 5.2.1 states that, subject to the exceptions outlined in the Manual, the divestment of government land should be advertised. Additionally, and with reference to Section 5.2.5, *Divestment in Special Cases*, lands can be disposed of by sale without advertisement in certain circumstances. One such circumstance is where “*...a hotel or industrial site needs to expand and the only available land belongs to the government*”. Another circumstance outlined therein is where “*land is required for strategic investment projects which will contribute to national/economic development*”.

The following provisions of the Contractor General Act were applicable to this investigation:

- (1) Sections 4 (1) (a) (i) and (ii) which mandates the Contractor General, “*... on behalf of Parliament- to monitor the award and the implementation of Government contracts with a view to ensuring that such contracts are awarded impartially and on merit (and that) the circumstances in which each contract is awarded ... do not involve impropriety or irregularity ...*”
- (2) Section 15 (1) which prescribes the discretionary power of a Contractor General to conduct an investigation into any or all of the following matters:
  - (a) “*the registration of contractors*”;
  - (b) “*tender procedures relating to contracts awarded by public bodies*”;
  - (c) “*the award of any Government contract*”;
  - (d) “*the implementation of the terms of any Government contract*”;
  - (e) “*the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence*”;
  - (f) “*the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences*”.

## Outline of Facts and Key Findings

Having reviewed the written statements, the documentary evidence and the evidence provided at the Hearings, the OCG found as follows:

1. An Agreement for Sale (**AFS 1**) was executed between Montego Beach (1975) Limited and Puerto Caribe Properties Limited dated November 23, 2016. The purchase price stated in the Agreement is US\$5,000,000 or J\$630,000,000. The exchange rate used was US\$1: J\$126.00. The following properties were sold:
  - a. Volume 1104 Folio 890 (Rooms Hotel); and
  - b. Volume 1435 Folio 41 (Rooms Hotel).
2. An Agreement for Sale (**AFS 2**) was executed between the UDC and Puerto Caribe Properties Limited dated November 23, 2016. The purchase price stated in the Agreement is US\$2,200,000 or J\$277,200,000. The exchange rate used was US\$1: J\$126.00. The following properties were sold:
  - a. Volume 1151 Folio 953 (The Garden);
  - b. Volume 1487 Folio 284 (Rooms Beach & the Garden Beach);
  - c. Volume 1236 Folio 249 (Moon Palace Beach);
  - d. Volume 981 Folio 26 (Landscape & access area);
  - e. Volume 370 Folio 15 (Landscape & access area);
  - f. Volume 1080 Folio 674 (Landscape & access area);
  - g. Volume 990 Folio 181 (Landscape & access area); and
  - h. Volume 934 Folio 91 (Landscape & access area).
3. The Government had committed to complete the sale in keeping with the end of Puerto Caribe Properties Limited's Financial Year, generally stated as December 2016<sup>1</sup>.
4. Five (5) Valuations were conducted relating to the two (2) Agreements for Sale, three (3) of which were conducted in May 2016 and were related to the Rooms Hotel and Additional Lands, while two (2) valuations were conducted in September 2016 and were related to the Beachlands. The Valuations are as follows:
  - a. **Breakenridge & Associates (Addendum)(May 2016)**  
Properties Valued: Volume 1104 Folio 890; Volume 1435 Folio 41; Volume 1151 Folio 953; Volume 1487 Folio 284; Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcels of land. Importantly: Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcel of land are landscape and access areas and no value/consideration was assigned to these parcels of land.

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<sup>1</sup> Information was obtained from documentary evidence provided by the Honourable Minister Daryl Vaz at Hearing held at the OCG on May 25, 2017. No specific date was stated.

i. Hotel & Beach	US\$6,600,000.00
ii. Additional Development Lands	<u>US\$2,940,000.00</u>
	<b><u>US\$9, 540,000.00</u></b>

**b. CD Alexander Company Realty Limited (May 2016)**

Properties Valued: Volume 1104 Folio 890; Volume 1435 Folio 41; Volume 1151 Folio 953; Volume 1487 Folio 284; Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcels of land. Importantly: Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcels of land are landscape and access areas and no value/consideration was assigned to these parcels of land.

i. Hotel on Land	US\$6,530,000.00
ii. Excess Development Land	<u>US\$2,930,200.00</u>
	<b><u>US\$9,460,200.00</u></b>

**c. Allison Pitter & Company (May 2016)**

Properties Valued: Volume 1104 Folio 890; Volume 1435 Folio 41; Volume 1151 Folio 953; Volume 1487 Folio 284; Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcel of land. Importantly: Volume 981 Folio 26; Volume 370 Folio 15 and some unregistered parcels of land are landscape and access areas and no value/consideration was assigned to these parcels of land

i. Hotel only	US\$5,500,000.00
ii. Additional Lands	<u>US\$3,000, 000.00 – US\$3,250,000.00</u>
	<b><u>US\$8,750,000.00 (using the upper limit value) US\$8,500,000.00 (using the lower limit)</u></b>

**Valuations relating to AFS 2 (Moon Palace Beach):**

**d. Allison Pitter & Company ( September 2016)**

Property Valued	Volume 1236 Folio 249 (Beach Lands)
Market Value	US\$3.6M – US\$3.7M
Market Rental Value	US\$148,000.00 per annum

**e. Breakenridge & Associates (September 2016)**

Property Valued	Volume 1236 Folio 249 (Beach Lands)
Capital Value	US\$3,400,000
Market Rental Value	US\$136,000.00 per annum

5. The OCG initiated its investigations by way of letter dated November 17, 2016 to the UDC and enquired whether valuations had been conducted for the referenced property and whether the allegation of the property being sold below market value was accurate.. The UDC, in its response dated November 28, 2016, advised the OCG that, “*The Corporation usually uses the average of all three (3) Valuations to determine a price.*” It is important to note that the valuations for the Beach Lands were not subjected to this method. In fact only two Valuations were undertaken.

The UDC, in the said letter indicated that, *“The Board considered the following factors in accepting*

- (a) that it was a strategic investment which will contribute to the creation of jobs during construction and after construction*
- (b) the issue of the purchaser having to compensate the lessee for the right of first refusal in the Lease. **UDC is not privy to the compensation figures agreed by the parties.** [OCG Emphasis]*

Documents submitted by the UDC showed a chronology of events surrounding the discussion to sell the subject properties. The chronology of events appears below:

6. On December 8, 2015, Mr. Desmond Malcolm, then UDC General Manager, sent an email to Miss Yvette Sibble, UDC General Counsel, Mr. Keith Knight, Q.C., the then Chairman of the UDC Board and one Chrysiys Reynolds saying *“There is a strong interest from the private sector in the acquisition of the subject property for development as a high end hotel.”* In that email message, Mr. Malcolm requested advice on how feasible it was to sell the property with the current lease.
7. This was followed, on December 10 and 11, 2015 by email correspondence between the UDC, EnviroPlanners Limited and a Mr. Balfour Denniston<sup>2</sup>, about the Rooms Resort and surrounding sites owned by the UDC.
8. The General Counsel, in a memorandum to the General Manager dated January 18, 2016 provided advice on the Lease of the Hotel, Rooms on the Beach to Village Resorts Limited. The Memorandum advised that the Village Resorts Limited had an initial 10 year lease since 2001, which was renewed for a further 10 years until December 2021. The General Counsel examined the Landlords right to terminate and noted that Village Resorts Limited was earlier in default with its payments and the Corporation had served a notice to quit. The Village Resorts Limited had subsequently made good on the payments and the notice to quit was withdrawn.<sup>3</sup>

The General Counsel highlighted Clause 22 of the lease agreement which speaks to the Right of First Refusal to the Tenant and noted that *“The construction of this clause means that if there is no breach of the terms lease, then if the Landlord is desirous of selling the leased premises during the term of this lease or any renewal thereof, the Landlord shall first offer same for sale to the tenant on such terms and conditions as the Landlord shall determine and if the tenant shall fail to accept the offer within thirty (30) days, then the said offer shall be deemed to be rejected and the Landlord may then offer the premises for sale to a third party on no more favourable terms than those offered to the tenant.”*

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<sup>2</sup> The UDC’s letter of November 28, 2016, indicates that it was subsequently discovered that Mr. Denniston was the Building Consultant for Puerto Caribe Properties Limited

<sup>3</sup> Copy of Memorandum dated January 18, 2016 from the General Counsel to the then General Manager, Mr. Desmond Malcolm was obtained by the OCG under cover of letter dated November 28, 2016 from the then Acting General Manager

In addition, the General Counsel further advised that Clause 23 *“makes any sale subject to the interest of the Lessee so if the tenant does not pursue the option contained in the right of first refusal, the Corporation will either have to sell, subject to the continuation of the lease or buy out the unexpired terms of the lease.”*

Correspondence submitted by Mr. Donald Hamilton, in his capacity as Deputy General Manager, Finance, Treasury and Investment, indicates that he was not aware *“...whether or not the right of first refusal was offered to Village Resort Limited by the Corporation.”*

9. In reference to the aforementioned Memorandum and the advice which was given, the UDC in its letter of November 28, 2016 to the OCG advised, *inter alia*, that **“...the Memo refers to Village Resorts, as up to that time, Legal was unaware that there was active discussions with a third party.” (OCG Emphasis)**
10. The then General Manager wrote an email dated January 19, 2016, to the General Counsel, asking whether valuations should be obtained to facilitate the sale of the property.

