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## The Country at a Glance

The primary language spoken in Jamaica is English, although a local dialect (patois) is widely spoken across the Island. Jamaica does not have a fixed rate of exchange. The United States dollar is a popularly traded currency in Jamaica, along with the British sterling and the Canadian dollar. At the time of publication of this article, the average exchange rate for the United States Dollar was Jamaican \$87.21 for every United States Dollar bought and Jamaican \$89.09 for every United States Dollar sold.

Jamaica is a Caribbean island located at latitude 18 degrees north and longitude 77 degrees west and is approximately 588 miles (946.3 kilometres) southwest of Miami, Florida, USA; 90 miles (144.8 kilometres) south of Cuba and 100 miles (160.9 kilometres) west of Haiti. It is the third largest island in the Caribbean with an area of 4,411 square miles (11,424 square kilometres) and measuring 146 miles (235 kilometres) from east to west. Its greatest width is (51 miles) 82.1 kilometres, from St. Ann's Bay to Portland Point.

The Island has a mountainous interior as well as broad coastal plains encircled by beautiful white sand beaches. It has a maritime tropical climate. There is little change of season with the average temperature being 77°F (25.5°C) in the winter months and 82°F (28°C) in the summer. It is typically sunny year-round with May, June, September and October generally considered to be the rainy months. The Island's climate is, however, strongly affected by the sea, which can produce cloud cover, rain and wind which may have a sudden effect on temperatures. The coastal plains of the north shore benefit from the Trade winds and in the mountains or hilly interiors, the evenings generally become quite cool.

There are no cultural or religious influences or prohibitions on the way business is conducted in Jamaica. Jamaica is, however, generally a religious society. Christianity, in its various denominations, is the dominant religion with the majority of the population belonging to Protestant churches.

Jamaica is divided into fourteen (14) parishes: Clarendon, Hanover, Kingston, Manchester, Portland, Saint Andrew, Saint Ann, Saint Catherine, Saint Elizabeth, Saint James, Saint Mary, Saint Thomas, Trelawny and Westmoreland. The country has 2 cities - Kingston, which is in the parish of Kingston in the south, and Montego Bay in the parish of Saint James in the north, oftentimes referred to as the "tourist capital" of the Island.

There are two international airports in Jamaica; one located in Kingston, the Norman Manley International Airport, and the other in Montego Bay, the Donald Sangster International Airport. Both airports are highly advanced and have recently been, or are currently being refurbished. The principal seaports are also located in Kingston and Montego Bay, with Port Bustamante, in Kingston, situated in the world's seventh

largest natural harbour. Extensive cruise shipping facilities are located in Ocho Rios, in the parish of Saint Ann, and Port Antonio in the parish of Portland. The marina in Port Antonio is home to the world class Errol Flynn Marina.

The railway system in Jamaica is limited and is primarily used for the transport of freight and bauxite. The Jamaican Government has, however, stated its intention to rehabilitate the country's railway systems for passenger use. Public transportation, in the form of buses and taxis, is available in all fourteen parishes.

Electricity is supplied in Jamaica by the Jamaica Public Service Company (JPSCo); formerly a 100% state owned entity. Today, the majority of the shares in JPSCo are privately owned, although the Government of Jamaica retains a minority shareholding.

Water is supplied by the state owned National Water Commission. The reliability and quality of potable water available through organized systems is generally viewed as good.

The supply of telecommunications services in Jamaica is advanced and diverse and the Island possesses an all-island domestic telephone network as well as amenities such as mobile services, high speed internet access and voice over internet protocol (VoIP) services and operator assisted worldwide services. Land line telephone service is provided by Cable and Wireless Jamaica Limited (CWJ), which held a monopoly at the beginning of the 21st century and "Flow". The 1999 agreement to open the market for telecommunications services has resulted in rapid growth in mobile-cellular telephone usage and mobile phone service to the country is now being provided by companies including CWJ, Mossel Limited, an Irish firm which introduced the highly competitive Digicel brand and the America Movil-owned Claro brand is the newest emergent in the telecommunications industry. The country also has several reliable internet service providers.

## **Intellectual Property**

Intellectual property is protected in Jamaica primarily through the common law tort of "passing-off" and statutorily under the Trade Marks Act and the Regulations to the Act; The Patents Act; The Designs Act; The Copyright Act and Regulations to the Act and The Geographical Indications Act.

