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JAMAICA'S AGENDA FOR ACTION

FINAL REPORT
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BIZCLIR

Business
Climate
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Reform

BUSINESS CLIMATE LEGAL AND INSTITUTIONAL REFORM
DIAGNOSTIC:

JAMAICA'S AGENDA FOR ACTION

FINAL REPORT

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INTRODUCTION

Business Climate Reform in Jamaica: A Critical Moment for Action

This report examines certain key components of the environment for doing business in Jamaica and identifies opportunities for targeted reforms that can stimulate much-needed economic growth.

Tracking four subject-matter areas covered by the World Bank's annual Doing Business initiative — **registering property, paying taxes, getting credit, dealing with licenses** — along with one other key area, **legislative process**, this report reviews the legal framework, numerous public and private institutions, and social dynamics underlying conditions for reform. Most importantly, this report identifies a number of tangible approaches to reform in the short-term that aim to support Jamaica's longer-term orientation toward market-driven solutions to provide economic opportunity for all levels of society.

Each of the areas covered in this report calls for immediate reform. The areas have a direct and critical bearing on Jamaica's ability to rise to the promise of economic reform based on sound market principles articulated by its new government, elected in September 2007. The new government faces serious, long-term problems in the economy, including large-scale unemployment, underemployment, and economic informality; a high debt burden attributable to previous government bailouts of ailing sectors of the economy; and a crime problem — coupled with an exaggerated perception of crime — that impedes economic growth. Jamaica's performance in the World Bank's most recent *Doing Business* report, particularly compared to its showing one year earlier, underscores the absence of economic growth prior to mid-2007 — the country actually fell in the rankings as other countries have more effectively streamlined their business environments. Although

the new government faces deep challenges, it also has the opportunity to turn around key areas that have diminished Jamaica's economic performance in recent years.

Both prior to its election and in the weeks following, the new government identified issues of **land titling, tax policy and administration, access to credit, and construction licenses** as its key priorities, chiefly due to the weak showing of each of these areas in the economy. (These areas parallel, respectively, the World Bank's *Doing Business*

World Bank "Doing Business" Categories	2007	2006	Change
<i>Doing Business Overall (178 Countries Surveyed)</i>	63	63	0
Starting a Business	11	9	-2
Dealing with Licenses	74	74	0
Employing Workers	33	32	-1
Registering Property	108	104	-4
Getting Credit	115	111	-4
Protecting Investors	64	62	-2
Paying Taxes	170	166	-4
Trading Across Borders	92	82	-10
Enforcing Contracts	103	104	+1
Closing a Business	22	22	0

Note: The World Bank's 2006 survey covered 175 countries.

categories of registering property, paying taxes, getting credit, and dealing with licenses). In considering its own role in supporting economic growth in Jamaica, the USAID Mission in Kingston further identified the country's legislative process as an area that requires significant reform.

More specifically, with respect to registering property, a recent land

titling initiative supported by the Inter-American Development Bank (IADB) produced disappointing results, and enormous swaths of land in Jamaica continue to lack the legal clarity of ownership that is necessary for individuals to build future wealth. With respect to paying taxes, Jamaica's performance in the *Doing Business* report, which surveys the number of steps and time it takes for an enterprise to comply with its tax obligations, as well as countries' specific rates of taxation, ranked among the poorest in the world. In the area of getting credit, micro, small, and medium-sized enterprises (MSMEs) operate in a notoriously weak environment. Jamaica lacks certain fundamental tools that are necessary to move forward in this area, such as a credit bureau or a modern system of secured transactions.

The new government identified construction licenses as an area for reform; a promising start in this area may lead to lessons for success that will be useful in approaching reform in the other areas. As for legislative process, there is little prospect for sustainable reform in any of these substantive areas unless significant steps are taken to improve the parliament's engagement in new law reform initiatives.

Significantly, in the World Bank's *Doing Business* analysis, Jamaica's performance in the Latin America-Caribbean region is relatively strong — it is placed 9th out of 31 countries surveyed.¹ Four of the countries ranking higher than Jamaica are located in the Caribbean — Puerto Rico (1); St. Lucia (3); Antigua and Barbuda (4); and St. Vincent and the Grenadines (6). Thus, one immediate opportunity before Jamaica is to learn from its neighbors, where market-oriented economic policies have helped make them attractive destinations for doing business.

The BizCLIR Diagnostic Process

This report is grounded in a comprehensive methodology, established through USAID's Economic Growth Office, which USAID has used in nearly 30 countries since 1998.² Incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool, USAID recently sponsored the development of an updated and redesigned set of indicators through its Business Climate Legal and Institutional Reform (BizCLIR) project. The indicators now substantially align with the structure of the World Bank's enormously influential *Doing Business* country reports.³

Since 2002, *Doing Business* has assisted countries in targeting where and how their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key indicia of whether and how the environment for doing business is "working," measured by indicators such as the number of procedures involved in achieving a goal, the number of days it takes, and its cost in relation to per capita income. The World Bank now gathers data from 178 countries and ranks each, thus demonstrating how their respective regulatory environments compare to others throughout the world. In the most recent *Doing Business* report, issued in late September 2007, Jamaica ranked 63 out of the 178 countries surveyed. Although this ranking is clearly respectable — and provides a strong signal to outsiders that Jamaica is open for

business — its poor showing in certain areas — paying taxes, getting credit, and registering property in particular — call for immediate action. Moreover, Jamaica's showing in the most recent *Doing Business* report reveals slight slippage in certain areas, indicating that the country is not keeping pace with reform efforts underway in countries of comparable or lesser economic status.



USAID's BizCLIR indicators take each subject covered by *Doing Business* and delve deeper into their respective legal frameworks, implementing and supporting institutions, and social dynamics to better understand *why* a country is where it is in the World Bank's rankings. The BizCLIR indicators consider each subject from a variety of perspectives, illuminating, for example, how certain business processes apply to rural communities, micro-enterprises, and small and medium-sized enterprises (SMEs). This approach was chosen in light of recent demand for better understanding of the issues highlighted in the *Doing Business* initiative and the need to help donors and countries understand, with greater particularity, "how to reform."

The BizCLIR/Jamaica diagnostic began in November 2007 with the designation of the five above-referenced issues by the USAID Mission in Jamaica. As noted, these issues largely correspond to the areas where the country fares the poorest in international indices or relate directly to economic growth priorities articulated by Jamaica's government, whose election was certified on September 11, 2007.

During the week of December 2–7, 2007, the assigned BizCLIR team reviewed the range of laws and other key documents that would provide it with a fundamental understanding of the issues. Among the critical documents the team reviewed, at this time and over the course of the diagnostic, were:

- Government of Jamaica, et al., *Jamaica Tomorrow, National Planning Summit 2007 Report* (December 2007)

¹ World Bank, *Doing Business in 2008*, regional rankings at <http://www.doingbusiness.org/economyrankings/?regionid=3>.

² Detailed information about USAID's Seldon Project, which implemented the first generation of the methodology, can be found at www.bizlawreform.com.

³ See generally, www.DoingBusiness.org. BizCLIR indicators also cover infrastructure and agriculture, as well as new indicators such as for health, are in the process of being developed.

- Jamaica Labor Party, *A Better Way . . . for Jamaica* (“Manifesto”) (2007)
- World Bank, *Doing Business 2008* (2007)
- Inter-American Development Bank, *IADB Country Strategy (2006-09)*
- USAID/Booz Allen Hamilton, *Jamaica Business Roadmap, Reducing Business Constraints* (February 2001).

In addition to these documents, the team reviewed numerous issue-specific studies and papers (addressing tax policy and administration, construction licenses, SMEs, and other topics) as well as extensive information from the Internet pertaining to donor programs, Jamaica’s government, and the private sector, non-government, professional, and academic sectors.

The in-country portion of the diagnostic took place from December 9–14, 2007, when the team traveled to Kingston, Jamaica, to survey the institutional and social dynamics underlying the country’s business environment. With the close assistance of the USAID Mission and several representatives of the Jamaica Chamber of Commerce, the team contacted and interviewed more than 75 individuals working across the country’s business environment, including government officials, agency representatives, small business owners, business associations, lawyers, academics, members of the banking and micro-lending sector, donors, and several others. The team’s objective was to obtain the “whole picture” of Jamaica’s environment pertaining to the key issues. Questions elicited a variety of perspectives and viewpoints and sought explanations for how each issue applies to all pertinent communities, whether urban, suburban, or rural. The diagnostic culminated in a presentation of findings and discussion to USAID and U.S. Embassy representatives on December 14, 2007. The team

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Tom Jersild, Independent Consultant	<i>Registering Property: Land Policy and Administration</i>
Doug Pulse, USAID	<i>Getting Credit: Access to Credit for MSMEs</i>
Charles Schwartz, USAID	Team Oversight and Substantive Support
Steve Vasak, Independent Consultant	<i>Paying Taxes: Tax Policy and Administration</i>

submitted a memorandum summarizing its initial findings and recommendations to the Mission and USAID/Washington’s Economic Growth Office on December 21, 2007 (see Appendix A).

This report is compiled from individual chapters written thereafter by team members. In general, the chapters are structured the same way.⁴ Specifically, each has four analytical sections:

Legal Framework. The chapters first examine the laws and regulations of Jamaica that serve as the structural basis for the country’s ability to achieve and sustain market-based

development. They pose the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? Occasionally discovered through this review are opportunities to make relatively small changes that may result in significant openings for business development and expansion.

Implementing Institutions. Next, the chapters examine institutions that hold primary responsibility for implementation and enforcement of the legal framework and subsidiary laws, regulations, and policies. These institutions include government ministries, authorities, and registries, or, in certain

Booz Allen Hamilton would like to acknowledge and thank USAID Jamaica, its Mission Director Karen Hilliard, the Jamaica Chamber of Commerce (JCC), and the Small Business Association of Jamaica (SBAJ) for their tremendous support throughout this assessment. In particular, we would like to thank Jimmy Burrowes of USAID Jamaica for leading this important effort and identifying extremely capable resources on the ground. We extend much gratitude to Tony Chang, Lissa Grant, Liz Hartley, and Edward Chin-Mook for their tireless support and dedication to this endeavor.

⁴ The scopes of work for two of the subject-matter areas covered in this diagnostic — paying taxes and dealing with licenses — were different from the others insofar as their respective inquiries were to focus significantly less on historic context and more on the current status of the issues and ongoing reform initiatives, with an emphasis on immediate, next steps toward reform. While the chapters addressing these areas indeed are oriented toward immediate, next steps, they are organized according to the same structure as the other chapters.

cases, private institutions such as banks and other lending institutions. The indicators seek to uncover how these implementing institutions function not only within Kingston, but also in rural communities and among less empowered constituencies.

Supporting Institutions. The chapters then look closely at organizations, individuals, or activities without which the legal framework or policy agenda in Jamaica cannot be fully developed, implemented, or enforced. Examples include lawyers, business support organizations and private services, professional associations, universities, and donor institutions. Questions and analyses examine relative awareness of law and practice on the part of each institution and the specific ways in which institutions increase public and professional awareness, work to improve the business environment, and otherwise serve their constituencies. In certain instances, weaknesses in one or more supporting institutions have been identified as critical areas for reform.

Social Dynamics. Finally, the indicators look to relevant, critical social issues. These questions attempt to uncover roadblocks to reform, including entities that may have an interest in subverting change. These indicators also seek to identify significant opportunities for bolstering the business environment — such as champions of reform or regional initiatives — as well as matters of access to opportunity and formal institutions. Often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

Following this four-part analysis, each chapter sets forth a set of **Recommendations**. These recommendations are drawn from the key findings in each chapter and reflect current reform capacities, opportunities, and evident will to reform. Some of the suggestions within the respective sets of recommendations may overlap — that is, some may be consolidated into a single reform initiative — and all turn on the priorities and preferences enunciated by the Jamaican government itself. It is premature, the team found, to set forth approximate costs or levels of effort involved with the recommendations, given uncertainties about the extent to which an area of interest already receives or will receive government or donor support. Nonetheless, the recommendations in this report are intended to serve as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work.

With respect to each area of inquiry, the diagnostic used a process of reviewing and scoring **key indicators** to develop a thorough analysis. Once assessors gathered as much relevant information as possible — from written sources, meetings and interviews, and consultation among colleagues — they scored each of the key indicators. To help an assessor determine a score, between 5 and 20 **supporting questions** accompanied each key indicator. These questions themselves were not scored but were intended to guide the assessor toward a consistent, factually based judgment from which the key indicator score was then derived.

The scores set forth herein are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in Jamaica. Rather, they should be read in conjunction with this report as a means of (1) understanding the relative status of certain key indicators of a healthy legal and institutional environment for business and trade, and (2) identifying priorities for reform.

The score awarded **key indicators** aligns with the following conclusions:

- 5 = strong positive
- 4 = moderate positive
- 3 = neutral (or having some negative and some positive qualities)
- 2 = moderate negative
- 1 = strong negative

Summary of Subject-Specific Findings

The findings of the four *Doing Business*-aligned subject-matter areas examined in this diagnostic, as well as the area of legislative process, are summarized below. Specific recommendations for reform are set forth in the individual chapters.

Registering Property. Jamaica's new government understands the critical importance of land titling as a key mechanism for unlocking the value of land, bolstering credit, and promoting business development generally.⁵ At this time, however, the general public does not share that awareness of, or concern over, land titling. Lawyers and others report that once an agreement to sell real property has been reached, the period of transaction is typically 6 to 9 months. This fact represents a grave

⁵ See Government of Jamaica, et al., *Jamaica Tomorrow, National Planning Summit 2007 Report* (December 2007) (hereinafter *National Planning Summit Report*) at 35-39.

disincentive toward taking the necessary steps to acquire a title that can be used in a future land transaction. Taxes, fees, and other costs involved in the transaction of real property — regardless of whether it is titled — can regularly exceed 15–20% of the value of the property.

Jamaicans perceive the expense and bureaucracy involved in formal registration and land transactions as so high that the value of their land is diminished by the costs of compliance

At this time, there is considerable disillusionment over the capacity of donors and government officials to address the land-titling issue. The IADB's soon-to-terminate Land Administration and Management Program (LAMP) fell well short of its goal of registering 30,000 parcels of land in the St. Catherine Parish, ultimately achieving legal title for only about 560 properties. Yet many important lessons were gained from the IADB's experience that can help guide future land titling initiatives. Moreover, notwithstanding the disappointment over the unmet goals of LAMP, the government, private sector, and donor community all continue to believe in the importance of land titling as a critical economic issue for Jamaica.

Paying Taxes. The state of tax policy and administration in Jamaica is among the weakest in the world. The IADB recently assessed the rate of business informality in Jamaica as being about 44%, although this figure may be low, as there is never certainty when trying to measure an economy's level of informality. There is little dispute that the complexity of paying taxes and high tax rates in Jamaica represent a major disincentive to joining the formal economy. Thus, Jamaica suffers major losses of potential tax revenue by virtue of the great number of enterprises that remain informal. It further suffers from the additional problems inherent in a shadow economy, including lack of access to capital, inability to enforce contracts, and vulnerability to corrupt and unlawful forces in the business environment.

The country's main tax law is long and complex and creates a system of taxation that is difficult to navigate. Although substantial "tinkering" could target certain communities and reduce tax rates,

there remains the high cost and time-consuming process associated with compliance. SMEs are at a particular disadvantage, with such enterprises overwhelmed by the difficulty of complying with all that the government requires or allows in the area of tax.

Moreover, the main agency charged with implementing the tax system suffers from many capacity deficits. The Tax Administration exhibits a clear need to improve its auditing abilities. In addition, major changes in the tax regime will require significant implementation assistance, including training the tax administration in the features of a new regime and implementation following changes in the legislative framework.

Jamaica is keenly aware of the key role that tax reform must play in the national reform agenda. The government, the private sector, and the donor communities are committed to tackling the problems that exist. However, there is not yet a consensus over immediate next steps. Such a consensus should be arrived at as soon as possible: The European Union (EU) has designated tax reform as one the core elements of its new budget assistance program, through which monies are scheduled to be released to the government upon achievement and verification of a series of reform benchmarks. The EU does not intend to serve as the primary source of technical assistance; however, a clearer understanding of assistance efforts among donors is an immediate priority.

Getting Credit. Although the government of Jamaica recognizes the important role that MSMEs play in achieving the country's economic and social goals, it has not yet established a clear approach to the development of this sector. Current policies and laws do not take into account the special needs of MSMEs. As a consequence, MSMEs carry a heavier compliance burden than do larger businesses. There is a strong need to address a wide range of issues that affect the establishment, funding, and operation of the MSME sector in Jamaica, with an eye toward easing the regulatory burdens on these entities and providing incentives rewarding responsible treatment of loan obligations. Such an effort may be underway through the Ministry of Industry, Investment, and Commerce (MIIC), which recently launched an initiative to develop a policy for MSMEs.

MSMEs carry a heavier compliance burden than do larger businesses

Preliminarily, Jamaica's history of poor and, in some cases, politically motivated government policies undermines the commercial lending sector and contributes to a "bad credit culture." The role the government has played in lending money over the years has led many borrowers to take their repayment obligations far less seriously than they should. Namely, there is a widespread belief that if funds come from the government they do not have to be repaid. On the other hand, government-sponsored guarantees are often necessary for lending in the agricultural sector where risks are perceived as so high that no other lenders will lend money at affordable rates. Yet most government lending or lending-guarantee mechanisms are defunct or in reorganization. Fundamental reform is essential, and solutions should target the peculiarities of Jamaica's current environment.

In addition, Jamaica is significantly behind in developing effective institutions that will allow lenders to assess and manage the risks of lending. Although the concept of a credit bureau has been under discussion in Jamaica for more than 10 years, it is not yet a reality. A credit bureau would help address the poor credit culture in Jamaica by alerting potential lenders of applicants' past defaults. Further, a credit bureau that contains both bad and good credit behavior will help MSME borrowers climb the credit ladder.

A number of contributing factors, including obsolete laws, antiquated and poorly operated registries, high costs, and inefficient enforcement mechanisms diminish the attractiveness of using secured transactions as a means to decrease the risks of lending. A key problem is the length of time that creditors have to register their loans, thus allowing borrowers to use their collateral as security for a number of loans.

There is widespread belief that if funds come from the government, they do not have to be repaid

Dealing with Licenses. Jamaica's private sector has called for improvement in the long and fragmented process through which public institutions, including numerous state agencies and the 13 Parish Councils, review and issue construction permits to private individuals and companies. The new government has responded to this call, with the Prime Minister recently announcing

his intent for the government to abide by a 90-day time limit in which applicants for a license are informed of either a positive or negative ruling. At this time, the Legislation and Regulations ("Legs and Regs") Committee of the Jamaica Chamber of Commerce is actively pressing for individual agency or parish accountability with respect to their individual roles in the existing licensing process.

Although it is not unusual in any country for several state and local agencies to play a role in the construction licensing process, coordination is critical, so that duplication among functions can be avoided and strict timelines can be observed. In the recent past, the JCC's "Legs and Regs" committee created a Developer's Manual, which compiled all the regulations imposed by all involved agencies and mapped the process. This revealed the extreme complexity of the construction licensing process and the immediate need for trimming and streamlining it and was a key step in improving the understanding and transparency of the process.

Key agencies involved in the construction licensing process suffer from capacity and resource deficits

Key agencies involved in the construction licensing process suffer from capacity and resource deficits and also lack sufficient coordination among one another to perform the licensing function efficiently. There is a shared vision in the public and private sectors to create a "one-stop shop" for the licensing function (an endeavor for which there are many positive examples from other countries). Transforming the vision to a formal policy and legal framework is a necessary next step.

Finally, the integrity and quality of construction licenses must be supported, so that Jamaica does not suffer from poor environmental or construction quality controls. During the BizCLIR/Jamaica diagnostic, one observer cautioned against merely "making a bad process faster." This is critical advice. At this time, both the public and private sectors are mindful of the need to separate National Environmental & Planning Agency's (NEPA's) environmental permitting function from its role in granting development licenses — a step necessary to ensure perceptions of integrity in the process — and that bifurcation is underway. In addition, Jamaica is undertaking the creation of a national building law and a commensurate national building code for the purpose of strengthening the quality of projects that

are approved. Ultimately, the goal of the government should be to foster a healthy licensing environment *without* compromising key issues of sustaining national vision for development and the importance of preserving and protecting the environment.

Legislative Process. The challenges facing the process of drafting and enacting laws in Jamaica relate to each of the issues described thus far and may present the most difficult hurdle of all. Jamaica's parliamentary system is outmoded and the parliament lacks independence. Although Jamaica needs a new legislative package directed at economic reform, the parliament does not have a history of significant involvement in conceiving new laws and pushing them forward in the absence of direction from the executive branch. A stronger parliament can only mean stronger laws, as issues would be vetted according to the divergent interests of a multitude of sectors, rather than designed to accommodate interests that may be closely aligned to the ruling party. It would also create a check on executive initiatives, which does not currently exist in any meaningful form.

Parliament has insufficient resources and weak legislative drafting capacity

At this time, the parliament has insufficient resources and weak legislative drafting capacity. There are not enough lawyers or other individuals working for parliament who are capable of strengthening it. Thus, the process of enacting new laws that reflect the country's economic growth priorities is too slow. The parliament would benefit from better access to resources, such as local professionals and the academic community, which could support and expand its legislative drafting capacity. There is no research unit in parliament, although there is a small library.

Moreover, corruption and security issues in Jamaica deter economic growth, and these issues must not be overlooked. Parliament must be mindful of corruption and security as key issues that diminish the economic potential of Jamaica. In fact, reinforced parliamentary commitment to addressing these issues can compel the executive branch to strengthen its own efforts to confronting them.

Cross-Cutting Themes

The diagnostic is organized so that five specific components of a healthy and prosperous economy are considered discretely and related to each other where appropriate. This format represents much of the Western construct about economics, civil society, and the individual's relationship to the state and other institutions. Certain issues and dynamics are so prevalent across this analytical framework, however, that they warrant special mention. These can be thought of as crosscutting themes or topical "layers" that represent all areas of review. In this diagnostic, the layers include:

1. The need for enhanced donor coordination.

A variety of multilateral and bilateral donor organizations are active in Jamaica, among them the IADB, the EU, the World Bank, the United Nations, the United Kingdom, the Canadian Government, USAID, and others. To a significant extent, one or more donors is already involved, whether to a large extent or tangentially, in each of the areas covered in this report. With the election of a new government, the donors' commitment to coordinating among themselves and with the Jamaican government has been enhanced.

There is an immediate need for consultation among the donors about their respective interest in tax reform, so that duplicative or even conflicting programs do not move forward. Joint planning and consultation will be critical, especially as the EU pursues its new budget support program. Specifically, if and when the Jamaican government meets certain reform priorities — including verifiable, successful reform in tax policy and administration — the EU will release a series of unrestricted budget-assistance "tranches," totaling up to 90 million Euro, over the next few years. Significantly, the EU does not intend to provide much technical assistance as part of its budget reform program.

In short, the focus and extent of all donor initiatives should be clarified among the donors themselves, as well as within the Jamaican government, including the Planning Institute of Jamaica, the government agency charged with donor coordination.

2. The need for improved clarity in government structures.

Preparation of this report presented an unusual difficulty: namely, that of identifying the complete

and accurate names of existing government ministries, along with a clear understanding of their respective portfolios. The fact that several ministry and agency names have changed in recent years is significantly attributable to attempts to modernize the public sector.

Assessors could not locate a single, definitive list of the names and portfolios of various ministries and agencies

Although clearly a valid goal, modernization is not complete until the various sources of government information, including websites, manuals, and even laws and regulations, reflect these changes. The fact that assessors could not locate a single, definitive list of the names and portfolios of various ministries and agencies suggests that some public agencies may themselves be uncertain over the current extent of their jurisdictions. Clarification of national government organization (and, thereafter, regional and local institutions) should be a priority for everyone who will be involved in future reforms.

