

DOING BUSINESS IN JAMAICA IN 2009



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A recent newspaper article highlighted a hopeful possibility of Jamaica's achieving developed world status by 2030. Juxtapose this with a recent World Bank and IFC study, "Doing Business 2009 – Country Profile for Jamaica", and an interesting picture of where we currently rank in the world emerges.

A perusal of this study highlights how intertwined public administration, law, and economic success are. Overall, Jamaica is ranked 63rd of 181 economies in terms of ease of doing business (with Singapore being number 1). Several components determine this. Significantly, we were ranked 11 and 22 for Starting and Closing a business respectively – those were our best grades.

Between our current state of affairs and being highly-ranked, are difficulties in Paying Taxes, Enforcing Contracts, Registering Property, Trading across Borders and Getting Credit for which we received the poorest scores (in that order, with payment of taxes being the lowest rank at 173). Leaving the tax and trade policies and procedures aside, what are the implications for our current legal system in the other three areas?

Firstly consider Contract Enforcement. The study suggests entrepreneurs are more willing to engage with new customers when there is an efficient system of enforcing contracts. Jamaica is ranked 127. This compares with being 102 in 2008. The fall is primarily due to an increase in the time for contract enforcement through the court system. This moved from 565 to 655 days. The 90-day increase is attributable to the introduction of automatic mediation in any proceedings in which a case management conference has not been fixed before September 18, 2006. In fairness to what some call a "negative reform", our Civil Procedure Rules provides for the application to dispense with mediation in certain circumstances. Also in its defence is a review by the Dispute Resolution Foundation reporting a 61% success rate for all matters mediated, with 97% of users reporting satisfaction. Approximately 20% of all cases referred to the DRF are commercial matters which represents a significant number of the commercial cases filed in the courts.

In the region, Jamaica has relatively few procedural steps and a shorter time for enforcement. But the cost is much higher. The study (using an claim of about US\$7,400) estimates costs at 45.6% of the claim in Jamaica. It's a fair presumption though that the cost as a percentage of the claim for enforcement of smaller claims is disproportionately higher than for larger claims. Jamaica's costs compare with for instance, St. Kitts and Nevis's 20.5%. Entrepreneurs prefer not to take risks in economies where it is costly or difficult to enforce contracts. Without assurances of efficient enforcement they would rather do business within small groups of existing contacts. The drivers of our relatively high cost should be analyzed.

Secondly, the ease of land conveyancing is a consideration for investors and creditors. Jamaica is ranked 109 overall for Registering Property. It is chiefly the cost, not the procedures or duration of transfers that is of concern.

The recent reduction in transfer tax and the stamp duty from 7.5% to 5% and from 5.5% to 4.5% of the property value respectively, is positive. However, these remain high relative to some neighbouring countries and more so internationally since some countries do not impose taxes or duties on land transfers.

New Zealand has best practices in land transfer according to the study. It has a two-step process which is possible to complete in 2 days, costing as little as 0.1% of the property value. Compare this with the 5-step, 10% of the property value cost to transfer land in Jamaica taking an estimated average of 54 days.

In terms of investor perception, lower costs and simpler procedures to transfer land formally, lowers transaction costs and are associated with security of property rights and less corruption.

Lastly, we look at obtaining credit. Jamaica ranked at number 84 for 2009, falling from 79 in 2008. There is a glaring absence in Jamaica of institutions that collect and distribute credit information on borrowers. Credit registries can expand access to credit by assisting lenders to assess risk and allocate credit more efficiently. Otherwise there may be heavy reliance on personal connections. Fortunately positive steps are being made with the Credit Reporting Bill. This legislation, when enacted will provide the framework for establishing credit bureaus.

Enhancing the credit system includes the protection of legal rights of those who offer credit. The registration of securities given to creditors is done at the National Land Agency, the Island Record Office and the Companies Office. Ideally we should have a security registration system that is unified geographically and by asset type. Some creditors do not have an unrestricted right or access to the security pledged because our laws give priority to certain taxes, employee compensation, NIS and NHT Contributions. Our public policy dictates this. Is this preferential treatment desirable?

As individuals we may often have been advised not to compare ourselves with others. The wisdom in this is clear. In attracting investment to our country and encouraging entrepreneurship though, comparisons are not only useful but crucial. Reaching and surpassing standards of regulations that enhance business activities already achieved in other countries would be pivotal to reaching that "developed world status by 2030".

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