

Jamaica

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Recent M&A developments

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Jamaica has seen an increase in the number of takeovers and acquisitions in the last two years. Notably, sophisticated methods have been used in these transactions, an indication of the growth and maturity of the Jamaican market and the willingness of businesses and attorneys-at-law to be innovative.

The most prominent acquisition during this period has been the takeover of Lascelles DeMercado & Co Ltd by Angostura Ltd of Trinidad and Tobago at a value of \$618 million. Angostura acquired 80% of Lascelles DeMercado's voting stock, with accepting shareholders agreeing to accept an initial cash payment and a deferred payment in accordance with a specified payment schedule on the deal's completion. Together, the companies will constitute the largest rum producer in the Caribbean.

In addition, in 2006, the El Salvador-based Cobalt Holdings acquired Courts Jamaica Ltd. The \$156 million acquisition of Courts was financed by a loan guaranteed by a debenture over Courts' entire fixed and floating assets, a mortgage over all its assets and a mortgage over all its real property. This was the first leveraged buyout (LBO) of its kind in Jamaica and reduced the need for Cobalt to fund the acquisition with its own equity or security.

Jamaican-owned companies have also been taking strides by acquiring local as well as overseas companies. Jamaican-owned conglomerate Grace Kennedy Ltd acquired the UK-based WT Foods from Bridgeport Capital Ltd for £23 million (\$44 million, J\$3.1 billion). This purchase is the first European acquisition for the company and was expected to add approximately £60 million to the company's group revenues. The conglomerate further expanded its worth by

two other purchases in the Caribbean with the acquisition of 30% of the Barbadian insurance company, Trident, for \$1 million (J\$67 million) and 91% of One1 Financial, a Trinidadian Broker, for J\$170 million (\$2.5 million).

Legal framework

The Securities Act (1993) (the Act) and the Securities (Takeovers and Mergers) Regulations 1999 govern mergers and takeovers of public companies in Jamaica. The Jamaica Stock Exchange Rules govern mergers and takeovers involving public companies listed on the Jamaican Stock Exchange.

Obligations of board of directors

The board of directors of a company that is being merged or acquired (offeree company) has several legal obligations whenever it receives notice of any firm intention to make an offer. The board is required, whether or not it views the offer as favourable, to forthwith notify the shareholders without delay by notice published in a daily newspaper circulating in Jamaica.

Where a genuine offer has been communicated to the board of an offeree company or the board has reasonable cause to believe that such an offer is likely to be made, that board or any member or members thereof must not, at any time thereafter, take any action relating to the company's affairs without the approval in a general meeting by the company's shareholders, which could effectively result in any such offer being frustrated or the company's shareholders being denied an opportunity to decide on its merits. The board must also satisfy itself that the offeror company is, or will be, able to implement the offer in full.

The directors of an offeror or offeree company will, at all times when advising the company's shareholders, act only in their capacity as directors without regard to their personal or family shareholdings or their per-

sonal relationship with the company and have regard only for the interests of the company's shareholders, employees and creditors.

Obligations and procedure for disclosure

Where an offer has been made in respect of an offeree company, the offeror must provide sufficient evidence, facts and expert opinions upon which an adequate judgment and decision can be reached, and sufficient time for the shareholders to make an assessment and a decision.

All offers to or by a public company must be made in writing in the first instance to the board of the offeree company or to its shareholders and must state the date of the bid and the name and address of the offeror. It must also include:

- precise particulars of the securities of which the offer is made;
- the total consideration payable for the purchase;
- how any securities issued will rank for dividends, capital and redemption;
- when and how the document of title will be issued; and
- how, when and where such offer may be accepted.

Takeover bid circular

In the case of a takeover transaction, a takeover bid circular, approved and authorised for delivery by the director of the offeror company, is to be sent by prepaid post or delivered to the offeree company and a copy thereof must be sent to the Financial Services Commission (FSC) and/or Jamaica Stock Exchange (JSE).

Directors' circular

The board of an offeree company will, within seven days of receipt of a takeover bid, issue a directors' circular containing a recommendation as to acceptance or rejection of the offer and the particulars specified in the regulations. A copy of the directors' circular will be delivered to the FSC and/or the JSE, sent to

each shareholder by prepaid post or by delivery and be published in at least one daily newspaper circulating in Jamaica.

Disclosure concerning acquisition of 20% or more of equity

The Act defines a takeover as a transaction or series of transactions whereby a person acquires, whether directly or indirectly, a holding or aggregate holdings of shares carrying 50% or more of the voting rights of a public company. It is interesting to note that there is an obligation for disclosure when an entity acquires 20% or more of the equity of any company. That entity must, within 10 days of the acquisition, send by registered mail to the FSC and/or JSE and the company a written statement containing details of the person acquiring the equity, the amount of the equity being acquired, the purpose for acquiring it and intentions, if any, of making further acquisitions in the future.

