

Any reply or subsequent reference to this communication should be addressed to the **Contractor-General** and the following reference quoted:-

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MEDIA RELEASE

CONTRACTOR GENERAL LAUNCHES SPECIAL INVESTIGATION INTO GOVERNMENT'S DIVESTMENT OF ITS 45% STAKE IN JAMALCO

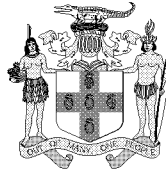
Kingston, Jamaica; June 1, 2010 – Contractor General, Greg Christie, has today formally launched a Special Statutory Investigation into the Government's proposed divestment of its 45% stake in JAMALCO to Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited (Hongfan).

The Contractor General's decision follows the failure and/or refusal of the Ministry of Energy and Mining (MEM) to put the divestment of the shares through a structured, Office of the Contractor General (OCG) monitored competitive process. The MEM has also failed to secure, for examination by the OCG, sworn particulars regarding a BVI registered entity, Port Reliant Limited, which has been represented as Hongfan's 'exclusive agent'.

In previous correspondence, the Contractor General had stated that the circumstances which surround the deal were such that they had raised, for the OCG, very serious concerns and questions on the issues of transparency, value for money, competition, conflicts of interest, propriety, merit and impartiality.

The OCG's decision to investigate the prospective GOJ/Port Reliant/Hongfan deal, has also come on the heels of the OCG's receipt of a letter from the MEM Permanent Secretary in which she has challenged the OCG's jurisdiction over the "divestment of government assets".

In response, the Contractor General has today written to the Prime Minister branding the "eleventh hour" development "to be nothing short of scandalous" and a "retrograde step for the Administration".



“The fact that the Administration has now boldly challenged the jurisdiction of the OCG over asset divestment matters, despite, *inter alia*, its previous record of requesting the OCG to formally investigate similar issues, has called into question the credibility and sincerity of its pronouncements regarding its commitment to fight corruption, to strengthen the country’s anti-corruption and good governance institutional structures, and to ensure transparency, probity, competition, accountability and value for money in public contracting”, Mr. Christie said.

In April 2008, the Administration had requested the OCG to conduct a formal investigation into the divestment of Air Jamaica’s London Heathrow Slots by the previous Peoples National Party (PNP) Administration. Over the past 18 months, the OCG, with the full knowledge of the Government, has also been closely monitoring several Government asset divestments without any opposition whatsoever from the Administration or from the Public Bodies that are involved.

The full text of the Contractor General’s six (6) page letter to the Prime Minister, the Minister of Energy and Mining and the MEM Permanent Secretary, is attached, herewith, for the public record.

-END-

Contact: The Communications Department, Office of the Contractor General of Jamaica
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June 1, 2010

The Hon. Orette Bruce Golding, MP
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10

The Hon. James Robertson
Minister of Mining and Energy, MP
Ministry of Mining and Energy
PCJ Building
36 Trafalgar Road
Kingston 10

Mrs. Hillary Alexander, JP
Permanent Secretary
Ministry of Mining and Energy
PCJ Building
36 Trafalgar Road
Kingston 10

Dear Sirs and Madam:

Re: Formal Notice of Commencement of Special Statutory Investigation – Proposal to Divest the Government of Jamaica’s Forty-Five Percent (45%) Stake in Jamalco

I am in receipt of the Permanent Secretary’s letter of May 27, 2010 which was written in response to my own letter of May 26, 2010 in the captioned regard. The positions which have been articulated by the Permanent Secretary in her letter have left the Office of the Contractor General (OCG) with no alternative but to immediately commence a formal Special Statutory Investigation into the captioned matter and into certain issues which are associated therewith.

I am also in receipt of the Permanent Secretary’s letter of May 31, 2010, under cover of which she has submitted to the OCG a two (2) page document with particulars which appear to relate to one Joseph Chang and one Gary Ho. The referenced document, however, has not satisfied the OCG’s written Requisitions which were directed to the Permanent Secretary for the provision of sworn particulars regarding **Port Reliant Limited**, inclusive of its place and date of incorporation, its beneficial ownership, its agency agreements with



Zhuhai Hongfan Non-ferrous Metals and Chemical Engineering Limited (Hongfan), and its historical business activities, particularly those which relate to its involvement in alumina industry related commercial transactions.

