

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 boards 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 personal 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 suf-

ficient evidence, facts and expert opinions upon which an adequate judgement 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 hold-

ing 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 ten 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.

Financial and corporate

Recommended firms

Tier 1

DunnCox
Hart Muirhead Fatta
Myers Fletcher & Gordon

Tier 2

Livingston Alexander & Levy
Nunes Scholefield DeLeon & Co
Patterson Mair Hamilton

Jamaica finds itself at a crossroads as the island's future identity within the financial community is examined, and possibly redefined. A concerted push by government bodies hopes to establish Jamaica as a competitor to offshore service providers in the region like the Cayman and British Virgin Islands, potentially fighting growing unemployment in the country and broadening its overall economic base. The recent discovery of several multi-million dollar Ponzi schemes operating in Jamaica only hinders the island's reputation within the financial community.

While much of the world has been steadily impacted by negative economic trends throughout the year, Jamaica is still realising the extent of secondary damage to traditionally active sectors like commodities and real estate. The suspended activity of leading aluminium producers Windalco and Alumina Partners of

Jamaica is a significant blow to one of the island's leading manufacturing sectors. The 17% reduction in remittances sent to Jamaica over the last six months provides another sobering detail for the island's foreseeable economic future. "We're still running on the momentum of last year," says one partner. "Things are going to get much tighter, and commercial services are going to get harder."

In an effort to combat the worsening economy, the Jamaican government has strengthened efforts toward developing the island's venture capital community. The proposed pool of funds has been estimated as high as \$4 billion, and has seen commitments from public and private sources like the National Investment Fund, Pan Caribbean Merchants Banks, the Micro Investment Development Agency, and Exim Bank Jamaica. The fund will focus on developing the international reach and capabilities of Jamaica's small and medium-sized businesses.

But as regional financial hubs simultaneously report decreased activity due to the financial downturn, Jamaica hopes to capitalise on this as it looks to recast itself as a competitor in international finance work. The proposed establishment of Jamaica as an offshore service provider already has lawyers here talking about raising their international profiles. With this in mind, establishing strategic relationships with onshore firms leads the agenda for Jamaica's legal community. While international competition may intensify due to the contracting domestic market, the relatively small number of firms in the jurisdiction capable of such work makes this less than a pressing concern for most lawyers.

DunnCox

DunnCox has become an institution within the Jamaican legal community. First opened in 1942, the firm has become a preferred contact for domestic and international banks and financing agencies alike, boasting such clients as Citigroup, First Caribbean National Bank, and the International Finance Corporation (IFC).

Lincoln Eatmon and Jerome Lee are mainstays of the firm's corporate and finance practices. This year, the firm also saw the retirement of managing partner Christopher Bovell, ending his 45-year tenure with the firm. Lincoln Eatmon was named his successor as DunnCox's new managing partner in January 2009.

As local counsel to Citigroup Merchant Bank of Trinidad, Eatmon and Bovell collaborated for the formation of a \$240 million note issuance for CL Financial. Executed in July 2008, the debt issuance was part of an overall

capital raising for CL's eventual acquisition of the Lascelles Group.

Lending work offered the firm its most consistent exposure this year. Representing the International Finance Corporation (IFC), DunnCox lawyers advised on two separate transactions with First Global Bank, both in March 2009. The firm first arranged a \$10 million loan to First Global through IFC, then prepared an IFC equity investment into the bank for the same amount.

Other work included the firm's representation of First Caribbean National Bank as the arranger of a lending syndicate for the Jamaica Public Service Company. Unsecured loans equalling \$35 million and J\$522 million (\$5.9 million) were granted for the Jamaican electricity distributor in December 2008.

Leading lawyers

Lincoln Eatmon
Jerome Lee

Hart Muirhead Fatta

Hart Muirhead Fatta is a perennial favourite with peers in the Jamaican legal community for its corporate and financial services work. The firm has maintained its lone office in Kingston since its founding in 1990, but despite this smaller operating model, Hart Muirhead Fatta is a constant competitor for larger rivals. Partners Mark Golding and N Patrick McDonald are recognised by peers as having cultivated much of the firm's recent success in banking and M&A law.

Leading lawyers

Mark Golding
N Patrick McDonald

Myers Fletcher & Gordon

Myers Fletcher & Gordon is the largest law firm in Jamaica, and has maintained the emphasis on cross-border transactions that peers have come to associate it with. An established London office reinforces the fact.

The financial, energy and tourism sectors are particular strengths for the firm, attracting returning clients like HSBC, GE Capital, IBM, and Marriott. Peter Goldson, head of the firm's corporate group, is recognised specifically for his expertise in pension matters.

Leading lawyers

Barbara Alexander
Peter Goldson
Noel Levy