REPORT ON THE FORENSIC AUDIT AND REVIEW

OF THE OPERATIONS OF

NATIONAL INDUSTRIAL AND COMMERCIAL INVESTMENTS LTD

CONSULTANT: S. A. GOOLSARRAN

DATE: 26 October2015

Executive Summary

1. During the period 1991 to 2001, the Board of Directors had interpreted NICIL's mandate in a manner consistent with the wishes of the Legislature. That mandate relates to NICIL performing a monitoring role for Government's investments and ensuring that all proceeds from such investments were collected and paid over to the Consolidated Fund. Such interpretation gained the full support of the Auditor General and was consistent with the explanations provided by the Minister of Finance at the time NICIL was established.

2. NICIL's retention of dividends received from public corporations and other entities and the proceeds from the sale of assets from 2002 onwards violates not only Article 216 of the Constitution but also the relevant sections of the FMA Act and successive years' Appropriation Acts. In addition, NICIL's recognition of these funds as its revenues is a breach of the fundamental accounting concept of matching costs with revenue since the Government's investments were transferred to NICIL as zero consideration. In other words, NICIL did not purchase these investments from the Government for which it claims ownership.

3. The Executive Director of NICIL acted unilaterally in the interpretation of NICIL's mandate following the signing of the Management Cooperation Agreement on 28 December 2001. That interpretation saw the retention of $26.858 billion covering the period 2002 to 2014, representing dividends received from public corporations and other entities as well as divestment proceeds, thereby denying the Treasury of the much-needed funds to execute government programmes and activities, as approved by Parliament.

4. The Board must also accept culpability in that, although it advised against the Executive Director's interpretation of NICIL's mandate, it took no steps to prevent the retention of funds that previously were paid over to the Treasury. Cabinet must also not escape responsibility for approving an agreement that violates constitutional and legislative requirements.

5. Having intercepted State revenues and treating them as its own, NICIL proceeded to incur public expenditure on various projects, including the Marriott Hotel, without parliamentary approval, in violation of Article 217 of the Constitution. Most importantly, it and has defied the wishes of the National Assembly as contained in Resolution 32 of 17 December 2012 requiring NICIL to pay over to the Consolidated Fund "all revenues and

proceeds from the sale of all State properties, except for those necessary administrative costs for maintaining and running its operations annually".

6. To compound matters, NICIL received amounts totaling $7.320 billion during the period 2007-2012 from other government agencies to effect payment for works undertaken on behalf of the Government. NICIL was essentially carrying out a paymaster function that is typically associated with the operations of the Treasury Department of the Ministry of Finance and was therefore functioning as a "parallel" Treasury.

7. NICIL as well as the government agencies involved was complicit in circumventing the requirement of Article 217(3) of the Constitution which prohibits withdrawals from any public fund other than the Consolidated Fund to meet public expenditure without parliamentary approval. This cross-transfer of funds among State institutions undermines authority of Parliament, and to the extent that Cabinet sanctioned this arrangement, it cannot escape liability. This practice has also resulted in a significant under-reporting of expenditure in the public accounts.

8 As regards the sum of $3.757 billion received from GGMC for the maintenance of hinterland roads, the minutes of NICIL's board meetings of 13 November 2013, 30 April 2014 and 11 September 2014 recorded the Executive Director as having stated that NICIL was experiencing difficulties in obtaining supporting documents from Ministry of Public Works for payments made and that material amounts remained unaccounted for.

9. In relation to the expenditure on the 2007 Cricket World Cup, NICIL had transferred amounts totaling $650 million to the Local Organizing Committee but failed in its responsibility of ensuring that there was proper accountability for the amounts transferred.

10. As regards the construction of the 44 High Street property, the contract was awarded in 2007 but at the time of reporting the building remained substantially incomplete. The building was abandoned, and the structure was expected to be torn down because the floors were not constructed to the required specifications. As the "Project Executing Unit", NICIL's role was to ensure that the works were executed according to the agreed specifications and had again failed to discharge its responsibility for this project, resulting in some $350 million of taxpayers' funds being wasted.

11. NICIL sold the Government's investment in GT&T in 2012 for US$30 million of which the sum of US$25 million was received. The balance of US$5 million was to be paid within a period of two years. During the period 2002-2011, the Government received $5.261 billion in dividends from these shares, or an average of $526.1 million per annum. By disposing of them, the Government would have lost $1.578 billion, equivalent to US$7.616 million, in revenue during the period 2012-2014. The purchaser would have therefore recovered the cost of his/her investment in less than 12 years by way of dividends while at the same time retaining the investment. This calls into question the merit in the Government's decision to dispose of GT&T shares.

12. The evidence indicates that in addition to the disposal of GT&T shares, there was an acceleration of the disposal of State properties/assets in order to secure financing for the construction of the Marriott Hotel. In particular, of the amount of $9.788 billion representing the sale of State assets/properties during the period 2002-2014, sums totalling $7.142 billion, or 73%, relate to the period 2011-2012. NICIL's financing of the construction of the hotel during the period 2010-2013 was $5.371 billion, comprising $800 million share capital, $3.316 billion (equivalent to US$15.5 million) in interest-free loan and $1.255 billion in advances. As at 7 July 2015, NICIL's advances increased to $4.521 billion, giving a total funding of $8.637 billion, equivalent to US$41.682 million.

13. The evidence also suggests that the removal and relocation of the NCN transmission tower were done to facilitate the housing development of the area. Instead of accumulating all the costs associated with the Sparendaam Project, including the market value of the land, in a special account to be applied in arriving at the price to be charged per house lot, NICIL's board and Cabinet were complicit in charging the related costs of $257.049 million to NCN in the form of equity investment, and to CH&PA in the form of receivable. The fact that several key Cabinet members are the beneficiaries of the house lots, renders it highly inappropriate for the very Cabinet to approve of the charging of the expenditure to the accounts of NCN and CH&PA.

14. During the period 2002-2014, 35 orders were issued vesting State properties/assets in NICIL, 13 of which were not reflected in NICIL's balance sheet. It was evident that these assets/properties were kept outside of the balance sheet because they were identified for disposal. More importantly, the Minister has applied the provisions of Section 8 of the Public Corporations Act in the transfer of State assets/properties vested in NICIL to third parties. However, the notification of 18 July 2000 issued by the then President made reference to the application of Section 5 only to NICIL and not Section 8. Therefore,

the transfer of assets/properties by NICIL to third parties by way of sale or otherwise does not appear to have a legal basis.

15. There is evidence that properties were disposed of on the same day, or within days, they were vested in NICIL, suggesting clearly that the purchasers had already been identified without any form of competitive bidding. In addition, according to NICIL's publication "Privatization in Tables: Phase II – (1993-2011)" during the period 1995 to 2011, NICIL disposed of 65 State assets/properties. A comparison of the sale proceeds with the valuations of the properties shows variances of on average of $1 million. In particular, in respect of 30 properties, the valuation and sale proceeds were identical while in respect of 22 properties the difference was a mere $2 million. These observations reflect a remarkable coincidence and raise serious doubts about whether or not valuations were carried out.

16. Despite the size and complexity of its operations, NICIL does not have its own procurement rules, which is key requirement of the Procurement Act. In the circumstances, it would have been more appropriate for NICL to involve NPTAB in the assessment of tenders received for the award of contracts. Instead, the assessment of bids was done internally and would have lacked the level of independence, especially for large projects such as the Marriott Hotel.

17. Serious concern is expressed in relation to the selection of the Contractor and the Engineering Supervisory Consultant. The former was selected at a time when there were allegations of corruption in Trinidad and Tobago. NICIL was yet to provide details of the second bidder's original and revised bid price to enable me to confirm the basis of the selection of the contractor. In addition, the consulting firm had faced criminal charges in a New York court and was disqualified from participating in the projects of the School Construction Authority until July 2015.By court order; the Head was relieved of his position at the time he signed the contract in August 2012.

18. At the end of June 2012, NICIL was in default for eleven years in terms of having audited financial statements. Concerned about the state of accountability of NICIL in general, and the lack of transparency and accountability associated with the disposal State assets in particular, the National Assembly passed resolution No. 14 dated 27 June 2012 calling on the Minister of Finance to provide it with all outstanding audited accounts of NICIL.

19. On 27 September 2012, that is, three months later, the Auditor General issued his reports on the financial statements of NICIL for the years 2002, 2003, 2004 and 2005.

These statements as well as those of subsequent years were given unqualified opinions i.e. a “clean bill of health”, notwithstanding serious concerns raised in this report which would have had a significant impact on the financial statements of NICIL.

20. A number of discrepancies and inconsistencies were observed in relation to the minutes of the annual general meetings of NICIL, and the evidence suggested that the minutes were prepared only when they were requested.

21. Having regard to the findings contained in this report and my conclusions, I make the following recommendations:

(a) Institute criminal and/or disciplinary actions against all those responsible for the interception of State revenues totalling $26.858 billion in violation of Articles 216 of the Constitution and the related sections of the FMA Act. Disciplinary action is provided for under the following sections of the FMA Act: (a) Section 48 – Misuse of public moneys; (b) Section 49 – Liability for loss of public moneys; and (c) Section 85 – Liability of official;

(b) Institute criminal and/or disciplinary actions against all those responsible for violating Article 217 of the Constitution by causing expenditure to be incurred out of State resources without parliamentary approval;

(c) Institute disciplinary action against all those responsible for ignoring National Assembly Resolution No. 32 of 17 December 2012 requiring NICIL to pay over to the Consolidated Fund “all revenues and proceeds from the sale of all State properties, except for those necessary administrative costs for maintaining and running its operations annually”;

(d) Institute criminal/disciplinary actions against all those responsible for other violations, including the failure to properly account for State resources under their control;

(e) Terminate the Management Cooperation Agreement of 28 December 2001, as provided for under the Agreement;

(f) Liquidate NICIL as a private limited liability company under the Companies Act 1991 and appoint a Receiver to oversee the liquidation process;

(g) Re-activate the Privatization Unit as a department of the Ministry of Finance to manage the Government's residual investments after liquidation proceedings have completed. In this regard, the existing staff of the NICIL could be transferred to the Ministry of Finance;

(h) Refer this report to the State Assets Recovery Unit with a view to recovering any State assets/properties that might have been improperly and illegally transferred to third parties; and

(i) Commission a further independent audit to examine in detail transactions over the last six years. (Given that the scope of this assignment covered the period 2001 to May 2015, a transactional approach could not have been taken.) In addition, considering the hostile, arrogant and demeaning response to my preliminary draft report as well as certain restrictions placed on this audit, it would be desirable for the Executive Director and the Deputy Executive Director to proceed on leave to facilitate the transaction audit.

Table of Contents

Report on the forensic audit and review of the operations of the National Industrial and Commercial Investments Ltd.

1. Background

1.1 The Government of Guyana has indicated that it was reviewing the performance and efficiency of publicly owned entities, statutory bodies, projects and activities financed by or through public funds. Accordingly, it has commissioned forensic audits and reviews of the operations of a number of entities, and has engaged my services to undertake such an audit and review of the National Industrial and Commercial Investments Ltd. (NICIL).

2. Terms of reference

2.1 The terms of reference for the engagement are as follows:

(i) To determine NICIL's adherence to and fulfillment of principles of corporate governance in all aspects, including its interpretation of its mission, adherence to legal or statutory and policy instruments and good practices;

(ii) To assess and test systems and detect any instances of corporate malfeasance and inefficiency for remedy and/or judicial interventions and systems realignment;

(iii) To determine the authenticity and validity of significant commercial and financial transactions entered into by NICIL with related parties, suppliers and customers, and measure the extent of potential prejudice the entity may have suffered through such dealings, if any;

(iv) To carry out a comprehensive financial systems review which should look at all systems, decisions and practices which have underpin NICIL's finances, and test and assess financial discipline at all levels. Without limitation, the Consultant should:

(a) Review and examine all financial books and records of NICIL as required to undertake such review and to obtain such clarifications and explanations as may be required in relation to such books and records;

(b) Review all contract administration and approval processes in relationship to the expenditure of funds;
(c) Review all material expenditures and contracts made by NICIL and obtain all necessary information and explanations relating to such expenditures and contracts;
(d) Examine all areas, including budgeting, financing, expenditure, management of revenue inflows, trade terms, procurement or purchase decisions and supply chain management;
(e) Examine NICIL's assets management system, including its fixed assets, their disposal and management or deployment;
(f) Examine NICIL's marketing, production and commissioning policies, systems and agreements to determine their integrity, efficacy and responsiveness; and
(g) Examine NICIL's archiving policy both by way of records keeping and as a performing asset that yields revenue for the entity; and

(v) To recommend statutory, legal or organizational changes required to identity and prevent any recurrence of improprieties.

2.2 The audit and review may be extended to cover any or all of the following:

(i) To conduct a human resources audit which should include key issues such as manpower policy and needs determination, selection and recruitment regarding philosophy, grading, departmentalization, payroll system and management, performance culture and the whole policy on advancement and promotions, labour issues, skills development and deployment. Examine current initiatives, their access and distribution and their impact on skills attraction and retention on staff motivation, performance and commitment;

(ii) To determine the planning culture at NICIL;

(iii) To determine NICIL's manpower and skills development policies to equip its key functional areas with strategic competences needed for migration to a digital area and beyond;

(iv) To recommend a business model, development and innovativeness which should help a restructuring exercise by gauging NICIL's capacity to align itself with and keep adjusting to the larger macro-environment through periodic strategic interventions; and

(v) To gauge NICIL's readiness to do business in an environment characterized by open competition locally, regionally and globally and the removal of statutory sources of revenue, including subsidies.

3. Scope and methodology

3.1 NICIL was incorporated July 1990 and operated as an individual company until the end of 2001.Following the signing of a Management Co-operation Agreement between the Government of Guyana, NICIL and the Privatization Unit of the Ministry of Finance, NICIL began to prepare consolidated financial statements with effect from 2002.In accordance with the above terms of reference, I carried out the audit and review in relation to the operations of NICIL as an individual company and not those of the entities forming part of the consolidation.

3.2 As per terms of reference, the period covered by the audit and review was from **1 January 2001 to 31 May 2015.** However, in terms of adherence to the principles of corporate governance and NICIL's interpretation of its mandate, I have found it necessary to refer earlier periods commencing the date when NICIL was incorporated. This I did through a careful study of the incorporation documents, the Management Co-operation Agreement, the minutes of the meetings of the Board of Directors, and holding detailed discussions with senior management. In addition, I reviewed the transcripts of the debates on NICIL during the tenth Parliament, and held a meeting was held with Mr. Carl Greenidge, the then Minister of Finance when NICIL was incorporated, to ascertain the Government's thinking when the company was established.

3.3 I conducted my review in three phases – planning, execution and reporting. In the planning phase, I sought information about NICIL's operations mainly through: the use of questionnaires; detailed examination of documentation provided; and discussions with senior management. I then prepared a detailed audit plan setting out the procedures I would follow, and the various tests I would carry out in order to arrive at conclusions relative to the terms of reference.

3.4 I held an entry conference on 9 June 2015 with the senior management to discuss, among others, the terms of reference for the audit and review as well as my interpretation and understanding of them in relation to NICIL's operations. Following the entry conference, I began planning the assignment followed by the execution of the field work.

3.5 My general approach to undertaking the assignment was the use of questionnaires in order to solicit as much information as possible and to obtain further understanding of NICIL's operations. I requested and obtained supporting documents and had additional discussions were held with key management personnel. A key aspect of the review was the quantification of the extent to which dividends received from public corporations, proceeds from the sale of State assets, and special transfers ceased to flow to the Consolidated Fund with effect from 2002; and ascertaining whether there was proper accountability for such funds. I used NICIL's audited financial statements as a basis for making the determination, supported by a detailed examination of the supporting documents.

3.6 I concluded the field work on 31 August 2015 and submitted the draft report to the Executive Director of NICIL who provided a response on 19 October 2015.I then finalized my report and submitted it to the Minister Finance on 26 October 2015, copied to the Chairman of NICIL's board, the Minister within the Ministry of Finance, and the Financial Secretary.

4. Findings and recommendations

4.1 *NICIL's early operations and the Board's interpretation of its mandate*

4.1.1 NICIL was incorporated on 18 July 1990 under the Companies Act, Chapter 89:01 of the Laws of Guyana, and continued operations under the Companies Act of 1991. It effectively began operations on 15 July 1991 with the appointment of an Executive Director. According to its incorporation documents, NICIL's main objective is "subscribing for, taking or otherwise acquiring and holding shares, stocks, debentures or other securities of any company, co-operative society or body corporate". This is reinforced by the Articles of Association which state that "The business of the company shall consist wholly or mainly the holding of shares or securities of companies, co-operative societies and other corporate bodies".

4.1.2 The authorized share capital is $100,000 (100,000 shares of $1 each) while the Board of Directors comprises a Chairman and a minimum of one and a maximum of nine other persons, appointed by the Minister of Finance on behalf of the Government of Guyana. The tenure of office of the directors shall not exceed three years, but a retiring director is eligible for re-appointment. The first directors of NICIL were: Mr. Harold Davis (former

Executive Director of Guyana Sugar Corporation, now deceased), Mr. H. Thompson (Secretary to the Treasury) and Mr. Avinash Bhagwandin (Permanent Secretary of the Ministry of Trade).

4.1.3 During the period 15 July 1991 to 31 December 2001, NICIL operated as a small entity with a staffing of four persons, and received a subvention through the national budget to meet the cost of operations. For 2001, the subvention was $4.6 million. It increased to $53 million in 2002, thereafter the subsidy ceased. Although NICIL received dividends and other special transfers from public corporations as well as proceeds from the disposal of certain state assets, it did not treat such funds as its revenue. Once received and brought to account, the related amounts were transferred to the Consolidated Fund.

4.1.4 NICIL commented that it did not agree with the above statement and contended that "These income items were clearly disclosed on the face of the income statement…" However, NICIL failed to appreciate the difference between "revenue" which is matched with costs to arrive at a profit, and other sources of income. The latter is normally described as "below the line item". In the case of dividends received from public corporations on the one hand, and dividends transferred to the Consolidated Fund (described as appropriations to the Consolidated Fund) on the other, these were in effect "hanging" below the line items in NICIL's income statement. In other words, since NICIL was collecting the dividends from public corporations on behalf of the Government, it merely passed them through its books en route to the Treasury. **The fact remains that up to 2001; all dividends received were not treated as NICIL's revenue and were paid over to the Consolidated Fund.**

4.1.5 During 1991, Government's investments in 30 entities were vested in NICIL on varying dates **at no consideration**. These were recorded in NICIL's books at nominal values, varying from zero value to $10. Those entities vested included large, commercial and profit-making entities with large asset holdings, such as Guyana Stores Ltd, Guyana Pharmaceutical Corporation, Guyana National Engineering Corporation, Guyana Oil Company, and Guyana Telecommunications Corporations. In 1994 and 1997, two other operations of Guyana Stores Ltd. were vested.

