

# Jamaica

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## Jamaican corporate finance legislation

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The regulatory aspects of the Jamaican financial sector continue to mature and evolve following the financial sector crisis which adversely affected a number of indigenous banks, insurance companies and other financial institutions during the mid-1990s.

Overall, the goals of the legislative framework of Jamaica's financial sector, and those of its regulatory entities, include the continuity of a profitable, modern, vibrant, dynamic and compliant financial sector. The success of the legislative framework seems to be confirmed by not only the vigilance and increased sophistication of the Jamaican regulatory entities and the growing positive ratings of Jamaican government debt on the international market, but also the continued high rates of foreign direct investment in Jamaican banks, insurance companies and other financial services. Moody's Investors Service provides a stable outlook for Jamaica's credit ratings (presently ranging between B1 and B2).

Recent developments in some key regulatory institutions are highlighted below.

### Ministry of Finance and Planning (MoFP)

The MoFP is responsible for providing the financial and economic policy framework to facilitate the effective regulation of the country's financial sector. The main objectives of the MoFP include creating an environment that will promote sustainable economic growth, and effectively regulating financial institutions and entities to protect the interests of all investors.

The MoFP recently announced plans to merge the National Investment Bank of Jamaica and the Development Bank of Jamaica.

### Bank of Jamaica

The Bank of Jamaica is responsible for supervising deposit-taking financial institutions, including commercial banks, merchant banks and building societies. At the time of writing there are six commercial banks, five merchant banks, four building societies and 47 credit unions in operation.

### Key legislative developments

There have recently been a number of key legislative developments affecting important sectors of the economy.

### *Anti-money laundering legislation*

The regulatory framework for money laundering is largely based on the Money Laundering Act 1996, the Money Laundering Regulations 1997 and the Terrorism Prevention Act 2005. These statutes create money laundering and terrorist financing offences and impose strict obligations on financial institutions to identify and prevent these activities. The Drug Offences (Forfeiture of Proceeds) Act 1994, the Mutual Assistance (Criminal Matters) Act 1995 and the Sharing of Forfeited Property Act 1999 permit Jamaican authorities to prosecute or enforce judgments or forfeiture proceedings for drug and revenue offences. The Proceeds of Crime Bill, which was also introduced recently, is intended to provide even more extensive forfeiture powers to the Jamaican authorities.

### *Money transfer and remittance agencies*

In February 2004 the Bank of Jamaica Act was amended to prohibit the carrying on of business as a money transfer and remittance agency or agent without the approval of the minister of finance, and to require such persons to operate in accordance with directions issued by the minister. In practice, approvals and directions will be given by the Bank of Jamaica, to which the minister has delegated his powers.

### *The Capital Adequacy Regulations*

The Capital Adequacy Regulations were passed in 2004 and set out minimum risk-based capital standards for commercial banks and other deposit-taking licensees. Under the regulations, the overall minimum capital to be maintained in relation to risk assets is 10% (this compares with the Basel 8% minimum).

### **The Qualifications of Auditors Regulations**

These proposed regulations will require notification to the Bank of Jamaica of proposed appointments of auditors, and will specify standards auditors must meet when undertaking an external audit of supervised financial institutions.

### *Credit unions*

In 1999 credit unions were designated as specified financial institutions by the minister of finance, which allows the Bank of Jamaica to access information on the sector. This represents a preliminary step towards the finalization of new credit union legislation, which will introduce a licensing regime and provide the Bank of Jamaica with the requisite authority to examine these entities, as well as impose sanctions for illegal and/or imprudent practices. Among other things, the legislation will define the classes of business in

which credit unions can operate, and prescribe the criteria and minimum solvency standards for the operation of these entities.

### Financial Services Commission

Non-deposit taking financial institutions are principally supervised by the Financial Services Commission (the FSC), which has oversight for the securities industry, the insurance industry and the pensions industry. As a result the FSC has supervisory responsibility for insurance companies, securities dealers, unit trusts, pension funds, retirement schemes and mutual funds.

The FSC oversees around 114 firms and more than 1,200 individuals doing business in the securities and insurance industries, and will be responsible for the registration and supervision of about 750 private pension plans, as well as pension administrators and investment managers.