- 3. The need for all reforms to take advantage of Jamaica's key strengths, which include a dynamic business community, a capable corps of legal and financial professionals, and a strong civil society.**

Unlike many development environments, Jamaica has very strong human resources, including a quality university system, a highly capable network of professionals, a dynamic and pro-active business community, and both private and public sectors that are ready and willing to engage technology. Thus, when planning for donor reforms, these local capacities should be accessed and emphasized. Even where solutions are drawn from international best practice, Jamaica likely has within its borders, or within the Caribbean region, the professional expertise to implement change. The opportunity to play a major role in conceiving and carrying out reform represents an opportunity to build even greater capacity among local individuals and institutions. Jamaica may require outside help in some instances, but this should not take place without first surveying the local options.

- 4. The persistence of informality in the commercial environment.**

According to the IADB, at least 40% of Jamaican businesses operate extra-legally because of the insurmountable regulatory and administrative obstacles involved with joining the formal sector, the tax system chief among them. This rate of informality is somewhat speculative. Regardless, the rate is widely observed to be extremely high, and the opportunities being missed, particularly among less privileged constituencies who stand to benefit from entrepreneurialism and access to credit, are enormous.

Jamaican enterprises that operate in the informal sector forego: (a) access to assistance programs normally only available to formal sector enterprises; (b) access to the mainstream credit system; (c) easier enforcement of contracts because the name, address, and other particulars of businesses are known; and (d) the ability to become part of the property-owning sector, which enables them to obtain collateral for loans. The state also loses out. It cannot collect taxes from informal enterprises, and it is unable to collect information that can be used as a basis for economic and other planning.

Until the rate of formalization increases, Jamaica's "gray economy" will stagnate the increases in productivity that the country desperately needs

Thus, as Jamaica strengthens its legal and regulatory regime in support of long-term economic growth, there is a particular need to increase the rate at which enterprises join the formal sector. In addition to broad-based tax reform, additional necessary steps include improving outreach and information provided to new and small entrepreneurs, making the labor environment more flexible, and generally abolishing all unnecessary or duplicative regulations, particularly at the local levels. Until the rate of formalization increases, Jamaica's "gray economy" will stagnate the increases in productivity that the country desperately needs.

- 5. The importance of strengthening the capacity of local institutions.**

Jamaica's constitution only recognizes a national government structure. Institutions of local government play a very important role, however, in

the normal activities of individuals and businesses. For example, Parish Councils serve as Local Development Authorities and, thus, are a critical player in the construction licensing process.

Application of resources and knowledge in Jamaica does not reflect the importance of local government institutions. Parish Councils often do not have the internal capacity or the resources they need to function properly. From adequate transportation to computers to office supplies, local institutions are lacking. They often are not in the position to sufficiently document their work, thus leading to a lack of transparency and guidance for the future. They are also vulnerable to arbitrary and non-transparent interference in their functions. Relatively strong universities and research institutions in Kingston do not sufficiently serve the information and knowledge needs of the more rural areas, and similar institutions at the local level are often weak and under-resourced. Thus, future assistance initiatives should move substantially into local institutions to better understand and respond to local needs.

6. The growing significance of regionalism.

As evidenced by its membership in the 15-member Caribbean Community, Jamaica recognizes that its growth policies for the future implicate greater integration of the resources and opportunities found among its neighbors. Jamaica's place in the Caribbean presents enormous opportunities for trade in services — including professional services, franchised businesses, and trade facilitation services — and for shared approaches to economic policy generally. Although harmonization of country practices and regionalism generally is beyond the scope of this report, they are important themes that should be taken into account as Jamaica plans for its future growth. Donor support for the Caribbean Single Market and Economy (CSME), which aspires to harmonize certain laws and economic policies among member states, should be coordinated with individual country donor support.

Summary of Priority Initiatives

Registering Property/Land Titling		
Year One	Year Two	Year Three
<ul style="list-style-type: none"> • Provide design and implementation of a high-level titling-policy task force • Create an outreach campaign to educate the public on the benefits of registering their land titles • Support the efforts of the Real Estate Reform Consortium (RERC) • Provide design and blueprint for a titling project similar to LAMP as LAMP was originally conceived • Define champions in GOJ that support the amendment of the 7.5% transfer tax and the 5.5% stamp duty, and commence legal drafting • Produce a National Land Policy • Create a program similar to Operation PRIDE • Support/design a project to scan and digitize title records, and modernize title deed forms • Train staff 	<ul style="list-style-type: none"> • Provide continuous funding and support for the titling policy task-force • Implement the campaign to educate the public on benefits of land titling • Implement a titling project similar to LAMP • Lobby and outreach concerning the amendments to the transfer tax and stamp duty, passing of the reform legislation • Revise National Land Policy • Implement program similar to Operation PRIDE • Implement project to scan and digitize title records, and modernize title deed forms 	<ul style="list-style-type: none"> • Monitor and evaluate project similar to LAMP • Pass legislative reform of the transfer tax and stamp duty • Revise National Land Policy and monitor progress • Monitor and evaluate Operation PRIDE similar project • Implement, monitor, and evaluate project to scan and digitize title records, and modernize title deed forms
Paying Taxes/Tax Policy and Administrative Reform		
Year One	Year Two	Year Three
<ul style="list-style-type: none"> • Ascertain the involvement of the donor community's role in Jamaican tax reform • Coordinate efforts of the donors • Prioritize legislative reform needs and commence legislative drafting • Complete an assessment of the processes, people, and technology of the Tax Authority, and produce a design that may include recommendations for reform concerning processes, people, and technology 	<ul style="list-style-type: none"> • Continue legislative drafting of required tax policy reform, and commence enacting new laws • Implement the design of the new processes, organizational structure, workforce planning, and technology of the tax authority 	<ul style="list-style-type: none"> • Continue ongoing legislative reform • Complete implementation of the tax administration reform, ongoing monitoring, and evaluation

Getting Credit/Access to Credit for MSMEs		
Year One	Year Two	Year Three
<ul style="list-style-type: none"> • Define a national policy on government credit interventions • Establish a national policy on MSMEs • Create a Credit Information System (CIS) task force • Revise secured transactions laws • Define a plan to modernize the registry to move to a fully automated collateral registry system • Design a plan to encourage private sector support of a venture capital fund 	<ul style="list-style-type: none"> • Socialize the national policy on government credit interventions, and revise annually • Promote leasing via outreach and training. Revise legislation if required • Launch plan to automate credit-related agencies (registry, etc.), and provide internet access to collateral registry • Enact all laws necessary for the e-registry to operate 	<ul style="list-style-type: none"> • Enact policy reform as necessary • Make automated collateral registry fully operational • Enact modern secured transactions legislation as required
Dealing with Licenses/Construction Licensing Reform		
Year One	Year Two	Year Three
<ul style="list-style-type: none"> • Use the USAID/Jamaica Chamber of Commerce Developers Manual as the basis for a short-term "regulatory guillotine" evaluation • Create a legislative, regulatory, and institutional reform program that addresses reforms necessary to meet the 90-day goal • Provide design and blueprint of the upgrade (technology and processes) of NEPA or similar agency • Design the one-stop shop, including an integrated, online "planning portal" and other agency-integration methods 	<ul style="list-style-type: none"> • Implement a program to streamline construction licensing and reduce unnecessary and duplicative licenses and processes • Implement the NEPA upgrades, process and technology reform • Implement the one-stop-shop 	<ul style="list-style-type: none"> • Continue implementation, plus monitoring and evaluation of construction licensing streamlining an reduction, NEPA upgrades, and one-stop-shop
Legislative Process		
Year One	Year Two	Year Three
<ul style="list-style-type: none"> • Establish a Legislative Modernizing Group or Committee to guide the implementation of legislative reforms • Design a training program to strengthen the informational, research, and legislative drafting capacity of the parliament • Create design and blueprint of new processes and workforce development of the parliament committees 	<ul style="list-style-type: none"> • Implement training program to strengthen the informational, research, and legislative drafting capacity of the parliament • Implement new processes and workforce development plan for the parliament committees 	<ul style="list-style-type: none"> • Monitor training program and make any necessary adjustments • Monitor effectiveness of new processes and workforce development plan, and adjust accordingly

Registering Property

Land Policy and Administration

Introduction

Good land law is crucial for market economies; it provides the legal environment for individuals and families to dwell in a secure ownership environment and for them and for businesses to own and sell land and buildings and use them as collateral to obtain credit. Good land law should be accompanied by an objective and user-friendly land titling system under which there is a formal, publicly recorded title for essentially all occupied land. Secure, formalized property rights unlock capital and value — especially for the poor — and encourage economic activity at all levels. This has been demonstrated in many countries, and it should be considered beyond dispute.

About half of occupied land is still not titled at all

On paper, Jamaica has had the elements of a good land law and titling system for more than a century. However, the laws are largely outdated, the titles that exist are often flawed, and — as an economically damaging consequence — about half of occupied land is still not titled *at all*.

The reasons for these conditions are largely understood and have been extensively aired within Jamaica. Those reasons, and interviews with concerned private and government persons, are the foundation for the specific recommendations set forth at the end of this chapter.

Legal Framework

Present Laws. Jamaica's underlying land law framework is a patchwork of statutes enacted over the past century and even before. Some are obsolete and not always clear and, as a whole, they are silent

on certain key subjects that they should cover. Most interviewees expressed this opinion, and it also emerges from a reading of the laws themselves.⁶

The principal law on titling is the **Registration of Titles Act**, enacted in 1889 and amended in specific respects in 1954, 1967, 1969, 1974, and 2005. The law is highly detailed (at 127 pages) on many

Registering Property	
<i>Doing Business in 2008</i>	
Rankings	
World (178 Countries Ranked)	74
Region (31 Countries Ranked)	20
BizCLIR Indicator Scores	
Legal Framework	3.2
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Social Dynamics	4

particular points. It provides for creation of the office of the registrar of titles⁷ and specifies duties of the registrar. Additionally, it provides for appointment of other officials with specific duties relating to valuation and clarification of titles and issuance of certificates of title and states that a purchaser of land may require the seller to provide title — unless otherwise agreed. Furthermore, it provides that the registrar's records shall be open for

public inspection and covers, in detail, many other specific matters, including leases, mortgages and mortgage foreclosure, subdivision, and acquisition of ownership through adverse possession.

The Registration of Titles Act is the acknowledged and much-used guide to titling in Jamaica.⁸ However, the Act clearly needs revision to reflect current circumstances and practices. It would also need revision if some of the recommendations set forth later in this chapter are adopted.

In 2005, the Registration of Titles Act was supplemented by the **Registration of Titles, Cadastral Mapping and Tenure Clarification Act**, a short (seven-page) but very important new titling law that was designed to facilitate the LAMP pilot titling project (described in detail below). The 2005 law grants the Ministry of Agriculture and Lands (MoAL) the power to designate special "project areas" for land mapping, and then to waive land transfer tax and stamp duty tax on certain transfers of land made within such areas. Those

⁶ About 35 Jamaican laws relating to land are collected on the Ministry of Justice website at www.moj.gov.jm/law, although it appeared from interviews that there are more.

⁷ This is now in the Land Titles Division of the Jamaican National Land Agency, which is described below.

⁸ Indeed, a well-thumbed copy lies on the desk of, and is routinely referred to by, officials interviewed at the Title Registry.

include transfers without monetary payment (for example, by gift between family members) and transfers in connection with “regularization and clarification of specified land,” which means issuing title to land that was previously untitled. As explained below, those transfer and stamp duty taxes constitute major obstacles to land regularization in Jamaica, and they were waived for the LAMP pilot project. (It is recommended below that those taxes be eliminated or modified for *all* land in Jamaica).

Other relevant laws include the **Conveyancing Act**, the **Vendor and Purchaser Act**, the **Transfer Tax Act**, and the **Settled Land Act**. The Conveyancing Act provides that in a sale of unregistered land there is an implied covenant that the seller will register it, but this is often observed in the breach. These other laws are referred to in the discussion below.

The Jamaican titling system and its problems.

Jamaica has a torrens title system modeled on the torrens system originally established in Australia in the nineteenth century. This system differs from those in the U.S., the United Kingdom, and most Commonwealth countries. Under a torrens system, title and ownership of a parcel of land are proven by looking at what is recorded in the Title Registry, making it unnecessary to go behind the registry's record when land is sold, e.g., by tracing prior land transfers back to the first owner in time. The advantage of this system (when it works) is that it eliminates the necessity and expense of researching old titles, buying title insurance, and obtaining title opinions from lawyers, all of which are standard tasks in parts of the U.S. when real estate is bought.⁹

In practice, registered titles in Jamaica are often questioned. Interviewees provided many anecdotal examples, including instances where commercial developers or mortgage lenders learned of unregistered easements and other previously undiscovered burdens on land that they had bought (or loaned against) and which could not be simply wished away or easily resolved in court. Interviewees also cited cases where former owners of farms or homes returned to Jamaica years after emigrating to the U.S. or elsewhere to “move back in,” even though the record title was in other names.

⁹ This advantage led some U.S. states to adopt torrens systems, but the torrens principle never caught on widely in the U.S. largely because in the U.S. title searching tends not to be a major problem and title insurance is available and inexpensive.

The result is that a significant portion of registered titles are flawed, with no easy and quick means of cure.¹⁰

A significant portion of registered titles are flawed, with no easy and quick means of cure

Interviewees cited reasons behind this state of affairs that can be cured with time, effort, and funding. One reason is that, too often, titles are simply not well researched when they are first issued. This can happen because the Title Registry department that examines titles is understaffed and not always adequately trained. Interviewees stated that there are about five fully trained title examiners, but that up to 20 are needed. Another reason is that the physical condition of title records is often not good; sometimes they are lost, and older ones suffer from deterioration and humidity in the central vault in Kingston where they are kept. Also, many older titles exist on old-fashioned forms that cannot be easily understood or used today. A project is now underway in the Title Registry to modernize and scan titles and digitize them electronically, with help from the Canadian International Development Agency (CIDA). This is a long-term effort. Interviewees estimated that it is now only about 7% complete.

The greater problem: Land that is not titled at all. A much greater problem is that about half of the occupied land in Jamaica is not titled *at all*. The 2007 National Summit Planning Report¹¹ (described below), divides such land into three categories. The following description of them suggests three possible remedies:

Rural family land. Much rural land is held and passed down within families, generation to generation, without formality as to title or formal means to recognize the separate parts held by individual family members. Such land is typically viewed as jointly inherited by the family's next generation, and family members who are absent from the land are generally not viewed as losing their interests. As a result of

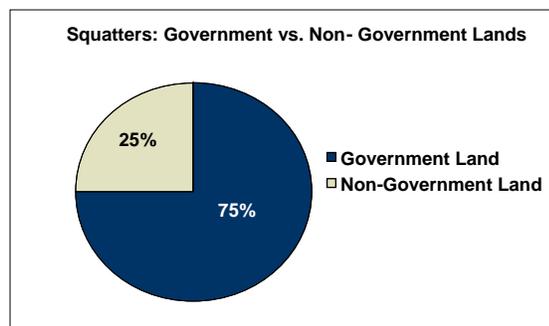
¹⁰ In some cases, assistance in clarifying titles can be Jamaica's 12-year adverse possession law, which entitles a person to title to a land parcel after 12 years of open and undisputed occupancy of the parcel. In practice, however, following this route can be convoluted and time-consuming. (The comparable adverse possession period under most U.S. laws is 20 years.)

¹¹ See National Planning Summit 2007 Report, *supra* note 5.

these conditions, land sales are very difficult to execute and rural development, in turn, is inhibited.

Importantly, however, the Summit Report indicates that “actual” ownership of these parcels is usually not in serious dispute and could be determined — and formalized with registered titles — without great technical difficulty (although only over a long term and at significant expense).

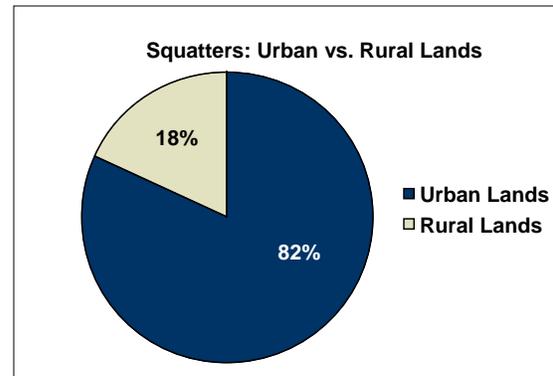
Urban squatter settlements. The Summit Report refers to 595 squatter settlements, of which 82% are urban and 75% are on government-owned land. Here, too, the identity of the actual “owners” is often not in dispute. Indeed, the fact that the government owns most of this land indicates that it is within the government’s ability to solve most of this problem. One obvious way is a privatization program in which new (and original) titles are issued to the legitimately established occupants. In the late 1990s, a government program called Operation PRIDE¹² was created to do exactly this, but that program was unsuccessful. The reasons for this, with an account of “lessons learned” and recommendations for future improvement, were stated in the Angus Report, a post-mortem assessment that is summarized in a 2000 article in the Jamaica Gleaner.¹³



¹² Operation PRIDE, a program of the Government of Jamaica, focused on helping low-income households acquire land for housing or regularizing tenure of land that they already occupy. To receive support, these low-income households had to undertake community assessments and form community organizations that are legal entities. Each household had to save and contribute to a community infrastructure fund, or contribute work in lieu of payments. Community organizations were meant to direct the program in acquiring land and in developing infrastructure, with support from NGOs or from the staff of Operation PRIDE. Jimmy Tindigarukayo, *An Attempt to Empower Jamaican Squatters*, at <http://eau.sagepub.com/cgi/reprint/16/1/199.pdf>.

¹³ www.jamaica-gleaner.com/pages/operationpride/angusreport.html. This document was part of a series of Gleaner articles published in 2002 under the heading “Pride Probe.”

Operation PRIDE was conducted under the auspices of the National Housing Development Corporation (NHDC) and interviewees stated that, notwithstanding its ultimate lack of success, it can be a useful structural model for a revived program.



Land transfers that are not registered. It is common in Jamaica for untitled land to be sold (and even subdivided) without formally obtaining and registering the title. Officials at the Registry estimated that about 50% of land transfers fall into this category. Also, it is not uncommon for *titled* land to be sold without formally *transferring* the title of record. In some cases a formal-looking deed may be signed and delivered to the buyer with a postage stamp to indicate seriousness but without any follow-up by registration of title or of title transfer. This happens in all categories — rural, urban, residential, and commercial.

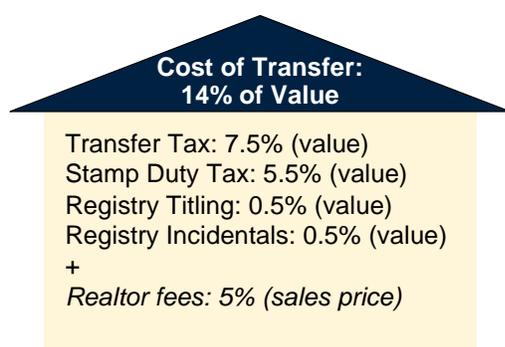
Leading reasons for this are the obstacles described immediately below.

Major obstacles to land transfer and titling — largely peculiar to Jamaica. Interviewees described two leading obstacles to land transfer and titling in Jamaica: (a) the extraordinarily high cost and needless complication of land transactions and title registration and (b) a striking — and seemingly uniquely Jamaican — psychological resistance by landholders to the idea of formalizing and recording land ownership. This last point was very heavily emphasized by interviewees and is discussed below under “Social Dynamics.”

High cost. The cost of transferring and titling land in Jamaica is among the highest in the world. The World Bank’s most recent *Doing Business* report puts a typical cost at 13.5% of the property’s value, ranking Jamaica 108th of the 178 countries in the

survey.¹⁴ Interviewees stated that the cost is actually much higher and includes costs not referred to in the survey.

There is, first, a transfer tax of 7.5% of the property's "value," which usually means the sale price in the case of a transaction where the land is being sold. This is imposed under the **Transfer Tax Act of 1971**. It was originally intended to be a progressive tax on the wealthy, but it has a bottom threshold exemption of only J\$100,000 (about US\$1,450), which gives it overly broad coverage. The transfer tax is payable by the land seller, although the seller and buyer are free to negotiate the burden between themselves.



On top of the transfer tax is a stamp duty tax of 5.5% of the property's value, normally split 50-50 by the seller and buyer (although, again, negotiable between them). A particularly pernicious feature of the stamp duty is that it must be paid within 30 days after the date of an agreement to sell the land is entered into — even though the sale itself may never take place or takes place much later, as is common. If the sale does not take place, the tax can only be recovered from the government through a bureaucratic refund process.¹⁵

These taxes apply whether the land being transferred is titled or untitled, and they apply even to gift transfers between family members and transfers by inheritance upon death.¹⁶ These taxes

¹⁴ The ranking is based on two factors, cost of registration including the taxes discussed above, and time period required to register (discussed below).

¹⁵ There is another land tax that is not a transfer tax, i.e., it is not levied or payable on the event of transfer of ownership. It is an *ad valorem* tax assessed on the unimproved value of land and is payable by all landowners whether or not the land is ever sold. Interviewees stated that this tax is widely not enforced, but buyers and mortgagees in significant sale transactions commonly require that past-due payments be made and brought up to date retroactively.

¹⁶ This feature is considered particularly unfair. Interviewees described structuring methods based on provisions of the

represent serious obstacles to development of an active and free commercial or residential real estate market in Jamaica. Interviewees cited cases in which owners held on to land too long rather than selling it, simply because of these taxes. In a commonly cited scenario, a buyer who acquired land that appreciated in value is not free (or at least not willing) to sell it until and unless the appreciation in value substantially exceeds the purchase price *plus* the tax burden of the resale. The result is an inhibited land market with prices artificially held down. (To fully understand the market, one should also be aware that realtors charge a standard 5% fee on the sale price, but that is a different issue).

Predictably, there is widespread illegal evasion and legal avoidance of these taxes. Where they are evaded illegally — for example, by holding back the registration of any transfer — respect for the law is cheapened, the land market is still further inhibited, and government revenues are lost. Where efforts are made to avoid them legally — for example, by various forms of transaction structuring — legal and other costs are incurred that should not be necessary in a free and open market. One legal avoidance method involves the fact that the transfer tax applies only to local individuals or companies, meaning that a foreign individual or a foreign-registered company owned by Jamaican individuals or companies can escape it. This leads to Jamaicans buying land through easily created foreign companies registered in the Cayman Islands, Bahamas, or elsewhere. This tax feature has the perverse effect of favoring foreign buyers — individual or corporate — over local Jamaican buyers — individual or corporate — in the Jamaican real estate market.¹⁷

As stated, the above cost factors apply to both titled and untitled land. There are yet additional costs for obtaining title where the land was previously untitled. The registry's official charge for titling is 0.5% of the property's value (this is included in the cost figures used in the World Bank *Doing Business* survey). Interviewees stated, however, that in practice, the Title Registry charges at least another 0.5% for incidental matters. Added to this is the cost

Settled Lands Act, which can be used to avoid the taxes on some inheritance of land, but which involve costs, including legal fees. Interviewees stated that there is litigation seeking to enjoin application of the stamp duty to transfers between family members including both transfers, both *inter vivos* and by inheritance.

¹⁷ There is no restriction on foreign ownership of land in Jamaica; this was eliminated in 1981. It was eliminated to create a level playing field for foreign investors, but now it is typically argued that the rules discriminate against locals in favor of foreigners.

of searching and establishing the ownership name in which the title will be issued. This work is done by Registry staff, but interviewees stated that in a significant residential or commercial transaction this process can be very convoluted, requiring lawyers and private land professionals to work alongside the Registry often at significant expense to the seller or buyer. Interviewees also said that Jamaica presents special problems because of the high level of mobility and emigration of Jamaicans. Absent title-holders must be tracked down to sign off on a transaction so that a title transfer will be fully clear.

Needless complication and delays. Apart from cost issues, interviewees reported that land transaction procedures as they currently stand are over-complicated and cumbersome, and represent yet another inhibition to an active land market in Jamaica. *Doing Business* puts the time simply to pay the taxes and register title at 54 days, helping Jamaica earn its relatively low ranking among the 178 countries surveyed. Interviewees stated that the reported 54 days, in fact, understates the problem; several reported that it can take 6 or more months just to sell a typical residential property. A reason for this is the multiplicity of procedures, steps, and personnel required — with the broker, surveyor, lender, separate lawyers for the seller, buyer and mortgage lender, title examiners, and registry personnel — and the fact that there is no standardized communication or procedures among these persons. Some interviewees commented that it is standard practice to “reinvent the wheel” in each transaction and sometimes twice or more in a single transaction.