Pursuant to the discretionary powers which are vested in me by Sections 15 (1) and 16 the Contractor General Act, I now hereby formally notify you that the OCG, acting on behalf of the Contractor General, has commenced a formal Special Statutory Investigation into the decision which has been taken by the Government of Jamaica (GOJ) to enter into a prospective Agreement for the sale of the Government's 45% stake in the JAMALCO joint venture to Hongfan.

The OCG's decision to commence this Investigation has been prompted by certain considerations, some of which have been formally documented in the OCG's prior written communications to the Permanent Secretary in this matter. These considerations, when taken together, have raised very serious concerns and questions for the OCG regarding the public interest, transparency, value for money, competition, conflicts of interest, propriety, merit and impartiality in the prospective award of the referenced contract to Hongfan.

In light of the aforementioned, the OCG's formal Statutory Investigation into the referenced matter will be directed, *inter alia*, at making a statutory determination with respect to the following:

1. The full particulars regarding between whom, where, when and how was the proposed transaction negotiated and settled with Hongfan and/or its 'exclusive agent', Port Reliant Limited;
2. The full particulars of all prospective arrangements and deals which were discussed, negotiated and/or contemplated by the GOJ either with Port Reliant Limited or with Hongfan, and the identity of the public officials and persons who were involved in the said discussions and/or negotiations;
3. The full particulars regarding Port Reliant Limited, inclusive of its place and time of incorporation, its beneficial ownership, its agency agreements with Hongfan and its historical business activities, particularly those which relate to its involvement in alumina industry related commercial transactions;
4. The substance and the implications of any oral or written representations, regarding the matter, which may have been made to the OCG by certain public officials, inclusive of (a) Mr. Howard Mitchell, Attorney-at-Law and Chairman of the Jamaica Bauxite Institute (JBI), Chairman of the Bauxite and Alumina Trading Company (BATCO), Chairman of the Jamaica Bauxite Mining Limited (JBM) and Chairman of the National Housing Trust (NHT), (b) Mrs. Marcia Forbes, the former Permanent Secretary in the Ministry of Energy and Mining (MEM), and (c) Mrs. Hilary Alexander, the current MEM Permanent Secretary;
5. The substance and the implications of any representations, regarding the matter, which may have been made to the OCG, whether directly or indirectly, by other persons;
6. The personal, business and/or professional relationships which currently exist or which have previously existed between any public official or person who may have been involved, or who is currently involved, whether directly or indirectly, in any of the aforementioned prospective arrangements;



7. The reason or reasons why the MEM has failed &/or refused to subject the referenced asset divestment to a structured, OCG monitored public competitive tender process as other Public Bodies have done;
8. Whether the proposed transaction has been negotiated and/or settled in full compliance with the provisions of the GOJ's Asset Divestment Policy;
9. Whether the proposed transaction has been negotiated and/or settled in compliance with the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act, namely that Government contracts must be "*awarded impartially and on merit*" and "*in circumstances ... which ... do not involve impropriety or irregularity*";
10. Whether there is any evidence which would suggest that any public officer or person, whether by his or her conduct or participation in any of the above-referenced prospective arrangements, may have contravened the Corruption Prevention Act and/or Section 29 of the Contractor General Act;
11. Whether any other Laws of Jamaica, inclusive of the Public Bodies Management and Accountability Act and the Financial Administration and Audit Act, may have been contravened by any public officer who was involved in this matter, or whether there is evidence of a breach of duty or misconduct on the part of any such public officer.

Pursuant to Section 15 (1) of the Contractor General Act, a Contractor General is empowered to conduct an Investigation, *inter alia*, into "*tender procedures relating to contracts awarded by public bodies*" and/or "*the award of any government contract*".

You should also be guided particularly by the provisions that are embodied in Sections 4, 16, 17, 18, 20, 21, 28 and 29 of the Contractor General Act.

In the Permanent Secretary's letter to the OCG of May 27, 2010, she has made reference to "*...the legal opinion that the divestment of government assets is a matter of policy that does not fall within the jurisdiction of the OCG*".