Prior use of a trade mark in Jamaica is not a prerequisite to registration in Jamaica. The time for filing an application for registration of a trade mark is approximately 8-12 months. Protection lasts for ten years and may be renewed for further ten year periods. Jamaica is a signatory to the Paris Convention, which was one of the first intellectual property treaties. An applicant who has previously applied for protection of a trade mark in a convention country (that is a country which is also a party to the Paris Convention) has a right to priority for the purposes of registering that mark for some or

all of the same goods or services, such that, for the purposes of establishing which rights take precedence shall be the date of filing of the first Convention Application. Convention priority is only available where registration in Jamaica takes place within 6 months of the filing of the first Convention Application.

Letters Patent, issued by the Governor General of Jamaica, are granted for a term not exceeding 14 years, unless extended at the discretion of the Governor General for a further term of 7 years. Jamaica is not a signatory to the Patent Cooperation Treaty and so application cannot currently be made via the Treaty mechanisms. Letters Patent are granted based on the novelty of the invention to Jamaica.

An application for registration of an industrial design under the Designs Act must contain the particulars of the applicant, along with three copies of the design itself, showing the different perspective views. The application must state what the design is applied to, and should identify the classes in which registration is sought. Protection lasts for 15 years.

There is no registered system of copyrighted works in Jamaica. Copyright subsists automatically upon creation without any statutory registration requirements. The Regulations required for operating the system of registration of geographical indications are not yet in force.

Jamaica is a signatory to several international treaties and bilateral agreements concerning intellectual property. The relevant treaties are:

- *Berne Convention - for the protection of literary & artistic works*
- *Rome Convention - for the protection of performers, producers of phonogram and broadcasting organizations*
- *Geneva Convention - for the protection of phonograms against unauthorized duplication of their phonograms*
- *WIPO Copyright Treaty*
- *WIPO Performances and Phonograms Treaty*
- *Agreement on Trade Related Aspects of Intellectual Property*
- *Paris Convention for the Protection of Industrial Property*
- *Brussels Convention relating to the Distribution of Programme-carrying Signals Transmitted by Satellite*
- *Nairobi Treaty on the Protection of the Olympic Symbol*

- *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*
- *Vienna Agreement Establishing an International classification of the Figurative Elements of Marks*

## **Investing in Jamaica**

The Government of Jamaica welcomes investment and currently promotes investment through its agencies including Jamaica Trade and Invest and Development Bank of Jamaica.

In addition, the Ministry of Industry, Investment and Commerce provides the policy framework for the encouragement of investment.

There are no foreign exchange controls in Jamaica preventing or restricting the use of foreign currency generally nor is there a general restriction on foreign direct investment by private investors. There are restrictions on foreign governments investing in banks and financial institutions.

Investment incentives are available for a wide range of business activities to applicants who qualify for such incentives under one of the applicable pieces of legislation or government policies. Relief from income tax, the local ad valorem consumption tax – General Consumption Tax (GCT) – and customs duty over a stipulated period of time are the usual types of incentives.

The following are the primary incentives/exemptions that are available to potential investors:

- a. Export Industry Encouragement Act – The incentive to approved enterprises includes an exemption from income tax for ten years and import duties on raw material and machinery to be used for production for ten years. The exemption applies primarily for exporters to markets in countries that are not members of the Caribbean Community and Common Market (CARICOM). However, the Minister of Industry, Investment and Commerce may exercise his discretion to limit the period of the exemption.
- b. Industrial Incentives (Factory Construction) Act – This Act provides some income tax and customs duty relief for approved builders of factories.
- c. Jamaica Export Free Zones Act – Benefits include duty concessions and income tax relief on profits and gains for entities operating in prescribed Free Zones.
- d. Jamaica Trade and Invest administers a Modernization of Industry Programme under which technical assistance is given to the development of personnel,

technology and in obtaining finance. In addition, concessions are available on the application of GCT payable on the acquisition of machinery and equipment directly related to the manufacturing process.

