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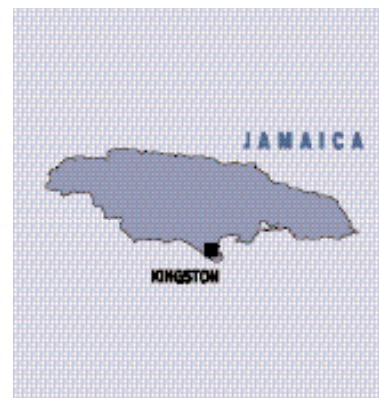
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The Jamaican corporate finance legislative framework

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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 focusing 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 the granting of 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) Bill

Under proposed legislation going through parliament (as at March 2004), the FSC will be 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

DunnCox

Hart Muirhead Fatta

Livingston Alexander & Levy

Myers Fletcher and Gordon

Nunes Scholefield DeLeon & Co

DunnCox

Based in Kingston, DunnCox is a firm of 17 partners and nine associates. This number has recently been added to, with Julianne Mais-Cox joining as partner at the beginning of 2004. She comes to a firm that acts in a plethora of areas including insolvency, corporate and commercial work, banking, real estate and taxation. The firm also benefits from alliances with the TerraLex organization in Miami and Washington DC firm Wolf Arnold & Cardoso.

DunnCox counts some large international financial institutions as clients, including Deutsche Bank, Inter-American Development Bank, the International Finance Corporation, Money Life Insurance Co and the Suntrust Bank, Florida. Recent deals the firm has advised on include the \$45 million privatization of Sangster International Airport, as well as the \$30 million loan to Oceanic Digital Jamaica Limited. In another deal, DunnCox lawyers Lincoln Eatmon and Dennis Edmunds advised Deutsche Bank on the issue of a €200 million (\$243 million) eurobond issued by the government of Jamaica. The deal was completed in early 2004.

Key contact partner

Christopher Bovell

Leading lawyer

Christopher Bovell

Hart Muirhead Fatta

Mark Golding of Hart Muirhead Fatta receives special praise. He is regarded by peers and clients alike as a fine lawyer to contact if corporate and commercial questions arise, and also acts as an advisor to the Jamaican government on regulatory matters.

Established in 1990, Hart Muirhead Fatta offers clients a full corporate and commercial practice that ranges from banking, domestic and international finance and restructurings, to aircraft leasing and labour relations.

Leading lawyer

Mark Golding

Livingston Alexander & Levy

Established in 1910, Livingston Alexander & Levy is the oldest law firm on the island. The firm employs five associates and 14 partners, of which two are Queen's Counsel. The firm offers advice to a variety of institutions, including banks, trusts, insurance companies, venture capitalists and private lenders. Livingston Alexander & Levy also represents foreign and domestic clients in the petroleum industry, the bauxite and alumina sector, Jamaican public services, agriculture (mainly sugar and bananas), media, real estate financing and tourism. From a strong team of attorneys, Warrington Williams is cited as especially good.

Key contact partners

Roald Henriques
Warrington Williams

Leading lawyer

Warrington Williams

Myers Fletcher and Gordon

Myers Fletcher and Gordon – Jamaica's largest firm – has offices in Jamaica, the UK and British Virgin Islands, employing some 36 attorneys. The Jamaica office has 16 partners and 18 associates. Myers Fletcher is a member of Lex Mundi, the international network of law firms, and the World Services Group. The firm acts for corporations, government agencies and individuals. It also acts as local counsel for many overseas lending institutions and corporations looking to invest in Jamaica. Partners Noel Levy and Barbara Alexander receive special mention from the market for their expertise and high-quality advice.

Key contact partner

Milton Samuda

Leading lawyers

Barbara Alexander
Noel Levy

Nunes Scholefield DeLeon & Co

With a total of nine partners and seven associates, Nunes Scholefield DeLeon & Co offers corporate advice to local, regional and multinational businesses. Four partners oversee the corporate and commercial practice, and the managing partner, Anthony Jenkinson, is a UK barrister and president of the American Chamber of Commerce of Jamaica.

Key contact partner

Anthony Jenkinson