4.1.6 In the consideration of NICIL's interpretation of its mandate, I refer to a correspondence dated 25 October 1995 from the Executive Secretary of NICIL, Mr. J. M. Worrell, to the Head of the Privatization Unit of the Ministry of Finance, Dr. Martin Boodhoo. In that correspondence, the Executive Secretary stated that the mandate of NICIL was one of facilitating “a unified and systematic management of Government shareholdings”. He indicated that the general terms of reference of NICIL were:

- To advise the Government on disposition of shares it held in corporations/companies;
- To establish a communication link with all corporations/companies in which the Government had shares; and
- To act as “watchdog” on what is happening to shares owned by the Government, and recommend to the Government steps needed to be taken.

4.1.7 The Executive Secretary went on to state that, with the establishment of the Privatization Unit in 1993, NICIL’s role was confined to “supplying available information on state-owned Enterprises to the Privatization Unit, and to the collection of dividends from Corporations/Companies in which the Government held shares and paying same over to the Accountant General”.

4.1.8 NICIL commented that the above correspondence also referred to the need to have an expanded NICIL since several other properties not identified for privatization would be vested in NICIL. NICIL also cited another correspondence from the then Secretary to the Treasury dated 19 July 1993 in which he stated that with the decision to wind down the operations of the Public Corporation Secretariat, the monitoring of the Public Corporations and the privatization of state-owned enterprises would be carried out by NICIL.

4.1.9 The need for a strengthened NICIL from a human resources management point of view is not disputed, and the fact this was not mentioned has nothing to do with “cherry-picking” or a lack of balance, as claimed by NICIL in its response. In fact, these statements have reinforced the views expressed by Mr. Worrell about NICIL’s role. NICIL went on to comment that Mr. Worrell’s statement reflected one of “opinion” or “policy” at the time, “which is at all times, subordinate to applicable law, and the articles and by-laws of NICIL”. NICIL did not elaborate further.

4.1.10 A review of NICIL’s audited financial statements for the period 1991-2001 indicates that the Board of Directors interpreted NICIL’s mandate as articulated by the Executive Secretary in the above-mentioned correspondence. Specifically, the Board viewed NICIL’s main responsibilities as: (a) to monitor the Government’s investments in public corporations and other entities; (b) to dispose of identified State assets/properties; and (c) to ensure that all returns on such investments, special transfers from public corporations and the proceeds from the disposal of such assets, were collected and paid over to the Consolidated Fund. At no time did the Board consider these inflows as funds belonging to NICIL, and hence its revenue. In this regard, for the period 1991 to 2001, NICIL transferred amounts totalling $3.415 billion to the Treasury and met its cost of operations via a subvention from the National Budget.

4.1.11 Table I provides details for the period 1991 to 2001 of: (a) dividends received; (b) proceeds from the disposal of State assets; (c) special transfers from public corporations; and (d) transfers to the Consolidated Fund.

Table I
Dividends received and transfers to the Consolidated Fund: 1991-2001

Year	Dividends received	Disposal of State assets	Special transfers	Other	Total amount transferrable	Transfers to Consolidated Fund
	$'000	$'000	$'000	$'000	$'000	$'000
1991	82,078	-	-	-	82,078	1,500
1992	165,591	80,410	93,715	2,366	342,082	313,075
1993	177,011	-	18,000	3,974	198,985	223,047
1994	195,481	-	-	3,611	199,092	201,131
1995	188,431	-	-	1,123	189,554	147,193
1996	83,277	5,752	190,000	496	279,525	331,493
1997	19,000	12,859	2,000	966	34,825	99,525
1998	318,470	4,590	34,000	-	357,060	184,105
1999	10,000	22,029	633,005	-	665,034	972,596
2000	351,665	20,968	-		372,633	373,027
2001	549,000	19,965	-		568,965	568,499
TOTAL	**2,140,004**	**166,573**	**970,720**	**12,536**	**3,289,833**	**3,415,191**

4.1.12 NICIL has submitted a schedule showing amounts totalling $2.271 billion were received as dividends, compared with $2.140 billion shown in the above table. The difference of $130.846 million is due to use of the audited accounts which are prepared on an accrual basis whereas the schedule was prepared on a cash basis.

4.1.13 As can be noted, dividends received from public corporations and other entities amounted to $2.140 billion; net proceeds from the disposal of State assets totalled $166.573 million; special transfers from public corporations accounted for $970.720 million; and miscellaneous income of $12.536 million. This gives a total of $3.290 billion transferrable to the Consolidated Fund. Amounts actually transferred to the Consolidated Fund totalled $3.415 billion. (There is an unreconciled difference of $125 million.) **In other words, during the period 15 July 1991 to 31 December 2001, all the funds received by NICIL, other than the subvention from the National Budget, were paid over to the Consolidated Fund.**

4.1.14 In its interpretation of NICIL's mandate, the Board might have been guided by the fact that, although ownership of Government investments was vested in NICIL, the question of a parent company/subsidiary company relationship did not arise, **especially since there was no exchange of value.** In other words, NICIL did not purchase the investments that the Government vested in it. The Board might have also considered NICIL's role as one of a custodial or agency relationship for these investments. **In this case, the issue was one of substance over form which is a fundamental accounting principle that guides the accounting and financial reporting**. It is relevant to note that Mr. H. E. Heyligar, a leading Chartered Accountant and Commissioner of Inland Revenue, was the Chairman of NICIL's Board during the period 1991 to 1999. By virtue of his substantive position, he would have been considered an expert in Company Law requirements, especially as they relate to parent company/subsidiary company relationships.

4.1.15 The Auditor General had concurred with the Board's interpretation of NICIL's mandate, as evidenced by the absence of any adverse comments regarding such interpretation in his reports on NICIL's financial statements for the period 1991 to 2001. As a minor qualification, he did refer to the absence of a register of institutions in which the State has investments, showing the amounts collectible as dividends in order to verify the amount shown in the financial statements. NICIL gloated at the fact that prior to 2001, its financial statements were qualified, compared with the post-2001 period where clean audit opinions were given. It must be stated that unqualified opinions are not necessarily an indication that all is well, especially if they are issued by an unqualified accountant. As will be noted later, given all the financial management issues raised in this report, one wonders why NICIL's accounts were not qualified. This is apart from the conflict of interest as it relates to the auditing of NICIL's accounts that has existed in the post-2002 period, to which reference is made later in this report.

4.1.16 Mr. Carl Greenidge, the Minister of Finance at the time NICIL was incorporated, at a meeting held with me at my request, confirmed that the intention behind the establishment of NICIL was consistent with the Board's and the Auditor General's understanding of NICIL's mandate. He explained that NICIL was formed to take over the some of the responsibilities of the Public Corporations Secretariat, since the Public

Corporations Act of 1988 had dissolved the Guyana State Corporation of which the Secretariat was part. Those responsibilities were essentially to monitor the performance of public corporations and to ensure that all dividends received, divestment proceeds and other returns were paid over to the Consolidated Fund.

4.1.17 NICIL's Articles of Association specifically state that "The business of the company shall consist wholly or mainly the holding of shares or securities of companies, co-operative societies and other corporate bodies". This is further evidence of a restriction of NICIL's mandate, consistent with the Board's interpretation and the explanations provided by the then Minister of Finance.

4.1.18 The fact that Parliament approved of a subvention to meet the cost of operations of NICIL would suggest that the Board's understanding of NICIL's mandate was consistent with the intent of the Legislature. NICIL was also incorporated at a time when the Government was embarking on a major privatization programme, especially as regards loss-making State institutions, and therefore the rationale for the establishment of NICIL could not have been one relating to creating another entity with a commercial and profit-making orientation. Indeed, NICIL's establishment came at a time when the Government was receding from its involvement in commercial activities to allow the private sector to undertake such activities best suited to it.

4.1.19 A review of the Estimates of Revenue and Expenditure and the audited public accounts for the period 1992 to 2001 indicates that there were two budget line items, namely: (a) dividends and transfers from public enterprises and equity holdings; and (b) sale of assets, including proceeds from divestment. This clearly suggests that the intention of the Legislature was to ensure that proceeds from these two sources were collected, whether via NICIL or otherwise, and paid over to the Consolidated Fund. Indeed, one of the financial statements constituting the public accounts relates to a comparison of budgeted revenue with actual collections and payment to the Consolidated Fund. This is further evidence that NICIL's Board's interpretation of its mandate was consistent with the wishes of the Legislature. In this regard, it is relevant to note that at a meeting of NICIL's Board on 12 March 2010 at which the form and content of NICIL's accounts were discussed in the context of Section 346 of the Companies Act, the then Head of the Presidential Secretariat had advised that **budget laws should take precedence over any company law requirements as they relate to government companies. Budget laws are essentially Appropriation Acts.**

4.1.20 As at 31 December 2001, NICIL's books recorded 20 investments with assigned nominal values amounting to $3.211 million, as shown at Table II.

Table II
Government's interest in entities vested in NICIL
as at 31 December 2001

#	Date of vesting	Name of entity	Assigned Value ($)
1	91-09-21	Guyana Pharmaceutical Corporation	1
2	-do-	Demerara Sugar Terminal Ltd.	1
3	-do-	Guyana National Engineering Corporation Ltd.	3
4	-do-	Guyana Shipping Corporation	1
5	-do-	National Edible Oil Company	1
6	-do-	Guyana Fisheries Ltd.	1
7	-do-	Guyana Printers Ltd.	1
8	-do-	Guyana Oil Company Ltd.	1
9	91-09-23	Livestock Development Company Ltd.	5
10	-do-	Guyana Oil Company Ltd.	1
11	91-10-01	Bauxite Industry Development Company Ltd.	1
12	-do-	Guyana National Co-operative Development Bank	3
13	91-10-02	Guyana Telephone & Telegraphic Company Ltd.	2
14	-do-	Bauxite Industry Development Corporation	2
15	91-10-24	Guyana Printers Ltd.	-
16	-do-	Guyana Sugar Corporation Ltd.	-
17	-do-	Guyana Stockfeeds Ltd.	-
18	-do-	Guyana National Co-operative Bank Trust Corporation	10
19	95-05-26	Guyana Stores Ltd.	2,245,000
20	97-01-31	Guyana Stores Ltd.	965,790
		TOTAL	**3,210,824**

4.1.21 The reduction in the list of investments by 12 was the result of: (a) the closure of the Guyana Co-operative Mortgage Finance Bank, the Guyana Co-operative Insurance Service, and Guyana Co-operative Agriculture and Industrial Development Bank; and (b) the disposal of Government's interest in some entities, especially those in the commercial banking sector.

4.1.22 The above values attached to the 20 investments were obviously unrealistic and bore no relationship to their real values, especially large commercial entities, such as Guyana Oil Company, Guyana Pharmaceutical Corporation and Guyana Stores Ltd. To this extent, the assets of NICIL were significantly understated.

4.2 *Management Co-operation Agreement and its implications*

4.2.1 On 28 December 2001, Cabinet approved the Privatization Unit of the Ministry of Finance assuming the additional responsibility of providing management and administrative services to NICIL as per Management Cooperation Agreement between the Ministry of Finance, NICIL and the Government of Guyana dated 31 December 2001. Cabinet subsequently ratified the agreement at its meeting held on 23 April 2002.

4.2.2 According to the agreement, the Privatization Unit is the authorized agent for the purpose of privatising any of NICIL's holdings set out in the Privatisation Policy Framework Paper (the "White Paper") laid in the National Assembly in 1993. It was also made the exclusive manager of NICIL for purposes of managing and administering all of the affairs of NICIL. By virtue of the appointment of the Privatisation Unit as the manager of NICIL, the Executive Secretary and Head of the Privatisaton Unit assumed the position of Executive Director of NICIL.

4.2.3 NICIL, for its part, became responsible for: (a) collecting and accounting for all privatization proceeds, rents, dividends, and other income of NICIL, in the name of NICIL; (b) utilizing and disbursing of the income of NICIL in accordance with the approval of NICIL's Board; and (c) the payment of a management fee to the Privatisation Unit. **The Agreement remains in effect unless the Cabinet decides otherwise.**

4.2.4 Up to 2001, the Board of Directors comprised neutral public servants. However, with effect from 1 January 2002, this arrangement changed with the Minister appointing himself to chair the Board and the former Head of the Presidential Secretariat (HPS) and Secretary to the Cabinet as a Director. These were the holders of key Cabinet positions, and therefore from a governance standpoint, this changed arrangement is not considered appropriate. **The Board was indeed transformed from one that reflected political neutrality to one with heavy political influence. In addition, the Minister had**

oversight responsibility for NICIL, and therefore his role as Chairman of the Board represented a conflict of interest.

4.2.5 As of 31 May 2015, the Chairman was Dr. Ashni Singh (former Minister of Finance) while the other directors were Dr. Roger Luncheon (former Head of the Presidential Secretariat), Ms. Sonya Roopnauth (Director of Budget, Ministry of Finance), Mr. Nigel Dharamlall (former Permanent Secretary, Ministry of Amerindian Affairs) and Mr. Winston Brassingtion (Executive Director of NICIL). A new board has since been appointed under the chairmanship of Dr. Maurice Odle.

4.2.6 According to its 2002 consolidated annual report, NICIL acquired the following state-owned entities for **zero consideration**: NEOCOL (100%), GNPL (99.6%), GNSL (100%), GNNL (90%), GUYOIL (100%), Property Holdings (73.19%), BIDCO (100%), and GPC (100%). This is in addition to the acquisition of 20% shareholding in GT&T and investments in GNCB Trust (10%), OMAI (5%) and Guyana Stores (3%). In the same report, the Executive Director of NICIL stated that the Management Co-operation Agreement paved the way for, among others, **"the fulfillment of financial statutory obligations which NICIL had previously failed to do".**

4.2.7 There was no elaboration as to what those obligations were. **However, with effect from 1 January 2002, NICIL ceased paying over to the Consolidated Fund dividends from public corporations as well as the proceeds for the disposal of State assets. Instead, it retained such funds and treated them as its revenue to be used for purposes as approved by the Board of Directors.**

4.2.8 NICIL commented that it was advised that a parent company/subsidiary company exists and that in 2001 a local Chartered Accounting firm had provided advice in this regard. However, the contract with the firm was to prepare consolidated accounts and was entered into on 12 December 2003 subsequent to the statement made by the Executive Director at NICIL's board meeting of 2 June 2003 that there would be consolidated accounts with effect from 2002. Therefore, the decision to consolidate preceded the engagement of the firm.

4.2.9 The Chartered Accounting firm had stated that "In practice and in economic terms NICIL acts as an agent of the Government of Guyana which controls the bodies corporate both for the purpose of the Companies Act and IAS 27. Accordingly, in our view NICIL is the holding company of these bodies and is therefore required to prepare consolidated financial statements that confirm with the requirements of the law and IAS". However, an agency arrangement does not connote ownership. The firm also referred to the need to determine the fair value of the shares held which might require a valuation exercise to be carried out. Needless to mention, this was not done.

4.2.10 Section 160 (2) of the Act provides for situations where group accounts are not required. These include:

- If the directors are of the opinion that it is impracticable, or would lead to no real value to the members of the company, in view of the insignificant amounts involved or would involve expenses or delay out of proportion to the value to the members of the company, to do so;
- The result of doing so would be misleading or harmful to the business of the company or any of its subsidiaries; or
- The business of the company and that of the subsidiary are so different that they cannot be treated as a single undertaking.

In all three cases, the consent of the Minister is required. As indicated above, the overriding consideration is **one of substance over form** as it relates to NICIL in deciding whether a parent company/subsidiary company relationship exists.

4.2.11 **For the period 2002 to 2014, NICIL retained amounts totalling $26.858 billion under this changed arrangement, as shown at Table III.**

Table III
Retention of dividends and capital proceeds: 2002-2014

Year	Dividends Received	Capital proceeds	Net income from properties	Interest & other income	Total
	$’000	$’000	$’000	$’000	$’000
2002	1,019,057	817,821	(15,973)	812	1,821,717
2003	766,873	166,765	10,943	17,134	961,715
2004	622,500	-	123,748	40,676	786,924
2005	896,835	169,882	135,875	11,286	1,203,878
2006	1,574,127	198,717	130,524	20	1,903,388
2007	308,250	386,475	137,522	22	832,269
2008	548,615	316,240	100,234	28	965,117
2009	1,417,563	123,735	25,064	21	1,566,383
2010	931,409	70,496	119,224	22	1,121,151
2011	2,633,481	1,583,899	154,693	21	4,372,094

2012	1,000,000	5,558,070	244,306	8	6,802,384
2013	3,519,988	200,000	229,857	102	3,949,947
2014	203,808	195,540	151,920	46,023	597,291
TOTAL	**15,442,506**	**9,787,640**	**1,511,937**	**116,175**	**26,858,258**

4.2.12 NICIL disputed the above statement, contending that it is "false and untrue". However, the above table was extracted from NICIL's financial statements which clearly show that dividends from public corporations and other entities were retained and treated as NICIL's revenue. NICIL sought to confuse the issue by failing to distinguish between dividends received and treated as revenue on the one hand, and dividends declared at annual general meetings based on the results of operations, on the other hand.

4.2.13 NICIL has submitted a schedule showing amounts totalling $14.345 billion were received as dividends, compared with $15.443 billion shown in the above table. The difference of $1.098 billion is due to use of the audited accounts which are prepared on an accrual basis whereas the schedule was prepared on a cash basis.

4.2.14 A closer examination of the Management Co-operation Agreement raises, among others, the following issues. First, the Privatization Unit is not a separate legal entity but rather a unit within the Ministry of Finance. The question therefore arises as to whether it is legally possible for NICIL to enter into an agreement with a department or unit of a Ministry to what essentially amounted to a take-over of NICIL's operations, and whether this arrangement would not be inconsistent with NICIL's primary objective of NICIL. The Agreement has created in effect a merger between NICIL and the Privatisation Unit since after the execution of the Agreement, the latter did not maintain a separate existence.There was also no evidence of any management fee paid to the Unit.

