



Jamaica House
Office of the Prime Minister

**PRESS RELEASE
FOR IMMEDIATE RELEASE**

February 19, 2019

MINISTERIAL BRIEF

In respect of:

The Compulsory Acquisition (Shares in Petrojam Limited) Act, 2019

PLEASE CHECK AGAINST DELIVERY

Mr. Speaker,

I submit for the consideration of this Honourable House, a Bill to provide for the acquisition of the Shares held in Petrojam Limited by Persons other than the Petroleum Corporation of Jamaica, and for Connected Matters.

Let me start by giving a brief history and context. In 1964, ESSO designed a hydro-skimming refinery in Jamaica as part of its strategic operations to process crude from its affiliate operations in Venezuela and other suppliers. By 1982, market dynamics had changed and the fiscal incentives given by the Government had come to an end and the refinery was no longer considered financially viable from ESSO's perspective. The Government at the time based on the need for energy security, consideration of its role in the economy, possible other industries that could be created such as petrochemicals and

other strategic reasons; through the Petroleum Corporation of Jamaica (“**PCJ**”) took over the refinery by purchasing 100% of its shares, and established Petrojam Limited (“**Petrojam**”). The refinery has been central to Jamaica’s energy supply for decades accounting for approximately (80%) of the market’s supply.

Since its establishment, the refinery has never really operated at its full capacity. The refinery’s current nameplate capacity is 36,000 barrels of oil/day but currently processes on average 25,000 barrels of oil per day. Refineries normally have a useful life of 25 to 30 years and retooling of the existing plant as ongoing maintenance would have to be done to keep it operationally viable. Since 2000, approximately 60 million United States dollars have been spent on major retooling works such as tank repairs and tower and boiler replacements but none of this expenditure could be considered major upgrades that would change the core processing capacity of the refinery and bring it in line with existing technologies; increase capacity, operational efficiency or product range to meet market demands and financial viability. The need for an upgrade was recognized from as early as the 90s and Petrojam and the PCJ have undertaken several studies on the Refinery upgrade. The challenge has always been the cost of the upgrade which can run into hundreds of millions of dollars with estimates as much as more than a billion dollars depending on the extent of the upgrade.

Some onlookers may ask why not just leave the refinery as is:

1. The refinery would become unprofitable to operate by virtue of inefficiencies, regular breakdowns and increased spending on retooling and maintenance;
2. Market conditions would make it cheaper to import than to refine; therefore the customers will pay in higher fuel prices or the Government by subsidies and tax breaks which eventually may mean higher taxes. Many countries have seen this risk and have decided to close down their refinery, we saw this happening in Trinidad and Tobago.

3. On April 26, 2013 then Minister with responsibility for Energy, Phillip Paulwell made it very clear at a Press Briefing at the Office of the Prime Minister and he was quoted in the Gleaner business report saying: *"In relation to Petrojam, this is a project that is well delayed. If Petrojam is not upgraded and expanded, we will have to shut it down. It is as simple as that,"*.

In 2004, when the refinery would definitely be at the end of its useful life, the then Minister with responsibility for energy, Phillip Paulwell in his sectoral presentation to this Honourable House,, announced that upgrading of the Petrojam refinery would be a central policy of the GOJ to improve its capacity, cognizant that without the upgrade, the refinery would be unable to meet upcoming changes in global fuel specifications. This was FIFTEEN YEARS AGO Mr. Speaker, and the policy has been carried forward across political administrations, and a series of Agreements signed.

In February 2005, a Letter of Intent was agreed between the Bolivarian republic of Venezuela, acting through its Ministry of Energy and Petroleum and the GOJ, acting through the Ministry of Commerce, Science and Technology, confirming, in principle, that they would pursue feasible options for the improvement of the refinery.

In June 2005, further to the Letter of Intent, a Memorandum of Understanding was signed between the same parties, with a view to establishing a Joint Venture.

