

584. At a Cabinet meeting held on 21 December 2006 MM announced the finalising of the DA. MM said that he would like it executed on the same day. This did not take place. However, the Acting Governor Harley Coalbrooke signed the DA on The 28th December 2006.

585. The following concessions were to appear in the Agreement and annexed Development Order at Schedule 3:

- i. Government agreement to improve the Salt Cay Port of Entry harbour, airport and airstrip before the development was complete,
- ii. Customs Import duties reduced to 5 % for 10 years (normally 30%) for materials and furniture,
- iii. Customs Import duties reduced to 0% for 5 years on all equipment including Plant, machinery and equipment tools,
- iv. The withholding of a charge on various leases.

586. On 28 December 2006, the first DA was executed and signed off by the acting Governor, Hartley Coalbrooke.

587. On 16 January 2007 the SC developer made another payment to the PNP account, this time in the sum of \$300,000.

588. Remaining with the progress of the development, we move a few months on to the spring of 2007.
589. On 11 April 2007 at a Cabinet Meeting attended by MM, FH, JH and LB, amongst others, MH presented paper 07/146 seeking approval for the sale of the freehold interest in a further 122 acres of Crown Land to the SC developers for the sum of \$6,102,000 and for the purpose of constructing low-density tourism related condominiums (the Governor was not present at the meeting). The Cabinet recommended the proposals.
590. The paper asked approval for the 'outright sale' of the 122 acres to SC Resort and Spa at their '*Open Market Value as stated in the Table at Annex 1, attached*'. The document annexed to the Paper was a table that had been prepared indicating the separate valuations for 7 plots of land (22.14 acres) at a total of \$1,102,000 and a valuation for a further larger 100 acre plot of land (10702/58) that was left blank in the column where you would expect to find the monetary value of the land.
591. What the paper failed to mention was that the 22.14 acres valuation figures had been provided by Mr Hoza over 6 years before in a two page report dated 30th January 2001 - before MM's party came to power. Further, that the same report had ended with the words, '*These values should not be taken as valid for a period in excess of twelve months nor if there is a material change in the circumstances*'. The valuation being relied on was from January 2001. It was only valid for 12 months and at this point was 6 years old.

592. His report was not attached to the Paper, merely the extracted figures with no reference to the date of the valuations despite the assertion by MH in his document that the valuation he was presenting was the 'Open Market Value'. That then leads to how Cabinet dealt with the balance of the 100 acres that hadn't been valued. One need only look at how the Cabinet Paper dealt with the hitherto un-valued 100 acre plot (10702/58). Unlike the 22.14 acres there had never been a valuation for this large plot of land. Mr Hoza will tell you he had never been asked to value the large plot. Rather than getting a valuation, Cabinet decided to sell it without one being carried out. You have seen from the minute that the decision was taken there and then to value the land and offer for sale at \$50,000 per acre without any civil service oversight or review. We say that that is consistent with the secret relationship growing between MH, and MM in particular, and the developer.

593. The initial recommendation in MH's Paper was, *'To approve of (sic) the outright sale of a portion of Parcel 10702/58 consisting of 100 acres, approx., subject to survey and its valuation by the Chief Valuation Officer'*. Yet shortly before or during the meeting the words *'subject to survey and its valuation by the Chief Valuation Officer'* were crossed out by hand and the valuation written in as \$5,000,000.

594. The problems with this valuation were later highlighted in a report by the Acting Chief Auditor when he looked into the events surrounding the land on Salt Cay in November 2007. This led to Mr Hoza providing an up to date valuation of the land in June 2008 of \$12,932,000. We accept that this was 15 months after the paper had been presented. Allowing for some price inflation between 2007-8, the Cabinet decision in April 2007 allowed the developer to purchase land at something around

half the true value. It is to be remembered that the previous year the Government had sold 41.5 acres of similar land the previous year that had been independently valued \$9.5 million. That, it is submitted, would have been known to the Government. Again we emphasise that one allows for errors and misjudgement. None of those things are criminal. But when this thrusting relationship between MHO and MM and MH is seen in the background of the determination of the politicians to force through, sometimes urgently, the accumulation and sale of land, it puts, we suggest, a different inference on how the precious resource of land is being sold at such discounted prices.

595. As we shall hear in more detail the saving of \$6.83 million to MHO on this purchase of the 100 acres of land he was offered at \$50,000 per acre bore a striking similarity to a \$6 million 'loan' applied for by MM, and apparently by LRM, 19 days later on 30th April 2007. We will come back to this. MM obtained a loan from the developer's bank J&T Banka, some 2 weeks later. Credited to the Chalmers Misick account on 14th May 2007.

