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Changes to financial regulation legislation: Implications for banks, financial institutions and companies operating in Jamaica

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In February 2010 the International Monetary Fund approved a 27-Month Stand-By Arrangement (SBA) sought by the Government of Jamaica (GOJ) to restore macroeconomic stability, create conditions for strong and sustained growth and to enable the economy to benefit from the recovery in the global economy. The SBA is grounded in: (i) fiscal consolidation and institutional reform; (ii) public debt restructuring; and (iii) financial sector reform to improve consolidated supervision and the regulation of non-banks.

This article examines two areas of financial regulation: proposals for an omnibus banking law, and the new Financial Investigations Division Act, that will significantly impact the corporate finance landscape and are expected to move Jamaica towards achieving the goal of financial stability and responsibility outlined in the SBA.

Changes to financial regulation legislation

The GOJ intends to pass an omnibus banking law which would facilitate more effective supervision of financial entities, streamline the standards and applicable legislation that apply to commercial banks, merchant banks, and building societies. The omnibus banking law will aim to:

- enhance licensing provisions and the fit and proper requirement for directors and officers;
- broaden and consolidate the supervisory powers of the Bank of Jamaica including powers of inspection;
- improve regulation of the banking sector in alignment with the recently issued

Revised Basel Core Principles on Banking Supervision; and

- provide for electronic reporting and enhancing powers as regards the investigation and prosecution of illegal deposit taking activities.

Further, the GOJ intends to amend the Bank of Jamaica Act and the Financial Services Commission Act to provide for stronger capital adequacy standards for all financial institutions in line with international standards.

The Financial Investigations Division Act, 2010 (FID)

The FID is expected to be pivotal in the protection and prevention of financial crimes. The FID will invariably interrelate with The Proceeds of Crime Act (Poca) and its Regulations. While, the Poca is primarily geared towards preventing individuals from benefitting from criminal conduct; the FID is focused on investigating financial crimes.

The Financial Investigations Division, established under the FID has responsibilities that include the:

- investigation of all categories of financial crime (defined as any offence involving money or other benefits and includes any offence involving fraud, dishonesty, money laundering or the financing of terrorist activities);
- collection of information and maintenance of intelligence databases on financial crimes;
- maintenance of an relationship with law enforcement agencies and other authorities of Jamaica and of foreign states, regional and international associations or organisations, with which it is required to share information;
- giving of advice to the Minister of Finance on matters of policy relating to the detection, prevention, and control of financial crimes; and
- compilation and publication of statistics on investigations carried out and conviction of person for financial crimes.

Additionally, the following features of the FID are of interest and importance.

(i) The Chief Technical Director (CTD), who is responsible for the day-to-day administration and operation of the FID, may enter into agreements with a public body in Jamaica or a foreign financial intelligence department or association of such departments regarding the exchange of information with the FID relevant to the investigation and prosecution of a financial crime.

(ii) The CTD may apply to a Judge for a production and inspection order in relation to a person suspected of having possession or control of any information relevant to an investigation of a financial crime. The order will not require the production of accounting records used in the ordinary business of a financial institution or to give access or answer questions that are subject to legal professional privilege however, privacy and secrecy laws cannot be used as a bar to the order. A financial institution includes a licensed bank, financial institution, or building society, a credit union, approved money transfer and remittance agent, exchange bureau, dealer or investment advisor under the Securities Act and a person who engages in insurance business within the meaning of the Insurance Act or performs services as an insurance intermediary within the meaning of the Insurance Act (but does not include an insurance consultant or adjuster).

(iii) An authorised officer may obtain a search warrant where there are reasonable grounds for suspecting that a person has committed a financial crime and that a book, record, or other document is on the premises. It is an offence to refuse to comply with the order or to knowingly provide false or misleading information in purported compliance with the order.

(iv) The CTD may apply for a restraint order or account monitoring order. The restraint order will restrain that person from completed any transaction or dealing relating to property, or to restrain a financial institution from carrying out a financial transaction

or other financial dealings of any kind with the person. While, the account monitoring order will mandate that the financial institution specified provide account information requested and specify accounts held or financial transactions or other financial dealings concluded by the individual.

(v) Significant financial penalties are imposed for breaches under the FID.

It is hoped that these and other impending legislature and regulatory changes will lead to a more stable and robust financial system as we navigate Jamaica into calmer waters.

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

The road to economic recovery has been slow in Jamaica. It has lagged behind other Caribbean countries in rebounding from the global financial crisis due to factors including its large debt and the drop in the production and export of bauxite and aluminium, which are a significant source of foreign revenue for the country after remittance and tourism. "Last year we were behind everyone else in coming back," says one partner.

