

Land Transfers in Jamaica: how long is too long?  
*A comparison of Jamaica's performance internationally*

*by Lorna Phillips, Commercial Partner*

Although personal experience tells us that Jamaica's time lines for transferring property are unduly long, the recent edition of *Doing Business 2007*<sup>1</sup> establishes our place as 107 out of 175 countries. Those behind us include Afghanistan, Bangladesh, India, Grenada and Nigeria which latter country is ranked at 170. Not surprisingly the United States, United Kingdom, Sweden, Saudi Arabia and other wealthy jurisdictions are way ahead of us, but more surprisingly other comparable lower middle income jurisdictions such as Peru and Iraq also rank way ahead of Jamaica at 32 and 37 respectively.

The data shows a clear correlation of speed with wealth: all the high income jurisdictions, with a few exceptions make transferring title quicker and cheaper. New Zealand for example ranks 1<sup>st</sup> with the number of procedures<sup>2</sup> at 2, the days taken 2 and the cost (measured as a percentage of property value) at 0.1%; Australia<sup>3</sup> ranks 27, takes just 5 days with the same number of procedures and costs 4.8%; while Canada ranks at 22, utilizes some 6 procedures over 10 days and costs a mere 1.7%.

Although tempting to think that if one reduces the number of procedures, then the process will be quicker, the data seems to indicate that this is not necessarily so. Guyana ranking 52 has 8 procedures whilst Indonesia with 7 ranks 120. Jamaica has only 5 procedures and yet still manages to hold its own at 107 in the world. Clearly however, if we can collapse some of our procedures, it is hard to see how this would not show positive results. The negotiation of an acceptable agreement is one process that could be sped up is by the use of pre-printed standard form agreements for sale. Although the evidence is not conclusive, it is certainly persuasive. Australia takes just 2 days to agree terms of contract, Canada takes 1 day and USA also takes 1 day: they all utilize pre-printed standard agreements. Mind you, England utilizes standard forms but still takes as long as 8 weeks to conclude their agreements. I suspect that the substantial inheritance of our property transfer laws from the motherland means that it is no coincidence that

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<sup>1</sup> A World Bank publication of investigations of *inter alia* business acquisitions of buildings and land across 175 economies of the world.

<sup>2</sup> A procedure is defined as any interaction of the buyer or the seller, their agents or the property with external parties, including government agencies, inspectors, notaries and lawyers.

<sup>3</sup> Incidentally Australia has one of the highest levels of ownership in the world with some 70% of the population owning property in 1996 compared with Jamaicans of whom 422,074 out of a population of approximately 2.5 million own dwellings (the latter is taken from 2001 population census).

England's time for completion is among the highest at 12 weeks<sup>4</sup> and that ours are probably comparable or worse.<sup>5 6</sup>

The use of technology, it almost goes without saying, will enhance the speed of the process. Indeed the jurisdictions able to boast 2 or 3 days registration process use high speed internet registrations as part of their process: New Zealand purchasers for instance complete their 2 procedures online. It does not take Einstein to deduce that a technology driven response is what is ultimately needed to bring about drastic change in Jamaica. The recently introduced e-commerce legislation was clearly not intended to apply to land matters<sup>7</sup>, and so it remains to be seen what the government of Jamaica has in mind to modernize this sector.

A word about lawyers: it has been mooted that transfers would be concluded a lot quicker without the involvement of lawyers. Without going into all the reasons why I believe that Jamaica's system is not sufficiently advanced to exclude lawyers (that is the subject of another paper), it is true that in some jurisdictions lawyers play a much reduced role. Real estate agents, notaries public or licensed conveyancers do much of the work currently undertaken by lawyers in some jurisdictions: notably France whose system relies heavily on notaries. Also in Sweden real estate brokers replace lawyers entirely and in England the role is shared between lawyers and licensed conveyancers. Does this have any impact upon time? The research data I compared does not address this issue. Certainly France, Sweden and England conclude their transactions more quickly and at a lesser cost. I suspect however that their high income status, highly regulated market place and highly organized system bring more to bear on speed than whether lawyers are involved or not.

And as for the cost – well predictably our costs are higher than most. A purchaser will pay 13.5% in legal costs, stamp duties and registration fees and other costs. This compares very unfavourably with jurisdictions of all income levels, but comparing Jamaica with other lower middle income jurisdictions we note Bolivia's cost at 5%, Brazil at 4% China at 3.1% and Colombia at 3.5% and it is only Cameroon at 18.7%, Republic of Congo at 27.2% and Syria at 27.9% that come in significantly higher. Even low income Ghana manages to be cheaper than Jamaica at 1.9% although it takes a whopping 382 days as against Jamaica's 54

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<sup>4</sup> The only other that was potentially higher was France at between 6 and 16 weeks. NB. The study that produced this data only looked at 10 mostly high income jurisdictions, and so is far from conclusive.