The OCG notes that in the chronology of events between January 19, 2016 and April 2016, there was no communication by way of correspondence. Notwithstanding, the OCG notes that the Ministry of Economic Growth and Job Creation (MEGJC) played an active role in the negotiation process in the sale to Moon Palace. The extent of the role is discussed below:

11. The UDC’s letter dated November 28, 2016, noted that *“The matter appears to have been in abeyance until April 2016.”*, subsequent to January 19, 2016. At this time there was no UDC Board as the new Board was appointed on June 16, 2016.
12. An email thread beginning with an email dated April 23, 2016 from Miss Maureen Denton, Executive Director and Head of Economic Growth Council Secretariat (the Ministry of Economic Growth and Job Creation) to the then UDC General Manager, and copied to the Honourable Minister Daryl Vaz and Locksley Smith of the Ministry of Economic Growth and Job Creation stated the following;  
*“Hi Desmond,*  
  
*Min. Vaz has asked that you speak with him on Monday re the 2 entities to do the valuations.*  
  
*So there are no issues, once UDC has defined the area to be valued it may be worthwhile to just pass that quickly by Palace Resorts so there is no misunderstanding especially with respect to the adjacent piece of land they want included.*  
  
*Please let us have this done as quickly as possible and at least within the 3 weeks you committed.*  
  
*Kind regards.”*
13. Miss Maureen Denton, by way of letter dated August 7, 2017, in response to the OCG’s request for chronological details of her involvement and awareness of the genesis and

procedures regarding the sale of lands by the UDC to Puerto Caribe Properties Limited, indicated she had a meeting with “*Gibran Chapur, Desmond Malcolm, Balfour Denniston on December 3, 2015 at Moon Palace... received and reviewed a copy of the Rooms on the Beach Lease Agreement on January 22, 2016..... Attended a meeting called by the Prime Minister with Palace Resorts in April 2016. I believe it was on Tuesday April 19, 2016.*”

14. A subsequent email dated April 21, 2016 from Miss Denton to the Honourable Minister Daryl Vaz and Mr. Desmond Malcolm (UDC) with the subject ‘Purchase of Land by Palace Resorts’ stated that:

*“In the meeting with the Prime Minister on Tuesday, Gibran Chapur indicated his Company’s interest in acquiring the land currently occupied by Rooms and an adjacent piece of land. (the “Property”). He noted that they were in discussions with Mr. Issa re the assignment of the lease from Village Resorts to Palace Resorts (which will require written consent from UDC). It was his intention to offer Village Resorts two years continued use of the property lease free....Mr. Chapur is contemplating offering a cash payment of US\$500,000 to Mr. Issa in addition to the 2 year lease free offer”*

The email further stated that:

*“At the meeting with the PM, Mr. Chapur noted that his Company’s intention was to pay a maximum of US\$5.5 million for the Property (this would include any payment to Mr. Issa.) Thus with the possibility of offering the US\$500,000 to Mr. Issa he would in fact be proposing to pay UDC US\$5 million for the land.*

***Mr. Malcolm indicated that even the US\$5.5 million may be problematic for the UDC based on the valuations UDC has received....” [OCG emphasis]***

The OCG in a letter to Miss Yvette Sibble, General Counsel, asked “*Kindly indicate whether there is a calculation of the sum payable as it relates to the unexpired terms of the lease. Please state the amount if such calculation was done;*” Miss Sibble in her response indicated that “*During the actual sale, the Legal Department was not asked to do a calculation. I am unaware of a calculation being done by any other Department.*”

15. By way of an email dated April 25, 2016 at 5:20 p.m., Mr. Phillip Myers, Director of Estate Management - UDC wrote to the General Manager and copied the Honourable Minister Daryl Vaz and other members of the UDC and the Ministry of Economic Growth and Job Creation indicating that Breakenridge and Associates, Allison Pitter & Company and C.D. Alexander & Company had been shortlisted to conduct the valuations. By way of emails dated April 25, 2016, the selection was approved by the then General Manager. The Honourable Minister Daryl Vaz, in response to the referenced email, at 7:55 p.m. responded and instructed as follows: “*Please specify 3 week turn around for valuation in hand. Please remember the beach.*”
16. UDC letter dated June 2, 2016 from the then General Manager, Mr. Desmond Malcolm, to the Honourable Minister Daryl Vaz with the caption “***Recommended Sale Price for (i)***

*Rooms on the Beach Hotel Complex inclusive of Beach Lands part of the Ocho Rios Bay as contiguous thereto and (ii) Development Lands adjoining the complex being the remainder of Lot 6 together with that portion of the Ocho Rios Bay Beach and (iii) access and landscape area contiguous thereto.”* indicated that “... I write to advise that an overall price of some **US\$9.3M (Nine Million Three Hundred Thousand United States Dollars)** had been recommended and approved and now referred for your attention.” The letter further asked that the Honourable Minister Daryl Vaz “...secure the Hon. Prime Minister’s approval to advance the matter.”

Interestingly, the Most Honourable Prime Minister Mr. Andrew Holness in a response to the OCG with regard to whether he was asked to approve a sale price of US\$9.3M stated that, “**No, I was not requested to approve a sale price of US\$9.3M. The law governing the UDC only requires reference to the Minister by way of an expression of ‘Non Objection’ in the disposal of asset. As Minister responsible for the UDC I have never been asked to approve a sale price for any asset disposal.**”(OCG EMPHASIS)

17. The OCG received a Position Paper, under cover of letter dated November 28, 2016, which addressed the impact of any divestment of the Rooms Hotel on the development plans for Ocho Rios. The Position Paper was sent via email to the Honourable Minister Daryl Vaz and to the email address, [asewell@mtw.gov.jm](mailto:asewell@mtw.gov.jm) and was also copied to Donald Hamilton, Desmond Malcolm, Robert M. Stephens, Lorna Perkins, Anthony Smith and Yvette Sibble. The Position Paper was not signed; however, it ended “Prepared by UDC Management” and was dated June 2, 2016.

A review of the Position Paper titled ‘*Brief – Ocho Rios Bay Development Plan and Impact of Divestment of Rooms on the Beach*’, highlighted the development plans for Ocho Rios and noted that the UDC supported divestment by lease rather than sale “...as the constant continuing source of income to the Corporation is very beneficial and extremely important as we face the possible erosion of our asset base with the uncertainty of compensation.” (OCG EMPHASIS)

The UDC, in its Position Paper, ultimately recommended “*A lease to the prospective investors for a term of 25-30 years to operate the hotel with improvements but to accord within the UDC development plan is ideal both from a planning and economic perspective and the maintenance of the diversification of the tourism product which caters to all sectors of the market.*”

The foregoing was the UDC’s documented position as at June 2, 2016.

**The OCG considered the income obtained/to be obtained from the continued leasing of the hotel, Rooms on the Beach and the Moon Palace Beach and notes the following:**

18. The Lease Agreement between the UDC and Village Resorts Limited with an effective date of January 1, 2001 was for a period of 10 years with the option to renew. The guaranteed minimum rent stated therein from 2006 and onwards was US\$480,000. The OCG is in

possession of a letter dated February 16, 2010 to Montego Beach (1975) Limited, c/o the UDC, from the Village Resorts Limited, giving notice of the Company's intention to renew the lease upon its expiration on December 31, 2010 at the rental rate of US\$480,000 per annum.