On August 14, 2006, a Joint Venture Agreement ("**JVA**") was signed between the PCJ, Petrojam and PDV Caribe S.A. ("**PDV Caribe**") to cooperate in the ownership and management of Petrojam and to undertake the refinery upgrade, which was recognized as critically important for the energy security of Jamaica. It stated that PDV Caribe S.A. and the PCJ agreed to embark on a Refinery Upgrade Project ("**RUP**") through the medium of Petrojam. The JVA

defines the RUP as;

“A project that will be carried out to expand the Kingston Refinery Processing capacity from 36 kilo barrels per day to 50 kilo barrels per day. In the first phase, the Refinery Upgrade Project will include a revamp of the Atmospheric Distillation Unit, and the installation of new units, including a Vacuum Distillation Unit, Naphtha Reformer...and a phase II will be evaluated aiming at incorporating a deep Conversion Unit in the Refinery”

The JVA also set out that in order to facilitate its purpose, the parties would enter into a Share Sale and Purchase Agreement pursuant to which PCJ would sell, and PDV Caribe would purchase, shares in Petrojam.

That Share Sale and Purchase Agreement was signed in August 2007, selling 49% of the shares in Petrojam for the sum of US\$63.7M, based on valuations by internationally recognized consultants with expertise in valuing assets in the energy sector.

Between 2008 and 2011, as we all know, most countries in the world were impacted by the global economic crisis among other crises, and Jamaica was not immune - different related factors prevented both parties from proceeding with the upgrade project.

Thereafter, I am advised that Petrojam went through different phases of pressing its Venezuelan counterparts to follow through on the commitment to upgrade the refinery. After entering into the various agreements leading up to selling the shares in 2007, Mr. Speaker, the parties continued to manage and operate Petrojam together for about a decade. Despite discussions and negotiations over that time, the RUP has not been achieved (although acknowledging at every step, across Ministers and political administrations, that the RUP was critically important).

In 2016, when this administration took office, we started a series of meetings aimed at seeking recommitment to the refinery or determination of another

path. In May 2016, I met with President Maduro, who gave me his commitment to take action on the RUP within three (3) months. In June 2016, a meeting was held in Caracas to evaluate the RUP and to clarify concerns. I met again with him in the Dominican Republic in January 2017 where we signed a Letter of Intent for the Refinery Upgrade. Further meetings were held in Kingston and Caracas. Pursuant to the Letter of Intent, a new Agreement was signed in Caracas on February 15, 2017.

In fact, the seminal importance of the RUP was again affirmed by the signing of this. It was called the Agreement in relation to the Kingston Refinery Upgrade Project (KRUP) between Petroleos de Venezuela (“**PDVSA**”) (the parent company of PDV Caribe SA) and PCJ. It stated in Recital D that:

“The Joint Venture Agreement between PCJ and PDVSA dated August 14, 2006 recognizes, inter alia, that the upgrading of the Petrojam refinery is of seminal importance to its sustainability and the commitment made by the partners, to undertake the Petrojam Refinery Upgrade Project (“RUP”) and to finance its implementation, is a condition precedent of the said Joint Venture Agreement.”

One example of why we are where we are Mr. Speaker, is to be found in these most recent efforts to sign an agreement and implement its terms. The Kingston Refinery Upgrade Agreement required that the parties agree **to establish a task force** comprised of representatives of both joint venture partners, **to coordinate and execute the actions needed to implement the Agreement**. It is important to note that the four members named by Venezuela never made themselves available to meet on any of the eighteen (18) occasions that meetings were held, despite being invited on every single occasion (and in fact they never appointed the 5th critical person). Petrojam members proceeded with the meetings in the absence of their Venezuelan counterparts but this demonstrated clearly, the lack of real commitment of PCJ’s counterparts to the activities of the task force - and accordingly the lack of commitment to actually executing the upgrade. The reality is that this is just

one of many circumstances which can be shared with you from the technical and political persons who have worked across administrations on these matters. The ultimate result has been that Jamaica's energy security has been further compromised by delay and inaction. We now need to assess and redefine the refinery's future and this can only be done by re-taking control.

Mr. Speaker, I want this Honourable House to appreciate that the decision to move in the current direction was not taken lightly. Even after twelve years of inaction (15 if you count from Member Paulwell's presentation in 2004) and not following through on written agreements, the GOJ pursued various diplomatic initiatives through the Ministry of Foreign Affairs and Foreign Trade and the Office of the Prime Minister. I just outlined some of the efforts undertaken by the GOJ between 2016 and 2018.

