

Jamaica

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The stability of the country's financial sector was threatened in the 1990s as a result of the failure of several local financial institutions, including banks and insurance companies. The government was forced to intervene to save the investments of Jamaica's depositors, policyholders and pensioners by taking control of the institutions and refinancing them. An onerous public debt was incurred. Subsequently the government amended existing legislation and imposed new legislation to strengthen controls on the sector.

To rebuild the financial sector, the government established institutional frameworks and regulatory structures focussing on consumer protection and the adequate and constant monitoring of the financial system. The government also took steps to create an environment attractive and conducive to investment and expansion of the productive sector.

The legislative framework within which corporations can raise and maintain capital to finance long-, medium- and short-term investments, as well as day-to-day working capital requirements, is governed by a number of laws, regulations and rules, which are summarized below.

The Companies Act

A public company that goes to the public for finance – that is, invites subscription for its shares or debentures – must issue a prospectus containing full and accurate disclosure, giving potential investors enough information for them to make a well-informed decision on whether to invest. The Companies Act sets out the requirements to be included in the prospectus.

The Bank of Jamaica Act

This Act establishes the Central Bank. Among its objectives, the Central Bank is to “influence the volume and conditions of supply of credit so as to promote the fullest expansion in production, trade and employment, consistent with the maintenance of monetary stability in Jamaica” and “to foster the development of money and capital markets in Jamaica”.

The Bank of Jamaica Act regulates dealings in foreign currency by permitting only authorized dealers to carry on business

or enter into specified transactions involving foreign currency or foreign currency instruments. The Act also restricts the acquisition of foreign assets.

The Central Bank also plays the role of supervisor and periodic examiner of a variety of institutions whose business includes granting loans and credit facilities or accepting deposits.

The Banking Act

The Banking Act requires any person carrying on a banking business to obtain a licence from the Minister of Finance. The applicant must satisfy certain criteria, which include the directors being fit and proper persons and the company being able to meet minimum capital requirements.

The Banking Act imposes restrictions on granting unsecured and secured credit facilities, and requires banks to maintain minimum cash and liquid asset reserves.

The Financial Institutions Act

Financial institutions licensed under this piece of legislation are regulated and restricted by the Bank of Jamaica in a manner similar to banks licensed under the Banking Act.

Provisions in the Bank of Jamaica Act, the Banking Act and the Financial Institutions Act safeguard the preservation of secrecy with regard to the affairs of banks' customers.

The Deposit Insurance Act

The Deposit Insurance Act was passed to help regain the confidence of the investing public by the establishment of the Jamaica Deposit Insurance Corporation (the Corporation). The Corporation's objectives are to establish and manage a scheme for the insurance of deposits, as defined in the legislation, against risk of loss.

All financial institutions – including commercial banks, merchant banks, building societies and certain other persons accepting deposits – are required to apply to the Corporation for deposit insurance.

The Securities Act

The Financial Services Commission (the FSC) established under this piece of legislation is responsible for the regulation

and supervision of financial services that do not carry on deposit-taking functions.

The Securities Act requires a person dealing in securities and investment advisors to obtain a licence. The FSC has to be satisfied as to certain specified details in relation to incorporation, control and supervision of the applicant as well as to the character of its officers or members, and as to its solvency and liquidity.

The FSC has the power to investigate and examine the securities industry, and is also responsible for regulating and supervising unit trust schemes under the Unit Trusts Act.

The Insurance Act

The life insurance companies that ran into difficulties in the 1990s were those that were attracted to new insurance products that offered their customers certain investment opportunities. Most of the investments were in real estate, stock and other securities. The assets were illiquid and often invested in poorly performing funds.

Persons carrying on insurance business in Jamaica are subject to the provisions of the Insurance Act. The FSC is also responsible for the administration of this Act.

The Regulations to the Act prescribe the extent of and the manner in which insurers may invest or loan their funds.

The Pensions (Superannuation Funds and Retirement Schemes) Act

Under this new Act (passed in May 2004), the FSC is responsible for the supervision of private pension arrangements, trustees, investment managers and administrators.

The Jamaica Stock Exchange (JSE)

The JSE deals in shares and securities listed in Jamaica. Transactions conducted on the JSE enjoy special exemptions from the payment of stamp duty and transfer tax. The JSE is a privately owned limited liability company whose rules govern its members, companies listed thereon and persons dealing through its facilities. The JSE is ultimately governed and regulated by the FSC.

Corporate and commercial

Recommended firms

Tier 1

DunnCox

Hart Muirhead Fatta

Lex Caribbean

Livingston Alexander & Levy

Myers Fletcher and Gordon

Nunes Scholefield DeLeon & Co

DunnCox

Peers and clients alike recognize DunnCox as one of Jamaica's leading law firms for its "quality of work and turnaround time". Indeed, one long-standing client points out that it "has

used them since the 1950s and has had excellent service from them." The firm comprises 16 partners and 11 associates, and benefits from its membership of international legal network TerraLex and from its alliance with US firm Wolf Arnold & Cardoso.