596. Additionally, as we will also hear when we look in a little more detail at the Amex Centurion Cards, MH's application for his card was approved on 13 April, the day after Cabinet resolved to sell the land to MHO's SC development company. Two Directors of J&TB underwrote \$75,000 of any default in payment. Also less than a week later (19th April 2007) all around the time that this land is being sold, the Crown say, at a deep discount to its true value, the same two Directors increased the guarantee on MM's Centurion Card to \$200,000. So, there is this coincidence of personal benefit at the time that the developer is being given advantage by the Government as to the development of the land.

597. Returning then to the development. On 1 June 2007, Stephan Kral, CEO of one of the development companies, Salt Cay DEVCO, proposed (on behalf of the Salt Cay Estates Ltd [SCE]) to MM that the company could build a port on the Island and offset the costs (\$3 million) against the purchase costs to them of 122 acres, which had recently been approved for sale to SCE.

^{598.} On 6 June MH introduced, by oral mention, a proposal to Cabinet. The proposal was adopted and agreed in the terms set out in the proposal by Kral.

599. On 15 August 2007, MM circulated to Cabinet correspondence in respect of the Salt Cay Resort and Spa development, recorded as minute 07/658. MM advised that representatives of the resort had approached the Government regarding the purchase of the land.

600. Cabinet advised that:

- a. The AGC prepare an appropriate short agreement between the Crown and Salt Cay Resort and Spa which would provide for the grant of freehold title on parcels 10702/20, 21, 22, 25, 27, 28, 29 and 58 consisting of 100 acres to Salt Cay Resort and Spa for \$6,102,000,
- b. The developers to pay \$3,102,000 immediately on transfer and grant a charge of \$3,000,000 to secure the balance,
- c. In the event that the construction of the port is less than \$3,000,000, the difference between the actual cost and \$3,000,000 to be paid to TCIG by Salt Cay Resort and Spa,

- d. Construction of the port was to be monitored by EMS,
- e. The Charge to be discharged on certification by EMS that the port was completed to their satisfaction to a value of \$3,000,000 or on payment of the difference between the construction cost and the \$3,000,000.

601. On 20 August 2007 MHo wrote on behalf of the developers to MM and MH seeking the right to lease 637.15 acres of additional Crown land – a substantial portion of the remainder of Salt Cay – for *inter alia* the construction of a marina village and an energy park. The developers also proposed a zoning plan for the island, to prevent what they described as ‘*insensitive and uncontrolled development, and works to the cemetery*’.

602. This proposal was raised with Cabinet by MH as an oral mention at a Cabinet meeting on 22 August 2007. MM was away from the islands and did not attend the meeting. Shortly before the Cabinet meeting in a meeting between the Governor and MH, who was in possession, the Governor recalls, of a large amount of rolled up plans showing the proposed development.

603. The Governor found it ‘*incredible that Cabinet was being asked to approve the disposal of so much Crown Land in this way and insisted that Cabinet could not be asked to take such a major decision solely on the basis of a letter from the developer circulated at the meeting itself*’. He informed MH that a proper Cabinet Paper was required with comments from the Planning Department and others and considered that ‘*there should be a process of public consultation before*’ what he understood from

the plans to be *“in effect two thirds of any island, was sold to a foreign developer, particularly one as environmentally and culturally important as Salt Cay”*.

604. MH’s response to the Governor was that the Government had been elected to bring prosperity to all the islands and consultation was unnecessary as the electorate had *“spoken”* during the election. After debate MH accepted that a Cabinet Paper would be prepared for the proposals for a 99-year lease agreement and the Cabinet Minutes recorded that *‘Mr. Hoffman did request other concessions however Cabinet was not prepared to address these matters at this time’*
605. At a meeting of the Cabinet on 29 August 2007 MM submitted Paper 07/408 recommending the lease of the land sought by the developers, with an option to purchase also being granted for the Marina Village, the expanded hotel services area and the relocated golf course. The basis for MM’s recommendation was the submission that, *“it goes without saying that it takes ‘guts’, a tremendous sense of will, confidence and optimism to invest in a location as remote as Salt Cay at this time”* adding that the island was *“fortunate to attract a group with such financial wherewithal and project development exercise to make such a significant investment”*.
606. The total purchase price was to be \$6.01 million and \$3.102 million was to be paid with the remaining amount being used to construct the port. A charge was to be registered against the land until the TCIG were satisfied that the port was constructed to the requisite standard.

