

TERMS OF REFERENCE
LEGISLATIVE DRAFTER
FOR JAMAICA INSOLVENCY LEGISLATION

BACKGROUND

The Jamaican law on bankruptcy and insolvency is presently contained in two pieces of legislation. The Bankruptcy Act covers personal and individual insolvency, whereas the Companies Act contains provisions which deal with the winding-up of insolvent corporate bodies. After much consultation, it was agreed that the need for reform is clear as evidenced by the following factors:

1. The existing bankruptcy and insolvency law is clearly deficient. The law is not found in one place (local legislation is heavily supplemented by local and Commonwealth case law); it is old and outdated (the Bankruptcy Act dates from 1880); it has been the subject of ad hoc amendments and so, is arguably unclear; it covers insolvency as one amongst many other topics (as evident in the Companies Act); the procedural rules are not only outdated, but they conflict with the rules that govern other court proceedings; and it has not kept pace with modern legislative policies towards insolvency.
2. Largely, as a result of these factors, the existing insolvency process is time-consuming and costly.
3. The existing law does not attempt to address the stigma of personal bankruptcy or corporate insolvency. The damage caused by this stigma is both personal and national.
4. Under the existing law, the interests of creditors are given paramount consideration above all stakeholders.
5. The existing law makes no or little provision for rehabilitation or re-organisation of the business and affairs of the debtor.
6. While court-sanctioned procedures for comprising or restructure corporate indebtedness by way of schemes of arrangement exist in section 206-211 of the Companies Act, no provisions exist for individual and corporate voluntary arrangements (whether out-of court or sanctioned by the court) which involve moratoriums or temporary stays allowing the debtor to carefully consider his or its options.
7. Few practitioners (including a small number of lawyers and public accountants) are involved in insolvency practice

In light of the above an Insolvency Review Committee ("the Committee") was formed under the auspices of the Private Sector Organisation of Jamaica ("the PSOJ") as a subcommittee of its Justice Reform Committee with a view to creating an enabling legal and regulatory environment for the implementation of insolvency laws. The Committee consisted of representatives from the public and private sectors who submitted a final report of their findings in April 2012 to the Ministry of Industry, Investment and Commerce. The recommendations will form the basis for drafting Instructions.

The Legislative drafter is expected to draft the Instruments as directed by the MIIC Legal Department in keeping with the recommendations provided by the Insolvency Committee.

SCOPE OF WORK

The drafter will be expected to:

1. Provide legal support to the MIIC Legal Department for the creation and development of the Insolvency Act and Regulations;
2. Liaise with the Legal Department concerning the detailed requirements for the Insolvency Act requested to be drafted;
3. Prepare the legislative instruments required as directed by the Ministry in keeping with the report of the Insolvency Committee;
3. Conduct such research as may be necessary in order to ensure that the Insolvency Act and regulation are drafted is consistent with the best practices adopted in countries having a vibrant international financial sector and are compliant with local and international regulatory guidelines;
3. Collaborate and consult as may be necessary between the relevant Ministries and departments of Government and Insolvency Review Committee in the development of the draft Insolvency Act and Regulation ;
4. Provide assistance, if required, in the presentation of the Bill and regulations to private sector interests and the wider society;
5. Provide continuing support as may be necessary to the Chief Parliamentary Counsel to resolve any issues, draft any amendments and provide guidance and assistance during all the enactment stages of the legislation until it has been passed by Parliament and promulgated.

DELIVERABLES:

The drafter must:

1. Prepare and submit a draft Bill and regulations to Ministry of Industry Investment and Commerce in keeping with prescribed time lines;
2. Upon review by the Chief Parliamentary Counsel and MIIC legal Department revise as necessary;
3. Work closely with the CPC throughout the drafting process and in carry out the amendments and modifications as may be requested by CPC and the Ministry after the submission of the first draft of such legislation and as may be requested by the Legislation Committee or the Parliament if required to do;
4. Attend meetings with Ministry, Legislation Committee Meeting , CPC , Stakeholders , Parliament as required
5. Prepare brief on bill and regulations

DURATION AND PHASING

See table attached showing work

REPORTING RESPONSIBILITY

The drafter will receive direction from the Ministry through the Senior Legal Officer and on-going guidance and support from the relevant officers in the Ministry.

QUALIFICATIONS

- Excellent Communication, presentation and problem solving skills;
- Strong analytical and drafting skills;
- Postgraduate degree in Law specifically in Legislative Drafting;
- Strong legal research skills and ability to critically assess and compare the legislative structures of different jurisdictions;
- At least 10 years experience as a legislative drafter;
- A thorough knowledge of the laws of Jamaica particularly in the areas of finance, taxation, financial regulation, laws related to Insolvency ;
- A thorough knowledge of the Jamaican legislative system and familiarity with the process of enacting and promulgating legislation;
- Familiarity with laws relating to Insolvency particularly in other jurisdictions would be an asset

The Consultant shall perform the services during the period commencing June 17, 2013 and should not go beyond August 30, 2013.

TERM

The Drafting Consultant will provide the service at a cost of **JA\$3,000,000.00**

PAYMENT SCHEDULE

Payment will be disbursed upon acceptance and approval in accordance with the following deliverables:

First Payment	-	15% as an initial start-up cost (J\$450,000.00)
Second Payment	-	35% on submission of the first draft of the bill (J\$1,050,000.00)
Third Payment	-	50% on presentation of finalized bill and Regulations for presentation to Parliament (J\$1,500,000)

WORK PLAN

Activity	Projected		Jun-13	Jun-13	Jul-13	Jul-13
	Days	Start Date				
Phase I - Resolution of Prelim. Matters						
Inception Meetings - MIIC and OPC	2	12/06/2013	14/06/2013			
Initial Data Collection		12/06/2013	14/06/2013			
Submission of Work Plan		11/06/2013	11/06/2013			
Total Days Phase I	2					
Phase II – Identification of Legal Instruments						
Research and Drafting legislation	11	17/06/2013	29/06/2013			
Meet with OPC weekly		17/06/2013	29/06/2013			
Submission of First Draft Bill to MIIC		28/06/2013	29/06/2013			
Feedback from MIIC, OPC, etc		04/07/2013	04/07/2013			
Total Days Phase II	11					
Phase III - Revise First Draft Bill						
Revision of Draft Legislation	5	04/07/2013	16/07/2013			
Draft Regulations	4	04/07/2013	16/07/2013			
Meet with OPC as necessary		04/07/2013	16/07/2013			
Submission of Second Draft Bill and Regulations to MIIC		16/07/2013	16/07/2013			
Feedback from MIIC, OPC, etc		19/07/2013	19/07/2013			
Total Days Phase III	9					
Phase IV - Submission of Final Draft Bill						
Revision of Draft Legislation (incl. Regs)	4	19/07/2013	24/07/2013			
Submission of Final Bill to MIIC		24/07/2013	24/07/2013			
Total Days Phase IV	4					
Phase V – Legislation Committee and other meetings						
Attendance and revision of draft	5	25/07/2013	31/07/2013			
Total Days Phase V	5					
TOTAL DAYS	31					

Billing

Billing @ 30 days J\$100,000 per day = J\$3,000,000

This takes account of all meetings also

NB: This cost includes attendance all relevant meeting as necessary