19. A Lease Agreement was executed between the UDC and Grande Resorts Limited<sup>4</sup> on November 30, 2004 for the property registered at Volume 1236 Folio 249 (Moon Palace Beach) in the amount of US\$17,295.15 per annum for a period of 11 years 6 months and expiring on May 30, 2016. There was also a Deed of Consent to Assignment of Lease dated June 30, 2014, where Grande Resorts Limited assigned its unexpired Lease to Puerto Caribe Properties Limited.
20. The OCG, found in the chronology of events leading up to the subject sale, and subsequent to the UDC's June 2, 2016 position paper, that the Honourable Minister Daryl Vaz was involved, as by way of letter dated June 15, 2016 under the signature of the then UDC General Manager, the Minister was provided with copies of the three valuations reports. The Honourable Minister Daryl Vaz in a hearing held at the Office of the Contractor General on May 25, 2017, when asked the reason for him requesting the valuations indicated that he had requested them "... *just for my own purposes as Minister of Investment to see what the values were*" **(Appendix 1)**
21. The Honourable Minister Daryl Vaz met with the UDC Management Team and the Chairman on July 29, 2016. At this meeting the UDC was formally advised that the Government through the Ministry of Economic Growth and Job Creation was in discussions with the owners and operators of Moon Palace to divest the Rooms on the Beach Property. Based on a copy of UDC's unsigned Minutes of the Meeting, the OCG notes that "*The Minister stated that it was a matter of investment and said that if it was not Jamaica it would be elsewhere as "everywhere is open for business. He stated that the Moon Palace offer currently was low at Six Million United States Dollars (US\$6,000,000); however, the Ministry would be meeting with them and negotiating to increase the offer."*

Additionally, the OCG notes that a meeting was held on August 4, 2016 with representatives of Moon Palace "*...to have further discussions regarding their expansion plans for Moon Palace Resort and the development of public infrastructure proximate to the resort."*

22. By way of letter dated August 18, 2016, **(Appendix 2)** Hart Muirhead Fatta, Attorneys-at-Law for Puerto Caribe Properties Limited proposed/offered the sum of US\$7,000,000 for the purchase of:
  - a. The lands on which the Rooms Hotel is being operated and the beach lands used by that hotel; **[With an average Value of US\$6,210,000.00] [OCG Calculation]**
  - b. The garden lands beside the Rooms Hotel and the beach land in front of it; **[With an average value of US\$2,956,733.33] [OCG Calculation]**and

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<sup>4</sup> The owners of Sunset Jamaica Grande

- c. The beach lands situated in front of the Moon Palace Jamaica Grande Hotel which “is presently being leased from the Corporation” by its client **[With an average value of US\$3,500,000] [OCG Calculation]**.
23. On September 26, 2016<sup>5</sup> a meeting was held between Puerto Caribe Properties Limited and the UDC where the Company offered a further US\$200,000.00 regarding discussions to include two thirds (2/3) of the Ocho Rios public beach inclusive of the area being leased currently by the Moon Palace Jamaica Grande Hotel (*referred to in this report as Moon Palace Beach*).
24. On October 13, 2016 the Board of Directors of the UDC approved the sale for Lot 6 contained in Volume 1104 Folio 809, Volume 1435 Folio 284, Volume 1151 Folio 953, portions of Ocho Rios Beach contained in Volume 1487 Folio 284 together with access and landscape area contained in Volume 981 Folio 26, Volume 370 Folio 15 and an unregistered parcel at a total cost of US\$7,200,000.00. The UDC indicated that another submission was made to the Board on November 2, 2016 which the Board also approved with regard to the beach lands, Volume 1236 Folio 249, which had been inadvertently omitted, and three other parcels being Volume 990 Folio 181, Volume 934 Folio 91 and Volume 1487 Folio 284. The sale of lands approved by the Board on November 2, 2016 were included in the purchase price of US\$7,200,000.
25. The proposed sale of the Ocho Rios Rooms Hotel, Lot 6 and Beach Property to Puerto Caribe Properties Limited was discussed at the UDC’s 488th Meeting of the Board of Directors held on October 13, 2016. The Minutes of the Meeting states that Mr. Donald Hamilton, the then Acting General Manager, in his presentation to the Board indicated instructively and importantly that,  
*“...both the Hon. Prime Minister and Minister Vaz have agreed to the sale at the amount indicated as well as their payment schedule if an agreement can be reached by the end of the month.”*
- The Minutes further indicated that,  
*“The Board unanimously approved Management’s recommendation for the sale of Rooms Hotel, the remainder of Lot 6 contained in Volume 1104 Folio 890, Volume 1435 Folio 41, Volume 1151 Folio 953, portions Ocho Rios Bay Beach contained in Volume 1487 Folio 284 together with access and landscape area contained in Volume 981 Folio 26, Volume 370 Folio 15 and an unregistered parcel to Puerto Caribe Properties Limited (PCPL), operators of Moon Palace Jamaica Grande Hotel in Ocho Rios, St. Ann at a cost of US\$7.2M.”*
- The Minutes further stated that,  
*“The approval is with the understanding that PCPL should start construction of an additional 770 rooms no later than May 2019 and complete construction by the end of 2022. Also, that they would, on signing of a formal agreement of sale, deposit the amount of US\$2.5M with a further payment of US\$4.7M upon the transfer of the titles.”*

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<sup>5</sup> Information was taken from the Urban Development Corporation’s letter November 28, 2016 to the OCG.

26. By way of letter dated October 19, 2016, **(Appendix 3)** The Most Honourable Prime Minister, Mr. Andrew Holness, in his capacity of Prime Minister and Minister of Economic Growth and Job Creation, offered his no objection to the sale of the following lands to Puerto Caribe Properties Limited at the negotiated sale price of US\$7,200,000.00:
- a. All those parcels of land registered at Volume 1104 Folio 890, comprising the Rooms Hotel and the remainder of Lot 6
  - b. Volume 1435 Folio 41
  - c. Volume 1151 Folio 953
  - d. Portions of land on which Ocho Rios Bay Hotel is situated registered at 1487 Folio 284
  - e. Access and landscape areas registered at Volume 981 Folio 26
  - f. Access and Landscape areas registered at Volume 370 Folio 15
  - g. Unregistered parcel of land (this was later found to be registered at Volume 1080 Folio 674).

Importantly, the aforementioned letter of No-objection dated October 19, 2016 did not include the parcel of land registered at Volume 1236 Folio 249 (Moon Palace beach) valued at US\$3.5M.

27. Subsequent to this letter of No-objection, the Ministry of Finance and the Public Service wrote on October 21, 2016 to the Ministry of Economic Growth and Job Creation regarding *“Draft Cabinet Submission – Sale of Ocho Rios Rooms Hotel, Lot 6 and Beach Property at Ocho Rios, St. Ann, to Puerto Caribe Properties Limited”*. The letter indicated that the Ministry offered its no objection *“...to the proposed sale of the following properties owned by the Urban Development Corporation (UDC):*
- *Rooms on the Beach Hotel*
  - *Additional Development Lands*
  - *Access Roads to the Hotel”*

Commendably, the letter of October 21, 2016 further stated that, notwithstanding the Ministry’s support, an explanation was to be provided to the Cabinet that justified the sale price being lower than the valuations rather than being at least an average of the three valuations.