On the assumption that the Permanent Secretary, as the lawfully appointed Accounting Officer of the MEM, has spoken on behalf of the GOJ, I am obliged to immediately place the following upon the formal record:

1. The OCG regards the Permanent Secretary's statement to be nothing short of scandalous. This is so particularly in light of the fact that (a) the Permanent Secretary is a senior public official, and (b) the Administration, by its own overt positions, has tacitly and openly supported, in unequivocal terms, the contention that the OCG indeed has the authority, under the law, to monitor and to investigate Government contracts which involve the sale or divestment of public assets.
2. The statement of the Permanent Secretary, coming as it has at the eleventh hour, must be viewed with deep concern and heightened suspicion. It is, undoubtedly, a retrograde step for the Administration.
3. The OCG wishes to assert, without any equivocation, that it is not only lawfully empowered by the provisions of the Contractor General Act to monitor and to investigate Government contracts which involve the sale or divestment of publicly owned assets, but that it is indeed mandated by law to do so.



4. The OCG is so fortified in its view – a view that it has consistently upheld since its very inception in 1986 – that it is prepared to vigorously challenge any opposing view in the Courts of Jamaica and beyond should this become necessary.
5. As evidence of the OCG’s contention that the Permanent Secretary’s – and, by extension, the GOJ’s statement – should be cause for public outrage and alarm, the OCG wishes to enumerate, hereunder, the following considerations:
 - (a) The Permanent Secretary’s statement is diametrically opposed to everything that the current Administration has said that it stands for on issues which relate to transparency and accountability in governance, and transparency, competition and probity in public contracting.
 - (b) It is instructive to record that on May 24, 2007, the OCG commenced a formal Statutory Investigation into the circumstances surrounding the divestment, by the GOJ, of its 49% stake in the Petrojam refinery to Petroleos deVenezuela S.A. (PDVSA). The Investigation was prompted by electronic media reports in which the then Leader of the Opposition and current Prime Minister, the Hon. Bruce Golding, had alleged that the referenced shares, which were being divested by the then Peoples National Party (PNP) Administration, were being sold at an undervalued price. The OCG’s Investigation, which involved, among other things, written communications between the OCG and Mr. Golding, was conducted and completed without any opposition whatsoever from Mr. Golding. The OCG’s Report of Investigation in the matter, which was dated May 2008, and which was formally tabled in both Houses of Parliament, concluded that there was no merit to Mr. Golding’s allegations.
 - (c) At the outset of the OCG’s monitoring of the Government’s divestment of the publicly-owned Jamaica Sugar Industry Assets, the Minister of Agriculture, the Hon. Minister Christopher Tufton, by way of letter which was dated January 17, 2008, challenged the OCG as to whether it had jurisdiction in State asset divestment matters.

The OCG, by way of letter that was dated February 7, 2008, vigorously insisted upon its authority and responsibility, under the law, to monitor the divestment of all State assets, inclusive of the subject Sugar Industry Assets. The OCG’s letter was formally copied to several State authorities, inclusive of the Prime Minister, the Hon. Bruce Golding, the Attorney General, the Cabinet Secretary and the Chairman of the Sugar Industry Enterprise Team.

Curiously and instructively, within two months of the date of the OCG’s letter to Minister Tufton, the OCG received a written request from Senator the Hon. Don Wehby, the then Minister with portfolio responsibility for the national airline, requesting that the OCG should investigate the divestment of Air Jamaica’s Heathrow Slots. The Slots had been divested in 2007 by the former PNP Administration, prior to the September 3, 2007 General Elections.

In his letter, which was dated April 8, 2008, Senator Wehby couched his request in the following terms: *“In keeping with the need for transparency and accountability in the disposal of public assets, I am referring the matter to your offices such that any appropriate review and action may be taken”*.



It is also instructive to note that Senator Wehby's request for the OCG to investigate the divestment of Air Jamaica's Heathrow Slots was followed by a more intense request that was publicly made by the current Administration from the very Floor of the House of Representatives itself on April 23, 2008. This further request, for a formal Investigation to be conducted by the OCG into the matter, was made by the Hon. Audley Shaw, the Minister of Finance and the Public Service, during his closing speech in the 2008/2009 Budget Debates.

It is matter of public record that the OCG did in fact conduct and complete the requested Investigation and did in fact submit a formal Report thereon that was tabled in the House of Representatives in April 2009 and in the Senate in May 2009.