Non-compliance with the relevant rules may result in disciplinary action being taken against the infringing company including, where applicable, suspension or cancellation of trading on the JSE.

The Jamaican economic and legislative frameworks facilitate large-scale mergers and acquisitions. Generally, the regulations seek to balance the interests of the offeror and the offeree while protecting shareholders of public companies and maintaining the standards of the FSC and/or JSE through clear guidelines for disclosure.

ment as investment-friendly, and it has already implemented legislation aimed at pumping energy into a flagging economy. For instance, an amendment to the Export Industry Encouragement Act will allow certain exporters to operate free of income tax for 10 years. Similar tax-free status can be granted to select service providers on the importing of building material and machinery.

The government has also made recent efforts to establish Jamaican offshore funds, an area of the market that had been dwindling. Incentives include eliminating the double taxation of dividends for non-listed companies.

The recent conservatism of institutional lenders as a result of suffering credit markets is a looming concern to future resort developments, on which Jamaica's economy largely depends. Yet development continues at several large commercial developments in Jamaica, including the \$1.8 billion Palmyra development on Montego Bay and the \$2 billion Harmony Cove resort.

Another incentive for development has been the granting of the first casino licences in Jamaica - to the companies Harmonisation and Celebration Jamaica - in April 2008.

Expanding Jamaica's tourism industry is a top concern for the government, which is now looking to overhaul port facilities to allow for more cruise ship business. Plans are also underway to merge the Development Bank of Jamaica and Exim Bank into the Jamaica Investment and Development Corporation. Many see this as a key step in streamlining the island's promotion to potential investors.

mated value of \$4.3 million. Additionally, Donovan Walker is representing the Jamaica National Building Society on its pending \$40 million acquisition of Blue Cross of Jamaica.

Leading lawyers

Christopher Bovell
Lincoln Eatmon
Jerome Lee
Donovan Walker

Hart Muirhead Fatta

Having only been established in 1990, Hart Muirhead Fatta has quickly become one of the leading commercial law firms in Jamaica. Renown in the market for top-quality representations in commercial and conveyance matters keeps the firm in the top tier. "Mark Golding is perhaps their best-known commercial lawyer," says a competitor. Patrick McDonald also comes recommended by peers and clients.

Leading lawyers

Mark Golding
Patrick McDonald

Myers Fletcher & Gordon

As the largest firm in Jamaica, Myers Fletcher & Gordon has the ability to service a high number of clients across market sectors. The firm specialises in acting for foreign clients in the tourism, energy, and financial sectors. A London office underlines the firm's highly reputed cross-border experience.

Peers regard the firm as distinguished in financial matters, noting its involvement on commercial development throughout Jamaica such as the Harmony Cove resort. "Noel Levy, the senior partner, is a highly regarded and experienced commercial lawyer," says a competitor. Myers Fletcher & Gordon has also developed close ties with the Jamaican government through prior representations.

Leading lawyers

Barbara Alexander
Peter Goldson
Noel Levy

Dunn Cox

DunnCox is an unquestioned leader in the Jamaican market. The firm is particularly well-received by peers and clients for its representations in the tourism and financial sectors. Jerome Lee and Lincoln Eatmon are particularly visible on transactions involving large commercial developments. Dunn Cox acts routinely for domestic and international financial institutions like RBTT Bank Jamaica and the Inter-American Development Bank.

This year Eatmon represented RBTT Bank Jamaica as the issuer of \$16.5 million to Ironshore Construction Company. The loan financed the construction of a shopping centre in Montego Bay. Again in Montego Bay, Christopher Bovell is advising Celebration Jamaica in connection with the \$1.8 billion financing for a casino and resort development. The transaction was still underway at the time of writing.

In corporate work, Jerome Lee represented Kraft Foods Jamaica on the sale of assets to Seprod, a food and beverage company. The deal closed in November 2007 with an esti-

Financial and corporate

Recommended firms	
Tier 1	
DunnCox	
Hart Muirhead Fatta	
Myers Fletcher & Gordon	
Tier 2	
Livingston Alexander & Levy	
Nunes Scholfield DeLeon & Co	
Patterson Mair Hamilton	

Much of the stagnation felt in Jamaica's island community over the last year can be attributed to the parliamentary elections in September 2007. Lawyers here describe the scenario as comparable to previous elections, where the possibility of changes to government was widely blamed for inspiring caution in investors.

But the elections have brought positive change. Jamaican lawyers see the new parlia-