28. The UDC, by way of letter dated October 25, 2016 to the Ministry of Economic Growth and Job Creation regarding *“Cabinet Submission of Ocho Rios Rooms on the Beach Hotel, Lot 6 and Beach Property to Puerto Caribe Properties Ltd”* provided a response to comments from the MOFPS inclusive of the comment that the sale price of US\$7,200,000.00 was lower than the valuations. The UDC’s letter stated that

*“...negotiations were conducted at the Ministerial level based on the strategic investment for national development. The Board approved the sale at the price as it took into consideration that the land was encumbered with a lease to Village Resorts and that Village Resorts had an unexpired term on the lease and a right of first refusal which the prospective purchaser will have to settle with the Lessee.”*

29. Cabinet, by way of Decision dated October 31, 2016, approved the sale of Rooms Hotel property, the remainder of Lot 6 contained in Volume 1104 Folio 809, Volume 1435 Folio 41 and Volume 1151 Folio 953, portions of Ocho Rios Bay Hotel registered at Volume 1487 Folio 284 together with access and landscape area registered at Volume 981 Folio 26, Volume 370 Folio 15 and Volume 1080 Folio 674 to Puerto Caribe Properties Limited for US\$7,200,000.00 for the construction of a five star hotel with amenities.
30. The Board approved the sale of the additional prime beach land registered at Volume 1236 Folio 249 (Moon Palace beach), which was previously omitted, as well as three additional parcels of land to regularise the transfer of ownership of the section forming the entrance of the existing Moon Palace Hotel at its meeting on November 2, 2016. The lands were registered at Volume 990 Folio 181, Volume 934 Folio 91 and Volume 1487 Folio 284.

The UDC Board also recommended that a waiver be sought on the transfer tax and the UDC's portion of the Stamp Duty considering the substantial gains lost to the Corporation.

The Minutes of the Board meeting held on November 2, 2016 and which was signed by the Chairman on December 15, 2016, indicated,

*"The Chairman said that the section of the beach land currently leased by Moon Palace should have been included in the sale, however, neither the beach land nor the driveway were. It was noted that the driveway leads only to the hotel. The Chairman stated that after negotiation it was agreed that they be included in the sale and the Board is being asked to approve the sale of the entire package to Moon Palace. When asked if the valuation included the beach land, the response was that it did not and that the cost for this portion of land was approximately US\$3.95 million. The Chairman stated that the sale price of \$7.2 million was not based strictly on the valuation of the properties but also on the potential benefit the sale would bring to the country. **A discussion ensued and a few of the Directors expressed concern with the sale, as well as with the effect decisions taken without the input of the Board, had on its effectiveness and the Corporation's balance sheet.**" [OCG's Emphasis]*

31. Cabinet, by way of Decision dated November 7, 2016, approved as part of the original package, which was US\$7.2M to Puerto Caribe Properties Limited, additional beach land registered at Volume 1236 Folio 249<sup>6</sup>, as well as three additional parcels of land to regularise the transfer of ownership of the section forming the entrance of the existing Moon Palace Hotel. The lands were registered at Volume 990 Folio 181, Volume 934 Folio 91 and Volume 1487 Folio 284. The Cabinet also approved the waiver of the transfer tax and the UDC's portion of the Stamp Duty considering the capital gains foregone by the Corporation.

The approval of the tax waiver was subsequently rescinded by way of Cabinet Decision No. 39/16 dated November 21, 2016.

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<sup>6</sup> The Beach land Registered at Volume 1236 Folio 249 was valued by Allison Pitter & Company as having a market value of US\$3.6M – US\$3.7M; and by Breakenridge & Associates indicated as having a capital value of US\$3.4M.

32. Commendably, on November 10, 2016<sup>7</sup> Mrs. Hope Blake, Deputy Financial Secretary, from the Ministry of Finance and the Public Service (MOFPS) wrote to the Ministry of Economic Growth and Job Creation (MEGJC) regarding “*Draft Cabinet Submission – Sale of Ocho Rios Rooms Hotel, Beach Property at Ocho Rios, St. Ann to Puerto Caribe Properties Limited.*” The letter stated, *inter alia*, that the MOFPS “...supports the overall initiative to facilitate further private sector investments....However the initiative should be done in accordance with the general agreement with our multilateral partners whereby integrity of revenues is preserved in every regard.”

The OCG wholeheartedly embraces the MOFPS’ concern highlighted in its letter dated November 10, 2016 with regard to the heavily discounted value at which the property was being sold. The OCG also notes that the referenced letter indicated that “*Consultation with the UDC has indicated that no monetary compensation will be provided to the Urban Development Corporation (UDC) for the additional parcels of land which will be included in the original package approved for sale to Puerto Caribe by Cabinet Decision No. 37/16 dated October 31, 2016.*”

The letter from the MOFPS also stated that “*With regards to the request for a waiver of the Transfer Tax and Stamp Duty, this cannot be supported at this time...*” and provided reasons for the comment.

33. Cabinet approved the sale of the additional lands, including the beach lands registered at Volume 1236 Folio 249 (*Moon Palace beach*), prior to the MOFPS’ letters of November 9 and 10, 2016.
34. The MOFPS’ letter of November 10, 2016 also commented that “*Based on the Submission, it appears that the sale of the beach lands would be in contravention of the Draft Beach Policy. It is recommended that consideration be given to ensure consistency with the Policy being developed.*”
35. Given the concerns highlighted by the MOFPS with regard to the subject sale, and more so the contrast between the Valuation Report and the sale price, and considering that Cabinet approved the sale prior to obtaining the comments of the MOFPS, the OCG wrote to the Most Honourable Prime Minister Mr. Andrew Holness to ascertain whether he was aware of the comments of the MOFPS as well as how the comments were treated. The referenced letter indicated as follows:

*“The OCG is aware that the Cabinet, by way of Decisions dated October 31, 2016 and November 7, 2016, gave its approval for the sale of property to Puerto Caribe Properties Limited. The OCG also has in its possession, copies of letters dated October 21, 2016 and November 10, 2016 from the Ministry of Finance and the Public Service (MOFPS) regarding draft Cabinet Submissions for the said properties in question.*

*Accordingly, it appears to the OCG that a second Submission was made to the Cabinet without the benefit of the comments of the MOFPS.*

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<sup>7</sup> This letter dated November 10, 2016 superseded a similar letter from the Ministry dated November 9, 2016

- a) *Kindly confirm, as it relates to the Submission of November 7, 2016, whether same was presented to the Cabinet without the comments from the MOFPS.*
  - b) *If the response to question 9a) above is yes, kindly advise of the reason(s) for the Submission to the Cabinet without the MOFPS' comments.*
  - c) *Kindly advise whether you were subsequently made aware of the comments from the MOFPS, which were communicated to the Ministry of Economic Growth and Job Creation by way of letter November 10, 2016, and if so, (i) the date of your awareness, and (ii) details regarding how the information was treated."*
36. The Most Honourable Prime Minister, by way of letter dated August 22, 2017 to the OCG noted in response to whether he was aware of the comments of the MOFPS dated November 10, 2016 indicated that:
- "Yes, I am aware of the specific letter and I am aware that while the Ministry of Finance and the Public Service raised some concerns, they noted their support to the overall divestment initiative to facilitate further private sector investments in the parish of St. Ann and noted from the Submission that, "The Policy Framework and Procedures Manual for the Divestment of Government-owned Lands require that government-owned land be divested at current market value; however this may be excepted where it is being divested for strategic purposes as determined by government policy."*
37. The OCG, in this letter to the Most Honourable Prime Minister, asked that the Prime Minister confirm whether the submission of November 7, 2016 was presented to Cabinet without the comments of the MOFPS. The Prime Minister in his response noted the following:
- "Yes, the submission was presented to Cabinet on the understanding that any decision would have to be subject to the comments of the Ministry of Finance when they are made available. The Cabinet binds itself to the fiscal responsibility and good governance framework in principle and practice, that any decisions with fiscal implication must have the comments of the Ministry of Finance. In this instance, Cabinet considered and decided subject to the presentation of the Ministry of Finance's comments, which supported the strategic objective of the sale but did not recommend a waiver of transfer of tax and stamp duty. The final decision of Cabinet reflected largely the comments and recommendation of the Ministry of Finance."*
38. The OCG by way of letter dated June 26, 2017 asked the Permanent Secretary, Mrs Audrey Sewell of the MEGJC;
- "2.) Kindly advise whether comments from the MOFPS were received prior to the second Cabinet Submission regarding sale of property to Puerto Caribe Properties Ltd. which resulted in the Cabinet Decision No. 38/16 dated November 7, 2016.*
- 3.) If the response to question 2 above is no, kindly advise of the basis upon which and the reason(s) why the submission was made without the MOFPS' comments."*
39. The Permanent Secretary, MEGJC, Mrs. Audrey Sewell, by way of letter dated July 3, 2017, in response to the question of why the submission was made to the Cabinet without the MOFPS' comments, advised the OCG that the Submission was forwarded to Cabinet for its

approval pending the receipt of the comments from the MOFPS and that a paragraph of the Submission had indicated that the comments were being awaited. The Permanent Secretary stated that *“The receipt of documents was expected to be had in time and forwarded to Cabinet, by the time the Submission was deliberated on.”*

