

# FINSAC LIMITED

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January 29, 2010

Commission of Enquiry  
The Jamaica Pegasus Hotel  
81 Knutsford Boulevard  
Kingston 5

**Attention: Mr. Fernando DePeralto**

Dear Sirs:

**Commission of Enquiry into the Collapse of Financial Institutions in  
Jamaica in the 1990s**

We refer to your letter of November 6, 2009 and our responses of November 18, and 26, 2009. As further requested by the Commission, we now provide additional information, as follows:

**Restructuring and sale of institutions**

4. Who was the valuator of each of the institutions sold by FINSAC?

~~The names of the valutors for these assets are included in the attached spreadsheet.~~

*We should mention that as part of its intervention into the various financial institutions, Finsac injected capital in the form of ordinary and preference shares in these companies. The preference shares were later converted into ordinary shares which in some instances resulted in Finsac being a majority shareholder in these companies, namely NCB, Union Bank and Life of Jamaica. This made sale more feasible as prospective purchasers would have a controlling interest.*

6. Who prepared the documentation on the offer for sale of each institution?

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*The names of the financial advisors and legal advisors involved in the preparation of the documentation on the offer for sale are included in the attached spreadsheet.*

### **Debts and securities transferred from Institutions**

18. What was the gross value of the securities transferred from each failed institution to FINSAC?

*When loans were acquired by Finsac from the failed institutions, they provided a listing of the balances along with the credit and security files for each, where available. The failed institutions did not provide a listing or the gross values of the securities held and no list was prepared within Finsac with this information.*

*We mention however that since the loans were acquired by Finsac:*

- a) some debtors would have settled their accounts and their securities released;*
  - b) some securities would have been sold (and we have provided to the Commission a list of real estate sold;*
  - c) Some loans and mortgages were sold and those securities transferred with the loan files; and*
  - d) in preparation for the sale of the remaining portfolio, OCWEN was engaged to value the loans and hence we could only provide an estimate of security values as at May 2001 when the loans were valued, by adding the figures at b), c) and d).*
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20. What was the gross amount of debts that were forgiven?  
22. Who were the persons whose debts were forgiven?

*We have conducted a research and have not located any one document which provides a comprehensive list of all the debts that were forgiven and persons whose debts were forgiven. We were however able to identify a summary of the list of loans submitted to the Finsac board for compromise under the Window of Opportunity in March/April 2001.*

Just prior to the commencement of advertisement for sale of the loan portfolio, in March 2001, the Government announced that Finsac would provide a final "Window of Opportunity" for the debtors to seek to arrange compromises for settlement of their debts. A more favourable position was adopted by Finsac with a view to benefiting debtors before the loans were sold. These compromises could have been settled by transfer of property/ies or payment of cash in full and final settlement of the debt.

The report doesn't state how many proposals were received by Finsac but it shows that over 220 were approved. Most had proposed settlements within three months, with a few extending up to six months and beyond. This was another golden opportunity for debtors to finalize "deals" with Finsac so that even if the accounts were not settled prior to sale of the portfolio, the purchaser would be bound to honour these agreements as long as debtors maintained their payments.

In summary, the total balances of the loans approved for partial forgiveness was J\$4.1 billion, with J\$2.5 billion to be written off and payment of J\$1.6 billion to be made to Finsac in settlement of the various debts. Sadly, by the beginning of December 2001 when the report was done, Finsac had received only \$305.7 million, a mere 18% of the proposed settlement amounts! If full payment was not received within the stipulated timeframe and no extension was agreed, the loan would revert to its original balance and sold to JRF. A copy of this report is attached.

I must make the final point that these proposals were submitted to Finsac by individual debtors and one would expect that debtors would have fully assessed their position prior to submitting proposals, as to how they would meet the settlement they were seeking approval for. It is stated in the file in August 2001 that some debtors ceased payment under the Window of Opportunity as they were "awaiting the much-publicized sale of the portfolio in anticipation of a **better deal** when negotiating with the new owners".

24. Who was the valuator of each of the non-financial institutions sold by FINSAC?

25. Who prepared the documentation on the offer for sale of each institution?

*FINSAC intervened in some financial institutions and among their assets acquired by Finsac were non-performing loans, real estate being held as investment properties and non-financial subsidiaries.*

*Finsac never sold any of these non-financial institutions and instead over the years they were being liquidated.*

*We have provided to the Commission a list of these Finsac-owned / controlled investment properties that were sold but did not locate a document that provides details of who did the valuations or who prepared the documentation on the offers for sale. There are 350 such properties and in order to provide this information, some additional time would be required for each sale file to be reviewed and the required information compiled.*

30. Who was the valuator of each of the properties sold by FINSAC?

*The names of the valuers for the loan-related properties sold by Finsac are included in the attached spreadsheet.*

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31. Who prepared the documentation on the offer for sale of each property?