607. The paper didn't address the fact that there was no valuation for the 647.15 acres; nor was there, we suggest, any meaningful analysis of the financial or other benefits of the proposal to the Government; or any analysis of any disadvantages of the development. Further, there was no mention of a proper consultation as proposed by the Governor a few days earlier. On one view, the developer was seeking to obtain the significant acreage obtained in that paper.
608. On 19 September a company Cottages of North Bay Limited sold parcels 10702/17 and 18, 26, 42 and 43; 18.76 acres of Salt Cay. The parcels were sold to 4 individuals who, the following day, sold the very same parcels to SCE Ltd.
609. On 30 September 2007 the Crown and SCE Ltd entered into an agreement for sale of 122 acres of land. The purchase price was \$6,102,000 approved in April 2007, with \$3 million being off set against the costs incurred by the developer in constructing the port as previously agreed.
610. On 4 October 2007 the agreement for sale and the deeds register for parcel 10702 (41 acres) (purchase cost \$4.25 million) were signed by the Governor and Adrian Corr of MSO on behalf of SCE Ltd. We are moving now from negotiation and agreement to the final stages.
611. On 20 November 2007 J&T Banka credited \$336,288.02 into MH's J&T Banka account. Disbursements were made, leaving account with a zero balance, and on 20 November 2008 an identical sum was transferred from that account into J&T Private Equity BV account.

612. On 28 November 2007 MM raised, once more by oral mention, a proposal that SCEL sought amendments to the 2006 DA; explaining that in return for various infrastructure improvements to the harbour and airstrip worth \$15 million they required import duties to be reduced to 0%. They had asked for 0% and no stamp duty; it was agreed by Cabinet they would be given a reduction to 1%, in addition TCIG granted SCEL a concession to manage the airport for 20 years.
613. There were a number of private landowners on SC with prime beachfront land, which sat in the centre of the proposed development. Approaches were made by SC Devco Ltd to buy the land. One couple that owned the Windmills Hotel agreed to sell but others refused. They were initially contacted by one of MHo's local Attorneys, Jonathan Katan. Stefan Kral then became involved and, on one occasion, MHo himself spoke to local owners, who were not keen to sell.
614. One Belonger in particular, who had known both MM and MH for many years, lost the land he had leased and over which he had been granted permission to buy for the purposes of his own development, without any explanation. Earl Ingham aka 'Super C', a Belonger from Grand Turk, together with three local partners wanted to build a resort with his construction company 'Super C Construction'. In August 2000 he applied for a CPL for a beachfront plot of land on North Beach (plot number 10702/20) Salt Cay to build condominiums. On 11 January 2001 he was granted a commercial CPL for parcels 10202/19 and 21 (despite applying for plot 20) with an option to obtain the freehold title at a discount at a later date.

615. Ingham received a copy of his lease on 28 June 2001 for plot 10702/21/1. The lease was dated as being made on 9 June. He secured a 3-year lease on the two parcels of land and paid the rent on the land throughout the period.
616. On 6 May 2003 Ingham received a letter from the Ministry of Natural Resources regarding a meeting of the Executive Council held on 9 April 2003 which approved the grant of a commercial CPL for parcel 10702/19 to construct a condominium project and the rent and fees that he paid in respect of 10702/20 were to be credited to parcel the same parcel (10702/19).
617. On 19 June 2003 he received a second letter in respect of plot 10702/19 showing the rent as \$4,000 per year and the freehold purchase price of \$80,000.
618. By 2004 the lease had run its course and Ingham applied for a 3-year extension.
619. On 20 October 2004 he received the new lease and, as before, he continued to pay his rent promptly every year. The reason why the development was delayed was that despite numerous requests from the Survey Department Ingham had yet to receive a proper site plan showing exactly where he could build and was also waiting for roads that he had heard would be built in order to assist him with gaining access to the land.
620. In 2006 Ingham became aware that SCE and Devco were, as he says, '*buying everything on the island*' and that his lease was up for renewal again. Ingham, who still wanted to carry on with his development regardless of SCE, so he contacted the Ministry of Natural Resources and asked for a further extension. He got no reply.

621. On 19 September 2007 Ingham wrote directly to MH as the Minister of Natural Resources complaining about being turned away every time he tried to extend the lease and requesting the extension he sought. He never received a reply.
622. At some point after the letter had been sent, Ingham met MH at one of the airports and gave him a copy of his application. MH said to him, "*Brother in-law, remember, one hand wash the other.*" Ingham did not get what he was hoping for – his extension.
623. Ingham then applied to buy the land for the \$80,000 offered to him under the terms of his lease. He heard nothing. He went to the land registry on 2 occasions and saw that his name was still on the lease. He then went to see Judith Campbell, Permanent Secretary for the Ministry of Natural Resources and gave her the copy of the register. She told him the land was no longer available to him. The third time he went to the Land Registry he saw that the developer's name, SCE, was on the title.
624. In November 2007 Ingham decided to turn to a lawyer for help. He went to TCM for help and gave him the documents and paid a retainer. Wanting to progress his claim he called the firm on a number of occasions but got no reply. He spoke to another lawyer at the firm who said that he would get TCM to contact him. He never did. Here was a Belonger who wanted to build on Salt Cay, not sell the land at a profit. He was blanked, it may be fair to say, at each turn when trying to pursue the rights he had under the lease. Because no one was able or willing to help him, the lease ran out. MHO bought that land in August 2006.