It can take 6 or more months just to sell a typical residential property

This conclusion was reinforced by the details of recent actual real estate transactions. Transaction procedures in Jamaica are not as efficient as in other countries, including the U.S. Much can be done to streamline the process, including developing standardized forms and clearly dividing responsibilities among types of professionals. Steps would include establishing standard practices for realtors to include work now being done at greater expense by lawyers and streamlining the registration process at the registry.

In order to resolve this issue, a working group called the Real Estate Reform Consortium (RERC) has been formed and incorporated (as a non-profit

corporation) and includes lawyers, surveyors, and real estate agents. Its aim is to “put the private sector house in order” with regard to land and real estate market practices, although it also deals with the governmental and tax issues described above.

Internal government dysfunction. Unclear organization and authority within the government has been another source of slowness and cost.¹⁸ This was a major factor impeding the IADB's recent land reform efforts. Legally, there is ambiguity as to whether the registry is properly under the Ministry of Agriculture & Lands' (MoAL's) jurisdiction as provided in the Registration of Titles Act or is a part of the recently created, extra-Ministry National Land Authority, where it now operates. It is not possible to identify all the issues here, but it is important, over the near-term, that they be clearly identified and resolved.

Some recent efforts to address the problems.

To date, there has not been an overall coordinated effort to rectify Jamaica's problems in land administration and titling. Important specific efforts already described are the continuing work of the RERC and the discontinued Operation PRIDE. In addition, MoAL has formed a steering committee to formulate a comprehensive National Land Policy. That committee delivered a report to the Ministry in September 2007 but apparently that work has not proceeded further. Such work should be continued.

Two more important efforts should be noted — the LAMP Project and the 2007 National Summit.

The LAMP Project. LAMP was a broad program begun in 2000 and continued into 2007 that was similar to land titling and mapping projects that have been undertaken in many other countries. Structurally, LAMP has been executed by the MoAL (although was previously in the hands of another Ministry) and funded by the Government of Jamaica and IADB loans. LAMP had four tasks, the first two of which directly concerned the issues described above. The four were:

- Title registration, with two parts: (1) initial registration of previously untitled properties, and (2) clarification of existing already-issued titles
- Technical assistance and advice on divestment of government-owned land

¹⁸ See “Land Titles Office in Turmoil,” *Jamaica Gleaner* (April 2, 2006), which summarizes the legal issues and the internal government disputes.

- Mapping of selected areas using global positioning system (GPS) surveying
- Land use planning with specific projects in two areas, Spanish Town and Santa Cruz.

Title registration was the subject of a pilot project in Jamaica's St. Catherine Parish, with the objective of registering 30,000 titles, of which about half would be new titles on previously untitled land and half would be clarified titles. In the end, the project issued fewer than 600 titles. It is not possible to assess the reasons for this outcome (the IADB is currently preparing a post-mortem analysis). However, its failure results from a variety of factors, many of which could be cured in any revived project. Two points have already been mentioned above: landholder resistance to regularization (reportedly many or most landholders were not willing to cooperate) and uncertain coordination within the government. Others were various administrative delays and personnel changes, government funding delays and cuts, issues concerning payments to local contractors, and issues related to periodic progress assessments. Significantly, disputes over boundaries and actual ownership were *not* a major problem.

Transfer and stamp duty taxes were waived in the St. Catherine pilot project area, which was considered a critical pre-condition for success. Notwithstanding its failures in titling issuance, the project did succeed in cadastral mapping of the St. Catherine area, a significant accomplishment that is useful for land tax purposes. LAMP continues to function as a unit within MoAL but expires in early 2008.

National Planning Summit 2007. Recently, land titling reform was one of seven high-priority needs tackled at a major public-private conference held at Montego Bay. This November 2007 conference was an important national event and its report is an important national document. Active participants included the Prime Minister, the Minister of Agriculture, the Head of the NLA, the Head of the IADB in Jamaica, and representatives of land development, mortgage financing, and other private companies active in land ownership and transactions.

The Summit Report¹⁹ assesses land registration and titling issues and makes several of the points made above in this chapter. It shows clear awareness of the issues at high government and private levels. It states as a goal:

“To establish a national land use plan and formalization of land ownership to promote social and economic development.”

It further identified specific objectives, including to:

- Develop an inventory of all lands in 2 years
- Register 90% of all parcels in 10 years
- Contain squatting immediately and regularize informal settlements in 10 years
- Develop and implement a national housing and squatter policy in 18 months
- Create a dynamic and efficient land market in 5 years.

Interviewees stated that a working group has already been formed to pursue these objectives, although it has not yet been formally organized or begun its meetings.

Implementing Institutions

The government bodies primarily concerned with land and land titling matters are the **MoAL**, www.moa.gov.jm, and the **National Land Agency (NLA)**, www.nla.gov.jm. Their websites are attractive and generally informative.

The LAMP project will continue as a unit of the MoAL (noted above). MoAL has a department called the Squatter Management Unit, but there was no opportunity to visit them.

The NLA is an Executive Agency established in 2001 to bring together the four functions of land valuation/property tax, Crown (government-owned) land management, land mapping, and — of greatest concern here — issuing and registering titles. Certain jurisdictional uncertainties involving the MoAL and the NLA are discussed above and in the recommendations section.

The title registry is situated in the **Land Titles Division of the NLA**. It is user-friendly; there are well-organized intake desks for registration of property, and rooms with property maps are accessible and the personnel helpful. Further staffing and other needs of the Registry are discussed above and in the recommendations section.

Other important government ministries and agencies (which assessors did not visit) are the **Ministry of Land and Environment**, a since-reorganized

¹⁹ See National Planning Summit Report, supra, note 5.

ministry under whose auspices the LAMP project was initially established, and the **National Housing Development Corporation**, which conducted Operation PRIDE. The names and authorities of government bodies responsible for land matters change from time to time. As a general point, coordination and centralization of authority should be encouraged.

Courts. The courts are the ultimate authority for deciding disputes concerning land matters. The Vendor and Purchaser Act gives authority to apply to the court for establishing title and interpreting title deeds. Such disputes go to the commercial court, which currently has two judges with experience in land matters. Most disputes are of two kinds: those under the Vendor and Purchaser Act, involving a contract to sell and buy land, and those in which there are competing claims to a parcel of land but no contract. Interviewees stated that cases involving such claims can be slow and lengthy (anecdotal evidence indicates that some cases have lasted for 10 years), and that the courts are often not considered a prompt, useful recourse for difficult title disputes.

Supporting Institutions

Legal and other professionals. There is an active body of lawyers and law firms acquainted with the issues described above that are willing and eager to help with them. They were of great assistance for this chapter. There is a Jamaican **Bar Association**, which was not visited but was active in litigation that sought to exempt family transfers from the transfer taxes. The Bar Association would undoubtedly be a useful vehicle for law revision and public education. There are also **realtors and surveyors** who are active in this area and also helpful for this report, particularly regarding reorganizing and streamlining land transactions.

Unofficial organizations. Several unofficial organizations can be important sources of help in this area. Mentioned above are the RERC, the new working group formed after the National Summit, and the committee that has worked on a new National Land Policy.

Donors. Donors have been important resources for land and land registration matters. **USAID** has been, and continues to be, actively interested in the specific activities of the **IADB** and the Canadian **CIDA** described above.

Social Dynamics

There is an immense demand in Jamaica for change and reform of land registration and titling practices and laws. The social dynamics underlying this demand are promising, but prompt action with a sense of urgency is critical, together with recognition that long-term dedication will be needed.

The issues are well understood and have been well aired within Jamaica. Further, there is motivation for comprehensive action at high governmental and private levels. This is evident from the National Summit conference and its report, and was apparent in the interviews for this report.

There is an immense demand in Jamaica for change and reform of land registration ... on the other hand, there is great inertia in Jamaica's land situation

On the other hand, there is great inertia in Jamaica's land situation, which is an obstacle to many other reforms. Change is difficult and the individuals and institutions involved — from landholders to realty agents to surveyors to lawyers to government personnel — may not reap immediate benefit from reform efforts. Ideally, all of these groups should be involved in reform to the land-titling system, contributing their insights and experiences to the development of a new system. They have differing incentives and motivations for change, however, their full participation in reform efforts may not always be readily available.

The greatest negative factor is the Jamaican landholder resistance to regularization and titling of land ownership. This was cited by every single interviewee and was a major impediment to the LAMP project. It is exacerbated by the Jamaican taxes, transaction complications, bureaucratic issues, and other problems detailed above. It must be understood sympathetically and sympathized with, as evidenced in the statements by landowners that interviewees relayed:

“If they register my land ‘they’ might take it away from me. Leave me alone. Go away.”

“I have a deed with a [postage] stamp. I paid my taxes. I own my land. Go through title and pay somebody for it? Why?”

The recommendations below are intended to help resolve this issue.

Recommendations

Some recommendations overlap, and some can be combined or addressed in a single initiative or project.

Support formal establishment, and provide continuity and funding for, a high-level titling-policy task force dedicated to the problems described above and the aims stated in the National Summit Report. Its aims should also include encouragement of coordination and centralization and elimination of jurisdictional ambiguities inside the government. The task force should include both high-level government and concerned non-government professional and business persons. Its membership could be centered on that of the working group referred to in the National Summit description above. It should have:

- *Formal organization* with a written statement of policy objectives and with regular meetings with minutes kept and periodic progress assessments
- *Planned publicity and communication* with the public and concerned persons through press releases, workshops, and regular informal communication
- *Funding* as necessary.

The government or a donor institution should consider providing one full-time, paid staff executive for this group. Funding would include compensation of that person and reasonable direct expenses for workshops, program design, possible publications, and possible office rental. It is *not* recommended that funding include fee compensation of the regular task force members.

Support and provide continuity and funding for the efforts of the RERC to simplify and streamline land transactions and, as it is now doing, to resolve practical problems particularly involving private-sector procedures and forms, costs, taxes, registry coordination, and other obstacles that are preventing an active real estate market in Jamaica. For this, the government or donor community should also consider providing a paid staff executive and funding direct expenses. Separately or alternatively, a short- or medium-term

foreign consultant, who is an expert in real estate transactions, could provide fresh views, practical experience, and drafting expertise.

Support a revival and multi-year continuation of a titling project similar to LAMP as LAMP was originally conceived. At a minimum, the project should include:

- A titling component, including both first-time titling of currently untitled parcels and resolution of flawed, already-registered titles, with a pilot project in a specific area
- Technical help and expertise, including software development
- Waiver of the transfer tax and stamp duty for all parcels covered
- Monitoring, including regular milestone assessments, financial controls, and coordination of donor and any government funding
- Assurance of priority treatment and high-level attention, and clear lines of authority, within the government
- An aggressive public education component aimed at landholders
- Possibly (depending on agreed scope and funding) nationwide cadastral mapping and a program for divestment of government lands and other issues.

The IADB's continuing interest in this project should be ascertained. In any event, a continued project should heed the lessons learned as stated in the forthcoming IADB assessment of LAMP and in similar titling projects in other countries.²⁰ It is not possible in this report to estimate any future cost and staffing, but a review of the LAMP and those other experiences would make this possible.

Funding, contractor selection, and other controls should be strict and should be strictly donor-monitored. Previous USAID experiences in Ukraine, Georgia, Afghanistan, Ethiopia, and other countries should be examined for lessons learned in staffing, sequencing, budgeting, and overall impact.

Support a legislative process that would result in the amendment of the 7.5% transfer tax

²⁰ Donor-supported projects with titling components and pilot programs similar to LAMP's are currently in progress and have recently been assessed in Afghanistan, Ethiopia, Laos, and Cambodia. The donors include USAID, AusAid of Australia, and GTZ of Germany.

and the 5.5% stamp duty by one or a combination of the following:

- Eliminate them, possibly replacing them with *ad valorem* taxes on already owned land, such as the tax described in Footnote 15
- Reduce them in amount (%)
- Increase the minimum threshold below which they do not apply
- Eliminate the requirement of advance payment of the stamp duty
- Exempt land on which a person's primary residence is situated
- Exempt farms and agricultural land below a stated size
- Exempt transactions between immediate family members and transfers on death to family members
- Eliminate the exemption for foreign-registered companies owned by Jamaican persons.

Support a revival and continuation of the recent (now possibly inactive) efforts to establish a National Land Policy that would state long-term objectives for both policy and law revision and would cover, among other things:

- The objectives stated above in the National Summit Report
- Elimination of the jurisdictional ambiguity concerning titling between the MoAL and the NLA
- Policy guidelines for revision and modernization of the existing land laws.

This work should take account of the preliminary report that was delivered to the MoAL in 2007 and include the persons previously involved.

Support a revival and multi-year continuation of a project similar to Operation PRIDE, to be a long-term program for privatization and transfer of government-owned land to urban squatters on that land. This should include:

- Issuing a registered title to the new owners with no title investigation charges to them
- Waiver of any transfer tax and stamp duty for the transfers to them
- A plan for valuation and any necessary government-supported or donor-supported

financing if the project involves purchases by the new owners

- Consideration of legal arrangements such as the formation of community-based organizations for possible collective purchase and ownership.

Such a revived project should heed the lessons learned from Operation PRIDE as stated in the Angus Report and should be coordinated with the Squatter Management Unit of the MoAL.

Funding, contractor selection, and other controls for such a program should be strictly donor-monitored.

Review and then, as appropriate, support and expand on activities that are now underway in the NLA, particularly the project to scan and digitize title records, modernize title deed forms, and increase and train staff responsible for examining and issuing titles. Ascertain the existing work of CIDA and any other donors and coordinate with them.

Support systematic replacement or modernization of the existing land laws, statute-by-statute and line-by-line. Consider providing a short- or medium-term foreign consultant who is experienced in legislative drafting to provide fresh practical views and drafting expertise. However, this process must include maximum consultation with and input and buy-in from Jamaican practicing lawyers, government officials, and others, including real estate developers and professionals, such as realtors and surveyors. Revisions should be guided by and consistent with a new National Land Policy if that is established.

As a matter of the very highest priority, establish a public communication and education program to combat the "fear" and lack of knowledge that many landholders have respecting formalizing and registering their land title. This can be part of one of the other items above or pursued as a separate project. It should include meetings, workshops, etc., and should draw on the practical lessons learned from the LAMP project.

Paying Taxes

Tax Policy and Administration

Introduction

The rate at which individuals and enterprises pay their taxes reflects the capacity of both the state and the health of an economy. The fairness and efficiency of a tax system can have significant bearing on whether entrepreneurs choose to join the formal sector in the first place — namely, if they believe that the tax system is fair and the state will use their money wisely, they are more likely to participate. If the tax system is perceived as excessively burdensome and unfair, however, and the citizenry further perceives the state as a poor steward of its monies, then informality persists, with few enterprises paying into the system and few benefits emerging. A larger tax base means that the state can pursue more growth-oriented priorities such as education, public health, and infrastructure. Also, when more individuals and enterprises participate in the system, the government can reduce the payments it seeks from each.

There is no dispute that the tax system in Jamaica is in woeful condition. In fact, it is one of the poorest, least effective in the world. This chapter sets forth a roadmap to implement the general recommendations of Jamaica’s Tax Policy Review Committee, made in 2004, as well as those of the Tax Reform Team that participated in the new government’s National Planning Summit, which took place in November 2007. This chapter adds a number of other recommendations geared toward bringing Jamaica into a state of modern tax policy.

Current tax law restricts domestic business development and is unattractive to foreign direct investment (FDI). Accordingly, there is no “quick fix” to the problem. Rather, an overhaul of the entire tax system is required. Jamaica must modernize its tax legislation to conform to international best practice, international accounting standards, and Organization

for Economic Co-operation and Development (OECD) tax treaty rules.

There is no dispute that the tax system in Jamaica is in woeful condition — one of the poorest, least effective in the world

Jamaica must also modernize its tax administration to effectively audit small- and large-scale businesses, pursue the shadow economy and tax evasion, and reduce the cost of compliance and collection. In short, Jamaica must transform its tax policy to adhere to international standards and best practices for the ultimate purpose of enhancing economic development, increasing domestic business activity, increasing employment at above minimum wage, and attracting FDI.

Paying Taxes	
Doing Business in 2008 Rankings	
World (178 Countries Surveyed)	170
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Legal Framework	1.8
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Supporting Institutions	3
Social Dynamics	2.75

Legal Framework

Jamaica’s tax system is composed of the following:

- A 16.5% General Consumption Tax (GCT)
- A corporate income tax (CIT) of 33.33%, a flat 25% income tax on individual income with a minimum exempt income level
- Excise taxes and import duties that are equivalent to Consumption Taxes
- Taxes on labor income
- Property taxes, stamp taxes, and other levies.

As highlighted in the 2004 Tax Policy Review Committee Report (also known as the “Matalon report”), Jamaica needs strong, sustained levels of economic growth to create jobs, reduce poverty, raise living standards, and pay down the national debt. A critical element in the process to achieve this is tax reform designed to simplify the tax system, make it more equitable, remove disincentives to investment and job creation, and ensure greater compliance. The report made numerous recommendations, including:

- Harmonizing the CIT Corporate and personal income tax (PIT) rates
- Eliminating most tax incentives
- Increasing the income allowance under the Personal Income Tax Law
- Eliminating all non-export zero rates to the Consumption Tax
- Reducing the tariff rate
- Reducing the Transfer Tax
- Eliminating the Stamp Tax
- Amending the Tax Laws
- Eliminating the Education Tax and mandatory HEART fund contributions²¹
- Addressing the differential taxation of capital income and dividends
- Addressing the shadow economy
- Amending the tax administration procedure on collection and audit.

To date, except for a 1.5% increase in the Consumption Tax rate, Jamaica has implemented none of the recommendations. Jamaica's new government, however, is mindful of the importance of addressing tax reform in the near-future and has recently made tax reform a legislative and programmatic priority. Along with land titling, tax reform was among seven high-priority needs addressed in a major public-private National Planning Summit held in November 2007. Active participants included the Minister of Finance and Public Service, the Jamaica Chamber of Commerce, and numerous other private sector representatives.

The National Planning Summit report²² shows clear awareness of the issues at high government and private sector levels. It states as its ultimate goals "a tax system which promotes economic growth and is a catalyst for development; is characterized by simplicity, equity and competitive rates; and is administered in an efficient and effective manner." To that end, the report calls for the creation of a roadmap that will allow for a new tax policy based on national consensus. The recommendations in this chapter represent a first attempt at such a road map, and further endeavor to set forth a plan for short- and long-term implementation.

²¹ HEART is Jamaica's Human Employment and Resource Training/National Training Agency, which provides training to the unemployed and underemployed communities in Jamaica. HEART contributions are mandatory. Private sector employers are required to contribute at the rate of 3% of the total "emoluments" of employees. See Human Employment And Resources Training Act (1982).

²² Supra, note 5.

Implementing Institutions

Jamaica's **Tax Administration**, which functions within the **Ministry of Finance and Public Service**, is the primary government agency charged with administering Jamaica's tax policy. The Tax Administration has several departments charged with various aspects of administering the tax system:

- The Director General's Executive Office (DGEO), which oversees and guides the operations of the Jamaica Tax Administration through an Executive Office staffed with specialists in various areas.
- The Taxpayer Appeals Department (TAD), responsible for processing appeals to decisions made by tax commissioners. TAD also processes waiver applications.
- The Inland Revenue Department, which has full responsibility for all compliance, tax collections, and taxpayer service functions.
- The Taxpayer Audit and Assessments Department (TAAD), which manages the audit and assessment functions pertaining to the Consumption Tax, the Stamp Duty, and other tax laws.

This diagnostic confirmed that the Tax Administration suffers from many capacity deficits and has many priority needs, chiefly automation, audit training, and additional resources

- The Tax Administration Services Department (TASD), which provides the following centralized services for the tax departments:
 - Legal services
 - Taxpayer education
 - Public relations
 - Training
 - Property services and procurement
 - Taxpayer registration
 - Forms, manuals, and procedures
- The Customs Department, which collects revenue and facilitates trade at the borders of the country.

This diagnostic confirmed that the Tax Administration suffers from many capacity deficits and has many priority needs, chiefly automation, audit training, and additional resources. Major changes in the tax regime will require significant implementation assistance, including training the tax administration professionals in the features of a new regime following changes in the legislative framework.

Supporting Institutions

Private sector actors. Jamaica has a rich network of private sector representatives and business associations that are eager to engage in a meaningful tax reform initiative. Various organizations participated in the National Planning Summit — including the Jamaica Chamber of Commerce and the Jamaica Hotel and Tourist Association — along with representatives of banks, professional service providers, private companies, and others. There is enormous interest in tax reform — the challenge for the government and donor community is to capture the interest and expertise and channel it into a clear and focused process toward reform.

Donors. With the support of the new Jamaican Government, Jamaica's donor community also has enunciated a clear interest in tax reform, chiefly as a means toward relieving the country of its highly onerous debt burden. Yet the donors themselves lack adequate coordination on the matter, and reconciliation of priorities and initiatives should be a priority for the very short term. For example, the EU named tax reform as a priority in its newly established budget support project. If and when the Jamaican government meets certain reform priorities — including verifiable, successful reform in tax policy and administration — the EU will release a series of unrestricted budget-assistance “tranches,” totaling up to 90 million Euro, over the next few years.

Although the EU does not intend to provide significant technical assistance as part of its budget reform program, it will provide some technical assistance, including an advisor designated to meet with Jamaica's tax commissioner in early 2008. The IADB similarly intends to provide some technical assistance in the area of tax reform, likely expertise focused on modeling the impact of certain potential rate changes. The World Bank, which at the time of this diagnostic was undergoing administrative changes in Jamaica, also has been said to have an interest in tax reform. The focus and extent of all

donor initiatives should be clarified among the donors themselves, as well as within the Jamaican government (including the Planning Institute of Jamaica, the government agency charged with donor coordination).

Social Dynamics

Jamaica is highly aware of the key role that tax reform must play in the national reform agenda. The government, the private sector, and the donor communities, among others, are committed to tackling the conditions that exist.

The threshold issue of achieving consensus remains

There is not yet, however, a consensus over immediate next steps. That is, is adjustment of tax rates in order? Should there be promulgation of new regulations? A renewed emphasis on auditing and enforcement? Or should a vastly simplified, dramatic transformation of the tax regime be the central priority? As detailed below, this diagnostic recommends an overhaul of the tax system as the necessary path to follow. But the threshold issue of achieving consensus remains.

Recommendations

There is a clear opportunity for a streamlined tax reform program that emphasizes vast but well-coordinated change throughout the tax environment. As a preliminary matter, the donor community should work quickly to share information about members' respective approaches to tax reform in Jamaica and to reach a consensus about a recommended plan for next steps. The Government of Jamaica needs to facilitate the communication among donors.

The donor community should work quickly to share information about members' respective approaches to tax reform

With respect to tax reform generally, short- and long-term opportunities include:

Summary of recommendations:

- **Short term** (effective for tax year 2008):
 1. Reduce the Corporate Income Tax rate to 25% to harmonize with the Personal Income Tax Rate as mandated by International Best Practice.
 2. Consumption Tax: eliminate the non-export zero rate (that is, apply the tax to certain local goods that are not made for export) and reduce the number of non-export exemptions to conform to the International Best Practice VAT format.
 3. Harmonize the taxation or non-taxation of dividend income both on domestic and foreign distributions. (Selective taxation violates International Best Practice.)
 4. Eliminate the Stamp Duty Tax.
 5. Eliminate or reduce the Transfer Tax at least to 5% until a new Personal Income Tax and Corporate Income Tax are put into effect with capital gain provisions.
 6. Eliminate the Education Tax and HEART to reduce employee and employer contributions to enable wage increases. This elimination would be offset by increased disposable income and increased consumption, and increases revenue under the Consumption Tax.
 7. Selectively eliminate the number of tax incentives until the new Corporate Income Tax Law eliminates all incentives by replacing them with tax advantage provisions.
 8. Increase the Personal Income Tax personal exemption to J\$225,000.²³
 9. Provide the Tax Administration's Audit and Assessments Division training in audit of multi-international transactions, financial markets, advanced international accounting rules, and criminal tax investigation techniques.
 10. Computerize risk-based analysis selection for Corporate and Personal Income Tax audits.
 11. Reduce penalty provisions for "honest" mistakes.