- e. Accelerated Depreciation/Special Capital Allowance - This facility allows for the writing off of the costs of new capital equipment within a 2 year period of manufacturing.
- f. Hotels (Incentives) Act - Income tax and import duty relief is available to approved hotel enterprises and convention-type hotels for up to ten years.
- g. Resort Cottages (Incentives) Act - Income Tax and import duty relief for up to seven years is available to recognized resort cottages.
- h. Motion Picture Industry Encouragement Act - An approved film producer is entitled to relief from income tax for a period not exceeding nine years after the first release of the motion picture. In addition, there is an exemption from the payment of import duty on equipment, machinery and materials for building of studios to be used in the production of a motion picture.

Other incentives may be found in the Income Tax Act, The Petroleum Refining Industry Encouragement Act and by direct application to the Minister of Finance.

The primary businesses in Jamaica are in, or connected to, the tourism or bauxite sectors, which have been adversely affected by the recent global economic downturn. Jamaica is also the producer of the world-renown "Blue Mountain" coffee and exports other products in the agricultural sector, including sugar and bananas. There is a currently a developing niche market for products such as spices and fruits.

It is noted that Jamaica is a signatory to the World Trade Organization (WTO) Doha Ministerial Declaration which requires the encouragement of free trade. As such, it is expected that government policy and local laws will soon have to be changed to be consistent with the Doha Declaration. Developing countries, including Jamaica, have been granted an extension of time until 2012 to implement a free trade regime.

Export financing is available from private financial institutions. There are several commercial banks, merchant banks and other regulated financial institutions which offer collateralized and unsecured business financing. The National Export-Import Bank of Jamaica Limited (EXIM Bank) specializes in providing financing for export businesses.

Pursuant to The Double Taxation Relief (Taxes on Income) (Caribbean Community) Order, Jamaica allows relief from double taxation on income earned by nationals (including bodies corporate or other legal persons) of CARICOM member countries in another CARICOM country.

Legislation in Jamaica provides for relief from double taxation on income earned in Jamaica by citizens of other countries, thus incorporating the provisions of bilateral double taxation treaties between Jamaica and other territories; such as the United States of America, France, the United Kingdom and the Kingdom of Spain.

### **Diplomatic Relations**

In 2001 the Treaty of Chaguaramas (1973) which established the CARICOM, was amended to create the CARICOM Single Market and Economy (CSME), the aim of which was to deepen the integration process and strengthen the Caribbean community in all of its dimensions to respond to the challenges and opportunities presented by changes in the global economy. Jamaica, in 2006, was one of the first six Caribbean countries to implement the CSME and is a part of the Caribbean Regional Negotiating Machinery (CRNM) which envisioned a CSME aimed at increasing the liberalization of trade and other economic activities, globalization and the emergence and expansion of regional economic blocs.

Full implementation of the CSME has so far failed to meet its implementation date, the last of which was December 2008. A consequence of full implementation of the CSME is that all workers would be eligible to move freely amongst CARICOM member states, obviating the requirement for CARICOM nationals to have permits or skills certificates to work in member states. It is noted that some categories of persons including artists, musicians, sportspersons, managerial staff, self-employed persons and university students currently enjoy the benefit of freedom of movement of labour in CARICOM.

The creation of the CSME is regarded as a giant step taken for the establishment of a trading bloc by the CARICOM member States, as it is seen to facilitate not only the consolidation of the market for goods and services produced in the region, but also defines trade relations with the rest of the world. The CSME also facilitates the coordination of the participation of CARICOM member countries in the negotiations for the Free Trade Area of the Americas (FTAA), the WTO and Contonou, the new trading arrangements with the European Union.

Jamaica has been a member of the WTO since 1995, has participated in a number of multilateral trade negotiations and has been a third party to many settlement dispute cases, such as the European Communities Export Subsidies for Sugar.

### **Government**

Jamaica has the First-Past-The-Post Westminster election system whereby each parish elects a single Member of Parliament. The party with the highest number of members of Parliament forms the government. An election is held a maximum of 5 years from the date of the last election, although on the decision of the Prime Minister, it may be held earlier.

The current and previous governments have been relatively stable. These governments have been democratically elected and Jamaica has had no coups or other insurrectionary movements since Jamaica achieved independence in August 1962.

The country has been ruled by the People's National Party for most of the preceding two decades. However, in September of 2007, the Jamaica Labour Party (JLP) won most of the seats in Parliament and now forms the government.

Local government is administered at the parish council level by elected representatives.

## **Judicial System**

The judicial system in Jamaica is based largely on the British judicial system. The judicial system consists of the Courts of Petty Sessions, Resident Magistrates' Courts, the Supreme Court, the Court of Appeal and the Privy Council.