<sup>5</sup> The data from the Real Estate Reform Consortium's recent study is not yet available, but I am speaking from my practice experience.

<sup>6</sup> Even though Jamaica utilizes conditional contracts, the culture still seems to be resistant concluding speedier contracts: there are a plethora of possible reasons that space precludes me from addressing here.

<sup>7</sup> The First schedule to the Electronic Transactions Act, 2006 excludes entirely the conveyance or transfer of real property or any interest in real property.

days to complete the process. By all comparisons, Jamaica's costs are way higher than most, with lower middle income countries costs averaging at 6%.

Taxation is the greatest part of the cost burden, especially for a vendor. It appears that it will take a progressive Minister of Finance facing a debt burden as high as Jamaica's currently is to agree to any significant tax cut.<sup>8</sup> This is in spite of the oft made complaint that the high combined tax rate of stamp duty and transfer tax encourages under-reporting of values or landholding, which it is presumed leads to inevitable loss of revenue and unwanted compliance costs.<sup>9</sup> The examples of India, Ireland and Mali whose tax reform policies seemed to contribute to improved economic growth should provide the evidence that increased revenues and not less, might well be the result.

A word about fees: most people believe quietly that lawyer's fees and real estate agent's fees are too high. Empirical evidence would appear to bear this out: Australia's agents earn 2%, Denmark's approximately 3%, Hong Kong's from 1.5-3% on the lower end (all high income jurisdictions), whilst upper middle income South Africa's agents' fees are as high as 6%. In Jamaica the standard fee for brokers is 5% (although it is subject to negotiation). For lawyers the world over the method of charging fees ranges from fixed fees, or a fixed fee range determined by price to being charged as a percentage. No conclusions can be drawn from the limited data, although Denmark's lawyers for instance charge between 0.4%-1% whilst Jamaican lawyers may charge anywhere between 2%-4%. Logically, it should be the degree and difficulty of work that dictate the level of fee earned. However, it appears to be more a case of tradition, strength of the market, and other unknown factors that determine fee levels. In Denmark for instance agents conduct all of the preparatory work, including property inspection, initial investigations, even the commissioning of a condition report on the state of the property all before marketing the property for sale, and still only earn approximately 3% commission.<sup>10</sup> In Canada as in France<sup>11</sup> the agent who earns 6% and 5% respectively, also prepares the agreement for sale.

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<sup>8</sup> A study undertaken by Roy Bahl of the Andrew Young School of Policy Studies (entitled Property Tax and Stamp Duty) concluded that the 'retention of revenue' justification for maintaining transfer tax and stamp duty at their current rates equates with the need for an increase in the General Consumption Tax rate from 15% to 16.5% to replace the loss of J\$2.8 billion in revenues for the year 2002/3; an unwelcome move it was presumably felt. Perhaps the Mr. Bahl gave the Jamaican government ideas, because Jamaicans are now paying General Consumption Tax at 16.5% without the benefit of a reduction in property sales taxes. One might query whether the passivity of the Jamaican people was underestimated by the learned Mr. Bahl; or maybe we are now witnessing unprecedented levels of under-reporting and landholding. Who knows?

<sup>9</sup> The report of the Tax Policy Review Committee published in 2004 in fact recommended the abolition of stamp duty altogether (with one minor non land related exception) and the reduction of transfer tax from 7.5% to 5%.

<sup>10</sup> Incidentally, high income Denmark's cost is a remarkable 0.6% of property value and ranks 36 in the world.

One final comparison might be useful: namely, with other holiday destination jurisdictions. One would like to think that the potential growth from villa and hotel acquisitions might encourage reform. In Spain (a high income jurisdiction) ranking 33 in the world it takes just 17 days to transfer property at a cost of 7.2%; St. Lucia (a upper middle income jurisdiction) ranks 51 and takes 20 days at a cost of 7.3%; St. Kitts (a upper middle income jurisdiction) ranks behind Jamaica at 136 and takes 81 days at a cost of 13.3%; Greece (a high income jurisdiction) ranks 94, takes 23 days at cost of 3.8% and Dominica (a upper middle income jurisdiction) ranks 78 taking 40 days at a cost of 13%. The economists can better inform us, but it seems to me that the encouragement of both local and overseas investment in real estate might improve Jamaica's ranking in the world and with it its wealth status from lower middle income jurisdiction.

The arguments for reform of the system of land transfers abound and whilst I have not sought to express those arguments in this article those arguments coupled with the comparison of performance with our more progressive international neighbours, indicate that reform is not desirable, it is essential.

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<sup>11</sup> France's world ranking is surprisingly at a low of 160 probably because it takes a high of 183 days to transfer property.