The letter further stated that, *“Cabinet, on November 7, 2016 took a decision based on the Submission that was before it. The comments from the MOFPS were received and presented to Cabinet. The Decision made by Cabinet on November 21, 2016, did not change the Decision regarding the sale of the additional properties, but rescinded the approval of the tax waiver.”*

40. The MOFPS by way of letter dated July 4, 2017 and in response to the OCG’s request to *“Kindly provide an Executive Summary outlining the Ministry’s role as it relates to the review of documents for Cabinet Submission”* advised that *“The Ministry of Finance and the Public Service (MoFPS) is required to review and comment on draft Cabinet Submissions prior to their presentation to Cabinet for consideration... The MoFPS, being the financial advisor to the Government, is critical to the decision-making process, and in most instances, a decision will not be taken by the Cabinet without the input of this Ministry.”* Notwithstanding, the OCG notes that the decision was taken by Cabinet despite the MOFPS concerns
41. The OCG was provided with copies of the Instruments of Transfer dated December 29, 2016 and January 11, 2017. The OCG was also provided with copies of the UDC’s receipts for payments made by the Purchaser. The UDC provided the OCG with a copy of its receipt acknowledging payment of US\$1,799,975 from Puerto Caribe Properties Limited dated November 24, 2016 as well as a copy of the receipt for administrative fee of J\$559,200 dated November 28, 2016. The OCG was provided with copies of other receipts of payment received from Puerto Caribe Properties Limited. The last receipt was dated April 28, 2017.

**The determination of the Sale Price and the acquiescence at the UDC Board level is discussed below:**

42. Mr. Donald Hamilton, Deputy General Manager, Finance and Treasury, UDC, was asked at a Hearing held at the OCG on May 15, 2017 to respond to a question relating to the basis upon which he had made a submission to the UDC Board for the approval of a US\$7.2M sale price to Puerto Caribe Properties Limited. Mr. Hamilton stated that  
*“...discussions had taken place between representatives of the Office of the Prime Minister and the Moon Palace and they outlined their intent and the Prime Minister along with Minister Vaz had basically agreed on that figure and that was what was presented to me and informed me to put the decision to the Board.”*  
Mr. Hamilton was the Acting General Manager at the time the submission was made to the Board.
43. The OCG was provided with a copy of a letter from the UDC dated October 25, 2016 to the MEGJC, wherein the comment *“negotiations were conducted at the Ministerial level”* was made. By way of letter dated June 8, 2017, the OCG requested that Mr. Hamilton clarify the

meaning of that statement. In response, by way of letter dated June 15, 2017, Mr Hamilton made reference to, among other things, the Minutes of Meeting of July 29, 2016 *“wherein Minister Vaz told the meeting with management that the MEGJC would be negotiating with Moon Palace”*.

The OCG was also provided with a copy of the UDC’s unsigned Minutes of Meeting of the Management and Portfolio Minister which was held on July 29, 2016. The OCG notes from the Meeting Minutes that *“Minister Vaz outlined that the Government through the Ministry was having discussions with Moon Palace Resorts Limited regarding the purchase of Rooms on the Beach.”* The Minutes also indicated that *“The Minister stated that it was a matter of investment and said that if it was not Jamaica it would be elsewhere as “everywhere is open for business. He stated that the Moon Palace offer currently was low at Six Million United States Dollars (US\$6,000,000); however, the Ministry would be meeting with them and negotiating to increase the offer.”*

44. A UDC Board Note dated November 2, 2016, from the Deputy General Manager (UDC) to the UDC Board Directors with the subject *“Proposed Sale of Ocho Rios Rooms Hotel, Lot 6 and Beach Property to Puerto Caribe Properties Limited operators of Moon Palace Jamaica Grande Hotel”* referred to a Meeting that was held on September 29, 2016 between Puerto Caribe representative and a UDC Team, including the Chairman and the Acting General Manager. The Board Note stated that *“At this meeting the representatives of PCPL made it clear that they had made an offer to the Government at the Ministerial level to acquire lands for which we had obtained valuations, being the lands on which the “Rooms” hotel is situated, lot 6 adjoining rooms and the beach lands in front Rooms, as well as, the beach lands in front of the existing Moon Palace Hotel which were the subject of a lease to Moon Palace by the UDC, for an overall price of US\$7M.”*

45. The Minutes of the 486th Meeting of the Board of Directors of the Urban Development Corporation held on August 3, 2016 indicated that the Honourable Minister Daryl Vaz, who was present for a part of the Meeting spoke about, among other things, having discussions with Moon Palace Resorts Limited regarding the Purchase of Rooms on the Beach. He said that:

*“A preliminary meeting was held with them and they were informed them[sic] that there was a lease on that adjoining parcel of land....A meeting with the owners of Moon Palace Jamaica Grande, the Prime Minister and Minister Vaz has been arranged for August 4th...”*

The Meeting Minutes also indicated that,

*“Mr Vaz indicated that the yearly income of approximately US\$550K would be lost if the sale comes through, however, the Corporation would gain capital.”* Prior to leaving the Meeting, the Minutes indicate that Minister Vaz *“...reminded the meeting of his availability and indicated that he had informed the Chairman and Mr. Hamilton that if there are matters that need to be dealt with urgently they should bring it to his attention and he would have it dealt with.”*

46. The Honourable Minister Daryl Vaz, at a Hearing held at the Office of the Contractor General on May 25, 2017, in response to a question from the Contractor-General as to whether he had any input relating to the packaging of the lands included in the Sales Agreement at a sale price of US\$7.2M.. The Minister’s response is detailed verbatim below:

*“Q. And if it has been said that Minister Vaz and the Honourable Prime Minister are the ones who approved at the 7.2 Million US value, how would you respond to that?”*

*A. I am not a valuator, sir.*

*Q. No, my apologies. In terms of agreeing that what should be in the sale agreement, meaning the package is 7.2, 7.2 is the figure that we will work with?”*

*A. Absolutely not, sir, I had nothing to do with that. That is a UDC Board decision and then as you would know, it would go to Cabinet prior to the Prime Minister's No Objection.”*

Further, the Honourable Minister Daryl Vaz in response to a question from the Contractor General regarding the reduction of the sale price from what had been initially recommended as US\$9.3M by the UDC, indicated that only the Board of the UDC could address the query. He noted further that:

*“...the protocols dictate that any such deal has, whether it is a lease for one dollar or a sale for one billion dollars there is a procedure which requires the no objection from the Minister, through the Ministry, for which UDC falls, in this case the Ministry of Economic Growth and Job Creation.”*  
**(Appendix 4)**

47. The UDC Board Chairman, Mr. Ransford Braham, in a letter to the OCG dated June 30, 2017 and in response to the question “*Kindly indicate whether it was the Board that had decided on the final sale price of US\$7.2M*” advised the OCG that, “*The UDC Board decided on the final price of **US\$7.2M** and there was no objection from the Ministry of Economic Growth and Job Creation under whose portfolio the UDC falls.*”

48. The Most Honourable Prime Minister, Mr. Andrew Holness, in a letter to the OCG dated August 22, 2017, in response to a question requesting his comment regarding the veracity of the statement that “*negotiations were conducted at the Ministerial level based on the strategic investment for national development*” indicated, *inter alia*, that,

*“Representatives of Moon Palace Resorts presented plans for the expansion of Moon Palace and the wider development of the immediate environs of the resort to the Ministerial level of Government. They were advised verbally at the presentation that the plans aligned with the Government’s strategic policy objectives and that they should pursue their plans at the technical and bureaucratic level with the respective agencies. The discussions held at the Ministerial level could NOT be accurately described as ‘negotiations’ and the presentation and discussions did not consider a sale price.*

*...Ultimately the board sets and approves the sale price...”*

The verbatim question and answers are detailed below:

*“11.The OCG has in its possession a letter from the UDC dated October 25, 2016 to Miss Constance Trowers, Ministry of Economic Growth & Job Creation, under the signature of the then Acting Managing Director, Mr. Donald Hamilton. The letter responded to, inter alia, the following comment from the Ministry of Finance that “...An explanation should be provided to the Cabinet that indicates satisfactory justification for the proposed sale price being lower than the valuations rather than being at least an average of the three”. The letter stated that “The UDC responds as follows that the negotiations were conducted at the Ministerial level based on the strategic investment for national development. The Board approved the sale at the price as it took into consideration that the land was encumbered with a lease to Village Resorts and that Village Resorts had an unexpired term on the lease and a right of first refusal which the prospective purchaser will have to settle with the Lessee.”*

*a)Kindly advise whether the foregoing statement with regard to negotiations being conducted at a Ministerial level is accurate.*

***“Representatives of Moon palace Resort presented plans for the expansion of Moon Palace and the wider development of the immediate environs of the resort to the Ministerial level of Government. They were advised verbally at the presentation that the plans aligned with the Government’s strategic policy objectives and that they should pursue their plan at the technical and bureaucratic level with the respective agencies. The discussion held at the Ministerial level could NOT be accurately described as ‘negotiations’ and the presentation and discussions did not consider a sale price.***

***Regarding the interest of the representatives of Moon Palace Resort in acquiring government assets, they were advised according to the GOJ divestment policy, to apply directly to the UDC which owns the properties and negotiate directly with them. In coming to their decision on the sale price the Board is obliged to consider the larger strategic value of the transaction within the framework of the government’s policy objectives:***

- ***to develop and transform urban centres and townships by promoting multi-faceted anchor projects, in civil infrastructure, commercial and residential real estate to catalyse further such development within the locale,***
- ***increase government owned asset utilization through divestments,***
- ***pursue public private partnerships in the financing, construction and operation of such anchor projects, and***
- ***develop enterprise clusters of economic activities around the anchor projects, in areas such as logistics, light manufacturing, tourism and entertainment, BPOs, and agriculture.***

***Ultimately the board sets and approves sale price. The law governing the UDC only requires reference to the Minister by way of an expression of ‘No Objection’ in the disposal of asset. The board has discretion to consider other relevant factors such as, “the land was encumbered with a lease to Village***

***Resorts and that Village Resorts had an unexpired term on the lease and a right of first refusal which the prospective purchaser will have to settle with the Lessee”***

49. The Most Honourable Prime Minister, Mr. Andrew Holness, in presenting a chronology of his involvement and awareness of the genesis and procedures regarding the sale of lands by the UDC to Puerto Caribe Properties Limited, made mention of, *inter alia*, an August 4<sup>th</sup>, 2016 Meeting with representatives of Moon Palace. The Most Honourable Prime Minister, Mr. Andrew Holness, stated “*Regarding their interest in acquiring government assets, they were advised according to the GOJ divestment policy, to apply directly to agency (in this case the UDC) which owns the properties and negotiate directly with them.*”

**Table 1 - Breakdown of the Valuations of the properties sold**

Valuation Breakdown							
Land	Volume	Folio	CD Alexander Company Reality Limited	Breakenridge & Associates	Allison Pitter & Company	Purchase Price using average of the Valuations	Purchase Price
Rooms on the Beach	1104	890	US\$6,530,000.00	US\$6,600,000.00	US\$5,500,000.00	US\$6,210,000.00	US\$5,000,000.00
Rooms on the Beach	1435	41					
The Garden	1151	953	US\$2,930,200.00	US\$2,940,000.00	US\$3,000,000-US\$3,250,000.00	US\$2,956,733.33	US\$2,200,000.00*
The Beach	1487	284					
Landscape & access area	981	26					
Landscape & access area	370	15					
Landscape & access area	unregistered						
<b>* includes additional lands as follows:</b>							
Moon Palace Beach	1236	249		US\$3.4M	US\$3.6M-US\$3.7M	US\$3,500,000.00	
Landscape & access area	1080	674	No value assigned	No value assigned	No value assigned	No value assigned	No value assigned
Landscape & access area	990	181	No value assigned	No value assigned	No value assigned	No value assigned	No value assigned
Landscape & access area	934	91	No value assigned	No value assigned	No value assigned	No value assigned	No value assigned
<b>Totals</b>				US\$12,940,000	US\$12,100,000	US\$12,666,733.33	US\$7,200,000.00
<b>NB: Moon Palace Beach (Vol 1236/Fol 249) was included in the sale without any adjustment to the sale price of US\$7.2M</b>							

## **Comments and Conclusion:**

Based on the findings, the OCG has found that the Properties were valued in keeping with the established procedures related to the divestment of government owned lands. The OCG also recognizes that the transaction appears to be a multifaceted approach and an opportunity to facilitate investment.

- a) The OCG is of the considered opinion that the **valuation** of the lands/properties which have been sold to Puerto Caribe Properties Limited/ Moon Palace Jamaica Grande Hotel was in keeping with the established procedures for the divestment of government owned lands. However, despite this adherence to the process for the purposes of securing a valuation, there remains concerns regarding the overall divestment process and the agreed upon sale price.
- b) It is accepted that the divestment of the referenced lands have been held out to be a strategic investment opportunity, and as such, would be subject to certain exceptions which are detailed in the GOJ Land Divestment Manual. This categorization of the referenced transaction as such is not in dispute.
- c) The properties which were sold to Puerto Caribe Properties Ltd were owned by the Urban Development Corporation, a body corporate and a public body, which, by reason of assignment is an Agency of the Ministry of Economic Growth and Job Creation, its parent Ministry.
- d) The valuation for the Rooms on the Beach property ranged between US\$5,500,000 and US\$6,600,000; the valuation of the Garden, Beach and landscape and access area were between US\$2,930,200 and US\$3,250,000, while the Moon Palace beach lands were valued between US\$3,400,000 and US\$3,700,000. The referenced lands were, therefore, cumulatively valued between US\$11,830,200.00 and US\$13,550,000.00, at the lowest and highest ends, respectively.
- e) The sale price, negotiated for all the referenced properties was US\$7.2 Million or approximately US\$4.6 Million below the lowest given cumulative valuation figures and approximately US\$6.3 Million below the highest given cumulative valuation figures. A sale price of US \$9.3m was initially put forward by the UDC; however the UDC Board approved and divested the properties at a sale price of US\$7.2m.

Notwithstanding the fact that the divestment of these government lands may be described as an exception to the established procedures, the Government of Jamaica did not negotiate from a position of strength.

- f) The lands were sold below market price and the Government did not optimize income from the divestment process. The initial offer was US\$7M for lands mean valued of US\$12.6M. The offer included Beach Lands registered at Volume 1236 Folio 249 leased in the amount of US\$17,295.15 per annum with an average value of US\$3.5M. This offer is an insult to the Jamaican people and the acceptance of the offer is tantamount to a departure by the UDC, the Ministry and ultimately the Cabinet from fiscal responsibility and good governance.
- g) The Beach Lands registered at Volume 1236 Folio 249 leased in the amount of US\$17,295.15 per annum with an average value of US\$3.5M was handed over to the owners by the consent of the Honourable Minister Daryl Vaz and the non-objection of the Most Honorable Prime Minister.
- h) There are varying perspectives from the Most Honourable Prime Minister, the Honourable Minister Daryl Vaz, the UDC Management, the MEGJC and the UDC Board regarding the circumstances surrounding and the role that each party played during the negotiations with Puerto Caribe Properties Limited and which resulted in a final sale price. The UDC has indicated that the negotiations were done at the Ministerial level. The Most Honourable Prime Minister has emphasized that the discussions that were held at the Ministerial level could not be accurately described as negotiations and that the purchasers were advised according to the GOJ divestment policy, that is, to apply directly and negotiate directly with UDC regarding their interest to acquire government lands. It is also the case that the Board of the UDC and the Honourable Minister Daryl Vaz indicate that the sale price was determined by way of Board decision.
- i) Notwithstanding, the OCG notes with reference to the 486<sup>th</sup> Meeting Minutes of the Board of Directors of the UDC, that the Honourable Minister Daryl Vaz advised the meeting that should there be any matter needed to be dealt with urgently that it should be brought to his attention and he would have it dealt with, which points to how pivotal the Minister's role was to the divestment process.
- j) Given the assets which are being divested and the strategic importance which has been placed on same, this portrayed uncertainty regarding 'the decision maker' and with regard to the negotiations and divestment of these lands it can be described at best as an

untidy state of affairs given the conflicting accounts presented to the OCG. The OCG considers that the numerous negotiations/discussions surrounding same to be untidy and not the most effective approach to preserve the integrity of the revenue.