The Petty Sessions Court is presided over by a Resident Magistrate or 2 Justices of the Peace. The Justices of the Peace Jurisdiction Act confers various powers on the Justice of the Peace including the power to issue warrants consequent on non-obedience to summons. A Resident Magistrate has the power of two Justices of the Peace.

There is a Resident Magistrate's Court for every parish. Each Court has jurisdiction within the relevant parish and one mile beyond its boundary line. This Court presides over both civil and criminal matters. The divisions of the Resident Magistrate's Court are the Family Court, the Juvenile Court, the Traffic Court, Gun Court, Small Claims Court, the Drug Court and the Night Court. The Resident Magistrate's Court has limited jurisdiction in both civil and criminal matters. The jurisdiction of the Court in civil matters is currently limited to J\$250,000.00. Civil matters tried at a Resident Magistrate's Court include recovery of possession, recovery of rent, granting of probate and letters of administration.

The Supreme Court has unlimited jurisdiction in civil and criminal matters. It consists of the Chief Justice, a Senior Puisne Judge and at least twenty other Puisne Judges. Judges of the Supreme Court are appointed by the Governor General of Jamaica, on the recommendation of the Judicial Services Commission. They have jurisdiction to hear applications regarding any breaches of fundamental rights and freedom provided for in the Jamaican Constitution. The Supreme Court exercises important supervisory functions over tribunals, such as the Industrial Disputes Tribunal, and the Resident Magistrate's Court in the hearing of writs of habeas corpus and making of orders of certiorari, mandamus and prohibition. Divisions of the Supreme Court are the Revenue Court established in 1971; the Gun Court, established in 1974 and the Commercial Court, which began operations in February 2001.

The Circuit Court is the criminal jurisdiction of the Supreme Court which, for the proper administration of justice, is convened in the parishes.

The Supreme Court is the main court of first instance with unlimited jurisdiction. The first Appellate Court is the Court of Appeal and the final Appellate Court is the Privy Council in the United Kingdom.

Appeals against decisions from both the Supreme Court and the Resident Magistrates' Courts are heard in the Court of Appeal. It consists of the President of the Court of Appeal and six Judges of Appeal. The Chief Justice is an ex-officio member, but only sits on the invitation of the President in matters in which the full Court is sitting. Judges of the Court of Appeal are appointed by the Governor General, on the recommendation of the Judicial Services Commission. The Chief Justice and the President of the Court of Appeal are appointed by the Governor General, on the recommendation of the Prime Minister after consultation with the Leader of Opposition.

The judicial system is generally perceived to be impartial, as the judiciary is independent of the Government. The judges, once appointed, have security of tenure. Once disputes fall within the jurisdiction of Jamaica, they fall to be determined by the local judicial system unless excluded by operation of law, or agreement of the parties. Contracting parties are free to exclude Jamaican Courts from having jurisdiction over any particular matter unless prohibited by law.

Mediation is now a mandatory part of the judicial process of the Supreme Court and is optional at the Resident Magistrate's Court level. Contracting parties may also agree to dispute resolution by arbitration, which may, at their option, be binding or non-binding.

On average, it takes 2 to 3 years from the date of commencement to conclusion of trial. Foreign judicial decisions may be enforced in Jamaica if the relevant country is party to a treaty with Jamaica which provides for reciprocal enforcement of judgments. The rules under which the Jamaican judiciary will enforce a foreign judgement are set out in the Judgments and Awards (Reciprocal Enforcement) Act and the Judgments (Foreign)(Reciprocal Enforcement) Act.

### **Legislative system**

Jamaica's legislative system is patterned on the British system. It is based on the doctrine of separation of powers. There is a separation between the Executive, the Legislature and the Judiciary.

Jamaica has a bicameral legislature consisting of the House of Parliament and the Senate.

### **Environmental Considerations**

The main statutory body in charge of monitoring the environment is the National Environment & Planning Authority (NEPA) which comes under the purview of the

Ministry of Health & Environment. The purpose of this body is to promote sustainable development by ensuring protection of the environment and orderly development in Jamaica.

NEPA's responsibilities include ensuring that Jamaica's natural resources are being used in a sustainable way and that there is a broad understanding of environment, planning and development issues with extensive participation amongst citizens and a high level of compliance to relevant legislation.