- **Long term** (effective for tax years 2009 and 2010):
 1. Using international models for best practice, replace the Income Tax Act with a new Personal Income Tax Law and Corporate Income Tax Law. The easier a tax law is to understand, the lower the compliance cost, both for the taxpayer and the tax administration.
 2. Create a Micro-Enterprise Law for taxation of small businesses to reduce the shadow economy and encourage registration.
 3. Create a Presumptive Tax Law to tax businesses whose taxable income is difficult to determine, such as casinos and petroleum companies.
 4. Create a Third Party Information Law to assist with the Tax Administration's verification of tax return information to detect tax evasion and avoidance, inaccuracy of tax returns and payments, and non-filing.²⁴
 5. Create a Secondary and Third Party Tax Liability Law to reduce the Tax Administration's reliance on circumstantial evidence to prove sham transactions and activities deliberately designed to avoid tax payment.²⁵
 6. Restructure the Tax Administration to better integrate the activities of each function to achieve cost-effective taxpayer service and collection of tax.
 7. Consider the creation of a new Tax Administration Law.

Roadmap for implementation:

New Corporate and Personal Income Tax Laws. Recent World Bank and International Monetary Fund (IMF) country reports agree that the Jamaican tax system requires simplified tax laws and the unification of tax rates between the corporate and personal income tax laws. The World Bank has further stressed the need for private sector development, especially small-scale enterprise development. Despite a standard rate of corporate income tax of 33.33%, Jamaica's tax revenue from its corporate tax rate is a relatively small percentage of total revenue. This is due to the relatively small business base caused by a lack of new business development over the last few decades and the large

²³ The 2004 report recommends J\$275,000. The current exemption is J\$190,000. This report recommends a mid-point exemption of J\$225,000, which is valid in the context of other reforms that are being recommended.

²⁴ For a detailed explanation see page 27.

²⁵ For a detailed explanation see page 28.

amount of unrecorded economic activity in the informal sector.

The important tax legislative criteria for attracting FDI and improving domestic business activity are clarity, stability, simplicity, equal treatment, a broad tax base, tax provisions similar to developed nations, and tax provisions that encourage profitable business activity. However, the current Jamaican Income Tax Act is confusing and inconsistent and fails to maximize revenue potential, causing unnecessary collection and audit difficulties. Internationally Accepted Provisions, Best Practice, OECD Treaty rules are omitted, including mergers, reorganizations, joint ventures, repatriation (transfer) of subsidiary and branch profit to the foreign parent, and payment of interest and royalties to foreign parent and other transactions between foreign parent-subsidiary or branch, which results in decreased tax revenue flow due to limited FDI opportunities and expansion of domestic business.

A new Corporate Income Tax Law should, by way of example, include:

1. Internationally recognized definitions and taxation of permanent establishments pursuant to OECD Treaty provisions
2. Accelerated depreciation methods to encourage expansion; mergers and reorganizations for tax-free business expansion
3. Foreign parent and subsidiary/branch tax provisions in compliance with Treaty provisions and conformance with Generally Accepted Accounting Principals or International Accounting Standards
4. Detailed international provisions for foreign non-resident income within Jamaica
5. Joint venture and partnership activity taxation
6. Recognition of cash, accrual, installment, and percentage of completion tax accounting methods
7. Consolidated returns, including branches of a foreign parent
8. Expanded types and amounts of business expense deductions under market standards, rather than government limitations
9. Provisions for micro enterprises to reduce the tax burden and record keeping of small companies
10. Like-kind, tax-free property exchange to encourage expansion
11. Provisions for bad debt reserves for banks and insurance companies
12. Detailed provision for bad debt deductions and other expense deductions, including business entertainment and travel expenses
13. Increased amounts allowed for charitable and sponsorship donations from corporations
14. Consistency in dividend and interest taxation, with provisions for parent and subsidiary both domestically and internationally
15. Capital gain taxation in lieu of reliance upon transfer tax for revenue.

Foreign companies from developed countries are attracted to tax systems similar to their own country laws. Therefore, converting the current Income Tax Act to an advanced tax system will not only increase business activity, but also tax revenue. In addition, a "rule book" or regulations for both the Personal and Corporate Income Tax Laws must be created. A rule book would eliminate misinterpretation, standardize implementation, reduce cost of collection, promote compliance and simplicity, and provide for more accurate audits.

Consideration should be given to reducing the corporate rate even further

The 2004 Tax Policy Review Committee Report suggested reducing the corporate tax rate to 25% to be in harmony with the personal income tax rate. However, consideration should be given to reducing the corporate rate even further. The question is whether Jamaica is competitive with its neighbors and whether a 25% rate is comparable to rates in developing countries. It is noted that employee contributions for social security, education tax, insurance, and HEART total 5%. Therefore, the effective tax on employment income is 30%, and the employer's share of such contributions (9%) results in an effective tax rate of 42%. Even with a 25% CIT, the employer's tax is 34%, which is the reason for eliminating the education and HEART withholdings.

Many neighboring Caribbean countries have corporate tax rates ranging from 20% to 30%. Regarding personal income tax, for example, the British Virgin Islands has no personal income tax, but requires an employment tax of 14%. Similarly,

Bahamas charges 8.8% and Turks 6.8% to 8%. In Eastern Europe, most new tax laws, both personal and corporate, have a flat 15% tax rate. As a result, lowering the Jamaican CIT to 25% in harmonization with the personal income tax rate would *not* enhance Jamaica's regional competitiveness or attractiveness to FDI.

However, Jamaica is faced with a large debt that must be repaid. Thus, to recommend a tax rate cut to 15% at this time would be detrimental *unless* there are documented offsets to other taxes. Such offsets would include the Consumption Tax, currently at a rate of 16.5%, but overloaded with non-export 0% rates and exemptions. An initial revenue loss from the PIT and CIT may be offset either by eliminating all non-export 0% rates and most exemptions and leaving the Consumption Tax rate at 16.5% or by retaining the non-export 0% rate and exemptions, but raising the tax to 18%, which is in line with most VAT rates in other countries. It is recommended, however, that the deletion of the non-export 0% rate and most exemptions would be a more taxpayer-friendly act because it enhances equal treatment of all taxpayers, establishes equality among businesses, and is more comparable to VAT systems.

Furthermore, lowering the PIT rate to 15% would result in disposable income increases; therefore, there is increased consumption. As the CIT rate is lowered, after-tax profits increase, which allows an increase to employee salaries, but the feasibility would have to be determined. The personal exemption under the PIT may be increased to J\$225,000 (based on a 15% tax rate) as opposed to the Tax Committee report suggestion of J\$275,000 (based on a 25% tax rate). Another offset is the elimination of tax incentives under the CIT. All taxpayers should be equally taxed.

The elimination of incentives and tax holidays, the correction to the Consumption Tax, the PIT exemption rate, increased consumption, and other recommendations, such as a stronger tax administration and reduction to the shadow economy discussed later in this section, should enable the reduced 15% tax rate to be revenue-neutral. In fact, an enhanced economy, increased registration, and more efficient tax administration should generate more tax revenue than is currently collected.

Summary of recommendations:

1. An immediate reduction to the CIT to harmonize with the PIT (both 25%)
2. Consideration to determine the tax revenue effect of reducing both the PIT and CIT to a 15% tax rate
3. Alternatively, gradually reduce the rates over a period of 2 years, e.g., in 2008 a rate of 20%, in 2009 a rate of 15%
4. The immediate elimination of the Education Tax and HEART to increase disposable income for consumption.

Consumption Tax. According to the 2004 Tax Review Report and IMF and World Bank recent Country reports, in the General Consumption Tax (GCT) [the Jamaican VAT], there are several tax rates and exemptions that cannot be explained for equity reasons. Zero tax rates are used not only for exports but also are extended to goods sold in the domestic market (some foodstuffs, health products, printed matter, some agricultural products, international freight, and some sport equipment and energy saving devices). Exemptions go beyond what is customary in other countries, including not only education, health, financial services, cultural activities, and transport, but also some food, some coffins, ice, some construction, some body care, and some medical services. Finally, vehicles are taxed at rates that vary from zero to 177%. The consequence of this variance in tax rates is that relative prices of goods and services are distorted. There are differences in VAT taxation for different products and users.

As a result of these flaws, Jamaica's General Consumption Tax is very different from a well-structured VAT. The most critical issue is that the tax rate is not uniform. This wide number of special tax treatments has a huge fiscal cost that forces the government to raise other taxes to comply with its revenue targets. There are also negative consequences on the allocation of resources. The government should try to revamp the GCT to convert it to a uniform form of VAT tax with only a few exemptions.

Summary of recommendation: Eliminate non-export zero rates and most of the exemptions.

Dividends. The taxation of dividend income is standard among EU member-states and other developed countries. This increases collection of tax revenue and avoids shifting income by majority shareholders. The following countries are among those that tax dividend income: Belgium, Czech

Republic, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Switzerland, Latvia, Finland, Norway, Sweden, Lithuania, Russia, United States, and most South American countries.

In Jamaica, withholding tax on dividends only applies to distributions from private companies, while listed stock exchange company dividends are not taxed. In addition, dividends/repatriation of profits between a parent and its subsidiary is treated as taxable dividend income.

With respect to taxation of dividends, there are two considerations: the non-taxation of certain dividends encourages raising capital through investments rather than through debt to reduce bankruptcy and business operating costs; alternatively, the taxation of other dividends eliminates majority shareholders and directors from paying themselves minimum taxable salary, while distributing to themselves large, tax-free dividends.

International best practice encourages equal treatment among all taxpayers. Dividend taxation of some but not all distributions violates this basic premise. Therefore, either all dividends should be taxed or no dividends should be taxed.

It should also be kept in mind that international best practices dictated that repatriation of profits between a foreign-based parent company and its domestic subsidiary should not be subject to tax. If Jamaica wishes to gain greater foreign direct investment from the U.S., the EU, and other regions, then such dividends should not be taxed. If Jamaica decides to tax dividend income, this directive should not be a negative factor toward FDI because, under International Accounting Rules, the repatriation of after-tax profits between a parent and subsidiary is exempt from tax if the parent owns 80% or more of the subsidiary's stock.

Summary of recommendation: A decision must be made to either tax *all* dividends or *no* dividends.

Tax incentives. The following incentives exist in Jamaica:

- The Industrial Incentives Act
- The Export Industry Encouragement Act
- The Hotel Incentives Act
- The Shipping Incentives Act
- The Motion Picture Industry Encouragement Act

- The Jamaica Export Free Zones Act
- The Foreign Sales Corporations Act
- The Cooperative Societies Act
- The Resort Cottages Act
- Exemption under the Income Tax Act in respect of prescribed agricultural activity
- Exemption on income earned from the ownership of shares in entities listed on the Jamaica Stock Exchange
- Deferment of GCT if the business is in a manufacturing activity
- Entering raw materials free of customs duty
- The Urban Renewal (Tax Relief) Act, which offers exemptions on income and incentives on capital expenditure to approved organizations or approved developers in a special development area.

In addition, approved enterprises may be granted a tax holiday of up to 10 years. Income from qualifying activities in the export-free zone is exempt from tax indefinitely, and income derived from convention hotels is exempt up to 15 years.

The 2004 Matalon report estimates that the number of separate incentives and remissions amount to nearly 200,000, and the amount of tax forgiven is equal to about one-fifth of total government tax revenues in 2003. Notwithstanding the intense competition for global investment funds Jamaica must face, policymakers in Jamaica have long been encouraged to weigh carefully the costs and benefits of tax exemptions and to consider reducing them, if possible, in order to bolster efforts to improve other determinants of investment and to make remaining tax incentives more cost-effective. Tax incentives are usually biased in favor of capital-intensive activities or encourage the adoption of a higher capital/labor ratio. This is a consequence of the reduction in the cost of capital vis-à-vis the cost of labor.

The success of tax legislation is not judged by broad-based tax privileges and incentives, which reduce tax revenue needed for budgetary requirements without a guarantee of increased business activity or FDI, since foreign companies are naturally skeptical of tax systems that are designed to pay them to come into a country. Rather, the important criteria for attracting FDI and improving domestic business activity are clarity, stability, simplicity, equal treatment, tax provisions similar to developed nations, and tax provisions that encourage profitable business activity. The following features of a tax law are more important than tax incentives:

- Market economy provisions, including tax base computation and rate of tax
- Norms of a market economy regarding depreciation, expenses allowed, loss carry-forward, tax credits, and allowances
- The ability to predict consequences of transactions by having stable, consistent tax law.

Summary of recommendations:

1. Completely review all incentives and delete all exemptions affecting business in the Income Tax Act.
2. Create a new CIT, which provides no incentives or tax holidays, and instead offers incentives in compliance with international accounting rules, through accelerated depreciation, installment method of reporting income, etc.

Shadow economy. In his preliminary review of the Matalon report, Indiana Minto of the University of the West Indies-based Jamaica Economy Project identified the current tax structure as forcing a large number of businesses to operate in the informal sector in order to avoid contact with the state and its apparatus, given the costs involved in such contact. According to Minto, "Jamaica appears to be caught up in a culture of noncompliance ('catch me if you can') and a culture of finding the path of least resistance on the administrative side ('I will catch who I can')."

Decreasing the shadow economy is a multi-factorial task. There should be a careful review and simplification of procedures to start a small company, simplified record keeping, and reduced tax rates and tax administration procedure to collect taxes not only from small companies but also from larger companies that are fraudulently evading taxes.

Various institutions, including the EU Commission, the OECD (in the 2000 economic survey of the Balkans), and the UN Development Agency have all addressed the tax revenue issue of small shadow economy businesses by suggesting the establishment of a micro-enterprise law. The parameters of a micro-enterprise law are generally: (a) two or fewer owners, both individuals (no company may be a shareholder); (b) nine or fewer full-time employees; (c) simple cash accounting and simple record keeping; (d) a tax rate of approximately 5% of gross

receipts; and (e) less than J\$60 million of gross annual receipts.

Summary of recommendations:

1. Create a micro-enterprise law to improve tax collection from those enterprises currently working in the shadow economy.
2. Simplify compliance for small businesses.
3. Strengthen tax administration, collection, audit, and criminal tax investigations aimed at large taxpayers who are evading taxes.
4. Reduce the tax rates to the PIT and CIT to enhance compliance.

Laws to assist Tax Administration collection of taxes. Every country needs an efficient system to detect fraud, evasion, errors, and non-filings to maximize the collection of taxes. Two legislative tools used in developed countries to achieve this result are the Third Party Information Law and a Law on Secondary and Third Party Tax Liability.

Third Party Information Law. The United States, Sweden, UK, Norway, France, Spain, Greece, Luxembourg, Switzerland, Latvia, Singapore, Austria, Denmark, Iceland, Netherlands, Germany, Estonia, Finland, Australia, Chile, Belgium, and most other EU and developed countries have incorporated into their control of income strategy a compliance information verification system that uses information declarations filed by third parties having transactions with taxpayers. These third-party information declarations report sources and amounts of annual income, property transfers, and expenses. Tax administrations use these third-party information declarations to verify taxpayer income and property declarations and self-assessments on annual income (tax) declarations and to instantly identify non-filers.

Through the process of matching the information on these third-party information declarations with the taxpayer's self-assessed information on annual income tax declarations and taxpayer's information on income and property declarations, the Tax Administration is able to determine whether a taxpayer receiving income has filed an annual income declaration or, if filed, whether the self-assessed information has been accurately reported to the Tax Administration and if information declared in an income and property declaration is correct. As a result, the assessment of tax and verification of the

income and property declaration are possible through a desk audit without the need for a lengthy, formal field audit. According to the 2001 Tax Conference conducted by the Asian Development Bank, “[I]nformation reporting systems appear to operate as a most effective stimulant for voluntary compliance. Research reveals income that has been reported on information returns is much more likely to be declared by taxpayers.”

The preparation of a third-party information declaration is not a burden for financial institutions, legal persons, and professionals, such as accountants, lawyers, and notaries, especially if electronic filing is permitted. It could be an imposition upon natural persons, but the circumstances for natural person filing for such a declaration is limited.

Secondary and Third-Party Tax Liability Law. Every country faces the problem of taxpayer tax evasion and avoidance caused by transferring property to a nominee to avoid payment of tax, using a company as an alter ego of the owner, draining a company of its assets to pay taxes, causing a liquidation to avoid taxes, transferring property causing the taxpayer to become insolvent, and conveying to deliberately defraud the tax administration. The issue is that the burden of proof rests with the administration to prove a deliberate intent to evade or avoid taxes. Intent, a state of mind, is proven by circumstantial evidence, which is difficult to prove unless certain actions are legislatively created to presume intent. This legislative burden of proof (presumption created by the law) is accomplished through a Secondary and Third Party Liability Law.

The tax administration must implement a risk-based audit procedure, create audit manuals for different industries, direct its outreach program to familiarize taxpayers with tax laws, define and impart training on indirect methods of audit, and strengthen and enforce collection procedures.

Summary of recommendations:

1. Create a Secondary and Third-Party Tax Liability Law to reduce the Tax Administration's reliance on circumstantial evidence to prove sham transactions and activities deliberately designed to avoid payment of tax.
2. Restructure the Tax Administration to better integrate the activities of each function to achieve cost-effective taxpayer service and collection of tax.

3. Consider the creation of a new Tax Administration Law.

Implementation. The short- and long-term implementation of the recommendations herein require a carefully coordinated and fluidly-implemented program involving the government, the private sector, and the donor community. As noted, as a critical preliminary matter, the donor community must clearly ascertain the involvement of its various members in Jamaican tax reform, including specific commitment of resources, and immediately act to reconcile any duplication or inconsistencies. Thereafter, one or more donors should support a multi-year tax reform initiative. At a minimum, the project should include:

- A short-term, consensus-building component, involving high-level policy makers, private actors, and others
- A legislative drafting component
- A regulatory drafting component, including creation of simplified processes, manuals, and forms
- An implementation component, including:
 - Training of Tax Administration professionals
 - Public education
 - Technical assistance expertise, including software development
 - Monitoring, including regular milestone assessments, financial controls, and coordination of donor and government funding
 - Assurance of priority treatment and high-level attention and clear lines of authority within the government.

For the purpose of defining the long-term costs of this initiative, experiences from other donor-sponsored tax reform efforts should be employed. It is not possible in this report to estimate specific costs and staffing, but review of previous experiences within and beyond Jamaica would make this possible. The likely investment of time is not less than 3 to 5 years. Funding, contractor selection, and controls should be strict and should be strictly donor-monitored.

Getting Credit

Access to Credit for Micro, Small, and Medium-Sized Enterprises

Introduction

The ability of entrepreneurs to borrow money on reasonable terms depends on a number of interrelated factors that collectively affect the risks associated with lending, specifically the likelihood of full and timely repayment. These “risk factors” include a mix of public policies, laws, and regulations; the local credit culture; the strength of property rights; and the effectiveness of settlement mechanisms, such as the enforcement and bankruptcy regimes. Typically, in jurisdictions in which these and other factors fail to protect lenders (or borrowers), the risk of credit default is high, and this risk is reflected in increased credit costs or a decrease in credit availability.

Further, certain types of borrowers are perceived as posing more than the usual lending risks and as a consequence, usually face significant additional obstacles in obtaining credit. Micro, small, and medium-sized enterprises (MSMEs), women, rural borrowers, and other less secure groups typically have limited capital, short entrepreneurial histories, or are subject to precarious social situations, all of which are deemed to present greater risks. The situation is further exacerbated by the fact that lenders often lack the experience and knowledge necessary to understand the needs of small businesses, particularly those based in the agriculture sector.

A long-held objective in Jamaica is to enhance the ability of MSMEs to contribute to the national development goals.²⁶ This approach, supported by both national and international development

²⁶ Government of Jamaica, “The National Industrial Policy — A Strategic Plan for Economic Growth and Development” (March 27, 1996).

organizations, necessarily includes ensuring that MSMEs have access to reasonably priced credit for reasonable durations.

Over the last decade, the Jamaican financial services sector has struggled to overcome the effects of the country’s deep financial crisis of the late 1990s. During this period, the volume of funds available and the willingness of banks and other financial institutions to lend were severely curtailed. Recently, there have been signs of a new dynamism in the credit industry. Lending has increased substantially

and there are more lenders competing for clients. Despite these improvements, however, the great demand for credit in Jamaica’s MSME sector continues to go unmet. According to a recent survey by the Inter-American Development Bank (IADB), 42% of small enterprises reported a need for credit, while only 15% said they are able to obtain it. Of those that obtained credit, only one-third received credit from commercial banks.²⁷

This chapter examines the status of lending in Jamaica, with an emphasis on credit extended to MSMEs. It discusses the factors that affect access to credit in Jamaica and then makes recommendations for how the current credit environment can be improved to further accommodate the credit demands of the nation.

Legal Framework

The **Banking Act of 1992**, the **Financial Institutions Act of 1992**, and the **Building Societies Act of 1995** regulate Jamaica’s banking sector, exclusive of credit unions. Credit unions are regulated pursuant to the **Cooperative Societies Act** and the authority of the Jamaica Co-operative Credit Union League Limited (JCCUL), although the Bank of Jamaica has begun provisional regulation of credit unions.

The legal framework governing Jamaica’s financial service sector is generally sound, but certain aspects are in need of revision and modernization to help

²⁷ Inter-American Development Bank (IADB), “The Informal Sector in Jamaica” (December 2006 at 27).

Getting Credit	
Doing Business in 2008 Rankings	
World (178 Countries Surveyed)	115
Region (31 Countries Surveyed)	25
BizCLIR Indicator Scores	
Legal Framework	3
Implementing Institutions	2.78
Supporting Institutions	3.4
Social Dynamics	3.4

facilitate the sector's continued recovery from the financial crisis of the late 1990s and to improve the overall lending environment for both lenders and borrowers. Further, as detailed in this chapter's recommendations, the development of certain national policies would provide a means to resolve fragmentation and improve the overall effectiveness of public and private support to MSMEs.

The Jamaican financial crisis of 1996–97, deemed to be “one of the largest in the world (in terms of GDP),”²⁸ revealed numerous weaknesses in the operation, regulation, and supervision of the Jamaican financial sector. Precipitating factors included poor management in recently privatized institutions, the taking of ill-advised risks, and inadequate supervision. At that time, commercial banks, merchant banks, and building societies (collectively hereafter “financial institutions”) were typically part of larger corporate conglomerates. Unfortunately, neither the laws nor the regulatory staff was equipped to deal with the regulatory issues raised by the complex structures.²⁹

Many of the regulatory weaknesses identified in post-crisis analyses have been addressed through subsequent reform and legislation. The reforms sought to strengthen the banking industry and re-instill public confidence.³⁰ But despite these banking reforms, the financial service sector continued to lag. During the post-crisis period, financial institutions were reluctant to lend, and when they did, it was often at annual interest rates of 60% or more. As a consequence, access to credit in Jamaica stagnated, and the demand for credit in Jamaica went unsatisfied at all levels.

The lending stagnation can be attributed to a number of separate but interrelated factors. And while there are myriad issues to be considered, the following are cited as having the greatest effect.

First, although beyond the scope of this assessment, high inflation rates played a role in decreasing lending in Jamaica in the post-crisis era. As recently as

September 2005, Jamaica was experiencing an annual inflation rate of 19%.³¹

Second, the bail-out that resolved the crisis was funded by the issuance of massive amounts of government debt. Financial institutions bought this debt, which was high-yielding and relatively low-risk, as a safe alternative to traditional lending. At one point, domestic financial institutions held over half the outstanding public debt.³² As a direct result of these investments, there were less funds to lend, leading to “fiscal crowding out.”³³

Third, the financial crisis was accompanied by an unprecedented number of financial institutions' failures. In 1995, just prior to the onset of the crisis, there were a reported 105 financial institutions operating in Jamaica. Currently, there are 15 financial institutions licensed and regulated by the Bank of Jamaica.³⁴ This dramatic industry contraction, though necessary to a certain extent to increase efficiency, nonetheless decreased competition among lenders and, therefore, affected the availability of credit.