- (d) In his Statement to the Parliament of Jamaica on February 10, 2010, the Hon. Bruce Golding, Prime Minister of Jamaica, whilst speaking on the subject of the Privatization of Air Jamaica, publicly acknowledged the OCG's authority under the law to monitor the divestment of State assets when, in defence of the GOJ's then stated positions on the Air Jamaica divestment, he reiterated the following verbatim statements which were conveyed by the OCG to the staff of Air Jamaica on February 1, 2010:

"The OCG has been monitoring the Air Jamaica divestment process from as early as 2008 April... The OCG has been monitoring the divestment process for conformance with the documented rules, pursuant to the provisions which are contained in Section 4 of the Contractor General Act."

- (e) In a letter which was dated January 14, 2010, the OCG wrote to the Cabinet Secretary, Ambassador Douglas Saunders, to formally request, *inter alia*, "a comprehensive list of all (Government) assets that are slated for divestment for the financial year 2010/2011" further to the OCG's stated intention to monitor the divestment of the said assets "pursuant to Section 4 of the Contractor General Act".

The OCG's letter was copied to the Prime Minister, the Permanent Secretary in the Office of the Prime Minister and the Financial Secretary. There was no objection to the request. By way of letter which was dated February 16, 2010, the Cabinet Secretary responded positively to the OCG's request by providing it with a Schedule in which was itemized 81 different public assets which are slated for divestment in the 2010/2011 financial year. It is instructive to note that, in his letter, the Cabinet Secretary also made specific mention of "GOJ shares (45%) in JAMALCO – Ministry of Energy and Mining". This is the very asset in respect of which the MEM Permanent Secretary has now suspiciously challenged the authority of the OCG to monitor or to investigate.

- (f) Finally, the OCG, during the past 18 months, has been working very closely with the Office of the Prime Minister, the Development Bank of Jamaica (DBJ), the Urban Development Corporation (UDC), the Ministry of Finance and the Ministry of Transport, to monitor their respective divestments of the below-listed state owned assets:

- (i) Shares in Pegasus Hotels of Jamaica Limited (59.81%)
- (ii) Shares in Rooms on the Beach (100%)
- (iii) Shares in Grand Lido – Booby Cay (50%)



- (iv) Mavis Bank Coffee Factory Limited
- (v) Davon Uniforms International Limited (DUIL)
- (vi) Sugar Industry Assets
- (vii) Norman Manley International Airport (NMIA)
- (viii) Oceana Hotel Complex
- (ix) Forum Hotel Complex
- (x) Air Jamaica Limited

It is instructive to note that at no time whatsoever, during the referenced 18 month period, has any challenge been raised by the GOJ regarding the legitimacy of the exercise of the OCG's lawful authority to monitor any of the above-referenced asset divestments.

The fact that the Administration has now boldly challenged the jurisdiction of the OCG over asset divestment matters, despite, *inter alia*, its previous record of requesting the OCG to formally investigate similar issues, has called into question the credibility and sincerity of its pronouncements regarding its commitment to fight corruption, to strengthen the country's anti-corruption and good governance institutional structures and to ensure transparency, probity, competition, accountability and value for money in public contracting.

The OCG regards this matter to be of such grave national import that it will formally bring same to the attention of the members of both Houses of Parliament and the Media.

The OCG's Investigation team in this matter will be led by Ms. Latoya Harris, Senior Special Investigator, who will be directly responsible to me for the conduct of the Investigation. Ms. Harris will, in due course, communicate formally with each of you as well as with other persons of interest to advise of the OCG's Investigation process and the Statutory Requisitions which will be issued in the pursuit of its conduct of this Special Quasi-Judicial Investigation.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: Hon. Delroy Chuck, MP, Speaker of the House of Representatives
Senator Dr. The Hon. Oswald Harding, OJ, CD, QC, President of the Senate
Hon. Audley Shaw, MP, Minister of Finance and the Public Service
Senator the Hon. Dorothy Lightbourne, Attorney General and Minister of Justice
Mr. Douglas Leys, QC, Solicitor General
Ambassador Douglas Saunders, CD, Cabinet Secretary
Dr. Wesley Hughes, CD, Financial Secretary
Mr. Howard Mitchell, Chairman, JBI, BATCO and JBM
Mr. Peter Millingen, Chairman, Clarendon Alumina Production Limited (CAP)
Mr. Milverton Reynolds, Managing Director, Development Bank of Jamaica
Ms. Latoya Harris, Senior Special Investigator, OCG