4.2.15 The second issue relates to the signatories to the Agreement. The HPS (representing the Government of Guyana); the Minister of Finance (as Minister and Chairman of the Privatisation Board; and (c) and Mr. Brassington (representing the Privatisation Unit) were the three signatories. **With effect from 1 January 2002, these three officials became Directors of NICIL's Board, with the Minister assuming the role of Chairman. In effect, these officials had entered into an agreement for a changed arrangement concerning the operations of NICIL and had assumed the role of implementing the new arrangement. Therein lies a serious conflict of interest!**

4.2.16 As indicated above, it is inappropriate for the Minister to appoint himself to chair NICIL's Board since in effect, he is reporting to himself on matters relating to NICIL. Indeed, the Head of the Privatisation Unit had a reporting relationship to the Minister while the

Chairman of the NICIL's Board was the Minister. In addition, the Government's designated representative on all matters relating to NICIL is also the Minister. **In effect, the Minister had signed the Management Co-operation agreement with himself!**

4.2.17 The third and perhaps the single most important consideration relates to whether the collecting and accounting for all privatization proceeds, rents, dividends, and other income of NICIL, in the name of NICIL, and for utilizing and disbursing of the income of NICIL as approved by NICIL's board, violates Article 216 of the Constitution. That Article states that "**All revenues or other moneys raised or received by Guyana (not being revenues or other moneys that are payable, by or under an Act of Parliament, into some other fund established for any specific purpose or that may, by or under such an Act, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund".**

4.2.18 **Dividends from public corporations and other entities as well as the proceeds from the disposal of State assets/properties are State revenues in the context of Article 216, as supported by legal advice. NICIL's involvement in this regard is one of an agency relationship with the State, and therefore the failure to pay over such revenues to the State is a serious constitutional violation. The vesting of public corporations in NICIL for zero consideration is akin to a Power of Attorney and therefore NICIL cannot claim ownership of these corporations and hence the returns from them.**

4.2.19 Article 216 only permits retention of revenues in some other fund established by an Act of Parliament and only to extent of defraying expenses of the concerned body. NICIL was, however, not established by any specific Act of Parliament. Rather, it was incorporated under the Companies Act, which is an Act to regulate generally the formation of companies as well as their operations. Therefore, the words in parenthesis in Article 216 are not applicable to NICIL. Even if that were so, NICIL did not retain such sums as were necessary to defray expenses. Rather, it retained the entire proceeds from dividends received from public corporations as well as privatization proceeds and used them for purposes as approved by its Board of Directors.

4.2.20 The Fiscal Management and Accountability (FMA) Act 2003 repeats the requirements of Article 216 but provides for exception in relation to any extra-budgetary fund established by an Act of Parliament. The Auditor General has consistently reported that no extra-budgetary fund has been established since the passing of the Act, as confirmed by his 2013 Report. **It is therefore incorrect to consider NICIL as an extra-budgetary fund in the context of the FMA Act.**

4.2.21 An important accounting convention is the matching concept whereby revenue is recognized when there are costs associated in earning such revenue. NICIL has not incurred any costs in the transfer of Government's investments to it. **Therefore, it would be inappropriate for NICIL to recognize the returns from those investments as well as privatization proceeds as its income, as this will result in a windfall gain. It is also doubtful whether the International Financial Reporting Standards (IFRS) which NICIL uses as its accounting and financial reporting framework would permit such a practice.**

4.2.22 NICIL has asked for clarification about the convention referred to in the preceding paragraph. This is one of the conventions that is the foundation pillar of accounting and financial reporting. It was also discussed at NICIL's board meeting of 11 July 2002 as referred to in paragraph 4.2.26.

4.2.23 NICIL further commented that the "treatment of accounting for gifts or transfers or vesting of assets to companies are in accordance with applicable IFRS accounting standards…"**This is an extraordinary statement in the context of NICIL** in that from all the correspondence reviewed there is no evidence to suggest that Government investments in public corporations and other entities in which controlling interest vests in the State as well as properties transferred, were "gifted" to NICIL.

4.2.24 Another important accounting concept is one of comparability. In a publication entitled "Overview of IFRS 15 on Revenue Recognition", the point was made that information about revenue is used to assess a company's financial performance and position and **to compare that company with other companies**. The extent of distortion (and hence lack of comparability) as a result of this change in accounting policy can be gleaned from an examination of the audited financial statements for the years subsequent to 2001. For example, in 2002, NICIL recorded operating revenue at $1.920 billion, and a profit after taxation of $1.645 billion on an issued share capital of $100,000 shares of $1. This gives an earnings per share (EPS) of $16,445! The EPS is an indicator of a company's profitability as well as shareholders' return on investment if all profits are distributed by way of dividends.

4.2.25 NICIL has also re-stated the resulted of operations for 2001 where it reported an EPS of $189.5 million. This level of EPS may be unprecedented in the history of companies and should have raised serious concerns about the appropriateness of the new policy. In subsequent years, there were marked fluctuations in revenue, and hence the EPS, which made comparison with similar companies and over time extremely difficult, if not impossible. For 2013, the EPS stood at $36 which was also extremely high by any standards.

4.2.26 I have reviewed the minutes of the meetings of NICIL's Board for the period 1 January 2002 to 31 December 2014. I have found no evidence of the Board approving the retention of dividends and other income from public corporations and other entities as well as privatization proceeds. In fact, I have found the contrary which is consistent with the earlier interpretation of NICIL's mandate. At its first meeting held on 11 July 2002 after the Management Co-operation Agreement was entered into, **the Board discussed the Agreement and the issue of matching costs with revenue. It noted the following:**

- **Dividends by any equity holding should be paid over directly to the Treasury;**
- **Privatisation funds should be held by NICIL, and out of these proceeds all privatization-related expenses could be met, including repairs and upgrades to buildings, and the balance transferred to the treasury; and**
- **All administrative costs relating to the operations of NICIL should be met by way of subvention.**

4.2.27 At the said meeting, Mr. Brassington stated that at his last meeting with the then President Bharrat Jagdeo, **the President expressed an interest in NICIL continuing to receive subvention from the Treasury and for all dividends received from public corporations to be paid over in full to the Treasury.** Dr. Ashni Singh, former Minister of Finance and the then Budget Director, indicated his agreement with the President and stated that **"dividends stated in the reports by Public Enterprises should equal to dividends received by NICIL and paid over to the Treasury". This he said, would assist in the IMF stipulation which states that the dividends received should match the amount shown as going to the Treasury. He went on to state that "along with dividends received lease payments should also be paid over fully to the Treasury".**

4.2.28 At the request of the Chairman of the Board, Mr. Brassington also clarified that "NICIL is currently the shareholder of Government assets. **It is responsible for the collection of information regarding the financial statements of government companies. It will then be responsible for attending the Annual General Meetings of the entities and to ensure compliance with applicable laws and reporting.**

4.2.29 At NICIL's board meeting of 2 June 2003, Mr. Brassington reported that all dividends received were being paid over to the Treasury. He stated that: (a) prior to 2002, the company was acting as a "post office"; (b) the objective was to make NICIL a properly functioning holding company; and (c) there would be consolidated accounts with effect from 2002. **The Board did not take a position with regard to Mr. Brassington's statement.** NICIL, however, argued that since the financial statements were signed by three directors, this was evidence of board approval. Suffice it to state that: Would such a major transformation of the operations of NICIL not require a specific board approval?

4.2.30 At NICIL's Board meeting of 21 July 2003, Mr. Brassington stated that based on a suggestion from Dr. Singh to cut the expense of the Treasury, NICIL would continue to have its budget but could have money from proceeds of NICIL to finance day-to-day operations of the Office. The Board agreed to this.

4.2.31 At its board meeting held on 28 August 2003, **Mr. Brassington stated that as dividends were received, they were paid over to the Government. He drew attention to the high cash balances NICIL was carrying and further stated that NICIL "needs to identify at what point transfer should be made to the Government… if strategic objectives for NICIL were developed that included facilitating investment, by leveraging the use of NICIL assets, in say the Berbice Bridge, then this would affect what NICIL did with said funds".**

4.2.32 At its 23rd meeting held on 12 March 2010, the question was raised whether the audited accounts of NICIL could be tabled in the National Assembly without annual reports. Section 346 of the Companies Act 1991 was referred to, which states that the Minister may prescribe the level of detail financial statements of Government companies can be presented. The minutes recorded the following statements from the HPS but the Board took no position on the matter:

> *The HPS voiced concern about whether this provision might be in conflict with budget laws and advised that we use Budgetary Laws.*

4.2.33 Concerned at the extent of violation of Articles 216 and 217 of the Constitution by NICIL, the National Assembly passed resolution No. 32 on 17 December 2012 requiring NICIL to pay into the Consolidated Fund all revenues and proceeds from the sale of all State properties and shares of companies belonging to the State and vested in the name of NICIL during the period 1992 to 2012, except for those necessary administrative costs for maintaining its running operations annually. **Needless to mention, NICIL ignored the resolution from the highest decision-making body of the land!**

4.2.34 NICIL commented that it is not aware of any law which "provides or subjects NICIL to the compliance of a motion of Parliament". NICIL, it should be emphasized, is not only a fully owned government company but also Section 5 of the Public Corporations Act of 1988 has been made to apply to it. In this light of this, NICIL should have complied with the wishes of the National Assembly unless legal advice suggests otherwise.

4.3 *Other sources of funding and their accountability*

4.3.1 In response to my request for information about other sources of funding, the Executive Director provided information indicating that during the period 2007 to 2012, **amounts totalling $7.320 billion were received from various government agencies to effect payment for works undertaken on behalf of the Government.** The following is a summary of the amounts received:

Name of Agency	Amount $'000	Purpose
Guyana Geology & Mines Commission	3,756,745	Hinterland roadworks
Guyana National Cooperative Bank	1,000,000	Marriott Hotel
Guyana Water Authority	353,000	Marriott Hotel
Guyana Forestry Commission	300,000	Marriott Hotel
Ministry of Labour	679,434	44 High St. property
Guyana National Cooperative Bank	150,000	Cricket World Cup
Guyana Forestry Commission	300,000	Cricket World Cup
National Frequency Management Unit	200,000	Cricket World Cup
Ministry of Public Works	170,500	Berbice River Bridge
Geology and Mines Commission	300,000	CAREFESTA X
Ministry of Agriculture	110,369	Hope/Dochfour Canal
TOTAL	**7,320,048**	

4.3.2 In his correspondence to me, the Executive Director stated that in general **NICIL served as an Agent or Project Executing Agency for the Government of Guyana on various projects and that "funds from other agencies were typically transferred by cabinet decision".** These were recorded in NICIL's books as amounts due. When disbursements were made, the amounts were correspondingly adjusted until the balances were reduced to zero. In other words, there was no recording of the transactions as expenditure in the books of NICIL. He further stated that there were cases where NICIL would make payments on behalf of the Government and reimbursements would be received later.

4.3.3 **The Executive Director, however, did not satisfactorily explain the rationale for the choice of NICIL to carry out what is essentially a paymaster function that is typically associated with the operations of the Treasury Department of the Ministry of Finance. In addition, NICIL's involvement in relation to these transactions is inconsistent with its core mandate**

of "subscribing for, taking or otherwise acquiring and holding shares, stocks, debentures or other securities of any company, co-operative society or body corporate". NICIL was therefore functioning as a "parallel" Treasury.

4.3.4 NICIL as well as the above agencies ought to have been aware of the requirement for all public expenditure to be sanctioned by Parliament through the National Budget, as provided for by Article 217(3) of the Constitution. That article states that "**No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorized by or under an Act of Parliament"**. For example, the financial resources of the GGMC and the Guyana Forestry Commission constitute public funds, and neither the GGMC Act, the GFC Act nor any other Act permits the transfer of funds to any other entity.

4.3.5 **This cross-transfer of funds among State institutions to meet public expenditure undermines authority of Parliament to approve such expenditure.** In addition, since the expenditure was not included in the National Estimates, it was not reflected in the Public accounts of Guyana, thereby resulting in a significant under-reporting of expenditure.

4.3.6 **NICIL and the above entities were therefore complicit in the violation of Article 217(3) of the Constitution and cannot escape culpability, notwithstanding that the Cabinet and/or the Prime Minister sanctioned these arrangements. Indeed, neither the Cabinet nor the Prime Minister is exempt from liability for the failure to adhere to this fundamental constitutional requirement on public financial management.**

4.3.7 As regards central government activities, a Ministry/Department can transfer by way of an "inter-departmental warrant" a budgetary allocation to the competent Ministry/Department to undertake the works on its behalf. For example, when the Audit Office had to undertake some rehabilitation works to its compound, the related amount allocated was transferred to the Ministry of Public Works to undertake the works on its behalf. The transfer was recorded in the books of the Audit Office as expenditure to be substantiated later by the relevant supporting documents from the Ministry of Public Works attesting to the satisfactory completion of the works. However, cross-transfers among State agencies to meet public expenditure are not permissible because of budgetary implications as well as the reporting of the relevant expenditure in the public accounts.

Re: *$3.757 billion received for maintenance of hinterland roads*

4.3.8 NICIL received an amount of $800 million from GGMC based on a memorandum dated 21 August 2007 from the Head of the Presidential Secretariat to the GGMC, which made reference to Cabinet decision CP(2007)8:1:H approving of the transfer. An agreement dated 1 November 2007 was then entered into between NICIL and the Ministry of Public Works for NICIL to disburse payments to contractors for the maintenance of interior roads. The disbursements were to be based on invoices presented by the Ministry and approved by the HPS. T**he FMA Act, however, does not recognize the HPS as an authority for the approval of payments since he is not the head of a Budget Agency. The HPS has therefore usurped the role of Heads of budget agencies and could be held liable for the misuse or loss of public funds under Sections 48, 49 and 85 of the FMA Act.**

4.3.9 NICIL received two further amounts of $1 billion and $1.2 billion GGMC based on agreements dated 3 August 2009 and 15 November 2011 respectively involving the Ministry of Public Works, the GGMC and NICIL. However, there was no reference to a Cabinet decision on the matter, and the Prime Minister in his capacity as Minister responsible for mines and minerals approved of these two transactions. Disbursements were also to be made on the written instructions of the Head of the Presidential Secretariat.

4.3.10 In relation to the $1 billion transfer from GGMC, the minutes of NICIL's board meeting of 14 July 2009 recorded the following discussion:

> ***Hinterland Roads*** *– It was reported that NICIL was in receipt of the $1 Billion from GGMC but the agreement was not signed. WB (Winston Brassington) highlighted that the nexus created here is that we are like a PEU for GGMC and the Ministry of Public Works is a sub-PEU from GGMC. But all accounts go back to GGMC. It was agreed that we will document the projects and will inform public works to transfer everything in the name of GGMC. We will be the PEU for various agencies from a financial disbursement agent perspective on the advice of Public Works for the project execution.*
>
> *AS (Ashni Singh) – we now need to let the other parties understand the implications from the accounting side on their books… There needs to be an agreement between Public works, NICIL and GGMC.*

4.3.11 At the 12th January 2009 meeting of NICIL's board, the Executive Director sought clarification whether NICIL was acting as an agent or principal. He stated that as an agent, the expenditure would not be reflected in NICIL's books, unlike the case of principal. If the latter was the case, he enquired whether there would be sufficient paperwork to support the validity of the payments. The Permanent Secretary of the Ministry of Public Works confirmed that the amounts involved were not reflected in the books of the Ministry and that back-up documents for $200 million could be sent to NICIL. At this point, the HPS suggested that the Minister of Finance and the Executive Director prepare a paper outlining the options for treating the transactions in question. **It is not clear whether such a paper was prepared, as subsequent minutes of meetings of the Board did not indicate this.**

4.3.12NICIL received a fourth amount of $756.745 million from GGMC was based on Cabinet decision CP(2012)7:5:S for: (a) the release of funding for existing projects - $271.340 million; new projects 2012 -$462.248 million; and (c) outstanding payments for contracts completed -$23.157 million.

4.3.13NICIL has provided a schedule of payments relating to the $3.757 billion received from GGMC, as summarised below:

Description	Amount $'000
Payments to the Ministry of Public Works	3,322,481
Payment to CBCSL on contract	202,243
Purchase of road equipment	164,608
Rehabilitation of Ituni/Kwakani roads	19,791
Mobilisation advances	11,788
Miscellaneous	35,834
TOTAL	**3,756,745**

4.3.14 The Ministry of Public Works has also provided schedules of works undertaken in support of the amounts of $1.2 billion and $756.745 million. **However, it was unable to provide any information in relation to the difference of $1.365 billion, that is, $3.322 billion minus $1.957 billion. It is not clear how much of the $1.365 billion remained outstanding and how much of the $1.979 billion were supported by bills/receipts and other supporting documents to ensure proper accountability of the funds transferred to the Ministry of Public Works.**

4.3.15 At NICIL's board meetings of 13 November 2013, 30 April 2014 and 11 September 2014, the Executive Director reported that NICIL was experiencing difficulties in obtaining supporting documents from Ministry of Public Works for payments made and that **material amounts remained unaccounted for**. The HPS indicated that he would discuss the matter with the Permanent Secretary.

4.3.16 Evidence was seen where GGMC initially treated the transfer of funds to NICIL as receivable. When the supporting documents were submitted to substantiate the expenditure, GGMC charged the expenditure to "Assistance to mining communities". **This is an inappropriate charge to the accounts of GGMC since the maintenance of hinterland roads is the responsibility of the Ministry of Public Works and is budgeted for under that Ministry in the National Estimates. The Auditor General should have raised this concern during his audit of the GGMC.**

Re: $1.653 billion received for Marriott Hotel

4.3.17 NICIL has provided a detailed list of payments in relation to the amounts of $300 million and $353 million received from the Guyana Forestry Commission and the Guyana Water Authority respectively, as summarized below:

Description	Amount
	$'000
Adam Development Urbahn Associates	264,240
Courtney Benn Contracting Services	169,138
Transfer of US$735,000 to ADUA	151,410
Guyana Water Authority	53,098
Set-off against final payment to ADUA	8,400
E & A consultants: advance on soil boring of Luckhoo pool area	3,488
Wesley Booker – advance on clearing of Luckhoo pool	1,228
Other	14,724
TOTAL	**652,610**

4.3.18 The schedule provided by NICIL showed an amount of $1 billion was received in 2012 from the Guyana National Cooperative Bank for the Marriott Hotel. However, this amount was not expended and remained in the books of NICIL as of 31 December 2014 as a liability. **It is not clear why, after two years, the funds were not returned to the Bank.** NICIL commented that the amount has since been returned to the Bank.