#### *Pension funds and retirement schemes*

The FSC's pensions division is responsible for the regulation and supervision of all private pension/superannuation funds and retirement schemes, and includes trustees, investment managers and fund administrators. The main registration, licensing, governance and investment regulations were recently passed into law, and the FSC has announced a September 30 2006 deadline for all pension funds to be registered. It is estimated that there are about 750 pension funds in Jamaica, worth a total of J\$100 billion (\$1.5 billion). The FSC estimates that most pension funds in Jamaica are solvent.

#### *Credit rating agencies*

In 2005 the FSC issued *Guidelines for the Regulatory Oversight of Credit Rating Agencies*, establishing a regulatory regime in which credit rating agencies are subjected to a process of recognition and derecognition. Firstly, the agency will be subject to an initial assessment, including a review of its financial resources, independence and rating procedures as well as the experience and training of its staff. Once that assessment is successfully completed the FSC will formally recognize the new entrant. Secondly, to maintain recognition the operations of the agency will be periodically reviewed for compliance with regulatory requirements. Non-adherence to these requirements would be a basis for derecognition.

### Jamaica Stock Exchange (JSE)

The JSE began operations in February 1969. Its principal objectives include promoting the development of a vibrant capital market in Jamaica, developing and enforcing rules designed to ensure orderly trading in listed securities, and to promote public confidence in the stock market and its broker members.

#### *Buyback or repurchase of shares*

Under the new Companies Act 2004 a company is authorized to purchase or otherwise acquire shares issued by it. However, where the company is listed on the Jamaica Stock Exchange (the JSE), in addition to meeting the requirements under the Companies Act the company must meet requirements detailed in recent amendments to the JSE rules. The new provisions require that to remain listed the company must maintain the required minimum issued capital and minimum number of shareholders as specified in the JSE rules.

The method of purchase or acquisition of the shares is also specified. The company must notify the JSE in writing at least 21 days before the purchase, and must provide further written notification within 10 days of the completion of the transaction.

## Corporate and commercial

### Recommended firms

#### Tier 1

DunnCox  
Hart Muirhead Fatta  
Myers Fletcher & Gordon

#### Tier 2

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

### DunnCox

The Jamaican market is in something of a "wait and see" situation at the moment, following the appointment of a new prime minister. But whatever the outcome, DunnCox's outstanding transactional record over recent times means that it is extremely well placed to take full advantage of any new work that reaches the Jamaican market. Its 17 partners, 11 associates and three consultants continue to attract roles on most of Jamaica's top-level matters, and from the team, Jerome Lee and Donovan Walker received most praise from peers and clients, both noted for being "meticulous, with a good record". Christopher Bovell also continues to command tremendous respect from the market.

DunnCox's impressive transactions list continues to speak volumes about the firm's reputation among leading domestic and international clients seeking top-notch Jamaican legal advice. Walker's standout mandates saw him act for the International Finance Corporation on a \$75 million loan to Jamaica Energy Partners for a second power barge to supply electricity to the Jamaica Public Service Company, and advise Credit Suisse First Boston in relation to the \$100 million securitization of diversified payments rights for National Commercial Bank.

Lee's focus tends more towards the corporate side, and in this area over the past year he acted for the Facey Commodity Company when it acquired a majority shareholding in Panama's Grupo Difoto for \$17 million, advised Seprod in its J\$375 million (\$5.6 million) acquisition of stakes in two companies that own and operate a dairy farm in Jamaica, and represented the selling shareholders in negotiating and finalizing the sale of the owner of the Montego Bay Beach Resort for \$9.2 million.

Among the year's other highlights, Christopher Bovell acted for Republic Bank (Trinidad & Tobago) on a \$35 million finance package granted to Trinidad Cement and Caribbean Cement, which comprised a \$20 million loan facility and a TT\$315 million (\$50 million) bond issue, and at the time of writing was providing ongoing advice to Alcoa in relation to the \$1.2 billion expansion of the Halse Hall alumina plant in Clarendon, Jamaica.

The firm also acted for the borrower in relation to a \$32 million loan from National Commercial Bank for the purchase and re-fitting of a hotel, and the following month acted for the borrower again in relation to a \$61 million structured financing package from Bear Stearns for the purchase of a hotel group. In March 2006 the firm landed a role on the \$40 million financing for the development of Montego Bay airport.

#### Leading lawyers

Christopher Bovell  
Jerome Lee  
Donovan Walker

#### Key contact partner

Christopher Bovell

### Hart Muirhead Fatta

Hart Muirhead Fatta has had a presence in Jamaica since 1990, and provides a wide range of advice, with a particular focus on corporate and commercial matters. The firm does not field as big a team as its top-tier rivals DunnCox and Myers Fletcher & Gordon, but this does not stop the firm commanding a great reputation among peers and clients, who describe it as “a small firm but with big shots”.