I am also advised that the GOJ has written several letters over the twelve-year period, expressing its dissatisfaction with the lack of action of PDV Caribe and urging conformance with the agreements signed. Promises and commitments have been made, but few have been honoured and therefore here we are today.

Mr. Speaker, the PCJ, in frustration, last year even took the extraordinary step to propose to finance the first phase of the RUP by itself by seeking to use US\$100M, loaned from the GOJ. As members of this Honourable House are aware, those funds were returned to the Ministry of Finance and the Public Service pending the decision of the Strategic Reform Committee.

Where has Petrojam and Jamaica been left by the years of inaction Mr Speaker? The answer is sad but true Mr Speaker. We have been left at risk. Let us start with the fact that technical assessments have found that refining operations will be negatively impacted by 2020 if Petrojam is not in a position to execute Phase 1 of the refinery upgrade (Vacuum Distillation Unit Project). This is primarily due to the imminent international obligations as

stipulated by the International Maritime Organization (“**IMO**”) regulations regarding sulphur, which will become effective on January 1, 2020, and the transition by the Jamaica Public Service Company Limited to Liquefied Natural Gas for its 190 MW power plant by June 2019, thereby reducing the need for heavy fuel oil produced by Petrojam.

Without an upgrade; it would be unable to further process HFO into high value products and having lost a major customer in JPS, Petrojam would become unprofitable.

Mr. Speaker, this is all against the background of the difficulties being faced by the energy sector, arising from the sanctions imposed by United States Executive Order 13808 dated August 24, 2017, which essentially prohibits United States persons from entering into specified transactions with the Government of Venezuela and any political division, agency or instrumentality thereof, including PDVSA. While Petrojam itself was not identified as a “sanctioned entity” under the Executive Order, the fact is that its banks and correspondent banks which facilitate basic transactions with suppliers and service providers, were US persons, and were therefore at risk or perceived risk of high fines for breaching such sanctions, and accordingly hesitant to continue providing such services which were fundamental to the most basic operations of Petrojam.

You would remember the circumstances Mr Speaker, it was August, right in the middle of the Hurricane Season, we had 2-3 weeks supply of oil and banks were holding Petrojam’s funds while they assessed the risk of whether they could process its transactions or not. Mr Speaker, it was with much effort across Ministries and our Embassy in Washington, that we were able to secure the requisite comfort letter from the U.S. Office of Foreign Assets Control to assure service providers that it did not consider ordinary transactions with Petrojam to be in breach of the sanctions. Although questions persisted, they were reasonably easily managed after a while, with the comfort letter.

Mr. Speaker, you might wish to note that it was in the wake of the issuance of the Executive Order, and while experiencing challenges with the Venezuelan implementation of the KRUP Agreement, that then Minister Wheatley started discussions with his counterpart regarding selling the shares back to the GOJ. Our efforts continued thereafter at both informal and formal levels.

Mr. Speaker, as members will undoubtedly be aware, the sanctions against PDVSA and related entities such as PDV Caribe have strengthened and expanded with the issuance of new Executive Orders since then, noting in particular those issued at the end of January 2019, as well as the fact that other countries are now imposing sanctions.

More particularly Mr Speaker you should note that on or around January 25th 2019, a new Executive Order was issued which broadened the definition of the Government of Venezuela to include “any political subdivision, agency or instrumentality thereof, including the central bank of Venezuela and PDVSA [or PDV Caribe] and any person owned or controlled by or acting for or on behalf of the Government of Venezuela” to include “ any person owned or controlled directly or indirectly by the foregoing and any person who has acted or purported to act directly or indirectly for or on behalf of any of the foregoing, including as a member of the Maduro regime.”

Without even going further, the implications are clear Mr Speaker.

As a result of the new Executive Orders, Mr. Speaker, payments to and from Petrojam have been subject to increased due diligence by the primary suppliers of lines of credit, as well as intermediary banks and the disruption or delay of transactions for Petrojam Limited has become a source of unease for Petrojam’s suppliers. We are advised that one bank has advised Petrojam that it will only facilitate payments to a limited set of contractors and the other major bank has advised Petrojam that it requires certain representations and an uncapped indemnity from Petrojam in order to continue to facilitate

transactions. Furthermore, among other matters, that bank has also sought Petrojam's agreement to acknowledge that it will delay or terminate transactions and services at any time. While Petrojam has sought legal advice on the extent of its exposure if it were to sign the indemnity, it recognizes that if the ownership structure remains the same, it may effectively be prevented from conducting its ordinary business if it does not sign the indemnity agreement. Mr. Speaker, the situation is not a healthy one for Jamaica's energy security.