The lending stagnation can be attributed to a number of separate but interrelated factors: inflation, fiscal crowding out, and financial institutions' failures

Now, in addition to disincentives posed by high-yield, low-risk government investments and the recent decrease in competition, financial institutions and other lenders face a number of additional obstacles, especially when lending to the MSME sector. These include the absence of a credit bureau; the lack of a modern secured transactions regime; the fact that potential borrowers often lack title to real property; the fact that potential borrowers have inadequate experience in bookkeeping and producing financial statements; and the fact that lenders do not always understand small businesses, or agriculture in particular. Further, as detailed later in this chapter,

²⁸ The World Bank, “Revitalizing Jamaica's Financial System,” Chapter 4 (January 2004).

²⁹ For a complete discussion of the Jamaican Financial Crisis, see World Bank (2000a); World Bank (2002e); and Nararj and Osabela (2002).

³⁰ The Financial Sector Reform Program (FSRP) (LO-12688/0C).

³¹ The International Monetary Fund, “Jamaica: Financial System Stability Assessment.” IMF County Report No. 06/156 (May 2006).

³² *Id.*

³³ *Id.*

³⁴ The 15 financial institutions include six commercial banks, four merchant banks, and five building societies. The 48 credit unions are not currently licensed by the Bank of Jamaica.

all lenders in Jamaica must face the risks posed by natural disasters, crime, and social unrest.

Possibly the most problematic aspect of the Jamaican lending industry is the state's active role in providing credit interventions to support sectors that have difficulty obtaining credit. For years, the state has moved in and out of the financial sector, particularly through a variety of direct and indirect schemes to infuse subsidized funds into the MSME and other needy sectors. At best, these efforts are seen as necessary to support high-risk sectors, such as agriculture and manufacturing. As worst, they are poorly implemented, politically motivated schemes.

The most problematic aspect of the Jamaican lending industry is the state's active role in providing credit interventions

In either case, the state's credit interventions have had the effect of skewing the market and fostering a bad credit culture. Virtually every lender interviewed for the instant diagnostic stated that if a loan is perceived to have any direct or indirect connection with the government, it does not need to be repaid. Government interventions raise the additional concern of sustainability. Reportedly, several government and quasi-government entities or programs are financially unstable and/or in the process of reorganization.³⁵ Several donors have commented negatively on these programs; nevertheless, the government continues to maintain a prominent position.

Most creditors prove reluctant to criticize the government's lending programs or its role in providing subsidized credit. For one thing, many of the government's projects tread a fine line between low-level lending and social welfare assistance, especially in the agricultural and manufacturing sectors.

Due to the factors mentioned above, as well as many others beyond the scope of this chapter, lending in Jamaica stagnated for almost a decade. Recently, however, the industry has begun to change, leading to increased lending at all levels.

³⁵ Concerns regarding financial or operational stability have been raised with respect to the People's Cooperative Banks, MIDA, MIDA funded programs, Self-Start, and the National Development Fund of Jamaica.

First, inflation has been brought under control. By January 2007, Jamaica's annual inflation rate had fallen to 6%, as compared to the target rate of 9.5%.³⁶

Second, the yield on government paper has decreased significantly, making it less attractive as an investment for financial institutions. For example, in 2006, the annual rate on 180-day instruments averaged 12%, compared to 22.9% in 2003–04. Similarly, the rate on 30-day instruments was 11.7%, compared to 15% in 2003–04. As a result, investments by financial institutions in these instruments have declined. To maintain past levels of profitability, banks have been forced to revisit lending as a source of income.

Third, the volume of funds available for lending has increased at all levels, including the MSME sector. According to statistics maintained by the Bank of Jamaica, the collective loan portfolios of financial institutions have increased, with banks reporting an increase of 28.2%, merchant banks an increase of 46.5%, and building societies an increase of 28.2% over the same time last year.³⁷ Increased availability of funds was also reported in the MSME sector. One government report estimates that more than J\$2.2 billion was lent to the MSME sector during fiscal year 2005–06. The same report projects as much as J\$ 3.8 billion would be available to the MSME sector for fiscal year 2006–2007.³⁸

In addition to increased funding, there has been a dramatic increase in MSME financing facilities. Now MSME lenders include government and quasi-government entities, donors, and private sector organizations. A representative of one private microfinance institution (MFI) explained that it is competing with at least 42 other entities that lend in the micro-sector.

Implementing Institutions

A variety of institutions play a central role in the area of access to credit for MSMEs in Jamaica. This section summarizes the country's key government regulating institutions and agencies and then details several of Jamaica's various types of lending institutions.

³⁶ International Monetary Fund, Jamaica Staff Report (April 11 2007).

³⁷ www.boj.org.jm Prudential Indicators of Commercial Banks, Licensees under the Financial Institutions Act (FIA), and Building Societies as of 30 September 2007.

³⁸ Ministry of Industry Report to the Cabinet (January 2007).

The **Ministry of Finance and Planning (MOFP)** is the line ministry charged with the overall responsibility for managing the state's finances and for drafting legislation that governs access to credit. Interviewees indicated that the MOFP has a reputation for internal mismanagement, resulting in a poorly functioning entity. The Ministry is said to suffer from disorganization and low capacity, both in terms of staff and technology. Currently, it has the authority to deny certain licenses, but this should be addressed in the proposed Omnibus Banking Bill.

The **Bank of Jamaica** serves as the primary financial regulator of Jamaica's insured depository institutions, including commercial banks, merchant banks, and building societies. The officials and staff of the Bank of Jamaica are highly regarded by the donor agencies with which it collaborates, as well as the financial institutions subject to its regulatory oversight. The Bank's mission is to strengthen the overall legal and regulatory framework with the goal of increasing financial discipline and improving the payment culture. As a result of the financial crisis of the late 1990s, the legal framework that governs these institutions has been significantly improved; however, there remain a number of regulatory gaps that have been identified and addressed under the Omnibus Banking Bill.

Financial sector regulators. Currently, the supervision of financial service providers is shared by government and industry entities. The Bank of Jamaica and the Ministry of Finance and Planning share oversight of the commercial banks and other insured institutions. Credit unions are considered to be "self-regulated," and as members of the Jamaican Cooperative Credit Union League, Ltd., are subject to audit and enforcement provisions. The regulation and supervision of non-deposit taking, non-bank financial entities, such as insurance and pension funds is by the Financial Services Commission (FSC).

Jamaica Cooperative Credit Union League, Ltd. The League represents the 48 credit unions in Jamaica and is responsible for the overall direction and coordination of the national credit union system. While its resources are limited, the League has taken several proactive measures to support its members, such as establishing minimum standards, organizing audits and regulatory efforts, and establishing a small fund similar to a deposit insurance fund. Credit unions are very positive about the work of the League and speak highly of its staff. Currently, there is a policy debate over whether to bring the

regulation and supervision of credit unions under the jurisdiction of the Bank of Jamaica.

There was a general lack of understanding of the benefits of establishing a modern, secured-transactions regime with an electronic registry

Property registries. Property registries play a key role in facilitating the access to credit by strengthening land rights, establishing and prioritizing claims, and providing creditors with information on prior liens. The current process governing the titling and registration of immovable property (land) is discussed elsewhere in this report. The registries used for filing liens on movable property were regarded favorably by those interviewees that use them, both in terms of staff and efficiency. As noted previously, however, there was a general lack of understanding of the benefits of establishing a modern, secured-transactions regime with an electronic registry.

Banks and building societies. As noted previously, the legal and regulatory framework governing the formal financial sector, including commercial banks, merchant banks, and building societies, has improved as a consequence of the financial crisis of the late 1990s. The formal sector itself has contracted significantly, leaving only a fraction of the original players. In 1995, just prior to the onset of the crisis, there were a reported 105 financial institutions operating in Jamaica. Currently, there are 15 financial institutions licensed and regulated by the Bank of Jamaica, including six commercial banks, four merchant banks, and five building societies. Commercial banks are regulated under the Banking Act, merchant banks and finance houses are subject to the Financial Institutions Act (FIA), and building societies are subject to the Building Society Act.

The industry is dominated by two banks, Bank of Nova Scotia Jamaica, Ltd. and National Commercial Bank, which collectively account for 73% of the industry's assets. Five commercial banks, representing 91.2% of the commercial banks' assets, have foreign ownership. Over the past several years, the formal sector has increased its lending significantly. According to statistics maintained by the Bank of Jamaica, the collective loan portfolios of

financial institutions have increased, with banks reporting an increase of 28.2%, merchant banks an increase of 46.5%, and building societies an increase of 28.2% over the same time last year.³⁹ But the sector continues to rely heavily on investments in Government securities and similar assets to generate profit. Roughly 39%, or \$169 billion, of assets of the six commercial banks was invested in government securities as of September 2006. This compared unfavorably to the sector in Trinidad and Tobago, whose commercial banks and non-finance institutions had a loan stock of \$38.4 billion, compared to investments of \$20 billion.⁴⁰

As a result of increased competition for loans, some commercial banks are branching into micro-lending, an area they generally ignored in the past. Additional incentives are necessary, however, to encourage more institutions to move “down market” and to lend in greater volumes.

Credit unions. As cooperatives, credit unions are established and regulated under the Cooperatives Societies Act and must meet minimum membership and capitalization requirements. Currently, credit unions are considered to “self-regulated” but are subject to the oversight of the Jamaica Cooperative Credit Union League, Ltd. (Credit League). Under an existing proposal, regulation and supervision of credit unions may be transferred to the Bank of Jamaica. Care must be taken that the new regulation scheme does not stifle the credit unions’ current lending activities.

Microfinance institutions. A review of Jamaica’s various institutions and programs lending to MSMEs is helpful toward developing a full understanding of the MSME lending environment in Jamaica. Due to the amount of wholesaling and on-lending, as well as recycling of old funds, it is difficult to make a bright-line distinction between public and private lending facilities. The distinction is important, however, as it highlights the number of government credit interventions in the MSME sector.

For the sake of clarity, this review is broken down in three parts. The first reflects MSME lending by the private sector, including financial institutions and credit unions. The second reflects lending by

government and quasi-government entities. The third reflects lenders specifically designated as microfinance lenders. In this regard, the information here has been culled from various reports prepared by the government and the private sector⁴¹ and from interviews with lenders.

a. Private sector lending

Financial institutions. Commercial banks and other financial institutions are recent entrants to the MSME lending sector. Due to the factors discussed previously, financial institutions have revitalized their lending programs as a means of maintaining past profit levels and retaining valuable customers. Competition from other lenders is pressuring banks to capture new markets. One estimate suggests the commercial banks have lent as much J\$2 billion to the MSME sector.

Interest rates range from a low of 18.5% annually to a high of 1.6% per week

Four of the six commercial banks currently licensed by the Bank of Jamaica have an SME or MSME loan program.⁴² Depending on the bank and the product, loans range from minimums of J\$100,000 to J\$650,000 to maximums of up to J\$100 million. Interest rates range from a low of 18.5% annually to a high of 1.6% per week. As a general rule, banks prefer to secure lending with liens on land or movable property, such as vehicles and/or equipment. There is very little information available on the actual size of their respective portfolios.

Credit unions. Jamaica’s credit unions took advantage of opportunities offered by the reluctance of financial institutions to lend in the post-crisis environment. As a result, credit unions have flourished and have established themselves as strong players in the MSME sector. According to one survey, at least five credit unions engage in some form of MSME

³⁹ Prudential Indicators of Commercial Banks, Licensees under the Financial Institutions Act (FIA), and Building Societies as at 30 September 2007 (www.boj.org.jm).

⁴⁰ Meikle, Ashford, “Paper securities trump loans on commercial bank’s balance sheets.” *The Jamaican Gleaner* (February 9, 2007).

⁴¹ This chapter relies heavily on the information on MSME lending collected by Development Options Limited.

⁴² Banks with reported SME and MSME programs include the National Commercial Bank Jamaica, Ltd., Bank of Nova Scotia Jamaica, Ltd., RBTT Bank Jamaica, Ltd., and First Global Bank, Ltd.

lending.⁴³ One estimate suggests the credit unions have lent as much J\$5.2 billion to MSMEs.

The penetration rate of Jamaica's credit unions is one of the highest in the world.⁴⁴ During fiscal year 2005–06, credit unions disbursed 1,105 loans, totaling J\$523 million to SMEs. For fiscal year 2006–07 the total disbursed was projected to increase by 20%.

The penetration rate of Jamaica's credit unions is one of the highest in the world

Depending on the institution and the product, credit union loans range from minimums of J\$5,000 to J\$30,000 to maximums of up to J\$19 million. Interest rates range from a low of 20% annually to a high of 1% per week. Generally, most loans are secured by savings or movable property. Currently, lending restrictions limit lending by credit unions to individuals (members), but there is a proposal to change this.

b. Government lending

Development Bank of Jamaica (DBJ). The DBJ was created following the merger of the Agricultural Credit Bank of Jamaica, Ltd. and the National Development Bank of Jamaica. Its primary function is to provide development credit through its network of approved financial institutions, including commercial banks, the network of Peoples Cooperative Banks, and credit unions. Currently, the DBJ wholesales funds to commercial banks at a rate of 10%. Its on-lending is subject to a cap of 3%, rendering these funds less profitable and therefore less attractive to the lending institution.

The DBJ has a separate program for wholesaling to the network of People's Cooperative Banks (PC Banks) that retail to the high-risk industries such as agriculture, poultry, and fishing. Wholesaling takes place at the rate of 7.75%, and the PC Banks add a spread of .125%. Borrower access funds are at the rate of 7.875%. Loans range from a minimum of

J\$10,000 to a maximum of J\$500,000 and are typically collateralized.

National Insurance Fund Credit Facility (NIS). In the past, Jamaica's Prime Minister sought to establish a J\$1 billion revolving credit facility to support MSMEs. The arrangement was criticized for being "politically motivated" and potentially damaging to the long-term interests of the NIS. The funds are wholesaled to financial institutions and other approved lenders, but on-lending is subject to a program cap of 3%. As a result, use of these funds by commercial lenders is financially unattractive. Of the J\$825 million approved, less than half has been distributed under the terms of the facility. There is no information of the total portfolio supported by these funds.

The Government of Jamaica/Government of the Netherlands MicroFIN Credit Programme. The MicroFIN funds totaling J\$205 million are wholesaled at a rate of 9% to approved credit institutions and so-called specialized Micro-Finance Organizations (MFOs).⁴⁵ MFOs, including JumpStart and the Small Business Loan Fund (SBLF), were specifically established to lend to micro entrepreneurs without traditional collateral, instead relying on creditworthiness and project viability. According to information collected by the Ministry of Industry, Technology, Energy and Commerce (MITEC), total disbursements under all MicroFIN facilities reach almost J\$1 billion, reflecting 20,455 loans.

The GoJ/EU credit schemes. The J\$264 million GoJ/GoN credit component is divided into two programs: the Micro Enterprise Loan Program (MELP), with a dedicated J\$44 million, and the Small Business Loan Programme (SBLP), with a dedicated J\$220 million. Under MELP, the Micro Investment Development Agency (MIDA)⁴⁶ wholesales funds at a rate of 11% to community development funds (CDF's), which on-lends to micro entrepreneurs at a retail rate of 23%. During FY 2005–06, just over J\$43 million was reportedly disbursed, financing 519 loans with an average size of J\$83,000. Default rates of borrowers from CDFs are estimated to be about 20% over the last 5 years. Under the SBLP, Pan Caribbean Financial Services (PCFS) wholesaled J\$123 million at a rate of 11% through 14 "participating credit institutions" (PCIs), that on-lend to small and micro entrepreneurs at rates of 14–25%. PCFS also retails to 12 companies under an

⁴³ Credit unions with reported MSME programs include Portland Cooperative, Mint Cooperative, St. Thomas Cooperative, City of Kingston, and Churches Cooperative.

⁴⁴ The International Monetary Fund, "Jamaica: Financial System Stability Assessment." IMF Country Report No. 06/156 at 19 (May 2007).

⁴⁵ Data provided by a report prepared by Development Options, Ltd. (DevOp Report) reflects a value of J\$220 million as of December 2007.

⁴⁶ MIDA operates as both a wholesaler and retailer of funds.

agreement with the Jamaica Manufacturers Association.

c. Microfinance lenders

A number of public and private microfinance institutions have emerged to service the MSME sector. In alphabetical order these include Access, Cooperative Organization for Pre and Micro Enterprise Limited (COPE), the Export-Import Bank, First Union, JN Small Business Loan, MEFL, MIDA (retail), NDFJ, Peoples Cooperative Banks (see discussion under government lending), and the Self-Start Fund. These programs are discussed in turn.

Access. Access is a private microfinance lender that received funds from Development Options Limited and Pan Caribbean Financial Services Limited, two wholesale lending agencies in Jamaica. Access makes both personal and business loans at an interest rate of 1% per week. Personal loans range from J\$10,000 to J\$200,000, while business loans have a maximum of J\$350,000.

Cooperative Organization for Pre and Micro Enterprise Limited (COPE). COPE seeks to provide both financial services and business advice to micro entrepreneurs in Jamaica. During fiscal year 2005–06, COPE funded an estimated 875 loans with an average loan size of J\$40,000 for a total disbursement of J\$35 million. COPE's activities are reportedly hindered by a lack of funding and the short-term nature of its funds.

National Export-Import Bank (Ex-Im Bank). Jamaica's National Export-Import Bank established a Small Business Loan Facility that provides working capital financing to small businesses that produce for either the domestic or export market. Loans range from J\$ 7.5–10 million, depending on the type of enterprise. During fiscal year 2005–06, the National Export-Import Bank disbursed approximately J\$248 million under the facility.

First Union Financial Group Limited. Established in 1999, First Union is a private limited liability company that makes loans to small businesses and employees of companies that will facilitate repayment through salary deductions. First Union offers MicroFIN and MAXIE programs. The MicroFIN programs are similar to other 1% per-week loans. The MAXIE program is an example of a new trend in the microfinance industry in Jamaica. In order to retain responsible borrowers, lenders are developing new products to compete with commercial lenders. These loans are made in greater amounts with

interest rates comparable to those of commercial banks. In the MAXIE case, the interest rate is on a sliding scale of 14–17%, depending on the loan amount. With rates of 1% a week and sometimes more, MSME borrowers carry a heavy financial burden in obtaining credit. It seems untenable that in addition to these industry burdens they are also expected to support subsidized credit to other borrowers.

Jamaican National Building Society. In 2000, the Jamaica National Building Society established the Jamaica National Small Business Loans (JNSBL) to concentrate on MSME lending. JNSBL offers three loan products targeting different levels of borrowers:

- BizStart loans provide for the financing of micro entrepreneurs who wish to start their own businesses. First-time loans are capped at J\$50,000 for a maximum of 30 weeks.
- BizGrow loans are offered to micro entrepreneurs for expansion purposes and the purchase of machinery. The maximum first loan under this program is J\$70,000 for a period of 10–50 weeks.
- BizEvents loans are provided to capitalize on seasonal opportunities. The maximum loan amount is J\$50,000 for a period of 10 weeks.

Micro Enterprise Financial Limited (MEFL). The Bank of Nova Scotia Jamaica, Ltd. has partnered with the Canadian International Development Agency (CIDA) and the Kingston Restoration Company (KRC) to create the MEFL. During Fiscal Year 2005–06, 3,277 loans were funded for a total disbursement of more than J\$70.5 million. Loans range from a minimum of J\$10,000 to a maximum of J\$300,000, with an interest rate of 1% per week. Initial lending is usually conducted on a "solidarity" basis, with responsible borrowers graduating to individual loans.

MIDA. In addition to its wholesaling activities, MIDA is engaged in limited retail lending. Loans to individuals range from a minimum of J\$100,000 to a maximum of J\$150,000, with interest rates of 1% per week. Loans to groups range from a minimum of J\$10,000 to a maximum of J\$250,000, with interest rates of 23%. MIDA's retail portfolio is currently estimated at J\$436 million.

National Development Foundation of Jamaica (NDFJ). The NDFJ is currently undergoing reorganization. Its operations currently suffer from a lack of funds, caused in part by poor lending practices in the past. The NDFJ offers loans ranging from a minimum of J\$200,000 to a maximum of J\$3 million, with interest rates of 1% per week. Its current portfolio is estimated to be J\$109 million.

Self-Start Fund. Self-Start is a retail institution that provides small loans to the MSME sector. While new efforts are being made to collect on past-due loans, Self-Start suffers from a lack of funding and direction. There is some suggestion that Self-Start provides a necessary "public welfare safety net" for borrowers that fall on hard times. The average loan size during fiscal year 2005–06 was J\$133,000.

Supporting Institutions

A strong lending industry depends on the effectiveness of a number of supporting institutions operating within the applicable legal framework.

Ministry of Industry, Technology, Energy and Commerce (MITEC) (this organization may also be referred to as the **Ministry of Industry, Investment and Commerce (MIIC)**). The Ministry's current role in government credit intervention is difficult to evaluate. For example, the Minister has the authority and responsibility for appointing the Board of Directors of MIDA, but does not have funding obligations. Certain members of its staff have significant interaction with the Self-Start fund, but again, there does not appear to be any funding responsibilities. This Ministry has recently launched an initiative to develop a national policy on small and medium-sized businesses. In January 2008, it invited business organizations and small businesses to contribute to the development of this policy.

Development Bank of Jamaica (DBJ). The new Government has yet to decide the role that the DBJ and the PC Banks will play in the future. The DBJ's primary function is to provide development credit through its network of approved financial institutions. The network of PC Banks has served as the primary retailer of the DBJ with little success. The PC Banks are undergoing a structural reorganization. It is estimated that one-third of the existing branches may be closed in an attempt to achieve sustainability. New programs are being considered, which involves creating farming

cooperatives, but these need a large infusion of capital.

Representatives of the DBJ acknowledge past mistakes and poor capacity within its ranks. Financial losses and poor lending practices have been addressed through mergers, branch closures, and reorganizations. There seems to be an understanding that the DBJ's continuation of past practices can do more harm than good, but there is a strong belief that the DBJ fulfills a public service need by funneling funds to the poorest of the poor.

Business development service providers. The provision of business development services has been embraced by both the government and donor organizations. Unfortunately, past efforts in this area have been fragmented and of limited success. The following is an abbreviated list of entities that are offering business development services:

- *The Private Sector Development Programme (PSDP)* is a 5-year technical assistance program, jointly funded by the Government of Jamaica and the EU to help improve the competitiveness of the MSME sector. The scheme has facilitated a number of capacity building and other technical assistance solutions to the sector at different levels (implementing agency, wholesalers, and retailers). Discussions with the EU indicated that they were not entirely satisfied with the results of this program but agree that future programs can be designed to take into consideration lessons learned.
- *The Jamaica Business Development Centre (JBDC)* is the institution mandated to facilitate the sustainable development of MSMEs in Jamaica. In this regard, the centre supports start-ups and micro enterprises through the provision of services, such as product development, marketing, linkages, and other forms of non-financial assistance. Critics claim that the services provided by the centre amount to little more than "hand holding" and that significant improvements in curriculum and training are warranted.

Credit information bureaus. Except for the small, informal credit exchange system operated by creditors, there are no credit information bureaus currently operating in Jamaica.

The **Small Business Association of Jamaica** is a growing and dynamic organization that promotes the interests of MSMEs to the government, the lending community, and others. It also strives to serve its members through informational and technical services and even through the possible creation of a micro-lending resource. Recently, the SBAJ has been called upon to contribute to the development of policy on small and medium-size businesses.

Social Dynamics

The social dynamics of Jamaica have an important impact on the availability of credit for MSMEs. As noted previously, there is a high demand for credit in the MSME sector in Jamaica and an increasingly wider range of players are competing to meet that demand. Nonetheless, research and interviews with a variety of stakeholders confirm that considerable barriers remain to increasing access to credit for MSMEs in the country.

Dynamic financial sector. Jamaica has a dynamic financial sector characterized by a high demand for credit and many lenders competing to meet that demand. One private MFI explained that it is competing with at least 42 other entities that lend in the micro sector. Nonetheless, interest rates for micro loans are still as high as 1% per week, an amount that does not include the additional costs and fees associated with this type of lending. A mix of private and public MFIs, credit unions, and special lending windows at some commercial banks compete as lenders to MSMEs in Jamaica. Borrowers also turn to family and friends, “loan sharks,” or informal arrangements such as “the partner” where a group of people contribute to a pool of funds each month and rotate which participant utilizes the monthly sum.