625. The first development agreement was signed on 28 December 2006. This was later amended by a further DA signed on July 14th 2008. This recalibrates dates, and issues relating to concessions and the dates that they will extend to.
626. The Deputy AG, Ms Braithwaite-Knowles, was first involved with the development in late 2005. At no stage was the AG's office ever involved with the negotiations as to the price of the sale and lease of land to the SC developers.
627. In its duty to the TCIG the AG's office did raise one or two queries in November 2006 at the time that the agreement for the sale of 41.5 acres for \$4.25 million was being finalised. In a series of emails between the AG's office, TCInvest and MH it was pointed out firstly, that the sale had attracted a Belonger discount of 50% and that at the time Cabinet had agreed the price MHo was not a Belonger nor had he been certified as a Belonger at the time the agreement was about to be signed and secondly, that the Chief Valuation Officer had valued the 238.72 acres of land assigned for the golf Club for lease as \$194,000 per annum and that this had changed to a peppercorn rent of \$1.00.
628. In an e-mail by way of response to the staff at the AG's office MH stated, *'Please be advised that the Cabinet minute is conclusive and should satisfy all concerns, therefore I respectfully suggest that there is no need to go behind the Cabinet decision. Ministers expect for all public servants to carry out Cabinet decision (sic) expeditiously'*.
629. Following the 2006 DA the developers requested a number of amendments.

630. Unusually, Mr Katan of MSO, rather than the AG's department, drafted a large number of the amendments. Through the amended DA, SCE sought to secure the leasehold to a further 913 acres with an "Option To Purchase" [OTP] the leased land. The proposed development had grown from a 52.5 acre site (along with 239 acres for the golf course) to a site, which covered approximately 1226 acres with over a 50% increase in the amount of buildings and a Marina to accommodate 250 boats.
631. Since the Government were effectively selling most of the island to a foreign investor there were those at the AGC's who felt that the negotiations should have been at 'arms length between AGC's, TC Invest and the Developers Attorney's' but were told by MM and MH on more than one occasion that '*whatever the Developer wants he can get*' the argument being that '*SC had had no investment and it was likely that nothing would change in that regard and here was a man who could change that*'. Of course on the face of it as a public statement, one understands that. One may frown at it, but one cannot argue with a political drive that says that if Salt Cay doesn't have the investment, nothing will change, and identifies a developer who can do it. But what one cannot do is make those statements, and give that message to the civil servants whilst keeping secret the lavish sums of money being sent by the developer.
632. One concession Ms Braithwaite-Knowles strongly opposed was a clause that would have allowed SCE Ltd to prepare the Islands Zoning and Development Plan and Development Manual. This meant in essence that SCE setting up the means to control how the Island could develop in the future. This also meant that other land-owners would have been prevented from developing their land in the way they wanted if their

plan did not comply with the SCE's Development Plan and Manual, and Ms Braithwaite-Knowles could not support this. Again Ms Braithwaite-Knowles was not supported by the Ministers and was met with the all too familiar line, "*if that's what the developer wants that's what he will get*".

633. Even the developers attorney Mr Katan had his doubts about the extent of planning control the developers were seeking and obtained advice from a barrister in London that suggested that the proposal could leave the TCIG open to judicial review. The clause that would have given the developers free rein over the development of Salt Cay was subsequently removed. The other concessions granted were still felt to be "over-generous" by the deputy AG, as she then was.

634. On 17 March 2008, at the request of the late Conrad Higgs, Shabaan Hoza undertook a valuation of the leased land and thereafter submitted his report.

635. Following the Robinson Report, which we referred to earlier when dealing in the introduction with the Crown Land Policy, the Governor was aware that there was some concern (after 21 March 2008) as to the possibility of an unhealthy relationship between the members of Cabinet and Mr Hoffman in which an investigation was recommended. It is not suggested that the report is evidence of an unhealthy relationship or indeed of failures in relation to the CLP, but it will be submitted to show that it influenced the Governor's thinking and that the politicians were aware of it. It is material that was known to the politicians and the Governor and their reactions to and handling of the report is relevant. The Governor discussed the report with MM

who said that the TCIG could not risk “killing off” the project and the investment it brought.