DunnCox's corporate and commercial practice is headed by Lincoln Eaton, a lawyer one client praised for his "vast knowledge base". The firm attracts as clients some of the most desirable international and local financial institutions active in Jamaica, including Citibank, First Caribbean International Bank and Capital & Credit Merchant Bank.

In April 2004 the firm acted for Coimex in connection with a joint venture relating to the development of an ethanol plant. More recently, DunnCox acted as Jamaican counsel to the iStar Financial Group on the \$60 million refinancing of the prestigious hotel, Ritz Carlton Jamaica. In another deal, the firm represented Grace Kennedy & Co on the merger of its financial entities with First Global Bank, in a deal valued at \$50 million. The firm also worked alongside Allen & Overy and Clifford Chance advising international specialist retailer, Courts PLC & Courts (Jamaica), on a £220 million (\$397.7 million) refinancing transaction, which closed in September 2004.

At the time of writing, DunnCox is acting for Surrey Paving & Aggregate Co (Jamaica) on a \$20 million development project for the Government of St Kitts and Nevis Island Administration.

Leading lawyers

Christopher Bovell

Lincoln Eatmon

Jerome Lee

Key contact partner

Christopher Bovell

Hart Muirhead Fatta

Market observers describe Hart Muirhead Fatta as a "small but good firm" that is "very active". Operating in Jamaica since 1990, the firm provides a wide range of legal advice with a particular emphasis in the corporate and commercial field. Among the strong team of seven lawyers, the market picks out Mark Golding and Hugh Hart in particular, describing them as "hard-driving and smart commercial lawyers."

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

Lex Caribbean

Lex Caribbean's network extends across the Caribbean Islands, encompassing the British Virgin Islands, Barbados, and Trinidad and Tobago. The firm has 15 partners and 12 associates across its network; Aubrey Garcia is prominent in the Jamaican office.

Among other deals, Lex Caribbean has recently worked alongside international legal powerhouses Clifford Chance and Allen & Overy on the £220 million (\$397.7 million) refinancing of the international specialist retailer, Courts PLC & Courts (Jamaica).

Key contact partner

Aubrey Garcia

Livingston Alexander & Levy

Set up in 1930, Livingston Alexander & Levy is the oldest law firm on the island. The firm provides financial law advice in all areas, including banking, capital markets, corporate and commercial, insolvency, and mergers and acquisitions. Clients of the firm include venture capitalists, trust companies, building societies, petroleum corporations, insurance companies, property developers, bauxite and alumina manufacturers, and agriculture producers such as the Blue Mountain Coffee Growers Association.

Livingston Alexander & Levy has a solid team of 20 lawyers, 16 partners and four associates, two of which are Queen's Counsel. Partners Roald Henriques and Warrington Williams are well-regarded by the market, and Angela Robertson is cited as a "competent and leading labour lawyer."

Leading lawyers

Roald Henriques
Angela Robertson
Warrington Williams

Key contact partners

Roald Henriques
Warrington Williams

Myers Fletcher and Gordon

With 50 lawyers, and offices in Kingston and London, Myers Fletcher and Gordon is the largest firm in Jamaica. One international banking client praises the firm for the "quality of its attorneys and its reputation." The firm is an exclusive member of the international network of law firms Lex Mundi, as well as the World Service Group. Among the dedicated team of 16 partners and 18 associates in the Kingston office, partners Noel Levy and Barbara Alexander receive special mention from the market for their expertise and high-quality advice.

At the time of writing, Myers Fletcher and Gordon is acting for the developers of 10 new international hotels that are either under construction or in the planning stages. In November 2004, the firm closed a deal for Jamaica Grande where it sold its hotel for \$38 million. The firm also represents

around 70% of the private firms operating in the bauxite and alumina sector. In one notable transaction, the firm advised Glencore in connection with its acquisition of a bauxite mining and alumina manufacturing entity. Another interesting deal saw the firm serve as legal counsel to the West Indies Cricket Board and ICC Cricket World Cup West Indies 2007 Inc in connection with the cricket world cup 2007, to be held in the West Indies.

Myers Fletcher and Gordon is especially strong in the financial sector, acting for local and international banks, securities dealers, insurance companies and mutual funds. Among recent highlights, Monica Ladd advised Pan Caribbean Merchant Bank on a \$48 million local bond issue for Digel International Finance, which closed in January 2005.

Leading lawyers

Barbara Alexander
Noel Levy

Key contact partner

Milton Samuda

Nunes Scholefield DeLeon & Co

Formed in 1985, Nunes Scholefield DeLeon & Co offers legal advice in all areas of financial law, including banking and finance, securities, and mergers and acquisitions. Managing partner Anthony Jenkinson – the president of the American Chamber of Commerce of Jamaica – heads the dedicated team of nine partners and eight associates.

The firm has recently represented Jamaican mobile operator Digicel on a \$48 million local bond issue, which closed in January 2005.

Key contact partner

Anthony Jenkinson