The facilitation of payments through intermediary banks is only one aspect of concern occasioned by the Executive Orders. An even more serious concern is the overseas suppliers of goods and services to Petrojam. Owing to Petrojam's continued association with Venezuelan entities, some suppliers have advised Petrojam that they are no longer willing to take the risk of supplying to Petrojam, and others have expressed grave concerns. If Petrojam is not able to access the goods and services required for the functioning of the refinery, the operations of the company would be severely jeopardized.

It cannot be that the Opposition believes that we should wait until the economy is actually plunged into crisis before we take action, as opposed to acting now when it has become crystal clear to any onlooker that crisis is likely and imminent if we take no action.

Mr Speaker, regretfully, the negotiations for the purchase of the 49% shareholding have not achieved the desired outcome. In the first instance this was because the price that the Venezuelans insisted on, was multiples of fair market value as determined by the most recent independent valuation done in 2018, using the same methodology that was used to value the shares for their sale to PDV Caribe in 2007. Agreeing to pay such a price could never have been justified to the Jamaican people. It has in fact been a source of some consternation that members of the Opposition seem to believe that Petrojam should pay the highest possible price for the shares rather than batting for strong negotiation on behalf of the Jamaican people. The Opposition would be

aware of the reality that the value of the refinery would have reduced over time without any investment, that its economic prospects are less certain, and that significant investment will be needed if it is to continue to operate as a refinery. How then could they be batting for Jamaica and the Jamaican people to pay more rather than less?

Mr. Speaker, notwithstanding, we were pleased to announce just recently that we had reached agreement on a settlement price. Unfortunately, the terms upon which such funds would be paid, could not be agreed, so essentially there is still no agreement. Perhaps more relevant to today's action however, is the clear reality that as a result of the sanctions, we will be unable to remit the funds to our counterparts without putting Jamaica's financial banking systems seriously at risk.

How do we know this Mr Speaker? Perhaps Minister Clarke could say more about this, but let me be clear that since **last July**, the PetroCaribe development Fund has been unable to remit funds to PDVSA under the Caracas Agreement. Furthermore, since an attempt was made to remit the 2019 PetroCaribe debt re-payment in December 2018, the funds have been held by the Intermediary Bank for "sanctions investigations". Notwithstanding the BOJ having made a formal request for the return of the funds since February 1, 2019, the funds have still not been released back to the GOJ. Note Mr Speaker, that these payments were all made BEFORE the tighter and more expansive sanctions issued at the end of January. What then would be the risk of making such payments now? The GOJ could never responsibly send funds out at such a high risk.

We have therefore proposed that as a compromise, PDV Caribe agree to transfer the shares to the GOJ in exchange for our payment into an escrow account for the benefit of PDV Caribe S.A. This was viewed as eminently reasonable as it is how we have had to treat monies payable under the Caracas Agreement since July. To date there is no such agreement.

Where we are now therefore Mr. Speaker, is that the GOJ,

- having attempted to enter into an Agreement with PDV Caribe SA for the repurchase of the latter's 49% shareholding in Petrojam Limited;
 - having pursued several diplomatic initiatives at the highest levels which have been unsuccessful (intercession by no less than 3 current and 1 former Head of Government was sought);
 - having written letters at the technical and ministerial levels across the years;
 - having waited twelve years with, to date, no indication that PDV Caribe will honour agreements signed;
 - having made its Petrojam teams available for meetings which have been unattended by PDV Caribe's representatives;
 - having been seized of the fact that in 2019 Petrojam will lose 50% of its market
 - having been seized of the fact that in 2020 the IMO sulphur content convention will be in effect;
 - having been advised in no uncertain terms of the potential termination of services by suppliers and bankers which would cripple the refinery and severely impact the Jamaican economy;
- the GOJ has re-assessed its legal options.

The GOJ now has no choice but to take the action before us today in the interest of preserving the energy security of this country. It is clear to anyone monitoring the geopolitical developments in the region that circumstances have not been improving over the past two years, and even the past two weeks. However quick or lengthy a process will be needed to resolve the issues at hand, time has run out for protecting Petrojam.