636. After some difficult moments on 3 April 2008 MM agreed to an independent review of the Salt Cay land transactions. The Governor made clear that he was not prepared to agree to further grant of land to Salt Cay developers until the review had been conducted.

637. On 30 April 2008 MM and the Governor spoke. MM pressed the Governor hard to agree to the transfer of the 122 acres. MM said that he was being called daily by the developers, that the TCIG were at risk of damaging the relationship with the developers and, among other things, that TCIG cannot risk losing a \$500 million investment into Salt Cay – the elected Ministers were agreed on the importance of the development and Cabinet had approved the sale. The Governor again refused to sign the transfer until the report was completed.

638. Deloitte & Touche were appointed to carry out the inquiry formally in May 2008.

639. On 20 May 2008 MM and MH told the Governor that they did not expect that Deloitte & Touche would find anything wrong save in relation to Belongers who had held land for some time being lucky enough to have profited on the sale.

640. On 28 May 2008 Hoffman, Kral and Misick met with the Governor. Again the issues about the 122 acres was raised against the backdrop of MM stating that there was a legally binding agreement to transfer the 122 acres.

641. The Hoza report was received by the Governor on the 1 June 2008. The 122 acres that MM and his Cabinet colleagues purported to have agreed to have “sold” to the Hoffman led development on Salt Cay for \$6.7m was in fact valued at \$12.8m. MM reaction was that this was not the developers fault and that any request for more money would surely lead to the end of the process for Salt Cay and this development. The Governor maintained his position. He wished to await the outcome of the report and he also wanted to know why Cabinet decisions which were based on OMV were not followed and an old valuation used.
642. On 10 June 2008 MM said to the Governor that the Developer was prepared to offer another \$1m as a gesture of good will. This was followed up by a letter from Stefan Kral on behalf of the developer to the Governor and MM offering to pay the additional \$1m for the 122 acres on Salt Cay on the basis that the Amended DA and Lease Agreement were executed without delay. The Governor was still insistent was put on hold.
643. On 11 June 2008 Cabinet approved a final DA. Before the Cabinet meeting MM insisted as he had before that the Governor sign a transfer of land document. But, whilst the amended DA was agreed it was also agreed that it was not to be signed until the report had been received.
644. On 18 June 2008 at what may be described as a very difficult 2-hour meeting by the former Governor MM continued to press the Governor to sign.

645. On the 25 June 2008 MM suggested that the Governor was now at risk of being sued by the Developer, that there was a risk of the \$500m investment being lost. The Governor held firm and MM pressed him, stating that the use of old valuations had been a mistake and that in any event the TCIG had been offered the extra \$1m out of a gesture of good will.
646. Again on 25 June 2008 when again MM tried to persuade the Governor to sign the transfer prior to receiving the report from Deloitte and Touche (the Governor had the draft but was not prepared to sign until they had issued a final report).
647. The Deloitte report simply restated the findings of auditor (Mr Robinson) – there was no evidence of wrong doing against the developers and, apart from the land flips and the use of an old valuation, the report did not find any evidence of wrongdoing.
648. On 3 July 2008 a bilateral meeting took place between MM and the Governor. The Governor agreed that the developers appeared to have acted in good faith (he was unaware of any relationship with MM in the financial sense). He also agreed that there was no further need to hold up the transfer but that TCIG needed to understand why an out of date valuation was used. The Cabinet meeting followed, MM presented the paper regarding Salt Cay and they approved the sale of 122 acres of Crown Land for \$7,102,000 (including the extra \$1m agreed by the Office of the Premier).
649. 9 July 2008 Kral wrote again to the Governor and MM. in the letter he raised concerns about the EIA process and said that Salt Cay would be developed in an

environmentally sensitive way. There was therefore, he stated, no legal basis for the EIA requirements. The additional \$1m offer was withdrawn.

650. Cabinet debated all of this, at some length, on 10 July 2008 - the last Cabinet meeting before Tauwhare left his post. Cabinet wished the developer to withdraw their letter of 9 July 2008 and agreed that TCIG would fund (as opposed to the Developer) any EIA reports that were required.

651. On 14 July 2008 the amended DA, Commercial Lease and agreement for the sale of land was signed off by Governor Tauwhare.

652. On final analysis, Ms Braithwaite-Knowles makes clear that, in her view, whilst the 2006 DA concessions were generous they were in keeping with what other developers had secured, but those contained in the 2008 DA were what she considered to be, “madness”.