Commercial banks are recent entrants to the MSME lending sector, as they have begun to face increasing competitive pressure to capture new markets. Following the deep financial crisis in 1996–97, banks in Jamaica were reluctant to lend and often did so at annual interest rates of 60% or higher. Banks found it profitable and less risky to buy government debt rather than act as true intermediaries between savers and borrowers. As interest rates on government paper decreased, however, banks have been facing market pressure to lend money more widely at annual interest rates around 20%. Though commercial banks are not yet major players in the MSME sector, they are seeking to expand their client bases and capture new markets. Banks hesitate to

move “down market” for several reasons, including: the absence of a credit bureau; the lack of a modern secured transactions regime; the fact that potential borrowers often lack title to real property; the fact that potential borrowers have inadequate experience in bookkeeping and producing financial statements; and the fact that lenders don't always understand small businesses or agriculture in particular.

There appears to be a window of opportunity in Jamaica for positive change in the financial sector

Time for change. While the issue of access to credit is a topic that has been championed by both of the major political parties in Jamaica, following the change of government in September 2007, there appears to be a window of opportunity in Jamaica for positive change in the financial sector. In fact, there is a sense among some stakeholders that reform must happen now or risk never happening. The new government has presented a pro-business platform and took a positive step in early November 2007 by holding a summit with private sector representatives in order to discuss pressing issues related to Jamaica's economy and business environment. The continuation of a strong public-private dialogue and a clear national policy will be critical to the implementation of productive reforms in the financial sector. In interviews, stakeholders demonstrated a clear understanding of the challenges and barriers to access to credit for MSMEs in Jamaica, and there appears to be a consensus surrounding the necessary remedies. Until now, the main hindrance to desirable reforms has been a lack of political will and implementation. For instance, despite broad consensus among stakeholders in the financial sector regarding the need for a credit bureau, a draft law for its establishment has been mired in parliament for roughly 10 years. People are tired of studies, inaction, and the absence of a clear national policy to address issues surrounding access to credit for MSMEs.

Poor credit culture. Due largely to the active and confusing role that the government has played in the financial sector, lenders in Jamaica must contend with a poor credit culture among borrowers. For years, the government has moved in and out of the financial sector, particularly through a variety of schemes to infuse lenders in the MSME sector with subsidized funds. The provision of subsidized credit has created a moral hazard due to the widespread

perception (repeated again and again during interviews) that “if it comes from the government, you don’t have to repay.” Many entities involved in on-lending subsidized credit from the government have faced a stigma leading to higher default rates among their borrowers. Even some lenders that no longer receive government funding, but did at some previous time, continue to struggle with the effects of the stigma. Stakeholders explained that, particularly in urban areas, the adverse effect of defaulting on a borrower’s reputation or character is not sufficient to dissuade the practice. The lack of a credit bureau further compounds the problem because it allows for chronic defaulters, whose poor repayment histories are never recorded in a central database.

Informality. According to the IADB, roughly 40% of economic activity in Jamaica takes place in the informal sector. One stakeholder suggested that people operate in the informal sector due to both “real and perceived bureaucracy.” Although many lenders require that borrowers have a registered tax number, tax compliance is low, as discussed in a separate section of this report. Those who operate in the informal sector often fear formality or simply do not see the benefit of formalization, given the prohibitive cost in terms of time, fees, taxes, and interaction with government officials. The government has not established a clear approach in the development of the MSME sector, and policies and laws do not take into account the special needs of MSMEs. Thus, MSMEs carry a heavier compliance burden than do larger businesses. As a result of high levels of informality, the country forgoes considerable tax revenue while small, informal borrowers are constrained in their options for obtaining credit.

Vulnerability to natural disasters. Due to its location in the Caribbean, Jamaica is vulnerable each year to destructive hurricanes. Most recently, the country endured significant damage from Hurricane Dean in late August 2007. These natural disasters take their toll on businesses of all sizes, particularly agribusinesses in the rural areas. Unfortunately, apart from large landholders and businesses, crop insurance and other types of insurance are not widely available or utilized in Jamaica. During interviews, various lenders in the MSME talked about the effects of natural disasters on their borrowers. Lenders’ loan portfolios illustrate the adverse effects as default rates tend to increase in the immediate wake of a hurricane. One institution explained that it

can take 6 months after a hurricane before default rates return to their usual level.

Crime. Jamaica is well known for its struggles with crime, often related to drug trafficking and gang rivalry. Part of the underlying cause of crime is the lack of other profitable alternatives for certain segments of the population. In particular, young men may turn to crime as a way to make money quickly. Widespread crime acts as a tax on many businesses that are victimized by extortion in order to receive protection or that spend significant funds on security services. Also, due to both business risks as well as physical risks to loan officers, some institutions are reluctant to lend in high-crime areas which constrains access to credit for those populations.

Gender. In the Jamaican MSME sector, women appear to have favorable access to credit. In fact, micro lenders tend to view women as more responsible borrowers, and they often comprise 70% or more of loan portfolios. Single parent households are common in Jamaican culture, and even where couples live together, women tend to play a strong role and commonly maintain control over assets.

Recommendations

Despite the plethora of government, quasi-government, and private credit facilities, and the emergence of a viable microfinance sector, the demand for credit by MSMEs in Jamaica continues to go unsatisfied. Clearly, more needs to be done to facilitate the access to credit in Jamaica at all levels. To achieve increased availability of credit, the following is recommended:

Support development and implementation of a national policy on government credit interventions. The extensive role the government has played in lending money over the years has met with limited success. Lending programs are fragmented and there is little coordination among implementing institutions. Numerous programs seem to overlap and target the same sectors with little short- or long-term effects. Further, these programs have been plagued by allegations of political motivation and corruption. Many have suffered from poorly trained staff and collection techniques, leading to massive defaults and program losses. There is widespread belief that if funds come from the government, they do not have to be repaid. This poor attitude has bled into the private sector, and many borrowers fail to take their repayment obligations seriously.

On the other hand, government-sponsored lending or guarantees are often necessary to support high-risk areas such as the agricultural sector, where risks are perceived as so high that no other lenders will lend money at affordable rates. Yet most government lending or lending-guarantee mechanisms are financially unstable or in the process of reorganization.

If the Government hopes to play a positive role in financing the growth of the MSME sector, fundamental reform in its method of credit intervention is essential. Current ad hoc efforts must be replaced with sustainable, integrated, and coordinated efforts. In this regard, a highly detailed, well-considered national policy is needed. At a minimum, this policy would serve to:

- Establish well-defined, unified goals for government credit intervention
- Curtail politically motivated lending, through the promotion of transparency and accountability
- Limit fragmentation, gaps, and overlaps among participating entities and lending programs
- Promote coordination between the public and private sector
- Limit skewing of credit markets due to government lending activities
- Establish prudential standards for government wholesalers and retailers
- Set training and educational standards for participants
- Improve lending process and repayment rates as a means to improve credit culture.

Establish a national policy on MSMEs. Although the government of Jamaica recognizes the important role played by MSMEs in achieving the country's economic and social goals, it has not yet established a clear approach in the development of this sector. As of January 2008, the creation of such a policy may be underway. The Ministry of Industry, Investment and Commerce has invited business organizations and small business representatives to contribute to such a policy.

There is a strong need to address a wide range of issues that affect the establishment, funding, and operation of the MSME sector in Jamaica, with an eye toward easing the regulatory burdens on these entities and providing incentives rewarding

responsible treatment of loan obligations. At a minimum, a new policy should:

- Identify the institutional framework for developing the MSME sector and establish their respective areas of responsibility. This will avoid unnecessary overlap and duplication of efforts.
- Review and revise the legal framework to address the needs of the MSME sector. The regulatory framework affecting MSMEs is bureaucratic and costly and raises difficult compliance issues. As a result, most informal enterprises have failed to formalize. Informality directly affects an enterprise's ability to secure credit. Areas that should be examined include formal registration requirements, labor law, taxation, investment incentives, and trade regulations.
- Identify non-financial assistance necessary to support the development of the MSME sector. As discussed in more detail below, these include services relating to business training, marketing, technological development, and information dissemination.
- Ensure that the policy specifically addresses the various difficulties raised by MSMEs seeking credit.

Create a Credit Information System (CIS) task force. The establishment of a CIS task force would help address many of the risk-related issues that plague lending in Jamaica, including the poor credit culture. CISs, also known as credit reference bureaus, collect credit and other types of revealing data that assist credit providers in predicting the likelihood of full and timely loan repayment.

An effective CSI allows credit provider lenders to better manage risks by pricing credit according to the track record of the individual borrower. In this regard, responsible borrowers are rewarded and bad borrowers are treated less favorably. And in Jamaica, where there is a history of borrowers defaulting on loans from several institutions, a credit information system can help address these serial defaults.

These systems support not only individual lenders but also the credit system as a whole. When lenders can make well-informed credit decisions, the cost of

credit is lowered through the avoidance of bad loans. Further, reliable credit information helps to decrease the work and effort involved in the application process by limiting the amount of due diligence that lenders must conduct on individual applicants. In this regard, credit information systems can prove particularly useful to MSMEs and women, who typically have limited credit histories and assets. Through the collection of information from microfinance companies, utilities, and other credit providers, reliable borrowers can establish positive credit histories, which they can then use to access commercial loans.

The establishment of a formal credit information system has been under consideration in Jamaica for the last decade. Virtually every lender interviewed voiced an urgent need for such a facility. Unfortunately, the process of establishing a credit information system has met with a number of controversies and obstacles. Issues that need resolution include the bureau's placement, its relationship with the credit bureau in Tobago, the types of software (off the shelf or local design), and location of information storage (domestic or regionally).

As a means to promote a consensus on the credit information system, a small task force could resolve the outstanding issues. The task force should be required to present its findings and recommendations within a specific timeframe to move this project forward.

Strengthen Jamaica's system of secured transactions. The use of property, whether moveable or immovable, to secure credit decreases the risks involved in lending by increasing the probability of repayment and providing a means for satisfying the debt in the event of default. Modern secured transactions regimes based on strong laws and efficient registries have proven effective in facilitating access to credit even in jurisdictions that have weak property rights and ineffective enforcement mechanisms. The scheme is relatively simple: When the loan is made, a security interest is taken in certain property, known as "collateral." This security interest is registered in a public registry. If the borrower fails to make payment, or the loan otherwise falls into default, a lender is legally entitled to take possession of the collateral and to satisfy the debt through its sale. The public notice provided by the registry serves to establish priorities of claims that provide additional creditor protection vis-à-vis other claimants.

In Jamaica, the taking of a security interest in movable property is governed by two separate laws, depending on the status of the security provider. If the security provider is a company, the creation of a "charge" or the registration of the bill of sale is governed by the Companies Act, and to be valid, the interest must be registered within 21 days in the Company's Registry. In October 2007, 130 charges were submitted, but only 57 were registered. Filings are rejected for a number of reasons, including inadequate paperwork. On the other hand, if the security provider is an individual or partnership, security interests are governed by the Bill of Sales Act, and to be valid, must be registered with the Registrar's General Department. The Registrar's General Department also has responsibility for registering deaths, births, and similar information.

While there are some delays in registration, both registries are working to decrease filing time. For example, the average time for filing charges in the Company's Registry has been decreased from 10 to 5 business days. Further, as a means of avoiding the delays and costs of seeking a court order, loan and collateral contracts typically contain provisions that allow repossession without court intervention. Accordingly, lenders who take movable property as collateral for loans generally voiced favorable opinions of the existing laws, process, and applicable registry.

However, there is a lack of understanding with respect to the benefits a modern, secured-transactions regime can provide. The current secured transactions regime, including the applicable laws and method of registration, does not comply with international best practices as it accommodates opportunity for fraud. Both laws are out-of-date and need modernization. For example, the applicable provisions of the Companies Act require registration of all charges as a condition to their validity. Registration should not be a condition to validity, only a means for establishing priority of claims, with respect to the other claimant. Another concern is raised by the rules on priorities, which are vague and unclear as they pertain to other security interest. Most troubling is the fact that there is a 42-day period within which the charge may be registered without giving up the priority position. This matter is of particular concern, because upon registration legal protection relates back to the date the subject agreement was created.

The Sale of Goods Act contains different but equally unacceptable provisions that limit its usefulness. Specifically, it is unnecessarily limited in scope; requires the filing of unnecessary information that can quickly become outdated; contains "renewal" provisions that can be used to defeat valid liens; fails to state rules governing default and enforcement; and requires the attestation of filings.

The historical basis for registering these interests differently, if there ever was one, is no longer valid, and the continuation of this bifurcated approach is unnecessary. Jamaica needs an inexpensive, comprehensive system of collateral lending that is open to all potential lenders and borrowers. The system must include rapid, out-of-court enforcement capacity to ensure success. Such a system will open up the access to credit to those who have no interest in land as well as to those who have limited credit history.

Promote financial leasing. Modern asset-based leasing may be another option for extending credit in Jamaica, especially for businesses and individuals who have limited credit history or few assets to use as collateral.

Under the terms of a financial lease arrangement, the lender (lessor) finances the sale of an asset to a borrower (lessee) who makes periodic payments similar to that of an ordinary lease. Over the course of the lease, the lessor retains legal title to the asset and, in the event of default, simply retrieves the asset from the lessee. If the lessee refuses to surrender possession of the property, the police will assist the lessor in the recovery. At the end of the lease term, the lessee makes a final payment to finalize the purchase and acquires legal title. Financial leasing allows borrowers who might otherwise be ineligible for financing to purchase assets without making a large down payment. In addition to retaining title to the property until the lease is paid in full, lessors derive additional benefits from the depreciation of the asset.

There are currently three asset management companies engaged in a form of leasing under the Hire-Purchase Act. These arrangements are typically limited to high-priced vehicles and equipment that retain their value over time. A modern leasing law would help provide additional security to the practice, and modifications to the tax law would provide greater incentives for leasing.

The leasing industry would also benefit from the establishment of a modern secured transactions regime on movable property. Specifically, leases would be eligible for registration in the movable property registry and thereafter easily located, thus decreasing the possibility of fraud due to unauthorized asset resale and unknown liens.

Continue to support technology. Lenders at all levels express interest in new technology as a means of overcoming the expense of lending to and inconvenience of servicing the rural areas.

Jamaica has taken a major step in developing its e-commerce capabilities through the enactment of the Electronic Transfer Act. The Electronic Transfer Act is part of the government's Electronic Transactions Policy. The Act is intended to create an effective regulatory framework to promote and enable local online business activity.⁴⁷ Unfortunately, there are several companion pieces of legislation that must be drafted, revised, and/or enacted before the Electronic Transfer Act can reach its full potential. These include the Data Protection Bill, Cyber Crime Bill, and legislation that will validate online signatures.

While still in the nascent stage, Jamaica should pursue its e-commerce efforts as a means of expanding the reach of existing financial services and lowering their respective costs.

Support business development services. Availability and access to information, mentoring, and advisory and consulting services are as important to MSME development as access to financial services. Non-financial services, when appropriately applied, will help improve the skills and capabilities of entrepreneurs and the professional staff and employees of MSMEs.

As part of the national policy on MSMEs and/or government credit intervention previously recommended, the government should specifically address the need for non-financial business development assistance to the MSME sector.

Encourage private sector support of a venture capital fund. While technically not an access to credit issue, the lack of start-up capital for MSMEs hinders the development of the sector. To qualify for most loan programs, applicants must provide

⁴⁷ See Jamaican Ministry of Commerce, Science, & Technology, Electronic Transactions Policy, available at: <http://unpan1.un.org/intradoc/groups/public/documents/CAR/ICAD/UNPAN009914.pdf>.

verification that they have been in operation for a period of 6 months to a year. Currently, the EU-sponsored PSDP offers assistance to access corporate finance by facilitating MSME finance from larger segments of Jamaica's financial services sector. Other efforts to provide venture capital funds have seen limited success. These efforts may have been premature due to the lack of a viable microfinance sector. A new venture capital fund, supported by the Jamaican private sector, may be timely.

Dealing with Licenses

Construction Licensing Reform

Introduction

The public licensing of building initiatives — small, medium, and large construction projects that involve the use of land, community infrastructure, and resources, and even public safety — is a legitimate and necessary government function. Failure of a government to license projects in a sound and consistent manner can result in veritable disaster. The 1999 earthquake in Koacaeli, Turkey collapsed more than 20,000 buildings, resulting in more than 17,000 deaths and at least 250,000 people temporarily or permanently displaced. The disaster ultimately revealed the government's negligence with respect to issuing construction licenses and failing to enforce building codes that were designed to provide far better protection against natural disaster. In China, the poor quality of air that has resulted largely from lax government engagement in regulating emissions from power plants and heavy industry threatens to undermine, in the short term, the 2008 Summer Olympics, and, in the long term, the health of the Chinese people.

On the other hand, too much regulation, or regulation that is inconsistent, sluggish in implementation, or poorly executed is an enormous problem for an economy, as the World Bank's *Doing Business* initiative has exhaustively exhibited in recent years. It is now well established that countries that offer a business-friendly regulatory environment grow faster.⁴⁸ Such an environment comprises a relatively simple and clear set of rules and processes for launching a construction project, including the creation of a clear set of laws and regulations, along with a "one-stop shop" of government agencies that participate in the licensing process. It also involves a willingness of government to *refrain* from regulating

⁴⁸ Simeon Djankov, Caralee McLiesh, Rita Ramalho, Regulation and Growth (World Bank, March 17, 2006).

certain aspects of the market. For example, countries that do not bestow national and local authorities with duplicative or ultra-discretionary licensing powers are considered more business-friendly than those that do the opposite. There is much to be learned from societies that balance the critical needs of government oversight against those of economic growth.

In Jamaica, the private sector has resoundingly called for improvement in the long and fragmented process through which public institutions, including over 15 national agencies and the 13 Parish Councils, review and issue development licenses and environmental permits to builders. There is no debate over where the room for improvement exists: As *Doing Business in 2008* documents, the process for obtaining approval for a construction project in Jamaica can take around 210 days, a period far longer than is optimal or necessary.⁴⁹

The new government has responded to calls for reform, with the Prime Minister recently announcing his intent for the government to enforce a 90-day time limit in which applicants for a license or permit are informed of either a positive or negative finding. At this time, the Legislation and Regulations ("Legs and Regs") Committee of the Jamaica Chamber of Commerce is actively pressing for individual agency and Parish Council accountability with respect to their individual roles in the existing licensing process. The recent experience of joint private and public sector engagement on this issue is positive, and lessons learned from this ongoing initiative may benefit other reform projects in the future.

That said, those involved in the reform process should hear one prominent observer's warning: Do not merely speed up a system that is flawed, particularly where the existing building code is

Dealing with Licenses	
<i>Doing Business in 2008</i>	
Rankings	
World (178 Countries Surveyed)	74
Region (31 Countries Surveyed)	14
BizCLIR Indicator Scores	
Legal Framework	3.14
Implementing Institutions	3.45
Supporting Institutions	4.3
Social Dynamics	4.125

⁴⁹ See *Doing Business in 2008, Dealing with Licenses (Jamaica)*, at <http://www.doingbusiness.org/ExploreTopics/DealingLicenses/Details.aspx?economyid=97>. (Although the process noted in *Doing Business* refers to action by the Parish Council, that action in most instances largely depends on the functioning of Jamaica's web of national institutions that are involved in the construction licensing process.)

concerned. The disparity among local building codes throughout the country not only leads to confusion and inconsistency among standards that are expected and applied but also enables the use of outdated standards and poor construction practices to persist. Moreover, although this inquiry did not closely examine the process of building inspections — that is, mandatory checks of licensed development projects by national and local agencies for compliance with building codes and other regulations — it is an issue that warrants close examination along with the continued emphasis on speeding up the licensing process. In other words, there should be a reinforced commitment within both the private and public sectors to the quality and integrity of construction processes. The overall goal should be efficiency that is balanced with sound, long-term planning; public health and safety; and preservation of Jamaica's natural resources.

Legal Framework

Any construction licensing regime involves a variety of national and local government institutions. International best practice centers on accessibility, clarity, and consistency of quality laws and regulations as well as integration of licensing functions across regulatory agencies. That is, the public should have little trouble identifying where the laws and regulations are maintained in an up-to-date fashion and discerning what they say and mean in practice. In turn, those agencies charged with enforcing the law must be equipped, willing, and able to coordinate their respective licensing processes. The ultimate goal of a legal framework is to effectively balance opportunities for economic growth and development with a society's long-term interest in sound management of shared resources and public safety.

Access and clarity. In Jamaica, although access to law and regulation pertaining to the construction licensing process has recently improved, the content of the laws and regulations themselves needs significant revisiting for clarity, consistency, and quality. Strengthening the legal framework is a prerequisite for improvement to the integration and efficiency of licensing functions among agencies.

Jamaica's Ministry of Justice has successfully placed almost all of its laws online, a notable accomplishment that many other lower middle-income countries have been encouraged to follow. Reconciling various pieces of legislation, or simply

identifying which laws are applicable when applying for a construction license, is not so simple, however.

At least 35 laws and hundreds of regulations pertain directly or indirectly to land use in Jamaica

The legal framework overlaying Jamaica's construction licensing regime is vast — at least 35 laws and hundreds of regulations pertain directly or indirectly to land use in Jamaica. One recent achievement is the creation of a comprehensive, loose-leaf Development and Investment Manual (“Developers Manual”). A USAID-sponsored project of the Jamaica Chamber of Commerce (JCC), in partnership with the government of Jamaica, the Developers' Manual was created for the purpose of clarifying and improving access to the statutory and regulatory framework implicated by the development process. The process of collecting all pertinent laws and regulations proved long and challenging: “[During the process] we discovered just how much was in peoples' heads” rather than in the law itself, according to one public official.

Following this long and challenging undertaking, several volumes of the Developers Manual (with others planned for the future) were issued in mid-2007, covering the following topics:

- Planning and Development (eight sections)
- Environment (two sections)
- Infrastructure, Utilities, and Communications (11 sections to be published at a later date)
- Hospitality Industry and Security (two sections to be published at a later date)
- Social Infrastructure and Waste Disposal (eight sections to be published at a later date)
- Business Facilitation (14 sections)
- Finance (10 sections).

As the JCC notes in its introduction to the Manual, the collection of all the relevant laws and regulations represents merely a first step to reform of Jamaica's construction licensing process. The JCC anticipates that a critical “second stage” is necessary — that is, “a thorough review of the processes . . . to ensure that all redundancies and duplications, as well as outdated or irrelevant procedures are excised, and that business-friendly procedures are put in their

stead.”⁵⁰ This suggestion is enormously important, for it implies a major and comprehensive overhaul of the construction licensing regime. Government and donor support for such an initiative is warranted and can take place in a series of stages, as detailed in this chapter’s recommendations.

In the meantime, accessibility to the Developer’s Manual is limited and could be improved through strengthened publication on the web and more extensive distribution among Jamaican businesses. Although there is strong awareness of the Developer’s Manual within national institutions and Kingston’s business community, there appears to be significantly less awareness in other places in the country.

Consistency and quality.

The major sources of authority involved with construction permits and licenses include the following, but several more exist.⁵¹

- The Natural Resources Conservation Authority Act (1991)
- The Town and Country Planning Act (1958)
- The Land Development and Utilization Act (1976)
- The Local Improvement Act (1914)
- The Beach Control Act (1956)
- The Watershed Protection Act (1963)
- The Wild Life Protection Act (1945)
- National Solid Waste Management Act (2002)
- Road Traffic Act (1938)

- Urban Development Corporation Act (1968).

Much could be done to improve the consistency and quality of the statutory authority underlying most of

these laws. First, a general review reveals that they typically are not sufficiently clear about their overall objectives. They generally lack preambles that set forth their fundamental purposes, statements that could be an important indication of legislative intent which may later guide implementing authorities who are attempting to reconcile apparent conflicts.