A point I could not miss Mr Speaker, is that the operational challenges of the years and going forward are made more-so because of the governance structure under the Joint Venture Agreement and the Articles of the Company. Mr Speaker, no major decision can be taken by the company

without the concurrence of the directors of PDV Caribe. To take any major decision, including the ability to move with alacrity once the Petrojam Review Committee makes its recommendations, energy security demands that Jamaica wait no longer.

Mr. Speaker,

It is important to understand that for the Government of Jamaica (GOJ), this is not a political issue. We have said it before, but we feel it is important to say it again, because some persons appear to want to make it a political issue, about the OAS, about Maduro, about foreign policy – about everything except the issues on which the government is really focused :- **The economic stability and energy security of Jamaica which are necessary for the well-being of all Jamaicans.** Simply put, we are here to take a responsible decision in the interest of the Jamaican people, not to perpetuate an act of hostility against any political regime.

Mr. Speaker, this action does not reflect any change in our free market based policies and belief in property rights. As we have explained to our foreign investors and bi-lateral development and investment partners, (and as they have understood) this is a specific isolated matter brought about by a confluence of circumstances including the huge financial risk of running afoul of sanctions. The Bill is drafted specifically to reflect a narrow and specific scope.

We are not seeking to take property without paying for it. The Bill before us provides a clear mechanism for compensation as required by the Constitution of Jamaica. It even provides for money to be paid in a special account so that funds are set aside from day 1 when the Act comes into effect.

We are not acting prematurely or hastily. There has been too much time wasted already by previous administrations - more than 12 years depending on when you start to count! We are at a point now where we must take decisive and responsible action which will ensure that Jamaica's sole refinery will be

able to purchase supplies and refine the oil which powers our homes, our schools, our businesses and places of work; make sure our buses, taxis and cars can run; purchase equipment to maintain its operations; and take decisions which will enable it to chart a new sustainable future.

Our decision today will ensure that Petrojam can pay for services and receive payments as well, so that it can in turn make significant contributions to the revenue of Jamaica.

Acquiring the shares this way has always been regarded as a measure of last resort. Indeed, the decision has not been taken lightly and is being pursued against the above background which makes it plain that Jamaica does not have the luxury, to wait any longer. At this juncture, and within the context of these considerations, the GOJ will compulsorily acquire the forty-nine percent (49%) shareholding in Petrojam Limited, wherever it may be held, for the public purpose of securing Jamaica's energy security, by way of the enactment of legislation.

Let me also state for the record that we have at all relevant times prior to this moment, made it clear to PDV Caribe that if it were to agree to feasible terms for the sale of the shares, the GOJ would suspend this legislative process. Despite our various efforts, we have not, to date, had success. I want to make it clear Mr Speaker, that were they to sign the draft Share Purchase Agreement before this debate concluded today, the GOJ would have been willing to suspend this process and sign the Agreement as well. Furthermore, if they were to do so prior to its passage in the Senate, this position would still stand.

Mr. Speaker, it is important that we note that what we have before us today, is a Bill which has been carefully crafted to achieve the primary purpose of assuring Jamaica's energy security. The Bill provides for the acquisition of the shares in Petrojam Limited not held by PCJ. The Bill is not intended to be of

general application to this or any other sector, or any other company in any sector. In fact, our Government is aware that if this Bill were not specific to the particular circumstances at hand, it could have been perceived as a potential dissuasion to investors on a whole. And so, we have been careful in this regard, Mr. Speaker, to ensure that the Bill achieves the primary purpose of compulsorily acquiring the 49% shareholding in Petrojam Limited, in the public's interest. The reference to "persons other than the PCJ" in the Long Title and in the definition of the "applicable property" Mr Speaker is out of an abundance of caution to ensure that any attempt to transfer the shares to a third party would not prohibit the operation of the Act, when it comes into effect.

Mr. Speaker, I will now give an overview of the various provisions of the Bill, for the consideration of this Honourable House.

Clause 1

Clause 1 of the Bill sets out the short title as being "the Compulsory Acquisition (Shares in Petrojam Limited) Act 2019".