The Agency processes and considers applications for environmental permits and licences, planning and development, change of agricultural land use, beach use, construction and operation of prescribed industrial facilities, sewage discharge, and industrial waste discharge and processes and approves permits for the export and transit of hazardous waste.

NEPA plays a pivotal role in large scale developments to ensure compliance with Government environmental standards and must be consulted in the following projects;

- a) Power generation plants;
- b) Port and harbour development;
- c) Subdivision of 10-50 lots or more
- d) Housing projects of 10 or more houses;
- e) Hotel/resort complex;
- f) Airport and airfields;
- g) Office complexes of 5,000.00 sq metres or greater;
- h) Eco tourism and nature tourism projects;
- i) Mining quarry projects;
- j) Large industry projects

More information on the country's environmental policies can be found at [www.nepa.gov.jm](http://www.nepa.gov.jm) .

## **Employment Regulations**

### *Employer/Employee Relations*

Several laws govern employer/employee relations in Jamaica. These include the Employment (Termination and Redundancy Payments) Act and Regulations, the Labour Relations & Industrial Disputes Act and Regulations, the Holidays with Pay Act and Order, the Minimum Wage Act and the Maternity Leave Act.

#### *Work Permits*

Work permits are required by non-nationals and non-exempted persons who are, or are about to be employed by another person or to be engaged in an occupation. These are obtained by making an application to the Work Permit section of the Ministry of Labour and Social Security. There is currently a non-refundable application fee of J\$14,400.00 in respect of each application. The process takes, on average, four to six weeks and the fees vary depending on the length of the work permit applied for. These fees are separate from the application fee. They vary from J\$27,000.00 for a three month permit to J\$108,000.00 for up to a one year permit.

In order to secure a work permit for non-nationals who are not exempt from the requirement for a work permit, an employer must prove that they have attempted to hire a national in the position but was unsuccessful in doing so.

#### *Wages*

There is a minimum wage in Jamaica which is subject to annual adjustment based on the rate of inflation.

Although an employee cannot be required to work more than six days per week, there is no set maximum number of work hours per day.

#### *Holidays*

In accordance with The Holidays With Pay Order (1973), holiday earned in any qualifying year of employment is granted by the employer during the next succeeding qualifying year unless the parties agree otherwise.

Under local law, an employee is entitled to two days sick leave without a medical certificate. There is no minimum number of sick days. A Doctor's Certificate is required once the number of sick days exceeds three.

#### *Hiring and Firing Requirements*

There is no law which requires investors to employ a minimum number of people, nor a minimum number of Jamaican nationals. Further, there is no requirement that Jamaican nationals must hold any specific positions in any foreign owned/incorporated company.

There are no rules to follow in respect of hiring personnel. However, local law regarding the provision of notice must be followed in order to dismiss an employee. The length of the notice required will vary, depending on the length of time the employee has been employed if not otherwise contractually agreed to by the parties. It should be noted that payment may be given in lieu of notice and that an employee may be summarily dismissed for cause (for example gross negligence, abandonment of job, fraud, theft) without the need for notice or to give payment in lieu of notice.

### *Safety Standards*

Provision for compliance with safety standards are found in various pieces of legislation. In respect of factory operations, the relevant regulations are the Building Operations and Works of Engineering Construction (Safety, Health and Welfare) Regulations, (1968); which are regulations to the Factories Act. Health and safety standards provision also exist under in the Food Storage and Prevention of Infestation Act (1958) and the Food and Drugs Act (1975). The Standards Act (1969) appoints the Bureau of Standards as the regulatory watchdog to, amongst other things, promote and encourage the maintenance of standardization in relation to commodities, processes and practices.

### *Unions*

Jamaica has a history of strong union representation on behalf of employees, particularly in respect of employees below the managerial level. Unions are recognized under local laws and exist in varying degrees in every major industry in Jamaica. Registered unions may apply for bargaining rights on behalf of employees in any industry in Jamaica. Unions in Jamaica do not have any overt political affiliations.

There is no obligation on the part of an employer to organize unions. However, if an application is made by a union for bargaining rights on behalf of employees, an employer has two options: The employer can either recognize the union as having bargaining rights in respect of the categories of employees claimed for or elect for a poll to be held to determine whether more than 50% of its employees wish the union to have bargaining rights. It should be noted that the right for employees to have union representation is entrenched in the Jamaican Constitution and any attempt to prevent employees from joining a union or engage in union activities is a criminal offence. Although widely used, local law does not require collective bargaining agreements.