32. Who reviewed the responses to the offer for sale of each property?

33. Who selected the persons with whom negotiations should be done in respect of each property?

34. Who made recommendations on the price and terms of sale of each property?

35. Who approved the price and terms of sale of each property?

*The procedures for sale of loan-related properties are stated here in detail for information purposes:*

- a) *Demand is made on debtor who is in default giving him fourteen days to settle the debt (or make arrangements so to do);*

- b) *If satisfactory response is not received, Statutory Notice of Sale is then issued to the debtor by registered mail. The Notice states debtor's name and address, details of the outstanding debt and the property charged, gives thirty days to settle the debt or make arrangements so to do and advises that sale will commence if response is not received within the 30 days.*
- c) *Upon expiration of Statutory Notice, if no response is received, a valuation is obtained from one of the approved valuers. The forced sale value which could be as low as 80% of market value is used as the reserve price;*
- d) *Property is then placed with an auctioneer (also from Finsac approved list) for sale by public auction;*
- e) *If an offer equal to or above the reserve price is obtained, the auctioneer provides copy of bid sheet and details of the prospective purchaser to the Asset Disposal Unit at Finsac;*
- f) *A submission is made to the managing director for approval and subsequently sent to the board for ratification;*
- g) *After approval by the managing director, the in-house attorney prepares agreement for sale and the sale proceeds normally;*
- h) *If the reserved price is not obtained at the auction, property is withdrawn and Finsac is advised and sent a copy of bid sheet;*
- i) *The particulars of the property, with the **market** value, are sent to all approved brokers with instructions to sell by private treaty;*
- j) *Broker then secures purchasers by advertisements or other means by negotiating price bearing in mind the market value;*
- k) *The broker sends all reasonable offers received to the Asset Disposal Unit and if the offer is within the "ball-park" figure, a submission is made to the managing director for approval (which is then sent to the board for ratification) or sent directly to the board for approval, depending on the property value.*
- l) *If approved, the in-house attorney prepares the agreement for sale and the sale proceeds as normal;*
- m) *External attorneys were engaged to prepare agreement for sale of the larger properties, which require closer scrutiny;*
- n) *If not approved or if the figure was too low to start with, the broker is advised to seek an improved offer;*
- o) *The list of properties available for sale is reviewed periodically to remove the ones that are sold and the revised list again sent to all brokers.*

We should mention that all Real Estate Brokers could become approved by applying to be added to the list. The requirements were that they should be licensed and be in good standing with the Real Estate Board, provide satisfactory bank reference, copies of appropriate registration documents (memorandum/articles of association and certificate of incorporation for companies or registration of Business Name for Partnerships) and a copy of the latest financial statements.

This list is also the approved list for valuers and auctioneers.

### **Transfer of debts and securities to JRF and others**

39. What was the gross value of securities pledged by debtors whose debts and securities were transferred to JRF and each other party?
41. If so who was the valuator and what value was placed on the securities?

As mentioned previously, Finsac sold debts to four institutions, namely Jamaica National Building Society, Victoria Mutual Building Society, National Investment Bank of Jamaica and Jamaican Redevelopment Foundation.

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a) We did not locate a list for the gross value of the securities for the loans sold to the building societies. However, bearing in mind that

- loans granted by building societies are usually fully secured;
- the sale price agreed between these two institutions and Finsac was just about 97 cents in the dollar;
- these mortgages would have been granted some time earlier; and
- that the total balances sold to the building societies was about \$645 million,

I would estimate that the gross value of the securities for these loans sold was in the region of \$710 million.

- b) *The file indicates that seven loans with combined principal and interest balances totaling approximately \$320 million were sold to the NIBJ. The file states that combined security value was \$162.2 million and that Finsac held second mortgages in some cases and in one case the mortgage ranked parri passu with mortgages granted by NIBJ. The file was not clear whether this \$162.2 million was the total value of the properties or whether it was Finsac's security value only.*

*Interestingly, of the \$162.2 million, \$24 million represented the security value for one debt which is an interest balance of \$1.2 million!*

- c) *As previously mentioned, OCWEN was engaged by Finsac to value the loan portfolio prior to sale. We were not able to locate a valuation report but we reviewed a diskette prepared by OCWEN, and it reflected that the aggregate principal loan balance as at May 2, 2001 was approximately J\$18.6 billion and the collateral value was J\$11 billion, i.e. about 59% of the principal loan balance.*

*It was mentioned in a previous report that OCWEN placed a value of US\$215 million on the loans following its valuation. Having now reviewed this diskette, it should be noted that that figure was incorrect and should really have been J\$4.7 billion or US\$103.6 million. However another document was seen wherein it is stated that OCWEN projected a gross collection of US\$170 million from the portfolio over four years, while Dennis Joslin Company projected US\$215 million from which Finsac would receive US\$90.5 million.*

80. *Were sales of delinquent borrowers' properties by way of Public Auction? If so, how many by Public Auction and how many by Private Treaty?*

*Please refer to the response for question 35 above for the process employed when delinquent borrowers' properties were being sold. The comprehensive list available of properties sold for delinquent borrowers did not capture whether sale was by way of public auction or private treaty.*

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*In order to provide this information, a list will need to be compiled after reviewing the sale files for the 102 such properties sold.*

81. How many delinquent borrowers were there with secured debts?  
82. How many delinquent borrowers were there with unsecured debts?

*From our research, we were unable to locate a comprehensive listing of secured and unsecured debts. However, in reviewing the OCWEN diskette containing information on the valuation done, we were able to estimate that just over 21, 000 unsecured loans existed, comprising mainly credit cards and overdrafts, leaving about 2,000 secured, comprising the total loans sold to JRF.*


83. Were any lawsuits brought to recover debts, and if so, how much was recovered consequent on such litigation?

*Some law suits were brought by Finsac to attempt to recover debts. From my research I did not locate a file containing a list of such cases and from my recollection Finsac did not maintain a list of suits commenced against debtors. In any event, these matters would have since been sold to JRF who would have assessed whether to continue the matters.*

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Yours sincerely,

**FINSAC LIMITED**

  
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General Manager

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