653. The purchase price for land to be used for residential purposes was \$50,000 per acre, \$20,000 per acre for Commercial use, and \$2,000 per acre for reclaimed land. On the face of it, the Government had accepted that the sale of the 122 acres at the 2001 price was undervalued.

654. Mr Hoza does not know why his valuations were not used. We suggest the relationship between MM MH and MHO taints the whole of the negotiations – the attempts to procure the DA, the final DA and the value of the sales.

655. On 18 November 2008, Kral wrote to MM and MH stating that the estimated costs of constructing a port had escalated to \$10 million and he proposed that the additional \$7million be offset against the acquisition of leased land.
656. A month or so later SC Devco applied for planning permission to construct a dock barge. This application was supported by an Environmental Impact Assessment.
657. On 17 December 2008 Clyde Robinson [CR], the Director of Planning, recommended that the Physical Planning Board [PPB] reject SCDevco's application because the Environmental Impact Assessment was flawed. The Board agreed and the application was rejected.
658. The decision of the PPB was communicated to MH. On 9 January 2009 MH summoned CR to a meeting. The meeting was attended by MM and Stefan Kral. Kral was allowed to speak and to challenge the rejection. MH and MM were abusive and swore at CR and attempted to intimidate him into reconsidering his recommendation.
659. MH demanded that an extraordinary meeting of the PPB be convened and that the decision be reversed. The meeting took place on same day 9 January 2009. The decision was reversed. The decision took 15 minutes to make.
660. We will now move to an analysis of the monies that flowed between the developer, the PNP, MM and MH.

661. J&T Financial Group owns a bank called J&T Banka [JTB]. JTB entered into partnership with MHO and provided funding for the Salt Cay development.
662. By 2008 they had invested over \$36 million. This was secured by charges on the Salt Cay Estates Ltd land.
663. In July 2008, a joint press release from MHO and Korbacka, in his role as Chairman of J&T Real Estate confirmed JTB's commitment to the development, the cost of which was predicted to exceed \$600 million.
664. MHO wished to open a bank; he joined with JTB in a joint venture known as Integris Bank [Integris] to seek permission to open the bank and then to expand throughout the Caribbean offering financial services.
665. In August 2007 MHO and FH met with the Bank and Trust Officer from the TCI Banking Section of the Financial Services Commission, Karleen Ferrier [KF] to explore obtaining a TCI Banking Licence. KF recalls that FH was suggesting that he thought the TCI was 'under banked' and, thinking it strange that MHO was already discussing looking for a premises before he had received a licence, expressed some doubt over whether a licence would in fact be approved; she thought the sector was already saturated, and recently another firm, Temple, had been refused a licence. An application was however submitted by JTB and was granted by the FSC Licensing Committee in November 2008. The venture was put on hold and the Financial Services Commission revoked its licence

666. Miller Simons O'Sullivan [MSO] administered accounts on behalf of MHO in the names of:

- a. Salt Cay project; and
- b. Terrapin Investments.

667. MHO caused payments to be made to the PNP by MSO.

668. On 13 December 2005, \$50,000 from the Salt Cay project MSO client account to the BCB PNP account. The Crown's case is that this sum was then moved to the PNP FCIB on 22 December. Once the money arrived, it was disbursed in a series of cheques:

- i. Cheque number 132 \$5,000 to MH
- ii. Cheque number 134 \$5,000 to LB
- iii. Cheque number 136 \$5,000 to JH
- iv. Cheque number 138 \$15,000 to MM
- v. Cheque number 139 \$15,000 to FH
- vi. Cheque number 142 \$6,500 to Lucayen Ventures

669. The Crown's case is that MHO was seeking to ingratiate himself. The monies arrived in one PNP account, were moved to another and are then distributed to JH FH MM LB and MH, and others.

670. On 9 August 2006, \$100,000 was paid from the MSO Terrapin Investments client account to the PNP BCB account, reducing the debit balance to \$113,786.77. From these funds:

- i. 29 August 2006: \$10,000 was made payable to FH (cheque 005 dated 17 August 2006)
- ii. 21 August 2006: \$35,000 was made payable to Hallmark Trust (cheque 004 dated 17 August 2006). Of the \$35,000, \$25,000 was credited to the credit card account in the name of Chief Minister's Office.

671. On 27 September 2006, \$100,000 was paid from the MSO Terrapin Investments client account and credited to the PNP BCB account.

672. On 1 December 2006, \$100,000 was paid from the MSO Terrapin Investments client account to the PNP FCIB account.

673. On 16 January 2007, \$300,000 was paid from the MSO Terrapin Investments client account and credited to the PNP FCIB account on 17 January 2007.