### **Import/Export Regulations**

Commercial exporting is highly encouraged in Jamaica; and is a particularly attractive activity where one qualifies for the incentives currently offered under the Export Industry Encouragement Act 1956 and the Jamaica Free Zones Act 1982. Depending on the nature of the exporting activity and the particular goods being exported, an exporter

may have to comply with certain local registration requirements and obtain government permit(s).

Import licences are required for the importation of certain products. Additionally, import quotas and other restrictions may apply when importing particular products.

The determination of value for customs purposes lies with the importer in the first instance and therefore an importer must produce a Declaration of Value along with the import entry for clearance procedures. The Customs Department will verify the value declared to satisfy itself as to the truth or accuracy of the declaration by checking any documentary evidence the importer may have to substantiate the values declared.

Several procedures must be followed in order to clear goods through customs. These include:

- Obtaining a Taxpayer's Registration Number (TRN) and a Tax Compliance Certificate from the Inland Revenue Department
- Obtaining from the Trade Board an import licence for products requiring a licence
- Obtaining customs broker services, if the import value exceeds a stipulated sum, currently US\$5000.00.
- Obtaining a ministerial permit for certain goods; for example when importing agricultural, horticultural or aquacultural products;

The following taxes/duties apply when importing goods:-

(1) Import Duty/Customs Duty:-

- (i) There are applicable import duties in Jamaica. Most goods entering Jamaica are subject to customs duties ranging up to 25% and the General Consumption Tax (GCT) of 16.5% payable thereon (excluding those products that are zero-rated or specifically exempted items).
- (ii) Goods imported from member countries of CARICOM that satisfy the rules of origin are currently not subject to any customs duty.

(2) Stamp Duty;

(3) The General Consumption Tax Act provides for the payment of GCT and Special Consumption Tax (SCT). Most items attract only GCT, while some attract both GCT and SCT. GCT is payable on goods and services except those items that are zero-rated and those that are exempted from GCT. Zero rated items are items

that attract 0% GCT. Exempted items are items that do not attract GCT. SCT is payable on a few items. These include alcoholic beverages, most tobacco products and some petroleum products.

- (4) The Customs User Fee is currently applicable to all imports and is calculated on the Cost Insurance and Freight (CIF) value of all goods being imported. The fee is also imposed on the personal and household effects acquired abroad by an arriving passenger who is a Jamaican resident, if the value of these goods exceeds a stipulated amount.
- (5) Standard Compliance Fee (SCF) is a fee collected on behalf of the Bureau of Standards. SCF is calculated on the CIF value.
- (6) Processing Fees are required for the processing of certain documents submitted to the Customs Department.

The Modernization of Industry Programme (MOI) was instituted in 1988 by the Jamaica Industrial Development Corporation (JIDC) to complement the Tariff Reform and Deregulation programmes as a part of the Government's overall development strategy. The Programme is administered by Jamaica Trade and Invest and its major objective is the "orientation of manufacturing industries towards adoption of techniques which exploit internal economies and reliable information systems designed to make them more competitive in the domestic and overseas market".

### **Structures for Doing Business**

As a matter of law, there is no standard business activity in which the Government will seek to participate in by way of direct ownership. However, certain industry-specific business activities will require government involvement in the form of operational approval and regulation; such as mining, telecommunications, securities trading, real estate development, life insurance and financial services.

#### *Forms of Liability Companies*

The liability of a company may exist in the following forms:-

- (i) a company having the liability of its members limited by the company's Articles of Incorporation/Association to the amount, if any, unpaid on the shares respectively held by the shareholders (termed "a company limited by shares")
  - the liability of a shareholder in a limited liability company with a share capital, is confined to his shares in the company and does not extend to his personal assets.

- the company may either be public or private, in the case of the latter where the membership of a private limited liability company may not exceed 20 and the company is not permitted to offer shares to the public.
  - the capital structure may comprise of both common and/or preferred stock..
- (ii) a company having the liability of its members limited by the company's Articles of Association to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (termed "a company limited by guarantee"), whether or not such a company has a share capital; or
- (v) a company not having any limit on the liability of its members (termed "an unlimited company").