As of January 2010, the government launched the Jamaica Debt Exchange (JDX) initiative in order to ease its debt burden and secure a loan from the International Monetary Fund (IMF). The program involved the exchange of its \$7.8 billion worth of domestic debt for bonds with lower interest rates and longer maturities. The JDX was supported by the IMF which consequently agreed to loan the country \$1.3 billion for its recovery efforts. Half of the money went to financial institutions as they possess most of the country's debt.

The government's contingency plan also involved divesting itself of Air Jamaica and its stake in the bauxite and alumina company Jamalco. As of May 2010, the government sold Air Jamaica to Trinidad and Tobago's Caribbean Airlines. The airline had accumulated \$1.3 billion in debt and become a financial liability to the government. "Air Jamaica was a serious drain on the budget," describes one partner.

Jamalco was another problematic company for the government. In April 2010, the company opted to enter into an agreement with the Chinese company Zhuhai Hongfan to sell its 45% stake in Jamalco through Clarendon Alumina Production (CAP). "We are seeing some major Chinese investments coming in," says one partner. "They are trying to buy a stake in bauxite companies."

China's latest actions in the country fit in with its aggressive strategy to buy up natural resources worldwide. In building a give and take relationship with Jamaica, China has also contributed investments to the country's infrastructure. The Jamaican and Chinese governments signed agreements in February 2010 for an investment from China of more than \$500 million to support projects including the construction of housing and roads. "The Chinese have seemed to make a decision of becoming a major player in the Caribbean," says a partner.

Adding to Jamaica's woes, the country's tourism industry has been hurt by the gang violence which erupted in May 2010. "It will take quite a few months for Jamaica's image in the marketplace to be improved," says one partner.

DunnCox

Established in 1942, Dunn Cox has gained a reputation in the market which precedes itself. Partners Lincoln Eatmon and Jerome Lee have kept the firm active through representations for the government of Jamaica in a series of divestitures to lighten the country's debt load. The firm's bread and butter, however, comes from advising on deals for domestic and international financial institutions.

DunnCox is advising the government of Jamaica in connection with the divestment of its six sugar estates to private companies. In July 2009, the firm assisted in negotiating the sale and lease agreement for three estates in the amount of J\$1.7 billion (\$20 million) to the Fred M Jones/Seprod consortium and Everglades Farms. DunnCox provided additional counsel to the government in July 2010 as it divested itself of its three remaining properties to the Chinese company Complant International. The deal was valued at J\$744 million (\$8.75 million).

On the banking side, the firm acted for one of the syndicate lenders, RBTT Jamaica, on a J\$1.9 billion (\$22.3 million) secured credit facility for Sanctuary Systems and Caribbean Green Power System. Led by Lincoln Eatmon, the firm advised RBTT and its parent Royal Bank of Canada on the negotiations within the lending syndicate, ultimately structuring the loan was used to

finance the Palmyra Resort and Spa and power plant.

Leading lawyers

Lincoln Eatmon
Jerome Lee
Janet Morrison
Donovan Walker

Hart Muirhead Fatta

Despite being younger and smaller than its competitors in the top tier, Hart Muirhead Fatta has proven that it can punch above its weight. Its banking and M&A practice as well as lawyers like Mark Golding and N Patrick McDonald have made the firm a standout contender among its rivals. The firm's sole office is located in Kingston.

Leading lawyers

Mark Golding
N Patrick McDonald

Myers Fletcher & Gordon

Myers Fletcher & Gordon is the largest firm in Jamaica with some 50 lawyers that handle corporate practice areas ranging from banking and capital markets to M&A and project finance. As the only tier-one firm with offices outside of Jamaica, it has set itself apart from the pack in offering cross border services.

Since establishing its London office in 1995, Myers Fletcher & Gordon has become a first-rate choice on cross-border transactions among clients. Its clientele include such international corporate names as IBM and Johnson & Johnson, as well as financial institutions like HSBC and Citibank.

In April 2010, the firm landed a role on the high-profile and contentious Air Jamaica-Caribbean Airlines transaction. Advising Trinidad and Tobago's Caribbean Airlines as the bidder, Myers Fletcher & Gordon negotiated and closed the acquisition of Air Jamaica in May 2010. The transaction's final value was undisclosed.

Myers Fletcher & Gordon has also maintained its longstanding presence in the tourism sector this year through its representation of Tavistock. The firm is advising the private investment company in connection with its development of the J\$272 billion (\$4 billion) Harmony Cove luxury resort.

Leading lawyers

Peter Goldson