Clause 2 (Interpretation)

Clause 2 contains the definition of certain terms that are used throughout the Bill. Of significance, (as referenced above) is the meaning of the following terms:

- "applicable property", which means the shares in Petrojam Limited, held by persons other than the Petroleum Corporation of Jamaica, immediately before the coming into operation of the Act.
- "Joint Venture Agreement", which means the Joint Venture Agreement dated August 14, 2006, between Petrojam Limited, the Petroleum Corporation of Jamaica, and PDV Caribe SA; and,
- "Minister", which means the Minister with responsibility for Petrojam Limited.

Clause 3 (Compulsory Acquisition of the applicable property and payment of value into escrow account)

Clause 3 of the Bill affords for the immediate vesting of the shares in the Accountant General, free of all encumbrances, which will be held on trust for the Government, once the Act comes into operation.

It is important to note further that once the Act comes into operation, under clause 3(2) the Registrar of Companies and all other persons responsible for registering the transfer, will be empowered to take the necessary steps to do such registration; and under clause 3(3)) the Minister with responsibility for Finance will be required to cause the amount of the value of the applicable property, to be paid into an escrow account, which for the purposes of the Act, will be an interest bearing account at the Bank of Jamaica, established by the Minister with responsibility for Finance. The amount to be paid into the escrow account will be taken from the Consolidated Fund, or any other source of funds available to the Government and which the Government deems to be appropriate in the circumstances.

We wish to highlight the good faith of the Government, by having the amount representing the objectively determined value of the shares being placed in an escrow account, upon the coming into operation of the Act. This evidence of good faith on the part of the Government ensures that from the outset, the necessary framework is put in place for compensation payments to be triggered at the appropriate time.

Clause 4 (Compensation)

In respect of the compulsory acquisition of the applicable property, compensation will be required to be paid in accordance with the Act, out of the escrow account. However, if the compensation to be paid is in excess of what is contained in the escrow account, then the excess will be paid out of the Consolidated Fund, or from any other source of funds available to the Government and which the Government deems to be appropriate in the circumstances.

The compensation to be paid to the interested person will be done by way of an electronic transfer, in the currency of the United States of America or any other freely convertible currency.

This clause further sets out the procedural steps required on the part of the Minister with responsibility for Petrojam and any interested person upon the coming into operation of the Act.

In Clause 4, it is to be noted that within thirty days after the Act comes into force, the Minister with responsibility for Petrojam will be required to publish a Notice, which should state that all claims to compensation for the applicable property may be made to that Minister. The Minister will also be required to specify in the Notice, the time within which such claims may be made, and the particulars of the applicable property.

While it is anticipated in these specific circumstances that there will be only one legitimate claimant for compensation, it was determined that the Bill would be phrased widely to not only ensure that the provisions of the Constitution of Jamaica are complied with, but to also acknowledge the possibility that if there continues to be a dispute within Venezuela regarding the government authorized to transact, then there could possibly be two claimants.

Clause 4 also outlines what will be required of an interested person where a claim to compensation is being made. The interested person will be required to state the nature of his interest in the applicable property and for same to be accompanied by supporting documentation. The time within which such claim may be made will be no less than thirty days nor more than three months from the date of the publication of the Notice.

It is important to note that no claim for compensation will be considered, if it is made after the expiration of the three-month period, unless the Minister

determines that injustice may arise if the claim is not considered. This again is intended to address the balance between there being only one company that is the owner of the shares, but that there could be circumstances which require Ministerial discretion and judicial intervention.

Clause 4 also provides that upon the expiration of this three-month period, the Minister must consider each claim, make a determination on the amount of compensation payable and serve a written notice of the determination on the interested person, unless the Minister applies to the Court for a determination to be made in respect of the person's interest in the applicable property. It should be noted that this Clause empowers the Minister to request additional information from a person in order to make the determination and that any person so requested must provide such information. It is important to note Mr. Speaker, that under this clause, a person commits an offence if he makes a statement or submits documentation that is false in any material particular, or being required by the Minister to provide information, fails to do so without reasonable excuse.

The written notice to be served by the Minister must specify (1) the amount of compensation determined to be payable to the interested person; (2) the value of the applicable property; and (3) the apportionment of the compensation among interested persons, where applicable.