The laws also appear to be duplicative with respect to the areas that they address. For example, numerous agencies in Jamaica are involved in one or more facets of natural resources management. This is not a problem, *per se*, but a comprehensive review of the laws and their supporting regulations would be useful toward understanding where overlaps or conflicts in law exist.

Also, the laws, some of which date back prior to Jamaican independence, have generally proven unable to keep up with what appears to be a routinely changing organization of ministries and agencies. For example, none of the laws even mention the National

Environment and Planning Agency (NEPA), the institution charged with facilitating the licensing of most construction projects. NEPA is a relatively recent result of a 2001 consolidation of the National Resources Conservation Authority, the Town Planning Department, and the Land Development and Utilization Department, which occurred as part of a Public Sector Modernization Program. There is, as discussed later in this report, an expectation that NEPA will be divided in the near future to separate its two main functions: (a) planning and (b) environmental protection.

In addition to local planning authorities, an array of national agencies may be consulted or otherwise involved in the process of reviewing an application for a construction permit or environmental license.

- Civil Aviation Authority
- Community Development and Sports
- HEART Trust/NTA
- Jamaica Bauxite Institute
- Jamaica Customs
- Jamaica National Heritage Trust
- Jamaica Public Service Company Limited
- Meteorological Services
- Mines and Geology Division
- Ministry of Agriculture and Lands
- Ministry of Health — Environmental Health Unit
- Ministry of Land and Environment
- Ministry of Local Government
- National Environment and Planning Agency
- National Irrigation Commission
- National Land Agency
- National Solid Waste Management Authority
- National Water Commission
- National Works Agency
- Natural Resources Conservation Authority
- Office of Disaster Preparedness and Emergency Management
- Office of the Prime Minister
- Pesticides Control Authority
- Spectrum Management Authority
- Tourism Product Development Company
- Urban Development Corporation
- Water Resources Authority

⁵⁰ Development and Investment Manual, Introduction, Message from the Jamaican Chamber of Commerce (May 2007) at 5.

⁵¹ Dates noted refer to when the law was originally enacted, as best discerned from online sources. Almost all of the laws listed here have undergone amendments since they were enacted, some on several occasions.

As noted, other than through the Developer's Manual, the regulatory authority for all ministry or agency functions pertaining to the licensing process is not easily accessible. Nor, even when consulting the Manual itself, are the regulations particularly easy to reconcile or understand. In particular, sequencing of regulatory activity and time limits for action on the part of agencies involved in the licensing process are rarely identified with certainty. Most agencies are not bound by any specific timeframes with respect to administering their part of the licensing or permitting process.

The construction licensing process. Notwithstanding the lack of transparency of Jamaica's legal framework for construction licensing, it can be said that implementing agencies, NEPA in particular, have taken important steps to bring clarity to the process. There also is a community of practitioners that generally understands the fundamentals of the process. In short, the relative complexity of Jamaica's construction licensing process typically turns on the size and scope of the project. According to materials posted on the NEPA website,⁵² there are three general types of licenses and permits, pertaining to one of the following:

- Subdivisions
- Environmental
- Planning.

Subdivisions. Applications for subdivision licenses are generally divided into smaller projects involving the construction of nine units or fewer and larger projects that involve concerns over environmental preservation or natural resources management and that therefore require an environmental permit. Applications are generally first submitted to a Local Planning Authority (Parish Council/LPA) and then forwarded to NEPA with an inspection report and

recommendation for action. Applications for subdivisions cover four types of building:

- Residential
- Commercial
- Agricultural
- Industrial.

Consideration of a construction project, whether a subdivision or another type, may implicate the following issues:

- Zoning
- Urban Limits
- Retention of Agricultural Lands
- Lot Size
- Ingress
- Egress
- Traffic Flow
- Density
- Setbacks from Roads, Gullies, Canals, Coastal Zones, etc.
- Open Space
- Parking
- Drainage
- Biological Resources
- Water Resources
- Protected Areas
- Sewage Treatment and Disposal
- Solid Waste Disposal
- Public Health
- Natural Hazards
- Air Quality
- Infrastructure

With respect to any of these types of development, NEPA may investigate a wide variety of issues implicated by the use of the land (see box on this page). Although NEPA is the agency charged with receiving an application for a construction license, it is hardly the only national agency involved. NEPA distributes the application to up to (and sometimes more than) 15 agencies concerned with the licensing process (see box on previous page). Significantly, NEPA has no authority to force another agency to act on an application. Indeed, one of the major complaints about the construction licensing process is that it can become bogged down in one of the other agencies, with NEPA unable to expedite the process.

Under the coordination of NEPA, the following groups review subdivision applications:

- Technical branches within NEPA. These branches, often concerned with the environmental impact of a project, may perform site visits or other research.
- An Internal Review Committee, which makes sure that the project adheres to all components of the application process.
- A Subdivision Committee, which comprises mostly external members, for which NEPA provides administrative support.

The Subdivision Committee reviews and acts on applications for larger subdivisions only (those consisting of 10 units or more). The recommendation of the Subdivision Committee is forwarded to the LPA, which has the final say on whether an application is granted. LPA decisions are subject to appeal to the Minister of Health and Environment. The job of monitoring and enforcing a subdivision permit belongs with the LPA.

⁵² See, e.g., NEPA, "The Application Process" (presentation prepared for Application Customers' Awareness Day, June 6, 2006).

Environmental and planning permits and licenses. An environmental or planning permit is required for the following:

- At least 44 prescribed categories of permits (most industrial and commercial projects, and larger residential projects, are covered by these categories)
- Trade and sewage effluent licenses
- Beach licenses
- Licenses pertaining to endangered species
- Licenses pertaining to trans-boundary movement of hazardous waste.

NEPA handles all applications for environmental permits but must rely on the input of other agencies. NEPA spearheads an environmental impact analysis, but this may also require the input of other agencies. In addition to a review that includes NEPA's technical branches, an Internal Review Committee, and a technical committee consisting mainly of outside agencies, the applications are reviewed by the Natural Resources Conservation Authority, which is housed within NEPA. Appeals are directed to the Minister of Health and Environment. NEPA has the authority to revoke or suspend any environmental or planning permit where stipulated conditions are not upheld. NEPA is charged with monitoring holders of environmental permits, and holders of permits must submit regular compliance reports.

Jamaica's Building Code. Applicants for a construction license in Jamaica commit to adhering to applicable building codes, which in fact means local building codes, because no national building code exists. At this time, there are building by-laws in each of the parishes and in Kingston-St. Andrew. In 1984, a national building code was drafted and distributed for comment within the public and private sectors, but it was never adopted. In 2001, another proposed code was circulated for review, but as of 2007, a national building code was still in draft form. Various constituencies are participating in the so-called "consultative stage" of preparing a national building code, including the institutes of architects and engineers, a joint industry council on construction, the Prime Minister's office, and the Ministry of Construction. A New Building Act, which would likely mandate the development and use of the national building code, is now on the government's legislative agenda and may be passed in 2008.

Developers and public sector officials acknowledge the "great need to standardize the building code[s]" in Jamaica. There is enormous concern that Jamaica is allowing, at least in some areas, the construction of poor-quality buildings — ones that, if not exactly unsafe, do not meet modern expectations of electrical capacity, environmental friendliness, or materials quality. The absence of building code uniformity in Jamaica can create a poor impression in the minds of outsiders who may be interested in investing in or insuring new construction, but who seek greater uniformity, clarity, and, most importantly, confidence that buildings constructed in Jamaica will be safe and structurally sound.

Enactment of a national building code is an issue in which consultation with other Caribbean nations would be useful. There already exists a Caribbean Uniform Building Code, which was developed in recent years to provide appropriate building standards for the Caribbean region. The Organization of East Caribbean States (OECS) has also developed a model building code, which has been adapted by several of the OECS members. In addition, the Organization of American States has significant experience in providing technical assistance with respect to building codes.

Implementing Institutions

NEPA. Since 2001, when it was formed as part of the Public Sector Modernization Program, NEPA has held the joint role of handling applications for both construction licenses and environmental permits. This joint responsibility, which was conceived for the purpose of encouraging efficiency, has resulted in some negative perceptions about the conflict inherent in facilitating national development through construction *and* in protecting the environment. Thus, the new government reportedly plans to split NEPA's core functions in the future, keeping the planning function in a single agency but likely returning the environmental portfolio to Ministry status. A new Environmental and Planning Authorities Act is envisioned for the first half of 2008, which is expected to enact this change. Considerably more legislative changes are warranted, however, to improve the construction licensing process.

In recent years, NEPA has proven responsive to calls from the private sector to improve its efficiency in handling applications for construction licenses and environmental permits. For example, as the JCC's "Legs and Regs" committee has pursued

simplification of the construction licensing process, NEPA has responded by reengineering its internal activities to streamline and speed the licensing process. Such efforts have included:

- More frequent meetings of the Subdivision Committees and the technical committees
- More pro-active facilitation of applicant inquiries and need for information, such as a more dynamic website
- Bifurcation of construction projects into first-tier and second-tier status so that simpler projects can be moved faster
- More staff.

In addition to these changes, NEPA has implemented new technologies, chiefly the so-called AMANDA system, an off-the-shelf, internationally recognized data maintenance and protection system that has been integrated into NEPA's application process. The new system will be open for public use later in 2008. Among its advantages, AMANDA reduces individual staff discretion and opportunities for error on the part of NEPA employees.

Improvements to NEPA's internal workings — particularly its willingness to communicate with its customers — have been noted and welcomed by professional communities that participate in the licensing process, including the country's organizations of architects and engineers. These same groups suggest that NEPA work to improve its public image by notifying its constituents and working through the media to inform the public about its process improvements.

A concern held by both the private sector and NEPA is the readiness of certain groups, particularly older professionals who have not been trained in such techniques as electronic drawing or mapping, to take advantage of the new system.

At this time, two facts diminish the effectiveness of NEPA, both of which must be addressed in future reforms.

NEPA, as the country's pre-eminent planning authority, does not have adequate power to push forward construction license and environmental permit applications in a timely fashion. Although NEPA has endeavored to streamline its own internal workings, it has little influence of how quickly other key agencies, such as the **National Works Agency** or the **National Housing Trust**, will respond to an application, nor over the activities of the LPA.

Although the role of the LPA may not be diminished in the near term — construction licensing is likely to remain at least in part in the province of local authorities — there surely can be reform to national legislation or regulation that clearly designates timeframes under which failure to act on the part of an agency means that NEPA can move forward with the entire process. At this time, NEPA is unable to do so. The LPAs require certain official approvals from other government agencies that cannot be substituted by action from NEPA.

Second, a tour of NEPA's facilities reveals that the agency is being asked to implement critical 21st century functions — ranging from sophisticated mapping functions to environmental stewardship — in a facility that remains stuck in the 1970s. Although Jamaica's debt crisis has precluded the country from investing in many of its public buildings and offices, the status quo is likely to delay reform for the immediate future. The expensive, sophisticated equipment that is being used to streamline and standardize NEPA activities cannot thrive for much longer in a work environment that has antiquated electrical capacity, poor ventilation, and overcrowded staff quarters. If nothing else, the outdated and physically uncomfortable work environment will discourage capable professionals from seeking to work at the agency.

Parish Councils (Local Planning Authorities) hold a key role in the construction licensing process. Although NEPA facilitates much of the critical work with respect to reviewing an application, the LPA is the ultimate decider of whether a development project takes place within Parish boundaries.

As a threshold matter, one issue that is "bigger" than construction licenses, but certainly influences it heavily, is the practicality of Jamaica's maintaining 14 individual LPAs. Reforms to the Parishes have been initiated by the new government and the IADB has long supported capacity-building within the Parishes, but national government commitment has been uneven over the years and progress has been limited. Some observers contend that, through use of new technologies, the work of certain Parishes could be consolidated and there could be greater integration of Parish work with various national functions. Automation of the construction licensing process, for example, is one example where national cooperation with local authorities is greatly warranted.

It is significant that LPAs are legally authorized to handle certain development projects without engaging NEPA or other national authorities. Various private-sector observers have questioned whether the duplication of these functions should be permitted in the future — an issue that should be considered in future legislative analysis.

Just as national implementing institutions such as NEPA suffer from a lack of resources and adequate infrastructure, the LPAs, in general, are not adequately housed, staffed, and supported.

Other public

agencies. As the JCC found while compiling its Developers Manual, a vast array of public agencies are involved to some degree in the licensing process. Time allotted for this diagnostic did not permit visits to or significant consultation with representatives of

other public agencies that are directly involved in the construction licensing process (and listed in this chapter's section on Legal Framework). The responsiveness to outside input demonstrated by NEPA was enormously promising, although other agencies do not experience the same immediate pressures for quick outcomes on construction applications. One suggestion emphasized by the JCC is that, within each agency that is significantly concerned with the construction licensing process, a champion for reform should be identified and charged with working toward process improvement with the other concerned agencies and constituencies.

One of the goals enunciated by the new government is the creation of a "one-stop shop" to manage the diverse roles played by the agencies that are involved in the licensing process. Other countries have done this successfully, using both regulatory and institutional reform to more effectively integrate their functions. The **Public Sector Modernization Office** is a unit of the Prime Minister's Office that may prove critical in launching and implementing the one-stop shop. That office is committed to realizing the Prime Minister's goal of guaranteeing an "up or

down" construction licensing decision within 90 days of the submission of an application. At this time, NEPA is awaiting the appointment of a single board that may take the place of individual committees involved in the licensing process. This single board may serve as the first step toward the creation of an effective one-stop shop.

Supporting Institutions

Jamaica Chamber of Commerce. The JCC is a

long-established organization of businesses that is highly active in the construction licensing reform process. For several years, the JCC has actively promoted greater transparency and public understanding of the process. The promulgation of the Developers Manual, with the support of USAID, is an important accomplishment that can serve as the grounds for further reform in the future. Namely, for the first time, the JCC succeeded in

capturing all aspects of the construction permitting and licensing process by collecting the applicable laws and regulations from all government agencies that play a role in the process.

The JCC understands the next steps — helping to streamline the existing construction licensing process; preparing relevant new legislation; and educating its membership about changes in the law and procedures. It is currently in the process of identifying a "critical path" toward overall reform. This path promises to be multi-faceted and to suggest a sequencing of reforms in the laws, regulations, national and local implementing institutions, and performance of the business community to achieve the overall goal of a 90-day process.

The building development community.

Numerous organizations represent the interests of developers in Jamaica. One point underscored by the community's representatives that should be considered over the course of any legislative review process concerns the legislative definition of the term "development." The developers believe that the Local Improvement Act in particular defines the

The UK Planning Portal: An International Best Practice

The Planning Portal is the United Kingdom Government's online planning and building regulations resource for England and Wales. The comprehensive website, located at <http://www.planningportal.gov.uk/>, provides users with information about planning and building regulations, accepts applications for planning permission, informs community members about ongoing developments, provides a mechanism for appeal, and provides significant research information about government policy. The site demonstrates how, with clarity, access, and integration, public institutions can present a fair and well-received process for construction licensing.

term “development” too broadly, purportedly requiring that even non-obtrusive construction undergo the licensing and permitting process and argue that the definition in Jamaica is outmoded. Whether this is the case is worth considering against a set of definitions found in analogous legislation in other countries.

Lawyers. The supply of lawyers who are sufficiently knowledgeable to navigate Jamaica's complex licensing process is relatively low. The Developer's Manual is a strong and important resource toward remedying this situation, and can be the basis for training and educating law students in the future. In the future, the Manual can be a teaching guide, both for local law students and for lawyers seeking continuing legal education in the field.

Architects and Engineers. These professional organizations are well organized and play an active role in training their membership; representing their membership's interest before local and national authorities; participating in the Building Code development process; and other proactive measures that support a strengthened permits and licenses environment. These professions also have a relatively strong foundation of expertise based in two of the nation's universities, the University of Technology and the University of the West Indies.

Social Dynamics

To an extent greater than that found in land titling, tax reform, or even access to credit for MSMEs, there is significant momentum in the construction licensing reform arena that not only promises some likely successes on that issue, but also sets an example for future achievements in public-private partnership.

The role of the JCC is instructive. Where the private sector mobilizes through the active and sustained involvement of individual members in policy discussion and development, the government has been responsive. The JCC has been disciplined and methodical about convening with public agencies and articulating its needs, as well as recording notable changes in the process. In response, national public agencies, particularly the Office of the Prime Minister and NEPA, have met the call for more streamlined, effective government. The next stage of reform will necessarily involve greater engagement of related agencies as well as the LPAs, which will be an administrative challenge for all parties involved.

It does appear that the strongest push for legislative and regulatory reform comes from businesses based in Kingston. The environment for dialogue can be enhanced through continued efforts to bring businesses based in different locales into the national discussion.

According to several authorities, one significant problem resulting from Jamaica's relatively complex system of construction licensing is that the law is routinely ignored and by-passed by less scrupulous developers. There are many anecdotal reports of individual or corporate developers engaging in construction before they have sought or received any licenses or permits. These actors reportedly ask for exemptions from the licensing process after the building is largely underway or complete. It is further alleged that such activity is typically the product of ill-gotten or laundered money, some of which may be used to pay off a public official who would otherwise seek to enforce the law. Such activity, if not actively reported and otherwise discouraged by the private sector, as well as prosecuted by the public sector, may sour the public's confidence in the good will of developers.

Indeed, Jamaica's showing with respect to perceptions of corruption in the public sector is not good. Under Transparency International's most recent Corruption Perception Index, Jamaica ranks 74th out of 179 countries surveyed.⁵³ Although this rank compares relatively favorably to other countries, the score of 3.3 on a 1–10 scale is unworthy of a public sector that should be pressing for the economic and social development of its people. In particular, this perception of corruption throws into doubt the integrity of the process of post-license building inspections. Where there is an impression that building inspectors can be “bought off,” confidence in the soundness of Jamaican construction suffers and a sense of security is compromised. Particularly in a region that so often is threatened with natural forces that challenge the strength of buildings, yet one that also relies heavily on tourism, this is an impression that Jamaica cannot afford to allow persist.

Another dynamic that should not be overlooked in Jamaica is its place within the Caribbean Single Market and Economy, which carries with it important responsibilities and opportunities. To the

⁵³ Transparency International, Corruption Perceptions Index (2007), at http://www.transparency.org/policy_research/surveys_indices/cpi/2007.

extent that Jamaica is able to harmonize its practices with other countries in the region, the more attractive the Caribbean becomes as a regional investment destination.

Recommendations

Based on these findings, the following is recommended:

Support and analyze lessons learned from continued private sector engagement in public sector reform. The current model in which private sector representatives — including business people, lawyers, developers, architects, engineers, and other interested stakeholders — work closely with government agencies to clarify their needs and make proposals for construction licensing reform is an excellent example of public-private cooperation, which should be encouraged and continued. The experience in the construction licensing arena can be carried forward in other future reform efforts, including those directed toward land titling, tax, and MSMEs. An analysis of the process underway would be instructive to other donor-support projects, both within and beyond Jamaica, in the future.

Use the USAID/Jamaica Chamber of Commerce Developers Manual as the basis for a short-term “regulatory guillotine” evaluation. The JCC’s effort to bring clarity to the development approval process can be taken one step further in the near future. Namely, in the short term, an analysis of the manual can lead to the implementation of a “regulatory guillotine.”⁵⁴ That is, a committee composed of public and private sector representatives can ask, with respect to each of the procedures set forth in the manual (and additional ones that may come to its attention in the process): (a) What is the legal authority for the regulation?; (b) Is the regulation necessary?; and (c) Is the regulation business-friendly (and, if not, how can it be improved)? This exercise can lead to a clear agenda for legislative and regulatory changes — one that would provide needed detail to the critical path analysis the JCC is preparing — that will be necessary for long-term reform of the development licensing process.

With respect to implementation of both the initial regulatory analysis and the proposed legislative or regulatory changes, success depends on the presence of the following:

- *A clear political commitment* to identify all regulations involved with the process and to recommend eliminating or amending those that are illegal, unnecessary, or unfriendly to business.
- *An independent review body* that sets the analysis apart from the undue influence of line ministries that may have an interest in preserving unnecessary or duplicative procedures.
- *Identification of how incentives for agencies to prolong unnecessary regulations can be removed.* For example, fees that a regulating agency collects should be no greater than the basic administrative cost of carrying out such a function. Where a review committee finds fee structures that do not fit this premise, it should recommend a change.
- *A transparent and rapid review process.* Both public and private stakeholders should be consulted and otherwise allowed to contribute to the process, and they should be informed of the review body’s findings and the reasons for its decisions.
- *An ability to measure cost-savings* or other results from the proposed elimination or streamlining of regulations should be established.

According to Jacobs and Associates, a “guillotine” process can take as few as 4 months and as long as 18 months.⁵⁵ The process in Jamaica would likely fall on the shorter end of this range, due to: (a) the relatively limited scope of such an inquiry — that is, emphasis on the construction licensing process specifically, rather than on the country’s regulatory and licensing environment as a whole; and (b) the existence of the Developer’s Manual, which has succeeded in gathering much of the necessary data on which such a process can be based. That said, the guillotine process should involve not only the licensing process, but also the compilation and review of all regulations pertaining to post-license inspections. To the extent that this information is not yet found in the Developer’s Manual, it should be gathered and considered.

⁵⁴ The term “regulatory guillotine” is a trademark of Jacobs and Associates (see <http://www.regulatoryreform.com/Guillotine.htm>) and refers generally here to the exercise of identifying regulations ripe for streamlining or elimination through the above-described, three-part process.

⁵⁵ Jacobs and Associates, “The Regulatory Guillotine: A National Commitment to Better Regulation” (undated) at <http://www.regulatoryreform.com/pdfs/Regulatory%20Guillotine%20Flyer%20August%202007.pdf>.

Countries that have undergone a regulatory guillotine process include Korea, Mexico, Moldova, Ukraine, Bosnia, and Croatia. The number of regulations eliminated through the processes in these countries range from around 20% to nearly 50% of those regulations reviewed. The number of regulations simplified as a result of such a process range from around 7% to as high as 23%.

Create a legislative, regulatory, and institutional reform program that addresses reforms necessary to meet the 90-day goal.

Once a “regulatory guillotine” analysis has taken place, along with other critical path analyses pertaining to the workings of relevant institutions, a general foundation for legal, regulatory, and institutional change will be established, and the reform emphasis will turn to changing the laws and regulations. To realize the necessary changes in a short amount of time, continued public-private partnering is critical and educating legislators and other stakeholders will also be necessary. The following concepts should be addressed in a legislative, regulatory, and institutional reform program:

- The separation of NEPA’s environmental and planning functions
- The creation and operation of an integrated “one-stop shop” for construction licenses
- The implementation of the guillotine — that is, consensus-building and training of implementers who may find that their roles under a streamlined procedure have changed
- A “silence equals consent” rule — the implementation of a rule stating that failure of an agency to act on an issue within a designated period of time may be regarded by other agencies involved in the process (including LPAs) as consent to the proposed project
- A timetable and plan for creation of a National Building Law and commensurate national building code
- An agenda for streamlining the construction licensing functions of Local Planning Authorities
- A program for training various constituencies in the changes in the legal, regulatory, and institutional environment.

Seek sponsorship for the upgrade of NEPA facilities (or the office space of those

agencies/ministries ultimately designated to handle applications for construction licenses and environmental permits.) As noted, the sophisticated equipment that NEPA uses to streamline and standardize its activities cannot thrive in a work environment that has antiquated electrical capacity, poor ventilation, and overcrowded staff quarters. As Jamaica begins to overcome its fiscal problems, greater attention should be dedicated to ensuring that public offices and facilities charged with facilitating economic development are themselves up to the task. On a broader level, one service the donor community could provide is a survey of public agency capacities and needs. A list of priorities can emerge from such a survey.

Implement the one-stop shop, including an integrated, online “planning portal” and other agency-integration methods. A revised legal and regulatory regime will carry with it the important matter of implementation. There are many technology solutions that can make the construction licensing process accessible, understandable, transparent, and relatively speedy. A “planning portal,” such as the one implemented in Great Britain (and noted in the box on page 48), would be a welcome initiative. But other issues must be addressed further, such as the noted space and technology concerns of implementing agencies and the capacity of Parishes to implement the new regimes.