674. The Court will recall that just 2 months after being flown to Prague to meet the Directors of the J & T Financial Group, in December 2005, MM made an application for an American Express Centurion Card which was underwritten through JTB.

675. On 3 March 2006, JTB received an application in relation to MM's wife, LRM, for a supplementary card. This application was granted. The account was run, MM spent on it, and credits were received, J&T having given the bank a guarantee.

676. On 19 April 2007, JTB, signed a letter to American Express, increasing JTB's guarantee for MM's card to \$200,000.

677. Between February 2006, when the card was first issued and April 2009, MM and LRM using their Centurion Cards spent \$4,881,335.32. Expenditure included:

- a. **Luxury goods**- several purchases at such stores as Louis Vuitton, Harrods in London, Harvey Nichols in Dubai, Macy's and Bloomingdales,
- b. **Jewellery** - such as purchases at Good Mark Jewellers Grand Turk, Jacob & Co New York
- c. **Designer clothing** - At both Men's and Ladies 'designer' clothing outlets such as Gucci, Dolce & Gabbana, Versace, Hugo Boss and designer footwear from such outlets as Jimmy Choos,
- d. **Travel** - Numerous flights and related travel costs totalling \$1,6million,
- e. **Hotels**- This included the Burjal Arab in Dubai, the Atlantis in the Bahamas (numerous visits), the Mandarin Oriental Hotel, the Hyde Park London, the Four Seasons Hotel in New York and the Cove Nassau,

678. On 12 April 2007 a JTB account was established for MH in identical terms to that of MM. The card was used in a similar way. Between April 2007 and May 2009 MH and Desrene Hanchell using their Centurion Cards spent \$1,146,020.48.

679. Expenditure included:

- a. **Luxury goods** - several purchases at expensive stores, such as Louis Vuitton, Harrods, London, and Bloomingdales,
- b. **Jewellery** - at Chiragg, Van Cleef & Arpe, Bal Harbour, JR Dunn Ft Lauderdale and Mayor, Miami,
- c. **Designer clothing** - Gucci, Dolce & Gabana, Versace, Armani and designer footwear from such outlets as Jimmy Choos,
- d. **Travel** - to Brazil, London; private Jet charter and Limousine hire,
- e. **Hotels** - The Mandarin Oriental Miami, the Ritz Carlton Hotel in Cayman and the Cove Nassau,
- f. **Wedding expenses**

680. How was the expenditure then paid for? Turn to examine the role of Thomas Chalmers Misick as, the Crown suggest, the private banker for Michael Misick and McAllister Hanchell.

681. *In summary*, 15 payments for MM's AmEx card were administered by TCM, and 6 were administered by TCM for the benefit of MH.

682. Payments received by TCM in relation to Salt Cay were credited into one of three accounts to which he had access:

- a. Chalmers Misick & Co: FCIB client account,
- b. Chalmers & Co: BCB client account, and
- c. Chalmers Misick & Co: TCI Bank client account.

683. When the funds were received they were then used, in part, to credit the JTB accounts of MM and MH in part service of the debt incurred on the cards.

684. In total, 15 payments can be attributed to the TCM client accounts for the benefit of MM's Centurion card totalling \$1,961,808.66, made up as follows:-

- a. 12 payments totalling \$1,774,723.07 from the BCB account,
- b. 2 payments totalling \$106,672.22 from the FCIB account, and
- c. 1 payment of \$80,413.37 from the TCI Bank account.

685. There are six payments from TCM for the benefit of MH totalling \$835,803.86, all transferred from the Chalmers & Co BCB account - the one that made the vast majority of the payments on behalf of MM. The Crown suggest that TCM, as an attorney and as brother of MM, with the knowledge he would have had of this jurisdiction, would have been on notice that these monies were way beyond that which a minister could expect to have access to.

686. There are 15 other payments made to MM's JTB accounts totalling \$2,502,123.59.

Those transfers were as follows:

- a. 4 payments from MM's own Belize Bank account totalling \$536,008.36,
- b. 3 payments from MM and LRM's "MyWay Productions 2" company Belize Bank account totalling \$422,920.75,
- c. 1 payment of \$69,990.00 from the PNP Belize Bank Account,
- d. 5 payments from Arling Anstalt, to which we will return, totalling \$1,195,153.75,

- e. 1 payment of \$3,427.92 from MM's own FCIB account, and
- f. 1 direct payment of \$274,621.81 from Miller Simons O'Sullivan:
 - i. On 12th June 2008 funds from an Istrokapital J&T Banka account in Prague were transferred into the client account of MSO Terrapin, a company controlled by MHo,
 - ii. On 16th June 2008 an email was sent from staff at Istrokapital to MSO asking that, once the funds had cleared, a wire transfer in the sum of \$274,621.81 be made to the MM's JTB account. The transfer was made on 17th June 2008.