In support of the OCG's concerns, reference is made to a Meeting of September 29, 2016, between representatives of Puerto Caribe Properties Limited and the UDC. There the representatives of Puerto Caribe asserted that an offer had been made to the GOJ to acquire the lands for an overall price of US\$7 Million. Based upon the disclosures to the OCG by the Officers at the UDC, the Office questions whether a price had been determined prior to that 'negotiation meeting'.

- k) The OCG is of the opinion that the UDC was unable to negotiate freely and from a position of 'strength' with Puerto Caribe Properties Limited because of the direct involvement of the Honourable Minister Daryl Vaz, and other state agencies. This has been denied by the Honourable Minister Daryl Vaz.
- l) Reference is made to the comments from the Ministry of Finance and Public Service in its letter dated November 10, 2016 wherein various concerns were raised regarding, *inter alia*, the valuation of the property, the Beach Policy and tax waiver. The OCG questions whether due and sufficient consideration was given to the Ministry's comments having regard to its responsibility to comment on matters which affect the public purse.
- m) The OCG is of the opinion that the GOJ, through the appropriate state agencies should have negotiated from a position of strength with the intent of obtaining a sale price similar to a reasonable market value as per the valuations which would preserve the integrity of the revenue. The OCG notes that the Rooms on the Beach Hotel, was not a liability to the public purse and was in a highly sought after area.
- n) Additionally, and with regard to the remaining life of the Lease Agreement for Rooms on the Beach, although the UDC did not do its own calculation, there was a considered and stated amount of US\$500,000 which Moon Palace was willing to offer Mr. Issa for the remainder of the Lease. If this was in fact a reasonable and indicative value of the cost of buying out the subsisting lease agreement, then the OCG is uncertain of the basis of the heavily discounted price at which the properties were disposed of.

It is the considered opinion of the OCG that the GOJ applied an excessive and generous discount towards the Beach lands (Mean Value of US\$3.5M) to Puerto Caribe Properties Limited as no market value consideration was placed on the land when it was included in the Sales Agreement.

As it relates to the seeming ‘rush’ to conclude the transaction the OCG is uncertain as to whether there was an unstated emergency circumstance. Additionally the OCG is uncertain as to whose benefit this urgency was resolved.

- o) The Ministry of Economic Growth and Job Creation (MEGJC) through the negotiation process surrendered its position of strength, that is, to negotiate a price close to market value but instead did completely the opposite in the name of attracting an investment. This had the effect of depriving the country of revenue and the integrity of the revenue was not preserved. Further, the surrendering of the position of strength in the negotiation process has made a farce of the negotiation process whereby the market price was unjustifiably discounted. *A fortiori*, the Government failed to optimize income from the divestment process in keeping with a stated purpose of the referenced 2015 Manual.
- p) The UDC must be singled out for failing to stand its ground by way of the recommendation of the sale price (US\$9.3M) which was also excessively discounted, and in fact revising their recommendation to US\$7.2M, the resultant effect of the Beach land being sold for very little consideration or value, notwithstanding that the mean value of the Beach land was US\$3.5M.
- q) The unit of the MOFPS headed by Mrs. Hope Blake should be commended for the recommendation provided to the MEGJC in its November 10, 2016 letter, that as it relates to the sale of lands, consideration be given to ensure consistency with the Beach Policy being developed and that the integrity of revenue be preserved.

## **Recommendations**

The OCG, having assessed the sale of the properties detailed herein to Moon Palace/ Puerto Caribe must posit the following recommendations.

1. It is recommended that the divestment of any government asset, whether for strategic purposes or otherwise, should be subject to a minimum reserve price, which is internal to the Government of Jamaica and which should steer the direction of the negotiation process.
2. The OCG recommends that negotiations for the divestment of state assets should be undertaken in keeping with established procedures and should, in no way, unless expressly stated in law or policy, be subject to discussions at the Ministerial level especially in matters of sale price.
3. It is recommended that all divestments, either at inception but prior to any agreement being finalized, have a documented and suitably comprised divestment team which is ultimately responsible for the overall divestment.
4. It is recommended that for future divestments greater analysis be undertaken to ascertain the financial impact, in particular, where the sale price is considerably lower than the Valuation.
5. In instances where the divestment is considered a Special Case, Section 5.2.5 of the Manual should be amended to include that a cost benefit analysis and or economic impact assessment of the sale be done prior to the finalization of any divestment of government owned lands.
6. It is recommended that relevant sanctions should be developed to address any deviations to the established rules.
7. It is recommended that Cabinet Submissions not be presented until or unless all the necessary facts have been included and the transaction is structured in the way it is intended. In this instance, the Cabinet Submission was sent for approval without the Beach Lands being included in the first instance and without the comments from the Ministry of Finance and Public Service, in the second instance.
8. It is recommended that this Report be referred to the Auditor General for consideration as deemed appropriate.

9. It is also recommended that the Beach Policy forms a part of all negotiations and/or transfer of Lands.

## Documents Reviewed

1. Letter dated November 28, 2016 from the UDC to the OCG in response to its requisition letter dated November 17, 2016.
2. Title Report for Volume: 1104 Folio: 890
3. Title Report for Volume: 1435 Folio: 41
4. Title Report for Volume: 1151 Folio: 953
5. Title Report for Volume 1487Folio:284
6. Title Report for Volume: 1236 Folio: 249
7. Title Report for Volume: 981 Folio: 26
8. Title Report for Volume: 370 Folios: 15
9. Title Report for Volume 1080 Folio: 674
10. Title Report for Volume: 990 Folio: 181
11. Title Report for Volume: 934 Folios: 91
12. Email dated December 8, 2015 with subject: Rooms on the Beach Ocho Rios from Desmond Malcolm to K.D. Knight and Chrysies Reynolds
13. Email dated December 10, 2015 with subject: Re: Rooms Resort Ocho Rios and some surrounding sites on the waterfront owned by the UDC, from Enviro Planners Limited to Desmond Malcolm
14. Plan Showing Site of rooms Resort Ocho Rios – Montego Beach 1975 Ltd and Surrounding sites owned by UDC
15. Email dated December 11, 2015 Re: Rooms Resort Ocho Rios and some surrounding sites on the waterfront owned by the UDC, from Enviro Planners Limited to Desmond Malcolm et al.
16. Memorandum dated January 18, 2016 with subject: Lease to Village Resorts Ltd-Rooms on the Beach from Yvette Sibble, General Counsel to Desmond Malcolm
17. Email chain ending with email dated April 25, 2016 with subject: Valuations from Desmond Malcolm to [darylhwaz@yahoo.com](mailto:darylhwaz@yahoo.com)
18. CD Alexander Company's Appraisal of Rooms on the Beach Hotel dated May 8, 2016
19. Allison Pitter and Company's Report and Valuation on Rooms on the Beach, Ocho Rios dated May 13, 2016
20. Breakenridge and Associates Report and Valuation on Club Jamaica (Rooms) and Appurtenant Lands, Ocho Rios, St. Ann dated May 6, 2016
21. Breakenridge and Associates Addendum to Report and Valuation on Club Jamaica (Rooms) and Appurtenant Lands, Ocho Rios, St. Ann dated May 6, 2016
22. Letter dated June 2, 2016 from the UDC to the Honourable Minister Daryl Vaz with subject: *Recommended Sale Price for (i) Rooms on the Beach hotel Complex inclusive of Beach Lands part of the Ocho Rios Bay as contiguous thereto and (ii) Development Lands adjoining the complex being the remainder of Lot 6 together with that portion of the Ocho Rios Bay Beach and (iii) access and landscape area contiguous thereto.*
23. Memorandum, from Phillip Myers – Director, Estate Management to Desmond Malcolm with subject: *Recommended Sale Price for (i) Rooms on the Beach Hotel Complex inclusive of Beach Lands part of the Ocho Rios Bay as contiguous thereto and (ii) Development Lands adjoining the complex being the remainder of Lot 6 together with that portion of the Ocho Rios Bay Beach and (iii) access and landscape area contiguous thereto and as detailed hereunder*