4.3.19 In May 2008, the preparation of the site of the Marriott Hotel commenced with the re-routing of the Georgetown Sewerage System at a cost of US$2.7 million, and the dismantling of the Luckhoo Swimming Pool and the Food and Drugs Department building. The contract was initially awarded to Courtney Benn Contracting Services whose contract was terminated and who was replaced by ADUA to complete the works.

4.3.20 On 6 October 2009, Cabinet by CP(2009)10:1:R approved of the Government of Guyana entering into a design and branding contract with ADUA in the sum of US$2.1 million, with the permissible exemption of all taxes as provided for in law. There was, however, no public advertisement for the works to be undertaken. The Executive Director explained that the firm was selected based on its previous interest in the project.

4.3.21 In 2004, the Government and ADUA had signed a Memorandum of Understanding (MOU) for the establishment of a "world class hotel, casino and entertainment complex". The project, to be named "Scarlett on the Atlantic", was to be erected on approximately 15 acres of land situated in Kingston, Georgetown and owned in part by Government and Georgetown City Council. According to the Executive Director, "Following the developer's difficulties in or around 2008/early 2009, the GOG (Cabinet) made the decision to take control of the project and restructure it in its present format as a Public-Private-Partnership (PPP) and publicly advertised for this". **In effect, ADUA was asked to repackage and submit its own proposal at a cost of US$2.1M.**

4.3.22 The Guyana Water Authority's contribution of $353 million was in relation to the rehabilitation of the sewerage system. However, NICIL in turn made two payments totalling $53.098 million to the utility company. It later clarified that the amount relates to payment for the relocation of a well.

Re: $679.434 million received for construction works at 44 High Street

4.3.23 According to Cabinet decision CP(2007)3:2:F dated 13 March 2007, the contract for the construction of Government offices at 44 High Street for the Ministry of Labour and the Guyana Forestry Commission was to be awarded to Kishan Bacchus General Contractors. Negotiations were to be concluded with the contractor to ensure that: (a) the price excluded the cost of electrical and air-conditioning of $190 million to be procured separately; and (b) the cost was to be reduced via a reduction of specifications to be jointly agreed to by the Ministry of Labour and the Guyana Forestry Commission so that the price of the main contract did not exceed $300 million.

4.3.24 The Guyana Forestry Commission was to meet the cost of the construction while NICIL was to finance the rest of the cost. In addition, the Ministry of Labour was required to countersign all contracts relating to the works while NICIL was responsible for implementing the construction. At the same time, the land formerly held by the Guyana Broadcasting Corporation under a State lease was to be vested in NICIL.

4.3.25 At NICIL's board meeting of 16 August 2007, the Executive Director informed the Board that the handing over of the site took place earlier in the day. **The minutes recorded the Minister of Finance as having agreed that "there should be no press release as this might draw attention to NICIL's spending when ideally should have been the expense of central Government". This is quite an extraordinary statement coming from the Minister and is a clear acknowledgement of the improper use of NICIL's funds.**

4.3.26 Five years later, there was an amended Cabinet decision CP(2012)7:1:W dated 6 July 2012 which approved of: (a) the transfer by sale of the property at 44 High Street to the Geology and Mines Commission at a purchase price of $100 million; (b) all moneys received by NICIL from Central Government less relevant expenses paid by NICIL up to 30 September 2012 to be reimbursed to the Consolidated Fund; and (c) NICIL being authorised to do all acts necessary to implement Cabinet's decision.

4.3.27 According to the schedule of payments provided by NICIL, amounts totalling $346.017 million were expended, leaving a balance of $333.417 million still held in the accounts of NICIL. Of the amount expended, $224.993 million relates to payments the contractor while $27.781 million was paid for engineering supervision.

4.3.28 **The construction of the building has since been aborted, and the structure was expected to be torn down because the floors were not constructed to the required specifications.** The minutes of NICIL's board meeting of 12 March 2010 recorded that **"In the absence of bonds, KBC (Kishan Bacchus General Contractors) owes $51 million after the 9th valuation. It was set out by AS (Ashni Singh) that we should identify $51 million of work and have him complete those aspects…"**

4.3.29 It is evident that the Ministry of Labour and NICIL failed to ensure that the contractor executed a valid performance bond against which recoveries could been made for any overpayment as well as defective and incomplete work performed. **The Minister's statement to allocate work to the value of the contractor's indebtedness appears reckless,**

considering that the project was aborted because of defective work performed, and any additional work would be a further waste of taxpayers' funds. It is not clear whether such additional works were performed.

4.3.30 NICIL commented that the contractor had presented a CLICO bond. However, on the appointment of a judicial manager during the CLICO downfall, all business and insurance coverage was terminated/suspended.

4.3.31 The role of the engineering supervisor also needs to be called into question. According to the minutes of NICIL's board meeting of 26 April 2007, the Executive Director was requested to provide examples of work done by the consultant to which he responded that he knew that the consultant had done work before but could not specify. He then stated that the firm was doing some work for Oldendorff Carriers in New Amsterdam and that he had not heard of "any good or bad reviews". At the said meeting, the HPS expressed doubts about the ability of the consultant to supervise the work of the contractor considering that "KBC needs strong supervision as even the Minister of Amerindian Affairs seems to have problems with works done". The HPS then indicated that he would discuss the matter with the President.

4.3.32 At its meeting of 14 May 2007, the Board discussed the progress of the works at 44 High Street. The minutes recorded that the HPS undertook to raise the issue with the President again following the President's request to have the Tender Board issue an opinion on the "integrity" of hiring the consultant without tender. **It is not clear why the consultant was not selected on the basis of competitive tendering and who initiated arrangements for his hiring.** Whatever the outcome of the meeting with the President, the consultant was retained to supervise the work of the contractor. The end result is that some $350 million of public resources has been wasted.

3.3.33 NICIL commented that, given that time was of essence and the consultant's familiarity with the needs of the Guyana Forestry Commission, a policy decision was made to have the firm continue with the works.

Re: $650 million received for the 2007 Cricket World Cup

4.3.34NICIL received amounts of $150 million and $300 million from the Guyana National Co-operative Bank and the Guyana Forestry Commission respectively. According to a letter dated 21 March 2007 from the HPS to the Executive Director of NICIL, reference was made to a Cabinet decision of 13 March 2007 for these sums to be used to support the Local Organizing Committee Guyana Inc. in meeting expenditure relating to the hosting of the 2007 Cricket World Cup. A further amount of the $200 million was received from the Guyana Frequency Management Unit.

4.3.35 NICIL has provided a schedule of payments totalling $678.620 million, $28.620 million in excess of the amount of $650 million received from the three agencies. The following is a summary of the payments made:

Description	Amount $'000
Local Organising Committee	332,022
Ministry of Public Works	150,000
Personalised telecommunication	56,264
Telephone charges	36,000
Balance of payment to various ICT providers	33,345
Engineering project and PWC	27,449
Other	43,540
TOTAL	**678,620**

4.3.36 At the meeting of NICIL's board on 3 September 2008, the Executive Director indicated that NICIL had not received an audit report and that the accounts were showing a large pay-out. He stated that he spoke to the Minister of Finance **who recommended that the possibility of issuing shares in the Cricket World Cup Inc. be explored.** Such a recommendation should have been rejected since transferring the payments made by NICIL to equity contribution is not a substitute for ensuring their proper accountability. **Suffice it to state that in 2007, that is one year earlier, NICIL had already added the Cricket World Cup Inc. to its list of investments in subsidiaries in the identical sum of $28.620 million!**

4.3.37 The minutes of the 12 January 2009 board meeting recorded that the Local Organizing Committee/ Ministry of Culture, Youth & Sport was to provide back-up for $335 million. It is not, however, clear whether this was done. In addition, NICIL was to pay the Accountant of Cricket World Cup the sum of $200,000 "**in order to confirm the transfer out of direct NICIL expenses and have him re-send the statement for submission to the Auditor General".**

4.3.38 NICIL commented that the payment to the accountant was for services after his employment ended "to recover the financial statements and authenticate for the period during his tenure".

4.3.39 **At NICIL's board meeting of 29 April 2011, the Executive Director referred to the management letter issued by the Auditor General on the transfer of funds to the Cricket World Cup Inc. and suggested that the transfers be treated as NICIL's equity.The HPS stated that a paper should be prepared to reflect three options with a view to regularizing the matter. As indicated above, NICIL had already made transfers to equity in 2007.**

4.3.40 **At NICIL's board meeting of 29 February 2012, the Executive Director referred to the qualified opinion issued by the Auditor General on the Cricket World Cup 2007 accounts. The Minister of Finance was recorded as having stated that "the AG's qualification of the accounts needs to be removed from CWC Inc.'s annual report". It is not clear if this was done, and if so, such action by the Minister would be considered an act of professional misconduct. NICIL was also asked to produce a paper for Cabinet to "debunk allegations in the accounts and otherwise but AS/HPS will speak to our principals first. Once a mechanism is cleared then NICIL should pursue the AG to remove the qualifications." Suffice it to state, any intervention by NICIL and/or Cabinet to influence the work of the Auditor General is inappropriate.**

4.3.41 NICIL commented that "The <u>draft audit opinion</u> contained qualifications due to the lack of information that was under the control of third parties and not under NICIL. The help of the Minister and HPS was sought to nudge the relevant ministries to provide outstanding documents/information, so the qualification could be removed".

4.3.42 The Cricket World Cup Inc. and the Local Organising Committee Guyana Inc. were to have been wound up following the conclusion of the Cricket World Cup. **It is not clear why this was not done, as the unaudited accounts of NICIL for 2014 showed the investment in the former.**

<u>Re: $170.5 million received for Berbice River Bridge</u>

4.3.43 By letter dated 4 July 2006, the HPS approved of NICIL meeting all additional cost in excess of the $20 million provided by the Ministry of Finance towards compensation of the identified occupants of D'Edward Village. Prior to 2006, NICIL incurred expenditure totalling $52.089 million, and for the period 2006-2014, a further $32.643 million was expended. **This gives a total expenditure as at 31 December 2014 of $84.732 million which was improperly charged to the administrative expenses of NICIL.**

4.3.44 NICIL commented that the expenditure was incurred in relation to public-private partnerships and that it was treated as expenses of NICIL based on advice given.

4.3.45 In 2008, NICIL received amounts of $20 million and $150.5 million from the Ministry of Public Works in connection with the Berbice River Bridge, of which sums totalling $253.792 million were expended. In addition, by way of a loan to the Government of Guyana, the Inter-American Bank had provided the sum of US$11 million, equivalent to G$2.279 billion, for the construction of the access road on both sides of the Berbice River to facilitate the construction and operations of the bridge. It therefore means that at 31 December 2014 Government's contribution to the Berbice River Bridge amounted to $2.618 billion.

4.3.46 NICIL had initially owned $950 million in preferred shares in the Berbice River Bridge Co. Inc. The shares were subsequently sold to the National Insurance Scheme (NIS). The Scheme had invested $80 million in ordinary shares. Therefore, out of a total shareholding of $1.350 billion, the NIS contributed $1.030 billion, or owns 76%. Yet, based on the Shareholders' Agreement, the Government has little say at the level of Berbice Bridge Co. Inc. (BBCI) board because control is skewed in favour of two private investors owning a mere 15% of the total shareholding.

4.3.47 It is not clear what role NICIL played in relation to the construction of the Berbice River Bridge and in deciding on the mix of financing for the project. The Executive Director of NICIL was also the Company Secretary of BBCI from its inception but it is not clear at what point he relinquished the position. With a mix of financing of 83% debt and 17% equity, the company is highly geared with resultant high debt servicing charges. The financing structure also bears a close resemblance to those of the Marriott Hotel and the aborted Amaila Falls Hydro project.

Re: $300 million received for CARIFESTA X

4.3.48 NICIL has provided the following breakdown on the payments made in relation to the $300 million received from GGMC:

Name of payee	Amount
	$'000
Ministry of Public Works: costs associated with preparations	35,283
National Parks Commission	5,000
Municipal & City Council	15,000

National Communications Network	10,000
Ministry of Culture, Youth & Sports	227,000
Transfer to Ministry of Public Works	7,717
TOTAL	**300,000**

4.3.49 The Auditor General was required to audit the expenditure incurred on CARIFESTA X and to issue the related report. I discussed this matter with him and he indicated that CARIFTETA X was not a separate legal entity. Therefore, there was no separate financial reporting and whatever funds flowed through the Ministry of Culture, Youth & Sports would have been reflected in that Ministry's appropriation accounts and hence would have been audited. However, the audit would not have covered the above amount. **Therefore, in the absence of an audit, the proper accountability for the $300 million received from GGMC remains outstanding.**

4.3.50 NICIL commented that the relevant supporting documents were available, and that a forensic audit was being carried out of CAREFESTA X.

Re: $110.369 million received for Hope Canal/Dochfour Relocation

4.3.51 By Cabinet decision CP(2010)8:4:T dated 24 August 2010, approval was granted for: (a) compensation of $320,400 to be paid for housing to a resident; (b) $27.434 million being disbursed to other residents for recognized claims to crops and land thereon; (c) $2.6 million for external legal and administrative costs; (d) NICIL being reimbursed the revised total sum of $102.532 million from the Consolidated Fund to cover all sums paid out for the project; and (e) NICIL being authorized to do all acts necessary to ensure the compensation of affected residents.

4.3.52 By Cabinet decision CP(2012)9:1:D dated 4 September 2012, approval was granted for the transfer of an unspecified amount by the National Drainage and Irrigation Authority to NICIL to facilitate the acquisition and to effect payment of compensation at current market value to four transported land owners whose lands were compulsorily acquired for the construction of the East Demerara Water Conservancy northern relief channel. In addition, the Lands and Surveys Commission was to provide farmlands equivalent to the lands acquired.

4.3.53 By Cabinet decision CP(2013)5:4:AA dated 30 May 2013, approval was granted for the sum of $7.837 million to be transferred from the National Drainage and Irrigation Authority (NDIA) to NICIL to facilitate compensation being paid to the four farmers. NICIL provided a schedule of payments totalling $108.142 million, leaving a balance of $2.227 million remaining in the books of NICIL.

4.4 ***Analysis of revenue and expenditure: 2002 to 2014***

4.4.1 According to its audited financial statements for 2002, NICIL received $1.019 billion in dividends from public corporations and other entities, capital proceeds of $817.821 million, and $29.685 million as income from properties, giving a total of $1.867 billion, which under the previous arrangement, would have been paid over to the Treasury. Having retained these amounts as its revenue, NICIL recorded a profit after taxation of $1.645 billion. Out of this profit, NICIL declared and paid a dividend of $812.682 million to the Government.

4.4.2 NICIL last received a subvention of $53.1 million in 2002 from the National Budget, compared with $4.6 million in 2001. This difference was mainly due to the absorption of the operations of the Privatization Unit within NICIL. With effect from 2003, NICIL used the proceeds for the sale of State assets/properties to meet its administrative expenses, as per decision of NICIL's board meeting of 21 July 2003. **Since the National Budget for 2003 would have been approved in April 2003, the use of such proceeds to fund the administrative expenses would have preceded the board decision.**

4.4.3 Table IV summaries the results of NICIL's operations as well as dividends declared and paid over to the Treasury for the period 2002- 2014.

Table IV
Summary of the results of NICIL's operations: 2002 – 2014

Year	Gross Revenue	Operating expenses	Admin. expenses	Other expenses	Profit before taxation	Dividends paid to Treasury
	$'000	$'000	$'000	$'000	$'000	$'000
2002	1,920,450	45,658	52,990	53,582	1,768,220	812,682
2003	1,102,988	141,273	111,768	174,802	675,145	491,818
2004	825,409	38,486	73,696	317,044	396,183	622,500
2005	1,357,973	144,095	230,869	132,893	850,116	1,070,000
2006	2,120,420	196,656	158,520	164,558	1,600,686	999,897
2007	1,051,758	197,081	184,680	377,674	292,323	307,500
2008	1,187,263	194,263	214,237	249,647	529,116	381,250
2009	1,815,702	228,424	287,157	90,340	1,209,781	1,394,543
2010	1,308,111	165,460	344,714	88,954	708,983	928,744

2011	4,572,965	179,412	383,301	1,414,031	2,596,221	2,154,541
2012	6,965,255	154,720	435,313	71,881	6,303,341	1,000,000
2013	4,258,306	206,443	483,692	58,299	3,509,872	1,720,000
2014	803,548	252,280	241,296	42,767	313,228	200,000
TOTAL	**29,290,148**	**2,144,251**	**3,202,233**	**3,236,472**	**20,753,215**	**12,083,475**

Gross r*evenue - $29.290 billion*

4.4.4 As can be noted, gross revenue for the period 2002-2014 totalled $29.290 billion.This amount includes sums totalling $9.788 billion representing the sale of State assets/properties of which amounts totalling $7.142 billion, or 73%, relate to the period 2011-2012. In particular, NICIL sold the Government's investment in the Guyana Telegraphic and Telephone Company (GT&T) in 2012 to Hong Kong Telecom for US$30 million of which the sum of US$25 million was received. The balance of US$5 million was to be paid within a period of two years. As at 31 December 2014, this amount remained outstanding.

4.4.5 During the period 2010-2013, NICIL's financing of the Marriott Hotel totalled $5.371 billion, comprising $800 million share capital, $3.316 billion (equivalent to US$15.5 million) in interest-free loan and $1.255 billion in advances. As at 7 July 2015, NICIL's advances to the Marriott Hotel increased to $4.521 billion, giving a total funding of $8.637 billion, equivalent to US$41.682 million. It is evident that the acceleration in the disposal of State assets/properties and the sale of GT&T shares were done to secure financing of the cost of construction of the Marriott Hotel.

4.4.6 NICIL commented that the sale of the shares to NIS was not only to add liquidity to NICIL but also to provide the NIS with a good investment opportunity as the Berbice Bridge was showing healthy profits. It further stated that NICIL had enough funds for its targeted investment in the Marriott Hotel and that GT&T proceeds were kept in NICIL's bank account for several years before being used on the hotel.

4.4.7 During the period 2002-2011, the Government received $5.261 billion in dividends from the GT&T shares, or an average of $526.1 million per annum. By disposing of the shares, the Government would have lost an estimated $1.578 billion in revenue, equivalent to

US$7.616 million, during the period 2012-2014. It therefore means that Hong Kong Telecom would have recovered its cost in less than 12 years by way of dividends while at the same time retaining ownership of the investment. This calls into question the merit in the Government's decision to dispose of GT&T shares.