#### *Limited Liability Companies*

There are no restrictions on capitalization in the case of a private company. A business may be capitalized by local or overseas investors to the extent that they are capable. However, a public company on its original incorporation is required to meet a minimum capital threshold, which is currently J\$500,000.00, before doing business or exercising any borrowing powers.

#### *Incorporation*

A limited liability company is incorporated in Jamaica by preparing and filing incorporation documents at the Companies Office of Jamaica (COJ). Once approved, the Registrar of Companies ("the Registrar") will issue a Certificate of Incorporation and assign a company number to the newly incorporated entity. Provided that all of the incorporation documents are in order, the entire incorporation procedure may be completed within one business week.

A limited liability company may be incorporated with at least one shareholder and having at least one director and one secretary, who must not be the same person.

Although there is no requirement for a Jamaican national to be a participant, manager or director in a company incorporated in Jamaica, the registered address of the company must be a Jamaican address.

Generally, local companies are required to pay income tax on its profits after allowable deductions) under the Income Tax Act; assets tax pursuant to the Assets Tax (Specified Bodies) Act; and GCT on goods and services pursuant to the General Consumption Tax Act.

With respect to subsidiaries and branches of foreign companies, the general taxation requirements in Jamaica are subject to the provisions applicable under double taxation treaties by virtue of which certain taxes may be reduced or waived.

### *Partnerships*

Both limited and general partnerships are recognised in Jamaica.

Generally, any partnership which exceeds twenty (20) members must be registered as a company under the Companies Act. However, partnerships involving attorneys-at-law and partnerships of accountants are generally exempted from the application of this rule.

A partnership is generally required to register its business name if it does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations (without any addition other than the true first names of individual partners or initials of such first name).

Generally, a special partner in a limited partnership is neither liable for, nor chargeable with, the payment of the debts of the partnership beyond the extent of the fund so subscribed by him to the capital of the co-partnership. A limited partnership must however have at least one general partner and it is the general partners only who shall have the power and authority to transact the business of and sign for and bind the partnership.

With respect to a general partnership, unless the partners agree to the contrary, the liability of the partnership is shared equally among the partners. The partners have unlimited liability with respect to the debts of the partnership.

### *Sole Proprietorships*

The Companies Act (2004) facilitates the incorporation of a “one-man company”. However, if desirous of an informal business structure with lower start-up costs and less annual filings at the Companies Office of Jamaica, persons may wish to operate without incorporation.

Sole proprietors having a place of business in Jamaica are generally required to be registered under the Registration of Business Names Act. The registration of a business name does not create separate legal status. Consequently, the personal liability of the proprietor is unlimited.

### *Subsidiaries/Branches/Representative Officers*

An overseas company may incorporate a subsidiary in Jamaica using the same procedure as that used to incorporate a local company.

Certified copies of the foreign incorporation documents and other details are required by the Registrar for the registration of a local branch of an overseas company.

The liability of a local branch is that of the foreign company, whereas the liability of the subsidiary is generally independent of that of the parent company.

#### *Bookkeeping requirements*

Companies are required to annually lay the accounts of the company before its members in general meeting. The incorporation documents usually outline the procedure for the keeping of local accounts, preparation and inspection of profit and loss accounts, balance sheets and group accounts (if any).

It may be necessary for the company to provide its Financial Statements when filing documents relating to the taxes and annual returns. If the company is listed on the Jamaica Stock Exchange, its balance sheet must be published at the end of the financial year.

#### *Form of Accounts*

Accounts must be kept in accordance with the provisions of any applicable legislation and in accordance with the Companies Act and the generally accepted accounting principles promulgated by the Institute of Chartered Accounts of Jamaica.

### **Cessation or Termination of Business**

#### *Cessation of Business and Removal of Company*

It is requirement for a business which has ceased trading to notify the relevant regulatory authority of this fact. The business's filing and taxation obligations may continue notwithstanding the fact that it has ceased trading. For example, a company may apply to the COJ to be removed from the Register of Companies provided that the company's filings are up to date, it has ceased trading and has neither assets nor liabilities.

#### *Liquidation of a Company*

There are three main methods of winding up/liquidating the assets of a company. Namely:

1. Compulsory winding up/winding up by the Court;
2. Voluntary winding up:
  - a. Members' voluntary winding up;

- b. Creditor's voluntary winding up; and
3. Winding up subject to the Court's supervision.