24. Email dated June 2, 2016 from Jenneth Llewellyn to [daryl.vaz@opm.gov.jm](mailto:daryl.vaz@opm.gov.jm) et al. with subject: *Brief – Rooms on the Beach* (UDC's Position paper regarding the divestment of rooms on the beach attached)
25. Letter dated June 15, 2016 from UDC to Minister Vaz.
26. Letter dated August 18, 2016 from Hart, Muirhead Fatta Attorneys-at Law to UDC with subject: *Offer to Purchase Lands situated in Ocho Rios, Saint Ann*
27. Extract of Minutes from UDC Board Meeting held on November 2, 2016
28. Extract from Minutes from UDC Board meeting held October 13, 2016
29. Agreement of Sale dated November 23, 2016 between Montego Beach (1975) Limited and Puerto Caribe Properties Limited
30. Agreement for Sale dated November 23, 2016 between UDC and Puerto Caribe Properties Limited
31. Memorandum dated November 7, 2016 from Audrey Sewell, PS to Dr. Sharon Crooks Director General with subject: *Cabinet Decision: Sale of Ocho Rios Rooms Hotel, Lot 6 and Beach Property at Ocho rios, St. Ann to Puerto Caribe Properties Limited.*
32. Memorandum dated November 14, 2016 from Audrey Sewell, PS to Dr. Sharon Crooks Director General with subject: *Cabinet Decision: Sale of Ocho Rios Rooms Hotel, Lot 6 and Beach Property at Ocho rios, St. Ann to Puerto Caribe Properties Limited*
33. Breakenridge and Associates Report and Valuation on Club Jamaica (Rooms), Ocho Rios St. Ann dated June 22, 2011
34. Breakenridge and Associates Report and Valuation on Club Jamaica (Rooms), Ocho Rios St. Ann dated March 31, 2013
35. Breakenridge and Associates Report and Valuation on Club Jamaica (Rooms), Ocho Rios St. Ann dated July 4, 2014
36. Breakenridge and Associates Report and Valuation on Club Jamaica (Rooms), Ocho Rios St. Ann dated July 15, 2015
37. Allison Pitter and Company Report and Valuation on Beach Lands- Part of Ocho Rios St. Ann dated September 9, 2016
38. Breakenridge and Associates Report and Valuation on Beach Lands, Ocho Rios St. Ann dated September 19, 2016
39. Plan outlining Lands attached to Sale of Lands Part of Ocho Rios Waterfront to Puerto Caribe Properties Limited
40. Receipt no156777 dated November 24, 2016 representing payment of \$1,799,975 from Puerto Caribe Properties Limited
41. Receipt no. 064396 dated November 28, 2016 representing payment of \$559,200 from Puerto Caribe Properties Limited.
42. Policy Framework and Procedures Manual for the Divestment of Government-owned Lands 2015
43. UDC Minutes of Meeting of the Management
44. UDC Minutes of 486<sup>th</sup> Meeting of the Board of Directors held on Wednesday, August 3, 2016
45. UDC Minutes of 488<sup>th</sup> Meeting of the Board of Directors held on Wednesday, November 2, 2016

46. Letter dated October 25, 2016 from the UDC to the Ministry of Economic Growth and Job Creation (MEGJC) re Cabinet Submission of Ocho Rios Rooms on the Beach Hotel, Lot 6 and Beach Property to Puerto Caribe Properties Limited
47. Board Notes dated October 24, 2016
48. Board Notes dated November 2, 2016
49. Lease Agreement dated November 3, 2004 between UDC and Grande Resort Limited for property registered at Volume 1236 Folio 249
50. Deed of Consent to Assignment of Lease dated June 30, 2014, assigning the unexpired Lease between UDC and Grande Resorts Limited to Puerto Caribe Properties Limited
51. Letter dated October 21, 2016 re Draft Submission – Sale of Ocho Rios Rooms Hotel, Lot 6 and Beach Property at Ocho Rios, St. Ann, to Puerto Caribe Properties Limited from the Ministry of Finance and Planning to MEGJC
52. Letter dated November 9 and 10, 2016 re Draft Submission – Sale of Ocho Rios Rooms Hotel, Beach Property at Ocho Rios, St. Ann to Puerto Caribe Properties Limited from the Ministry of Finance and Planning to MEGJC
53. Memorandum dated June 1, 2016 re Lease of Beach Land, Ocho Rios St. Ann registered at Volume 1236 Folio 249 to Puerto Caribe Ltd. (Moon Palace Jamaica Grande) to Mr. Desmond Malcolm, General Manager from Ms. Elizabeth Harrilal, Estate Manager,
54. Letter dated August 7, 2017 from Ms. Maureen Denton, Executive Director and Head Secretariat, Economic Growth Council
55. Letter dated July 3, 2017 re Review of Complaint received regarding Sale of Lands – Moon Palace from Mrs. Audrey Sewell, Permanent Secretary, Ministry of Economic Growth and Job Creation
56. Letter dated June 30, 2017 re: Review of Complaint received regarding Sale of Lands – Moon Palace from Mr. Ransford Braham, Board Chairman, Urban Development Corporation
57. Letter dated June 12, 2017 re Review of Complaint – Sale of Lands, Moon Palace from Mr. Donald Hamilton, Deputy General Manager Finance, Treasury & Investment, Urban Development Corporation
58. Letter dated July 4, 2017 re Review of Complaint received regarding Sale of Lands (Rooms on the Beach and Beach Land property) to the operators of Moon Palace Hotel from Hope Blake, Ministry of Finance and the Public Service
59. Letter dated June 15, 2017 re Review of complaint – Sale of Lands, Moon Palace from Mr. Donald Hamilton, Deputy General Manager Finance, Treasury & Investment, Urban Development Corporation
60. Letter dated June 12, 2017 re Review of Complaint received regarding Sale of Lands – Moon Palace from Mrs. Audrey Sewell, Permanent Secretary, Ministry of Economic Growth and Job Creation
61. Letter dated May 31, 2017 re Review of complaint received regarding sale of Lands – Moon Palace from Mr. Damian Graham, General Manager, Urban Development Corporation
62. Letter dated May 29, 2017 re Review of Complaint received regarding Sale of Lands – Moon Palace Requisition
63. Letter dated August 22, 2017 re Review of complaint received regarding Sale of Rooms on the Beach by the Montego Beach (1975) Limited to Puerto Caribe Properties Limited and

- the Sale of Beach Lands by the Urban Development Corporation (UDC) to the Puerto Caribe Properties Limited from the Most Honourable Prime Minister, Mr. Andrew Holness
64. Letter dated September 6, 2017 re Review of complaint received regarding sale of Lands – Moon Palace from Mr. Douglas Saunders, Cabinet Secretary
  65. Letter dated September 12, 2017 re Review of complaint received regarding sale of Lands – Moon Palace from Mr. Ransford Braham, Board Chairman, Urban Development Corporation
  66. Letter dated February 12, 2018 re Divestment of Lands to Moon Palace from Mr. Damian Graham, General Manager, Urban Development Corporation

## Appendices

- Appendix 1 – Excerpt of Verbatim Notes of Meeting of Review of Complaint received regarding sale of Rooms on the Beach by Montego Beach (1975) Limited to Puerto Caribe Properties Limited and the Sale of Beach Lands by the Urban Development Corporation (UDC) to Puerto Caribe Properties Limited held at the Office of the Contractor General on May 25, 2017
- Appendix 2 – Letter dated August 18, 2016 re: Offer to Purchase Lands Situated in Ocho Rios, Saint Ann
- Appendix 3 - Letter dated October 19, 2016 re: Proposed Sale of Ocho Rios Rooms Hotel, lot 6 and Beach Property to Puerto Caribe Properties Limited – Operators of Moon Palace Jamaica Grande Hotel
- Appendix 4 - Excerpt of Verbatim Notes of Meeting of Review of Complaint received regarding sale of Rooms on the Beach by Montego Beach (1975) Limited to Puerto Caribe Properties Limited and the Sale of Beach Lands by the Urban Development Corporation (UDC) to Puerto Caribe Properties Limited held at the Office of the Contractor General on May 25, 2017