4.4.8 NICIL commented that: (a) since 2009, there was a downward trend in dividend payout by GT&T and that it was necessary to dispose of the investment; (b) the highest price offered in a public tender was US$7; and (c) with the help of Ambassador Dabydeen in China, NICIL was able to secure a sale price of US$30 million.

4.4.9 Apart from the GT& T shares and some minor other disposals, the related assets that NICIL sold during the period 2002-2014 were not reflected in the balance sheet of NICIL although these assets were vested in NICIL. Notwithstanding that the assets were transferred at zero consideration, at the time of vesting they should have been reflected in the accounts of NICIL after proper valuations are carried out. In this way, the sale proceeds could have been matched with the values of the assets recorded in NICIL's books to arrive at a profit or loss on disposal.

4.4.10 NICIL commented that the balance sheet does not show a breakdown of individual assets and that since the assets were gifted or vested for zero consideration, there was no effect on the income statement when they are disposed of. In support of its argument, NICIL referred to IAS 16.67-71 which provides for an asset to be removed from the balance sheet on disposal or when it is withdrawn from use and no future economic benefits are expected from its disposal. The gain or loss on disposal is the difference between the proceeds and the carrying amount and should be recognized in the income statement. However, NICIL's income statements for the period 2002-2014 do not reflect any line item entitled "profit on disposal" which suggests that no valuation was carried out.

Re: operating expenses - $2.144 billion

4.4.11 Total expenditure for the period 2002-2014 amounted to $8.583 billion. However, there were marked fluctuations from one year to the next, with no consistent trend to facilitate comparative analysis. In addition, **a review of the minutes of NICIL's board meetings indicated no evidence that NICIL's budgets were formally presented to the board.** NICIL commented that its budgets were shared with the Ministry of Finance in advance of the financial year when requested to do so. However, this hardly a substitute for a formal presentation to and approval by the board.

4.4.12 The Operating Expenses of $2.144 billion relate mainly to costs associated with Government's investments, especially as regards properties and real estate transactions. Table V gives a breakdown by categories of expenditure:

Table V
Breakdown of Operating Expenses 2002-2014

#	Name of entity	Amount $'000
1	LINMINE operating expenses	1,259,918
2	Real estate rates & taxes	209,238
4	BERMINE direct expenses	172,540
6	Real estate legal fees	66,640
7	GNEC direct expenses	59,308
8	Loss on sale of assets	53,625
9	Refund – Eccles	24,532
10	Real estate – Sanata	43,440
11	Real estate security	58,111
12	Real estate insurance	29,111
13	Real estate maintenance	17,376
14	Real estate surveys	15,808
15	Real estate advertisements	16,969
16	Real estate valuations	15,609
17	GPC direct expenses	15,037
18	Dividends paid	14,543
19	GNPL direct expenses	12,945
20	GTV/GBC direct expenses	11,072
13	Others	48,549
	TOTAL	**2,144,251**

4.4.13 As can be noted, LINMINE accounted for $1.260 billion or 59% of the operating expenses, including salaries of 75 staff members ($983.319 million) and rates and taxes ($122.342 million). In total, LINMINE accounted for $1.914 billion or 22.3% of NICIL's expenditure for the period 2002-2014.

4.4.14 In 2004, LINMINE became a division of NICIL. However, apart from the operations of the McKenzie-Wismar Bridge, it is unclear what the activities of LINMINE were to justify the expenditure of $1.914 billion during the period 2002-2014 or approximately $150 million annually.

4.4.15 NICIL commented that "Linmine represented a loss on the NICIL side with the expenses relating to securing the many assets that were still being held, pending a sale or lease in a transparent manner. In fact, by virtue of this being a NICIL department, the Treasury was insulated from supporting these operations". NICIL further commented that in 2003 the LINMINE Secretariat was set up to: (a) facilitate the privatization of LINMINE; (b) manage the Watooka Complex and the McKenzie-Wismar Bridge; and (c) safeguard the assets that were not part of the part of the privatization.

4.4.16 In 2003, LINMINE was recorded in the books of NICIL as a subsidiary with a value of $3.483 billion. However, in 2004, the value was reduced to zero, and up to the time of reporting LINMIME remained a subsidiary of NICIL. In 2002 and 2003, the Auditor General had disclaimed his opinion of LINMINE's financial statements because of uncertainties of a fundamental nature mainly relating to fixed assets, inventories, accumulated losses and lack of evidence that the entity had the ability for the foreseeable as a going concern.

4.4.17 LINMINE's latest audited accounts continued to show share capital of $3.483 billion. Therefore, a significant discrepancy existed between the accounts of NICIL and those of LINMINE. NICIL commented that in 2004 LINMINE was privatized and the assets that were not part of the privatization were vested in NICIL, hence the written-down value of the investment to zero. Notwithstanding NICIL's explanation, the discrepancy still remained.

4.4.18 NICIL also expended amounts totalling $195.275 million in respect of BERMINE for the period 2008-208 while amounts totalling $71.039 million were expended on GNEC for the same period. NICIL commented that prior to privatization of these entities, expenses paid by NICIL were for social and pre-privatization costs.

4.4.19 Other rates and taxes accounted for $209.238 million while legal fees amounted to $66.640 million or an average of $5.126 million per annum. Considering the NICIL has in its employ an Attorney-at-law in the Deputy Chief Executive Officer/Company Secretary as well as an in-house Legal Counsel, it is not clear why the extent of outside legal services was needed.

4.4.20 NICIL commented that various transactions require independent legal representation as well as representation in court by external counsel and that in-house legal advisors should not be the company's advocate in a court room.

Administrative expenses - $3.202 billion

4.4.21 Administrative expenses amounted to $3.202 billion and relate to standards items such as employment costs, telephone, electricity, fuel, and other related office expenses. Employment costs amounted to $896.612 million or 28%. Table VI shows the trend in employment costs for the period 2002-2014:

Table VI
Trends in employment costs 2002-2014

Year	No. of staff	Amount $'000	% increase	Year	No. of staff	Amount $'000	% increase
2002	29	35,040	-	2009	35	73,266	20.6
2003	27	33,830	(3.5)	2010	38	85,728	17.0
2004	26	29,876	(11.7)	2011	42	94,888	10.6
2005	27	35,137	17.6	2012	37	89,113	(6.0)
2006	34	37,344	6.3	2013	38	111,394	25.0
2007	44	54,728	46.6	2014	40	119,055	6.8
2008	40	60.724	10.9				

4.4.22 As can be noted, there was a sharp increase in employment costs in 2007. This was due mainly to an increase in staffing from 34 to 44 as well as the inclusion of salaries of the Executive Director and the Deputy Chief Executive Officer/Company Secretary respectively. Previously, their salaries were met from a World Bank-funded project at the Ministry of Finance.

4.4.23 In 2008, an additional payroll was introduced commencing with a payment of $12.856 million. In 2010, this payroll cost increased from $17.059 million to $45.554 million. For the period 2008-2014, total payments amounted to $298.593 million. NICIL commented that in 2008-2010 there was an increase in employees as well as regularizing of contracts for key management persons who were previously employed by the Government.

4.4.24 Included in the figure for Administrative Expenses were amounts totalling $590.839 million relating to LINMINE, comprising privatization ($75,378 million), maintenance ($84.197 million), fuel ($53.543 million), payments to contractors ($111.903 million); and

Other ($265.818 million). It therefore means that total expenditure incurred by NICIL on behalf of LIMNIME for the two categories of expenditure (Operating and Administrative) was $1.851billion.

4.4.25 The audited accounts of NICIL for 2012 showed an amount of $103.277 million as having been written off as loss on disposal. Explanations obtained indicated that this was due to the fire in Linden which destroyed buildings belonging to NICIL.

4.4.26 Amounts totalling $3.226 million were shown as Board Members Fees. However, the recipients were not members of NICIL's board. NICIL commented that the fees relate to the board members of the Privatization Unit. Given that the Unit is not a separate legal entity and for all practical purposes has been merged with NICIL, it is unclear why there are board members for the Privatization Unit.

4.4.27 Included in the Administrative Expenses were amounts totalling $931.026 million which are unrelated to the activities of NICIL and **are therefore not a proper change against the accounts of NICIL**. Table VII gives a breakdown of these expenditures:

Table VII
Breakdown of unrelated Administrative Expenses

#	Description	Amount $'000
1	Scarlett (Marriott Hotel)	516,491
2	Provision for bad debts	181,925
3	Amaila Falls Hydro Project	94,747
4	Berbice River Bridge	84,732
5	Guyana Power & Light	53,131
	TOTAL	**931,026**

4.4.28 As regards the expenditure of $516.491 million incurred on the Marriott Hotel, Atlantic Hotel Inc. (AHI) was incorporated in September 2009 to oversee the construction of the hotel and to take ownership of it. It was from the same year that expenditure on the hotel began to accumulate in the books of NICIL, **and therefore the above amount should have been shown as recoverable from AHI.** A further amount of $2.708 million was expended during the period January to May 2015 and charged to the expenditure of NICIL. **As a result, NICIL's expenditure has been over-stated by $519.199 million. The cost of the hotel would also under-stated by this amount.**

4.4.29 NICIL commented that: (a) any expense during the development stage and prior to the start of construction was paid by NICIL; and (b) expenditure on infrastructure such as rebuilding the road and public walkway should have been funded by the Government but was incurred by NICIL, given the lack of a Parliament to approve appropriations.

4.4.30 As regards the Amaila Falls Hydro Project, the Executive Director indicated that amounts expended on the project were treated as receivable from Sithe Global, the developer of the project. He further stated that since the project has been aborted, the receivable amount from Sithe Global would have to be written off. According the NICIL's draft financial statements for 2014, the total amount receivable from Sithe Global was $303.270 million of which **the sum of $151.615, representing 50% of the debt, was shown as provision for bad debts.**

4.4.31 Although Section 346 does not specifically refer to provision for bad debt, given the size of Sithe Global's provision that had been made in NICIL's 2013 accounts, it would have been appropriate for the Minister's approval to have been sought before making the provision. In any event, there was no evidence that NICIL's Board specially approved of expenditure to be incurred on behalf of Sithe Global, notwithstanding that it would have approved of the accounts. A provision for bad debts has the same effect on an entity's results of operations as that of a write-off and is usually a precursor to the latter, hence the need to specifically involve NICIL's board and the Minister. The fact that the board approved of the accounts is not enough.

4.4.32 Despite the statement from the Executive Director that payments made on behalf of the Amaila Falls Hydro Project were recoverable from Sithe Global, **amounts totalling $94.747 million were charged to the expenditure of NICIL. A further amount of $5.333 million was expended during the period January to May 2015 and charged to the expenditure of NICIL, resulting in an over-statement of NICIL's expenditure of $100.080 million and a corresponding under-statement of the amount owed by Sithe Global. Therefore, the total expenditure incurred on behalf of Sithe Global was $403.350 million.** It is not clear: (a) how much of this expenditure relates to the construction to the Amaila Falls access road; (b) how much was paid to Synergy Holdings before the contract was terminated; (c) what procedures were followed leading to the award of the contract; (d) how much remained recoverable from the contractor; and (e) what procedures were followed in the selection of China Railway Group to complete the road and how much was paid to it; and (f) what is the state of completion of the road.

4.4.33 NICIL commented that: (a) the arrangement with Sithe was covered by written agreements that have been agreed and approved by the Government, at the level of Office of the President/Cabinet; (b) under these agreements, NICIL owns the intellectual property paid for, if the project does not proceed; (c) NICIL did not make any payments to Synergy and was not involved in the selection process of Synergy or China Railway; and (d) when the project was suspended, it became prudent to charge the expense to the income statement of NICIL, rather than to receivables. However, it still remains unclear why expenditure continued to be incurred after the suspension of the project.

4.4.34 The amounts of $84.732 million and $53.131 million expended on behalf of the Berbice River Bridge and the Guyana Power and Light respectively are also **not a proper charge to the accounts of NICIL** and should have been recovered from these two agencies.

Other expenses - $3.236 billion

4.4.35 During the period 2002 to 2008, there were three categories of expenditure reflected in NICIL's accounts, namely Operating, Administrative and Other. With effect from 2009, the categories were reduced to two with the merger of Administrative and Other expenses. Table VIII gives a breakdown of the main items of expenditure categorized as "Other", inclusive of a provision made in 2011 for bad debts and stock obsolescence of $1.360 billion shown as a separate item in the accounts.

Table VIII
Breakdown of "Other" expenses

Description	Amount $'000
Provision for bad debts and stock obsolescence	1,359,558
Provision for bad debts (GEC)	427,687
BERMINE direct expenses	99,756
LINMINE direct expenses	63,260
GTV/GBC direct expenses	31,759
Decipher/Sijan direct expenses	19,439
LTI donation	30,973
Denmore Berbice	30,000
BIPP direct expenses	18,513
GNEC direct expenses	11,731
LMPCI direct expenses	11,000
TOTAL	**2,103,676**

4.4.36 Given the magnitude of the provision for bad debts and stock obsolescence, one would have expected a full and proper disclosure to be made in the notes to the audited accounts of NICIL as to reason(s) for this provision, the entities involved and the reason(s) for such a provision to be taken up in the books of NICIL. In addition, **there was no evidence that the matter was discussed at the level of NICIL's board, nor was there evidence that the specific approval of the Minister was sought for the provision to be made, notwithstanding that Section 346 of the Companies Act refers to the Minister's approval for write-offs only.** A provision for bad debt has the same effect on the results of NICIL's operations as that of a write-off and is usually a precursor to the latter, hence the need to involve NICIL's board and the Minister. NICIL has since provided a schedule of bad debts provision and has indicated that since the Board approved the accounts, this constituted approval. As indicated above, this was not enough.

4.4.37 As regards the other items of expenditure totalling $774.118 million shown in the above table, except for LINMINE, it is not clear why these should be borne by NICIL. NICIL commented that "These expenses were physically incurred and paid for by NICIL. Expenditures are expenses unless they satisfy the definition and recognition criteria". However, this explanation does not address the question as to the rationale for NICIL incurring the above expenditure.

4.5 *Analysis of assets and liabilities: 2002-2014*

4.5.1 As at 31 December 2001, the net assets of NICIL was a negative $51.731 million because of an amount of $55.731 million due to the Mayor and City Council of Georgetown as a result of a Court ruling. As a result of a change in accounting policy in terms of revenue recognition as well as treating public corporations as NICIL's subsidiaries, among others, net assets increased significantly over the years. As at 31 December 2014, net assets have increased to $14.316 billion, as shown at Table IX:

Table IX

Comparison of NICIL's net assets and financing: 2001 and 2014

	2001	2014	Increase
	$'000	$'000	$'000
Property & equipment	656	1,328,578	1,327,922
Investments	3,212	2,919,606	2,916,394
Subordinated bonds	-	3,315,866	3,315,866
Cash & deposits	2	3,042,703	3,042,701

Other assets	-	6,692,244	6,692,244
TOTAL ASSETS	3,870	17,298,997	17,295,127
Less: liabilities	(55,731)	(2,983,319)	(2,927,588)
TOTAL NET ASSETS	**(51,861)**	**14,315,678**	**14,367,539**
FINANCED BY:			
Issued share capital	1	100	99
Retained earnings	3,869	8,149,989	8,146,120
General reserves	-	1,666,270	1,666,270
Other reserves	(55,731)	4,499,319	4,555,050
TOTAL FINANCING	**(51,861)**	**14,315,678**	**14,367,539**

4.5.2 NICIL commented that the accounts for 2001 were restated as a result of the vesting of Sanata Textiles in NICIL which had an outstanding obligation to the City Council. It also stated that dividends are required to be paid out of profits, and to do otherwise would be a contravention of NIC's Articles and By-Laws. It is not clear why this statement was made, as this report has not raised this as an issue. The issue at hand is NICIL retaining the dividends received from public corporations and other entities and treating them as its revenue.

Re: Property & equipment

4.5.3 NICIL provided a schedule in support of the net book value of properties as at 31 December 2014, as summarized below. Most of these properties were vested in NICIL during the period 1999 to 2003:

Description of property	Amount $'000
Toolsie Persaud land	330,000
Building LCC	128,959
BERMINE properties	124,296
IAST	72,520
Area 'F" Ruimveldt	60,500
17-18 Lombard Street	59,747
LPC land and building	51,741
Lot 18 Lamaha	44,813
304-305 East Street	39,200
Ministry of Amerindian Affairs	38,082
Friendship land	25,000

Other	10,140
TOTAL	**984,998**

4.5.4 Included in the amount shown as "Other" are 35 properties that have been assigned values of $1,000 while ten other properties have values ranging from $2,000 to $3.150 million. It is evident that that there has been a significant undervaluation of NICIL's properties and hence an understatement of the value of NICIL's net assets. NICIL commented that this was due to the high cost of regular valuations.

Re: Investments

4.5.5 NICIL's financial statements recorded the following investments in subsidiaries:

Name of entity	% owned	# of shares	Amount $'000
Atlantic Hotel Inc.	100	80,000	800,000
NCN	100	35,000,000	220,329
Kwakwani Utilities In.	100	44,086	130,563
Property Holdings Inc.	73.6	76,625,044	76,025
GNNL	90	2,203,200	36,220
Guyana World Cup Inc.	100	-	28,820
Lethem Power Co. Inc.	100	17,030	17,030
Linden Electricity Co. Inc.	100	73,000	7,300
Guyana Oil Company Ltd.	100	574,999	575
LINMINE	100	3,482,661	-
GNCB	95.3	2,382,299	-
Other			3,330
TOTAL			**1,320,192**

4.5.6 Considering the values assigned to some of the investments, for example, GUYOIL - $575,000, it is again evident that NICIL's investments in the above entities have been significantly undervalued. NICIL commented that it is a general accounting principle to reflect investments at cost or market value, whichever is lower. As indicated earlier, NICIL did not purchase these investments and therefore there are no costs attached to them, except for the nominal values assigned and any additional costs incurred.

4.5.7 The amount of $800 million shown as investments in Atlantic Hotel Inc. represents 80,000 ordinary shares at $100 each in Atlantic Hotel Inc., the company that was established to own the Marriott Hotel. This amount represented one-third equity interest in the hotel. NICIL commented that it owns 100% of the share capital in AHI. This report has not disputed this. The one-third interest referred to is in relation to AHI's ownership of the Hotel with equity financing of $800 million or US$4 million. The total equity financing of the hotel is US$12 million, with the difference of US$8 million to be financed by a private investor. Since at the time of reporting, there was no investor, NICIL had to provide additional financing in the advances to AHI in order to complete the hotel.