Among these so-called big shots, Mark Golding came in for the most praise this year, one client describing him as “particularly good” and a private practice peer noting that “he is now very well established”.

The firm has recently been involved in a number of high-profile deals, advising opposite DunnCox on the \$50 million merger of Grace Kennedy’s financial entities with First Global Bank. Other recent highlights include representing Rose Hall Resorts on the \$60 million refinancing in June 2004 of the Ritz Carlton Jamaica hotel.

#### Leading lawyers

Mark Golding  
Hugh Hart

#### Key contact partner

Hugh Hart

### Myers Fletcher & Gordon

Myers Fletcher & Gordon is Jamaica’s biggest firm, with 16 partners and 18 associates in its head office in Kingston, and a further three partners and six associates working out of the firm’s London office. The firm’s international credentials are assured by it being the Jamaican member of Lex Mundi, one of the world’s leading association of independent law firms, and the World Services Group. From among the team, partners Noel Levy and Barbara Alexander stand out, being described as “very knowledgeable” and “easy and pleasant to work with”.

Eight partners and seven associates handle the firm’s finance instructions. The department is headed by partner Barbara Alexander, who also tends to take the lead on the firm’s biggest deals. In December 2005, Alexander advised National Commercial Bank on a \$32 million bank loan for the purchase and re-fitting of a hotel, and the following month acted for Bear Stearns in relation to arranging a \$61 million structured financing package for the purchase of a hotel group. In March 2006 she teamed up with Noel Levy to advise MJB Airports on \$40 million-worth of borrowing to finance the development of Montego Bay airport. At the time of writing, Milton Samuda was acting for National Commercial Bank on a \$38 million bank loan for the development of a government wastewater treatment plant.

Monica Ladd handles the bulk of the firm’s financial services mandates, which over the past year have included acting on the regulatory aspects of various cross-border repurchase financings and sales of securities, pension fund structures, and developments in insurance and securities products.

On the corporate side, Levy runs a capable team of eight partners and 10 associates, which grew last year following the recruitment of new associate Tobi-Ann Chang in July 2005. Although M&A activity in Jamaica has been relatively subdued of late, at the time of writing the firm was acting on the purchase of the controlling interest in a publicly listed chain of retail stores, expected to close before the end of the year.

Project finance, however, is a different story, and there has been a lot of work coming Myers Fletcher & Gordon’s way this year. Lance Hylton, who runs the projects department at the

firm, came in for plenty of praise, being described variously as “very bright and capable” and “business savvy”. In three deals that were ongoing at press time, the firm was acting for the Port Authority of Jamaica in relation to the privatization of the port of Kingston container terminal, advising Tavistock, the developer and controlling shareholder in the project company handling a tourist development covering 2,200 acres of seafront land, and guiding the governments of Jamaica and Trinidad & Tobago through the development of a liquefied natural gas regasification plant.

#### Leading lawyers

Barbara Alexander  
Lance Hylton  
Noel Levy

#### Key contact partners

Barbara Alexander  
Lance Hylton  
Monica Ladd  
Noel Levy

### Other notable firms

Livingston Alexander & Levy was set up in 1930, making it Jamaica’s oldest firm. The firm specializes in banking, capital markets, corporate and commercial, insolvency, and mergers and acquisitions matters, and in these areas it boasts an impressive client list that includes venture capitalists, trust companies, building societies, insurance companies and property developers. The team of 21 lawyers are well regarded by the market.

Formed in 1985, Nunes Scholefield DeLeon & Co offers legal advice in all areas of financial law, including banking and finance, securities, and M&A work. Managing partner Anthony Jenkinson, who is also the president of the American Chamber of Commerce of Jamaica, heads the dedicated team of nine partners and eight associates. Among recent deal highlights, at the beginning of 2005 the firm acted for a large Jamaican mobile operator, Digicel, on a \$48 million local bond issue.

Lastly, Patterson Mair Hamilton makes its debut appearance on the *IFLR1000* rankings this year after plenty of recommendations to that effect from peers and clients. The firm’s lawyers have a wealth of experience in advising on the full range of corporate and financial law matters, but the market considers the standout lawyer to be Trevor Patterson, described unanimously as “excellent” by peers.