Once the company has been successfully wound up and assets liquidated and distributed in accordance with the prescribed ranking of claims, the Registrar of Companies ought to be notified, after which the company will be removed from the Register in due course.

The company's obligations to creditors depend on the assets of the company and the nature of the security held by the creditors. Certain debts, including taxes and employees' wages (not exceeding the prescribed amount), are deemed, by the Companies Act, to be preferential debts.

### **Insolvency/Bankruptcy**

#### *Investor's liability in the event of insolvency or bankruptcy*

When an entity has failed to pay its debts, creditors may bring legal proceedings in court to recover the sums owed. If a company becomes insolvent, it may be wound up on the application of the company, a shareholder or a creditor by a liquidator who is responsible to the body of creditors. Individual insolvency/bankruptcy is governed by The Bankruptcy Act, which outlines the priority in which debts are to be paid.

#### *Rescue processes available to an Investor*

A number of options are available to the investor creditor. These include compromise arrangement and receiverships.

### **Tax Regime**

#### *Income Tax*

Tax is charged on the worldwide income of resident individuals at the rate of 25% and on the worldwide income of resident companies and the locally-earned income of overseas companies at the rate of 33⅓% (subject to any applicable double-taxation treaties). Employers resident in Jamaica are required to deduct income tax at source under the P.A.Y.E. system. Apart from income tax, an employer is required to deduct Education Tax (2%) and National Insurance Scheme contributions (2½ % up to J\$500,000), National Housing Trust contributions (2%) and Human employment and Research Training (HEART) contributions (3%). Income tax and the various other statutory deductions are charged on emoluments or benefits associated with the employment, including the provision of accommodation and motor vehicles.

The theme governing allowable deductions is that the expenses ought to be reasonably incurred in gaining the income. Rental of business premises, interest charges, business travel and entertainment, motor vehicle leasing and repair, legal and accounting expenses, and bad debts are all examples of allowable deductions. Net operating losses incurred for a particular year may in certain circumstances be carried forward for particular periods.

Income tax may be withheld at source in the case of income earned by non-residents from real property in Jamaica, or from any business activity carried on in Jamaica, or from and interest that is credited by a financial institution on an account other than one which is designated as tax-free. Income tax is also withheld at source in the case of dividend payments to a resident. Dividend payments made to non-residents may be governed by double taxation treaties which will often provide a foreign tax credit to the taxpayer.

#### *General Consumption Tax (GCT)*

General Consumption Tax is a value-added tax payable on most goods and services supplied in or imported into Jamaica. Currently, the rate of GCT is 16.5% on most goods and services. In general, in computing the tax the taxpayer deducts the tax paid on the purchase of goods and services (input tax) from the tax charged to customers on the sale of goods and services (output tax). This is subject to the status and treatment of the taxpayer or the good or service supplied for GCT purposes.

#### *Capital Gains Tax*

Jamaica does not tax capital gains.

#### *Transfer Tax*

Transfer tax is payable on the transfer of an interest in real property or shares in a company. Transfer Tax on land is currently 4% of the market value of the property (i.e. land, leases of land, securities and beneficial interests in certain classes of property) save for companies listed on the Jamaica Stock Exchange (or the Junior Stock Exchange) which are exempt from transfer tax.

#### *Stamp Duty*

Stamp duty is payable on a wide range of legal documents and instruments including agreements for the sale of land or shares, transfers of land or shares, mortgages, commercial leases, and promissory notes to name a few. In some cases the stamp duty is a nominal flat fee equivalent to US\$15 or less, but in other cases *ad valorem* stamp duty

is chargeable. In the case of conveyances stamp duty is charged at the rate of 3% of the consideration expressed in the instrument of conveyance.

### *Property Tax*

Property Tax (otherwise called Land Tax) is payable by any person in possession of land. The Government and certain organisations (like churches and schools) are exempt from the payment of property tax. The Property Tax rates are based on the unimproved value of the property.

### **Attorneys**

Depending on the nature of the business, it is advisable that local Counsel be retained, either on a full-time or case by case basis to ensure that the business is compliant with applicable legislation.

A database of local attorneys is available online as well as in our local telephone directory.

### *Attorneys' fees*

Unless specifically agreed to the contrary, professional fees are usually calculated based upon what is regarded as being fair and reasonable having regard to all the circumstances of the case.