4.5.8 As regards the amount of $220.329 million shown as NICIL's investment in NCN, the following sequence of events is relevant:

(a) At NICIL's 17 August 2007 meeting, the Executive Director informed the Board that there were 15 acres of land at Sparendaam that was good for sale. The Board agreed that NICIL would develop the area with high income house lots or town houses and condominiums;

(b) At the 14 July 2009 Board meeting, the Minister of Finance stated that he agreed to have all sums being expended at Sparendaam to be treated as NICIL's equity injection to NCN. At the said meeting, the Executive Director indicated that "we intend to transfer the land at Sparendaam to NICIL, which will be subdivided for allocation and construction".

(c) According the NICIL's audited financial statements for 2009, amounts totalling $166.241 million were shown as having been expended on the cost of removal and relocation of the transmission tower from Sparendaam to La Parfaite /Harmonie, West Bank Demerara. This amount was treated as an increase in NICIL's equity investment in NCN from $36.183 million to $202.424 million;

(d) In 2010, NICIL's accounts recorded an additional capital injection of $29.465 million, increasing the equity investment in NCN of $231.889 million. However, it was not until 29 April 2011 that the Board approved of the NCN transmission tower removal and relocation being charged to equity. Therefore, the decision to treat the expenditure as equity injection in NCN preceded the board decision; and

(e) NICIL's investment in NCN decreased to $220.329 million in 2012. However, it was not until 11 February 2015 that a share certificate was issued for an amount of $220.553 million.

4.5.9 On 9 March 2010, Cabinet approved of the award of a contract to Atlantic Construction in the sum of $13.797 million for Phase I of the laying of road infrastructure work at Plantation Sparendaam. Cabinet also approved of the vesting of the new development project at Plantation Sparendaam in the Central Planning and Housing Authority (CH&PA).

4.5.10 At NICIL's 12 March 2010 meeting, the Executive Director reported that amounts totalling $188 million were expended on the Sparendaam project of which VAT of $14 million was recoverable. He advised the Board that the former President had agreed verbally to the budget being increased from $135 million to $150 million but the overall cost was exceeded due to various factors. The actual cost certified by a Chartered Accounting firm was $185.553 million.

4.5.11 On 4 June 2010, Cabinet approved of a contract in the sum of $7.739 million for the installation of water infrastructure at Plantation Sparendaam and for NICIL to do all acts to ensure its completion.

4.5.12 The Executive Director contended that: (a) NICIL had no part in the allocation of lots at Sparendaam, with the land initially owned by the State and then transferred to CHPA per Cabinet's decision; (b) NICIL's role was to manage initial infrastructure on behalf of CH&PA in parallel with the relocation of the NCN tower and to build the Dorcus Community Centre in exchange for a piece of land to create a Southern access way into Sparendaam (to be owned by CHPA) based on tendered works and contracts; (c) the total amount expended was treated as a receivable in NICIL's books; and (d) attempts have been continuous to have CH&PA repay the outstanding sum.

4.5.13 I met with the Minister within the Ministry of Communities on 10 September 2015 and he confirmed that CH&PA had no involvement in the project. This is notwithstanding Cabinet's decision of 9 March 2010 to the vesting of the Sparendaam in CH&PA. I have also reviewed the vesting orders covering the period 2007 to 2014 and I have found no evidence of the Sparendaam land being vested in NICIL and subsequently to CH&PA.

4.5.14 NICIL has provided a detailed schedule of expenditure relating to road infrastructure works, the installation of water infrastructure, the building of the Dorcus Community Centre, and security costs, among others. The total amount expended was $71.496 million. This amount was shown as receivable from CH&PA. It therefore means that State funds amounting to $257.049 million were expended on the development of the Sparendaam housing project. NICIL should have accumulated the expenditure to be applied to the cost per plot and hence recovered from the ultimate beneficiaries.

4.5.15 Using a conservative estimate of $985 million for the 2009 market valuation of the land on which the Marriott Hotel has been constructed prior to infrastructure being undertaken on a similar size land, **the total value of the Sparendaam project works out to $1.242 billion or $82.8 million per acre**. This figure should have been used to compute the price per lot. It is not clear: (a) how many lots are involved and their respective sizes; (b) the basis under which the recipients were selected; (c) how the price of approximately $1.5 million per lot was determined; and (d) which entity - NICIL or CH&PA - received the proceeds from the sale of the plots.

4.5.16 **It is evident that the removal and relocation of the tower was done to facilitate the housing development of the area. In addition, instead of accumulating all the costs associated with the Sparendaam project in a special account to be applied in arriving at the price to be charged per house lot, NICIL and Cabinet were complicit in charging the related expenditure to NCN in the form of equity investment, and to CH&PA in the form of receivable. The fact that the majority of the Cabinet members are the beneficiaries of the house lots renders it highly inappropriate for the very Cabinet to approve of the charging of the expenditure of $257.049 million to the accounts of NCN and CH&PA.**

4.5.17 NICIL offered the following comments in relation to the above observations:

- The management of the Ogle Airport had approached the then President about the concerns the NCN tower being on the flight path of aircraft utilizing the airport and a request was made for the transmission tower to be lowered and/or relocated;

- NCN had made representation for the relocation of the tower for improved transmission, especially for the hinterland;

- The relocation costs of the tower was properly treated as NICIL's equity contribution to NCN;

- Several engineers in the employ of CH&PA/Ministry of Housing & Water were actively involved in the project;

- Notwithstanding Cabinet's decision for NICIL to vest the land in CH&PA, NICIL did not do any act, due to subsequent knowledge gained that CH&PA had sold the lots and completed the transfers to third parties; and

- It is not in agreement with the principle used in estimating the value of the land by comparing a waterfront property with a residential property. Needless to mention, both are waterfront properties.

4.5.18 As regards the tower being in the flight path of aircraft operating out of Ogle Airport, there was no reference to this in any of NICIL's board minutes or in any of the Cabinet's decisions in relation to the Sparendaam Project. It is also not clear to whom NCN made representation for the relocation of the tower since the established procedure is for NCN to request funding via the National Budget to undertake any capital works.

4.5.19 In terms of trade investments, the following is a breakdown:

Name of entity	% owned	# of shares	Amount $'000
Guyana Stores Ltd	3	3,188,473	3,188
Omai Gold Mines Inc.	5	500	1
Guyana Stockfeeds Ltd.	7	7,000,000	7,000
Caribbean Food Corporation	7	7,186	-
New GPC Inc.	10	761,566	76,157
Berbice River Bridge	0	1	-
Bauxite Company of Guyana Inc.	10	-	443,426
Hand-in-Hand Trust	10	250,000	25,000
TOTAL			**554,772**

4.5.20 NICIL also has the following investments in associated companies:

Name of entity	% owned	# of shares	Amount $'000
Bosai Mineral Group	30.0	5,223,208	1,044,642
Surpana Allied & Industrial	49.9	49,900	-
TOTAL			**1,044,642**

4.5.21 Except for the Bosai Mineral Group and Guyana Stockfeeds Ltd., **there is no evidence that any dividends were received from the above investments totalling $1.599 billion**.

4.5.22 Guyana Stores Ltd. was sold in 1999 for US$6 million with Government retaining 3% of the shareholdings. However, $2 million remained outstanding from the purchaser, Royal Investments Inc., and the matter is currently before the High Court.

4.5.23 NICIL's 2004 audited accounts showed an investment of $1.045 billion in Omai Bauxite Mining Inc. representing a 30% Omai's shareholding. In 2009, Bosai Mineral Group came in existence and NICIL switched its investment in the new company. For the period 2010-2014, NICIL received amounts totalling $3.9 billion in dividends from Bosai.

4.5.24 As regards Guyana Stockfeeds Ltd., there is a note in the financial statements indicating that despite a judgment in favour of restoring NICIL's previous shareholdings in Guyana Stockfeeds Ltd., the latter appealed the decision. That judgment was made prior to 2002, and it is not clear what the status of the appeal is. The last dividend received the company was in respect of 2006.

4.5.25 In relation to the New GPC Inc., by Cabinet approval of October 1999 and September 2001, the Government had sold 60% and 30% respectively of its shareholding in the predecessor organization, the Guyana Pharmaceutical Corporation, to Queens Atlantic Investments Inc. for $658 million. However, there was no evidence that the New GPC paid any dividends to the Government for its 10% stake in the company.

4.5.26 As regards NICIL's 10% investment in shares in Hand-in-Hand Trust Inc., in 2002 the Government had sold 90% of its shares in GNCB Trust Corporation to Hand-in-Hand Mutual and Fire Insurance Co. for $439 million. Prior to 2006, the financial statements of NICIL showed an investment of 10% of the shares in GNCB Trust Corporation which was renamed in Hand-in-Hand Trust Inc.

4.5.27 There was an allegation of conflict of interest involving the Executive Director of NICIL whose brother owns one-third of the shares in Hand-in-Hand Trust. The Executive Director had signed a resolution of Hand-in-Hand Trust dated 24 August 2011 on behalf of his brother. Hand-in-Hand Trust is also a private investor of the Berbice Bridge Co. Inc. (BBCI) of which the Executive Director was the Company Secretary. NICIL had also invested $950,000 in shares in BBCI. These were eventually sold to the NIS in order to raise funds. In response to the allegation, the Executive Director had issued a press release in which he stated that he had consulted with the then Minister of Finance and the Attorney General and was advised that they saw no conflict of interest.

4.5.28 The Executive Director also held directorship and/or chairpersonship in several agencies in which the State holds investments via NICIL. These include: Atlantic Hotel Inc. (where he was the sole director and chairperson); Guyana Power and Light; GEC, NCN, Property Holdings Inc., LINMINE, BERMINE, BIDCO, Aroaima Mining Co. Inc., Linden Electricity Co. Inc., Mathews Ridge Power and Light Inc., and NEOCOL. **From a governance standpoint and possible conflicts of interest, the holding of such directorship and/or chairmanship is considered inappropriate in view of NICIL's relationship with these entities**.

Re: Subordinated bonds

4.5.29 On 11 April 2013, NICIL's board approved of an interest-free loan of US$15.5 million to Atlantic Hotel Inc. to finance the cost of the construction of the Marriott Hotel. The loan is in the form of subordinated bonds with a maturity date of 30 April 2028.

Re: Bank balances

4.5.30 According to NICIL's audited financial statements; amounts totalling $6.043 billion were reflected as cash and deposits as at 31 December 2013. Table X gives a breakdown of balances as at this date along with the balances as at 31 May 2015:

Table X
List of bank accounts and balances as at 31 December 2013

#	Account No.	Name of account	Year opened	Balance as at 31/12/13 G$'000	Balance as at 31/05/15 $'000
1	487-748-6	NICIL BCM	2003	3,630,684	(84,918)
2	651-247-9	GTC Gratuity	2013	4,387	4,387
3	744-185-0	Berbice Inn	2010	247	653
4	650-729-7	Secretariat petty cash	2010	184	292
5	484-183-9	McKenzie Bridge	2010	89,901	81,621
6	484-171-4	Watooka Complex	2010	31,321	34,080
7	484-195-3	LINMINE Secretariat	2010	21,652	19,931
8	654-183-3	PU Proceeds		2	1
9	654-301-1	NICIL Current A/c	?	(94,935)	(260,518)
10	1-185-8/1-215-3	GNCB	?	163	162
11	109-9/3-208-5	NICIL US A/c	2003	2,305,357	1,459,191
12	483-161-6	GUYSUCO transactions	2003	438	415
13	655-212-2	BRB Land Acquisition	2006	11,674	11,522
14	Republic Bank T'dad	LINMINE US$ A/c	?	40,939	40,939
15	Petty cash			123	2,892
16	US$ cash			590	4,007
		TOTAL		**6,042,727**	**1,314,657**

4.5.31 As can be noted, NICIL's bank balances as at 31 May 2005 were reduced from $6.043 billion to $1,315 billion mainly due to additional advances to Atlantic Hotel Inc. for the construction of the Marriott Hotel, up from $1.255 billion at the end of 2013 to $4.521 billion as at 7 July 2015.

4.5.32 **The business cash management account and the current account were, however, overdrawn by $84.918 million $260.518 million respectively** while the balances on NICIL's US$ account and LINMINE's US$ account reflected positive balances of G$1.459 billion and G$40.939 million respectively. Other significant balances were: McKenzie Bridge - $81.621 million; Watooka Complex - $34.080 million; LINMINE secretariat - $19.931 million; and Berbice Bridge land Acquisition - $11.522 million.

4.5.33 NICIL commented that several pre-audit adjustments were processed at the time the schedule was presented and the revised balances on the BCM and current account were $884 million (positive) and $28 million (overdrawn) respectively.

Re: Other Assets

4.5.34 Other Assets as at 31 December 2014 totalled $6.692 billion, comprising: Inventories - $416.2 million; Trade Receivables - $2.011 billion; Other Receivables - $555.218 million and related party transactions - $4.660 billion. The original amount of inventories was $1.676 billion but a provision of $1.359 billion was made for obsolescence. This provision could be traced to 2011 and earlier years.

4.5.35 In relation to Trade Receivables, a provision for bad debts of $575.890 million has also been made. This amount could also be traced back to 2011 and earlier years and relate to Guyana Stores - $382.513 million; Guyana National Industrial Corporation - $185.611 million; and Aroaima Metal Company - $7.736 million.

4.5.36 The following gives a breakdown of the balances of Trade Receivables:

Name of Debtor	Amount $'000
Hong Kong Telecom	1,000,014
Guyana Stores Ltd.	510,017
Guyana National Industrial Corporation	342,141
LINMINE Secretariat debtors	58,288
BK International	35,766

AMC receivables	23,048
Scady Business Corporation	15,014
Others	26,882
TOTAL	**2,011,117**

4.5.37 The amount of G$1 billion (equivalent to US$5 million) owed by Hong Kong Telecoms relates to the sale of GT&T shares which were sold for US$30 million in 2012 of which US$25 million was received. The balance of US$5 million was due and payable before the end of 2014.

4.5.38 In 2008, NICIL sold 4.7 acres of land (Tract RU) to Scady Business Corporation for $115 million. According to NICIL's publication, "Privatization in Tables: Phase II – 1993-2011", this amount was paid to NICIL. However, as can be noted, an amount of $15.014 million remained outstanding for over eight years.

4.5.39 In relation to Other Receivables, these relate LINMINE - $289.610 million; and Sithe Global - $303.270 million. Provision has been made for the write-off of $247.460 million or 95% of LINMINE's debt while a similar provision has been made for the write-off of $151.635 million or 50% of Sithe Global's debt.

4.5.40 Of the amount of $4.660 billion shown as related party receivables, $4.421 billion was in relation to indebtedness by AHI for the construction of the Marriott Hotel. As at 7 July 2015, the latter amount has increased to G$4.521 billion, equivalent to US$21.816 million. AHI is also indebted to the Republic Bank of Trinidad and Tobago in the sum of US15.25 million in the form of a loan to be repaid in 26 semi-annual installments. Given that half-yearly repayments of principal and interest are due to commence sometime in 2016, it is extremely unlikely that the hotel will generate enough revenue to service the Republic Bank loan and to discharge its liability to NICIL. It may therefore be necessary for the amount of US$21.816 million to be converted into a long-term liability in the form of an additional loan, bearing in mind that NICIL has already granted AHI an interest-free loan of US$15.5 million. Alternatively, NICIL's equity contribution could be increased by $21.816 from US$4 million to US$24. 816 million.

4.5.41 Included in Related Party Receivable is an amount of $754.398 million shown as provision for bad debts. These relate to Guyana Electricity Corporation - $566.633 million; GT&T - $142.738 million; GUYSUCO - $42.968 million; and LINMINE - $2.059 million. **It therefore means that the total provision for bad debts as at 31 December 2014 was $3.270 billion.** The comments made earlier about specific board approval and the Minister's involvement in relation to these large provisions for bad debts, are also relevant. It should not be over-emphasized that a provision for bad debt has the same effect on the results of NICIL's operations as that of a write-off and is usually a precursor to the latter, hence the need to involve NICIL's board and the Minister.

Re: Current liabilities

4.5.42 NICIL's current liabilities as at 31 December 2014 amounted to $2.695 billion. Included in this amount was the sum of $1 billion shown as owing to the Guyana National Cooperative Bank. This amount was transferred to NICIL in 2012 for the Marriott Hotel project, and it is not clear, why after two years, the funds were not returned to the Bank.

4.5.43 Also included in the current liabilities was the sum of $333.417 million representing the unexpended portion received from the Guyana Forestry Commission and the Ministry of Labour in relation to the rehabilitation of the 44 High Street property. In view of the fact that the project has been abandoned, this amount should have been returned to the two entities.

4.6 *Vesting and sale of State assets/properties: 2002-2014*

4.6.1 During the period 2002-2014, 35 orders were issued for the vesting of State properties/assets in NICIL. However, as shown at Table XI, 13 of these properties were not reflected in the in the balance sheet of NICIL, notwithstanding that the vesting orders gave NICIL the legal titles to the properties. **This is not in keeping with established accounting practice which requires these properties to be valued and placed in the balance sheet so that when they are disposed of, a profit or loss on disposal is reflected in the accounts. However, only the disposal proceeds were shown in the accounts of NICIL and treated as its revenue.**

Table XI
List of properties not shown in NICIL's balance sheet

#	Date	Vesting Order	Description of property	Remarks
1	18/06/02	20/2002	94-95 Duke Street	Sold to Roraima Airways Inc. via Order No. 2/2009.
2	05/09/02	27/2002	Tract C and Lot E Plantation Rome	Sold to Pritipaul Singh Investments via Order No. 29/2002.
3	06/01/05	36/2004	LINMINE properties	Sold to various persons during 2010-2014
4	22/11/04	37/2004	Lethem Power Co.	Status not determined.
5	27/08/05	27/2005	Plantation Ruimveldt	Leased to Modern Industries Ltd. and

			(sublot A30, lots 24, 25, 28 & 28)	C. H. Gibbs
6	23/09/05	42/2005	Mud Lot 3, North Cummingsburg	Status not determined.
7	28/01/08	06/2008	Tracts A & B High Street (Car Park)	Status not determined.
8	30/12/08	47/2008	Tract RU Plantation Liliendaal	Sold to Scady Business Corporation.
9	14/07/09	12/2009	49-52 A Water Street	Sold to J. P. Santos.
10	23/11/10	61/2010	Block Alpha	Transferred to Atlantic Hotel Inc. for the construction of the Marriott Hotel
11	11/01/10	63/2010	22 Sendall Place	Sold to Wooed Philips
12	30/01/14	04/2014	Lot 14 A Water Street	Sold to Harry Rambarran.
13	04/04/14	15/2014	Sub lot AA Turkeyen	Transferred to China Railway First Group via order 16/2014.