Legislative Process

Introduction

There is consensus among key observers interviewed for this diagnostic — including academics, former politicians, representatives from civil society and others — that parliamentary checks on Jamaica's executive branch are inadequate. There is hope that the newly elected government will implement several of the recommendations by various commissions, task forces, and joint select committees to strengthen the parliament's ability to play a more effective role in Jamaica's governance. In his inaugural speech, the prime minister (PM) stated that he would make it a priority to create a new framework for good governance in Jamaica. Specifically, he emphasized the curtailment of powers of the executive and the strengthening of parliament, so that the latter can exert greater control over the government.⁵⁶

Over the past decade there has been recognition and consensus by the main political parties that the Jamaican legislature has been operating in an “18th-century capacity” and is ill-equipped to legislate, debate, or exercise oversight of economic reforms required for the 21st century. The stagnation of policymaking and legislative process in Jamaica can be attributed to the concentration of legislative powers in the executive and the inability of the legislature to hold the government accountable. The absence of an effective opposition that constructively challenges the executive's agenda and oversees the adoption of new economic policies has resulted in policy outcomes that have strengthened specific interest groups affiliated with the ruling party at the expense of others. The parliament does not have an investigative arm, one analogous to the Government Accountability Office (GAO) in the United States, to review the activities of the executive branch to help improve economic program performance. In the absence of independent oversight mechanisms, the executive (that is, the ruling party) has unrestricted ability to distribute selective and personal favors to its supporters. The absence of impartial monitoring or an independent oversight body has led to ineffective and discretionary implementation of policies in Jamaica.

Constitutional reform has been on the public agenda for over a decade. There is consensus among the political parties in favor of strengthening Jamaica's national democratic systems, which include the following measures:

Over the past decade there has been recognition and consensus by the main political parties that the Jamaican legislature has been operating in an “18th-century capacity”

- Diminish the power of the PM
- Strengthen the independence of parliament and its involvement in the budgetary process
- Make public officials more accountable by way of provisions for impeachment
- Institutionalize an independent group element within the legislature consisting of a committee formed by former members of parliament, former judges, and others interested in supporting legislative reform initiatives.

These areas are key elements of the Jamaica Labour Party 2007 Manifesto.⁵⁷

Legal Framework

Jamaica's constitution stipulates that the executive, specifically the cabinet, is collectively responsible to parliament.⁵⁸ The power to make laws for the peace, order, and good government of Jamaica is vested in the parliament, “subject to the provisions” of the constitution. The parliament is composed of the queen of England as represented by the governor general, a senate, and a house of representatives. The senate consists of 21 members, 13 who are appointed by the governor general on the advice of the prime minister and the remaining eight by the governor general on the advice of the leader of the opposition. Only four ministers can be appointed from the senate, and they may have portfolio responsibility. The non-ministerial senators serve on

⁵⁶ Inaugural address by the Honourable Bruce Golding at the swearing-in ceremony as Prime Minister of Jamaica (September 11, 2007).

⁵⁷ A BETTER WAY...for a Better Jamaica, the Jamaica Labour Party, Manifesto, 2007.

⁵⁸ Jamaica constitution (order in Council) 1962 section 64(3).

a voluntary basis and only meet once a week. The senate functions as the chamber of review, considering bills passed by the house of representatives. The senate may initiate legislation, except for money bills.⁵⁹

The house of representatives is made up of 60 members, each of whom is elected by single-member constituencies in a first-past-the-post electoral system. The normal tenure for each member of parliament is 5 years, with an exception that allows for an extension of the 5-year period if Jamaica is at war.⁶⁰ The speaker is the presiding officer of the house and is formally elected by the members of the house. The constitution provides for each chamber to regulate its internal procedures and to establish its own standing orders.⁶¹ The house sits only from Tuesday through Thursday.

The current administration recognizes that Jamaica's legal framework requires an overhaul to address its major challenges, including macroeconomic management, corruption, and social sector problems such as drugs, arms trafficking, and high levels of violent crime

Sources of Law in Jamaica consist of the constitution, statutes, and common law. International treaties have no binding domestic effect until and unless they are incorporated into Jamaican law by domestic legislation. The enforcement of treaty provisions is outside the competence of the courts unless they have been given domestic statutory provision.

Customary international law also represents a source of law. Courts may take judicial notice of this source. The practice in Jamaica is that international law does not form part of common law. International law may only become law if recognized

by the judicial decision or legislation, as the constitution is silent on this issue.

The current administration recognizes that Jamaica's legal framework requires an overhaul to address its major challenges, including macroeconomic management, corruption, and social sector problems such as drugs, arms trafficking, and high levels of violent crime. Although the country has attempted in the past to confront these challenges with significant policy and institutional reforms, social and economic performance has languished in recent years and has led to a sustained diminishment of human and financial capital. The former government articulated a social policy framework entitled *Jamaica 2015*,⁶² which discusses the need for clear goals and objectives for changes in key institutional systems and the relationships supporting the achievement of those goals.

Under the new government, there remains considerable demand for enhanced transparency in the political decision-making process and accountability for decisions made.

The failure by past governments to strengthen Jamaica's democratic institutions, namely the legislature and the judiciary, so that they can effectively provide checks and balances on the executive has provided space to "informal," non-elected community leaders (so-called "dons") to provide "extra judicial" services and enforcement mechanisms to alienated communities. "Clientelism" has been described by Jamaicans as an inherent feature of Jamaican political culture: while it promotes competitive politics, it does so under the rules that limit competitiveness and constrain genuine democratic forms associated with parliamentary democracy.⁶³ Corruption is a serious challenge. Parliament should be seen as leading the fight against corruption, rather than as a weak and ineffective institution.

Implementing Institutions

The role of parliament in Jamaica's democracy. Jamaica's parliament is a "Westminster style," constitutionally powerful institution, but it proves very weak in living up to this design. The political culture of Jamaica has been described as a highly clientelistic form of the inherited Westminster two-party system, and thus is a major constraint to

⁵⁹ At the time of this review only six private member bills had been tabled, none of which had been scheduled for debate.

⁶⁰ Jamaica constitution (order in council) 1962 section 64(3).

⁶¹ Standing Orders of the House of Representatives of Jamaica, 1964.

⁶² Government of Jamaica, 2002. *Jamaica 2015: a framework and action plan for improving effectiveness, collaboration, and accountability in the delivery of social policy.*

⁶³ Carl Stone interview, 1980.

any type of reform. Electoral and constitutional rules ensure that the party that controls the majority votes in the house of parliament appoints the PM. The PM, in turn, forms his government with members from his own party and selects cabinet ministers, the majority of the senators, and senior bureaucrats, including the chief justice. Concentrated in the PM, per constitutional prerogative, are discretionary powers to unilaterally shape the policy and legislative agenda with no formal restriction other than to consult the leader of the opposition.

It is important to note that the political careers of individual members of parliaments (MPs) in a Westminster legislative system are heavily dependent on party leadership. Political party whips and the PM decide which candidates are selected and nominated to run for office and who is to fill cabinet positions, as well as who sits on legislative committees. The party's policymaking process affects the MPs' constituencies and likelihood of reelection. Hence, it is unlikely and has not been the practice for backbench MPs to challenge the PM or the parliamentary leadership or exercise their roles as legislators due to personal political ambitions. MP loyalties are to the party and to satisfying the executive — thus, they are not necessarily accountable to their public constituencies.

In Jamaica, the political opposition is weak and does not have the numbers or resources to veto or challenge the ruling party. It lacks resources to conduct research, initiate private member bills, or conduct constituency services. In the absence of government sponsorship for MP outreach activities, some MPs seek alternative sources of electoral support — that is, some seek the support of “dons” or community leaders who are not traditional (or legal) partisan brokers but rather represent private legal and illegal business activities.

The legislative process. The inherent weakness of the parliament is that it does not function independently. As an institution populated with ministers, the majority of whom are from the ruling party, parliament is unable to provide the necessary checks and balances required in a functioning democracy.

The constitution and the parliamentary standing rules provide that any MP may introduce a bill, although in practice the executive plays the key role in initiating and presenting legislation that is tabled and approved in the house of representatives. The cabinet determines the legislative agenda and

announces it in parliament. This process consists of approximately seven steps, which do not involve the legislative body formally.⁶⁴ The cabinet subcommittee on legislation reviews the ministries' legislative proposals, and then prioritizes them according to consultations within the executive. Any public consultations during this process are done under the ambit of the pertinent ministry and may include an MP, depending on the relationship. Thus, “lawmaking” is not a function of the legislature but rather of the executive, with parliament playing a *pro-forma* approval role.

In Jamaica, the political opposition is weak and does not have the numbers or resources to veto or challenge the ruling party

The drafting and presentation of legislation is centralized in the executive branch in the Ministry of Justice by the chief parliamentary counsel. The chief parliamentary counsel is responsible for drafting all legislation in Jamaica, which the attorney general reviews for constitutional muster. The Ministry of Justice's legal reform department also reviews draft laws for substitutive law reform content. Any legislative proposal must be approved by the cabinet's legislation committee in order for it to be introduced in parliament.

Reportedly, all these various executive departments are inadequately staffed and lack resources, which is a major reason behind the huge backlog of bills and legislative proposals. Moreover, often legislative proposals are not prioritized by the government and as such, staff can be pulled off one legislative program and required to shift focus based on “political emergencies.” Slowness in the process can also be attributed to regular ministerial and portfolio changes.

Parliament has inadequate human and financial resources. MPs do not have offices or dedicated staff to assist them with their work. Parliament does not have a research and information unit, although it has engaged the research services of the **University of the West Indies Centre for Leadership and Governance**. Parliament has a small library that needs upgrading with relevant materials and

⁶⁴ Government of Jamaica Circular, Ministry of Justice —Office of Parliamentary Counsel (February 2006).

technological resources. Despite holding the title chief parliamentary counsel, the individual who holds this job is mainly accountable to the cabinet and other government statutory bodies, and *not* the parliament. Further, parliament does not have a legislative draftsman or legal counsel. Opposition MPs engage private attorneys and academics to seek to draft and develop private member bills. Individual lawyers and professors at the law school have provided services to MPs; however, such services are not provided through a formal relationship with the parliament or the judiciary.⁶⁵

The role of parliament's committees.

Committees are normally the work engines of a legislature and contribute to legislative effectiveness by exercising oversight, gathering and analyzing information, conducting public hearings and facilitating exchanges on important public issues as well as providing a venue for interparty communication and cooperation. Jamaica's parliamentary committee system comprises sessional select committees, special select committees, and joint select committees. There are 10 sessional select committees:

- Public accounts
- Standing orders
- House Committee on Privileges
- Regulations
- Public administration and appropriations
- Internal affairs
- External affairs
- Economy and production
- Human resources and social development
- Infrastructure and physical development.⁶⁶

The parliament's infrastructure is outdated and does not have offices for members to conduct their business or separate committee meeting rooms to conduct hearings. The plenary hall is used for committee business.

Once a bill has been tabled in parliament, it is not automatically referred to the relevant committee. As noted by a former senator, only "controversial" legislation is referred to Joint Select committees, and

⁶⁵ It should be noted that proposed legislation drafted by private parties and presented to Parliament are not looked at favorably — the institutions in Parliament, e.g., the Chief Parliamentary Counsel, views the process as one in which legislative drafting originates with that office.

⁶⁶ Standing Orders of the House of Representatives of Jamaica (1964).

even then it is done in an ad-hoc manner. Such committees are appointed at the beginning of each session of the legislative calendar and are "empowered" by a motion tabled in the house by a government minister. The motion will call for a committee to investigate a particular matter, including bills, and the substance of the motion becomes the committee's terms of reference. Committees are open to the media and public and notices inviting the public to committee hearings are published in the government gazette. Observers note that recently there is more engagement by backbenchers, opposition, and the ruling party during question time and more attentiveness from the ruling party. In addition, there has been an increase in private member motions being debated in both houses, although ultimately being defeated.

There has been an increase in private member motions being debated in both houses

Parliamentary committees are under-resourced and underutilized. The former administration utilized the joint select committee process for controversial legislative proposals. Through the joint select committees, parliament has exercised its oversight role due to the nature of the issues — Proceeds of Crime Bill, the Sexual Offences Act — and in response to the increased demands by civil society for inclusion and transparency.

The joint committees' work is hampered by inadequate professional staff and lack of institutional support. On one occasion, a non-governmental organization (NGO) was presenting its recommendations on a policy before a joint committee on a legislative proposal and the committee members did not have the policy document under discussion. Access to in-depth analytical research and expertise is critical. This is especially pronounced in technical issues, such as commercial law, business frameworks, tax, customs, budget and finance, and other complex legal and economic regulations in which MPs do not have the adequate expertise to effectively address the issues or respond to the executive. As MPs are granted this autonomy, they will require training and education on how to prepare for committee hearings and how to conduct oversight. On a positive note, there has been notable progress emerging from the overwhelming participation of civil society actors and associations. The executive has increasingly felt obliged to accept recommendations offered by civil

society or amend legislation in response to the publicized committee process.

The Public Accounts Committee (PAC) is considered the most prestigious committee of parliament and consists of all MPs of the house. It is chaired by an opposition MP, referred to as the shadow Minister of Finance. The PAC only reviews the budget after the fiscal year and does not have the opportunity to provide inputs to the executive when the budget is presented. Under the Financial Administration Act, the auditor general is required to submit an annual report to parliament on the appropriation accounts of ministries and departments.

Parliament's role with respect to the national budget has been described as ineffective, despite the fact that the national budget is formally the responsibility of the parliament. The constitution gives the Minister of Finance the responsibility for preparing estimates of revenue and expenditure before the close of the financial year and tabling it in parliament in the new financial year. The government's financial year runs from April 1 to March 31 of the following year. The national budget debate takes place in April and closes with a parliamentary vote in early May. Only the PM, the leader of the opposition, the Minister of Finance, and the spokesman for the finance of the opposition may address parliament during the budget debate. Only after the national budget has been approved do the sectoral budget debates begin, at which time ministers and backbenchers can participate in the debate. Parliamentary debate and approval is a formality, as rarely are amendments to the budget accepted. The legislature rubber-stamps the proposals from the executive. The public cannot participate in any of these debates.

Staff. The standing orders of parliament state that committees are assisted by parliamentary officials, who serve as secretaries to the committees and are responsible for administrative and research activities. The provision of legislative support services does not meet the needs of the parliament. There are only six clerks for all the committees and only three are subject matter experts. Parliament does not have a legal unit and has a very limited research capacity. Without access to in-depth policy information and research, MPs cannot make informed decisions and are required to make arrangements through the clerk to access research services provided by the University of the West Indies.

Furthermore, opportunities for parliamentary staff development in terms of training and skills development have been limited.

Supporting Institutions

Civil society groups in Jamaica are playing an increasing role recently in the legislative arena. During this diagnostic, several interviewees commented on how public lobbying (as opposed to private lobbying) has improved and how it is beginning to have the desired impact on the legislature, particularly through the joint select committee process. That process has provided civil society with an avenue to make key changes in legislation that the ruling party accepts, albeit reluctantly. In addition, there reportedly has been a general receptiveness on the part of ministries to soliciting citizen feedback and securing evidence as a basis for planning and policy development. There are also well-funded interest groups that lobby parliament about its own legislative priorities. Most civil society groups face challenges of inadequate resources and outreach capacities.

Jamaica has robust media outlets, including three television stations, three major newspapers, and 11 radio stations with national coverage. There are a number of community-based cable TV and radio stations. There have been increases of public radio talk shows, such as the Breakfast Club, that provide serious examination of policy issues and build national consensus on key questions. The government owns none of the media and the press enjoys a considerable measure of freedom (although several interviewees professed confusion as to why the press does not speak out on certain crucial issues). Several recommendations were made to increase the effectiveness of the media through building capacity for more sustained investigative reporting and analysis of issues.

The judiciary. The absence of a coherent institutional policy framework for parliament has generated a lack of clarity on what the problems concerning the other branches of government are and how they should be addressed. The result has been ad-hoc policy making, as well as inadequate funding support and piecemeal implementation, which have undermined the effectiveness of planned reforms.⁶⁷

⁶⁷ Final Report, Jamaican Justice System Reform Taskforce, p. 12 (June 2007).

Jamaica's courts are generally perceived to be independent from political power. Judges are well respected and generally free from perceptions of corruption that are held against the other branches of government. The portrait of a well-institutionalized, independent judiciary does not match, however, with the dramatic increase in crime violent rates over the past several years and the judiciary's inability to cope with the overwhelming amount of cases. Poor rule of law and crime negate the positive elements of the judiciary vis-à-vis the business environment. Crime has had a negative effect on the development of Jamaican human capital; specifically, it has created and accelerated incentives for migration, introduced inefficiencies into the Jamaican economy, severely undermined the national work ethic, and diverted government resources from investment to crime management.

A 2004 World Bank report acknowledges that the perceived fairness and independence of Jamaica's court system from political pressures co-exist with considerable delays in the administration of justice and outdated and inefficient legal and administrative practices.⁶⁸ Courts are not seen as having adequate institutional support to perform effectively and efficiently with respect to both civil and criminal cases. The Supreme Court began using mediation through the Dispute Resolution Foundation as an alternative to traditional trials, which alleviated some of the backlog of that court. The government made justice sector reform a high priority and assigned it as part of its public sector modernization program. The government-established Justice Reform Project was charged with undertaking a comprehensive review into the state of justice and to develop strategies and mechanisms to facilitate its modernization. The government has yet to implement the comprehensive recommendations from the JRP task force, which will likely require legislative changes and potentially a constitutional amendment.⁶⁹

National integrity systems. Jamaica seems to possess an integrity system — that is, a network of formal and informal institutions that can freely observe and comment upon the actions of government — with many strong pillars. The media and civil society exhibit growing strength. Institutions such as the judiciary, the auditor general, the contractor general, the national contractors' commission, the service commission, and the

director of public prosecutions seem to enjoy significant formal standing, but they reportedly lack real independence.⁷⁰ The main and critical deficiency in the system, however, is the ineffectiveness of checks and balances on the overwhelming dominance of executive-prime ministerial power.

The Norman Manley Law School students' legislative committee, under the supervision of a senior lawyer, has submitted comments and language to several joint select committees (e.g., the Proceeds of Crime bill and the Sexual Offences bill). This intervention has been welcomed by the parliament and complimented by the Ministry of Justice as providing parliament with a badly needed service. With regard to legislative drafting, the law school offers a basic undergraduate course in legislative drafting, with an advanced master's program offered for a year in Barbados. The Ministry of Finance asked the law school to conduct specialized, in-service training on legislative drafting for key civil servants, but the law school was unable to fulfill the request due to funding constraints.

Social Dynamics

The political will exists within Jamaica's new government to strengthen the parliament to function as an independent lawmaking and oversight institution. There is widespread consensus that the parliament is currently a rubber stamp of the executive and does not address Jamaica's modern needs. The PM has set the tone for reform. The PM's Public Sector Modernization office and other key offices appear to be open to granting parliament greater autonomy to draft legislation, increase its research capacity, and provide for other reforms. Key to parliament's autonomy would be to shift away from the Ministry of Justice the parliament's legislative drafting and legal reform functions. True reform will bring a shift in the political dynamic and delineate and strengthen clear executive and legislative roles and responsibilities.

True reform will bring a shift in the political dynamic and delineate and strengthen clear executive and legislative roles and responsibilities

Several recommendations have been made to the ruling parties to strengthen the parliament's

⁶⁸ World Development Report, 2004. Making Services Work for Poor People, Washington, D.C., the World Bank.

⁶⁹ Jamaica Justice Reform Taskforce, Final Report (June, 2007).

⁷⁰ National Integrity systems, Transparency International Country Study Report (September, 2003).

independence. These recommendations are found in several proposals that attracted support from the constitutional commission and the joint select parliamentary committee on constitutional reform. The challenge for this administration will be to consolidate the recommendations and to build consensus regarding how to implement the recommendations.

In addition to the formal constitutional and institutional constraints on the legislature's power, there are political cultural factors that require attention. The most important is what several interviewees called a "tribalistic" dynamic — that is, complete loyalty to the party leader, whether he is the PM or the leader of the opposition. These individuals are the main magnet for party support and primary determinants of their party's electoral fortunes. Thus, parliamentary backbenchers (whether from the ruling party or the opposition) rarely demonstrate independence from their leaders, choosing instead to protect their own prospects for re-election.⁷¹ In order to change this political culture, political leadership is required that is prepared to challenge the current entrenched system.

Aside from the weak capacity and institutional challenges within the parliament, it is not clear if there are any genuine economic reformers who have the ability, experience, and political savvy to champion economic reform issues. This will be a key variable in whether the parliament can play a constructive role promoting genuine economic reform through the committee process.

Recommendations

Based on the foregoing discussion, the following is recommended:

Support the establishment of a Legislative Modernizing Group or Committee to guide the implementation of legislative reforms.

This is a long-term recommendation that would require a diverse base to build local ownership. Such a group would be separate from the Public Sector Modernization program and would focus specifically on issues pertaining to modernizing the legislature and its processes. It would take its cue from the executive as articulated by the PM's inaugural speech to strengthen parliament to exert greater control over the government. Donors can provide critical assistance that progressively improves the ability of

the parliament to advance the interests of citizens, the private sector, and others, and to provide a balance to executive power.

Modernization groups or committees in legislatures are multi-party boards of legislative leaders, key actors from the representatives from the PM's office, key civil society actors, academics, and others. These groups must be championed by one or more MPs — retired or sitting, who command the respect of both parties — and who have competency to create plans to guide the institutional development and strengthening of parliament. This group would be responsible for providing technical assistance to develop:

- A vision and strategic plan of implementation
- A review of all legislative functions that would be more appropriately placed in the parliament that currently take place in the executive
- A plan for shifting such functions to the parliament
- Assistance to the parliament to establish a budget office
- Legislative drafting services
- Information and legal research assistance and support for other infrastructure or human resource needs.

All of these ideas relate to the separation of powers. They can be very politically sensitive and would require full support from the PM, as well as engagement of reform-minded MPs.

Strengthen the parliament's informational, research, and legislative drafting capacity.

Donor-funded activities could help Jamaica's legislature better fulfill its lawmaking responsibilities and could include:

- *Information and research capacity building.* This recommendation seeks to provide MPs and professional staff with the skills that will be required as they gain increased lawmaking power. Effective lawmaking requires specialized skills, notably the ability to blend the technical and legal competence with relevant political knowledge so that laws are written and reflective of their intended substance. In order to perform such tasks, the parliament requires its own information and research sources, distinct from academic research, embedded into a continuing process of

⁷¹ The Policymaking Process in Jamaica, Inter-American Development Bank, WDC (May 2006) at 9.

institutional transformation and empowerment.

- *Consolidation of laws.* Such an exercise is necessary to assist the parliament in determining which laws are actually in force. The legislature is reportedly unsure what polices have been codified and what the executive's future practices will be concerning the delineation of the law. Such a consolidation exercise would also benefit any rule of law/judiciary reform program.
- *Legislative drafting.* The Legislative Modernizing Group should address the issue of providing the parliament with its own legislative drafter. If it is agreed to institutionalize law-drafting services in the parliament, a donor could provide technical assistance to professionalize the process and to provide training for MPs. This activity should be developed in conjunction with the Norman Manley Law School to develop a formal in-service course to train professional staff.

relevant and results in useful, evidence-based policy analysis

- Technical assistance to establish processes to secure recommended inputs through formal linkages with department/agency committees with key experts from civil society organizations, the private sector, and the executive
- Training for committee staff assigned to the joint select committees, including availing them of opportunities to learn from other Commonwealth, regional, or relevant international experiences.

Strengthen parliamentary committee infrastructure, staff, and processes. Due to limited resources, committee support should be focused on key sector issues and the development and implementation of an oversight agenda for the targeted committees. For example, a donor could provide:

- Support to the relevant committee on economic issues, the private sector, and economic reform to develop policy strategies to review the executive's legislation and sessional papers pertaining to matters involving financial sector supervision
- Support to strengthen the integration and effectiveness of the planning and budget process through enhanced prioritization, e.g., the reliability of budget allocations and flexibility of resource allocations
- Technical assistance to MPs to improve their knowledge of how to monitor and conduct oversight of the executive; also provide training on how to establish more effective institutional links between MPs and the providers of policy information so that the information generated is timely and

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