The written notice must also offer to pay the compensation awarded to the entitled persons and must specify the time frame within which the entitled persons are required to indicate their acceptance or rejection of the offer and inform interested persons of their right to apply to the court, among other things.

In the case where an interested person accepts the offer, the Minister of Finance upon the instruction of the Minister with responsibility for Petrojam in writing will cause the compensation to be paid to the person accordingly.

Finally, Mr. Speaker, in relation to this clause, the Government has taken the position that no compensation determined or paid will be chargeable with stamp duty or transfer tax.

Clause 5 (Rules for determination of compensation)

Mr. Speaker, Clause 5 of the Bill sets out the Rules for the determination of compensation, detailing the matters that should not be taken into consideration in determining compensation, as well as the matters that should be taken into account.

This clause provides that in assessing compensation, account must be taken of the following important factors:

1. The fair market value of Petrojam Limited, as determined by the valuation carried out by Muse, Stancil and Company (an internationally recognized consultant with expertise in the valuation of assets within the energy sector), as expressed in its valuation report dated March 20, 2018, with a valuation date as of April 1, 2018;
2. The failure to carry out the refinery upgrade project as defined under the Joint Venture Agreement and the Agreement in relation to the Kingston Refinery Upgrade Project; and
3. Any difficulties arising from the sanctions imposed by third party states in respect of the Government of Venezuela, Petroleos de Venezuela (PDVSA), and any person owned or controlled by said Government.

It is important to note, Mr. Speaker, that the Clause requires that the value of the applicable property will be taken to be 49% of the fair market value of Petrojam Limited based on the Income Approach which was the basis of the sale of the shares to PDV Caribe SA in 2007.

The Muse Stancil Report expressly recognizes that the Income Approach is the most important method of estimating the value of any revenue producing assets that represent the present value of the sum of the projected future cash flows received from the assets.

Clause 6 (Reference to Court)

Clause 6 of the Bill grants the Minister with responsibility for Petrojam a right to have reference to the Court where the determination of compensation is not straightforward. For example, where there are two interested persons that have come forward claiming the same interest.

Clause 6 of the Bill, also grants to an interested person who has not accepted the compensation offered, a right of access to the Court for the determination of that person's interest, if any, in the applicable property, the amount of compensation that was assessed having regard to clauses 4 and 5, and the compensation to which he is entitled.

Further, it should be noted that the right of access to the Court is also provided in Clause 6 of the Bill to an interested person who has accepted the offer of compensation and is desirous of having the Court enforce the payment of compensation.

Clause 7 (Appointment of Assessors) & Clause 8 (Compensation not to exceed amount claimed)

Clause 7 of the Bill provides for the Court to appoint two assessors for determining the amount of any compensation, where an interested person applies to the Court and Clause 8 provides that the amount awarded to that person by the Court cannot exceed the amount claimed.

Clause 9 (Service of notices) and Clause 10 (Obstruction)

Clause 9 makes provisions for the service of notices, and Clause 10 creates an offence where a person willfully obstructs any person who has the responsibility for registering the transfer of the applicable property.

The Memorandum of Objects and Reasons

In concluding, Mr. Speaker, the Bill contains a Memorandum of Objects and

Reasons, which sets out the main reason for the promulgation of this legislation. As indicated in my introductory remarks, the Joint Venture Agreement was entered into with the objective of upgrading Petrojam's refinery, and so to that end the shares in Petrojam were sold to PDV Caribe SA. The refinery has not been upgraded. Petrojam's operations are now at risk due to the imminent transition by JPS, the imminent international obligations under the IMO regulations and the sanctions imposed by third-party countries which impact the energy sector, thereby requiring the Government to take positive action to assure the country's energy security. The Government has therefore decided to enact legislation to provide for the acquisition of the shares held in Petrojam, by persons other than the Petroleum Corporation of Jamaica.

The entire Bill, Mr. Speaker, has been carefully considered and drafted so that it adequately satisfies the principles expressed in Section 15 (1)(b) of the Constitution of Jamaica, which requires that any law which seeks to compulsorily acquire property of any description, must secure to any interested person claiming an interest in or right over such property, a right of access to the court for the purpose of (i) establishing such interest or right, if any, (ii) for determining the compensation (if any) to which he is entitled; and (iii) enforcing his right to any such compensation.