4.6.2 NICIL commented that the balance sheet does not show a breakdown of individual assets and that since the assets were "gifted" or vested for zero consideration, there was no effect on the income statement when they are disposed of. In support of its argument, NICIL referred to IAS 16.67-71 which provides for an asset to be removed from the balance sheet on disposal or when it is withdrawn from use and no future economic benefits are expected from its disposal. The gain or loss on disposal is the difference between the proceeds and the carrying amount and should be recognized in the income statement.

4.6.3 NICIL's income statement for the period 2002-2014, however, does not reflect any line item entitled "profit on disposal" nor does the balance sheet show an item entitled "Revaluation Reserve" where the accumulated surplus/deficit on revaluation is shown. NICIL, by its own admission highlighted in various parts of this report, referred to the difficulty in engaging in frequent valuation exercises and the use of a "conservative" approach in assigning nominal values to the assets/properties. These observations as well as the fact that the entire gross proceeds from the disposal of assets/properties were shown as gross revenues, clearly suggest that the accounting standard referred to in the previous paragraph was not complied with.

4.6.4 As NICIL is not a public corporation, Section 66 (1) of the Public Corporation Act permits the Minister by notification in the *Gazette* to apply any of the provisions of the Act, with modifications, or such modifications as specified in the notification to anybody corporate, not being a corporation, owned by the State or in which controlling interest vests in the

State or in any agency on behalf of the State. A notification dated 18 July 2000 was made to the effect that Section 5 of the Act shall apply to NICIL. That section provides for the vesting in a public corporation of movable and immovable property. In the relation to the transfer of an asset/property, Section 8 of the Act is applicable. However, the notification of 18 July 2000 does not extend this section. Notwithstanding this, the Minister has been using Section 8 for the purpose of disposing of assets vested in NICIL, and therefore legal support for this action appears to be in doubt.

4.6.5 NICIL sold the property at 93 Duke Street, Kingston to Roraima Airways via Order No. 26/2010 dated 17 June 2010. The records of NICIL indicate that the company was the third highest bidder. However, the highest bidder withdrew his bid after the tender was awarded to him, and it was decided to sell the property to Roraima Airways because of its expansion plans as well as the fact that the company is the owner the adjacent property which NICIL had earlier been sold to it.

4.6.6 The two properties were sold for $49 million and $138 million, compared with valuations of $50 million and $140 million respectively. It is not clear how much was expended on renovation works before these two properties was sold. The rationale for disposing of these two properties could also not be determined, considering: (a) the property was strategically located in close proximity of the United Stated Embassy and the Canadian High Commission; and (b) other State agencies in need of office space have been renting buildings over the years, e.g. the Guyana Revenue Authority in respect of its office in Camp Street. It is relevant to note that in 2011NICIL had sold the land only at Lot E ½ 126 & 127 Barrack and Parade Streets with an acreage of 0.6753for $179 million. This land is in close proximity of the Duke Street properties.

4.6.7 According to NICIL's publication "Privatization in Tables", during the period 1995 to 2011, NICIL recorded 65 disposals of State assets/properties, excluding the sale/mortgage of LINMINE power plant to Texas Ohio and the sale of lands at Linden. **A comparison of the sale proceeds with the valuations of the properties shows variances of on average of $1 million. In particular, in respect of 30 properties, the valuation and sale proceeds were identical while in respect of 22 properties the difference was a mere $2 million. This appears to be an extraordinary coincidence.**

4.6.8 In relation to the sale of the old GAIBANK property at Barrack and Parade streets, the actual valuation was $127.820 million. However, the publication shows a valuation of $181 million while the price paid was $179 million.

4.6.9 Although paragraph 4.6.7identified the source of information, NICIL requested and was provided with the source of information via an email communication, and at the time of reporting, it was yet to respond.

4.6.10 By Order No. 29/2002, NICIL transferred the property at Plantation Rome (4.143 acres) to Pritipaul Singh Investments **on the same day that it was vested in it.** Both orders were **signed by the Acting President. The proceeds from the sale amounted to $336 million. Similarly, sub-lot AA Turkeyen was transferred to China Railway First Group on 4 April 2014 as a gift via Order No. 16/2014, the same day the property was vested in NICIL via Order No. 15/2014. Both orders were signed by the Minister of Finance.**

4.6.11 By Order No. 37/2011 dated 3 May 2011, the Minister of Finance vested 10.022 acres of property at Plantation Turkeyen from the Government of Guyana to in NICIL, and on 9 June 2011, the property was transferred to Multicinemas Guyana Inc. by Order No. 38/2011. **The selling price was $159 million. It is evident that the purchasers of these three properties had already been chosen without any form of competitive bidding.**

4.6.12 China Railway was involved in the controversial award of the East Coast Demerara Road Expansion Project from Better Hope to Belfield. It was also involved in the completion of the Amaila Falls access road after the previous contractor had failed to meet his obligations under his contract. It is not clear what competitive procedures were followed in the awarding of the contract to China Railway.

4.6.13 As regards the property that was sold to Multicinemas Guyana Inc., NICIL's publication referred to above stated that it "was advertised and the highest bidder failed to provide any financial commitment or proof of his ability to purchase and develop the land. Following the passage of time, the property was later sold with negotiations to Multicinemas Guyana Inc. for the establishment of a modern state-of-the-art entertainment complex with multiplex cinemas that will result in job creation, increase revenue from taxes and provide social medium for Guyanese. Value received was higher than the current market value and the highest bid receive earlier". It is to be noted, however, that the land was sold a little over one month after it was vested in NICIL and therefore there is inconsistency in the above statement as regards advertisement, failure of the highest bidder and the passage of time. In addition, the status of the developmental works could not be determined.

4.6.14 NICIL commented that there are several reasons why a property might not be subject to public tender. These include:

- Occupants of leased properties may be accorded the first option to buy;
- Properties may be sold at market value or above, without a public tender, where there is significant expected investment as in the case of Multicinemas, the development of which has been partly delayed due to court actions; and
- In the case of Scady Business Corporation, the property was sold at a price per acre that was three to four times greater than the comparable market price.

4.6.15 NICIL acted an agent for the sale of GUYSUCO properties. According to the above-mentioned publication, 21 properties were sold for $1.128 billion, as shown at table XII.

Table XII
List of GUYSUCO properties sold by NICIL

#	Date	Order No.	Description of property	Name of purchaser	Amount $'000
1	24/12/03	47/2003	Block R Diamond	Demerara Distillers Ltd.	250,000
2	30/07/10	25/2010	Herdmanston House	Michael George	133,900
3		49/2003	200-201 Camp Street	CLICO	101,918
4	08/10/03	15/2004	Tracts 1-6 of Q1 Providence	Classic Resources Inc.	90,000
5	30/12/08	…/2008	Block R Leonora	South American Woods Inc.	80,000
6	30/07/10	30/2010	Tract A Farm	Walter Persaud	65,000
7			Block X	Banks DIH Ltd.	60,000
8	08/10/03	37/2003	Area H Farm	Classic Resources Ltd.	60,000
9	04/07/05	24/2005	4A Diamond	Guyana Beverages Inc.	54,978
10	19/07/03	20/2004	3A Diamond	Guyana Beverages Inc.	44,982
11	24/12/03	48/2003	Tract 7 of Q1 Providence	Mines Services Ltd.	36,000
12	30/12/08	56/2008	Plot RBL Diamond	Republic Bank Ltd.	32,000
13	07/02/06	06/2006	ZZ Ogle	GT&T	25,000
14	30/12/08	53/2009	Plot GBTI Diamond	GBTI	23,787
15		39/2010	Tract B farm	Samuel & Yvonne Hinds	15,000
16	08/02/08	09/2008	Plot DBL Diamond	Demerara Bank Ltd.	14,000
17	30/12/08	55/2008	Block RP of 2A	NPI Communications Inc.	13,500
18	03/12/08	54/2009	Plot GOC Diamond	GUYOIL	13,333
19	30/12/08	55/2009	31(a) Sea Spray, Leonora	Surrendra Persaud	7,520

20	17/02/10		30(b) Sea Spray, Leonora	Irfaan Ali	7,100
21	14/07/09	13/2009	Plot B Prospect	GUYOIL	431
				TOTAL	**1,128,449**

4.6.16 On 12 December 2008, 13.3098 acres of land at Plantation Groenveldt, West Coast Demerara (Block R Leonora) were transferred to South American Woods Inc. for the construction and operations of a wood processing facility with the option of future development in manufacturing, industrial and commercial activities including the construction and operations of a shopping mall, providing the wood processing facility is constructed first. Construction was to commence one year later. The purchase price was $80 million. **However, at the time of reporting, there was no evidence that the wood processing facility was constructed.**

4.6.17 By Order No. 45 of 2008 dated 29 December 2008, 209.343 acres of land at Block LPT lettered XXX were transferred from GUYSUCO to the Government of Guyana. Of this amount, 103.88 acres were transferred to NICIL via Order No. 4/2010 dated 12 March 2010. Three months later, on 17 June 2010, NICIL sold the said land to National Hardware for $510 million via Order No. 43 of 2010. This works out to $4.9 million per acre.

4.6.18 On 29 December 2008, a further transfer by way of gift of 400.340 acres of land at Cummings Lodge, Industry and Ogle from GUYSUCO to the Government of Guyana. There is no evidence that any of these lands have been vested in NICIL and whether they have been disposed by way of sale.

4.6.19 By Order No. 47/2008 dated 30 December 2008, 4.7 acres of land at RU Plantation Liliendaal was transferred from the Government of Guyana to NICIL. NICIL in turn sold the property on 2 January 2009, a mere two days later, for $115 million to Scady Business Corporation, an overseas company based in Tortola, British Virgin Islands. This is further evidence of the sale of land without any form of competitive bidding.

4.6.20 By Order No. 40/2010 dated 29 November 2010, NICIL sold 18.871 acres of land and buildings and erections at Plantation Ruimveldt (Sanata Textiles) to Queens Atlantic Investments Inc. (QAII) for $689 million. The note on NICIL's publication reads:

> *After being advertised for sale but no proposals were received. In mid-2007, a proposal was received from QAII for the development of the compound with a US$27 million investment plan. The proposal was for a*

lease with an option to purchase. At the time of the proposal NICIL was facing continued vandalism and destruction to the property despite the presence of security. In 2007, following the requisite approvals a lease was issued and in 2010 having satisfied all the conditions precedent to exercise the option to purchase, the property was sold at the current market valuation of the property before the improvements were implemented.

4.6.21 In 1999 and 2011, NICIL sold 60% and 30% of Government's interest in the Guyana Pharmaceutical Corporation to Queens Atlantic Investments Inc. for $458 million and $200 million respectively. The note in the publication explains as follows:

The determination of the price of $200 million for 30% of the shares in the New GPC was based on the approval of the Privatisation Board and Cabinet; the price was determined after considering a loss in 2000 and the assumption by New GPC of $81 M more in liabilities than anticipated at privatization; the pro-rated price of the shares to the original sale price was $238 M-however, when adjusted for the pro-rated loss of 2000 and the increase in liabilities, a downward reduction of G$45 M was arrived at yielding a price of G$192 M for the 30% share value; the sale price was set at G$200 M…

4.7 *Procurement and contract management*

4.7.1 In accordance with Section 24 of the Procurement Act 2003, public corporations and other bodies in which controlling interest vests in the State may, subject to the approval of the National Procurement and Tender Administration Board (NPTAB), conduct procurement according to their own rules and regulations, except to the extent that such rules and regulations conflict with the Act or the regulations, the Act and the regulations shall prevail. In addition, if funds are received from the Treasury for a specific procurement, then the corporation or other body shall be obliged to follow the procedure set out in the Act and the regulations.

4.7.2 Despite the size and complexity of its operations, NICIL does not have its own procurement rules, which is key requirement of the Procurement Act. In the circumstances, it would have been more appropriate for NICL to involve NPTAB in the assessment of tenders received for the award of contracts, as is the case of other State institutions that do not have their own procurement rules and regulations.

4.7.3 The Executive Director contended that the opening of all bids is normally done in the presence of the staff of the Auditor General's office and that NICIL carries out internal assessments before contracts are awarded. He further stated that NICIL staff would collect the bids received; review each bid submission for tender procedure compliance; and, where required, summarize key details of each bid. A paper is then prepared and presented to the various Boards and Cabinet for final decision.

4.7.4 The Executive Director's response, however, did not address NICL's failure to follow the requirement of Section 24 of the Act. In addition, the presence of the Audit Office at the opening of bids does not negate, or is not a substitute for, this requirement. Further, internal assessments by the staff of NICIL lack the much-needed degree of independence to evaluate tenders received, especially for a large project such as the construction of the Marriott Hotel.

4.7.5 As regards the selection of the contractor for the construction of the Marriott Hotel, of the 23 local and foreign firms that applied for prequalification, seven firms were shortlisted. However, it was noted that several reputable international firms were not shortlisted. According to NICIL, only two firms submitted bids. SCG International (Trinidad & Tobago) Ltd. was rated the lower evaluated tenderer with a bid price of US$65 million, some US$24 million higher than the estimated cost of US$41 million. NICIL indicated that SCG's bid considerably lower than the other bidder.

4.7.6 NICIL also indicated that both two bidders were requested to submit alternative designs with a view to reducing their bid prices without compromising on the standards for a Marriott-type hotel. **However, Section 41 of the Procurement Act states that there shall be no negotiation between the procuring entity and any of the bidders**. In the absence of its own procurement rules, NICIL should have been guided by this requirement.

4.7.7 **Up to the time of reporting, despite being reminded to do so, NICILwas yet to submit information as to who the other bidder was and what was the bid price, including his revised bid and other related information. In the absence of this information, the basis of the award of the contract to SCG International could not be properly determined.**

4.7.8 NICIL further indicated that SCG's revised tender was considerably lower than that of the other bidder. However, the size of the hotel was reduced from 274,032 square feet to 190,467 square, a 31% reduction in size. LEED certification was excluded as well as other costs estimated at US$1.5 million. On 16 November 2011, AHI (represented by Mr. Brassington) entered into a contract with SCG for the design and construction of the hotel in the sum of US$50.918 million, a 22% reduction in price**. This was a mere a mere**

12 days before the 28 November 2011 elections. It is not normal practice for major contracts, such as that for the construction of the Marriott Hotel, to be awarded so close to national elections, for obvious reasons. In addition, there was no approval from NICIL's board nor from Cabinet at the time the contract was entered into. It was not until 27 September 2012, some eleven months later, that such approval was granted, with a retroactive effective date of 30 September 2011.

4.7.9 In early July 2010, news reports surfaced in Trinidad and Tobago of SCG International being investigated in relation to the award of contracts totalling TT$2 billion relating to the Urban Development Corporation of Trinidad and Tobago (UDECOTT) without any form of tendering, in addition to several other government contracts. The Police had raided SCG's office and seized documents relating to UDECOTT. NICIL commented that it was not aware that SCG was convicted for wrong-doing and that it could not disqualify the contractor on the basis of allegations.

4.7.10 The selection of the Engineering Supervision Consultant also raises questions about integrity of NICIL's internal assessments of tenders. The selected firm, M.A. Angeliades Inc. was charged with underpaying 300 workers it had employed at nearly one dozen New York substation construction projects. It was disqualified from participating in the projects of the School Construction Authority until July 2015. On 30 June 2010, the firm's head, M. A. Angeliades, pleaded guilty of felony and falsification of business records and he and his daughter were to have resigned from their positions in the firm which was to have been monitored by an independent private sector Inspector General through September 2013.Despite this, the contract between M. A. Angeliades Inc. and AHI was executed on 6 August 2012 and was signed in person by Mr. Angeliades!

4.7.11 In response to the above, AHI provided as evidence a letter dated 30 March 2011 from the lawyers of M. A. Angeliades Inc. indicating that the case was dismissed and there were no pending litigations. However, the letter made it clear that the period referred to was to 31 December 2009, and that the case was People v. M.A. Angeliades Inc., Ind. No. 2686/2009. Suffice it to state that the charges against the company were set aside after a non-prosecution agreement was filed in the court, requiring the company to compensate the workers who were underpaid, failing which the criminal charges would be restored.

4.7.12 One of the questions comprising the evaluation criteria was: "Has your organization's license ever been revoked in said jurisdiction or trade category?" However, this part of the evaluation worksheet was left blank for both bidders. This raises the pertinent question as to whether the omission was an oversight or a deliberate act. AHI commented that the

information was not filled in because M.A. Angeliades Inc. did not have a revocation of license!

4.8 ***Financial reporting and audit***

4.8.1 Section 346 (1) provides for a Government company to present to the Minister audited accounts within six months of the close of the financial year and for those accounts to be laid in the National Assembly not later than three months thereafter. A Government company is defined as any company in which not less than 51% of the paid up share capital is held by the Government and includes a company which is a subsidiary of a Government company.

4.8.2 In accordance with Section 107 of the Companies Act 1991, the directors of a company must call an annual general meeting of shareholders not later than 18 months after the company comes into existence and subsequently, at least once every calendar year and not later than 15 months after the holding of the last preceding annual general meeting. The main purposes of the meeting are: (a) to consider the financial statements of the company; (b) the auditor's report; (c) election of directors; and (d) the re-appointment of the incumbent auditor. If default is made in holding such a meeting, the company and every officer of the company shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars.

4.8.3 NICIL is a Government company, and as such it is required to follow the above requirements. **However, financial reporting and audit were eleven years in arrears as at the end of June 2012.** Concerned about the state of accountability of NICIL in general, and the lack of transparency and accountability associated with the disposal State assets in particular, the National Assembly passed resolution No. 14 dated 27 June 2012 calling on the relevant Ministers to, among others:

(a) Provide the Assembly with a report on the disposal by sale or otherwise of all state lands during the period 2000-2011, including the terms on which they were disposed of, and the criteria used;

(b) Make financial provision for the urgent commissioning of an independent financial audit of NICIL and the Privatization Unit;

(c) Provide a detailed report on the disposal by sale or otherwise of all State assets entrusted to NICIL and the Privatisation Unit, the terms on which they were disposed of and the criteria used; and

(d) Provide the outstanding bi-annual reports and annual audited accounts required of NICIL and the Privatisation Unit under the relevant legislation.