687. In respect of MH, other than TCM, there were 3 other sources of payments made to the JTB account which were as follows:-

- a. J&T Banka themselves crediting \$336,288.02 into the JTB account (7 days later an identical sum was transferred from this account to J&T Private Equity B.V which is part of the J&T Financial Group),
- b. 1 payment of \$49,990.00 from a Belize Bank account, source unknown; and,
- c. 1 payment of \$302,835.84 from Arling Anstalt

688. JTB would ensure that the AmEx payments were always up to date by a series of transfers between the accounts, even if MM and MH had not provided the funds to clear the balance on the cards. In this way JTB provided a overdraft facility to MM and MH to ensure their continued usage of the Centurian Cards.

689. By 30 April 2009 MM's account was overdrawn by \$461,466.66. By this point the CoI well under way. On 29 December 2009 JTB then sold the debt and as a result a charge was placed on MM's Belview property.
690. On 30 April 2007, just over two weeks after Cabinet had resolved to sell 122 acres of land to the Salt Cay development for approximately half its value, and at a loss to the TCIG of approximately \$6 million, MM and his then wife made an application to JTB for a loan of \$6 million. The application was processed through the JTB foreign branch in Bratislava, Slovakia. The stated purpose of this loan was the purchase of a house in Los Angeles. The Court may infer, we say, that from the speed with which the loan was granted, the bank may not have carried out full due diligence.
691. Salt Cay Golf Club Ltd ("SCGC") held a 99-year lease over 239 acres of SC land at a peppercorn rent of \$1 per acre, per year. They offered 50% of the shares as security for the loan. This, along with a blank promissory note, was one of the guarantees for the loan.
692. Business Ventures Ltd [BVL] (a company administered by TCM) held a 50% shareholding in SCGC between 15 December 2007 and 14 May 2010 That shareholding was used as security for the loan.
693. A 'Mortgage over shares' between BVL and J&T, evidencing the security, dated 27 April 2007 was signed by TCM on behalf of BVL. On the face of the records TCM was saying that he was a director of BVL, who were a shareholder in SCGC, but according to FSC they did not become a shareholder until December 2007. The

Crown's case is that the creation of the mortgage and security was an illusion, contrived in order to create the illusion of a valuable security for the loan.

694. The TCI FSC company registration document for SCGC Ltd was not updated with the change of share holding until 15 December 2007.

695. As to the \$6m loan, none of the funds were ever used to make the house purchase. What did happen to it?

696. On 14 May 2007 \$6 million was transferred from JTB to Chalmers Misick & Co's FCIB account.

697. On 15 May 2007, following receipt of the funds by Chalmers & Co, \$5 million was transferred to a certificate of deposit to be put on a 30-day deposit, and \$500,000 was transferred to the Belize Bank Client account. Once the money arrived, and before the next deposit, the following payments were made:

- a. 15 May 2007: \$40,564.76 transferred back to J&T Banka itself to pay MH's Centurion Credit,
- b. 15 May 2007: \$120,000 to HSBC in Miami, the wire transfer instructions stating the payment was to be made to Revolution Entertainment Design,
- c. 15 May 2007: \$150,000 to Compass Bank Alabama. The wire transfer instructions recorded that it was for the benefit of Dr Tonya Merritt,

- d. 23 May 2007: \$157,095 to Wachovia Bank Atlanta. The wire transfer instructions stating it was for the benefit of Rococo Design Inc,
- e. On 21 May 2007 \$15,000 was transferred to Thomas C Misick (an account held at Bank of America).

838. On 4 June 2007 the \$5 million was redeemed and credited to the Chalmers & Co FCIB account. The following payments were made, the Crown suggest on behalf of MM, from that account:

- a. Cheque 282 dated 1 June 2007 for \$1million to the Belize Bank MyWay Productions 2 Ltd. This was a MM/LRM company account in respect of which MM was a signatory, and the account was used to make payments to the Centurion card,
- b. Cheque 287 dated 5 June 2007 in the sum of \$3 million to Belize Bank with the cheque marked 'Client Instructions – Business Ventures Ltd' (the company which was eventually to become the 50% shareholder in SCGC, and had allowed the shareholding it was yet to hold to be used for security for the loan, of which these \$3 million represented 50% of the amount loaned),
- c. On 15 June 2007 \$300,000 was transferred to MyWay Productions 2 Ltd' account on the instructions of BVL,

839. And so, by 15 June, \$1.3 million had been transferred to My Way Productions. Tomorrow we will turn to what happens to those funds.