4.8.4 On 27 September 2012 the Auditor General issued his reports on the financial statements of NICIL for the years 2002, 2003, 2004 and 2005. These statements as well as those of subsequent years were given unqualified opinions i.e. a "clean bill of health", despite the concerns expressed in this report that would have had a significant impact on the financial statements of NICIL.

4.8.5 Table XIII provides the status of NICIL's financial reporting and audit for the period 2002-2013. At the time of reporting, financial statements for 2014 were being audited by the Auditor General.

Table XIII
Financial reporting and audit: 2002-2013

Year	Date of audit report	Date of AGM	Date laid in National Assembly	Year	Date of audit report	Date of AGM	Date laid in National Assembly
2002	27/09/12	03/02/12	08/11/12	2008	12/11/12	Not provided	17/12/12
2003	27/09/12	03/02/12	08/11/12	2009	30/11/12	Not provided	17/12/12
2004	27/09/12	No date stated	08/11/12	2010	30/11/12	Not provided	17/12/12
2005	27/09/12	No date stated	08/11/12	2011	16/05/13	No date stated	07/11/13
2006	17/09/12	Not provided	17/12/12	2012	22/11/13	No date stated	16/01/14
2007	12/11/12	Not provided	17/12/12	2013	19/02/15	Not provided	09/07/15

4.8.6 NICIL provided a schedule indicating that it had submitted draft financial statements within 2-3 months of the close of the financial year and had responded to the queries from the Auditor General also within a period of on average 2-3 months of the receipt of the queries. In May 2012, NICIL had also recalled the draft financial statements for 2002 and 2003 and replaced them with a revised set of financial statements prepared in a new and more detailed format in compliance with the International Financial Reporting Standards (IFRS). It could, however, not be determined whether subsequent years were also withdrawn and replaced, **and efforts to obtain information from the Audit Office were not successful.** However, it stands to reason that this would have been done, as years subsequent to 2003 were all prepared and audited in compliance with the IFRS.

4.8.7 As indicated above, the Auditor General issued his reports on the financial statements of NICIL for the years 2002, 2003, 2004 and 2005 on the same day, that is, 27 September 2012.Inasmuch as his office had completed a significant amount work on the original draft financial statements for 2003 and 2004 as well as subsequent years, the revised set of financial statements would have required a substantial amount of additional audit work,given the level of detail involved as required by the IFRS, hence the concern that the audit opinions for four consecutive years were issued on the same day. **Attempts to obtain the original draft financial statements submitted to the Auditor General were unsuccessful.**

4.8.8 It is relevant to note that during the period 28 August 2006 to 15 May 2015, the Chairman of the Board of Directors of NICIL was the former Minister of Finance. His spouse was an Audit Director in the Audit Office with overall responsibility for the audit of public enterprises which includes the audit of NICIL. **This arrangement presented a serious conflict of interest. The minutes of NICIL's board meeting of 27 April 2007 recorded the Minister as having stated that "he supports outsourcing of the audits of the subsidiaries, but NICIL accounts need to be audited by the Auditor General". Given the state of affairs to have existed in the Audit Office, it would have been more appropriate for the audit of NICIL to have been outsourced.**

4.8.9 NICIL has produced consolidated accounts of itself and its "subsidiaries" from 2002 to 2006. An examination of these consolidated financial statements for 2002 showed that the Board approved the accounts on 12 March 2010 while the Auditor General issued his opinion on them on 15 June 2010. However, the Auditor General's opinion on the accounts of NICIL as an individual company was issued on 27 September 2012, that is, 15 months later. It should be emphasized that the audited consolidated financial statements could not have existed before the date when the accounts of NICIL, as an individual company, were certified by the Auditor General. A similar observation was made in relation to the consolidated accounts of NICIL for 2003, 2004 and 2005, as shown below:

Year	Date of Auditor General's report on consolidated accounts	Date of Auditor General's report NICIL as an individual company
2002	15 June 2010	27 September 2012
2003	09 May 2011	27 September 2012
2004	21 February 2012	27 September 2012
2005	04 May 2012	27 September 2012

4.8.10 The Auditor General has acknowledged that he issued his opinions on the consolidated financial statements of NICIL for the above years before his opinions on the financial statements of NICIL as an individual company. He, however, did not provide a satisfactory explanation why he had done so. NICIL's board was also complicit in the violation of this fundamental principle regarding the preparation of group accounts when it approved the above consolidated financial statements without ensuring that NICIL as an individual company was audited first.

4.8.11 According to the Auditor General's report for 2013, the audit of NICIL's consolidated accounts for 2006 has been finalized. Draft financial statements for 2007-2011 were received and the audits were in progress.

4.8.12 An examination of the NICIL's consolidated financial statements for 2002 revealed that the Auditor General issued a qualified audit opinion on the grounds that: (a) inventories valued at $1.177 billion were not subject to a physical verification and a provision of $943.8 million was made for write-off; (b) No provision was made for sums of $573.480 million and $309.155 million in respect of receivables; and (b) the absence of share certificates in support of amounts shown as share capital in respect of BIDCO, GPC, NEOCOL and GNNL.

4.8.13 According to the minutes of NICIL's board meeting held on 29 April 2011, the 2003 consolidated financial statements were discussed. The minutes recorded the Minister of Finance as having expressed concern about the qualifications from the Auditor General's office and "has asked for assurances that in 2003 the qualifications from 2002 are not applicable". The Auditor General issued his audit opinion on the 2003 consolidated accounts on 9 May 2011 with a minor qualification relating to absence of share certificates. The 2004 accounts were given a clean "bill of health" while another minor qualification was given in 2005 in relation to the assets register and inventories of NCN.

4.8.14 In response to my request for copies of the minutes of the annual general meetings for the period 2002 to 2013, NICIL provided unsigned copies for 2002, 2003, 2004, 2005, 2011 and 2012. It is not clear why the minutes for the other years, that is, 2006-2010 and 2013, were not presented. NICIL commented that the minutes for the outstanding years were submitted to me. However, those were minutes of board meetings and not of annual general meetings.

4.8.15 The first set of accounts prepared by NICIL was in respect of 1991, and therefore the annual general meeting for 2002 should have been its 12th meeting. However, the minutes of the 2002 annual general meeting referred to it as the 20th meeting. Subsequent years followed the latter numerical sequence.

4.8.16 A perusal of these minutes indicates that the date of the meeting for 2002 and 2003 was 3 February 2012 whereas the Board approved of the accounts on 25 September 2012, some seven months later, while the Auditor General issued his opinion on them on 27 September 2012. The annual general meeting could not have been held earlier than the date when the accounts were approved by the Board and subsequently certified by the Auditor General. In addition, the minutes of the meetings for 2004, 2005, 2011 and 2012 did not indicate the dates when the meetings were held.

4.8.17 Further examination of the 2002 and 2003 minutes of NICIL's annual general meetings indicates the declaration of dividends of $828.682 million and $491.818 million was made on 3 February 2012. However, according to the audited accounts for these and subsequent years, dividends were paid in the years in question. It is evident that dividends were paid years in advance of their declarations at annual general meetings. In the case of 2002 and 2003, they were paid a decade in advance!

4.8.18 A number of other discrepancies were also observed in relation to these minutes. For example, the minutes for 2004 did not record the date of the meeting, and one of the resolutions referred to an earlier meeting instead of the 2004 meeting. The time the meeting was also left out. Similar discrepancies were observed in relation to the minutes for 2005, 2011 and 2012. In particular, the minutes recorded shareholder's representative at the 22nd annual general meeting was the former Prime Minister Samuel Hinds but the related resolutions of that meeting were signed by former Minister Irfaan Ali. Resolution No. 5 in the minutes also made reference to 31 December 2004 whereas the actual resolution referred to 31 December 2005.

4.8.19 It is evident from the above that the minutes of the annual general meetings of NICIL's board at which dividends were declared, were put together when a request was made for them.

5. Conclusions

5.1 During the period 1991 to 2001, the Board of Directors had interpreted NICIL's mandate in a manner consistent with the wishes of the Legislature. That mandate relates to NICIL performing a monitoring role for Government's investments and ensuring that all proceeds from such investments were collected and paid over to the Consolidated Fund. Such interpretation gained the full support of the Auditor General and was consistent with the explanations provided by the Minister of Finance at the time NICIL was established.

5.2 NICIL's retention of dividends received from public corporations and other entities and the proceeds from the sale of assets from 2002 onwards violates not only Article 216 of the Constitution but also the relevant sections of the FMA Act and successive years' Appropriation Acts. In addition, NICIL's recognition of these funds as its revenues is a breach of the fundamental accounting concept of matching costs with revenue.

5.3 The Executive Director of NICIL acted unilaterally in the interpretation of NICIL's mandate following the signing of the Management Cooperation Agreement on 28 December 2001. That interpretation saw the retention of $26.858 billion covering the period 2002 to 2014, representing dividends received from public corporations and other entities as well as divestment proceeds, thereby denying the Treasury of the much-needed funds to execute government programmes and activities, as approved by Parliament.

5.4 The Board must also accept culpability in that, although it advised against the Executive Director's interpretation of NICIL's mandate, it took no steps to prevent the retention of funds that previously were paid over to the Treasury. Cabinet must also not escape responsibility for approving an agreement that violates constitutional and legislative requirements.

5.5 Having intercepted State revenues and treating them as its own, NICIL proceeded to incur public expenditure on various projects, including the Marriott Hotel, without parliamentary approval, in violation of Article 217 of the Constitution. Most importantly, it and has defied the wishes of the National Assembly as contained in Resolution 32 of 17

December 2012 requiring NICIL to pay over to the Consolidated Fund “all revenues and proceeds from the sale of all State properties, except for those necessary administrative costs for maintaining and running its operations annually”.

5.6 To compound matters, NICIL received amounts totalling $7.320 billion during the period 2007-2012 from other government agencies to effect payment for works undertaken on behalf of the Government. NICIL was essentially carrying out a paymaster function that is typically associated with the operations of the Treasury Department of the Ministry of Finance and was therefore functioning as a “parallel” Treasury.

5.7 NICIL as well as the government agencies involved was complicit in circumventing the requirement of Article 217(3) of the Constitution which prohibits withdrawals from any public fund other than the Consolidated Fund to meet public expenditure without parliamentary approval. This cross-transfer of funds among State institutions undermines authority of Parliament, and to the extent that Cabinet sanctioned this arrangement, it cannot escape liability. This practice has also resulted in a significant under-reporting of expenditure in the public accounts.

5.8 As regards the sum of $3.757 billion received from GGMC for the maintenance of hinterland roads, the minutes of NICIL’s board meetings of 13 November 2013, 30 April 2014 and 11 September 2014 recorded the Executive Director as having stated that NICIL was experiencing difficulties in obtaining supporting documents from Ministry of Public Works for payments made and that material amounts remained unaccounted for.

5.9 In relation to the expenditure on the 2007 Cricket World Cup, NICIL had transferred amounts totalling $650 million to the Local Organizing Committee but failed in its responsibility in ensuring that there was proper accountability for the amounts transferred.

5.10 As regards the construction of the 44 High Street property, the contract was awarded in 2007 but at the time of reporting the building remained substantially incomplete. The building was abandoned, and the structure was expected to be torn down because the floors were not constructed to the required specifications. As the “Project Executing Unit”, NICIL’s role was to ensure that the works were executed according to the agreed specifications and has again failed to discharge its responsibility for this project, resulting in some $350 million of taxpayers’ funds being wasted.

5.11 NICIL sold the Government's investment in GT&T in 2012 for US$30 million of which the sum of US$25 million was received. The balance of US$5 million was to be paid within a period of two years. During the period 2002-2011, the Government received $5.261 billion in dividends from these shares, or an average of $526.1 million per annum. By disposing of them, the Government would have lost $1.578 billion, equivalent to US$7.616 million, in revenue during the period 2012-2014. The purchaser would have therefore recovered the cost of his/her investment in less than 12 years by way of dividends while at the same time retaining the investment. This calls into question the merit in the Government's decision to dispose of GT&T shares.

5.12 The evidence indicates that in addition to the disposal of GT&T shares, there was an acceleration of the disposal of State properties/assets in order to secure financing for the construction of the Marriott Hotel. In particular, of the amount of $9.788 billion representing the sale of State assets/properties during the period 2002-2014, sums totalling $7.142 billion, or 73%, relate to the period 2011-2012. NICIL's financing of the construction of the hotel during the period 2010-2013 was $5.371 billion, comprising $800 million share capital, $3.316 billion (equivalent to US$15.5 million) in interest-free loan and $1.255 billion in advances. As at 7 July 2015, NICIL's advances increased to $4.521 billion, giving a total funding of $8.637 billion, equivalent to US$41.682 million.

5.13 The evidence also suggests that the removal and relocation of the tower were done to facilitate the housing development of the area. Instead of accumulating all the costs associated with the Sparendaam Project, including the market value of the land, in a special account to be applied in arriving at the price to be charged per house lot, NICIL's board and Cabinet were complicit in charging the related expenditure to NCN in the form of equity investment, and to CH&PA in the form of receivable. The fact that several key Cabinet members are the beneficiaries of the house lots, renders it highly inappropriate for the very Cabinet to approve of the charging of the expenditure of $257.049 million to the accounts of NCN and CH&PA.

5.14 During the period 2002-2014, 35 orders were issued vesting State properties/assets in NICIL, 13 of which were not reflected in NICIL's balance sheet. It was evident that these assets/properties were kept outside of the balance sheet because they were identified for disposal. More importantly, the Minister has applied the provisions of Section 8 of the Public Corporations Act in the transfer of State assets/properties vested in NICIL to third parties. However, the notification of 18 July 2000 issued by the then President made reference to the application of Section 5 only to NICIL and not Section 8. Therefore, the transfer of assets/properties by NICIL to third parties by way of sale or otherwise does not appear to have a legal basis.

5.15 There is evidence that properties were disposed of on the same day, or within days, they were vested in NICIL, suggesting clearly that the purchasers had already been identified without any form of competitive bidding. In addition, during the period 1995 to 2011, NICIL recorded 65 disposals of State assets/properties. A comparison of the sale proceeds with the valuations of the properties shows variances of on average of $1 million. In particular, in respect of 30 properties, the valuation and sale proceeds were identical while in respect of 22 properties the difference was a mere $2 million. These two observations reflect an extraordinary coincidence and raise serious doubts as to whether valuations were indeed carried out.

5.16 Despite the size and complexity of its operations, NICIL does not have its own procurement rules, which is key requirement of the Procurement Act. In the circumstances, it would have been more appropriate for NICL to involve NPTAB in the assessment of tenders received for the award of contracts. Instead, the assessment of bids was done internally and would have lacked the level of independence, especially for large projects such as the Marriott Hotel.

5.17 Serious concern is expressed in relation to the selection of the Contractor and the Engineering Supervisory Consultant. The former was selected at a time when there were allegations of corruption in Trinidad and Tobago. NICIL was yet to provide details of the second bidder's original and revised bid price to enable me to confirm the basis of the selection of the contractor. In addition, the consulting firm had faced criminal charges in a New York court and was disqualified from participating in the projects of the School Construction Authority until July 2015.By court order; the Head was relieved of his position at the time he signed the contract. Yet he personally signed the contract in August 2012!

5.18 At the end of June 2012, NICIL was in default for eleven years in terms of having audited financial statements. Concerned about the state of accountability of NICIL in general, and the lack of transparency and accountability associated with the disposal State assets in particular, the National Assembly passed resolution No. 14 dated 27 June 2012 calling on the Minister of Finance to provide it with all outstanding audited accounts of NICIL.

5.19 On 27 September 2012, that is, three months later, the Auditor General issued his reports on the financial statements of NICIL for the years 2002, 2003, 2004 and 2005.

These statements as well as those of subsequent years were given unqualified opinions i.e. a “clean bill of health”, notwithstanding serious concerns raised in this report which would have had a significant impact on the financial statements of NICIL.

5.20 A number of discrepancies and inconsistencies were observed in relation to the minutes of the annual general meetings of NICIL, and the evidence suggested that the minutes were prepared only when they were requested.

6. Recommendations

6.1 Having regard to the findings contained in this report and my conclusions, I make the following recommendations:

(a) Institute criminal and/or disciplinary actions against all those responsible for the interception of State revenues totalling $26.858 billion in violation of Articles 216 of the Constitution and the related sections of the FMA Act. Disciplinary action is provided for under the following sections of the FMA Act: (a) Section 48 – Misuse of public moneys; (b) Section 49 – Liability for loss of public moneys; and (c) Section 85 – Liability of official;

(b) Institute criminal and/or disciplinary actions against all those responsible for violating Article 217 of the Constitution by causing expenditure to be incurred out of State resources without parliamentary approval;

(c) Institute disciplinary action against all those responsible for ignoring National Assembly Resolution No. 32 of 17 December 2012 requiring NICIL to pay over to the Consolidated Fund “all revenues and proceeds from the sale of all State properties, except for those necessary administrative costs for maintaining and running its operations annually”;

(d) Institute criminal/disciplinary actions against all those responsible for other violations, including the failure to properly account for State resources under their control;

(e) Terminate the Management Cooperation Agreement of 28 December 2001, as provided for under the Agreement;

(f) Liquidate NICIL as a private limited liability company under the Companies Act 1991 and appoint a Receiver to oversee the liquidation process;

(g) Re-activate the Privatisation Unit as a department of the Ministry of Finance to manage the Government's residual investments after liquidation proceedings have completed. In this regard, the existing staff of the NICIL could be transferred to the Ministry of Finance;

(h) Refer this report to the State Assets Recovery Unit with a view to recovering any State assets/properties that might have been improperly and illegally transferred to third parties; and

(i) Commission a further independent audit to examine in detail transactions over the last six years. (Given that the scope of this assignment covered the period 2001 to May 2015, a transactional approach could not have been taken.) In addition, considering the hostile, arrogant and demeaning response to my preliminary draft report as well as certain restrictions placed on this audit, it would be desirable for the Executive Director and the Deputy Executive Director to proceed on leave to facilitate the transaction audit.

7. Acknowledgement

7.1 I wish to express my gratitude to the management of NICIL for the cooperation extended to me during the course of this assignment.

S. A. Goolsarran FCCA, MBA, DBA

Public Financial Management Consultant